

**ANNEXURE F**  
**BUDGET RELATED POLICIES**



**NEWCASTLE MUNICIPALITY**  
**CREDIT CONTROL AND DEBT COLLECTION POLICY**  
**2020/2021**

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## **1. PURPOSE**

This Policy, read together with the Newcastle Municipality Credit Control and Debt Collection By law, has been compiled in compliance with the Local Government: Municipal Systems Act 32 of 2000 and provides procedures and mechanisms for credit control and debt collection as contemplated in Chapter 9 of the Systems Act.

In terms of Section 96, the Municipality is enjoined to (a) collect all money that is due and payable to it, subject to the Act and any other applicable legislation; and (b) for that purpose, to adopt, maintain and implement a credit control and debt collection policy which is consistent with its rates and tariff policies.

The raising and recovery of revenue is a constitutional right and duty of the Municipality and is fundamental to the long term financial and economic sustainability of the Municipality and to the achievement of the Municipality's constitutional responsibilities in, inter alia, addressing the needs of the local community. In turn, members of the local community have the right, amongst others, to access municipal services (subject to the law), and a reciprocal statutory duty in terms of Section 5(2) of the Systems Act to pay promptly service fees, rates on property and other charges, levies and duties imposed by the Municipality.

This Policy aims, on the one hand, to ensure that the Municipality's approach to credit control and debt collection is sensitive, transparent and is equitably applied throughout the Municipality's geographic area and seeks on the other hand, to enable the Municipality to conduct its financial affairs in an effective, economic and efficient manner by ensuring that the incidence of under collection of revenue and bad debt is minimized, its revenue base is protected and has ability to grow and that cash flow is not negatively impacted upon, thereby compromising optimal delivery of services

## **2. DEFINITIONS**

Unless indicated to the contrary in this Policy, words contained in this Policy have the same meaning as in the Newcastle Municipality: Credit Control and Debt Collection By-law

**"Account"** means written notification in the form of a statement of account in respect of municipal services, rates, sundry charges and other charges, addressed to a person liable for payment thereof;

**"Acknowledgement of debt"** means an admission of liability and written undertaking by a debtor to repay an amount owing to the Municipality, and includes a consent to judgement and for the purposes of this policy it also means a Credit Authority;

**"Agent"** means a person authorised by the Customer to act on his or her behalf;

**"Arrears"** means any amount which is due, owing and payable and which remains unpaid by due date;

**"Authorised Official"** means the Head: Revenue or his delegate in terms of the Municipality's System of Delegations;

**"Availability Fee"** means the tariff referred to under Tariff Type in the eThekweni Municipality's Tariff Policy;

**"Bulk Customer"** means a Customer who consumes large amounts of electricity for commercial or industrial purposes;

**"By-law"** means the eThekweni Municipality: Credit Control and Debt Collection By-Law, as amended;

**"Category of Owners"** means, for the purpose of section 4.2 of this Policy, any department of state or administration in the national, provincial or local sphere of government which has a good credit history with the Municipality.

**"CFO"** means a person employed by the Municipality in terms of section 57 of the Systems Act as the Chief Financial Officer of the Municipality, and includes any person to whom the Chief Financial Officer has delegated or sub-delegated a power, function or duty in accordance with the system of delegation developed by the Municipal Manager in terms of section 79 of the Municipal Finance Management Act and section 59 of the Systems Act;

**"Collection Charges"** means the charges which the Municipality is entitled to recover in terms of section 75A (1) of the Systems Act, and includes the administrative cost–

- (a) of reminding any ratepayer or Customer of arrears;
- (b) for the termination, restriction or reinstatement of any Municipal service to a defaulting ratepayer or Customer;
- (c) of any notice rendered, sent, delivered or published to a ratepayer or Customer in terms of the By-law or any other law;
- (d) of any merchant fee; and
- (e) in respect of any other charge which the Municipality is by law entitled to recover;

**"Company"** means a Company as defined in the Companies Act, 2008 (Act 71 of 2008);

**"Consolidated account"** means a monthly account reflecting municipal service fees, charges, surcharges on fees, property rates, sundry charges and other municipal taxes, levies and duties and all consolidations in terms of section 102 of the Systems Act;

**"Credit Authority"** means any arrangement made by agreement between the Municipality and a Customer for the payment of any arrears in instalments. Such arrangement may take the form of an agreement or an acknowledgment of debt;

**"Customer"** means any person or their agent with whom the Municipality or an Authorised Official has entered into an agreement for the provision of any Municipal service to the premises;

**"Defaulter"** means a Customer whose account is in arrears;

**"Deposit"** means a monetary amount raised by the Municipality in relation to the consumption of a Municipal service and mitigation of credit risk to the Municipality, irrespective of the existence of an agreement;

**"Disconnection"** means a termination or restriction of a Municipal service supplied to a meter;

**"Due date"** means the date on which a Customer's account becomes payable, which in the case of monthly accounts is twenty-one days from the date of the account, and in the case of annual accounts is the 31 October each year;

**“Effective Date”** means the date on which this Policy comes into effect which shall be 1 July 2019

**“Fee”** means a prescribed amount charged by the Municipality to a Customer for the provision of any Municipal service;

**“Financial Guarantee”** means an irrevocable and unconditional written undertaking issued by a registered South African Bank in favour of the Municipality, to honour all obligations (present or future) owed by a person to the Municipality, should that person be in breach of any or such obligation;

**“Fines”** means any lawfully determined pecuniary penalty which is payable by a person to the Municipality in terms of applicable legislation, arising from the commission of an act or an omission that is punishable by law;

**“Flow restrictor”** means a washer which is installed in the water connection which allows a monthly consumption of 6 kilolitres of water but at an extremely low flow rate;

**“Illegal connection”** means any connection or reconnection to a system through which Municipal services are provided, which is not authorised or approved by the Municipality or an Authorised Official;

**“Juristic person”** includes a partnership, a proprietor, association or other body of persons, corporate or unincorporated and includes a trust and organ of state;

**“Leak period”** means the metering period immediately prior to the date of repair of the leak and the metering period during which the leak is repaired. Each of these two periods will not exceed 65 days;

**“Meter”** means any device which measures any demand or quantity of either electricity energy or water passing through such meter;

**“Metering period”** means the time interval between two successive billed meter readings but shall exclude previous leak periods;

**“MPRA”** means the Local Government: Municipal Property Rates Act, 2004 (Act 6 of 2004), as amended;

**“Multi-property owner”** means an owner of 50 or more registered properties in the Municipality's area of jurisdiction;

**“Municipal charges”** means municipal service fees, surcharge on fees, penalties, interest, property rates, and other municipal taxes, levies and duties, as well as any other charges in terms of Legislation, Policy or an agreement including Sundry Charges and Collection charges;

**“Municipal service”** means a service provided by the Municipality in terms of its powers and functions to or for the benefit of the local community, irrespective of whether or not –

- (a) such service is provided by the Municipality itself or by engaging an external mechanism contemplated in section 76 of the Systems Act; or
- (b) any fees, charges or tariffs are levied in respect thereof;

**“Net salary”** means the gross salary minus pension and statutory deductions;

**“Owner”** means:

- (a) In relation to a property referred to in paragraph (a) of the definition of "property" in the MPRA, a person in whose name ownership of the property is registered;
- (b) The administrator of the body corporate of a sectional title scheme where the common property of a sectional title scheme is at issue and there are no elected trustees of the body corporate;
- (c) The administrator, where the owner of a property is a mental health care user as defined in section 1 of the Mental Health Act, 2002 (Act No. 17 of 2002);
- (d) The business rescue practitioner, where the owner of a property has been placed under business rescue;
- (e) The managing agent, where the owner of a property is absent from the Republic of South Africa or where the Municipality has, after reasonable attempts, not been able to determine his or her whereabouts;
- (f) Every person who is entitled to occupy or use a building, or who does occupy or use a building, where –



- (i) The owner of the property is absent from the Republic of South Africa;
- (ii) The Municipality has, after reasonable attempts, not been able to determine the whereabouts of the owner of the building; and
- (iii) There is no managing agent;
- (g) Trustees and beneficiaries jointly, in the case of property in a trust;
- (h) An executor or administrator, in the case of property in a deceased estate;
- (i) A trustee or liquidator, in the case of a property in an insolvent estate or in liquidation;
- (j) A judicial manager, in the case of a property in the estate of a person under judicial management;
- (k) A curator, in the case of property in the estate of a person under curatorship;
- (l) A person in whose name a usufruct or other personal servitude is registered, in the case of a property that is subject to a usufruct or other personal servitude, as joint owner together with the registered owner;
- (m) A lessee, in the case of a property that is registered in the name of the Municipality and is leased by it;
- (n) A buyer or a developer, in the case of a property that was sold by the Municipality and of which possession was given pending registration of ownership in the name of the buyer, beneficiary, or a developer;
- (o) A fideicommissary as joint owner together with the fiduciary;
- (p) Ingonyama Trust in respect of the land vested in the Ingonyama Trust by virtue of the Ingonyama Trust Act of 1994, as amended, or any other law;
- (q) The National Government of the Republic of South Africa, in the case of a property that is registered in the name of a deregistered company or close corporation and where ownership thereof has accrued to the state by operation of law ( bona vacantia);
- (r) An owner of a property in the name of any other juristic person not mentioned in this definition of an owner; and
- (s) A child or children in charge of a property in the case of a child headed household as contemplated in this Policy and the Rates Policy of the Municipality;

