



SUPPLY CHAIN MANAGEMENT POLICY

MUNICIPALITY

SUPPLY CHAIN MANAGEMENT POLICY LOCAL GOVERNMENT:

MUNICIPAL FINANCE MANAGEMENT ACT, 2003

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Definitions

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

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

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

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

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

“functionality” means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

“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 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;

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 Endumeni 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 Endumeni Municipality –
 - (a) procures goods or services;
 - (b) disposes goods no longer needed;
 - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
 - (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 accounting officer must –
 - (a) at least annually review the implementation of this Policy; and
 - (b) when the accounting officer considers it necessary, submit proposals for the amendment of this Policy to the Endumeni Municipal council.
- (2) If the accounting officer submits proposed amendments to the council that differs from the model policy issued by the National Treasury, the accounting officer must –
 - (a) ensure that such proposed amendments comply with the Regulations; and
 - (b) report any deviation from the model policy to the National Treasury and the KZN 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 Endumeni Municipal council hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –
 - (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - (i) Chapter 8 or 10 of the Act; and
 - (ii) this Policy;
 - (b) to maximise administrative and operational efficiency in the implementation of this Policy;
 - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
 - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

- (2) Sections 79 and 106 of the Act apply to the subdelegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- (3) The accounting officer may not subdelegate any supply chain management powers or duties to a person who is not an official of Endumeni Municipality or to a committee which is not exclusively composed of officials of Endumeni 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.

Subdelegations

- 5. (1) The accounting officer may in terms of section 79 or 106 of the Act subdelegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such subdelegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.
- (2) The power to make a final award –
 - (a) above R10 million (VAT included) may not be subdelegated by the accounting officer;
 - (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be subdelegated but only to –
 - (i) the chief financial officer;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
 - (c) not exceeding R2 million (VAT included) may be sub-delegated but only to –
 - (i) the chief financial officer;
 - (ii) a senior manager;
 - (iii) a manager directly accountable to the chief financial officer or a senior manager; or
 - (iv) a bid adjudication committee.
- (3) An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in

subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–

- (a) the amount of the award;
 - (b) the name of the person to whom the award was made; and
 - (c) the reason why the award was made to that person.
- (4) A written report referred to in subparagraph (3) must be submitted –
- (a) to the accounting officer, in the case of an award by –
 - (i) the chief financial officer;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
 - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
 - (i) a manager referred to in subparagraph (2)(c)(iii); or
 - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- (5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.
- (6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.
- (7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

Oversight role of council

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

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

Supply chain management unit

7. (1) A supply chain management unit is hereby established to implement this Policy.

- (2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

Training of supply chain management officials

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

CHAPTER 2
SUPPLY CHAIN MANAGEMENT SYSTEM

Format of supply chain management system

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

Part 1: Demand management

System of demand management

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

Range of procurement processes

- 12.** (1) Goods and services may only be procured by way of –
- (a) petty cash purchases, up to a transaction value of R500 (VAT included);
 - (b) formal written price quotations for procurements of a transaction value over R 500 up to R200 000 (VAT included); provided that:
 - i) in terms of the Preferential Procurement Policy Framework Act the 80/20 points system shall be applied for procurement to the value of R 30 000 up to R 200 000.00; and
 - (c) a competitive bidding process for–
 - (i) procurements above a transaction value of R200 000 (VAT included); and
 - (ii) the procurement of long term contracts

- (d) The preferential points as per the requirements of the Preferential Procurement Policy Framework Act will be applied as follows to the competitive bidding process in (c) above:
 - the 80/20 points system shall apply for procurement to the value of R 1 000 000, and
 - the 90/10 points system shall apply for procurement to the value in excess of R 1 000 000.00
- (2) The accounting officer may, in writing-
 - (a) lower, but not increase, the different threshold values specified in subparagraph (1)(a) to (c); or
 - (b) direct that –
 - (i) formal written price quotations be obtained for any specific procurement of a transaction value lower than R 500; or
 - (ii) 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 that provider’s –
 - (i) full name;
 - (ii) identification number or company or other registration number; and
 - (iii) tax reference number and VAT registration number, if any;
 - (b) has authorised Endumeni Municipality to obtain a tax clearance from the South African Revenue Services that the provider’s tax matters are in order; and
 - (c) has indicated –
 - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
 - (iii) whether a spouse, child or parent of the provider or of a

director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

Lists of accredited prospective providers

14. (1) The accounting officer must –
- (a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through 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 per type of service.

