

MOPANI DISTRICT MUNICIPALIT



SUPPLY CHAIN MANAGEMENT POLICY

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CLAUSE 1 Definitions

"Application" means a Mopani District Municipality Supply Chain shall apply to all departments or officials demanding or acquiring or disposing good & services in the Mopani District Municipality

"Competitive bidding process" means a competitive bidding process referred to in regulation 12(1)(d);

"Competitive bid" means a bid in terms of a competitive process;

"Final award" in relation to bids or quotation submitted for a contract, means the final decision on which bid or quote to accept;

"Formal written price quotation" means quotation referred to in regulation 12(1)(c)

"Framework contract" means agreement between an employer and one or more contractors, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

"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 of provinces;
- (b) A member of the board of directors of any municipal entity;
- (c) An official of the municipality of municipal entity;
- (d) An employee of any national or provincial department, national or provincial department, national or provincial public entity of constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 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 a Mopani District Municipality must keep in term of regulation 14

"Other applicable legislation" means any other legislation applicable to municipal supply chain management, including

- (a) The preferential procurement policy framework Act; 2000 (Act 5 of 2000);
- (b) The Broad-Base Black Economic Empowerment Act, 2003 (53 of 2003); and
- (c) The Construction Industry Development Board Act, 2000 (Act 38 of 2000)

"Treasury guideline" means any guideline of supply chain management issued by the Minister in term of section 168 of the Act;

"The Act" means the Local Government: Municipal Finance Management Act; 2003 (Act 56 of 2003)

"Written or verbal quotations" means quotation referred to in regulation 12(1)(b).

Part1: Establishment and implementation of supply chain management policies (Clauses 2-9)**CLAUSE 3 ADOPTION AND AMENDMENT OF SUPPLY CHAIN MANAGEMENT POLICIES**

- (1) The accounting officer of a Mopani District Municipality must-
 - (a) Promptly prepare and submit a draft supply chain management policy of the municipality with SCM regulation 2 to the council of the municipality for adoption;
 - (b) At least annually review the implementation of the policy; and
 - (c) When the accounting officer considers it necessary, submit proposals for the amendment of the policy to the council or MANCO
- (2) the accounting officer may for purposed of sub-regulation
 - (a) Make use of any Treasury guideline determining standards for municipal supply chain management policy, and submit to the council or board of the directors that guideline standard, or any modified version thereof, as a draft policy.
 - (b) If the accounting officer submits a draft policy to the council or MANCO that differs from the guideline standard, the accounting officer must ensure that such draft policy complies with SCM regulation 2.

- (c) The accounting officer must report any deviation from the guideline standard to the National Treasury and the relevant provincial treasury.
- (3) When preparing or amending its supply chain management policy, a Mopani District Municipality must take accounting of the need for uniformity in supply chain practices, procedures and form between organs of states in all spheres, particularly to promote accessibility of supply chain management systems for small businesses.
- (4) the accounting officer of a municipality must in term of section 62(1)(f)iv of the Act, and the accounting officer of a municipal entity must in term of section 99(2)(h) of the Act, take all reasonable steps to ensure that the Mopani District Municipality has and implements a supply chain management policy as set out in regulation 2

CLAUSE 2 ESTABLISHMENT AND IMPLEMENTATION

- (1) The Mopani District Municipality had in terms of section 111 of the Act implement a supply chain management policy 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 regulatory framework prescribed in chapter 2 of the SCM 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 state in supply chain management systems between organs state all spheres; and
 - (f) Is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) in addition to complying with sub-clause (1), and to extend determined by the parent municipality, also be consistent municipality. If the supply chain management policy of the parent not consistent with the supply with supply chain management policy of its parent municipality, the council of the parent municipality must take appropriate steps to ensure consistency.
- (3) No Mopani District Municipality may act otherwise than in accordance with its supply chain management policy when-
 - (a) Procuring goods or services
 - (b) Disposing of goods no longer needed;
 - (c) Selecting contractors to provide assistance in the provision of municipal services chapter 8 of the municipal Systems Act applies; or
 - (d) In the case of a municipality, selecting external mechanisms referred to in section 80(1)(b) Of the Municipal Systems Act for the provision of municipal services in circumstances contemplated
- (4) Sub-clause (1), (2) and (3) do not apply in the circumstance described in section 9110 (20) of the Act except where specifically provided other within SCM regulations.

CLAUSE 4 DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES

- (1) The council of a municipality must delegate such additional powers and duties to the accounting officer so as to enable the accounting officer-
 - (a) To discharge the supply chain management
 - (i) Chapter 8 or 10 of the Act; and
 - (ii) The supply chain management policy of the Mopani District Municipality
 - (b) To maximise administrative and operational efficiency in the implementation of the supply chain management policy ;
 - (c) To enforce reasonable cost-effective measure for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of the supply chain management 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 power and duties delegate or sub-delegate any supply chain management powers or duties

- (a) No municipal council or accounting officer may delegate or sub-delegate any supply chain management power or duties- in the case of a municipality-
 - (i) To a person who is not an official of the Mopani District Municipality
 - (ii) To a committee which not exclusively composed of official of the Mopani District Municipality
- (3) The Policy may not be read as permitting an official to whom the power to make final award in a competitive bidding process otherwise than through the committee system provided for in SCM regulation 26

CLAUSE 5 SUBDELEGATIONS

- (1) An accounting officer have in term of section 79 or 106 of the Act sub-delegate supply chain management power and duties, including those delegated to the accounting officer in term of SCM regulation /clause 4(1), but any such sub-delegation must be consistent with sub-regulation /clause (2) & 4.
- (2) The power to make a final award-
 - (a) Above R10 million (VAT includes) may not be sub-delegated by an accounting officer;
 - (b) Above R2 million (VAT include) may not exceeding R10 million (VAT included), may be sub-delegated in written but only to-
 - (i) The chief financial officer;
 - (ii) A senior manager; or
 - (iii) A bid adjudication committee of which the chief financial official or a senior manager is a member
 - (c) Not exceeding R2 million (VAT included) have be sub-delegated but only to-
 - (i) The chief financial officer to approve bid recommended by BEC
 - (ii) A senior manager who is chairperson of Bid Adjudication Committee;
 - (iii) A bid evaluation committee which a Supply Chain Manager accountable directly to the chief financial officer is a member
- (3) An official or bid evaluation committee which have powers to make final awards has been sub-delegated in accordance with sub-regulation/clause (2) must within five days of the end of each month submit to the official referred to in sub-clause (4) a written report containing particulars of each final 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 sub-clause (3) must be submitted-
 - (a) To the accounting officer, in the case of an award by-
 - (i) The chief financial officer or delegated manager in budget & treasury;
 - (ii) At least four senior manager; or
 - (iv) A bid adjudication committee of which the chief financial officer or a senior manager is a manager or
 - (v) A bid evaluation committee which a Supply Chain Manager accountable directly to the chief financial officer is a member
 - (b) To the chief financial officer or the senior manager responsible for the relevant bid, in the case of an member by-
 - (i) A member referred to in sub-clause (2)(c)(iii); or
 - (ii) A bid adjudication committee of which the chief financial officer or a senior manager is not a member
- (5) Sub-clauses (3) and (4) do not apply to procurement out of petty cash
- (6) This regulation 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 SCM regulation 26.
- (7) No decision-making in terms of any supply chain management power and duties may be delegated to an advisor or consultant

CLAUSE 6 OVERSIGHT ROLE OF COUNCIL OF MUNICIPALITY OR BOARD OF DIRECTORS OF MUNICIPAL ENTITY

- (1) The council of a Mopani District Municipality must maintain oversight over the implementation of its supply chain management policy.

- (2) For the purpose of such oversight the accounting officer must-
 - (a) within 30 days of the end of each financial year, submit a report on the implementation of the supply chain management policy of the Mopani Municipality District under its sole or shared control, to the council of the municipality
 - (b) Whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council municipality or in the case of a then submit the report to the accounting officer of the parent municipality for submission 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 Executive Mayor of Mopani District Municipality, as the case may be.
- (4) The reports of a municipality must be made public in accordance with section 21A of the Municipal System Act.

CLAUSE 7 SUPPLY CHAIN MANAGEMENT UNITS

Mopani District Municipality had establish a supply chain management unit & committee system to implements its supply chain management policy

- (1) A supply chain management unit must operate 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
- (2) A committee system must operate under the direct supervision of the Accounting Officer to whom this duty has been delegated in terms of section 79 of the Act & clause 4(1)

CLAUSE 8 TRAINING OF SUPPLY CHAIN MANAGEMENT OFFICIALS

The training of officials in implementing a supply chain management policy should be in accordance with any Treasury guideline of supply chain management training

Part: 2: Framework for supply management policies (Clauses 9-38)

CLAUSE 9 FORMAT OF SUPPLY CHAIN MANAGEMENT POLICY

Mopani District Municipality describe in sufficient detail-

- (a) The supply chain management system that is to be implemented by the Mopani District Municipality; and effective systems for
 - (a) Demand management;
 - (b) Acquisition management;
 - (c) Logistics management
 - (d) Disposal management;
 - (e) Risk management; and
 - (f) Performance management

CLAUSE 10 SYSTEM OF DEMAND MANAGEMENT

1. Mopani District Municipality provides for an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments of the Mopani District Municipality are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the Mopani District Municipality
2. The Municipality's Integrated Development Plan (IDP) is a comprehensive strategy document setting out how the Municipality intends to tackle its development challenges in a financial year. It is on the basis of the IDP that the resources of the municipality will be allocated and on which the budget is based.
 - (a) Accounting Officer through Supply Chain Management Unit shall continuously ensure:
 - (i) Mopani District Municipality annual develop Demand / Procurement Plan that:
 - Is align with Service Delivery Budget Implementation Plan;
 - Align with Municipal Budget;
 - Align with Integrated Development Plan (IDP);
 - (ii) Accounting Officer shall ensure that:-

- process of developing demand / procurement plan commence on 01st April
 - Draft demand / procurement plan is submitted with Municipal Budget to council on 30th May
 - Council adopted demand / procurement plan not later than 30th August
 - (iii) That efficient and effective provisioning and procurement strategical systems are implemented to enable the Municipality deliver the required quantity and quality of services to the communities.
 - (iv) establishment of uniformity in policies, procedures, documents and contract options and the implementation of sound systems of control and accountability.
 - (v) development of a world-class professional supply chain management system which results in continuing improvement in affordability and five pillars of Supply Chain Management based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced.
- (3) Demand management lies at the beginning of the supply chain and the major activities associated with identifying demand are:
- (a) establishing requirements, determining needs, deciding on appropriate procurement strategies.
 - (b) Demand management accordingly shall involve the following activities:
 - (i) understanding the future needs
 - (ii) identifying critical delivery dates;
 - (iii) identifying the frequency of the need;
 - (iv) linking the requirement to the budget;
 - (v) conducting expenditure analyses based on past expenditure;
 - (vi) conducting commodity analyses in order to check for alternatives; and conducting industry analyses.

CLAUSE 11 SYSTEM OF ACQUISITION MANAGEMENT

- (1) A supply chain management policy provide for an effective system of acquisition management in order to ensure-
- (a) That good and services are procured by the Mopani District Municipality in accordance with authorised processes only;
 - (b) That expenditure of 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 condition of contract, are in accordance with and applicable with any applicable legislation; and
 - (e) That any treasury guideline on acquisition management are properly taken into account
- (2) A supply chain management policy, except where provided otherwise in the SCM regulations, does not apply in respect of the procurement of goods and services contemplated in section 110 (2) of the Act, Including
- (a) Water from Department of water Affairs of public entity, another municipality or a municipal entity ;
 - (b) Electricity from Eskom or another public entity, another municipality or a municipal entity or
 - (c) Service for government departments or its entity
- (3) Mopani District Municipality procuring goods or services contemplated in section 110(2) of the Act must make public the fact that it procures such goods or services otherwise that through its supply chain management system, including –
- (a) The kind of goods or services; and
 - (b) The name of the supplier

CLAUSE 12 RANGE OF PROCUREMENT PROCESSES

- (1) subject to SCM regulation 11(2), SCM policy provide for the procurement of goods and services by way of-
- (a) Petty cash purchases; up to a transaction value of R2000 (VAT included);
 - (b) Written or verbal quotation for procurement of a transaction value over R2000 up to R10,000 (VAT included)
 - (c) Formal written price quotation for procurement of a transaction value over R10,000 up to R200,000 (VAT included); and
 - (d) A competitive bidding process for-

- (i) Procurements above a transaction value of R20,000 (VAT included; and
 - (ii) The procurement of long term contracts.
- (2) Accounting officer in written may-
- (a) To lower, but not to increase, the different threshold values specifies in sub-clause (1); or
 - (b) To direct that
 - (i) Written or verbal quotation to be obtained for any specific procurement of a transaction value lower than R10,000
 - (ii) Formal written price quotation for any specific procurement of a transaction value than R10,000 ;or transaction value than R30,000 three written quotations;
 - (iii) A competitive bidding process be followed for any specific procurement of a transaction value lower than R200,000.
- (3) Procurement of good or service –
- (a) may not deliberately be split into parts of items a lesser value merely to avoid complying with the requirement of the policy
 - (b) may when the determining transaction values, a requirement for goods or services consisting of different parts or items as far as possible be treated and dealt with as a single transaction.

CLAUSE 13 GENERAL PRECONDITIONS FOR CONSIDERATION A WRITTEN QUOTATION OR BIDS

- (1) Mopani District Municipality may not consider a written quotation or bids unless the provider who submitted the quotation or bids-
- (a) Has furnished the Mopani District Municipality with that provider's
 - (I) Full name & CSD good standing status;
 - (II) Identification number of company or other registration number; and Tax reference;
 - (III) number and VAT number, if any
 - (b) not register with Treasury CSD or not in good stand on CSD system
 - (c) has authorised the Mopani District Municipality to obtain a tax clearance from South African Revenue services that the provider's tax matters are in order; and
 - (d) has completed MDM 4 indicating-
 - (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 director, managers, principal shareholders or stakeholder is in the services 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, stakeholder referred above is in the service of the state or has been in the service of the state in the previous twelve months

CLAUSE 14 LISTS OF ACCREDITED PROSPECTIVE PROVIDERS

- (1) MDM may no long keep a list of accredited prospective providers of goods and services but utilised National Treasury' Central Supplier of Database (CSD) that must be used for the procurement requirements through verbal quotation or formal written price quotation; and
- (a) Mopani District Municipality may invite prospective providers of goods or services to apply for evaluation in term committee system to be listed as Panel of accredited prospective for specific commodity or services or goods;
 - (b) specify the listing criteria for accredited prospective providers; and period of listing
- (2) disallow the listing of any prospective of any name appears on the National Treasury's database as a person prohibited from doing business with the public sector

CLAUSE 15 PETTY CASH PURCHASES

- (1) Procurement of goods or service by means of petty cash purchase referred to in **Clause 12(1) (a)**, which must include conditions-

- (a) Delegate to Supply Chain Management Manager or Expenditure Manager for petty cash, may be sub delegate to an official reporting to the manager;
- (b) Limiting the number of the petty cash purchases or the maximum amount of R 2000.00 per each transaction
- (c) Excluding any types of expenditure from petty cash purchases, where this is considered necessary; and
- (d) Requiring monthly reconciliation reports from each manager to the chief financial officer, including the total amount of petty cash purchases for that purchase.