**"Person"** means a natural person or Juristic Person;

**"Property"** means—

- (a) immovable property registered in the name of a person, including, in the case of sectional title scheme, a sectional title unit registered in the name of a person;
- (b) a right registered against immovable property in the name of a person;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation, excluding a permission to occupy; or
- (d) public service infrastructure;

**"Prescribed"** means a determination set or laid down by law, or by the Municipal Council or the CFO from time to time;

**"Prescribed Form"** means any document that may be prescribed by law or approved by Municipal Council or required by the CFO from time to time;

**"Rates"** means a municipal rate on property envisaged in terms of section 229(1) (a) of the Constitution and levied by the Municipality in terms of the MPRA, expressed as cents in the rand;

**"Rates Regulations"** means the Municipal Property Rates Regulations, 2006 as amended;

**"Residential property"** means a dwelling, in any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person **excluding** a dwelling where the dominant use is for any purpose other than residential, or where it is used in the supply of commercial accommodation;

**"Revenue Clearance Certificate"** means a certificate of the kind referred to in Section 118(1) of the Systems Act;

**"Section 118(1) debt"** means debt contemplated in Section 118(1) of the Systems Act;

**"Section 118(3) debt"** means debt contemplated in Section 118(3) of the Systems Act;

**"Services Account"** means an account which relates to water and or electricity consumption and related charges;

**“Service Agreement”** means an agreement entered into between the Customer and the Municipality for the provision of a Municipal service which includes but is not necessarily limited to water and electricity;

**“Social Worker”** means a person employed by the Municipality who is registered as a social worker under the Social Service Professions Act, 1978 (Act No 110 of 1978);

**“Sundry charge”** means an amount charged to a Person which is not directly linked to a property and includes but is not limited to–

- (a) charges arising from damage to municipal property and equipment;
- (b) monies owed for Municipal services other than rates, water, electricity and sanitation;
- (c) monies awarded to the Municipality through court orders and judgments;
- (d) fines; and
- (e) monies owed to the Municipality by the Municipality staff (staff debts);

**“Systems Act”** means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as amended;

**“Tenant”** means in relation to this Policy, a person who entered into a lease agreement with a Landlord; and became a Customer of the Municipality prior the adoption of section 3.1 of this Policy .This excludes tenants referred to in section 3.3 and 14.5 and Social Housing Tenants as mentioned in this Policy;

**“Tenderer”** means a contractor, service provider or supplier who has submitted a tender for the provision of services or the delivery of goods to the Municipality;

**“Water services”** means the supply of potable water and, where a municipal sewerage reticulation system exists, the disposal of sewage;

## PROVISION OF MUNICIPAL SERVICES

### 3. REGISTRATION FOR THE PROVISION OF MUNICIPAL SERVICES

- 3.1 **Residential property** - The Municipality will endeavour to register **owners only** for services on their properties. Tenant registrations that are currently in place will continue until the tenant vacates the premises, the account is closed or the Municipality cancels the contract of the tenant that is in default in terms of subsection 6.1 (b) of this Policy.
- 3.2 **Business property** - The Municipality will only enter into new contracts for the provision of Municipal services with tenants if the owner of the property is a multi-property owner as defined in this Policy, and the municipal accounts on all of his or her properties are paid. Where the landlord is not a multi-property owner, the owner of the property must register for the provision of Municipal services.
- 3.3 When the owner of the property is a Bulk Customer, the CFO, at his or her discretion, may allow tenants of the bulk customer to be registered for municipal services on the property concerned, upon submission of any documents or information that may be requested by the CFO.
- 3.4 **Government property** - The Municipality will continue to register tenants for services. The respective Government Departments shall be held liable for the debts on their own property.
- 3.5 **Sundry accounts** – A Person must provide the Municipality with a municipal account number. If the Person does not have an existing municipal account then a new account must be created.
- 3.6 The Municipality shall whenever possible, combine any separate accounts of a person who is liable for payment to the Municipality, into one consolidated account.
- 3.7 No registrations or additions to the customer database can be processed unless legal documentation acceptable to the CFO has been produced in each instance.

- 3.8 If there is an outstanding debt on the property this debt must be settled in full, or suitable payment arrangements must be made by the owner of the property, before a Customer or owner is registered for services. This section does not apply to a new owner who has taken transfer of property and applies for a Municipal service.
- 3.9 Customers who fail to register and who illegally consume services will be subjected to such administrative, civil or criminal action as the Municipality deems appropriate.
- 3.10 Where the purpose for or extent to which any Municipal service used is changed, the onus and obligation is on the Customer or owner to advise the Municipality of such change.
- 3.11 A Person applying for a Municipal service must enter into a Service Agreement with the Municipality in order for such Municipal service to be provided.
- 3.12 **Documentation and Information (Juristic Persons)-** An application by a Juristic Person for a Municipal service must include –
- (a) The submission of a resolution delegating authority to the applicant and furnishing, if applicable, the Juristic person's Registration Number or Trust Reference Number with the Master of the High Court.
  - (b) The names, identity number, cell phone number, physical and postal addresses, email addresses and any other particulars of all the directors (excluding ex-officio directors as contemplated in the Companies Act, 2008 (Act 71 of 2008) or members or trustees or proprietors or partners.
  - (c) Certified copies of the following where applicable:
    - (i) Current Letter of Authority of the Trustee(s).
    - (ii) Identity documents of the persons referred to in (b) above.
    - (iii) CIPC registration documents.
    - (iv) Constitution.
  - (d) A signed Direct Debit form in the prescribed form.

- 3.13 A person may be required to provide to the Municipality with personal information, as may be prescribed, for any purpose contemplated in this policy, amongst others, all contact details (such as postal/physical/email address.), proof of identification, financial information and any other relevant documentation, as may be required by the Municipality from time to time (such as a lease agreement or a title deed).
- 3.14 All information furnished may be verified by the Municipality with any or all data information institutions, credit information bureau's and any financial institutions as may be deemed necessary by the Municipality in determining a person's credit worthiness or for any other reason as determined by the CFO.
- 3.15 The Municipality has a right to conduct a full credit check on any person who is or who will become subject to this policy or any other policy of the Municipality.

#### **4. DEPOSITS**

- 4.1 Upon date of ownership transfer, a deposit will be automatically raised, based on the criteria determined by the CFO, from time to time which include but are not limited to the Customer's profile, the risk the Customer poses to the Municipality, previous consumption, connection type and size of the metered Municipal service.
- 4.2 Where a tenant terminates a Services Account, consumption charges emanating from a meter must thereafter be linked to the owner's rates account and a deposit will be raised once consumption is recorded and will become due in the next months' bill.
- 4.3 The Municipality may appropriate a Customer's deposit on any account related to that Customer.
- 4.4 Notwithstanding receipts for different services, deposits payable to the Municipality shall be a consolidated deposit, paid **in cash**.

- 4.5 Where a business customer does not present a valid South African ID Document, a deposit equivalent to twice the prescribed deposit shall apply, in addition to the personal suretyships.
- 4.6 If a Customer is in arrears, the deposit may, upon due notice, be increased.
- 4.7 The Municipality may utilise the consolidated deposit as security for any or all of the charges or amounts owed by the customer as included in the statement of account.
- 4.8 No deposit will be raised on property where there is no consumption however an availability fee shall be raised.
- 4.9 Where a tenant has absconded leaving a debt on a property, an additional deposit, equal to the debt on the property, may be raised on any other account held by the tenant with the Municipality.
- 4.10 No deposit will be levied on an indigent consumer account.
- 4.11 **Guarantees**
- a. Existing Guarantees held by the Municipality in lieu of a Deposit shall be honoured for the duration of the contract with the Municipality.
  - b. Addendums to existing Guarantees shall not be accepted. The additional deposit must be paid in cash.
  - c. Where guarantees are held in lieu of deposits, such guarantee shall be presented for payment and a new deposit shall be raised on any arrear account.
  - d. Notwithstanding the provisions of section 4.12 (a), a Financial Guarantee issued by a registered South African Bank and in a form acceptable to the CFO, may be furnished by an applicant for a Municipal service in lieu of the Deed of Suretyship referred to in section 3.12(e) above. Written application to furnish

such a Financial Guarantee must be made to the CFO who shall have the right to conduct a full financial analysis and credit check of the applicant and to call for such other documents and have regard to such other information as may be considered relevant to the consideration of the application.

- e. The CFO may demand or accept, a Financial Guarantee issued by a registered South African Bank on behalf of a contractor, in favour of the Municipality as security for any damage or loss that is incurred by, or may be sustained by the Municipality during the course of any work undertaken by the contractor in the circumstances set out in section 33.1.
- f. Where municipal property is alienated, the CFO may accept the lodging of a Financial Guarantee, in a form acceptable to the CFO, in lieu of a cash deposit on the purchase price.
- g. The CFO may, on written application, permit a person to substitute a Financial Guarantee referred to in (e) with another Financial Guarantee either from the same guarantor or a different guarantor, provided there is no risk to the Municipality.

#### 4.12 **Review of Deposits**

- a. If the Customer poses a credit risk, the value of the original deposit paid or an existing guarantee held by the Municipality, may be reviewed from time to time by the CFO.
- b. The deposit on an account shall be reviewed when—
  - i. Annually
  - ii. the Account is paid after the due date;
  - iii. payment by negotiable instrument or direct debit is dishonoured; or
  - iv. there is increased consumption of services.
- c. The deposit will be increased annually as per the approved tariffs
- d. The Municipality may increase the deposit payable by a Customer by up to 12 months average usage.