Petty cash purchases

15. The conditions for the procurement of goods by means of petty cash purchases referred to in paragraph 12 (1) (a) of this Policy are as stipulated in a Petty Cash Policy as approved by the accounting officer.

Written quotations

16. Endumeni Municipality only accepts formal written price quotations.

Formal written price quotations

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

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

Procedures for procuring goods or services through 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 Endumeni Municipality;
 - (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
 - (d) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all 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 (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
 - (g) original documents are to be kept in a safe and secure place.

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

- or other service provider in respect of which payment is overdue for more than 30 days;
- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
 - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

Public invitation for competitive bids

22. (1) The procedure for the invitation of competitive bids is as follows:
- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
 - (b) the information contained in a public advertisement, must include –
 - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
 - (ii) a statement that bids may only be submitted on the bid documentation provided by Endumeni Municipality; and
 - (iii) date, time and venue of any proposed site meetings or briefing sessions; and
 - (iv) that the bid will be evaluated on functionality, if applicable.
 - (c) where the bid will be evaluated on functionality-
 - (i) the evaluating criteria must be objective
 - (ii) the following must be clearly specified in the invitation to submit a bid-
 - (a) evaluation criteria for measuring functionality;
 - (b) weight of each criterion;
 - (c) applicable values; and
 - (d) minimum qualifying score

- (2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

Procedure for handling, opening and recording of bids

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

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

Negotiations with preferred bidders

- 24.** (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
- (a) does not allow any preferred bidder a second or unfair opportunity;
 - (b) is not to the detriment of any other bidder; and

(c) does not lead to a higher price than the bid as submitted.

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

Two-stage bidding process

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

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

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

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

Committee system for competitive bids

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

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

(2) The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and

(3) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

(4) The committee system must be consistent with –
(a) paragraph 27, 28 and 29 of this Policy; and
(b) any other applicable legislation.

(5) The accounting officer may apply the committee system to formal written price quotations.

Bid specification committees

27. (1) A bid specification committee must compile the specifications for each procurement of goods or services by Endumeni 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 2011;
 - (g) must, where applicable, comply with regulation 4 of the PPPFA ; and
 - (h) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must as far as possible be composed of -
- The Assistant Head: Legal and Estates,
 - The Manager: Financial Statements/Housing/, and
 - The Manager: Expenditure
- which members will be appointed by the Accounting Officer in writing.
- The Committee may, when appropriate, include external specialist advisors.
 - Two of the three permanent members will form a quorum.
- (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) functionality criteria, if applicable, and no bid must be regarded as an acceptable bid if it fails to achieve the minimum qualifying score for functionality as indicated in the bid invitation ;
 - (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) a Senior Manager in Finance Department
 - (b) a Manager in Technical Services and
 - (c) a Manager in Corporate Services,
- which members will be appointed by the Accounting Officer in writing
- (3) Two members of the committee will form a quorum.

Bid adjudication committees

- 29.** (1) A bid adjudication committee must –
- (a) consider the report and recommendations of the bid evaluation committee; and
 - (b) either –
 - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
 - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) A bid adjudication committee must consist of at least four senior managers of Endumeni Municipality which must as far as possible include:
- (a) the Chief Financial Officer or, if the Chief Financial Officer is not available, another manager in the budget and treasury office reporting directly to the Chief Financial Officer and designated by the chief financial officer; and
 - (b) the Executive Manager: Technical Services,;
 - (c) the Executive Manager: Corporate Services; and
 - (d) a SCM Practitioner.

Three members of the committee form a quorum.

- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5)
 - (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
 - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
 - (ii) notify the accounting officer.
 - (b) The accounting officer may –
 - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
 - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The accounting officer must comply with section 114 of the Act within 10 working days

Procurement of banking services

- 30.**
- (1) A contract for banking services –
 - (a) must be procured through competitive bids;
 - (b) must be consistent with section 7 or 85 of the Act; and
 - (c) may not be for a period of more than five years at a time.
 - (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

(3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

Procurement of IT related goods or services

31. (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if –
- (a) the transaction value of IT related goods or services required in any financial year will exceed 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 Endumeni 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 KZN provincial treasury and the Auditor General.