CLAUSE 16 WRITTEN OR VERBAL QUOTATIONS

- (1) The procurement of goods or services through written or verbal quotations, which must include conditions stating-
 - (a) That quotation must be obtained from at least three different providers preferable from, but not limited to, providers whose names appear on the list of accredited prospective providers of the National Treasury Central Suppliers' (clause 14)
 - (b) That, to the extent feasible, providers must be requested to submit such quotation in written;
 - (c) That it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
 - (d) That the accounting officer must record the names of the potential providers requested to provide such quotation with their quoted price; and
 - (e) That if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

CLAUSE 17: FORMAL WRITTEN PRICE QUOTATIONS

- (1) The procurement of goods or services through formal written price quotations, which must include conditions stating-
 - (a) That quotations must be obtained in written from at least three different providers whose names appear on the list of accredited prospective providers of the National Treasury' Central Supplier Database or approve Framework Agreements
 - (b) That quotation may be obtained from providers who are listed, meet the listing criteria in the supply chain management policy required by clause 14;
 - (c) That if it not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or Deputy Manager SCM; and
 - (d) That the accounting officer must record the name of the potential providers and their written quotations
- (2) A designated official referred to in sub-clause (1)(c) must within three days of the end of each month report to the chief financial officer on any approvals give during that month by that official in term of the sub-clause.

CLAUSE 18 PROCEDURE FOR PROCURING GOODS OR SERVICES THROUGH WRITTEN OR VERBAL QUOTATIONS AND FORMAL WRITTEN PRICE QUOTATIONS

- (1) The procurement of goods or service through written of verbal quotation or formal written quotations, stipulate-
 - (a) That all requirements in excess R30,000 (VAT included) that are to be procured by means of formal written quotations must, in addition to the requirement of regulation 17, be advertised for least seven days on the website of the Mopani District Municipality
 - (b) That when using the listed Panel of accredited prospective providers the accounting officer must promote ongoing competition amongst providers listed on the Panel (Framework Agreements), including by inviting providers to submit quotation on a rotation basis
 - (c) That the accounting officer must take all reasonable steps to ensure that the procurement of goods or /and services through the written or verbal quotation or formal written price quotation is not abused;
 - (d) That the accounting officer or chief financial officer must on a monthly basis be notified in written price quotation accepted by an official acting in terms of a sub-delegation; and
 - (e) Requirements for proper record keeping.

CLAUSE 19 BIDDING PROCESS (COMPETITIVE BIDS)

- (1) contract transaction above valued R200,000 (VAT included) for the once off or short-term contract or long-term contract; term contract; framework agreement ; for goods or services or work may be procured through a Single

source procurements; Limited or close bidding process two stage or competitive bidding process, subject to clause 11(2); contract for

- (2) Mopani District Municipality promote competitive Bidding process for goods or services or work above transaction value of **R200 000,00** (VAT included), may not deliberately split into or items to lesser value merely for the sake of procuring the goods or services or work to avoid competitive bidding processes or compliance
- (3) Mopani District Municipality may use the following Strategic resourcing wisely to enhance fair competition
 - a) Single source procurements
 - b) Limited or close bidding process
 - c) Framework Agreements /panel of service provider:-
 - i. provide a convenient means for employers to obtain goods, services or works from contractors within a defined scope on an "as instructed" basis over a set term without necessarily committing to any quantum of work.
 - ii. Normally the employer appoints a number of contractors to provide goods, services or works in terms of a framework agreement following a competitive selection process e.g. qualified procedure or open procedure.
 - iii. enable an employer to obtain goods, services or works as and when required in an efficient and cost effective manner.
 - iv. Only near the end of the term is the market approached to provide the goods,
 - v. services and works covered by such contracts for the next term not exceeding three(3) years
 - vi. The reopening of competition amongst contractors whenever the terms and conditions are amended ensures that the prices for work done not explicitly covered in the framework contract remains competitive.
 - vii. Shall be applicable for goods (stock item or bulk purchases) or services such as or work [consulting service; law firm; construction/infrastructure project
- (4) MDM SCM policy applicable in infrastructure procurement together with Appendix A: SUPPLY CHAIN MANAGEMENT POLICY FOR INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT

CLAUSE 20 PROCESS FOR COMPETITIVE BIDDING

- (1) Procedures for a competitive bidding process for each of the following stages:
 - (a) The compilation of bidding documentation;
 - (b) The public invitation of bids;
 - (c) Site meetings or briefing sessions, if applicable;
 - (d) The handing of bids submitted in response to public invitation
 - (e) The evaluation of bids;
 - (f) The award of contracts;
 - (g) The administration; and
 - (h) Proper record keeping.

CLAUSE 21 BID DOCUMENTATION FOR COMPETITIVE BIDS

The criteria to which bid documentation for a competitive bidding process must comply, and state that in addition to clause 13 the bid documentation must-

- (1) Take into account-
 - (a) The general conditions of contract (GCC) of 2010;
 - (b) any treasury guideline on bid documentation
 - (c) Procurement Preferential Policy Framework Act regulations (PPPFA regulation 2017); and
 - (d) the requirements of the construction industry development board, in the case of a bid relating to construction, upgrading or refurbishment of the building or infrastructure;
- (2) include evaluation and adjudication criteria, including any criteria by other applicable legislation;
- (3) State in the tender documents:-
 - (a) If the tender will be evaluated on Local production / content as designated by DTI
 - (i) in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered;

- (ii) If there is no designated sector, an Mopani District Municipality may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.
- (iii) A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.
- (b) If the tender will be evaluated on functionality.
 - (i) The evaluation criteria for measuring functionality must be the evaluation criteria for measuring & objective; the points for each criteria and, if any, each sub-criterion; and The minimum qualifying score for functionality for a tender to be considered further-
 - (ii) must be determined separately for each tender; and may not be so low that it may jeopardise the quality of the required goods or services; or high that it is unreasonably restrictive;
 - (iii) Points scored for functionality must be rounded off to the nearest two decimal places.
- (c) If decides to apply pre-qualifying criteria to advance certain, designated groups, must be stated on advertise/document the tender with a specific tendering condition that only one or more of the following tenderers may respond tenderer:
 - (i) A having a stipulated minimum B-BBEE status level of contributor
 - (ii) an EME or QSE;
 - (iii) Successful tenderer may be comply subcontracting a minimum of 30% to EME or QSE which is at least 51% owned by black people who are located with MDM area or youth / women / military veterans or people living in rural or underdeveloped areas or townships;
 - (iv) A tender that fails to meet any pre-qualifying criteria stipulated in the tender documents is an unacceptable tender.
- (d) Provisional Sums or Prime Cost Items or rate per item for Multiple framework contracts:
 - (i) monetary allowances in excess of R200 000 for provisional sums or prime cost items have been included in the bid documents, and where the work or items to which the sums relate are to be executed/supplied by sub-contractors/suppliers, then a competitive bidding process, as determined by Supply Chain Management from time to time, shall be followed in respect of these sums/items.
 - (ii) When monetary allowances of less than R200 000 have been included in the bid documents, and where the work or items to which the sums relate are to be executed/supplied by sub-contractors/suppliers, the contractor must be required to obtain a minimum of three written quotations for approval by the responsible agent.
 - (iii) Where quantity to execute item/contract can't be determine during bidding process, bidder may be require to bidder item per rates only where rates can be use time to time to determine total bid amount / total order amount
- (e) The preference point system applicable to the tender:-
 - (i) it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;
 - (ii) 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million
 - (iii) 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
 - (iv) A maximum of 80 or 90 points shall be allocated for price on the following basis:

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \text{ OR } P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

P_{\min} = Comparative price of lowest acceptable bid

- (v) In terms of Regulation 6 or 7 of the PPPFA regulation 2017, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system) for bid below R50 million	Number of points (90/10 system) for bid above R50 million
1	20	10
2	18	9
3	14	6
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
Non-compliant contributor	0	0

- (vi) A tenderer must submit proof of its B-BBEE status level of contributor.
 - (vii) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but- may only score points out of 80 for price; and scores 0 points out of 20 or 10 for B-BBEE.
 - (viii) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
 - (ix) The points scored must be rounded off to the nearest two decimal places.
 - (x) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (4) if the bid the bid transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
- (a) if the bidder is required by law to prepare annual financial statement for auditing, their audited annual financial statement
 - (i) for the past three years; or
 - (ii) since their establishment if established during the past three years
 - (b) a certificate signed by the bidder certifying that the bidder has no undisputed commitment for municipal services towards municipality or other service provider in respect of which payment is overdue for more than 30 days
 - (c) particulars of any contracts awarded to the bidder by an organ of state during the past five years, once or dispute concerning the execution of such contract;
 - (d) 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 Mopani District Municipality is expected to be transferred out of the Republic; and
- (5) Samples are required:
- (a) shall be delivered separately (to the bid) to the addressee mentioned in the bid documents marked with the bid and item number as well as the bidder's name and address.
 - (b) Bids may not be included in parcels containing samples.

- (c) If samples are not submitted as required in the bid documents or within any further time stipulated by the Chairperson of the Bid Evaluation Committee in writing, then the bid concerned may be declared non-responsive.
- (d) Samples shall be supplied by a bidder at his/her own expense and risk. The Municipality shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents, and shall reserve the right not to return such samples and to dispose of them at its own discretion.
- (e) If a bid is accepted for the supply of goods according to a sample submitted by the bidder, that sample will become the contract sample. All goods/materials supplied shall comply in all respects to that contract sample.
- (6) 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.
- (7) Validity Periods
 - (a) The period for which bids are to remain valid and binding must be indicated in the bid documents.
 - (b) The validity period is calculated from the bid closure date, bids shall remain in force and binding until the end of the final day of that period,
 - (c) Bids are valid be for 90days normal contract & 180 days for framework contracts or panel.
 - (d) This period of validity may be extended by the Chairperson of the Bid
 - (e) Evaluation Committee, provided that the original validity period has not expired, and that all bidders are given an opportunity to extend such period. Any such extension shall be agreed to by a bidder in writing, should not extended beyond 180days counting from the date o close.
 - (f) Bidders who fail to respond to such a request before their tender lapses, or who decline such a request shall not be considered further in the bid evaluation process.
 - (g) The responsible official must ensure that all bidders are requested to extend the validity period of their bids where necessary in order to ensure that the bids remain valid throughout the appeal period or until the appeal is finalised. If bidders are requested to extend the validity period of their bids as a result of an appeal being lodged it must be made clear to bidders that this is the reason for the request.

CLAUSE 22 PUBLIC INVITATION FOR COMPETITIVE BIDS

- (1) The procedure for the invitation of competitive bids, shall-
 - (a) That any invitation to prospective providers to submit bids must be by means of a public advertisement on the website of the Mopani District Municipality; e-tender (National Treasury website); newspapers commonly circulating locally, or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); i-tender (cidb website) in case of construction/infrastructure
 - (b) The information a public advertisement must contain, which must include-
 - (i) The closure date for the submission of bids, which may not be less than 30 days in the case of transaction over R10million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date of which the advertisement is placed in a newspaper, subject to sub-clause (2); and
 - (ii) A statement that bids only be submitted on the bid documentation provided by the Mopani District Municipality
- (2) A supply chain management policy may allow the accounting officer to determine a closure date for the submission of bids which is less than the 30 or 14 day requirement, but 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 to the Mopani District Municipality must be sealed.
- (4) Where bids are requested in electronic format, such bids must supplemented by sealed hard copies.

CLAUSE 23: PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS

- (1) Procedure for the handling, opening and recording of bids-
 - (a) Stipulate that bids-
 - (i) May be opened only in public and any person may attend such opening
 - (ii) Must be opened at the same time and as soon as possible after the period for the submission of bids has expired;

- (b) Confer on any bidder or member of the public 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; and
- (c) Require the accounting officer-
 - (i) To record in a bid register all bids received in time;
 - (ii) To make the register available for public inspection; and
 - (iii) To publish the entries in the register and the bid results on the website and notice board of the Mopani District Municipality
 - (iv) All late submission shall be return unopen or if open shall be mark late submission (no record in bid register or evaluated)
- (2) **Alternative Bids**
 - (a) Bid documentation may state that alternative bids can be submitted provided that a bid free of qualifications and strictly in accordance with the bid documents is also submitted.
 - (b) An alternative bid shall be submitted on a separate complete set of bid documents and shall be clearly marked "Alternative Bid" to distinguish it from the unqualified bid referred to above.
 - (c) Bid documentation shall state that the Municipality will not be bound to consider alternative bids.
- (3) **Late Bids**
 - (a) A bid is late if it is not placed in the relevant bid box by the closing time for such bid.
 - (b) A late bid shall not be admitted for consideration and where feasible shall be returned unopened to the bidder
- (4) **Bid Sum**
 - (a) A bid will not necessarily be invalidated if the amount in words and the amount in figures do not correspond, in this case the amount in words shall be read out at the bid opening.
 - (b) All rates, with the exception of rates only bids (Multiple framework contracts) where is possible may be read out at bid opening and proprietary confidential information shall not be disclosed.

CLAUSE 24: NEGOTIATION WITH PREFERRED BIDDERS

- (1) Accounting officer may negotiate the final term 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) If the price offered by a tenderer scoring the highest points is not market related, Accounting Officer may not award the contract to that tenderer but in term PPPFA regulation 9(a):-
 - (a) Negotiate a market-related price with the tenderer scoring the highest points or cancel the tender if the tenderer does not agree to a market-related price or
 - (b) negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender if the tenderer scoring the second highest points does not agree to a market-related price;
 - (c) negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender if a market-related price is not agreed as envisaged in paragraph (a)(b), the MDM must cancel the tender.
- (3) Minutes of such negotiation must be kept for record purposes

CLAUSE 25 TWO-STAGE BIDDING PROCESS

- (1) Two-stage bidding process is allow for
 - (a) Large complex project i.e. infrastructure or consultant service or Maintenance;
 - (b) Projects where it may be undesirable to prepare complete detailed technical specification; or
 - (c) Long term projects with a duration period exceeding three years
- (2) In the first stage functionality testing or technical proposal on conceptual design or performance specifications should be invited, subject technical as well commercial clarification and adjustment.
- (3) In the second stage final technical proposals or priced bids should be invited from panel of qualified bidders

CLAUSE 26 COMMITTEE SYSTEM FOR COMPETITIVE

- (1) A committee system appointed by Accounting Officer in written for competitive bids consisting of at least-
 - (a) A bid specification committee;

- (b) A bid evaluation committee; and
- (c) A bid adjudication committee;
- (d) In addition Accounting Officer May appoint Review Committee / mandate Internal Audit to audit bid before award
 - (i) The appointment by the accounting officer of the members of each committee, taking into account section 117 of the Act; and
 - (ii) An attendance or oversight process by a neutral or independent observer appointed by accounting officer when this is appropriate for ensuring fairness and promoting transparency.
- (2) The committee system must be consistent with-
 - (a) SCM Regulation / clauses 27, 28 & 29 and
 - (b) Any other applicable legislation
 - (c) Committee members at least annual shall declare interest
 - (d) Accept code of ethics/conduct for municipal staff /committee members in term MSA schedule 2
- (3) The accounting officer to apply the committee system to formal written price quotation.