#### 4.13 **Interest Payable on Cash Deposits**

The Municipality will not pay interest on cash deposits.

## **ACCOUNTS MANAGEMENT**

### **5. ACCOUNTS**

- 5.1 The Municipality will deliver notices, any other document and accounts in accordance with section 115 of the Systems Act. A Customer may register for another mode of transmission as set out in the Credit Control and Debt Collection By-Law. In the case of multiple-ownership, the account will be delivered to any one of the owners.
- 5.2 Subject to the provisions of section 95(e) of the Systems Act, a failure to receive or accept accounts does not relieve a Customer of the obligation to pay any amount due and payable. The onus is on the Customer to make every effort to obtain a copy of the account, or establish the amount payable for payment.
- 5.3 The Municipality or an authorised official must, if administratively possible, issue a duplicate account to a customer on request. The Municipality will provide owners with copies of their tenant's accounts if requested in writing.
- 5.4 The Municipality may post annual rates assessment for record purposes.

5.5 With the exception of Government Accounts, assessment rates shall be billed on a monthly basis, and may only be billed annually by prior written agreement, subject to the Rates Policy of the Municipality.

5.6 Customers are required to update their information details with the Municipality promptly whenever information on record changes and or whenever requested by the Municipality. A failure to update information with the Municipality or a failure to respond to the Municipality's request for updated information may, subject to the principles of administrative justice, result in the restriction of services, disconnection of services or prosecution. Such update of information includes, but is not limited to—

- a. Details of executors or administrators of deceased estates;
- b. Deregistration or termination of a company, close corporation or trust if the company, close corporation or trust is the account holder;
- c. Details of deceased company directors, members of Close Corporations and trustees of Trusts;
- d. Details of deceased - partners
  - (i) Company directors;
  - (ii) Members of close corporations; or
  - (iii) Trustees of Trusts;
- e. Letters of appointment of a Trustee or Liquidator in the case of an insolvency /liquidation together with contact particulars.
- f. Contact details of the Customer;
- g. Notice of a company or close corporation placed under business rescue or liquidation and
- h. Any change of members, trustees or directors of a juristic person.

5.7 The payment of rates shall not be affected by reason of an objection, appeal or non-compliance with the Rates Policy of the Municipality.

- 5.8 There is no obligation on the Municipality to provide records older than 5 years from the date such records are requested.
- 5.9 Accounts may reflect actual or estimated Municipal charges.
- 5.10 In order to ensure that credit control information on owners and property is regularly updated, the Municipality's Building Plans Assessment Department must provide the CFO with monthly returns of all applications submitted in terms of the National Building Regulations and Building Standards Act, 1977 (Act 103 of 1977). Such monthly returns must contain the name of the owner of the property, the nature of the application and application reference number, as well as the deeds office description and street address of the property that is the subject of the application. Similar information must be provided by the Municipality's Land Use Management Department in relation to land development applications that are made under the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) read together, with the Newcastle Municipality: Planning and Land Use Management Bylaw, 2016.
- 5.11 In terms of Section 22 of the Companies Act, 2008 (Act 71 of 2008), a company may not carry on its business recklessly, with gross negligence, with intent to defraud or trade under insolvent circumstances. Where a company fails to honour its obligations to the Municipality in terms of the law, and its debt to the Municipality exceeds 90 days or longer, the CFO may (without detracting from other credit control measures that may be implemented), report such company to the Companies and Intellectual Property Commission for investigation for having breached the provisions of such Act. This could result in the Commissioner issuing an order for the company or close corporation to cease trading.

## **6 RESPONSIBILITY FOR AMOUNTS DUE**

- 6.1 In terms of Section 118 (3) of the Systems Act, an amount due for municipal service fees, surcharge on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property. Accordingly —
- a. the owner of such property shall be liable for charges incurred in connection with such property during his or her ownership and shall remain liable irrespective of the change of ownership, and all municipal debts must be paid by the owner of such property without prejudice to any claim or right of recovery which the Municipality may have against another person;
  - b. the Municipality reserves the right to cancel a contract with the Customer in default and to register the owner of such property for services on the property; and
  - c. Subject to the right to a basic water supply as contemplated in the Water Services Act, 1997 (Act No.108 of 1997), as amended, the Municipality will not provide any services on the property until all municipal debts (other than historic debt incurred by a previous owner of the property), on the property have been paid in full or suitable arrangements have been made to pay such debts. The Municipality reserves the right to determine the manner in which access to a basic water supply will be provided.
- 6.2 Where the property is owned by more than one person, each owner shall be jointly and severally liable, the one paying the other to be absolved, for all municipal debts charged on the property.
- 6.3 Owners with their tenants who are registered as Customers shall be held jointly and severally liable, the one paying the other to be absolved, for debts on their property, except for property rates. It is in the interests of a tenant of property, however, to ensure

that the landlord provides the tenant with proof of payment of rates on the leased property, on a regular basis.

- 6.4 Refuse removal shall form part of the property debt payable by the owner of the property.
- 6.5 When a Juristic person opens a Service Account, the directors, members or trustees as the case may be must sign personal suretyships in favour of the Municipality. Liability for outstanding amounts maybe extended to such directors, members or trustees jointly and severally, the one paying the other to be absolved.
- 6.6 The Municipality may —
- a. In a case of an Owner who is in arrears:
    - (i) recover from a tenant, occupier or agent such monies as are owing by the tenant, occupier or agent to the owner, as payment of the arrears owing by such owner for so long as a tenant or occupier occupies a property in respect of which arrears are owing, or an agent acts for an owner in respect of whose property arrears are owing;
    - (ii) recover the amount in whole or in part despite any contractual obligation to the contrary on the part of the tenant, occupier or agent; or
    - (iii) recover from the tenant, occupier or agent an amount which is limited to the amount of the rent or other money due and payable, but not yet paid by the tenant, occupier or agent;
  - b. apply to the Companies and Intellectual Property Commission to re-register a deregistered company or close corporation or apply to court for an order of restoration or the voiding of the deregistration for the purposes of recovering the amounts owed by that company or close corporation for all municipal debts which have accrued and shall recover the costs of re-registration from the directors or members accordingly; or
  - c. In the case of assets accruing to the State by operation of any law [(bona vacantia) – Section 76 (2) (i) of the PMFA] collect outstanding fees from

the relevant treasury who may exercise all powers, authority and prerogatives, and fulfill any obligation on behalf of the state.

- 6.7 Should the tenant, occupier or agent refuse to pay as contemplated in subsection 6.6 to the Municipality, the services of the tenant, occupier or agent may be disconnected.
- 6.8 Should any dispute arise as to the amount owing, the Customer shall pay all amounts which are not subject to the dispute that are due and payable, pending the finalisation of the dispute lodged in respect of the specific amount owed by the Customer.
- 6.9 Subject to sections 20 and 21 of this Policy, where an existing Customer wishes to convert an existing electricity and or water supply service to a Pre-paid meter, the Customer must first settle all outstanding amounts or make a suitable arrangement to liquidate the outstanding amount as contemplated in section 24 of this Policy, before an application for a pre-paid meter may be considered.
- 6.10 On special projects identified by the Municipal Council, pre-paid meters may be zero costed in the case of indigent consumers.
- 6.11 The owner of the property may be held liable for tampering with the electricity metering equipment or the water metering equipment on the property as well as charges that arise therefrom.
- 6.12 Subject to the operation of the law, where any subsidiary company of a holding company is indebted to the Municipality, the liability for such arrears may be extended to the holding company; and where any holding company is indebted to the Municipality, the liability for such arrears may be extended to any subsidiary company
- 6.13 Debtors may be referred to a third party debt collector and tracing agent.

- 6.14 The Municipality may enter into a Credit Authority for the liquidation of a debt by a person other than the debtor, where such person offers to settle the debt and meeting the qualifying criteria as contained in this policy or as prescribed by the CFO.

## **7 PAYMENT OPTIONS**

- 7.1 The Municipality will endeavour to establish a payment network to ensure that wherever practically possible, Customers have access to a payment site within a reasonable distance of their home.
- 7.2 The Municipality shall accept payment under the following circumstances–
- a. Payment via , electronic funds transfer (EFT) or Cash for Settlement of final accounts.
  - b. Subject to a. and b. above, the following payment methods are also available:
    - (i) EFT;
    - (ii) Internet Transfers;
    - (iii) Third party collectors appointed from time to time by the Municipality;
    - (iv) Direct Debit; and
    - (v) Debit Order payments.
    - (vi) EasyPay outlets (Pick n Pay, Shoprite, Checkers, Woolworths, Pep Stores
  - c. The following shall apply for all EFT payments of the Customer's arrears accounts:
    - (i) Only proof of payments from customers will be accepted.
    - (ii) The proof of payment will be verified, where applicable, for authenticity (through the submitting bank's website).
    - (iii) All reconnection requests where services have been disconnected will ONLY be actioned once payments have been cleared and or receipted to the respective consumer accounts.

e. Customers whose accounts are in arrears are encouraged to pay at online sites in the Municipality's banking halls.

7.3 Where any direct debit or payment made to the Municipality or an authorised official is later dishonoured by the bank, the Municipality or its authorised official–

- a. will recover the bank charges incurred relating to that dishonoured payment against the account of the Customer;
- b. may regard such an event as default on payment and the account shall be dealt with as an arrear account; and
- c. reserves the right to take legal action for recovery of arrears.

7.4 The methods of payment shall be determined by the CFO from time to time.

7.5 Where a Customer signs a Credit Authority with the Municipality, payment shall, as far as possible, only be accepted via a direct debit procedure.