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

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

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

Procurement of goods necessitating special safety arrangements

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

Proudly SA Campaign

34. The municipality supports the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:
- Firstly – suppliers and businesses within the municipality or district;
 - Secondly – suppliers and businesses within the relevant province;
 - Thirdly – suppliers and businesses within the Republic.

Appointment of consultants

35. (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must be procured through competitive bids if
- (a) the value of the contract exceeds R200 000 (VAT included); or
 - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
- (a) all consultancy services provided to an organ of state in the last five years; and
 - (b) any similar consultancy services provided to an organ of state in the last five years.

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

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

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

Unsolicited bids

37. (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - (c) the person who made the bid is the sole provider of the product or service; and
 - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
- (a) reasons as to why the bid should not be open to other competitors;
 - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the 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 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 KZN provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the 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 Endumeni Municipality to the bid may be entered into or signed within 30 days of the submission.

Combating of abuse of supply chain management system

38. (1) The accounting officer must–
- (a) take all reasonable steps to prevent abuse of the supply chain management system;
 - (b) investigate any allegations against an official or other role player of fraud, corruption, favoritism, 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 Endumeni 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 Endumeni 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 Endumeni Municipality or has committed any improper conduct in relation to such system;
 - (ii) has been convicted for fraud or corruption during the past five years;
 - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (iv) has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury and KZN provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this policy.

Part 3: Logistics, Disposal, Risk and Performance Management

Logistics management

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

Disposal management

40. (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets are subject to sections 14 and 90 of the Act.
- (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.
- (4) The accounting officer must ensure that –
- (a) immovable property is sold only at market related prices except when

- the public interest or the plight of the poor demands otherwise;
 - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
 - (c) 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.
- (5) Bids for disposal or letting of assets will be considered on price only.

Risk management

41. (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:
- (a) insolvency; non payment of rates and service charges; liquidation; unable to supply certificate from SARS.
- (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;
 - (c) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
 - (d) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

Performance management

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

Part 4: Other matters

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

43. (1) No award above R30 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the accounting officer 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

44. Irrespective of the procurement process followed, no award may be made to a person in terms of this Policy –
- (a) who is in the service of the state;
- (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
- (c) a person who is an advisor or consultant contracted with the municipality.

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

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

- (c) the amount of the award.

Ethical standards

46. (1) A code of ethical standards as set out in **subparagraph (2)** is hereby established for officials and other role players in the supply chain management system of Endumeni Municipality in order to promote –
- (a) mutual trust and respect; and
 - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) An official or other role player involved in the implementation of this Policy –
- (a) must treat all providers and potential providers equitably;
 - (b) may not use his or her position for private gain or to improperly benefit another person;
 - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
 - (d) notwithstanding subparagraph (2) (c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
 - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, Endumeni 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 Endumeni Municipality;
 - (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and

- (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - (i) any alleged fraud, corruption, favouritism or unfair conduct;
 - (ii) any alleged contravention of paragraph 47(1) of this Policy; or
 - (iii) any alleged breach of this code of ethical standards.

- (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 Endumeni Municipality who must ensure that such declarations are recorded in the register.

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

- (5) A breach of the code of ethics must be dealt with as follows -
 - (a) in the case of an employee, in terms of the disciplinary procedures of Endumeni 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 municipality, 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 Endumeni Municipality for or in connection with the award of a contract; or
 - (b) any reward, gift, favour or hospitality to –
 - (i) any official; or
 - (ii) any other role player involved in the implementation of this Policy.
- (2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

Sponsorships

48. The accounting officer must promptly disclose to the National Treasury and the KZN 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. 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) if the objection or complaint is against the procurement process, submit a written objection or complaint against the decision or action to the accounting officer of the municipality who shall, in turn, within 24 hours refer the written objection or complaint to the independent and impartial person referred to in paragraph 50 for resolution or
 - (b) if such complaint or objection is against the award of a bid, lodge a written appeal with the Municipal Bid Appeals Tribunal in accordance with the provisions of paragraph 50A.

