

UMUZIWABANTU LOCAL MUNICIPALITY UMASIPALA WENDAWO



MUNICIPAL SUPPLY CHAIN MANAGEMENT POLICY

PREAMBLE

Section 111 of the Municipal Finance Management Act requires each Municipality and Municipal entity to adopt and implement a supply chain management policy, which gives effect to the requirements of the Act. In addition, the Preferential Procurement Policy Framework Act requires an Organ of State to determine its Preferential Procurement Policy and to implement it within the framework prescribed. This requirement is given effect in Appendix A of this policy. The uMuziwabantu Local Municipality is further committed to combating fraud, corruption, favoritism and irregular practices in Supply Chain Management by blacklisting persons who have been found to have engaged in such practices. This is the Supply Chain Management Policy of uMuziwabantu Municipality

PURPOSE

The purpose of this Policy is:

- (a) to implement a Supply Chain Management system in accordance with Section 217 of the Constitution which is fair, equitable, transparent, competitive and cost effective;
- (b) to provide for procedures and processes for the procuring of goods, services or works;
- (c) to provide for procedures and processes for the disposal of goods no longer needed;
- (d) to provide for procedures and processes for the selection of contractors to provide assistance in the provision of municipal services other than where Chapter 8 of the Municipal Systems Act applies ;
- (e) to provide for provision of municipal services through a service delivery agreement with a natural or juristic person which is not an organ of state;
- (f) to ensure consistency with other applicable legislation and regulations thereto;
- (g) to give effect to the Preferential Procurement Policy objectives of the Municipality;
- (h) to ensure optimal service delivery by facilitating effective and efficient procurement;
- (i) to combat fraud, corruption favoritism and irregular practices in Supply Chain Management by blacklisting persons who have been found to have engaged in such practices;

PROBLEM STATEMENT

The Municipality is committed in terms of the Constitution and its procurement policies to have a supply chain policy that is fair, equitable, transparent, competitive and cost effective and to combat irregular practices in the tendering process in order to acquire the best goods and services for the Municipality.

(1) Section 217 (1) of the Constitution provides that when an organ of state in the national, provincial or local sphere of government contracts for goods and services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;

(2) Section 111 of the Municipal Finance Management Act requires every municipality to develop and implement a supply chain management policy in order to give effect to the provisions of the Act;

(3) The Preferential Procurement Policy Framework Act, 2000 (No. 5 of 2000) provides for the framework for a procurement policy which allows for categories of preference in the allocation of contracts, together with consideration of the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (No. 53 of 2003);

(4) The Governments Preferential Procurement Policy objectives include increased usage of local resources; redressing the skewed employment and ownership through the BBBEE Act; the creation of job opportunities and poverty alleviation; stimulation of skills development and transferring of skills and fasttracking the growth of and ensuring the sustainability of SMME's;

(6) In terms of the Supply Chain Management Regulation 11 (1) and (2), where a municipality procures goods and services otherwise than through its supply chain management system, it must make that fact public. The name of the supplier and the kind of goods or services procured must be made public.

TABLE OF CONTENTS	PAGE (S)
1. Definitions	6
CHAPTER 1	
IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY	
2. Supply chain management policy	8
3. Amendment of supply chain management policy	9
4. Delegation of supply chain management powers and duties.....	9
5. Sub-delegations	10
6. Oversight role of council	11
7. Supply chain management units	11
8. Training of supply chain management officials	11
CHAPTER 2	
SUPPLY CHAIN MANAGEMENT SYSTEM	
9. Format of supply chain management system.....	12
Part 1: Demand management	
10. System of demand management.....	12
Part 2: Acquisition management	
11. System of acquisition management.....	12
12. Range of procurement processes.....	13
13. General preconditions for consideration of written quotations or bids.....	14
14. Lists of accredited prospective providers.....	14
15. Petty cash purchases.....	15
16. Written or verbal quotations.....	15
17. Formal written price quotations.....	17
18. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations.....	17
19. Competitive bidding process.....	17
20. Process for competitive bidding.....	20
21. Bid documentation for competitive bids.....	21
22. Public invitation for competitive bids.....	21
23. Procedure for handling, opening and recording of bids.....	22
24. Negotiations with preferred bidders.....	23
25. Two-stage bidding process.....	23
26. Committee system for competitive bids.....	23
27. Bid specification committees.....	24
28. Bid evaluation committees.....	25
29. Bid adjudication committees.....	25
30. Procurement of banking services.....	29
31. Procurement of IT related goods or services.....	29
32. Procurement of goods and services under contracts secured by other organs of state.....	30
33. Procurement of goods necessitating special safety arrangements.....	30
34. Proudly SA Campaign.....	30
35. Appointment of consultants.....	30

36. Deviation from, and ratification of minor breaches of, procurement processes.....	31
37. Unsolicited bids.....	32
38. Combating of abuse of supply chain management system.....	33

Part 3: Logistics, Disposal, Risk and Performance Management

39. Logistics management.....	34
40. Disposal management.....	34
41. Risk management.....	35
42. Performance management.....	36

Part 4: Other matters

43. Prohibition on awards to persons whose tax matters are not in order.....	36
44. Prohibition on awards to persons in the service of the state.....	36
45. Awards to close family members of persons in the service of the state.....	36
46. Ethical standards.....	37
47. Inducements, rewards, gifts and favors.....	40
48. Sponsorships.....	40
49. Objections and complaints.....	41
50. Resolution of disputes, objections, complaints and queries.....	41
51. Contracts providing for compensation based on turnover.....	42
52. Implementation and Monitoring.....	42
53. Communication	42
54. Policy Review.....	42
55. Date of effect	42
56. Commencement.....	42

ANNEXURES

A. Preferential Point System.....	43
B. Tribunal Appeals	47

Definitions

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

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

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

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

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

“In the service of the state” means to be –

(a) A member of –

- (i) Any municipal council;
- (ii) Any provincial legislature; or
- (iii) The National Assembly or the National Council of Provinces;

(b) A member of the board of directors of any municipal entity;

(c) An official of any municipality or municipal entity;

(d) An employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);

(e) A member of the accounting authority of any national or provincial public entity; or

(f) An employee of Parliament or a provincial legislature;

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

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

“Municipality” – Umuziwabantu Local Municipality

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

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

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

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

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

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

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2. Supply chain management policy

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

3. Amendment of the supply chain management policy

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

4. Delegation of supply chain management powers and duties

- (1) The council hereby delegates all powers and duties to the municipal manager which are necessary to enable the municipal manager –
 - (a) To discharge the supply chain management responsibilities conferred on municipal managers in terms of –
 - (i) Chapter 8 or 10 of the Act; and
 - (ii) This Policy;
 - (b) To maximize administrative and operational efficiency in the implementation of this Policy;
 - (c) To enforce reasonable cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of this Policy; and
 - (d) To comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to a municipal manager in terms of subparagraph (1).
- (3) The municipal manager may not sub delegate any supply chain management powers or duties to a person who is not an official of Umuziwabantu Local Municipality or to a committee which is not exclusively composed of officials of Umuziwabantu Municipality.
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