## **8 FULL AND FINAL SETTLEMENT**

8.1 Where the exact amount due and payable has not been paid in full, any lesser amount tendered and receipted, shall not be in full and final settlement of such an account, except when duly accepted in terms of a delegated authority.

8.2 The CFO must be consulted on any settlement, out of court or otherwise, that has a budgetary implication on the Municipality.



## **9 CASH ALLOCATION**

- 9.1 The Municipality may—
- a. consolidate any separate accounts of persons liable for payments to the Municipality;
  - b. credit a payment by such a person against ANY accounts of that person; and
  - c. implement any of the debt collection and credit control measures provided for in this Policy and the By-law in relation to any arrears on any of the accounts of such a person.
- 9.2 Any amounts paid may be appropriated to the oldest debt first.
- 9.3 Any amount paid by the Customer in excess of an existing debt may be held in credit for the Customer in anticipation of future rates and fees for Municipal services, and no interest will be payable on that amount.
- 9.4 The Municipality's allocation of payment is not negotiable and the Customer may not choose which account to pay.

## **10 INTEREST AND ADMINISTRATIVE CHARGES**

- 10.1 Interest will be charged on business accounts only.
- 10.2 Interest charged on government accounts previously will be reversed for arrear accounts only.
- 10.3 The legal rate of interest raised on arrears is equivalent to the rate of interest as determined in Municipal Property Regulation 9 of the Rates Regulations, 2006 or applicable legislation.
- 10.4 Interest shall accrue 30 days from date of account on unpaid accounts. Interest shall

accrue for each completed month in respect of any arrears remaining unpaid after 30 days of the account. A part of a month shall be deemed to be a completed month on the basis that interest is charged as from the first day of the account being in arrears.

10.5 Interest may only be reversed under the following circumstances–

- a. exemptions as determined by Council from time to time;
- b. if the Municipality has made an administrative error on the account;
- c. Where any debt has arisen as a result of a faulty meter or the Municipality has applied an incorrect charge, meter constant or tariff due to an administrative error;
- d. where an owner takes over the debts of the tenant; or
- e. where the CFO approves such reversal from time to time;

## **11 PROCUREMENT OF GOODS AND SERVICES AND PAYMENTS IN TERMS OF CONTRACTS**

- 11.1 When submitting a tender for the provision of services or the delivery of goods, each potential tenderer must prove to the satisfaction of the Municipality that all accounts for which the tenderer is liable, have been paid up to date, and that all accounts for which each and every director, member, owner, partner or trustee of the tenderer is liable for are also up to date or suitable payment arrangements have been signed.
- 11.2 The Municipality shall at its own discretion check whether all the municipal accounts of the tenderer are up to date. Copies of all current accounts sent to the tenderer and to each director, member, owner, partner or trustee must be attached to the tender documents.
- 11.3 Where a tenderer's place of business or business interests are outside the jurisdiction of the Municipality, a Revenue Clearance Certificate from the relevant Municipality must be produced.
- 11.4 Before awarding a tender, the Municipal debts of the tenderer and of each director, member, owner, partner or trustee of the tenderer must be paid in full or suitable payment arrangements have been signed.
- 11.5 Where payments are due to a creditor of the Municipality, or in terms of any contractual arrangement with the Municipality, any arrear amount owing to the Municipality may be set off against such payments.
- 11.6 The provisions of this Policy also apply to quotations, public tenders and tenders in terms of section 47 of the Municipality's Supply Chain Management Policy.

## **12 AGREEMENT WITH EMPLOYERS INTERMS OF SECTION 103 OF THE SYSTEMS ACT**

12.1 Section 103 of the Systems Act reads as follows—

A Municipality may—

- (a) with the consent of a person liable to the Municipality for the payment of rates or other taxes or fees for Municipal services, enter into an agreement with that person's employer to deduct from the salary or wages of that person-
  - (i) any outstanding amounts due by that person to the Municipality;  
or
  - (ii) regular monthly amounts as may be agreed.

12.2 In the event that the employee voluntarily chooses to use the method of payment as contemplated in subsection 12.1 for the payment of his or her municipal accounts, the employee may approach the Municipality for an agreement to be concluded.

12.3 A collection commission may be payable to the employer as determined from time to time.

### **13 STAFF, COUNCILLORS AND WARD COMMITTEE MEMBERS IN ARREARS**

- 13.1           a.     Item 10 of Schedule 2 to the Systems Act (Code of Conduct for Municipal Staff Members) states that–
- i.   a staff member of the Municipality may not be in arrears to the Municipality for rates and service charges for a period longer than three (3) months; and
  - ii. a Municipality may deduct any outstanding amounts from a staff member's salary after this period; and
- b.     The Municipality shall liaise with the relevant staff on repayment of their arrears.
- c.     The staff member must sign a Credit Authority and direct debit deduction form in accordance with this Policy
- d.     No special treatment shall be afforded to staff members whose accounts are arrears.
- e.     Any staff member who has breached the code will be dealt with in accordance with the disciplinary procedures adopted by the Municipality or as prescribed by Law or determined by a Collective Agreement.
- 13.2           a.     Item 12A of Schedule 1 to the Systems Act states that a Councillor may not be in arrears to the Municipality for a period longer than three months.
- b.     The Municipal Manager shall liaise with the Speaker and issue the necessary salary deduction instruction where appropriate.
- 13.3           Where the Municipality is satisfied with the reasons supplied by the staff member or Councillor or Ward Committee Member stating why the account is in arrears, the staff member or Councillor or Ward Committee Member must pay such arrears within a reasonable period of time

- 13.4 On appointment to a higher post, employees who have signed a Credit Authority shall increase their instalments on the Credit Authority in accordance with their new salary increase.
- 13.5 The Council reserves the right to deduct any arrears from the stipend or any other amounts payable to ward committee members.

## **14 ARREAR ACCOUNTS**

### **Disconnection and Reconnection of Services**

- 14.1 Arrears on rates, services or any other consolidated debt may result in disconnection of ANY service or in a restriction of use of municipal facilities.
- 14.2 A disconnection/reconnection fee, as determined by the Council, from time to time, will be raised on all accounts printed for disconnection with the threshold of R500.
- 14.3 Any official or contractor appointed by the Municipality for the purposes set out herein, may, at all reasonable times enter any premises to which services are supplied by the Municipality, in order to inspect pipes, wires or any apparatus used for the supply of services and belonging to the Municipality, for the purpose of ascertaining the quantity of services supplied or consumed, or to disconnect or terminate such supply or remove any apparatus belonging to the Municipality.
- 14.4 Should the owner fail to allow access to the premises or the property to which services are supplied by the Municipality on three consecutive occasions, the CFO may, having given due notice, disconnect, stop, restrict or discontinue the provision of any service, and the owner, at his or her cost should opt for a pre-paid meter.
- 14.5 The owner of the property remains liable and responsible for all instances of unauthorised reconnections and disconnections, illegal connection, tampering, damage or theft of municipal infrastructure, and services installed in the property. Furthermore, the onus is upon the owner to ensure that tenants on the premises or the property refrain from such acts. Nothing precludes the Municipality from recovering charges from a previous owner where tampering is proven by the Municipality, or in a court of law, to have predated a current owner's title to the property, or where the application of the laws allows from both the previous and current owner, jointly or severally, the one paying the other to be absolved (given that the debt attaches by law to the property).

- 14.6 An unauthorised reconnection or illegal connection of, or tampering with a service supply is prohibited and shall constitute a criminal offence which shall result in legal action being taken against the owner and disconnection of Municipal services or removal of the entire services supply being effected.
- 14.7 Subject to applicable legislation, the Municipality may refuse the supply of water or electricity to a consumer who is found guilty of fraud, theft or any other criminal offence related to Municipal services, or, where it is evident that such criminal offence has occurred, until such time as the total costs, penalties, other fees, illegal consumption and any applicable tariffs and rates due to the Municipality have been paid in full.
- 14.8 Reconnections of Municipal services will only be allowed when all applicable penalties and fees have been paid and the debt has been extinguished or suitable arrangements have been made to settle the debt.
- 14.9 In addition to the other circumstances in which a Municipal service may be disconnected in terms of this policy or the By-law, services may be disconnected , after due notice has been given –
- a. Where the owner or tenant is deceased and such has not been reported to the Municipality; or
  - b. Where a company, close corporation or trust has been deregistered and such has not been reported to the Municipality, or
  - c. Where a company or close corporation is deregistered and continues to trade but fails to settle debt owed to the Municipality.
- 14.10 Reconnection of services where services have been disconnected in terms of subsection 14.10 above will be authorised when–
- a. an executor has been appointed; or
  - b. the Company or Close corporation has been re-registered.