Resolution of objections and complaints against procurement process

50. (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of objections and complaints between the municipality and any other person regarding -
- (a) the implementation of the procurement process in terms of the supply chain management system; or
 - (b) any matter arising from the implementation of the procurement process in terms of the supply chain management system.
- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must –
- (a) strive to resolve promptly all objections and complaints received; and
 - (b) submit monthly reports to the accounting officer on all such objections and complaints received, attended to or resolved.
- (4) If the independent and impartial person referred to in paragraph 50.1, is of the view that a matter which should be dealt with in terms of paragraph 50A, he or she shall forthwith refer the matter to the Municipal Bid Tribunals and that Tribunal shall then hear and determine the matter in accordance with the provisions of paragraph 50A.
- (5) An objection or complaint may be referred to the KwaZulu-Natal Provincial Treasury if:
- (a) the objection or complaint is not resolved within 60 days; or
 - (b) no response is forthcoming within 60 days.
- (6) If the Provincial Treasury does not or cannot resolve the matter, the objection or complaint may be referred to the National Treasury for resolution.

50A. Municipal Bid Appeals Tribunal

- (1) The council shall establish a Municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.
- (2) The accounting officer of the municipality, in consultation with the Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Bid Appeals Tribunal.
- (3) The powers, duties and functions of the Municipal Bid Appeals Tribunal, and matters incidental thereto, are set out in the Rules which are appended to this Supply Chain Management Policy and marked Appendix A.
- (4) The administrative and secretarial work involved in the performance of the duties and functions of the Municipal Bid Appeals Tribunal shall be performed by officers of the Provincial Treasury as set out in the Rules referred to in paragraph 50A.3.
- (5) There shall be no further appeal against a decision of the Municipal Bid Appeals Tribunal.

Contracts providing for compensation based on turnover

51. If a service provider acts on behalf of Endumeni Local Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Endumeni Local Municipality must stipulate –
- (a) a cap on the compensation payable to the service provider; and that such compensation must be performance based.

Evaluation of Bids

52. (1) When Endumeni Local Municipality needs to invite and evaluate bids on the basis of functionality depending on the nature of the required commodity, service and/or works, paragraphs (2) and (3) below must be adhered to.
- (2) Endumeni Local Municipality must indicate on an invitation to submit a bid if that bid will be evaluated on functionality, and must also clearly specify:
- a. The evaluation criteria for measuring functionality;

- b. The weight of each criterion; and
- c. The applicable value as well as the minimum threshold for functionality

(3) The evaluation of bids must be conducted in the following two stages:

- (a) Firstly, the assessment of functionality must be done in terms of the evaluation criteria and the minimum threshold referred to in paragraph (2) above. A bid must be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation.
- (b) Thereafter, only the qualifying bids are evaluated further in terms of the preference points systems, prescribed below.

The evaluation criteria for measuring functionality must be objective.

The 80/20 preference point system for acquisition of goods, services and / or works up to a Rand value of R 1000 000 The following formula must be used to calculate the points for price in respect of bids/ procurement with a Rand value equal to, or above R 30 000 and up to a Rand value of R 1000 000 (all applicable taxes included). The municipal manager may, however, apply this formula for procurement with a value of less than R 30 000, if and when appropriate:

A maximum of 80 points is allocated to Price only on the following basis:

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

Where

P_s = Points scored for price of bid under consideration

P_t = Rand value of bid under consideration

P_{\min} = Rand value of lowest acceptable bid

- (1) A maximum of 20 points may be awarded to a bidder for attaining the B-BBEE status level contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant Contributor	0

- (2) The points scored by the bidder in respect of B-BBEE contribution contemplated in the table above must be added to the points scored for price.

The 90/10 preference point system for acquisition of goods, services and / or works above a Rand value of R 1000 000

- (1) The following formula must be used to calculate the points for price in respect of bids/ procurement with a Rand value above R1000 000 (all applicable taxes included)
- (1) A maximum of 90 points is allocated to Price only on the following basis:

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

Where

P_s = Points for comparative price bid under consideration

P_t = Comparative price of bid under consideration

P_{min} = Comparative price of lowest acceptable bid

A maximum of 10 points may be awarded to a bidder for attaining the B-BBEE status level contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant Contributor	0

- (3) The points scored by the bidder in respect of B-BBEE contribution contemplated in sub-section (2) must be added to the points scored for price as calculated in accordance with sub-section (1).