5. Sub-delegations

- (1) The municipal manager may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the municipal manager in terms of this Policy, but any such sub-delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.
- (2) The power to make a final award –
 - (a) Above R10 million (VAT included) may not be sub-delegated by the municipal manager;
 - (b) Above R2 million (VAT included), but not exceeding R10 million (VAT included), may be sub-delegated but only to –
 - (i) The chief financial officer;
 - (ii) A senior manager; or
 - (ii) A bid adjudication committee of which the chief financial officer or a senior manager is a member
 - (c) Not exceeding R2 million (VAT included) may be sub-delegated but only to –
 - (i) The chief financial officer;
 - (ii) A senior manager;
 - (iii) Assistant chief financial officer; or
 - (iv) A bid adjudication committee.
- (3) An official or bid adjudication committee to which the power to make final awards has been sub-delegated in accordance with subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4);
 - (a) A written report containing particulars of each final award made by such official or committee during that month, including–
 - (i) The amount of the award;
 - (ii) The name of the person to whom the award was made; and
 - (iii) The reason why the award was made to that person.
- (4) A written report referred to in subparagraph (3) must be submitted –
 - (a) To the municipal manager, in the case of an award by –
 - (i) The chief financial officer;
 - (ii) A senior manager; or
 - (iii) A bid adjudication committee of which the chief financial officer or a senior manager is a member; or
 - (b) To the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
 - (i) A manager referred to in subparagraph (2) (c) (iii); or

- (ii) A bid adjudication committee of which the chief financial officer or a senior manager is not a member.

(5) Subparagraphs (3) and (4) of this policy do not apply to procurements out of petty cash.

(6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this policy.

(7) No supply chain management decision-making powers may be delegated to an advisor or consultant.

6. Oversight role of council

(1) The council reserves its right to maintain oversight over the implementation of this policy.

(2) For the purposes of such oversight the municipal manager must –

- (i) Within 30 days of the end of each financial year, submit a report on the implementation of this Policy and the supply chain management policy of any municipal entity under the sole or shared control of the municipality to the council of the municipality; and
- (ii) Whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the council.

(3) The municipal manager must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor.

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

7. Supply chain management unit

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

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

8. Training of supply chain management officials

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

CHAPTER 2

SUPPLY CHAIN MANAGEMENT SYSTEM

9. Format of supply chain management system

This Policy provides systems for –

- (i) Demand management;
- (ii) Acquisition management;
- (iii) Logistics management;
- (iv) Disposal management;
- (v) Risk management; and
- (vi) Performance management.

Part 1: Demand management

10. System of demand management

(1) The municipal manager must establish and implement an appropriate demand management system in order to ensure that the resources required by the municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.

(2) The demand management system must –

- (a) Include timely planning and management processes to ensure that all goods and services required by the municipality are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;
- (b) Take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature; and
- (c) Provide for the compilation of the required specifications to ensure that its needs are met.
- (d) Undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

Part 2: Acquisition management

11. System of acquisition management

(1) The municipal manager must implement the system of acquisition management set out in this Part in order to ensure –

- (a) That goods and services are procured by the municipality in accordance with authorized processes only;

- (b) That expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (c) That the threshold values for the different procurement processes are complied with;
 - (d) That bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
 - (e) That any Treasury guidelines on acquisition management are properly taken into account.
- (2) When procuring goods or services contemplated in section 110(2) of the Act, the municipal manager must make public the fact that such goods or services are procured otherwise than through the municipality supply chain management system, including–
- (a) The kind of goods or services; and
 - (b) The name of the supplier.

12. Range of procurement processes

- (1) Goods and services may only be procured by way of –
- (a) Petty cash purchases, up to a transaction value of R500.00 (VAT included);
 - (b) Written or verbal quotations for procurements of a transaction value over R500.00 up to R10 000.00 (VAT included);
 - (c) Formal written price quotations for procurements of a transaction value over R10 000 up to R200 000.00 (VAT included); However, quotations above R30 000 vat inclusive are subject to the application of the Preferential Procurement Policy Framework Act, 2017 (PPPFA) and
 - (d) A competitive bidding process for–
 - (i) Procurements above a transaction value of R200 000.00 (VAT included); and
 - (ii) The procurement of long term contracts.
- (2) The municipal manager may, in writing –
- (a) Lower, but not increase, the different threshold values specified in subparagraph; or
 - (b) Direct that –
 - (i) Written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000.00;
 - (ii) Formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000.00; or
 - (iii) A competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.00.
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction

13. General preconditions for consideration of written quotations or bids

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

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

14. Lists of accredited prospective providers (registered on the CSD)

- (1) The municipal manager must –
 - (a) Keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations ; and
 - (b) At least once a year through newspapers commonly circulating locally, the website and any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
 - (c) Specify the listing criteria for accredited prospective providers; and
 - (d) Disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.
- (4) Blacklisting of accredited prospective providers may occur in the following instances;

- (a) On request;
- (b) For non – compliance;
- (c) Proven non – delivery or
- (d) Proven fraud and/or corruption.

15. Petty cash purchases – (R0.01 –under R2000.00)

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

- (a) The municipal manager or his delegate is to determine the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;
- (b) The municipal manager or his delegate is to approve the maximum number of petty cash purchases or the maximum amounts per month for each manager;
- (c) The municipal manager or his delegate is to determine the types of expenditure from petty cash purchases that are excluded, where this is considered necessary; and
- (d) A monthly reconciliation report must be provided to the chief financial officer, including –
 - (i) The total amount of petty cash purchases for that month; and
 - (ii) Receipts and appropriate documents for each purchase.
- (e) In line with Council approved policy, the Municipal Manager or his delegate is to approve the pauper burial purchases.

16. Written or verbal quotations - (R2000.00- R10 000.00 all taxes included)

The conditions for the procurement of goods or services through written or verbal quotations are as follows:

- (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective/CSD providers of the municipality, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 14(1) (b) and (c) of this Policy; (all service providers must be listed on CSD before purchase order can be issued);
- (b) To the extent feasible, providers must be requested to submit such quotations in writing;
- (c) If it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the municipal manager or another official designated by the municipal manager;
- (d) The municipal manager must record the names of the potential providers requested to provide such quotations with their quoted prices; and

- (e) If a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

17. Formal written price quotations - (over R10 000.00 - R30 000.00 all taxes included)

- (1) The conditions for the procurement of goods or services through formal written price quotations are as follows:
 - (a) Quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality registered on CSD;
 - (b) Quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 14(1) (b) and (c) of this Policy;
 - (c) If it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
 - (d) The municipal manager must record the names of the potential providers and their written quotations.
 - (e) Quotations above R30 000 (vat inclusive) will be subject to the preferential point system - Annexure A
- (2) A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

18. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations (R30, 001 – R200, 000 all applicable taxes included.)