- 14.11 In addition to the other circumstances in which a Municipal service may be disconnected in terms of this policy or the By-law, services may be disconnected, after due notice has been given –
- a. Where the owner or tenant is deceased and such has not been reported to the Municipality; or
  - b. Where a company, close corporation or trust has been deregistered and such has not been reported to the Municipality, or
  - c. Where a company or close corporation is deregistered and continues to trade but fails to settle debt owed to the Municipality.
- 14.12 Reconnection of services where services have been disconnected in terms of subsection 14.10 above will be authorised when–
- a. an executor has been appointed; or
  - b. the Company or Close corporation has been re-registered.
- 14.13 The services of Customers on pre-paid meters, who tamper with their services, will be disconnected and any amounts due to the Municipality will become payable immediately.
- 14.14 Where a Municipal service, which is not in the name of the registered owner, has been restricted, disconnected or discontinued, the CFO may, subject to the principles of administrative justice, insist that the service be transferred into the name of such property owner; and
- a. Notwithstanding subsection 14.13, the CFO may at any other time insist that the service be transferred into the name of such property owner.
- 14.15 Where a Municipal service is to be disconnected or restricted, as contemplated in subsection 14.1, due notice of intention to disconnect or restrict such Municipal service will be given not only to the debtor but also to the owner of the property, or the tenant/occupier, as the case may be, in line with the Constitutional Court decision in Joseph and Others v City of Johannesburg and Others CC 43/09.
- 14.16 Any additional grounds for disconnecting Municipal services as set out in the Bylaw, shall be deemed to form part of this Policy.
- 14.17 Any municipal employee involved in an instance of not carrying out the disconnection processes may be subjected to the relevant disciplinary procedures.

## **DOMESTIC WATER AND SEWAGE DISPOSAL CUSTOMERS**

- 15.1 Flow restrictors shall be installed in water connections of Customers who have not paid the total charges for water services (i.e. supply of portable water, and, where applicable, the disposal of sewage) for sixty (60) days or more, and who owe the Municipality more than the amount determined by the CFO from time to time, for water used and sewage discharged and who have not responded to written notification from the Municipality to–
- a. pay the outstanding amount;
  - b. meet with officials of the Municipality; or
  - c. make arrangements to settle the debt.
- 15.2 On restriction of the water supply via a flow restrictor washer, Customers have the following payment options–
- a. pay the outstanding arrear amount in respect of water service charges plus all relevant charges in full
  - b. Pay the current account and sign a payment arrangement for the arrear amount
- 15.3 In the event of tampering of a restricted supply, the Municipality may remove the entire water connection. Customers may facilitate the re- instatement of the water supply– pay the outstanding debt in respect of water services charges in full (including all charges) plus the prevailing costs of a new water connection and penalty charges;

- 15.4 Flow restrictors shall be installed in water connections of Customers who have not paid the total charges for water services (i.e. supply of portable water, and, where applicable, the disposal of sewage) for sixty (60) days or more, and who owe the Municipality more than the amount determined by the CFO from time to time, for water used and sewage discharged and who have not responded to written notification from the Municipality to–
- a. pay the outstanding amount;
  - b. meet with officials of the Municipality; or
  - c. make arrangements to settle the debt.
- 15.5 On restriction of the water supply via a flow restrictor washer, Customers have the following payment options–
- a. pay the outstanding arrear amount in respect of water service charges plus all relevant charges in full
  - b. Pay the current account and sign a payment arrangement for the arrear amount
- 15.6 In the event of tampering of a restricted supply, the Municipality may remove the entire water connection. Customers have one option to facilitate the re- instatement of the water supply–
- a. pay the outstanding debt in respect of water services charges in full (including all charges) plus the prevailing costs of a new water connection and penalty charges;

15.7 Flow restrictors shall be installed in water connections of Customers who have not paid the total charges for water services (i.e. supply of portable water, and, where applicable, the disposal of sewage) for sixty (60) days or more, and who owe the Municipality more than the amount determined by the CFO from time to time, for water used and sewage discharged and who have not responded to written notification from the Municipality to–

- a. pay the outstanding amount;
- b. meet with officials of the Municipality; or
- c. make arrangements to settle the debt.

15.8 On restriction of the water supply via a flow restrictor washer, Customers have the following payment options–

- a. pay the outstanding arrear amount in respect of water service charges plus all relevant charges in full
- b. Pay the current account and sign a payment arrangement for the arrear amount

15.9 In the event of tampering of a restricted supply, the Municipality may remove the entire water connection. Customers have two options to facilitate the re- instatement of the water supply–

- a. pay the outstanding debt in respect of water services charges in full (including all charges) plus the prevailing costs of a new water connection and penalty charges; or
- b. The current amount, the connection costs and penalty charges must be paid immediately and sign a suitable payment arrangement for the arrear amount.

- 15.10 If a Customer has received a new connection and then tampers with it again, the connection will be removed and will not be replaced until all outstanding water debts and penalties have been paid in full.
- 15.11 All illegal connections that are found will be removed and owners and occupiers may be prosecuted by a court of law.
- a. The Credit Authority shall be cancelled on application for a revenue clearance certificate and all debts on the property shall become due, owing and payable.
- 15.12 In the event of a funeral or other function associated with the death of a family member, or a family wedding, an application may be made for temporary relief whereby the flow regulator may be removed for a specific period of up to seven days only. The application must be supported by a letter from the ward or PR Councillor. The flow regulator will be reinstated after seven days.

## **16 TERMINATION OF SERVICES AND SERVICES AGREEMENT**

- 16.1 At least fourteen (14) days' notice is required from the Customer upon termination of an account, to enable the Municipality to take final meter readings and process account adjustments.
- 16.2 Once the account is terminated, the account must thereafter be linked to the owner's rates account.
- 16.3 Unless otherwise directed by an order of court, the Municipality will not terminate or disconnect water and or electricity supply, at the request of a Landlord or owner, where there are occupiers on the property or premises and the Landlord or the owner is not a Customer in respect of such supply.

16.4 A Customer who wishes to terminate, disconnect or remove a water and or electricity supply where there are occupiers on the property or premises, must, before such an application may be considered:

(a) Provide the Municipality with proof that the occupiers have been given 14 days' notice of the proposed termination (not later than 30 days prior to the lodging of an application with the Municipality); and

(b) Settle all amounts owing to the Municipality or make a suitable arrangement to liquidate the debt as contemplated in section 24 of this Policy.

16.5 The requirement to give 14 days' notice mentioned in subsection 18.4 above, is in line with the Constitutional Court decision in Joseph and Others v City of Johannesburg & Others CCT 43/09 and the principles of administrative justice.

16.6 The Municipality may exercise its common-law right where a tenant on a property is in breach of his or her contract with the Municipality, and link the debt to the owners' account. The tenant shall forfeit his or her deposit to the owner where the outstanding debt is paid by the owner.

16.7 The Municipality may terminate a service agreement, having given a written notice of not less than 14 days to the Customer, if the Customer concerned has breached or failed to comply with any specific term or condition of the service agreement, and has failed to remedy such breach or rectify such failure after service on such Customer of a notice to do so in terms of section 11 of the Credit Control and Debt Collection By-law.

## **17 UNALLOCATED CONSUMPTION**

17.1 A registered owner remains liable to monitor his /her property as well as meter readings even if all electricity or water services have been disconnected. Accordingly when electricity and water consumption is recorded on a property during a period for which there is no registered Customer against whom a bill can be raised, the relevant charges for electricity and water services shall be raised against the registered owner on his or her consolidated bill. Furthermore, the Municipality has the right to remove relevant

Municipal infrastructure (and other components) at the cadastral boundary of the property to ensure that ongoing electricity and or water consumption, is terminated.

## **18 METER READINGS**

The Municipality may estimate readings and read meters in accordance with the period prescribed in the respective water and electricity Policies and By-laws.

## **19 REVENUE CLEARANCE CERTIFICATES**

Subject to Sections 118(1) and (1A) of the Systems Act, the following shall apply to the issue of a revenue clearance certificate for the purpose of effecting transfer of a property to a new owner.

### **19.1 Assessments—**

- a. an application shall be made by a conveyancer, in the prescribed form. Each application must be accompanied by the relevant application fee. The application will not be processed until the fee is paid.
- b. copies of all current accounts must accompany any application made manually or electronically, as the case may be. If the relevant information is not provided, the application will be returned to the conveyancer.
- c. the Municipality does not accept responsibility for errors on manual applications. The Conveyancer must check that all details on the application, assessment and the revenue clearance certificate are correct.
- d. assessed figures are calculated in advance based on the period determined by the CFO. Municipal charges are estimated based on previous consumption, taking into account any existing Property Rates Rebate. However, in the case of a transfer of a share in a deceased estate property to the heir and holder of the other share/s, assessment figures may be calculated thirty (30) days in advance if all arrear debt is paid or will be paid when the assessment is paid by the Conveyancer and the heir is already registered on the system as a Customer in respect of such property. Should the Conveyancer opt for the reduced assessment period, he/she must indicate this when making application for a revenue clearance certificate.



- e. Where an assessment is requested and there is Section 118(1) debt, and other outstanding amounts that have arisen during ownership of a property ("Section 118(3) debt"), the Municipality shall notify the Conveyancer, in writing and request an indication of the manner in which the whole of the debt will be settled. The Conveyancer must inform both the seller and the purchaser of the outstanding debt due to the Municipality.
- f. The only acceptable modes of settlement of Section 118(3) debt, other than in the case of insolvency, are: (1) full payment or (2) the furnishing of a Financial Guarantee in favour of the Municipality for the Section 118(3) debt payable on date of registration of transfer of the property.
- g. The Conveyancer must indicate to the Municipality in writing, which of the two settlement modes referred to in 22.1(f) will be used in order to settle the Section 118(3) debt. Such notification must be furnished as soon as possible but no later than 2 days after the date of issue of a revenue clearance certificate in terms of Section 118(1) of the Systems Act.
- h. an "Attorneys' Report" in respect of all amounts owing and the assessed figures, shall be issued upon the receipt of the request for the report.
- i. the assessment shall remain valid for a period of thirty (30) days from the issue date. If payment has not been received within this period, a re-assessment may be required and payment of a further application fee will apply.
- j. prior to the issue of a revenue clearance certificate for a subdivision which is still held under the title of the parent property, the owner/seller must pay all debt on the parent property. The onus rests with the owner/seller to ensure that on new sub-divisions, the debts on the parent property are fully paid.