Commencement

53. This Policy takes effect on 01 September 2013

APPENDIX A

ENDUMENI LOCAL MUNICIPALITY

RULES FOR MUNICIPAL BID APPEALS TRIBUNAL

1. CHAPTER 1: INTERPRETATION

1.1 What words mean in these rules

In these rules any word or expression which is defined in the Municipal Supply Chain Management Regulations published on 30 May 2005 in Government Gazette No 27636 under Notice No 868 of 2005 has the same meaning, unless the context indicates that the word or expression should have another meaning, and –

- 1.1.1 **“appeal”** means a formal objection to the award of a bid by the Municipality brought in terms of these rules by an appellant;
- 1.1.2 **“appellant”** means a person who initiates a formal objection to the award of a bid by the Municipality and who qualifies as an appellant in terms of chapter 5 of these rules;
- 1.1.3 **“bid”** means a written offer equal to or in excess of R 200 000 made by a person in response to an invitation by the Municipality for the supply of goods, services, or works to the Municipality;
- 1.1.4 **“day”** means a calendar day;
- 1.1.5 **“deliver”** means to formally provide the Secretariat with a copy of a document in the manner described in rule 9.1;
- 1.1.6 **“District Municipality”** means the Umzinyathi District Municipality;
- 1.1.7 **“interested person”** means either –
 - 1.1.7.1 a person who was awarded a bid; and
 - 1.1.7.2 a person, other than an appellant, whose bid was rejected by the Municipality;

- 1.1.8 **“Municipal Bid Appeals Tribunal”** and **“Tribunal”** means the tribunal established in terms of rule 3.1 and, in relation to a particular appeal, means the particular tribunal which has jurisdiction to hear the appeal in question;
- 1.1.9 **“Municipal Supply Management Regulations”** means the Municipal Supply Chain Management Regulations made in terms of the Local Government Municipal Finance Management Act (Act No. 56 of 2003);
- 1.1.10 **“Municipality”** means the Endumeni Local Municipality;
- 1.1.11 **“person”** includes a company, close corporation, trust, partnership or association;
- 1.1.12 **“Provincial Treasury”** means the Provincial Treasury of the province of KwaZulu-Natal; and
- 1.1.13 **“Secretariat”** means the secretariat established in terms of chapter 4 of these rules to undertake the administration of the Tribunal and to assist with the setting down and conduct appeals.

1.2 **How to calculate a period of days**

When a number of days is prescribed for doing something, then that number must be calculated by excluding the first day and including the last day, unless the last day falls on a Sunday or a public holiday or on a day during the period between 16 December to 7 January, in which case that day or period must be excluded.

2. **CHAPTER 2: THE PURPOSE OF THE MUNICIPAL BID APPEALS TRIBUNALS**

2.1 The purpose of the Municipal Bid Appeals Tribunal is to receive, hear and decide appeals against the award of bids by the Municipality.

2.2 The Tribunal must act impartially and independently.

2.3 The Tribunal is intended to assist in maintaining the good repute of municipal bid processes in the Municipality by providing an accessible, transparent and speedy mechanism for resolving objections to the award of bids by the Municipality. Service delivery, necessarily delayed by an appeal, requires that the procedure of the Tribunal be efficient and speedy.

3. **CHAPTER 3: THE MUNICIPAL BID APPEALS TRIBUNALS**

3.1 **Establishment**

3.1.1 The Council shall establish a Municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.

3.1.2 The accounting officer of the Municipality, in consultation with the Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Appeals Tribunal.

3.1.3 The Municipal Bid Appeals Tribunal has as its seat the place where the District Municipality has its seat.

3.1.4 The Chairperson of the Tribunal may determine that in respect of a particular appeal, the Tribunal should sit at a place other than the seat of the District Municipality.

4. **CHAPTER 4: THE MUNICIPAL BID APPEALS TRIBUNAL SECRETARIAT**

4.1 **Who is the Secretariat?**

The administrative and secretarial work incidental to the performance of the functions of the Municipal Bid Appeals Tribunal shall be performed by officers in the Provincial Treasury designated and assigned for such purpose by the Head of the Provincial Treasury.