- 1. The procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations is as follows:
 - (a) Quotations above thirty thousand (R30, 000) rand (VAT inclusive) will be subject to the preferential point system – Annexure A)
 - (b) All these requests for procurement should be advertised both on the notice board of the municipality and the municipal website for a period of not less than seven (7) days.
 - (c) When using the list of accredited prospective providers, the municipal manager may apply service provider rotation to promote local economic development.
 - (d) Offers received must be evaluated on a comparative basis taking into account unconditional discounts;
 - (e) The municipal manager or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a sub delegation;
 - (f) Offers above R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of the request of quotation (RFQ), ability and capability to deliver the goods and services.

- (g) Acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points
 - (h) Council requirements for proper record keeping.
2. Include MBD 6.2 as applicable for Local production and content.
 3. For EMEs and QSEs verify sworn affidavits to claim B-BBEE points against CSD Information.
 4. **The following procurement of services are excluded from the supply chain management processes, subject to the approval of the Accounting Officer;**
 - (a) Procurement of taxi services: That taxis will be procured through Taxi Associations where the event will be held or at the point of departure by passengers and one quotation may be sourced through the Local Taxi Association.
 - (b) Procurement of artists and Programme Directors: That one quotation may be sourced from the preferred Artist or Programme Director subject to the approval of the Accounting Officer.
 - (c) Procurement of radio slots: Radio slots must be sourced from the relevant radio station on which the slots will be booked.
 - (d) Procurement of Employee Assistant Programme (EAP) related services. That one quotation be sourced from the professional/center with required expertise, subject to approval by the Accounting Officer.
 5. Minimum requirements for proper record keeping must be complied with.

19. Competitive bids

- (1) Goods or services above a transaction value of R200 000.00 (all taxes included) and long-term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.
- (2) No requirement for goods or services above an estimated transaction value of R200 000.00 (all taxes included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

(3) Pre-qualification criteria for preferential procurement

- (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.

(4) Subcontracting as condition of tender for above R30 million

- (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 sub regulation(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 sub regulation (2) from which the tenderer must select a supplier.

(5) Subcontracting as condition of tender for below R30 million

(1) Where feasible and unless approved by the Accounting Officer, all contracts from R2 million up to R30 million, shall be subject to subcontracting to advance designated groups as set out below;

- a) For contracts with a contract value from R2 million and up to R5 million – subcontracting to a minimum of 10%.*

- b) For contracts with a contract value from R5 million and up to R8 million – subcontracting to a minimum of 15%.*
- c) For contracts with a contract value from R8 million and up to R15 million – subcontracting to a minimum of 20%.*
- d) For contracts with a contract value from R15 million and up to R30 million – subcontracting to a minimum of 30%.*

(2) If an organ of state applies subcontracting as contemplated in sub regulation(1), the organ of state must advertise the tender with a specific tendering condition that the successful tenderer must subcontract to -

- (a) an EME or QSE (CIDB Stages 1, 2, 3);*
- (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 organ of state to provide the required goods or services in respect of the applicable designated groups mentioned in sub regulation (2) from which the tenderer must select a supplier.

(4) It is a condition that the tenderer must pay the sub-contractor, selected in relation to sub regulation (3) above, within a three day period after the organ of state has paid the tenderer.

(5) The organ of state must ensure that in compiling the specifications , the Bill of Quantities (BOQ) relating to the sub-contracted part is costed and fixed.

(6) Subcontracting after award of tender

(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.

(7) Tender Validity

- (a) The bid offer(s) received at the close of tender are to be accepted within the period of tender validity as stipulated in the bid document.
- (b) In an event, where, the evaluation of bids received are not concluded within the validity period, the municipality through the SCM unit must arrange to extend the period of validity to all bidders before expiry date.
- (c) Prior approval for the extension of the bid validity period must be sought from the Accounting Officer or designated official such as Manager: Supply Chain Management.
- (d) In an event where the validity period of the bids received have expired with no extension of the period of tender validity being arranged with all bidders before the expiry of the validity period, the tender is null and void and of no force and effect.
- (e) **Tender validity period is 90 days for goods/services and 120 days for works/infrastructure projects.**
- (f) The 80/20 preference point system for projects below R50 million will be used and 90/10 for projects above R50 million

20. Process for competitive bidding

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

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;
- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 23;
- (e) Evaluation of bids as detailed in paragraph 28;
- (f) Award of contracts as detailed in paragraph 29;
- (g) Administration of contract
 - i. After approval of a bid, the municipal manager and the bidder must enter into a written agreement.
- (h) Proper record keeping
 - ii. Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

21. Bid documentation for competitive bids

The criteria to which bid documentation for a competitive bidding process must comply, must–

- (a) take into account –
 - (i) The general conditions of contract and any special conditions of contract, if specified;
 - (ii) Any Treasury guidelines on bid documentation; and
 - (iii) The requirements of the Construction Industry Development Board (CIDB), in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) Include the preference points system to be used; BBBEE Codes of good practice as contemplated in the PPPFA Regulations, 2017 and the evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) Compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) If the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
 - (i) If the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
 - (aa) For the past three years; or
 - (bb) Since their establishment if established during the past three years;
 - (ii) A certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - (iii) Particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
 - (iv) A statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) Stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

22. Public invitation for competitive bids

- (1) The procedure for the invitation of competitive bids is as follows:
 - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in a newspaper commonly circulating locally, the website of the municipality, or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
 - (b) The information contained in a public advertisement, must include –

- (i) The closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long-term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
 - (ii) A statement that bids may only be submitted on the bid documentation provided by the municipality; and
 - (iii) Date, time and venue of any proposed site meetings or briefing sessions.
 - (iv) Indicate if re-qualification criteria is applicable.
 - (v) In the case of a designated sector , indicate in the advertisement that only locally produced or manufactured goods meeting the stipulated minimum threshold will be considered.
- (2) The municipal manager may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted must be submitted in a sealed envelope, with bid number.

23. Procedure for handling, opening and recording of bids

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

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

24. Negotiations with preferred bidders

- (1) The municipal manager may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidder, provided that such negotiation –
 - (a) Does not allow any preferred bidder a second or unfair opportunity;
 - (b) Is not to the detriment of any other bidder; and
 - (c) Does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.
- (3) The PPPFA Regulations makes provision for the negotiation of market related prices, refer to Regulation 6 (9)(a-c) and 7(9)(a-c).