CLAUSE 27 BID SPECIFICATION COMMITTEES

- (1) A bid specification committee must sit at Ad-Hoc basis appointed by Accounting Officer to:-
 - (a) compile the specifications / draft bid documentation, bid requirements, term and condition for each procurement of goods or services by the Mopani District Municipality in term of applicable legislation;
 - (b) determine the evaluation and adjudication criteria, including any criteria by other applicable legislation;
 - (c) Determine weighting & criteria of the functionality test or decide not include function as criteria;
 - (d) Decide on preference point system applicable to the tender
- (2) Specifications and draft bid documentation -
 - (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 standard such as those issued by standards South Africa, the International Standards organisation, or an authority accredited or recognised by South African National Accreditation System with which the equipment or material or workmanship should comply;
 - (c) Where possible, be described in term of performance required rather than in terms of descriptive characteristics for design;
 - (d) May not create trade barriers in contract requirements in the of specification, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certifications;
 - (e) May not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no sufficiently precise or intelligible way describing the characteristics of the work, in which case such reference must be accompanied by the work 'equivalent';
 - (f) **Must indicate each specific goal for which points may be awarded in terms of points system set out in supply chain management policy and**
 - (g) Must be approved by the accounting officer prior to publication of the invitation for bids in term of clause 22
- (3) A bid specification committee must be composed of two or more official of the Mopani District Municipality, preferably the manager responsible for the function involved; chair by SCM Official, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts

CLAUSE 28 BID EVALUATION COMMITTEE

- (1) A bid evaluation committee shall sit at Ad-Hoc basis appointed by Accounting Officer
 - (a) Evaluation bids in accordance with-
 - (i) The specifications for a procurement; and
 - (ii) The points system as must be set out in the supply chain management policy of the Mopani District Municipality in terms of regulation 27 and as prescribed in term of the Preferential Procurement Framework Act regulation 2017;
 - (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; CSD compliance and
- (d) Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A bid evaluation committee must as far as possible be composed of-
 - (a) Officials from departments requiring the goods or services; and
 - (b) At least one supply chain management practitioner of the Mopani District Municipality.

CLAUSE 29 BID ADJUDICATION COMMITTEES

- (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
 - (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 (section 57) of the Mopani District Municipality which must include-
 - (i) 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 or designated by the chief financial officer where applicable
 - (ii) At least one senior supply chain management practitioner who is an official of the Mopani District Municipality; and
 - (iii) A technical expert in the relevant field who is an official of the municipality, if the Mopani District Municipality has such an expert.
- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson, if the chairperson is absent from a meeting, the member 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) If a bid adjudication committee decides to award a bid other than one recommended by the bid evaluation committee, the bid adjudication by the bid evaluation committee,
 - (a) the bid adjudication committee must prior to awarding the bid-
 - (i) Check in respect of the preferred bidder whether that bidder's municipal rates & taxes and municipal services are not in arrears;
 - (ii) Notify the accounting officer.
- (c) 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)
 - (ii) if the decision the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for recommendation.
- (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.
- (8) Awards or other
 - (a) The contract/bid must be awarded to the tenderer scoring the highest points if bid price is market related or award be subjected clause 24
 - (b) A contract may be awarded to a tenderer that did not score the highest points only in accordance with section 2(1)(f) of the PPPFA Act. intention to apply objective criteria in terms of section 2(1)(f) must stipulate the objective criteria in the tender documents
 - (c) Criteria for breaking deadlock in scoring
 - (i) If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.

- (ii) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for B-BBEE.
 - (iii) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots.
- (d) Subcontracting after award of tender
 - (i) A person awarded a contract may only enter into a subcontracting arrangement with the approval of Accounting Officer.
 - (ii) A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
 - (iii) A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract
- (9) Cancellation of tender
 - (a) Mopani District Municipality may, before the award of a tender, cancel a tender invitation if-
 - (i) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
 - (ii) funds are no longer available to cover the total envisaged expenditure;
 - (iii) no acceptable tender is received; or
 - (iv) there is a material irregularity in the tender process.
 - (b) The decision to cancel a tender invitation in terms of sub-clause (a) must be published in the same manner in which the original tender invitation was advertised.
 - (c) (An organ of state may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.
- (10) Remedies
 - (a) Upon detecting that a tenderer submitted false information regarding its BBBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, -
 - (b) the Mopani District Municipality must inform the tenderer accordingly and give the tenderer an opportunity to make representations within 14 days as to why-
 - (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
 - (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
 - (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any MDM; and
 - (c) if it concludes, after considering the representations referred to in sub-clause(b), that-
 - (i) such false information was submitted by the tenderer, disqualify the tenderer or terminate the contract in whole or in part; and applicable, claim damages from the tenderer; or
 - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.
 - (d) Mopani District Municipality must-
 - (i) inform the National Treasury, in writing, of any actions taken in terms of sub clause (a);
 - (ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
 - (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

- (e) The National Treasury may request an organ of state to submit further information pertaining to sub clause(a) within a specified period.
- (f) The National Treasury must-
 - (i) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
 - (ii) maintain and publish on its official website a list of restricted suppliers.

CLAUSE 30: PROCUREMENT OF BANKING SERVICES

- (1) A contract for the provision of banking services to a Mopani District Municipality-
 - (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 regulation 22(1). Bid must be restricted to banks registered in terms of the Banks Act, 1990 (Act 94 of 1990)

CLAUSE 31: PROCUREMENT OF IT RELATED GOODS OR SERVICES

- (1) A supply chain management policy may allow the accounting officer to request the state Information Technical Agency (SITA) to assist the Mopani District Municipality with the acquisition of IT related goods or services through a competitive bidding process.
- (2) The parties must enter into a written agreement to regulate the service rendered by, and payments to regulate the services rendered by, and the payment to be made to SITA
- (3) The accounting officer must notify SITA together with a motivation of the IT needs of the Mopani District Municipality if-
 - (a) The transaction value of IT related goods or services required by Mopani District Municipality in any financial year will exceed R50 million (VAT included); or
 - (b) The transaction value of a contract to be procured by the Mopani District Municipality whether for or more years exceed R50 million (VAT included)
- (4) If SITA comments on the submission and the Mopani District 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.

CLAUSE 32: PROCUREMENT OF GOODS AND SERVICES UNDER CONTRACTS SECURED BY OTHER ORGANS OF STATE

- (1) the accounting officer may procure goods or services for the Mopani District Municipality under a contract secured by another organ of
 - (a) The contract has been secured by that other of state by means of a competitive bidding process applicable to the organ of state;
 - (b) The Mopani District Municipality has no reason to believe that such contract was not validly procured
 - (i) Request a written consent from the bidder to participate on such contract
 - (ii) Request a written consent with confirmation that contract have been awarded from competitive bidding process with tender irregularities from organ of state hosting the contract
 - (iii) Request all bidding process documentation i.e. bid advert; opening register; committee reports
 - (iv) Accounting Officer may subject submitted information to internal auditing for accuracy
 - (c) There are demonstrable discounts or benefits for the Mopani District Municipality to do; and
 - (d) That other organ of state and the provider have consented to such procurement in writing.
- (2) Sub-clause (1)(c) and (d) do so; and
 - (a) A municipal entity procures goods or services through a contract secured by its parent municipality;

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

CLAUSE 33 PROCUREMENT OF GOODS NECESSITATING SPECIAL SAFETY ARRANGEMENT

- (1) Mopani District Municipality's may procure and stores goods in bulk which necessitate special safety arrangements e.g. Fuel / chlorine gas.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons including the total cost of ownership and cost advantages for the Mopani District Municipality.

CLAUSE 34 PROUDLY SA CAMPAIGN & LOCAL PROMOTION

1. Mopani District Municipality shall supports the Proudly South African Campaign and promote local content & production on its procurement.
2. Mopani District Municipality shall apply PPPFA regulation 2017 Pre-qualification criteria for preferential procurement reg4.(1) where decides to apply pre-qualifying criteria to advance certain designated groups, Conditions shall be specified on bid adverts / documents that following tenderers may respond-
 - (a) a tenderer having a stipulated minimum B-BBEE status level one contributor;
 - (b) EME or QSE or cibd grading with PE status;
 - (c) Tenderer subcontracting a minimum of 30% to-
 - (i) EME or QSE or cibd PE status which is at least 51% owned by black people
 - (ii) EME or QSE or cibd PE status which is at least 51% owned by black people who are youth;
 - (iii) EME or QSE or cibd PE status which is at least 51% owned by black people who are women;
 - (iv) EME or QSE or cibd PE status which is at least 51% owned by black people with disabilities;
 - (v) EME or QSE or cibd PE status which is 51% owned by black people living in MDM
 - (vi) Cooperative which is at least 51% owned by black people;
 - (vii) EME or QSE or cibd PE status which is at least 51% owned by black people who are military veterans;
- (4) Allow subcontract for a contract above R30 million to above status
- (5) Invited contractor or service providers to participant on Developmental procurement programs or multiple framework contracts

CLAUSE 35 APPOINTMENT OF CONSULTANTS

- (1) The accounting officer may procure services provided that any Treasury guideline in respect of consulting services are taken into account when such procurement are made
- (2) A contract for the provision of consultancy services to a Mopani District Municipality must be procured through competitive bids if-
 - (a) The value of the contract exceeds R200 000.00 (VAT included; or
 - (b) The duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by the regulations for competitive bids, bidders must furnish the Mopani District Municipality with particulars-
 - (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 last five years
- (4) The Mopani District Municipality 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 courses of the consultancy service is vested in the Mopani District Municipality

CLAUSE 36 DEVIATION FROM AND RATIFICATION OF MINOR BREACHES OF, PROCUREMENT PROCESSES

- (1) A supply chain management policy may allow the accounting officer-
 - (a) To dispense with the official procurement processes established by the policy and to procure any required good 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; or
- (v) In any other exceptional case where it is impractical or impossible to follow the official procurement processes:-
 - v-1. any purchase on behalf of the Municipality at a public auction sale;
 - v-2. any contract in respect of which compliance therewith would not be in the public interest;
 - v-3. ad-hoc repairs to plant and equipment where it is not possible to ascertain the nature or extent of the work required in order to call for bids; and
 - v-4. any contract in respect to accommodation, travel agencies and courier services.
 - v-5. any acquisition in respect of show stalls.
 - v-6. Any acquisition service or goods while waiting the finalisation SCM process (advertise bid)
- (b) To ratify minor breaches of the procurement processes by an official or committee acting in terms of delegated power or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of sub-clause 1 (a) and (b) and report them to the next meeting of the council, or board of directors, or management meeting in the case of a municipal entity, and include as a note to the annual financial statements.
- (3) Sub-clause of (2) does not apply to the procurement of goods or services in regulation 11(2)
- (4) Exception
- (5) Condonation of Expenditure**
 - (a) The Municipal Manager may, upon recommendation of the Bid Adjudication Committee, condone any expenditure incurred in contravention of, or that is not in accordance with, a requirement of this Policy. This power may not be sub-delegated by the Municipal Manager. Such condonation shall not preclude the taking of disciplinary steps against the responsible official.
 - (b) In the event where the Municipal Manager refuses to condone any expenditure referred to in clause (a) such expenditure will be deemed to be either unauthorised, irregular or fruitless and wasteful expenditure as defined in section 1 of the MFMA and will be treated by the Municipal Manager in accordance with the relevant provisions of the MFMA.
- (6) Obligation to Report**

The reasons for all deviations shall be recorded and reported by the Municipal Manager to Council at the next Council meeting, and shall be included as a note to the annual financial statements.

CLAUS 37 UNSOLICITED BIDS

- (1) Mopani District Municipality is in term of section 13 of the Act not obliged to consider unsolicited bids receive outside a normal bidding process
- (2) If a Mopani District Municipality decides in terms of section 113(2) of the Act to consider an unsolicited bid, it may do so 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 for, the Mopani District Municipality
 - (c) The person who made the bid is the sole provider of the product or service; and
 - (d) The reason for not going through the normal bidding processes are found to be sound by the accounting officer
- (3) If a Mopani District Municipality decides to consider an unsolicited bid that complies sub-clause (2), the Mopani District Municipality must make its decision public in according with section 21A of the Municipal System Act, together
 - (a) Its reasons as to why the bid should not be open other competition;
 - (b) An explanation of the potential benefits for the Mopani District Municipality were it to accept the solicited bid; and
 - (c) An invitation to the public or other potential supplier to submit their comments within 30 days of the notice.
- (4) Once the Mopani District Municipality has received written comments pursuant to sub-clause (3), it must such comments, including any responses from the unsolicited bidder, the National Treasury and province treasury for comment.

- (5) The adjudication committee must consider the unsolicited bid and may 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 committee submitted by the public; and
 - (b) Any written comments and recommendation of the National Treasury or 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 national Treasury the reason for rejecting of not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the Mopani District Municipality to the bid may be entered into or signed within 30 days of the submission.

(10) Public-Private Partnerships

- (a) 61. Part 2 of chapter 11 of the MFMA applies to the procurement of public-private partnership agreements.
- (b) Section 33 also applies if the agreement will have multi-year budgetary implications for the Municipality within the meaning of that section.