4.2 **Opening hours**

The office of the Secretariat must be open for the filing of documents from 08:00 to 12:30 and from 14:00 to 16:00 every day other than a Saturday, Sunday or public holiday.

4.3 **Contact details**

The address, telephone number, fax number and e-mail address of the Secretariat is:

Physical address: 145 Chief Albert Luthuli
Pietermaritzburg
3201

Telephone no.: 033 - 897 4357

Telefax no.: 033 342 4238

Email address: philile.memela@kzntreasury.gov.za

4.4 Documents may only be filed with the Secretariat at the address, telefax number or email address given in rule 4.3 and during the hours referred to in Rule 4.2. Notwithstanding rule 4.2, documents may be faxed or e-mailed to the Secretariat at any time.

5. **CHAPTER 5: WHO MAY APPEAL?**

5.1 Only a person who submitted a bid in response to an invitation to bid may appeal against the award of that bid to another party.

5.2 An interested person may lodge an appeal where the Municipality (or any committee or person acting under delegated power) has –

5.2.1 committed misconduct in relation to their duties concerning the awarding of bids;

5.2.2 committed a gross irregularity;

5.2.3 exceeded its or their power;

5.2.4 awarded a contract in an improper manner, or

5.2.5 awarded a bid in a manner which contravenes the Municipality's Supply Chain Management Policy or any applicable law.

6. **CHAPTER 6: PRELIMINARY PROCEDURES**

The Municipality must –

6.1 Indicate in its bid documents that appeals against the award of bids must be lodged with the Secretariat within the time period referred to in the bid documents.

6.2 At the time of awarding a bid –

6.2.1 formulate comprehensive reasons for the award of the bid to the successful bidder and the failure to award the bid to each interested party; and

6.2.2 prepare and retain for not less than 180 days, a comprehensive file of all documentation relevant to the award of the bid to the successful bidder and the failure to award the bid to each interested party.

6.3 When advertising the award of a bid, the Municipality must inform all interested parties that appeals against the award of the bid in question must be lodged with the Municipal Manager within the time period referred to in the advertisement, and that a copy should be forwarded to the Secretariat.

7. **CHAPTER 7: PROCESSING AN APPEAL**

7.1 The Appellant must within fourteen days of the award being advertised, file a notice of appeal containing the grounds of appeal with the Municipal Manager. A copy of the notice should be forwarded to the Secretariat.

- 7.2 The Municipal Manager must maintain a register in which all appeals, and the outcome thereof, are recorded.
- 7.3 On receiving the notice of the appeal, the Municipal Manager must, within 24 hours, send the appeal to the Secretariat.
- 7.4 On receiving the notice of the appeal, the Secretariat shall –
- 7.4.1 issue the appeal with a unique number which must thereafter be reflected on all documents prepared by the Secretariat, the appellant, or any other party participating in the appeal; and
- 7.4.2 request the Municipality to, within three days:
- 7.4.2.1 confirm, in writing the names and contact details of all interested parties affected by the appeal;
- 7.4.2.2 serve on the Secretariat its reasons for awarding the bid to the successful bidder and for its failure to award the bid to the appellant; and
- 7.4.2.3 serve on the Secretariat all the documentation relevant to the decision relating to the award.
- 7.5 After receiving the information from the Municipality, the Secretariat shall:
- 7.5.1 notify all interested parties affected by the appeal that an appeal has been lodged, advise these persons of their right to respond to the appeal, and describe, in plain language, the next steps; and
- 7.5.2 provide the appellant with copies of the information supplied by the Municipality; and