25. Two-stage bidding process

- (1) A two-stage bidding process is allowed for –
 - (a) Large complex projects;
 - (b) Projects where it may be undesirable to prepare complete detailed technical specifications; or
 - (c) Long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.

26. Committee system for competitive bids

- (1) A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the municipal manager may determine:
 - (a) A bid specification committee;
 - (b) A bid evaluation committee; and
 - (c) A bid adjudication committee;
- (2) The municipal manager appoints the members of each committee, taking into account section 117 of the Act; and
- (3) A neutral or independent observer, appointed by the municipal manager officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- (4) The committee system must be consistent with –

- (a) Paragraph 27, 28 and 29 of this Policy; and
- (b) Any other applicable legislation.

(5) The municipal manager may apply the committee system to formal written price quotations.

27. Bid specification committees

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality.
- (2) Specifications –
 - (a) Must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - (b) Must take into account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
 - (c) Must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
 - (d) May not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
 - (e) May not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
 - (f) Must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2007;
and
 - (g) Must be approved by the municipal manager prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) A bid specification committee must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

28. Bid evaluation committees

- (1) A bid evaluation committee must –
 - (a) Evaluate bids in accordance with –
 - (i) The specifications for a specific procurement; and
 - (ii) The points system set out in terms of paragraph 27(2) (f).
 - (b) Evaluate each bidder's ability to execute the contract;
 - (c) Check in respect of the recommended bidder whether they are not indebted to the municipality or in arrears with municipal services;
 - (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/ senior official from the finance department of the municipality.

29. Bid adjudication committees

29 (1) A bid adjudication committee must –

- (a) Consider the report and recommendations of the bid evaluation committee;
and
either –
 - (i) Depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
 - (ii) Make another recommendation to the accounting officer how to proceed with the relevant procurement.
 - (iii) Must ensure that all the necessary bid documents have been submitted
 - (iv) Must ensure that disqualifications are justified and that valid and accountable reasons/ motivations were furnished for passing over of bids
 - (v) Ensure that scoring has been fair, consistent and correctly calculated and applied; and
 - (vi) Declarations of interest have been taken cognizance of.

29. (2) A bid adjudication committee must consist of at least four senior managers of the municipality

- (1) The members of the committee are appointed in writing by the Municipal Manager and the Municipal Manager will determine the term of office for the members.

- (2) The members of the committee shall include the following:
- (a) The chief financial officer or, if the chief financial officer is not available, the assistant chief financial officer who shall preferably be the chairperson of the committee
 - (b) A senior manager (as referred by section 56 of the Municipal Systems Act) or an official who reports directly to a senior manager
 - (c) At least one senior supply chain management practitioner who is an official of the municipality
 - (d) A technical expert in the relevant field who is an official, if such an expert exists
 - (e) An official from the municipality who will provide secretariat
- (3) The Bid Adjudication Committee cannot undertake business without a quorum present, consisting of half plus one of its total membership with voting power.
- (4) The municipal manager may also appoint secondees to temporarily replace members that are absent from the meetings due to illness, leave, etc. The municipal manager will also decide whether or not such secondees will have the same powers as members.
- (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.

29. (3) Mandate of the Bid Adjudication Committee

- (1) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
- (i) Check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears and;
 - (ii) Notify the municipal manager or a senior official delegated by the Municipal Manager.
- (b) The municipal manager or the delegated official may –
- (i) After due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
 - (ii) If the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.

- (2) The municipal manager or his delegate 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.
- (3) If the decision of the Bid Adjudication Committee to approve a bid other than the one recommended by the Bid Evaluation Committee is ratified, the Auditor-General, the relevant provincial treasury and the National treasury must be notified of the reasons for deviating from such recommendation within 10 working days.
- (4) The Bid Adjudication Committee must also consider and rule on all recommendations/ reports regarding the amendment, variation, extension, cancellation or transfer of contracts awarded.
- (5) The Bid Adjudication Committee may also if and when required to do so, consider for approval the recommendations of the Bid Specification Committee in order to ensure that:
 - (i) The need forms part of the strategic goals and objectives contained in the municipality's Integrated Development plan (IDP);
 - (ii) A proper and unbiased specification is compiled for the specific requirement;
 - (iii) proper terms of reference are drawn up for the service required clearly indicating the scope of requirement, the ratio between price and functionality, the evaluation criteria as well as their weights and values;
 - (iv) Strategic sourcing principles were applied and that the market was properly researched and analyzed;
 - (v) The necessary funds are available in the approved budget;
 - (vi) If and when applicable, in addition to the General Conditions of Contract, appropriate Special requirements and Conditions of Contract are specified;
 - (vii) The preference point system and appropriate goals are identified and points allocated for these goals, consistent with the requirements of the Preferential Procurement Regulations;
 - (viii) Where applicable ranges have been set (indicating breakdown of the points/ percentages as provided for the relevant sliding scales for the selected specified goals).
- (6) Each member as well as officials rendering administrative support must sign an Attendance Register and Undertaking of Confidentiality and Impartiality declaration form at each Bids Adjudication Committee meeting (Annexure B).
- (7) Members are to declare that they will;
 - (i) Accept the confidentiality
 - (ii) Not make known anything regarding the meeting, unless officially authorized; and
 - (iii) Not purposefully favor or prejudice anybody.

- (8) The municipal manager must comply with section 114 of the Act within 10 working days, if bids are approved that were not recommended in the normal course of implementing the SCM policy.

29. (4) UTILISATION OF PANELS FOR MAXIMUM PERIOD OF THREE (3) YEARS

The Municipality's established panel of service providers will be utilized as follows:

1. The duration of the established panels shall be for a maximum period of three (3) years from the date of appointment. In the event where a service provider is appointed within the time frame of the panel period and the appointment period exceeds the panel maximum duration period, the service provider will proceed with scope of work till the expiry of the contract.
2. All providers on the panel of service providers shall, as far as possible, be used on a rotational basis to allow all providers on the panel fair and equal opportunity to work within the municipality.
3. Not more than 10 service providers to compete per project submitting quotations to encourage competition and the most advantageous rates for the municipality. Rotation will be used to select the 10 service providers.
4. The written quotations closing date (at least seven days) will be utilized for the panel of service providers bidding process.
5. Any continued engagement of service providers on the panel shall be dependent on the performance and quality standards set out, in their contract agreements.
6. In the event where the user department wishes to make use of a panel established by another department or entity, such a user department shall obtain written permission from the custodian of the panel in writing, in line with their approved acquisition plan, prior to the intended engagement.
7. The appointment of service providers drawn from existing panels must be dealt with in terms of the delegation of Supply Chain Management powers and duties.
8. All quotations solicited by the end users, from the respective panels, will be deposited into the quotation box, in a sealed enveloped clearly identifiable in terms of the panel number.
- ~~9.~~ The utilization of service providers of the respective panels will not exceed the duration of the panels nor exceed the approved estimated value. where the appointment is made and the contract comes to an end, before the services is fully rendered. The services will be rendered by the service provider until completion stage.
10. Application of the PPPFA Regulations to the extent that Price and BBBEE preferential points becomes the basis for preference for one bidder over the other shall not apply when appointing bidders onto a panel of service providers. Preferential points system shall apply when a service provider appointed onto the panel is requested to submit quotations. In the case where a fixed or standardized rate are agreed upon

by all members of the Panel no further preferential elimination shall apply and service providers shall be utilized on a rotational basis.