CLAUS 38 COMBATING OF ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM

- (1) Measures for the combating of abuse of the supply chain management system, and must enable the accounting officer-
 - (a) To take all reasonable steps to prevent such abuse;
 - (b) To investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with the supply chain management 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 Services (SAPS)
 - (c) To check the National Treasury; 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) To reject any bid from a bidder-
 - (i) If any municipal rates and taxes or municipal service charge owned by that bidder or any of its directors to the Mopani District Municipality or to any other municipality or municipality entity, are in arrears for more than three months
 - (ii) Who during the last five years has failed to perform satisfactorily on a previous contract with the Mopani District Municipality or any other organ of state after written notices was given to that bidder that performance was unsatisfactory
 - (e) To 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) To 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 contracts;
 - (ii) An official or other role players committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
 - (g) To reject the bid of any bidder if that bidder or any of its directors
 - (i) Has abused the supply chain management system of the Mopani District Municipality or has committed any improper conduct in relation to such systems;
 - (ii) Has been convicted for fraud or corruption during the past five years;
 - (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (iv) Has been listed in the register for tender defaulters in terms of section 29 of the prevention and combating of corrupt Activities Act (12 of 2004).
- (2) The accounting officer must inform the National Treasury and provincial treasury in written of any actions taken in terms of sub-clause (1)(b)(ii),(e) or (f)

*Part 3: Logistics, disposal, risk and performance management (clauses 39-43)***CLAUSE 39 LOGISTICS MANAGEMENT**

- (1) Mopani District Municipality will provide for an effective system of logistics management in order to provide for the setting of the inventory levels, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, vendor performance, and maintenance and contract administration.
- (2) Stock items shall be systematically replenished using the re-order point planning strategy in conjunction with minimum and maximum levels. Open reservations shall be taken into account during the replenishment run.
- (3) Placing of Orders
 - (a) Purchase orders will be created with reference to requisitions where the supply source is contract or quotations (where sourcing had to take place) using bulk stock vote.
 - (b) All purchase orders which are for imported goods and which are subject to rate and exchange adjustments must specify that the vendor must take out a forward exchange contract in order to fix the Rand based price in the purchase order.
 - (c) All purchase orders will be captured on the financial system exclusive of VAT.
 - (d) Standing orders (also known as "framework orders") will be used in cases where a longer term arrangement, such as after hour services and copier contracts, are required.
 - (e) Purchase order approvals will be systems based and will involve the Acquisition department only.
 - (f) The assets section (for asset creation) and the transport section (for insurance claims) will be informed after the purchase order approval of assets related for bar coding before distribution.
 - (g) The assets section (for asset creation) and the transport section (for insurance claims) will be informed after the purchase order approval of assets related for bar coding before distribution
- (4) Receiving and Distribution of Goods
 - (h) The logistic division / warehouse shall receive copy on official purchase order to utilise to:-
 - (i) Verify Quantity / quality check done by the transit official and a specialist where the need arise
 - (ii) Delivery note / invoice must be signed by the transit official and
 - (iii) the store person after all the checking is done
 - (iv) update stock level / stock item cards / bin card & the system immediately
 - (v) Stock item must be properly package in store
 - (vi) The store person will issue according to the paperwork
 - (vii) Stores controller must update the bin card and the system after issuing
 - (viii) Goods will be received on the Municipality's financial system with reference to purchase orders.
- (4) No over receipt of stock will be allowed. Under receipts will keep the purchase order open for the outstanding delivery quantity.
- (5) Stores and Warehouse Management
 - (i) Stores and warehousing function shall be centralised to main store room in Giyani
 - (ii) five town/municipal satellite shall be supported to main stores operate under the jurisdiction of the Supply Chain Management Unit.
 - (iii) The Supply Chain Management Unit must ensure proper financial and budgetary control; uphold the principle of effective administration, proper stock holding and control, product standardisation, quality of products and a high standard of service levels.
- (6) Expediting Orders
 - (a) The purchasing expeditor will be required to monitor and expedite outstanding purchase orders.
 - (b) Reminder letters can be faxed automatically or send via e-mail to vendors based on the reminder levels (days before delivery due date) that are set in the purchase order.
 - (c) Term or multiple framework contracts may be use for bulk stock purchase at rotation basis
- (7) Vote
 - (a) Budget & reporting shall create stock item vote that will be utilise for bulk stock purchase
 - (i) Budget amount of stock item vote shall not exceed a consolidate budget allocation of user department

- (b) Stores or warehouse shall use departmental vote to issue a stock item;
 - (ii) SCM shall credit such user vote according stock item on hand value (FIFO or average waiting model)
 - (iii) User with negative or overspending shall be request to transfer funds in line with
- (8) Issuing of stock
 - (a) End user shall request items on internal requisition clearly describing stock item, vote, budgeted amounts
 - (i) Requisition shall be approve by authorise official
 - (ii) Goods will be issued from stock with reference to reservations
 - (iii) goods can be issued for consumption against internal orders, cost centres, projects and assets under construction.
- (9) Supply chain management unit with varies end uses shall develop stock demand management plan:-
 - (a) Bid specification committee for development of specification
 - (b) Identifying stock item in demand or market analysis; procurement approach & procurement strategies
- (10) Stock taking
 - (a) Warehouse /stores must conduct monthly stock taking for monthly report submitted to SCM
 - (b) SCM unit conduct quarterly stock taking for quarterly report submitted to council
 - (c) BTO shall at least twice conduct a year conduct mid – year invite internal audit & financial year end stock conducting with appointed chairperson in present of external auditor (AGSA) or independent auditor

Transport Management

- (a) The Municipality's fleet management policy must be adhered to at all times
(Under contraction)

CLAUSE 40 DISPOSAL MANAGEMENT

- 1) Mopani District Municipality will provide for an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act
- 2) A supply chain management policy must-
 - (a) specify the ways in which assets may be disposed of, including by-
 - (i) Transferring the assets to another organ of state in terms of a provision of the Act enabling the transfer of assets
 - (ii) Transferring the assets to another organ state at market related value or, when appropriate, free of charge;
 - (iii) Selling the assets; or
 - (iv) Destroying the asset;
 - (b) stipulate that-
 - (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise
 - (ii) movable assets may be sold either by way of written price or quotations, a competitive bidding written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the Mopani District Municipality;
 - (iii) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local school are interested in the equipment
 - (iv) in case of the disposal of firearms, the national conventional Arms Control committee has approved any sale or donation of firearms to any person or institution within outside the Republic;
 - (c) provided that-
 - (i) immovable property is let at market related rates expect when the public interest of the letting or the plight of the poor demands otherwise; and
 - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting immovable property are annual reviewed; and
 - (iii) Ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.
 - (d) Ensure that where assets are traded in for other asset, the highest possible trade-in price is negotiated.

CLAUSE 41 RISK MANAGEMENT

- (1) Mopani District Municipality will provide for an effective system of risk management for the identification, consideration and avoidance of potential risk in the supply chain management system.
- (2) Risk management must include-
 - (a) The identification of risk on a case-by-case basis;
 - (b) The allocation of risk to the petty cash best suited to manage such risks;
 - (c) Acceptance of the cost of the risk where the cost of transferring the risk is greater the retaining it
 - (d) The management of the 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.

CLAUSE 42 PERFORMANCE AND CONTRACT MANAGEMENT

- (1) Mopani District Municipality will provide for an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management process are being followed and whether the desired objective are being achieved and
- (2) Accounting Officer shall ensure that:
 - (a) All term bids appointed service provider(s) shall enter into a written contract / service level agreement in term section 116 of MFMA that:-
 - (i) Sign by both parties (Mopani District Municipality and service provider)
 - (ii) Drafted by Mopani District Municipality's legal division
 - (iii) In addition to standard contract, detailed at least the following:-
 - Contract Name & number
 - Name of Municipality, service provider;
 - Starts date, end dates, termination, Payment agreement
 - Negotiated Term & condition
 - (b) Commitment register for:
 - (i) measuring performance and monitoring contract management is update
 - (ii) at quarterly basis update commitment register is reported to council
 - (iii) detailed the following column:-
 - contract name& number, name of service provider;
 - dates of appointment, start & end dates;
 - contract value, payment value, remaining balance
 - comments or performance update
- (3) Contract Price Adjustment
 - (a) For all contract periods equal to or exceeding one year, an appropriate contract price adjustment formula must be specified in the bid documents.
 - (b) In general, if contract periods do not exceed one year, the bid shall be a fixed price bid and not subject to contract price adjustment.
 - (c) However, if as a result of any extension of time granted, the duration of a fixed price contract exceeds one year, the contract will automatically be subject to contract price adjustment for that period by which the extended contract period exceeds such one year. An appropriate contract price adjustment formula must be specified in the bid documents.
 - (d) Notwithstanding of above sub-clause, if the bid validity period is extended, then contract price adjustment may be applied.
 - (e) Contracts providing for Compensation Based on Turnover
 - (f) If a service provider acts on behalf of the Municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the Municipality must stipulate;
 - (i) a cap on the compensation payable to the service provider; and
 - (ii) that such compensation must be performance based.
- (4) Management of expansions or variation of orders against the original contract

- (a) It is recognized that, in exceptional cases, an accounting officer or accounting authority may deem it necessary to expand or vary orders against the original contract.
 - (b) The absence of a prescribed threshold for the expansion or variation of orders against the original contract has, however, led to gross abuse of the current SCM system. (c) In order to mitigate against such practices, accounting officers and authorities are directed that, from the date of this instruction note taking effect, contracts may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services and 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. The relevant treasuries may, however, decrease these thresholds for institutions reporting to them.
 - (c) Any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist.
 - (d) The contents of paragraph (b) are not applicable to transversal term contracts facilitated by the relevant treasuries and specific term contracts as in such contracts, orders are placed as and when commodities are required and that at the time of awarding the contract, required quantities are not known
- (5) User departments shall be responsible for ensuring that contract:
- (a) prepare the contract administration plan & budget is available to execute the contract;
 - (b) monitor the performance of the contractor;
 - (c) appropriate responsibility and accountability;
 - (d) are adequately trained so that they can perform and exercise the responsibility; and
 - (e) act with due care and diligence and observe all accounting and legal requirements.
- (6) There are three levels of contract administration:
- (a) The first operational level is for standard contracts for goods and services. Day to day contract administration should become no more than a monitoring, record keeping and price adjustment authorisation role.
 - (b) The second or intermediate level is for more complex contracts for services. An example would be a contract to outsource cleaning services. This type of contract will require a more active role for the contract manager in developing the relationship between the Municipality and the contractor.
 - (c) The third level is for strategic contracts involving complex partnerships and outsourcing arrangements. These contracts need more active management of the business relationships between the supplier and the users, for example to manage outputs and not the process. Sufficient resources need to be dedicated by all parties to successfully manage these contractor relationships and, where feasible, to achieve partnership. A partnership is the result of mutual commitment to a continuing co-operative relationship, rather than parties working on a competitive and adversarial basis.
- (7) Framework agreements
- (a) provide a convenient means for employers to obtain goods, services or works from contractors within a defined scope on an "as instructed" basis over a set term without necessarily committing to any quantum of work. Normally the employer appoints a number of contractors to provide goods, services or works in terms of a framework agreement following a competitive selection process e.g. qualified procedure or open procedure. Framework agreements accordingly enable an employer to obtain goods, services or works as and when required in an efficient and cost effective manner.
 - (b) Only near the end of the term is the market approached to provide the goods, services and works covered by such contracts for the next term.
 - (c) The essential elements of a framework agreement are:
 - i. A framework agreement is only entered into with contractors (including suppliers and service providers) who have the resources and the capability to carry out work that is likely to be instructed.
 - ii. A framework agreement needs to include the basis by which contractors are to be remunerated for instructed work.
 - iii. The scope of work of a framework agreement needs to identify the extent and location of the work covered by the contract as the employer may not instruct a contractor to provide work outside of the scope of work associated with the contract.
 - iv. Competition amongst framework contractors participating in framework agreements covering a particular scope of work needs to be reopened whenever there is no justifiable reason for issuing a batch/task/package

order to a particular contractor, in which case all such contractors are invited to submit quotations to execute a batch/task/package order.

- v. Contractors may only proceed with work associated with a batch/task/work package when given an official batch/task/package order to do so.
- vi. Employers are not permitted to issue a batch/task/package order after the end date of the term of the framework agreement.
- vii. Any work commenced before the end of the term of a framework contract may continue until the end date provided in the batch/task/package order.
- (d) The instructing of work outside of the scope of work of a framework agreement is not permitted. This is seen to circumvent the system anything not explicitly provided for in the framework contract must be procured on a competitive basis in terms of an organisation's normal procurement system.
- (e) The reopening of competition amongst contractors whenever the terms and conditions are amended ensures that the prices for work done not explicitly covered in the framework contract remains competitive.
- (f) Framework contracts should generally be between three years. (ISO 10845-1) except where justified by the organisation's executive. Municipal contracts having a duration of longer than three years need to satisfy sections 33 and 116 of the Municipal Finance Management Act, 2003 (Act 56 of 2003)
- (g) The Supply Chain Management Regulations issued in terms of the Public Finance Management Act and the Municipal Finance Management Act permit one organ of state to make use of another organ of state's contract that is put in place by means of a competitive procurement process.
- (h) Framework contracts are well suited to such applications.
- (i) Essential elements of a framework agreement should, as a minimum, contain:
 - i. The term (period) of the contract within which a batch/task/package order falling within the scope of work associated with the contract may be issued;
 - ii. The scope of the goods, services or works which may form the basis of a batch/task/package order;
 - iii. The basis by which contractors are to be remunerated for instructed work; and
 - iv. Where a framework contract is entered into with more than one contractor, the manner in which competition between framework contractors in relation to a specific batch/task/package order falling within the scope of work associated with their contracts, may be reopened.

(8) Multiple framework contracts

are entered into Where the framework agreement provides prices prime rates or rates only or fees or staff rates or expenses etc. which fully cover the required goods or services or works or infrastructure procurement the employer may invite the contractor who in their opinion is most suited to provide the work associated with the batch/task/package order in the best interest of the employer to do so.

- (a) Factors such as geographic location, prior work around the required scope of work and specialist expertise might influence the decision.
- (b) Alternatively, such selection may be made on a next in line basis from a rotating data base.
- (c) Where the terms of the framework contract require modification, or where there is no advantage or justification for favouring one framework contractor over another, all contractors who have framework contracts covering the required scope of work are invited to submit quotations to provide work in terms of the batch/task/package order.
- (d) Quotations need to be evaluated in accordance with the cidb Standard Conditions of Tender or National Treasury General Conditional Contract 2010
- (e) Typical activities associated with framework contracts

Procurement activities and gates associated with the issuing of an order above the quotation threshold in terms of a framework agreement

Activity	Key action	
1	Confirm justifiable reasons for selecting a framework contractor where there is more than one framework agreement covering the same scope of work	Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited

2	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents
3	Confirm that budgets are in place	Confirm that finance is available so that the order may be issued
4	Issue Task/Package Order	Issue draft task/package order to a contractor or issue quotation documents to all or selected contractors who have framework contracts.
5	Authorise the issuing of the order Issue Task/Package Order	If applicable, review evaluation report and confirm or reject recommendations. Finalise order / Formally accept the offer in writing and issue the contractor with a signed copy of the order task

Part 4 Other Matters: (Clauses 43-52)

CLAUSE 43 PROHIBITION ON AWARD TO PERSONS WHO'S TAX MATTER ARE NOT IN ORDER

- (1) Mopani District Municipality will irrespective of procurement process may not make any award to a person whose tax matters have not been declared by the South African Revenue Service or central supplier's Database system to be in order.
- (2) Before making an award to a person, a Mopani District Municipality must first check on CSD system whether that person's tax matter are in order.
- (3) If SARS does not respond within seven days such person's tax matter may for purposes of sub-clause (1) be presumed to be in order
- (4) If CSD system is down due to network problem, immediately when system back on line, tax matter will be verified before any payment of the service providers
- (5) Municipal rates and taxes

No contract may be awarded to a tenderer who, of the principals of that tenderer, owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity and are in arrears for more than 3 months.