- k. any discrepancies may result in delays in the issuing of a revenue clearance certificate, and in addition may result in the levying of additional backdated rates, penalties or charges.
- l. any amounts paid shall be appropriated to the oldest debt first.
- m. a separate application is required for each transfer.
- n. an assessment in terms of S118 (1) of the Systems Act will only be issued on request by a Conveyancer.
- o. The Municipality shall exercise its rights to recover such debt as guided by the law on the application of Section 118 of the Systems Act.
- p. the onus is on the Conveyancer to advise the seller of the provisions of section 19.1.o above.
- q. where the Municipal account is in respect of a debt consolidated under Section 102 of the Systems Act, the said consolidated account will be deconsolidated on application for a revenue clearance certificate. An account for the property subject to the Revenue Clearance application will be rendered together with the full interest that accrued on the consolidated account.
- r. Assessed figures **must** be based on, and will be issued only, once an actual reading has been done.
- s. Subject to section 19.7 of this Policy, a revenue clearance certificate shall be issued within ten (10) days of the date of payment of the amount requested in the "Attorneys' Report".

- t. Where simultaneous transfers of a property are contemplated, the Conveyancer must apply for a separate revenue clearance certificate in respect of each new transfer.
- u. A conveyancer must, when requesting an assessment in respect of a property to be transferred to a minor, submit an affidavit in the prescribed form providing such particulars of the minor and of the minor's guardian as may be prescribed.

## 19.2 Revenue Clearance Certificates–

- a. Payment of the assessment must be made in cash, EFT payments, direct debit, bank transfers, bank cheques or other instruments accepted by the CFO from time to time.
- b. There shall be no refunds on the cancellation of a sale or otherwise.
- c. The Certificate shall be valid for a period of sixty (60) days from date of issue.
- d. The certificate shall be endorsed with the balance owing as a charge against the property in order to bring the same to the attention of the seller, buyer and conveyancer. The onus is on the conveyancer to advise his or her clients accordingly.
- e. The Municipality reserves the right to follow any of the legal mechanisms available to it in order to recover the balance of the debt, including, lodging an urgent application to interdict the sale of the property until the debt is paid in full.
- f. All Collection Charges incurred in pursuing recovery of arrears, shall be levied against the debtor's account.

19.3 Information and contact details of the purchaser provided on the revenue clearance certificate shall be used as details of the new owner (purchaser) for the purposes of billing for rates, services and consolidated accounts, until the same has been changed by the purchaser.

19.4 On the date of ownership transfer, the previous owner's (the Seller) service agreement will be deemed to have lapsed, and the new owner (purchaser) must conclude a new service agreement with the Municipality in terms of this policy and By-law.

- 19.5 The seller shall furnish to the Municipality new contact details, in writing, comprising a postal and physical address and such further information as may be determined by the CFO from time to time, prior to the Municipality issuing the rates clearance certificate. The seller shall continue to keep the Municipality informed of any change in contact details until such time as the Municipality has confirmed in writing that all amounts that became due whilst the property was in the ownership of the seller (whether or not raised at the time of the rates clearance certificate) have been paid up. Non-compliance with this section will be regarded as an offence.
- 19.6 Subject to the application of the law, where, subsequent to the transfer of ownership of a property, the Municipality becomes aware of any Municipal Charges that ought to have been raised in terms of any Legislation (e.g. the MPRA) or this Policy against a predecessor in title to the property, the Municipality will be entitled to hold such predecessor in title liable for such Municipal Charges. If, by law, the Municipality is entitled to continue raising such Municipal Charges post transfer, the new owner will only become liable for those Municipal Charges that become due and payable with effect from the date of transfer.
- a. An example will be the levying of adjusted rates in terms of Section 78 of the MPRA on account of an event on the property (e.g illegal building works) or a change of category (e.g. an illegal use of the property) that occurred prior to transfer and continues post transfer.
- 19.7 Where an application has been made for a revenue clearance certificate, in respect of a property on which unauthorised development has taken place, or unauthorised /illegal activities have been conducted, the application will not be processed further until such time as the Municipality has re-assessed the valuation of the property.

## **20 LEGAL ACTION.**

20.1 Legal proceedings may be instituted by the Municipality to recover arrear amounts on service accounts, where—

- a. disconnection action yielded no satisfactory result;
- b. disconnection action is not possible due to the nature of the services for which the account has been rendered; or
- c. the arrears are older than ninety (90) days.

20.2 The Municipality may, in terms of Sections 28 and 29 of the MPRA, recover arrear rates from tenants in occupation of the relevant property, or managing agents, but only to the extent of the rent payable or amount due by the tenant but not yet paid to the owner of the property. This does not preclude further legal action against the owner.

20.3 For residential properties occupied by owners, all reasonable steps shall be taken to ensure that the ultimate sanction of judgment and sale-in-execution is avoided or taken as the last resort. The Municipality, however, has total commitment to follow the legal process through to judgment and sale-in-execution should the debtor fail to make use of the alternatives provided for by the Municipality from time to time.

20.4 Once judgment is obtained the properties will be advertised and sold through public auction, unless appropriate settlement has been made to the satisfaction of the Municipality. The Municipality shall assess annually, the appropriate minimum amount below which it will not attach homes.

20.5 All Collection Charges shall be debited to the relevant debtor's account.

20.6 Proceeds of the Sale in Execution may be appropriated to any of the debtor's accounts in arrears.

- 20.7 Metering and connection equipment remain in the ownership of the Municipality at all times and the owner of the property, on which such meters and connection equipment is installed, shall be held responsible for all instances of tampering, damage or theft. Accordingly, the owner of the property concerned is liable for any breach of this duty and may be prosecuted.
- 20.8 Where a Sectional Title Body Corporate is in arrears, the CFO may apply to court for the appointment of an administrator in terms of Section 16 of the Sectional Titles Management Scheme Act 8 of 2011, as amended, or for the joinder of the members of the Body Corporate, in their personal capacities as joint judgment debtors in respect of a judgment debt in favour of the Municipality in terms of section 15 of such Act.

## **21 CREDIT AUTHORITIES IN RESPECT OF ARREARS IN TERMS OF SECTION 58 OF THE MAGISTRATES COURTS ACT**

- 21.1 The Municipality may, at its discretion, enter into a Credit Authority in the prescribed form, incorporating a consent to judgment in terms of section 58 of the Magistrates Courts Act, with Customers and owners in arrears with municipal service fees, surcharges on fees, property rates and other municipal taxes, levies, duties and sundry charges, after consideration of an application submitted by such persons as prescribed by the Municipality.
- 21.2 The Municipality may conduct a credit check and request certain information from a Customer or owner in order to satisfy itself that the Customer or owner will be able to honor the agreement. Such credit check may include a full risk analysis of the Customer or owner concerned to determine his/hers/it's:
- (a) Risk profile as an individual/entity;
  - (b) Interests in any Juristic person;
  - (c) Affordability of the proposed debt instalments; and
  - (d) Court orders or agreements, if any, with other creditors for payment of a debt and costs in instalments
- 21.3 Before any Credit Authority is concluded, all municipal service fees, surcharges on fees, property rates and other municipal taxes, levies, duties and sundry charges must be consolidated onto one account (if not done previously) and a Credit Authority concluded for the full debt.
- 21.4 The customers' current account must be paid in full, and maintained, for the duration of the Credit Authority.
- 21.5 The owner of a property must consent in writing to a Credit Authority being entered into between the Municipality and his or her tenant.



21.6 Should the tenant breach the Credit Authority referred to in subsection 24.5 above, the Credit Authority and the account shall be terminated immediately with the tenant and linked to the owner's rate account.

21.7 Re-connection and disconnection fees, where applicable, must be paid in full before any Credit Authority can be entered into.

21.8 By entering into a Credit Authority, the debtor(s), and where applicable, the owner, acknowledges that failure to meet any installment will, subject to the provision of the Bylaw, result in prompt disconnection action being taken, without prejudice to any legal action that the Municipality may take to recover the arrears.

21.9 Credit authorities to be concluded with Juristic persons shall require;

- a. documentation and information as set out in section 3.12 above as maybe applicable;
- b. the financial situation of the Juristic person to be reviewed taking into account latest audited financial statements and other supporting documentation relevant to their financial position;
- c. Deeds of suretyship in favour of the Municipality, by the persons referred to in subsection 3.12 (b) above, as the case maybe; in an amount equivalent to the value of the debt plus current accounts; and
- d. the deposit to be reviewed.