11. Bid Specification Committee will not be required to convene where the terms of reference or specifications applicable have been specified in detail at the time of establishing the panel and there is no further qualification required when requesting quotations once the Panel has been established and the estimated procurement value does not exceed R200 000.00 (VAT inclusive).

30. Procurement of banking services

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

31. Procurement of IT related goods or services

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

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

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

33. Procurement of goods necessitating special safety arrangements

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

34. Proudly SA Campaign

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

- Firstly – suppliers and businesses within the district;
- Secondly – suppliers and businesses within the KZN province;
- Thirdly – suppliers and businesses within the Republic.

35. Appointment of consultants

- (1) The municipal manager may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.

- (3) Consultancy services must be procured through competitive bids if-
 - (a) The value of the contract exceeds R200 000 (VAT included); or
 - (b) The duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
 - (a) All consultancy services provided to an organ of state in the last five years;
 - (b) Any similar consultancy services provided to an organ of state in the last five years.
- (4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality.

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

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

37. Unsolicited bids

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process
- (2) The municipal manager may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
 - (a) The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) The product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - (c) The person who made the bid is the sole provider of the product or service;and
 - (d) The reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the municipal manager decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –
 - (a) Reasons as to why the bid should not be open to other competitors;
 - (b) An explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) An invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The municipal manger must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the municipal manger, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
 - (a) Any comments submitted by the public; and
 - (b) Any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the municipal manager must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.

- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality to the bid may be entered into or signed within 30 days of the submission.

38. Combating of abuse of supply chain management system

(1) The municipal manager must–

- (a) Take all reasonable steps to prevent abuse of the supply chain management system;
- (b) Investigate any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
 - (i) Take appropriate steps against such official or other role player; or
 - (ii) Report any alleged criminal conduct to the South African Police Service;
- (c) Check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
- (d) Reject any bid from a bidder–
 - (i) If any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - (ii) Who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) Reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) Cancel a contract awarded to a person if –
 - (i) The person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) An official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) Reject the bid of any bidder if that bidder or any of its directors –
 - (i) Has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;

- (ii) Has been convicted for fraud or corruption during the past five years;
 - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public-sector contract during the past five years; or
 - (iv) Has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The municipal manager must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or f) of this policy.

Part 3: Logistics, Disposal, Risk and Performance Management

39. Logistics management

The municipal manager must establish and implement an effective system of logistics management, which must include –

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

40. Disposal management

- (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act will be through the competitive bidding process.
- (2) Assets may be disposed of by –

- (i) Transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
 - (ii) Transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (iii) Selling the asset; or
 - (iv) Destroying the asset.
- (3) The municipal manager must ensure that –
 - (a) Immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - (b) Movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
 - (c) Firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
 - (d) Immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
 - (e) All fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
 - (f) Where assets are traded in for other assets, the highest possible trade-in price is negotiated; and
 - (g) In the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.

41. Risk management

- (1) The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:
 - 1.1 An internal control system needs to be implemented and has to be properly managed and controlled. The implementation and management of an internal control system would include the following:
 - a) Effectiveness and efficiency of operations.
 - b) The safeguarding of the District Municipality's assets inclusive of information.
 - c) Compliance with applicable laws, regulations and supervisory requirements.
 - d) Supporting business sustainability under normal as well as adverse operating conditions.
 - e) The reliability of reporting.
 - f) Behaving responsibly towards all stakeholders.

1.2 The Internal Auditor must assist the procurement officer with the monitoring of risks management.

(2) Risk management must include –

- (a) The identification of risks on a case-by-case basis;
- (b) The allocation of risks to the party best suited to manage such risks;
- (c) Acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
- (d) The management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
- (e) The assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

42. Performance management

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

Part 4: Other matters

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

- (1) No award may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the municipal manager or his delegate must first check with SARS whether that person's tax matters are in order.
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.

44. Prohibition on awards to persons in the service of the state

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

- (a) Who is in the service of the state;
- (b) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state;
or
- (c) A person who is an advisor or consultant contracted with the municipality

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

The municipal manager must ensure that the notes to the annual financial statements disclose particulars of any award of more than R2000 to a person who is a spouse, child or

parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including-

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

46. Ethical standards

- (1) A code of conduct for supply chain management practitioners and other role players involved in supply chain management is hereby established for officials and other role players in the supply chain management system of the municipality in order to promote–
 - (a) Mutual trust and respect; and
 - (b) An environment where business can be conducted with integrity and in a fair and reasonable manner.

46. (1) Code of Conduct

The purpose of this Code of Conduct is to promote mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner.

46. (2) General Principles

The municipality commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in supply chain management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.

Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.

Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

46. (3) Conflict of interest

An official or other role player involved with supply chain management –

- (a) Must treat all providers and potential providers equitably;

- (b) May not use his or her position for private gain or to improperly benefit another person;
- (c) May not accept any reward, gift, favor, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- (d) Notwithstanding sub-regulation 46 (3) (c) above, must declare to the municipal manager details of any reward, gift, favor, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- (e) Must declare to the municipal manager 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, or in any award of a contract by the municipality;
- (f) Must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) Must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- (h) Should not place him/her under any financial or other obligation to outside individuals or organizations that might seek to influence his/ her in the performance of his/ her official duties; and
- (i) Should not take improper advantage of their previous office after leaving their official position.

46. (4) Accountability

- (1) Practitioners are accountable for their decisions and actions to the public.
- (2) Practitioners should use public property scrupulously.
- (3) Only the municipal manager or his/ her delegate has the authority to commit the municipality to any transaction for the procurement of goods and / or services.
- (4) All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.
- (5) Practitioners must assist the municipal manager in combating fraud, corruption, favoritism and unfair and irregular practices in the supply chain management system.
- (6) Practitioners must report to the municipal manager any alleged irregular conduct in the supply chain management system which that person may become aware of, including
 - (i) Any alleged fraud, corruption, favoritism or unfair conduct;
 - (ii) Any alleged contravention of the policy on inducements, rewards, gifts and favors to municipalities or municipal entities, officials or other role players; and
 - (iii) Any alleged breach of this code of conduct.