CLAUSE 44 PROHIBITION ON AWARDS TO PERSONS IN THE SERVICES OF THE STATE

- (1) Mopani District Municipality will irrespective of the procurement followed Municipality may not make any award to a person-
 - (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 is a person in the service of the state; or
 - (c) Who is an advisor or consultant contracted with the Mopani District Municipality
- 2) organ of state" in section 1 of the Act in paragraph (a) to (e) includes-
 - (a) a national or provincial department as defined in the Public Finance Management Act, 1999;
 - (b) a municipality as contemplated in the Constitution;
 - (c) a constitutional institution as defined in the Public Finance Management Act;
 - (d) Parliament or provincial legislature.

CLAUSE 45 AWARDS TO CLOSE FAMILY MEMBERS OF PERSONS IN THE SERVICE OF THE STATE

- (1) The note of the annual financial statement of the Mopani District Municipality must disclose particulars of any award of more than R 2,000 to a person who is a spouse, child or parent of a person in the service of the state, or been in the service of the state in the previous twelve months, including-
 - (a) The name of the person;

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

CLAUE 46 ETHICAL STANDARDS

- (1) MDM officials involve implementation of the supply chain management policy of must sign code of ethical standards/conduct complying with sub-clause (2) for officials and other role players in the supply chain management system in order to promote
 - (a) Mutual trust and respect; and
 - (b) An environment where business can be conducted with integrity and in a fair and reasonable manner
- (2) A municipal code of ethical standard must stipulate that an official or other role player involved in the implementation of the supply chain management policy of the Mopani District Municipality-
 - (a) Must treat all providers and potential provider equitably;
 - (b) may not use his or her position for private gain or to improperly benefit for 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 the person;
 - (d) notwithstanding sub-clause (2)(e), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to the person or any close family member, partner or associate of the person;
 - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the Mopani District Municipality
 - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
 - (g) must be scrupulous in his or her use of property belonging to the Mopani District 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 regulation 47(1)
 - (iii) any alleged breach of the code of ethical standards
- (3) Determination that-
 - (a) all declarations in terms of sub-clause (2)(d) and (e) must be recorded in a register which the accounting officer must keep for this purpose;
 - (b) all declarations by the accounting officer must be made to the mayor of the municipality or the board of directors of the municipal entity who must ensure that such declaration are recorded in the register; and
 - (c) contain measures to ensure that appropriate action is taken against any official or other role player who commits a breach of the code of ethical standards
 - (d) Mopani District Municipality may adopt the National Treasury's code of conduct for supply chain management practitioners and other role players involved in the implementation of the supply chain management. When adopted, such code of conduct becomes binding on all officials and other role players involved in the Mopani District Municipality.
 - (e) sub-clause (2) (c) does not apply to gifts less than R 500 in value

CLAUSE 47

INDUCEMENTS, REWRDS, GIFTS AND FAVOURS MUNICIPALITY OR MUNICIPAL ENTITIES, OFFICIALS AND OTHER ROLE PLAYERS

- (1) no person who is a provider or prospective provider of goods or services to a Mopani District Municipality, or a recipient of goods disposed or to be disposed of by a Mopani District Municipality, may either directly or through a representative or intermediary promise, offer or grant-

- (a) any inducement or reward to the Mopani District Municipality for or in connection with award of a contract; or
- (b) any reward, gift, favour or hospitality to-
 - (i) Any official of the Mopani District Municipality; or
 - (ii) Any other role player involved in the implantation of the supply chain management policy of the Mopani District Municipality.
- (2) The accounting officer of a Mopani District Municipality must promptly report any alleged contravention of sub-clause (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleges to have acted, should be listed in the National Treasury for database of person prohibited from doing business with the public sector.
- (3) Sub-clause (1) does not apply to gifts less than R 750 in value

CLAUSE 48 SPONSORSHIP

- (1) The accounting officer of a Mopani District Municipality must promptly disclose to the National Treasury and provincial treasury any sponsorship promised, offered or granted to the Mopani District Municipality, whether directly or through a representative or intermediary, by any person who is-
 - (a) A provider or prospective provider of goods or services to the Mopani District Municipality; or
 - (b) A recipient or prospective recipient of goods disposed or to be disposed, of by the Mopani District Municipality.
 - (c) Authority for Executive Mayor/Accounting to source such sponsorship should be request & granted in written including Private Public Partnership

CLAUSE 49 OBJECTIONS AND COMPLAINTS

Mopani District Municipality must allow persons aggrieved by decision or action taken by the Mopani District Municipality in the implementation of its supply chain management system, to lodge within 14 of the decision or action a written objection or complaint to the Mopani District Municipality against the decision or action

CLAUSE 50 RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

- (1) The supply chain management policy of a Mopani District Municipality must provide for the appointment by the accounting officer of an independent and impartial person not directly involved in the supply chain management processes of the Mopani District Municipality-
 - (a) To assist in the resolution of disputes between the Mopani District Municipality and other persons regarding-
 - (i) Any decisions or action taken by Mopani District Municipality in the implementation of its supply chain management system; or
 - (ii) Any matter arising from a contract awarded in the course of its supply chain management system; or
 - (b) To deal with objections, complaints or queries regarding any such decision or action or any matter arising from such contract.
- (2) A parent Mopani District Municipality under its sole or shared control may for purposes of sub-clause (1) appoint the same person.
- (3) The accounting officer, or another officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (4) The person appointed must-
 - (a) Strive to resolve promptly all disputed, objections, complains or queries; and
 - (b) Submit monthly reports to the accounting officer on all dispute, objections, complaint or queries received, attended to or resolved
- (5) 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.
 - (b) No response is received from the Mopani District Municipality within 60 days
- (6) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (7) This regulation must be read as affecting a person's rights to approach a court at any time.

CLAUSE 51 CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

- (1) If a service provider acts on behalf of a Mopani District 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 Mopani District Municipality must stipulate-
- (a) A cap on the compensation payable to the service provider; and
 - (b) That such compensation must be performance based.

CLAUSE 52 COMMENCEMENT

These Regulations take effect of Date..... after council resolution and becomes effective for a Mopani District Municipality on had dates subject to any exemptions that may be granted in terms of MFMA section 177 of the act. Prohibition on awards to persons whose tax matter are no in order



MOPANI DISTRICT MUNICIPALITY

SUPPLY CHAIN MANAGEMENT POLICY FOR INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT

Appendix A: Mopani District Municipality Supply Chain Management Infrastructure procurement policy

1 Scope

This policy establishes the *Mopani District Municipality's* policy for infrastructure delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management. It includes the procurement of goods and services necessary for a new facility to be occupied and used as a functional entity but excludes:

- a) the storage of goods and equipment following their delivery to *Mopani District Municipality'* which are stored and issued to contractors or to employees;
- b) the disposal or letting of land;
- c) the conclusion of any form of land availability agreement;
- d) the leasing or rental of moveable assets; and
- e) public private partnerships.

2 Terms, definitions and abbreviations 1

2.1 Terms and definitions

For the purposes of this document, the definitions and terms given in the standard and the following apply:

agent: person or organization that is not an employee of *Mopani District Municipality* that acts on the *Mopani District Municipality's* behalf in the application of this document

authorised person: the accounting officer, the accounting authority or the appropriately delegated authority to award, cancel, amend, extend or transfer a contract or order

conflict of interest: any situation in which:

- a) someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially,
- b) an individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or
- c) incompatibility or contradictory interests exist between an employee and the organization which employs that employee

contract manager: person responsible for administering a package on behalf of the employer and performing duties relating to the overall management of such contract from the implementer's point of view

family member: a person's spouse, whether in a marriage or in a customary union according to indigenous law, domestic partner in a civil union, or child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption

framework agreement: an agreement between an organ of state and one or more contractors, the purpose of which is to establish the terms governing orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged

gate: a control point at the end of a process where a decision is required before proceeding to the next process or activity

gateway review: an independent review of the available information at a gate upon which a decision to proceed or not to the next process is based 2 August 2015

gratification: an inducement to perform an improper act

infrastructure delivery: the combination of all planning, technical, administrative and managerial actions associated with the construction, supply, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

infrastructure procurement: the procurement of goods or services including any combination thereof associated with the acquisition, renovation, rehabilitation, alteration, maintenance, operation or disposal of infrastructure

maintenance: the combination of all technical and associated administrative actions during an item's service life to retain it in a state in which it can satisfactorily perform its required function

operation: combination of all technical, administrative and managerial actions, other than maintenance actions, that results in the item being in use

order: an instruction to provide goods, services or any combination thereof under a framework agreement

organ of state: an organ of state as defined in section 239 of the Constitution of the Republic of South Africa

procurement document: documentation used to initiate or conclude (or both) a contract or the issuing of an order

principal: a natural person who is a partner in a partnership, a sole proprietor, a director a company established in terms of the Companies Act of 2008 (Act No. 71 of 2008) or a member of a close corporation registered in terms of the Close Corporation Act, 1984, (Act No. 69 of 1984)

standard: the latest edition of the Standard for Infrastructure Procurement and Delivery Management as published by National Treasury

working day: any day of a week on which is not a Sunday, Saturday or public holiday

2.2 Abbreviations 2

For the purposes of this document, the following abbreviations apply

CIDB: Construction Industry Development Board

SARS: South African Revenue Services

3 General requirements

3.1 Infrastructure procurement and delivery management shall be undertaken in accordance with the all applicable legislation and the relevant requirements of the latest edition of the National Treasury Standard for Infrastructure Procurement and Delivery Management.

3.2 No departures shall be made from the provisions of the National Treasury Standard for Infrastructure Procurement and Delivery Management without the approval of the National Treasury.²

3.3 No departure shall be made from the provisions of this policy without the approval of [*delegated person*]

3.4 Pre-feasibility and feasibility reports are required on⁴(*Sub-clause 4.1.1.4 c) of the standard permits an organ of states' policy to require that pre-feasibility and feasibility reports are required, notwithstanding the test provided for in this sub-clause to determine if such reports are required. The compiler of the policy needs to delete this sub-clause if it is not required.*

3.5 Stage 3 to 7 are required for⁵ *Sub-clause 4.1.1.1 of the standard permits stages 3 to 9 where the work does not involve the provision of new infrastructure or the rehabilitation, refurbishment, alteration of existing infrastructure. Stages 5 and 6 to be omitted where there is sufficient information to proceed to stage 7 is contained in the stage 4 deliverable. The policy may require that certain types of work (e.g. specific types of maintenance) need to pass through all the stages.*

4 Control framework for infrastructure delivery management

4.1 Assignment of responsibilities for approving or accepting end of stage deliverables

The responsibilities for approving or accepting end of stage deliverables shall be as stated in Table 1.

4.2 Additional gates 3

The following additional gates shall apply:

Municipal Manager shall appoint a gateway review team in accordance with the provisions of clause 4.1.13.1.2 of the standard to undertake gateway reviews for master plan for maintenance, repair and refreshments

4.3 Additional requirements 3

The following additional requirements apply:

Municipal Manager shall appoint a gateway review team in accordance with the provisions of clause 4.1.13.1.2 of the standard to undertake gateway reviews for operation projects.

4.4 Gateway reviews

4.4.1 Gateway reviews for major capital projects above a threshold

4.4.1.1 *Municipal Manager* shall appoint a gateway review team in accordance with the provisions of clause 4.1.13.1.2 of the standard to undertake gateway reviews for major capital projects.

4.4.1.2 The requirements for a gateway review in addition to those contained in section 4.1.13 of the standard are as follows:

4.4.2 Elective gateway reviews

Gateway reviews shall be undertaken

Table 1: Responsibilities for approving or accepting end of stage deliverables in the control framework for the management of infrastructure delivery

No	Stage		Name of Person assigned the responsibility for approving or accepting end of stage deliverables
0	Project initiation		<i>Senior manager Engineering / water</i> accepts the initiation report
1	Infrastructure planning		<i>Senior manager Engineering / water</i> approves the infrastructure plan
2	Strategic resourcing		<i>Municipal Manager / SCM</i> approves the delivery and / or procurement strategy
3	Pre-feasibility		<i>Senior manager Engineering / water</i> accepts the pre-feasibility report
	Preparation and briefing		<i>Senior manager Engineering / water</i> accepts the strategic brief
	Feasibility		<i>Senior manager Engineering / water</i> accepts the feasibility report
4	Concept and viability		<i>Senior manager Engineering / water</i> accepts the concept report
5	Design development		<i>Senior manager Engineering / water</i> accepts the design development report
6	Design documentation	6A Production information	<i>Senior manager Engineering / water</i> accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance

		6B Manufacture, fabrication and construction information	The contract manager accepts the manufacture, fabrication and construction information
7	Works	The contract manager certifies completion of the works or the delivery of goods and associated services	
8	Handover	The owner or end user accepts liability for the works	
9	Package completion	<p>The contract manager or supervising agent certifies the defects certificate in accordance with the provisions of the contract</p> <p>The contract manager certifies final completion in accordance with the provisions of the contract</p> <p><i>Senior manager Engineering / water</i> accepts the close out report</p>	

5 Control framework for infrastructure procurement

5.1 The responsibilities for taking the key actions associated with the formation and conclusion of contracts including framework agreements above the quotation threshold shall be as stated in Table 2.

5.2 The responsibilities for taking the key actions associated with the quotation procedure and the negotiation procedure where the value of the contract is less than the threshold set for the quotation procedure shall be as follows:

- a) *municipal manager* shall grant approval for the issuing of the procurement documents, based on the contents of a documentation review report developed in accordance with the provisions of the standard;
- b) the authorised person may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard.

5.3 The responsibilities for taking the key actions associated with the issuing of an Batch/task/package order/appointment letter in terms of a framework agreement shall be as stated in Table 3.

6 Infrastructure delivery management requirements

6.1 Institutional arrangements

6.1.1 Committee system for procurement

14 Treasury Regulation 16A6.2 of the PFMA requires that a committee system be established for procurement above the threshold for quotations. The requirement to establish a committee system does not apply to major public entities, national government business enterprises and provincial government business enterprises. Such organs of state nevertheless are required in terms of the standard to assign responsibilities for taking key actions at procurement and framework agreement gates.

An accounting officer may require that the tender committee (bid adjudication committee) also deal with quotations.

The principle of segregation (an internal control designed to prevent error and fraud by ensuring that at least two individuals are responsible for the separate parts of any task) is dealt in the standard as follows:

- ▣ procurement gate 3: a technical evaluation of procurement documents and an approval of such documentation;
- ▣ procurement gate 5: a technical evaluation of submissions and an authorization to proceed with the next phase of a procurement process; and

▣ procurement gate 6: a tender evaluation and a recommendation to award a contract.

6.1.1.1 General

6.1.1.1.1 A committee system comprising the documentation committee, evaluation committee and tender committee shall be applied to all procurement procedures where the estimated value of the procurement exceeds the financial threshold for quotations and to the putting in place of framework agreements.

6.1.1.1.2 The evaluation committee shall, where competition for the issuing of an order amongst framework contractors takes place and the value of the order exceeds the financial threshold for quotations, evaluate the quotations received.