21.10 A Credit Authority may **not** be granted where—

- a. arrears have arisen due to dishonoured cheques or direct debit reversals;
- b. instances of repeated meter tampering or illegal connections have been identified;
- c. the services have been removed;
- d. a customer has failed to honour a previous acknowledgement of debt for the payment of arrears to the Municipality, unless the CFO otherwise decides on good cause shown;

- e. the CFO determines that the customer will be unable to afford the debt repayments under the Credit Authority; or
  - f. Any other relevant factors as determined by the CFO from time to time.
- 21.11 Where any debt has arisen as a result of a faulty meter or the Municipality having applied an incorrect charge or tariff, the Customer may arrange to pay the debt over a maximum period at the discretion of the CFO.
- 21.12 The amount of the down payment and the period of the Credit Authority shall be at the discretion of the CFO.
- 21.13 The Credit Authority shall be terminated if a debtor relocates from the property. The balance owing shall become immediately due and payable.
- 21.14 The monthly installments on a Credit Authority are payable within twenty one (21) days from the date of the account notwithstanding any further extension of time printed on the face of the account.
- 21.15 A Credit Authority shall be cancelled upon application for a revenue clearance certificate on the property, and the whole debt shall become due, owing and payable, notwithstanding any agreement to the contrary.
- 21.16 Where the Credit Authority is based on interim readings, the amounts on the Credit Authority will accordingly be adjusted once the actual readings are taken. The Customer must sign any additional documentation relative to this.
- 21.17 A Credit Authority for staff and councilors shall be in accordance with section 13.
- 21.18 The customer who signs a Credit Authority may make payment to the Municipality via a Debit Order.
- 21.19 The Municipality is not a Credit Provider within the meaning of the National Credit Act, 2005 (Act No 34 of 2005). Nothing in this Policy should be construed as conferring such status on the Municipality.

## **22 DISPUTES**

- 22.1 A Person who wishes to lodge a dispute in respect of an account must submit the dispute in writing, on the prescribed form in the case of rates, to the Authorised Official as defined in this Policy stating the reasons for such dispute and any relevant facts, information or representation which the Authorised Official should consider to resolve the dispute.
- 22.2 The dispute must be submitted within twenty one (21) days of the account. If a dispute is raised after this period, it will be treated as an enquiry, the account will not be suspended and normal credit control procedures will apply.
- 22.3 The dispute must relate to a specific amount on the account. Amounts not in dispute must be paid in full. If the amounts not in dispute remain unpaid, services may be disconnected.
- 22.4 Should any dispute arise with respect to the amount owing, the debtor must continue to make regular payments based on the average charges for the preceding three (3) months prior to the dispute, plus interest where applicable. A debtor may not raise a dispute under this Policy in relation to rates levied on a property due to its categorization of Unauthorised or Illegal Development in terms of the MPRA. The legal remedies to object or appeal against such categorization, are contained in the MPRA
- 22.5 A query is not regarded as a dispute. A query is a verbal inquiry whereas a dispute must be in writing and lodged with the relevant municipal department or section.
- 22.6 Proven tampering charges are not regarded as a dispute. Where a charge or penalty has been legally raised in relation to an Illegal Connection, a person may not raise a dispute in terms of this section 25. Any legal remedies must be invoked under the legislation that gave rise to the charge or penalty. The charge or penalty remains payable unless reversed by law.
- 22.7 The person contemplated in 25.1 above must provide the Authorised Official with the account alleged to be in dispute, which includes incorrect readings, misallocation of payments, incorrect tariffs charged and incorrect property values used and any other relevant information that may be required.

22.8 The Authorised Official:

- a) May investigate or cause the dispute to be investigated within thirty (30) days , or as soon as possible after such dispute is received;
- e) May call for additional information /documentation from a Customer who disputes an account;
- f) Must inform the person in question , promptly, in writing, of his or her finding after conclusion of the investigation; and
- g) Must take a decision, based on the spirit of the Policy.

22.9 A dispute submitted above shall not stop or defer the continuation of any credit control and legal procedure already instituted for the recovery of arrear payments relating to such dispute.

22.10 A Person has the right to appeal to the CFO against the decision of the Authorised Official. The CFO may hear representations and either confirm, vary or revoke the decision of the Authorised Official and must communicate his decision within 30 days of date of receipt of the appeal or as soon thereafter as possible.

22.11 A person whose rights are affected by the decision of the CFO may lodge an appeal against that decision within 21 days of the date of notification of the decision, to the Municipal Manager in terms of section 62 of the Systems Act. The appeal must be lodged on the prescribed form.

22.12 Disputes regarding the General Valuation Roll must be submitted to the Municipality's Real Estate Unit in the form of an objection or appeal as envisaged by Sections 50 and 54 of the MPRA. The account must be paid in full until an objection or appeal outcome is reached where after the account will be credited or debited accordingly.

## **23 REFUNDS**

23.1 Credits on accounts shall only be refunded:

- 23.1.1 On application and subject to all the Customer's accounts being fully paid,
- a. to the account holder, on a water services or electricity account; or
  - b. to the owner; or
  - c. to the conveyancer to pay the buyer or seller, on/after transfer of a property,

unless otherwise directed by an order of Court.

23.2 The provisions of subsection 26.1.1 above shall also apply to any credits that may arise from an objection or Appeal process.

23.3 A refund shall be forfeited after 3 years if it remains unclaimed.

## **24 DECEASED ESTATES**

- 24.1 Subject to subsection 27.7, the Executor or representative of a Deceased Estate shall be liable for payment of all debts on the property.
- 24.2 Notwithstanding the provisions of section 3, for the purposes of liability for an account, including a consolidated account, the occupier or occupiers of a property which vests in a deceased estate where neither an executor nor representative has been appointed, will be regarded as the Deemed Owner. The CFO may request a deemed owner to sign a Service agreement. Where there is more than one occupier on the property, every occupier will be jointly and severally liable for an account or consolidated account.
- 24.3 "Deemed Ownership" does not confer any rights on an occupier other than the liability to pay the accounts or as contemplated in this policy.
- 24.4 In accordance with subsection 14.10, failure to inform the Municipality that the property forms part of a deceased estate may result in the disconnection of services, until an executor or representative has been appointed.
- 24.5 Where a deceased estate is insolvent (liabilities exceed all assets) and a property is sold by the executor pursuant to section 34 of the Administration of Deceased Estates Act, 1965 (Act 66 of 1965), the Municipality enjoys preferent creditor status in terms of section 118 (1) of the MSA. Accordingly, no revenue clearance certificate will be issued until all amounts assessed for the prescribed 2 year period, have been paid. The  
balance of the debt will be dealt with as guided by the law on the administration of deceased estates.
- 24.6 Where a deceased estate has not been wound up within a period of 3 years, then the Municipality, without derogating from such other rights as may exist in law, may disconnect a Municipal service to the property, or review the provisions of any applicable Service Agreement.
- 24.7 The Municipality may conclude a Credit Authority with any person who wishes to settle a deceased person's debt or a portion thereof. This provision is intended to assist family members of a deceased person or an occupier of property that is vested in a

deceased estate, to receive Municipal services pending the winding up of an estate.

## **25 IRRECOVERABLE DEBT**

25.1 Debt will only be considered as irrecoverable if it complies with one or more of the following criteria—

- a. all reasonable notifications and cost-effective legal avenues have been exhausted to recover a specific outstanding amount;
- b. any amount equal to or less than R500.00, or as determined by Council from time to time, will be considered too small, after having followed basic checks, to warrant further endeavours to collect it;
- c. the cost to recover the debt does not warrant further action;
- d. it has been proven that the debt has prescribed;
- e. the debtor is untraceable or cannot be identified so as to proceed with further action;
- f. the debtor has emigrated leaving no assets of value to cost-effectively recover the Municipality's claim;
- g. it is not possible to prove the debt outstanding;
- h. a court has ruled that the claim is not recoverable;
- i. the claim is subject to any order of court;
- j. the claim is subject to an out of court settlement agreement;
- k. the debt is subject to a settlement in terms of section 109 of the Systems Act;
- l. the Municipality has resolved that the debt is irrecoverable;

- m. if an offer of Full and Final Settlement is accepted and confirmed in writing by the Head: Legal and CFO if it has financial implications;
- n. the outstanding amount is -
  - i. as a result of an administration error;
  - ii. an interest as a result of a property debt that arose prior to the current owner taking transfer and successive transfers before his; or
- o. expenditure incurred in respect of internal accounts raised in the name of the Municipality, in any previous financial year;
- p. conversion of old dormant account balances of debtors, inherited from the previous municipalities which now form part of the Municipality, and where reasonable steps have been taken to recover these debts; or
- q. where the Municipality-
  - i. expropriates any property; or
  - ii. purchases any property in terms of its Sales in Execution.

25.2 Provided there is sufficient provision for bad debt, the CFO shall write off any revenue which is irrecoverable or the recovery of which is considered not to be reasonably practicable.

25.3 The CFO must report to Council all amounts that have been written off as irrecoverable with the Section 71 MFMA report

## **26. INCENTIVE SCHEMES**

Incentive schemes may be implemented at the discretion of the CFO from time to time to encourage the payment of municipal accounts.



## 27. DEBT RELIEF PROGRAMME

27.1 The debt relief programme is aimed at assisting Customers who are in arrears for rates and services charges, for a period of sixty (60) days or more. Customers, excluding staff and Councillors, eligible for the debt relief programme are those families–

- a. who reside on property with a rateable value as determined by the Municipality at its annual budget; or
- b. who, irrespective of the property value, are confirmed by the CFO as being too poor to be able to afford their current service charges debt; after having taken into consideration an assessment report from a Municipal Official in terms of subsection 16.2.b; or
- c. where the Customer has temporarily lost employment and has been verified through the ITC system

27.2 The following criteria must be met before a Customer will be regarded as eligible for debt relief:

- d. a comprehensive report by the ward or PR councillor on the Customer and status as contemplated in 16.1 b. and/or 16.1 c must be submitted to the Municipality;
- e. an assessment and report by the municipal official who would present his or her opinion, based on a site visit, on whether the family qualifies for debt relief;

27.3 Upon approval of the Customer's eligibility for debt relief by the CFO, the debt may be written off or the subsidy (that equivalent to the indigent) may be provided for the specified period of relief. The CFO must report the writing off of all debt in terms of this section to the Municipal Council by compiling a report in terms of with the Section 71 of the MFMA.