- (7) Any declarations made must be recorded in a register which the municipal manager must keep for this purpose. Any declarations made by the municipal manager must be made to the mayor who must ensure that such declaration is recorded in the register.

46. (5) Openness

Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

46. (6) Confidentiality

Any information that is the property of the municipality or its providers should be protected at all times. No information regarding any bid / contract / bidder / contractor may be revealed if such an action will infringe on the relevant bidder's / contractor's personal rights.

Matters of confidential nature in the possession of officials and other role players involved in SCM should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions also apply to officials and other role players involved in SCM after separation from service.

46. (7) Bid Specification / Evaluation / Adjudication Committees

- 6.1 Bid specification, evaluation and adjudication committees should implement supply chain management on behalf of the municipality in an honest, fair, impartial, transparent, cost-effective and accountable manner.
- 6.2. Bid evaluation / adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.
- 6.3 All members of bid adjudication committees should be cleared by the municipal manager at the level of "CONFIDENTIALITY" and should be required to declare their financial interest annually (Annexure b)
- 6.4 No person should-
 - 6.4.1 Interfere with the supply chain management system of the municipality; or
 - 6.4.2 Amend or tamper with any price quotation / bid after its submission.

46. (8) Combative Practices

- (1) Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:
- (i) Suggestions to fictitious lower quotations;
 - (ii) Reference to non-existent competition;
 - (iii) Exploiting errors in price quotations / bids;

- (iv) Soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters.

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

- (a) In the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h) of the Municipal Systems Act;
- (b) In the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
- (c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

47. Inducements, rewards, gifts and favors to [municipalities / municipal entities], officials and other role players

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
 - (a) Any inducement or reward to the municipality for or in connection with the award of a contract; or
 - (b) Any reward, gift, favor or hospitality to –
 - (i) Any official; or
 - (ii) Any other role player involved in the implementation of this Policy.
- (2) The municipal manager must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

48. Sponsorships

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

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

49. Objections and complaints

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

50. Resolution of objections and complaints against procurement process

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

50A. Municipal Bid Appeals Tribunal

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

51. Contracts providing for compensation based on turnover

If a service provider acts on behalf of a municipality to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the municipality must stipulate –

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

52. Implementation and Monitoring

This policy will be implemented and effective once approved by Council.

53. Communication

This policy shall be distributed to all employees of UMuziwabantu Local Municipality using all possible communication tools available to the Municipality.

54. Policy Review

This policy will be reviewed on an annual basis and revised if necessary and this shall be the responsibility of Budget and Treasury Office.

55. Date of Effect

This policy shall be effective on the date it is approved and adopted by Council and it replaces all other policies on Supply Chain Management policy.

56. Commencement

This Policy takes effect on 01 July 2020.

APPENDIX A

Calculations of Points

The 80/20 or 90/10 Preferential Point System

Preferential Point Systems

- (a) The 80/20 preference point system is applicable to bids with a rand value equal to or above R 30 000 and up to a rand value of R50 million (all applicable taxes included). Institutions may apply the 80/20 preferential point system to price quotations with a value less than R30 000 if and when appropriate.
- (b) The 90/10 preferential point system is applicable to bids with a rand value above R50 million (all applicable taxes included).

Calculation of points for price

The PPPFA prescribes that the lowest acceptance bid will score 80 or 90 points for price. Bidders that quoted higher prices will score lower for price on a pro-rata basis.

The formulae to be utilized in calculating points scored for price are as follows:

80/20 Preferential point system for acquisition of services, works or goods up to a rand value of R1 million (all applicable taxes included)

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

Where

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptance bid or offer.

Preferential point system for acquisition of services, works or goods with a rand value above R1 million (all applicable taxes included)

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

Where

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

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

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

Conditions of points for BBBEE level of contributor

Points must be awarded to a bidder for attaining the BBBEE status level of contribution in accordance with the table below:

BBBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

A bid must not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the BBBEE status level of contribution or is a non-compliant contributor. Such a bidder will score zero (0) out of a maximum 10 or 20 points respectively for BBBEE.

Calculation of total points scored for price and BBBEE status level of contribution

The points scored for price must be added to the points scored for BBBEE status level of contribution to obtain the bidder's total points scored out of 100.

EVALUATION OF BIDS THAT SCORED EQUAL POINTS

In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for BBBEE.

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

In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.

Cancellation and Re-Invitation of Bids

(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.

An Accounting Officer may, prior to the award of a bid, cancel the bid if:

- (a) Due to changed circumstances, there is no longer a need for the services, works or goods requested. AO must ensure that only goods, services or works that are required to fulfill the needs of the institution are procured.
- (b) Funds are no longer available to cover the total envisaged expenditure. AO has to ensure that the budgetary provisions exist; or
- (c) No acceptable bids are received. (If all bids received are rejected, the institution must review the reasons justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract or a combination of these, before inviting new bids).

AWARD OF CONTRACTS

- (a) A contract must be awarded to the bidder who scored the highest total number of points in terms of the preferential point systems.
- (b) In exceptional circumstances a contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points. The reasons for such a decision must be approved and recorded for audit purposes and must be defensible in a court of law.

CONTRACT EXTENSIONS/VARIATIONS

GENERAL

The General Conditions of Contract (as amended from time to time) is applicable to all contracts and shall be adhered to.

EXTENSION OF CONTRACTS

As a general rule, the municipality may not extend a contract:

- (a) More than once
However, a contract may also be extended for a second time. In such circumstances, clear and justifiable reasons must be provided to the relevant approval authority, proving that such additional extension is beneficial to the municipality. Any such extension may not be approved, if the purpose is to circumvent the competitive bidding mechanisms of the procurement policy.
- (b) For a period exceeding the duration of the original agreement.

- (c) The value of the extension may not exceed the original approved value of the contract.
- (d) The provisions of Section 33 of the MFMA shall be considered for contracts that impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year.
- (e) Where applicable the provisions of Regulation 36 shall be applied.

VARIATION OF CONTRACTS

The municipality may not vary a contract: -

- (a) For a period exceeding the duration of the original agreement; and
- (b) For an amount exceeding 20% of the original contract value for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract.
- (c) Contracts may be amended/varied/modified according to UMUZIWABANTU LM's delegated powers to achieve the original objective of the contract.
- (d) Amendments may not materially alter the original objective; as such amendments should form part of a new bid invitation.
- (e) All contractual parties shall agree to the amendment in writing.
- (f) No contract can be amended after the original contract has ceased to exist.