6.1.1.1.3 The persons appoint in writing as technical advisors and subject matter experts may attend any committee meeting. Such advisers and experts shall not participate in the decisions making proceedings of such meetings.

6.1.1.1.4 No person who is a political officer bearer, a public office bearer, a political advisor or a person appointed in terms of section 12A of the Public Service Act of 1994 or who has a conflict of interest shall be appointed to a procurement documentation, evaluation or tender committee.

6.1.1.1.5 Committee decisions shall as far as possible be based on the consensus principle i.e. the general agreement characterised by the lack of sustained opposition to substantial issues. Committees shall record their decisions in writing. Such decisions shall be kept in a secured environment for a period of not less than five years after the completion or cancellation of the contract unless otherwise determined in terms of the National Archives and Record Services Act of 1996.

6.1.1.1.6 Committees may make decisions at meetings or, subject to the committee chairperson's approval, on the basis of responses to documents circulated to committee members provided that not less than sixty percent of the members are present or respond to the request for responses. Where the committee chairperson is absent from the meeting, the members of the committee who are present shall elect a chairperson from one of them to preside at the meeting.

Table 2: Procurement activities and gates associated with the formation and conclusion of contracts above the quotation threshold

Activity		Sub-Activity (see Table 3 of the standard)		Key action	Person assigned responsibility to perform key action
1 *	Establish what is to be procured	1.3 PG1	Obtain permission to start with the procurement process	Make a decision to proceed / not to proceed with the procurement based on the broad scope of work and the financial estimates.	<i>Municipal Manager</i>
2 *	Decide on procurement strategy	2.5 PG2	Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure	Confirm selection of strategies so that tender offers can be solicited	<i>Municipal Manager /Supply Chain Management</i>
	Solicit tender offers	3.2 PG3	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	<i>Municipal Manager</i>
		3.3 PG4	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place	<i>Chief financial Officer</i>
4	Evaluate tender offers	4.2 PG5	Obtain authorisation to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure	Review evaluation / adjudication report, ratify recommendations and authorise progression to the next stage of the tender process	<i>Tender committee Chairperson</i>
		4.7 PG6	Confirm recommendations contained in the tender evaluation report	Review recommendations of the evaluation / adjudication committee and refer back to evaluation/adjudication committee for reconsideration or make recommendation for award	<i>Municipal Manager</i>
5	Award contract	5.3 PG7	Award contract	Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract	<i>Municipal Manager or delegated committee [BEC up-to R2m & BAC above R2m to R10m]</i>
		5.5 GF1	Upload data in financial management and payment system	Verify data and upload contractor's particulars and data associated with the contract or order	<i>Chief financial officer</i>

6	Administer contracts and requirements inflation, or the time for completion at award of a	6.4 PG8A	Obtain approval to waive penalties or low performance damages.	Approve waiver of penalties or low performance damages	Municipal Manager
		6.5 PG8B	Obtain approval to notify and refer a dispute to an adjudicator	Grant permission for the referral of a dispute to an adjudicator or for final settlement to an arbitrator or court of law	Municipal Manager
		6.6 PG8C	Obtain approval to increase the total of prices, inflation, or the time for completion at the award excluding contingencies and price adjustment for contract or the issuing of an order by more than 20% and 30%, respectively	Approve amount of time and cost overruns up to the threshold	Municipal Manager
		6.8 PG8E	Obtain approval to cancel or terminate a contract	Approve amount	Municipal Manager
		PG8F 6.9	Obtain approval to amend a contract	Approve proposed amendment to contract	Municipal Manager

Table 3: Procurement activities and gates associated with the issuing of an order above the quotation threshold in terms of a framework agreement

Activity	Key action		Person assigned responsibility to perform key action
1 FG1	Confirm justifiable reasons for selecting a framework contactor where there is more than one framework agreement covering the same scope of work	Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited	Municipal Manager
2 FG2	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Municipal Manager
3 FG3	Confirm that budgets are in place	Confirm that finance is available so that the order may be issued	Chief Financial Officer
4FG4	Issue Task/Package Order	Issue draft task/package order to a contractor or issue quotation documents to all or selected contractors who have framework contracts.	Municipal Manager / Supply Chain management
5FG6	Authorise the issuing of the order Issue Task/Package Order	If applicable, review evaluation report and confirm or reject recommendations. Finalise order / Formally accept the offer in writing and issue the contractor with a signed copy of the order task	Municipal Manager / Supply Chain management

6.1.1.2 Procurement documentation committee

6.1.1.2.1 The *accounting officer* shall appoint in writing on a procurement by procurement basis:

- a) the persons to review the procurement documents and to develop a procurement documentation review report in accordance with clause 4.2.2.1 of the standard; and
- b) the members of the procurement documentation committee.

6.1.1.2.2 The procurement documentation committee shall comprise one or more persons. The chairperson shall be an employee of *Mopani District Municipality* with requisite skills. Other members shall, where relevant, include a representative of the end user or the institution requiring infrastructure delivery.

6.1.1.2.3 No member of, or technical adviser or subject matter expert who participates in the work of the any of the procurement committees or a family member or associate of such a member, may tender for any work associated with the tender which is considered by these committees.

6.1.1.3 Evaluation committee

6.1.1.3.1 The *accounting officer* shall appoint on a procurement by procurement basis in writing:

- a) the persons to prepare the evaluation and, where applicable, the quality evaluations, in accordance with clauses 4.2.3.2 and 4.2.3.4 of the standard, respectively; and
- b) the members of the evaluation committee.

6.1.1.3.2 The evaluation committee shall comprise not less than three people. The chairperson shall be an employee of *Mopani District Municipality* with requisite skills. Other members shall, where relevant, include a representative of the end user or the institution requiring infrastructure delivery.

6.1.1.3.3 The evaluation committee shall review the evaluation reports prepared in accordance with sub clause 4.2.3 of the standard and as a minimum verify the following in respect of the recommended tenderer:

- a) the capability and capacity of a tenderer to perform the contract;
- b) the tenderer's tax compliance status;
- c) the Compulsory Declaration has been completed; and
- d) the tenderer is not listed in the National Treasury's Register for Tender Defaulters or the List of Restricted Suppliers.

6.1.1.3.4 No tender submitted by a member of, or technical adviser or subject matter expert who participates in the work of the procurement documentation committee or a family member or associate of such a member, may be considered by the evaluation committee.

6.1.1.3.5 The chairperson of the evaluation committee shall promptly notify the [*accounting officer or chief financial officer or designation of delegate*] of any respondent or tenderer who is disqualified for having engaged in fraudulent or corrupt practices during the tender process.

6.1.1.4 Tender committee

Where no separate tender committee is established, this section should simply refer to the bid adjudication committee which is set up to deal with tenders with both the supply chain for general goods and services and for infrastructure

6.1.1.4.1 The tender committee shall comprise the following persons or their mandated delegate:

The chairperson needs to be an employee of the institution with requisite skills. Other members should be employees of the institution and include at least a supply chain management practitioner. It should be composed in such a way that it is cross-functional of the activities of the institution.

The tender committee shall comprise of least four Senior Managers or their mandated delegate including the following:

- a) senior manager who appointed by accounting officer shall be the chairperson or
- b) *chief financial officer / manager from budget & treasury delegated by accounting officer*
- c) *supply chain management practitioner (SCM manager or Accountant or Assistance Accountant*
- d) Technical Expert in the relevant field i.e. manager technical engineering or water or PMU

6.1.1.4.2 No member of the evaluation committee may serve on the tender committee. A member of an evaluation committee may, however, participate in the deliberations of a tender committee as a technical advisor or a subject matter expert.

6.1.1.4.3 The tender committee shall:

- a) consider the report and recommendations of the evaluation committee and:
 - 1) verify that the procurement process which was followed complies with the provisions of this document;
 - 2) confirm that the report is complete and addresses all considerations necessary to make a recommendation;
 - 3) confirm the validity and reasonableness of reasons provided for the elimination of tenderers; and
 - 4) consider commercial risks and identify any risks that have been overlooked or fall outside of the scope of the report which warrant investigation prior to taking a final decision; and
- b) refer the report back to the evaluation committee for their reconsideration or make a recommendation to the authorised person on the award of a tender, with or without conditions, together with reasons for such recommendation.

6.1.1.4.4 The tender committee shall consider proposals regarding the cancellation, amendment, extension or transfer of contracts that have been awarded and make a recommendation to the authorised person on the course of action which should be taken.

6.1.1.4.5 The tender committee shall consider the merits of an unsolicited offer and make a recommendation to the accounting officer

6.1.1.4.6 The tender committee shall report to the *[designation of person]*¹⁹ any recommendation made to award a contract to a tenderer other than the tenderer recommended by the evaluation committee, giving reasons for making such a recommendation.

6.1.1.4.7 The tender committee shall not make a recommendation for an award of a contract or order if the recommended tenderer or framework contractor has:

- a) made a misrepresentation or submitted false documents in competing for the contract or order; or
- b) been convicted of a corrupt or fraudulent act in competing for any contract during the past five years.

6.1.1.4.8 The tender committee may on justifiable grounds and after following due process, disregard the submission of any tenderer if that tenderer or any of its directors, members or trustees or partners has abused the delivery management system or has committed fraud, corruption or any other improper 11 conduct in

relation to such system. The *[National Treasury or the name of provincial treasury, as applicable]* shall be informed where such tenderers are disregarded.

6.1.2 Actions of an authorised person relating to the award of a contract or an order

6.1.2.1 Award of a contract

The authorised person shall, if the value of the contract inclusive of VAT, is within his or her delegation, consider the report(s) and recommendations of the tender committee, or in the case of the awards for contracts below the quotation threshold, the recommendation of the *Accounting officer*, and either:

- a) award the contract after confirming that the report is complete and addresses all considerations necessary to make a recommendation and budgetary provisions are in place; or
- b) decide not to proceed or to start afresh with the process.

6.1.2.2 Issuing of an order

The authorised person shall, if the value of an order issued in terms of a framework contract, is within his or her delegation, consider the recommendation of the evaluation/adjudication committee or the Accounting officer as relevant, and either:

- a) authorise the issuing of an order in accordance with the provisions of clause 4.25 of the standard; or
- b) decide not to proceed or to start afresh with the process.

6.1.3 Conduct of those engaged in infrastructure delivery

6.1.3 Conduct of those engaged in infrastructure delivery²⁰

20 Sub clause 5.1 d) of the standard requires that the institution's policy establish ethical standards for those involved in the procurement and delivery of infrastructure. This clause is aligned with the general requirements for compliance with ethical requirements of the Treasury Regulation 16A8 issued in terms of the PFMA.

6.1.3.1 General requirements

6.1.3.1.1 All personnel and agents of *Mopani District Municipality* shall comply with the requirements of the CIDB Code of Conduct for all Parties engaged in Construction Procurement. They shall:

- a) behave equitably, honestly and transparently;
- b) discharge duties and obligations timeously and with integrity;
- c) comply with all applicable legislation and associated regulations;
- d) satisfy all relevant requirements established in procurement documents;
- e) avoid conflicts of interest; and
- f) not maliciously or recklessly injure or attempt to injure the reputation of another party.

6.1.3.1.2 All personnel and agents engaged in *Mopani District Municipality's* infrastructure delivery management system shall:

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a family member or an associate;
- b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;

- c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;
- d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;
- e) ensure that resources are administered responsibly;
- f) be fair and impartial in the performance of their functions;
- g) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- h) not abuse the power vested in them;
- i) not place themselves under any financial or other obligation to external individuals or firms that might seek to influence them in the performance of their duties;
- j) assist *Mopani District Municipality* in combating corruption and fraud within the infrastructure procurement and delivery management system;
- k) not disclose information obtained in connection with a project except when necessary to carry out assigned duties;
- l) not make false or misleading entries in reports or accounting systems; and
- m) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.

6.1.3.1.2 An employee or agent may not amend or tamper with any submission, tender or contract in any manner whatsoever.

6.1.3.2 Conflicts of interest

6.1.3.2.1 The employees and agents of *Mopani District Municipality* who are connected in any way to procurement and delivery management activities which are subject to this policy, shall:

- a) disclose in writing to the employee of the *Mopani District Municipality* to whom they report, or to the person responsible for managing their contract, if they have, or a family member or associate has, any conflicts of interest; and
- b) not participate in any activities that might lead to the disclosure of *Mopani District Municipality* proprietary information.

6.1.3.2.2 The employees and agents of *Mopani District Municipality* shall declare and address any perceived or known conflict of interest, indicating the nature of such conflict to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to a procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

6.1.3.2.3 Agents who prepare a part of a procurement document may in exceptional circumstances, where it is in *Mopani District Municipality's* interest to do so, submit a tender for work associated with such documents provided that:

- a) *Mopani District Municipality* states in the tender data that such an agent is a potential tenderer;
- b) all the information which was made available to, and the advice provided by that agent which is relevant to the tender, is equally made available to all potential tenderers upon request, if not already included in the scope of work; and

c) the procurement documentation committee is satisfied that the procurement document is objective and unbiased having regard to the role and recommendations of that agent.

6.1.3.3 Evaluation of submissions received from respondents and tenderers

6.1.3.3.1 The confidentiality of the outcome of the processes associated with the calling for expressions of interest, quotations or tenders shall be preserved. Those engaged in the evaluation process shall:

- a) not have any conflict between their duties as an employee or an agent and their private interest;
- b) may not be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person;
- c) deal with respondents and tenderers in an equitable and even-handed manner at all times; and
- d) not use any confidential information obtained for personal gain and may not discuss with, or disclose to outsiders, prices which have been quoted or charged to *Mopani District Municipality*.

6.1.3.3.2 The evaluation process shall be free of conflicts of interest and any perception of bias. Any connections between the employees and agents of *Mopani District Municipality* and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

6.1.3.3.3 *Mopani District Municipality* personnel and their agents shall immediately withdraw from participating in any manner whatsoever in a procurement process in which they, or any close family member, partner or associate, has any private or business interest.

6.1.3.4 Non-disclosure agreements

Confidentiality agreements in the form of non-disclosure agreements shall, where appropriate, be entered into with agents and potential contractors to protect *Mopani District Municipality's* confidential information and interests.

6.1.3.5 Gratifications, hospitality and gifts

6.1.3.5.1 The employees and agents of *Mopani District Municipality* shall not, directly or indirectly, accept or agree or offer to accept any gratification from any other person including a commission, whether for the benefit of themselves or for the benefit of another person, as an inducement to improperly influence in any way a procurement process, procedure or decision.

6.1.3.5.2 The employees and agents of *Mopani District Municipality* as well as their family members of associates shall not receive any of the following from any tenderer, respondent or contractor or any potential contractor:

- a) money, loans, equity, personal favours, benefits or services;
- b) overseas trips; or
- c) any gifts or hospitality irrespective of value from tenderers or respondents prior to the conclusion of the processes associated with a call for an expression of interest or a tender.

6.1.3.5.3 The employees and agents of *Mopani District Municipality* shall not purchase any items at artificially low prices from any tenderer, respondent or contractor or any potential contractor at artificially low prices which are not available to the public.