- 7.5.3 require the appellant to provide written representations amplifying (if necessary) its grounds of appeal within a further five days.
- 7.6 On receiving the further representations from the appellant, or after the five days have lapsed, the Secretariat must, within two days, provide all the interested parties affected by the appeal with copies of the appellant's notice of appeal and further representations (if any) and advise them of their right to lodge, with the Secretariat, a response to the appeal within five days.
- 7.6.1 Any response to an appeal must include:
- 7.6.1.1 a concise statement of the grounds on which the matter is supported or opposed;
 - 7.6.1.2 facts or allegations contained in the appellant's representations that the interested party affected by the appeal admits;
 - 7.6.1.3 facts or allegations contained in the appellant's representations that the interested party affected by the appeal denies and the grounds for such denial; and
 - 7.6.1.4 the material facts or points of law on which the interested party affected by the appeal relies.
- 7.7 Once the Secretariat has received representations from the interested parties affected by the appeal, or the period for doing so has lapsed, the Secretariat shall deliver all the documentation relevant to the appeal to the Chairperson.
- 7.8 On receiving the documents from the Secretariat, the Chairperson (or Deputy Chairperson in the Chairperson's absence) must within two days of receiving the documentation decide whether the appeal:

7.8.1 is frivolous, vexatious or without any merit; or

7.8.2 should be determined on the basis of the documents alone;
or

7.8.3 should be referred to an oral hearing.

7.9 The Secretariat, within two days of receiving the Chairperson or Deputy Chairperson's decision on whether or not to proceed with the appeal, must:

7.9.1 issue a notice of non-referral if the appeal has been deemed to be frivolous, vexatious or without any merit; or

7.9.2 notify the appellant, interested parties affected by the appeal and the Municipality that the appeal will be determined on the basis of the documents alone; or

7.9.3 notify the appellant, interested parties affected by the Appeal and the Municipality that the appeal will be determined on the basis of an oral hearing, inform these parties of the venue, date and time of the hearing, and inform them of any directives that may have been issued by the Chairperson with regard to the conduct of the appeal.

7.10 **Withdrawal of matters**

An appellant, before an application has been decided, may withdraw the application, or any part of the application, by serving a notice to this effect on the Secretariat.

8. **CHAPTER 8: HEARINGS**

8.1 **Informality**

8.1.1 Any oral hearing of an appeal must be informal and must follow the procedures determined by the Chairperson or Deputy Chairperson, as the case may be.

8.1.2 The Tribunal shall determine the admissibility of any evidence adduced and of its probative value.

8.2 Access

The hearings of the Municipal Bid Appeals Tribunal are open to the public unless otherwise determined by the Chairperson.

8.3 Witnesses

If the Tribunal requests a witness to give evidence at the hearing, the Chairperson may request the Municipal Manager to procure the presence of that witness at the hearing.

8.4 Interpreter

A party requiring the services of an interpreter must notify the Secretariat at least three days prior to the date for which the matter has been set down.

8.5 Record of hearing

The Secretariat must compile a record of the proceedings in respect of any matter that has come before the Tribunal, comprising of:

8.5.1 the application documents.

8.5.2 notices;

8.5.3 the Chairperson's record of pre-hearing procedures;

8.5.4 all documentary evidence;

8.5.5 the transcript, if any, of the oral evidence given at the hearing; and

8.5.6 a written record of the Tribunal's final decision with reasons.

8.6 Non-appearance

If a party to an appeal fails to attend any hearing, and that party is –

8.6.1 the appellant, the Tribunal may dismiss the matter by issuing a written ruling; or

8.6.2 is not the appellant, the Tribunal may –

8.6.2.1 continue with the proceedings in the absence of that party; or

8.6.2.2 adjourn the hearing to a later date

8.6.3 The Tribunal must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of this rule.

8.6.4 If a matter is dismissed, the Secretariat must send a copy of the ruling to the parties.

8.7 **Hearing procedure**

Subject to any directive issued by the Chairperson of the Tribunal, a hearing shall be conducted as follows:

8.7.1 **Commencement**

The Chairperson shall –

8.7.1.1 introduce the members of the Tribunal;

8.7.1.2 request any other parties present to introduce themselves;

8.7.1.3 explain the procedure of the hearing; and

8.7.1.4 provide a brief introduction to the subject matter of the appeal.

8.7.2 The Municipality's case

The Municipality shall –

8.7.2.1 explain the background to the bid;

8.7.2.2 provide reasons for the appointment of the successful bidder and for the failure to appoint the appellant; and

8.7.2.3 deal with the appellant's representations and any pertinent points that may have been made by any of the interested persons.

8.7.3 Questioning of the Municipality's representative

The other parties shall be given an opportunity to ask questions of the Municipality, in the following order:

8.7.3.1 the appellant;

8.7.3.2 any interested party affected by the appeal.