EXTENSION OF CONTRACT PERIODS

- (a) Approval for the extension of contractors shall be obtained from the delegated structure that approved the original award of bid.
- (b) The extension of a contract shall be requested and finalized before the expiry date of the current contract.
- (c) Where prices are amended for the extended period, the reasonableness of the prices shall be established and approved by the delegated structure referred to above.
- (d) Where justifiable reasons are provided for extending a contract, the relevant application may be considered favorably and contractors may be approached with the request to indicate whether they are prepared to extend the contract period.
- (e) Contracts may normally not be extended beyond the period as determined by the MM's delegated powers.

APPENDIX B

UMUZIWABANTU LOCAL MUNICIPALITY RULES FOR MUNICIPAL BID APPEALS TRIBUNAL

1. CHAPTER 1: INTERPRETATION

1.1 What words mean in the rules

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

- 1.1.1 **“appeal”** means a formal objection to the award of a bid by the Municipality brought in terms of these rules by an appellant;
- 1.1.2 **“appellant”** means a person who initiates a formal objection to the award of a bid by the Municipality and who qualifies as an appellant in terms of Chapter 5 of these rules;
- 1.1.3 **“bid”** means a written offer equal to or in excess of R200 000 made by a person in response to an invitation by the Municipality for the supply of goods, services, or works to the Municipality;
- 1.1.4 **“day”** means a calendar day;
- 1.1.5 **“deliver”** means to formally provide the Secretariat with a copy of a document in the manner described in rule 9.1;
- 1.1.6 **“District Municipality”** means UGU District Municipality
- 1.1.7 **“interested person”** means either –
 - 1.1.7.1 a person who was awarded a bid; and
 - 1.1.7.2 a person, other than an appellant, whose bid was rejected by the Municipality;
- 1.1.8 **“Municipal Bid Appeals Tribunal”** and **“Tribunal”** means the tribunal established in terms of rule 3.1 and, in relation to a particular appeal, means the particular tribunal which has jurisdiction to hear the appeal in question;
- 1.1.9 **“Municipal Supply Management Regulations”** means the Municipality Supply Chain Management made in terms of the Local Government Municipal Finance Management Act (Act No. 56 of 2003)
- 1.1.10 **“Municipality”** means the Umuziwabantu Local Municipality
- 1.1.11 **“person”** includes a company, close corporation, trust, partnership or association;
- 1.1.12 **“Provincial Treasury”** means the Provincial Treasury of the province of KwaZulu-Natal; and
- 1.1.13 **“Secretariat”** means the secretariat established in terms of Chapter 4 of these rules to undertake the administration of the Tribunal and to assist with the setting down and conduct appeals.

1.2 How to calculate a period of days

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

CHAPTER 2: THE PURPOSE OF THE MUNICIPAL BID APPEALS TRIBUNALS

- 4.1 The purpose of the Municipal Bid Appeals Tribunal is to receive, hear and decide appeals against the award of bids by the Municipality.
- 4.2 The Tribunal must act impartially and independently.
- 4.3 The Tribunal is intended to assist in maintaining the good repute of municipal bid processes in the Municipality by providing an accessible, transparent and speedy mechanism for resolving objections to the award of bids by the Municipality. Service delivery, necessarily delayed by an appeal, requires that the procedure of the Tribunal be efficient and speedy.

CHAPTER 3: THE MUNICIPAL BID APPEALS TRIBUNALS

3.1 Establishment

- 3.1.1 The Council shall establish a Municipal Bid Appeals Tribunal for its area of jurisdiction to hear and determine an appeal against the award of a bid.
- 3.1.2 The Accounting Officer of the Municipality, in consultation with the KwaZulu-Natal Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Appeals Tribunal.
- 3.1.3 The Municipal Bid Appeals Tribunal has as its seat the place where the District Municipality has its seat.
- 3.1.4 The Chairperson of the Tribunal may determine that in respect of a particular appeal, the Tribunal should sit at a place other than the seat of the District Municipality.

CHAPTER 4: THE MUNICIPAL BID APPEALS TRIBUNAL SECRETARIAT

4.1 Who is the Secretariat?

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

4.2 Opening hours

The office of the Secretariat must open for the filling of documents from 08H00 to 12H30 and from 14H0 to 16H00 every day other than a Saturday, Sunday or public holiday.

4.3 Contact details

The address, telephone number, fax number and email address of the Secretariat is:

Physical address: 145 Chief Albert Luthuli
Pietermaritzburg
3201
Telephone No: (033) 897-4357
Telefax No: (033) 342-4238
Email address: philile.memela@kzntreasury.gov.za

Documents may only be filled by the Secretariat at the address, telefax number or email address given rule 4.3 and during the hours referred to in Rule 4.2, documents may be faxed or emailed to the Secretariat at any time.

CHAPTER 5: WHO MAY APPEAL?

- 5.1 Only a person who submitted a bid in response to an invitation to bid may appeal against the award of that bid to another party.
- 5.2 An interested person may lodge an appeal where the Municipality (or any committee or person acting under delegated power) has –
 - 5.2.1 committed misconduct in relation to their duties concerning the awarding of bids;
 - 5.2.2 committed a gross irregularity;
 - 5.2.3 exceeded its or their power;
 - 5.2.4 awarded a contract in an improper manner, or
 - 5.2.5 awarded a bid in a manner which contravenes the Municipality's Supply Chain Management Policy or any applicable law.

CHAPTER 6: PRELIMINARY PROCEDURES

The Municipality must –

- 6.1 indicate in its bid documents that appeals against the award of bids must be lodged with the Secretariat within the time period referred to in the bid documents.
- 6.2 At the time of awarding a bid –
 - 6.2.1 formulate comprehensive reasons for the award of the bid to the successful bidder and the failure to award the bid to each interested party; and
 - 6.2.2 prepare and retain for not less than 180 days, a comprehensive file of all documentation relevant to the award of the bid to the successful bidder and the failure to award the bid to each interested party.