6.1.3.5.4 All employees and agents of *Mopani District Municipality* may for the purpose of fostering inter-personal business relations accept the following:

- a) meals and entertainment, but excluding the cost of transport and accommodation;
- b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;
- c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;
- d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and
- e) gifts in kind other than those listed in a) to d) which have an intrinsic value not more than R750 unless they have declared them to the *Accounting officer or SCM office*

6.1.3.5.5 Under no circumstances shall gifts be accepted from prospective contractors during the evaluation of calls for expressions of interest, quotations or tenders that could be perceived as undue and improper influence of such processes.

6.1.3.5.6 Employees and agents of *Mopani District Municipality* shall without delay report to the *accounting officer or chief financial officer or appropriately delegated authority* any incidences of a respondent, tenderer or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision.

6.1.3.6 Reporting of breaches

Employees and agents of *Mopani District Municipality* shall promptly report to the *accounting officer* any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

The *accounting officer* shall investigate all allegations of corruption, improper conduct or failure to comply with the requirements of this policy against an employee or an agent, a contractor or other role player and, where justified:

- a) take steps against an employee or role player and inform the *National Treasury or the Limpopo provincial treasury, as applicable* of those steps;
- b) report to the South African Police Service any conduct that may constitute a criminal offence;
- c) lodge complaints with the Construction Industry Development Board or any other relevant statutory council where a breach of such council's code of conduct or rules of conduct are considered to have been breached;
- d) cancel a contract if:
 - 1) it comes to light that the contractor has made a misrepresentation, submitted falsified documents or has been convicted of a corrupt or fraudulent act in competing for a particular contract or during the execution of that contract; or
 - 2) an employee or other role player committed any corrupt or fraudulent act during the tender process or during the execution of that contract.

6.1.4 Involvement of employees of departments in tenders

Any submissions made by a respondent or tenderer who declares in the Compulsory Declaration that a principal is an employee of a national or provincial department and does not have the written permission of the executive of that department as required in terms of Section 30(1) of the Public Service Act of 1994 shall be rejected. 15

6.1.5 Collusive tendering

Any submissions made by a respondent or tenderer who fails to declare in the MDM 9 Compulsory Declaration that the tendering entity:

- a) is not associated, linked or involved with any other tendering entity submitting tender offers; or
- b) has not engaged in any prohibited restrictive horizontal practices including consultation, communication, agreement, or arrangement with any competing or potential tendering entity regarding prices, geographical areas in which goods and services will be rendered, approaches to determining prices or pricing parameters, intentions to submit a tender or not, the content of the submission (specification, timing, conditions of contract etc.) or intention to not win a tender shall be rejected.

6.1.7 Placing of contractors under restrictions

6.1.7.1 If any tenderer which has submitted a tender offer or a contractor which has concluded a contract has, as relevant:

- a) withdrawn such tender or quotation after the advertised closing date and time for the receipt of submissions;
- b) after having been notified of the acceptance of his tender, failed or refused to commence the contract;
- c) had their contract terminated for reasons within their control without reasonable CLAUSE;
- d) offered, promised or given a bribe in relation to the obtaining or the execution of such contract;
- e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards *Mopani District Municipality*; or
- f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of *Mopani District Municipality* that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements,
- g) *legal services* shall prepare a report on the matter and make a recommendation to the *accounting officer* for placing the contractor or any of its principals under restrictions from doing business with the *Mopani District Municipality*.

6.1.7.2 The *accounting officer* may, as appropriate, upon the receipt of a recommendation made in terms of 6.1.7.1 and after notifying the contractor of such intention in writing and giving written reasons for such action, suspend a contractor or any principal of that contractor from submitting a tender offer to *Mopani district municipality* for a period of time.

6.1.7.3 The *Accounting officer* shall:

- a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of *Mopani District Municipality* who are engaged in procurement processes; and
- b) Notify the *National Treasury or Limpopo provincial treasury* and Construction Industry Development Board, as applicable of such decision and provide them with the details associated therewith.

6.1.8 Complaints

6.1.8.1 All complaints regarding the *Mopani District Municipality's* infrastructure delivery management system shall be addressed to the *[designation of person, office or department]*. Such complaints shall be in writing.

6.1.8.2 The *[designation of person, office or department]* shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the *[designation of person, office or department]* who will decide on what action to take.

6.2 Acquisition management

6.2.1 Unsolicited proposal

6.2.1.1 The *Mopani District Municipality* is not obliged to consider unsolicited offers received outside a normal procurement process but may consider such an offer only if:

- a) the goods, services or any combination thereof that is offered is a demonstrably or proven unique innovative concept;
- b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the person who made the offer;
- c) the offer presents a value proposition which demonstrates a clear, measurable and foreseeable benefit for *Mopani District Municipality*;
- d) the offer is in writing and clearly sets out the proposed cost;
- e) the person who made the offer is the sole provider of the goods or service; and
- f) the *[accounting officer]* finds the reasons for not going through a normal tender processes to be sound.

6.2.1.2 The *accounting officer* may only accept an unsolicited offer and enter into a contract after considering the recommendations of the tender committee if:

- a) the offer relates to known institutional requirements that cannot, within reasonable and practical limits, be acquired through a competitive or competitive negotiation procedure as provided for in SANS 10845-1;
- b) the goods, service or any combination thereof is used for or relates to a matter that falls within the *Mopani District Municipality's* mandate or functions; and
- c) the person who made the offer satisfies all other requirements which are conditional upon the award of a contract.

6.2.2 CSD compliance

6.2.2.1 No contract may be awarded or order issued unless a tenderer or contractor is CSD non-Tax compliance or cleared by SARS provided that the tenderer is not domiciled in the Republic of South Africa and the SARS has confirmed that such a tenderer is not required to prove their tax compliance status.

6.2.2.2 In the case of a partnership, each partner shall comply with the requirements of 6.2.2.1.

6.2.2.3 No payment shall be made to a contractor who does not satisfy the requirements of 6.2.2.1. An employee of *Mopani District Municipality* shall upon detecting that a tenderer or contractor is not tax compliant, immediately notify such person of such status.

6.2.2.4 Notwithstanding the requirements of 6.2.2.1 and 6.2.2.3 the following shall apply, unless a person who is not tax compliant indicates to *Municipal Manager* that it intends challenging its tax compliance status with SARS,

- a) a contract may not awarded to a non-compliant tenderer;
- b) an order may no awarded to a non-compliant contractor;
- d) before authorising a further payment due to a non-compliant contractor who has failed to remedy its tax compliance status after receiving a first warning, a second and final warning shall be issued to such contractor;

e) no payments may be released for any amounts due in terms of the contract due to a non-compliant contractor if, after a period of 30 calendar days have lapsed since the second warning was issued, the non-compliant contractor has failed to remedy its tax compliance status.

6.2.2.5 The *Mopani District Municipality* may cancel a contract with a non-compliant contractor if such a contractor fails to remedy its tax compliance status after a period of 30 calendar days have lapsed since the second warning was issued in terms of 6.2.2.4e).

6.2.2.6 Municipal rates and taxes

No contract may be awarded to a tenderer who, of the principals of that tenderer, owes municipal rates and taxes or municipal service charges to any municipality or a municipal entity and are in arrears for more than 3 months.

6.2.3 Declarations of interest 17

Tenders and respondents making submissions in response to an invitation to submit a tender or a call for an expression of interest, respectively shall declare in the Compulsory Declaration MDM 4 whether or not any of the principals:

- a) are an employee of the *Mopani District Municipality* or in the employ of the state; or
- b) have a family member or a business relation with a person who is in the employ of the state.

6.2.4 Invitations to submit expressions of interest or tender offers 17

6.2.4 Invitations to submit expressions of interest or tender offers

6.2.4.1 All invitations to submit tenders where the estimated value of the contract exceeds R500 000 including VAT, except where a confined tender process is followed, and expressions of interest shall be advertised on the *Mopani District Municipality's* website and on the National Treasury eTender Publication Portal and cidb website i-tender portal exempted are framework contract

6.2.4.2 Advertisements relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.4.1 be advertised on the CIDB website. Advertisements shall be placed by *[name of designated person]*. 18

6.2.4.3 Where deemed appropriate by *Accounting officer* an invitation to tender and a call for an expression of interest shall be advertised in suitable local and national newspapers as directed

6.2.4.5 Invitations to submit expressions of interest or tender offers shall be issued not less than 10 working days before the closing date for tenders and at least 5 working days before any compulsory clarification meeting. Procurement documents shall be made available not less than 7 days before the closing time for submissions.

6.2.5 Publication of submissions received and the award of contracts

6.2.5.1 The supply chain management shall publish within 10 working days of the closure of any advertised call for an expression of interest or an invitation to tender where the estimated value of the contract exceeds R500 000 including VAT on the institution's website, the names of all tenderers that made submissions to that advertisement, and if practical or applicable, the total of the prices and the preferences claimed. Such information shall remain on the website for at least 30 days.

6.2.5.2 The supply chain management shall publish within 7 working days of the award of a contract the following on the *Mopani District Municipality's* website;

6.2.5.3 The *supply chain management* shall submit within 7 working days of the award of a contract the information required by National Treasury eTender Publication Portal regarding the successful and unsuccessful;

6.2.5.3 The *supply chain management* shall submit within 21 working days of the award /completed of a contract the information required by CIDB i-tender portal regarding the successful bidder information:

- a) the contract number;
- b) contract title;
- c) brief description of the goods, services or works;
- d) the total of the prices, if practical;
- e) the names of successful tenderers and their B-BBEE status level of contribution;
- f) duration of the contract; and
- g) brand names, if applicable.

6.2.6 Disposal committee

6.2.6.1 The *[accounting officer]* shall appoint on a disposal by disposal basis in writing the members of the disposal committee to decide on how best to undertake disposals in accordance with the provisions of clause 10 of the standard.

6.2.6.2 The disposal panel shall comprise not less than three people. The chairperson shall be an employee of *Mopani District Municipality*.

6.2.6.3 The disposal committee shall make recommendations to *Municipal Manager* who shall approve the recommendations, refer the disposal strategy back to the disposal committee for their reconsideration, and decide not to proceed or to start afresh with the process.

6.3 Reporting of infrastructure delivery management information

Municipal Manager shall submit any reports required in terms of the standard to the *National Treasury or Limpopo provincial treasury, as applicable*].

7 Infrastructure procurement

7.1 Usage of procurement procedures

7.2 Procurement documents

7.1 Usage of procurement procedures

The *Mopani District Municipality* shall not apply the following procedures:

- a) *[identify procedure]*;

7.2 Procurement documents

7.2.1 The standard forms of contract that may be used are as follows: Form of contract	Code	Usage
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7.2.2 The *Mopani District Municipality's* preapproved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilised to obviate the need for legal review prior to the awarding of a

contract. All modifications to the standard templates shall be approved by *Accounting Officer* prior to being issued for tender purposes.

7.1.4 The Municipal Declaration and returnable documents contained in the standard shall be included in all tenders for:

- a) consultancy services⁴⁰; goods and services
- b) or any combination thereof where the total of the prices is expected to exceed R10 m including VAT
- c) *additional requirements, may be request i.e. use of standard access specifications, health and safety specifications etc*
- d) *state specific goals that may be promoted...*

7.3 Developmental procurement policy

The following specific goals shall be proposed in term of PPPFA regulation 2017 and contractor development framework:

Accounting officer shall set a side developmental infrastructure operation or capital budget for development program

Awards framework contract with specific goals to advance certain designated groups, as specified on PPPFA regulation 2017 that respond should be only accepted from below contractors-

- (a) tenderer having a stipulated minimum B-BBEE status level one contributor;
- (b) EME or QSE or cibd grading with PE status preferable contractor living MDM areas;
- (c) Tenderer subcontracting a minimum of 30%

7.4 Payment of contractors

The *Mopani District Municipality* shall settle all accounts in accordance with the terms of the contract or service level agreement

7.5 Approval to utilise specific procurement procedures

7.5.1 Prior approval shall be obtained for the following procurement procedures from the following persons, unless such a procedure is already provided for in the approved procurement strategy:

- a) *The Municipal Manager shall authorise* the use of the negotiated procedure above the thresholds provided in the standard.
- b) *The Municipal Manager* shall authorise the approaching of a confined market except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in the standard and which can be dealt with or the risks relating thereto arrested within 48 hours; and
- c) the proposal procedure using the two-envelope system, the proposal procedure using the two-stage system or the competitive negotiations procedure or MDM SCM policy clause 24

7.5.2 The person authorised to pursue a negotiated procedure in an emergency is *Accounting Officer or delegate authority*

7.6 Receipt and safeguarding of submissions

7.6.1 A dedicated and clearly marked tender box shall be made available to receive all submissions made.³⁸

7.6.2 The tender box shall be fitted with two locks and the keys kept separately by two *[designated persons]*. Such personnel shall be present when the box is opened on the stipulated closing date for submissions.

7.7 Opening of submissions

7.7.1 Submissions shall be opened by an opening panel comprising at least two MDM officer nominated by *Accounting Officer or Deputy SCM manager* who have declared their interest or confirmed that they have no interest in the submissions that are to be opened.

7.7.2 The opening panel shall open the tender box at the stipulated closing time and:

- a) sort through the submissions and return those submissions to the box that are not yet due to be opened including those whose closing date has been extended;
- b) return submissions unopened and suitably annotated where:
 - 1) submissions are received late, unless otherwise permitted in terms of the submission data;
 - 2) submissions were submitted by a method other than the stated method,
 - 3) submissions were withdrawn in accordance with the procedures contained in SANS 10845-3; and.
 - 4) only one tender submission is received and it is decided not to open it and to call for fresh tender submissions;
- c) record in the register submissions that were returned unopened;
- d) open submissions if received in sealed envelopes and annotated with the required particulars and read out the name of and record in the register the name of the tenderer or respondent and, if relevant, the total of prices including VAT where this is possible;
- e) record in the register the name of any submissions that is returned with the reasons for doing so;
- f) record the names of the tenderer's representatives that attend the public opening;
- g) sign the entries into the register; and
- h) stamp each returnable document in each tender submission.

7.7.3 Each member of the opening panel shall initial the front cover of the submission and all pages that are stamped in accordance with the requirements of 7.7.3h).

7.7.4 Respondents and tenderers whose submissions are to be returned shall be afforded the opportunity to collect their submissions.

7.7.5 Submissions shall be safeguarded from the time of receipt until the conclusion of the procurement process.

7.8 Use of another organ of state's framework agreement

The *Mopani District Municipality* may make use of another organ of state's framework contract which has been put in place by means of a competitive tender process and there are demonstrable benefits for doing so. The *accounting officer* shall make the necessary application to that organ of state to do so.