8.7.4 The appellant's case

The appellant shall have an opportunity to present its case, setting out its grounds for the appeal.

8.7.5 Questioning of the appellant

The other parties shall then be given an opportunity to ask questions of the appellant, in the following order:

8.7.5.1 the Municipality

8.7.5.2 any interested party affected by the appeal..

8.7.6 The case of interested parties affected by the appeal

Interested parties affected by the appeal shall then have an opportunity to each present their case.

8.7.7 Questioning of interested parties affected by the appeal

The other parties shall then be given an opportunity to ask questions of the interested parties affected by the appeal, in the following order:

8.7.7.1 the appellant;

8.7.7.2 the Municipality.

8.7.8 Closing statements

Each party shall then have an opportunity to present a brief closing statement, in the following order:

8.7.8.1 the appellant;

8.7.8.2 the Municipality;

8.7.8.3 interested parties affected by the appeal.

8.8 Powers of the Municipal Bid Appeals Tribunal

8.8.1 The Tribunal –

8.8.1.1 must hear and finalise an appeal within five days of the date of the hearing;

8.8.1.2 must make a final binding decision to confirm, vary or set aside the decision of the Bid Adjudication Committee or the Municipal Manager;

8.8.2 If the award is varied or set aside, the Tribunal must make any order it considers appropriate regarding the manner in which the matter is to be resolved.

8.8.3 The Tribunal may make a default order –

8.8.3.1 after it has considered or heard any necessary evidence; and

8.8.3.2 if it is satisfied that the notice of set down was adequately served.

9. **CHAPTER 9: GENERAL RULES**

9.1 **Delivery of documents**

9.1.1 Where a document is required to be delivered to the Secretariat, it may be delivered –

9.1.1.1 at the Secretariat's physical address;

9.1.1.2 by registered mail to the Secretariat;

9.1.1.3 by fax; or

9.1.1.4 by e-mail

9.1.2 Documents sent by fax or e-mail must include all of the following information on a cover page or cover message:

9.1.2.1 the name, address and telephone number of the sender;

9.1.2.2 the date and time of transmission;

9.1.2.3 the total number of pages sent;

9.1.2.4 the name and telephone number of the person to contact if transmission is flawed; and

9.1.2.5 the manner in which, and the person to whom, an acknowledgement of receipt should be sent.

9.2 Confidentiality

If a party alleges that any document or information required to be delivered to the Secretariat is confidential, the Chairperson of the Tribunal shall determine the matter and deal with an request in any manner that he/she deems fit.

9.3 Representation of parties

9.3.1 A party to a matter may act in person or appoint a representative.

9.3.2 A person appointed as representative must notify the Secretariat and provide it with the following particulars:

9.3.2.1 name;

9.3.2.2 postal address and address for the service of documents;

9.3.2.3 telephone and fax numbers;

9.3.2.4 e-mail address;

9.3.2.5 the unique reference number of the matter;
and

9.3.2.6 name of the person represented.

9.3.3 A party who terminates a representative's authority to act in a matter must notify the Secretariat in writing, and must provide details where the person may be contacted, both telephonically and for the purpose of serving documents.

9.3.4 A party does not need to be represented by a legal representative before the Tribunal.

9.4 Powers of the Chairperson to deviate from certain rules

9.4.1 The Chairperson may on good cause shown, and in keeping with the requirements of justice and expediency:

9.4.1.1 direct that any prescribed time period may be shortened or extended:

9.4.1.2 give directions on the manner, form, and medium in which evidence is to be led.

9.5 Expert witnesses

9.5.1 A municipal Bid Appeals Tribunal may appoint such experts or other persons as service providers as it may deem necessary with a view to assisting it in the exercise and performance of its powers, duties and functions.

9.5.2 The terms, conditions and fees applicable to any expert or person appointed under Rule 9.5.1 and the work to be performed or services to be rendered must be determined by the Provincial Treasury, and be contained in a written agreement entered into for that purpose between the Provincial Treasury and the expert or person concerned.

9.5.3 The experts or other persons appointed under Rule 9.5.1 may not vote on any decision taken by the Municipal Bid Appeals Tribunal.