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

CHAPTER 7: PROCESSING AN APPEAL

- 7.1 The Appellant must within fourteen days of the award being advertised, file a notice of appeal containing the grounds of appeal with the Municipal Manager. A copy of the notice should be forwarded to the Secretariat.
- 7.2 The Municipal Manager must maintain a register in which all appeals and the outcome thereof, are recorded.
- 7.3 On receiving the notice of the appeal, the Municipal Manager must, within 24 hours send the appeal to the Secretariat.
- 7.4 On receiving the notice of the appeal, the Secretariat shall –
- 7.4.1 issue the appeal with a unique number which must thereafter be reflected on all documents prepared by the Secretariat, the appellant or any other party participating in the appeal; and
 - 7.4.2. confirm in writing the names and contact details of all interested parties affected by the appeal;
 - 7.4.3. its reasons for awarding the bid to the successful bidder and for its failure to award the bid to the appellant; and
 - 7.4.4. all the documentation relevant to the decision relating to the award.
- 7.5 After receiving the information from the Municipality, the Secretariat shall:
- 7.5.1 notify all interested parties affected by the appeal that an appeal has been lodged, advise these persons of their right to respond to the appeal and describe in plain language, the next steps;
 - 7.5.2 provide the appellant with copies of the information supplied by the Municipality; and
 - 7.5.3 require the appellant to provide written representations amplifying (if necessary) its grounds of appeal within a further five days.
- 7.6 On receiving the further representations from the appellant or after the five days have lapsed, the Secretariat must, within two days, provide all the interested parties affected by the appeal with copies of the appellant's notice of appeal and further representations (if any) and advise them of their right to lodge with the Secretariat, a response to the appeal within five days.

7.6.1 Any response to an appeal must include:

- 7.6.1.1 a concise statement of the grounds on which the matter is supported or opposed;
- 7.6.1.2 facts or allegations contained in the appellant's representations that the interested party affected by the appeal admits;
- 7.6.1.3 facts or allegations contained in the appellant's representations that the interested party affected by the appeal denies and the grounds for such denial; and
- 7.6.1.4 the material facts or points of law on which the interested party affected by the appeal relies.

7.7 Once the Secretariat has received representations from the interested parties by the appeal, or the period for doing so has lapsed, the Secretariat shall deliver all the documentation relevant to the appeal to the Chairperson.

7.8 On receiving the documents from the Secretariat, the Chairperson (or Deputy Chairperson in the Chairperson's absence) must within two days of receiving the documentation decide whether the appeal:

- 7.8.1 is frivolous, vexatious or without any merit; or
- 7.8.2 should be determined on the basis of the documents alone; or
- 7.8.3 should be referred to an oral hearing.

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

- 7.9.1 issue a notice of non-referral if the appeal has been deemed to be frivolous, vexatious or without any merit; or
- 7.9.2 notify the appellant, interested parties affected by the appeal and the Municipality that the appeal will be determined on the basis of the documents alone; or
- 7.9.3 notify the appellant, interested parties affected by the Appeal and the Municipality that the appeal will be determined on the basis of an oral hearing, inform these parties of the venue, date and time of the hearing, and inform them of any directives that may have been issued by the Chairperson with regard to the conduct of the appeal.

7.10 Withdrawal of matters

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

CHAPTER 8: HEARINGS

8.1 Informality

- 8.1.1 Any oral hearing of an appeal must be informal and must follow the procedures determined by the Chairperson or Deputy Chairperson, as the case may be.
- 8.1.2 The Tribunal shall determine the admissibility of any evidence adduced and of its probative value.

8.2 Access

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

8.3 Witnesses

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

8.4 Interpreter

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

8.5 Record of hearing

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

- 8.5.1 the application documents;
- 8.5.2 notices;
- 8.5.3 the Chairperson's record of pre-hearing procedures;
- 8.5.4 all documentary evidence
- 8.5.5 the transcript, if any, of the oral evidence given at the hearing; and
- 8.5.6 a written record of the Tribunal's final decision with reasons.

8.6 Non-appearance

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

- 8.6.1 the Tribunal may dismiss the matter by issuing a written ruling; or
- 8.6.2 the Tribunal may –
 - 8.6.2.1 continue with the proceedings in the absence of that party; or
 - 8.6.2.2 adjourn the hearing to a later date.
- 8.6.3 The Tribunal must be satisfied that the party had been properly notified of the date, time and venue of the proceedings before making any decision in terms of this rule.
- 8.6.4 If a matter is dismissed, the Secretariat must send a copy of the ruling to the parties.

8.7 Hearing procedure

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

8.7.1 Commencement

The Chairperson shall –

- 8.7.1.1 introduce the members of the Tribunal;
- 8.7.1.2 request any other parties present to introduce themselves;
- 8.7.1.3 explain the procedure of the hearing; and
- 8.7.1.4 provide a brief introduction to the subject matter of the appeal.

8.7.2 The Municipality's case

The Municipality shall –

- 8.7.2.1 explain the background to the bid;
- 8.7.2.2 provide reasons for the appointment of the successful bidder and for the failure to appoint the appellant; and
- 8.7.2.3 deal with the appellant's representations and any pertinent points that may have been made by any of the interested persons.

8.7.3 Questioning of the Municipality's representative

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

- 8.7.3.1 the appellant;
- 8.7.3.2 any interested party affected by the appeal.

8.7.4 The appellant's case

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

8.7.5 Questioning of the appellant

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

- 8.7.5.1 the Municipality
- 8.7.5.2 any interested party affected by the appeal.

8.7.6 The case of interested parties affected by the appeal

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

8.7.7 Questioning of interested parties affected by the appeal

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

8.7.7.1 the appellant;

8.7.7.2 the Municipality.

8.7.8 Closing statements

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

8.7.8.1 the appellant;

8.7.8.2 the Municipality;

8.7.8.3 interested parties affected by the appeal.

8.8 Powers of the Municipal Bid Appeals Tribunal

8.8.1 The Tribunal

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

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

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

8.8.3 The Tribunal may make a default order –

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

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

CHAPTER 9: GENERAL RULES

9.1 Delivery of documents

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

9.1.1.1 at the Secretariat

9.1.1.2 by registered mail to the Secretariat

9.1.1.3 by fax; or

9.1.1.4 by email.

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

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

9.1.2.2 the date and time of transmission;

9.1.2.3 the total number of pages sent;

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

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

9.2 Confidentiality

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

9.3 Representation of parties

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

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

9.3.2.1 name;

9.3.2.2 postal address and address for the service of documents;

9.3.2.3 telephone and fax numbers;

9.3.2.4 email address;

9.3.2.5 the unique reference number of the matter; and

9.3.2.6 name of the person represented.

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

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

9.4 Powers of the Chairperson to deviate from certain rules

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

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

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

9.5 Expert witnesses

- 9.5.1 A Municipal Bid Appeals Tribunal may appoint such experts or other persons as service providers as it may deem necessary with a view to assisting it in the exercise and performance of its powers, duties and functions.
- 9.5.2 The terms, conditions and fees applicable to any expert or person appointed under Rule 9.5.1 and the work to be performed or services to be rendered must be determined by the Provincial Treasury and be contained in a written agreement entered into for that purpose between the Provincial Treasury and the expert or person concerned.
- 9.5.3 The experts or other persons appointed under Rule 9.5.1 may not vote on any decision taken by the Municipal Bid Appeals Tribunal.