7.9 Use of a framework agreement by another organ of state

7.9.1 An organ of state may request in writing to make use of one or more of *Mopani District Municipality's* framework contracts. Such a request signed by the accounting officer of that organ of state, shall:

- a) outline the scope and anticipated quantum of work associated with the work that is required;
- b) provide a motivation for the use of the framework agreement; and
- c) detail the benefit for the state to be derived from making use of the framework agreement.

d) comply with MFMA regulation 32 / clause 32 of Mopani District municipality policy/procedure

7.9.2 The *accounting officer or chief financial officer or appropriately delegated authority* may approve a request made in terms of 7.9.1 to make use of the *Mopani District Municipality's* framework contract, conditionally or unconditionally, if:

- a) the framework agreement was put in place following a competitive tender process;
- b) confirmation is obtained that the framework contract is suitable for the intended use and the required goods, services and works fall within the scope of such contract;
- c) the framework contractor agrees in writing to accept an order from that organ of state; and
- d) the organ of state undertakes to pay the contractor in accordance with the terms and conditions of the agreement; and
- f) the term of the framework agreement does not expire before the issuing of the required orders.

7.10 Insurances

41 Align with the manner in which the institution wishes to manage risk.

42 Alternatively state that the insurances shall be principal or employer controlled.

43 Modify as necessary

7.10.1 Contractors shall be required to take out all insurances required in terms of the contract.⁴²

7.10.2 The insurance cover in engineering and construction contracts for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) CLAUSED by activity in connection with a contract shall in general not be less than the value stated in Table 4, unless otherwise directed by Accounting officer.

7.10.3 Lateral earth support insurance in addition to such insurance shall be take out on a case by case basis.

Table 4: Minimum insurance cover⁴³

Type of insurance	Value
Engineering and construction contracts - loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) CLAUSED by activity in connection with a contract	Not less than R20 million
Professional services and service contracts - death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract or damage to property	Not less than R10 million
Professional indemnity insurance	geotechnical, civil and structural engineering: R5,0 million electrical, mechanical and engineering: R3,0 million architectural: R5,0 million other R3,0 million

7.10.4 The insurance cover in professional services and service contracts for damage to property or death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract shall not be less than the value stated in Table 4 for any one event unless otherwise directed by *[designated person]*.

7.10.5 SASRIA Special Risk Insurance in respect of riot and associated risk of damage to the works, Plant and Materials shall be taken out on all engineering and construction works.

7.10.5 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than the value stated in Table 4 in respect of each claim, without limit to the number of claims, unless otherwise directed by the *[designated person]* in relation to the nature of the service that they provide.

7.10.6 *Mopani District Municipality* shall take out professional indemnity insurance cover where it is deemed necessary to have such insurance at a level higher than the levels of insurance commonly carried by contractors.

7.10.7 Where payment is to be made in multiple currencies, either the contractor or *Mopani District Municipality* should be required to take out forward cover. Alternatively, the prices for the imported content should be fixed as soon as possible after the starting date for the contract.

7.11 Written reasons for actions

7.11.1 Written reasons for actions taken shall be provided by the *Accounting Officer*ⁱ

7.11.2 The written reasons for actions taken shall be as brief as possible and shall as far as is possible, and where relevant, be framed around the clauses in the:

a) ISO 10845-3, *Construction procurement - Part 3: Standard conditions of tender*, and, giving rise to the reason why a respondent was not short listed, prequalified or admitted to a data base; or

b) ISO 10845-4, *Construction procurement - Part 4: Standard conditions for the calling for expressions of interest*; as to why a tenderer was not considered for the award of a contract or not awarded a contract.

7.11.3 Requests for written reasons for actions taken need to be brief and to the point and may not divulge information which is not in the public interest or any information which is considered to prejudice the legitimate commercial interests of others or might prejudice fair competition between tenderers.

7.12 Request for access to information

7.12.1 Should an application be received in terms of Promotion of Access to Information Act of 2000 (Act 2 of 2000), the "requestor" should be referred to the *Mopani District Municipality's* Information Manual which establishes the procedures to be followed and the criteria that have to be met for the "requester" to request access to records in the possession or under the control of *Mopani District Municipality's*.

7.12.2 Access to technical and commercial information such as a comprehensive programme which links resources and prices to such programme should be refused as such information provides the order and timing of operations, provisions for time risk allowances and statements as to how the contractor plans to do the work which identifies principal equipmentⁱⁱ and other resources which he plans to use. Access to a bill of quantities and rates should be provided in terms of the Act.

⁴⁰ Delete if there is no intention of allowing another organ of state to make use of the institution's framework agreements.

⁴¹ Align with the manner in which the institution wishes to manage risk.

⁴² Alternatively state that the insurances shall be principal or employer controlled.

⁴³ Modify as necessary

⁴⁴ Amend as necessary



MOPANI DISTRICT MUNICIPALITY

Appendix B: Mopani District Municipality PPPFA regulation 2017

NATIONAL TREASURY

NO. R. 32

20 JANUARY 2017

**PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000:
PREFERENTIAL PROCUREMENT REGULATIONS, 2017**

The Minister of Finance has, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000), made the regulations set out in the Schedule.

SCHEDULE**Preferential Procurement Regulations, 2017****Contents**

1. Definitions
2. Application
3. Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting
4. Prequalification criteria for preferential procurement
5. Tenders to be evaluated on functionality
6. 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million
7. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million
8. Local production and content
9. Subcontracting as condition of tender
10. Criteria for breaking deadlock in scoring
11. Award of contracts to tenderers not scoring highest points
12. Subcontracting after award of tender
13. Cancellation of tender
14. Remedies
15. Circulars and guidelines
16. Repeal of Regulations and saving
17. Short title and commencement

Definitions

1. In these Regulations, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act must bear the meaning so assigned-

“B-BBEE” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

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

“black designated groups” has the meaning assigned to it in the codes of good practice issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

“black people” has the meaning assigned to it in section 1 of the Broad-Based Black Economic Empowerment Act;

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

“co-operative” means a co-operative registered in terms of section 7 of the Co-operatives Act, 2005 (Act No. 14 of 2005);

“designated group” means-

- (a) black designated groups;
- (b) black people;
- (c) women;
- (d) people with disabilities; or
- (e) small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);

“designated sector” means a sector, sub-sector or industry or product designated in terms of regulation 8(1)(a);

“EME” means an exempted micro enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

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

“military veteran” has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);

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

“people with disabilities” has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);

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

“proof of B-BBEE status level of contributor” means-

- (a) the B-BBEE status level certificate issued by an authorised body or person;
- (b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- (c) any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

“QSE” means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

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

“rural area” means-

- (a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
- (b) an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;

“stipulated minimum threshold” means the minimum threshold stipulated in terms of regulation 8(1)(b);

“the Act” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

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

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

“youth” has the meaning assigned to it in section 1 of the National Youth Development Agency Act, 2008 (Act No. 54 of 2008).

Application

2. These Regulations apply to organs of state as envisaged in the definition of organ of state in section 1 of the Act.¹

Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting

3. An organ of state must-
- (a) determine and stipulate in the tender documents-
 - (i) the preference point system applicable to the tender as envisaged in regulation 6 or 7; or

¹ The definition of “organ of state” in section 1 of the Act in paragraph (a) to (e) includes-

- a national or provincial department as defined in the Public Finance Management Act, 1999;
- a municipality as contemplated in the Constitution;
- a constitutional institution as defined in the Public Finance Management Act;
- Parliament;
- a provincial legislature.

Paragraph (f) of the definition of organ of state in section 1 of the Act includes any other institution or category of institutions included in the definition of “organ of state” in section 239 of the Constitution and recognised by the Minister by notice in the *Government Gazette* as an institution or category of institutions to which the Act applies. Government Notice R. 501 of 8 June 2011 recognises, with effect from 7 December 2011, all public entities listed in Schedules 2 and 3 to the Public Finance Management Act, 1999, as institutions to which the Act applies. Note should be taken of notices issued from time to time in terms of paragraph (f) of this definition. The application of these Regulations is also subject to applicable exemptions approved in terms of section 3 of the Act.

- (ii) if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;
- (b) determine whether pre-qualification criteria are applicable to the tender as envisaged in regulation 4;
- (c) determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in regulation 8;
- (d) determine whether compulsory subcontracting is applicable to the tender as envisaged in regulation 9; and
- (e) determine whether objective criteria are applicable to the tender as envisaged in regulation 11.

Pre-qualification criteria for preferential procurement

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

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

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

Tenders to be evaluated on functionality

5.(1) An organ of state must state in the tender documents if the tender will be evaluated on functionality.

- (2) The evaluation criteria for measuring functionality must be objective.
- (3) The tender documents must specify-
 - (a) the evaluation criteria for measuring functionality;
 - (b) the points for each criteria and, if any, each sub-criterion; and

- (c) the minimum qualifying score for functionality.
- (4) The minimum qualifying score for functionality for a tender to be considered further-
- (a) must be determined separately for each tender; and
- (b) may not be so-
- (i) low that it may jeopardise the quality of the required goods or services; or
- (ii) high that it is unreasonably restrictive.
- (5) Points scored for functionality must be rounded off to the nearest two decimal places.
- (6) A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
- (7) Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in regulation 11.

80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million

6.(1) The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to or above R30 000 and up to a Rand value of R50 million, inclusive of all applicable taxes:

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

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

(2) The following table must be used to calculate the score out of 20 for B-BBEE:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6

7	4
8	2
Non-compliant contributor	0

(3) A tenderer must submit proof of its B-BBEE status level of contributor.

(4) A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified, but-

(a) may only score points out of 80 for price; and

(b) scores 0 points out of 20 for B-BBEE.

(5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

(6) The points scored by a tenderer for B-BBEE in terms of subregulation (2) must be added to the points scored for price under subregulation (1).

(7) The points scored must be rounded off to the nearest two decimal places.

(8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.

(9)(a) If the price offered by a tenderer scoring the highest points is not market-related, the organ of state may not award the contract to that tenderer.

(b) The organs of state may-

(i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;

(ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;

(iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.

(c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender.

90/10 preference point system for acquisition of goods or services with Rand value above R50 million

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

Where-

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

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

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

(2) The following table must be used to calculate the points out of 10 for B-BBEE:

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

(3) A tenderer must submit proof of its B-BBEE status level of contributor.

(4) A tenderer failing to submit proof of B-BBEE status level of contribution or is a non-compliant contributor to B-BBEE may not be disqualified, but-

(a) may only score points out of 90 for price; and

(b) scores 0 points out of 10 for B-BBEE.

(5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

(6) The points scored by a tenderer for B-BBEE contribution in terms of subregulation (2) must be added to the points scored for price under subregulation (1).

(7) The points scored must be rounded off to the nearest two decimal places.

(8) Subject to subregulation (9) and regulation 11, the contract must be awarded to the tenderer scoring the highest points.

(9)(a) If the price offered by a tenderer scoring the highest points is not market-related, the organ of state may not award the contract to that tenderer.

(b) The organs of state may-

- (i) negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
 - (ii) if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender;
 - (iii) if the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.
- (c) If a market-related price is not agreed as envisaged in paragraph (b)(iii), the organ of state must cancel the tender.

Local production and content

8.(1) The Department of Trade and Industry may, in consultation with the National Treasury-

- (a) designate a sector, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and
- (b) stipulate a minimum threshold for local production and content.

(2) An organ of state must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.

(3) The National Treasury must inform organs of state of any designation made in terms of regulation 8(1) through a circular.

(4)(a) If there is no designated sector, an organ of state may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.

(b) The threshold referred to in paragraph (a) must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.

(5) A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

Subcontracting as condition of tender

9.(1) If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups.

(2) If an organ of state applies subcontracting as contemplated in subregulation (1), the organ of state must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to-

- (a) an EME or QSE;

- (b) an EME or QSE which is at least 51% owned by black people;
 - (c) an EME or QSE which is at least 51% owned by black people who are youth;
 - (d) an EME or QSE which is at least 51% owned by black people who are women;
 - (e) an EME or QSE which is at least 51% owned by black people with disabilities;
 - (f) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
 - (g) a cooperative which is at least 51% owned by black people;
 - (h) an EME or QSE which is at least 51% owned by black people who are military veterans; or
 - (i) more than one of the categories referred to in paragraphs (a) to (h).
- (3) The organ of state must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in subregulation (2) from which the tenderer must select a supplier.

Criteria for breaking deadlock in scoring

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

(2) If functionality is part of the evaluation process and two or more tenderers score equal total points and equal preference points for B-BBEE, the contract must be awarded to the tenderer that scored the highest points for functionality.

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

Award of contracts to tenderers not scoring highest points

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

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

Subcontracting after award of tender

12.(1) A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.

(2) A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

(3) A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

Cancellation of tender

13. (1) An organ of state may, before the award of a tender, cancel a tender invitation if-

- (a) due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
- (b) funds are no longer available to cover the total envisaged expenditure;
- (c) no acceptable tender is received; or
- (d) there is a material irregularity in the tender process.

(2) The decision to cancel a tender invitation in terms of subregulation (1) must be published in the same manner in which the original tender invitation was advertised.

(3) An organ of state may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

Remedies

14. (1) Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of these Regulations which will affect or has affected the evaluation of a tender, or where a tenderer has failed to declare any subcontracting arrangements, the organ of state must-

- (a) inform the tenderer accordingly;
 - (b) give the tenderer an opportunity to make representations within 14 days as to why-
 - (i) the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
 - (ii) if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
 - (iii) the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and
 - (c) if it concludes, after considering the representations referred to in subregulation (1)(b), that-
 - (i) such false information was submitted by the tenderer-
 - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
 - (bb) if applicable, claim damages from the tenderer; or
 - (ii) the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.
- (2)(a) An organ of state must-
- (i) inform the National Treasury, in writing, of any actions taken in terms of subregulation (1);

- (ii) provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and
- (iii) submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.
 - (b) The National Treasury may request an organ of state to submit further information pertaining to subregulation (1) within a specified period.
 - (3) The National Treasury must-
 - (a) after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and
 - (b) maintain and publish on its official website a list of restricted suppliers.

Circulars and guidelines

15. The National Treasury may issue-
- (a) a circular to inform organs of state of any matter pertaining to these Regulations; or
 - (b) a guideline to assist organs of state with the implementation of any provision of these Regulations.

Repeal of Regulations and saving

16.(1) Subject to this regulation, the Preferential Procurement Regulations, 2011, published in Government Notice No R. 502 of 8 June 2011 (herein called "the 2011 Regulations), are hereby repealed with effect from the date referred to in regulation 17.

(2) Any sector designated and minimum threshold determined for local production and content for purposes of regulation 9 of the 2011 Regulations and in force immediately before the repeal of the 2011 Regulations, are regarded as having been done under regulation 8(1) of these Regulations.

(3) Any tender advertised before the date referred to in regulation 17 must be dealt with in terms of the 2011 Regulations.

Short title and commencement

17. These Regulations are called the Preferential Procurement Regulations, 2017 and take effect on 1 April 2017.

⁴⁰ Delete if there is no intention of allowing another organ of state to make use of the institution's framework agreements.

⁴¹ Align with the manner in which the institution wishes to manage risk.

⁴² Alternatively state that the insurances shall be principal or employer controlled.

⁴³ Modify as necessary

⁴⁴ Amend as necessary