## **28. BUSINESS RESCUE**

28.1 In terms of Section 118 (3) of the Systems Act, an amount due for municipal service fees, surcharge on fees, property rates and other municipal taxes, levies and duties is a charge upon the property in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property. Accordingly

28.1.1 Where in terms of the Companies Act, 2008, a company is required to publish a notice in terms of subsection (3)(a) or (4)(b) of Section 129 relating, respectively to the adoption of a resolution to be placed under business rescue or the appointment of a business rescue practitioner, it must simultaneously give notice to the Municipality.

## **29. MISREPRESENTATION**

29.1 Any person who has received any benefit or relief in terms of this Policy and who has misrepresented themselves in order to qualify for such benefit or relief commits an offence and, in addition to criminal proceedings, remedial measures will be taken in a manner as determined by the Municipality from time to time, and the CFO–

- (a) Will reverse all benefits and relief received;
- (b) Will raise any fee, as determined by Council from time to time, as set out in the Tariff Policy; and
- (c) Will cancel any Credit Authority and all amounts due to the Municipality will become payable immediately.

29.2 The Municipal Manager shall report any misrepresentation in terms of this Policy to the South African Police Services.



# NEWCASTLE MUNICIPALITY



## PROVISION FOR DOUBTFUL DEBTS AND DEBTORS WRITE OFF POLICY

Provision for doubtful debts and debtors write off policy 2020-21

## Contents

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## **1. Definitions:**

In this policy, unless the context indicates otherwise:

"the municipality" means the Newcastle Municipality;

"debt" means an obligation in money and/or services due and owing to the municipality;

"debtor" means a person, natural or juristic, who owes a debt to the municipality and who may be compelled to pay in terms of a claim or demand by the municipality;

"irrecoverable debt" means the debt which in terms of this policy meets the criteria for writing off;

## **2. Purpose and Scope of the Policy**

The purpose of this policy is to provide a framework for regulating the write-off and provision of irrecoverable debts and the consequent further enhancement of the municipality's debt management strategy.

## **3. Objective of the Policy**

- 3.1 To ensure that the debtors disclosed in the annual financial statements are stated at amounts that are deemed to be collectable.
- 3.2 To ensure that the uncollectable debt is written off within the guidelines of the existing policies and applicable legislation.

## **4. Transparency, accountability and fair administrative action**

The municipality commits itself and its officers to act fairly and justly in an open and transparent manner in implementing this policy.

- 4.1 A proposal to write-off a debt, either as part of a group of debts, or individually, will be considered by the CFO on its merits pursuant to the procedure and with due regard to the information which must be provided to it in terms of this policy.
- 4.2 The Constitution entitles everyone to administrative action which is lawful, reasonable and procedurally fair and to be given reasons for any such action which affects them.
- 4.3 The Promotion of Administrative Justice Act, No 3 of 2000 is the legislation required by the Constitution to give effect to the right to just administrative action and in order to promote an efficient administration and good governance and to create a culture of accountability, openness and transparency in public administration or in the exercise of a public power or the performance of a public function.
- 4.4 This policy incorporates the above principles by providing parameters and procedures to guide the municipality and its officers in implementing it, and thereby exercising a public power through a series of administrative actions. In so doing, the policy seeks to provide certainty on the part of those affected by it with regard to how the municipality will act in the circumstances covered by the policy and uniformity of action on the part of its officers.

## **5. Policy principles**

The following are the principles for the Debtors Write-Off of Irrecoverable Debt Policy –

- 5.1 The policy comply with the Local Government: Municipal Finance Management Act (No 56 of 2003), the Local Government: Municipal System Act (No 32 of 2000) and other related legislation.
- 5.2 Before any debt is written-off it must be proved that the debt has become irrecoverable. To ensure that recommendations for the writing-off of debt are consistent and accurate; irrecoverable debt will be defined as –
- i. Where the tracing of the debtors is unsuccessful;
  - ii. All reasonable steps, in terms of the Credit Control Policy, were taken by the administration to recover the debt; and
  - iii. All old debts of the approved indigents accounts.
- 5.3 Bad debt to be written-off must be considered in terms of cost benefit. Therefore, when it becomes too costly to recover and the chances of collecting the debt are very slim, a write-off should be considered.
- 5.4 Time value of money is very important because the older the debt becomes, the more difficult and costly it becomes to collect. It is therefore imperative that a proper system of credit control is implemented and maintained to avoid debt reaching the stage of becoming too expensive to recover.

## **6. Impairment of debtors**

Consumer debtors, long term receivables and other debtors are stated at cost less a provision for doubtful debts. The provision is made on an annual basis, or based on the expected cash flows.

In accordance with the relevant legislation and accounting framework an objective assessment of the accounts receivable is made at the financial year end to determine a possible impairment of the asset.

Individual classes of receivables are assessed for impairment using the following methodologies:

### **6.1 Consumer Debtors**

Consumer debtors are evaluated at each reporting date and impaired as per Risk Assessment Profile per debtor as per the report received from ITC

### **6.2 Sundry deposits**

Sundry deposits are assessed for impairment to ensure that no objective evidence exists that these deposits are irrecoverable.

### **6.3 Sundry debtors**

Sundry debtors are assessed for impairment to ensure that no objective evidence exists that these debtors are irrecoverable.

## **7. Procedures for writing off of debt**

### **7.1 General**

- a) A debt may be written off by the CFO and reported to Council by Sec 71 Reporting.
- b) The CFO may unless specific provision is made elsewhere in this policy, write off a debt containing at least the information prescribed in this policy certifying that the processes provided for in the municipality's Credit Control and Debt Collection Policy have been adhered to and that in his / her opinion there is no reasonable prospect of recovery of the debt and / or that further efforts to do so would be uneconomical.
- c) A debt may only be written-off against the municipality's provision for doubtful debts,
- d) The writing-off of a debt is an accounting procedure and does not constitute abandonment by the municipality of its claim against a debtor.

Provision for doubtful debts and debtors write off policy 2020-21



- e) Copies of the reports to the Council in regard to all debts written-off are to be retained in the records of the municipality against the name of the debtor.
- f) In terms of the Indigent Policy, the arrears on an account are written-off upon registration as an indigent account and the related report is submitted to Council.
- g) Upon closure of an active account and after the security deposit is released, any outstanding balance of one hundred rand (R100.00) or less after three months that cannot be transferred to another account belonging to the accountholder should be written-off and a report submitted to Council accordingly.

#### 7.2 Information to be placed in a report of writing off of a debt or group of debts:

- a) In the case of an individual debt, particulars of the debt including the amount of the debt, stating separately the capital amount and the interest accrued.
- b) In the case of a group of debts, particulars of the group including a motivation for the submission of the debts in question as a group (e.g. cause of action, collection procedures and prospect of recovery similar in each case) and the total amount of the debts in the group, stating separately the total of the capital amounts and interest accrued.
- c) Steps taken to recover the debt or group of debts
- d) Particulars of the debtor including:
  - i. Account number;
  - ii. Name of account holder;
  - iii. Whether the account holder has been liquidated or sequestrated;
  - iv. Whether the debtor can be traced.
- e) Any other information relating to the debt which may be requested by Council.

### 8. Factors which may be taken into account in writing off debt

- 8.1) A debt is deemed to be irrecoverable:
  - a. If it has prescribed in terms of the Prescription Act, No 68 of 1969;
  - b. If the debtor has been sequestrated or liquidated and the proceeds of the sequestration or the liquidation are insufficient to satisfy the debt;
  - c. The cost of recovery of the debt is likely to exceed the amount outstanding.
- 8.2) Any other debt may not be deemed to be irrecoverable unless:

- a. all of the debtor's attachable movable and immovable property has either been sold in execution and the proceeds have not satisfied the debt, or the cost of recovery is higher than the value of the movable property;
  - b. the debtor is employed or in receipt of an income and all processes to attach that income or to obtain a court order for payment of the debt in instalments have been exhausted.
- 8.3) A debt may be considered irrecoverable if all reasonable attempts to trace the whereabouts of the debtor have been unsuccessful and no attachable assets have been found.
- 8.4) If the ITC report indicates that the debtor is deceased, is an uncollectable individual and the business is liquidated or deregistered.

## **9. General provisions relating to the writing off of debt**

- 9.1 Not less often than once during the municipality's financial year, the Accounting Officer shall submit a report to the Council on debts to be written-off.
- 9.2 A debt shall not be regarded as written-off until the Council has taken a resolution.
- 9.3 Prior to writing-off a debt and after consideration of the report and recommendation of the Accounting Officer in terms of this policy, the Council must be satisfied that:
- i. the municipality has exhausted all means of debt recovery provided for in its Customer Care, Credit Control and Debt Collection Policy;
  - ii. recovery of the debt in question has been pursued diligently and completely;
  - iii. no other reasonably possible and practical means of recovery of the debt exists.
- 9.4 The writing off of a debt must be recorded in the records of the municipality and in its books of account in terms of Generally Recognised Accounting Practice.
- 9.5 The Council must in its budget make provision for doubtful debts through the medium of a funded reserve established in terms of the municipality's Funding and Reserve Policy, compliant with regulation 8, Municipal Budget and Reporting Regulations R 3214 dated 17/4/09.

- 9.6 Should any provision of this policy conflict with a provision of the municipality's Indigent Policy relating to a debt of a registered indigent, the latter policy takes precedence.
- 9.7 In writing-off a debt, the municipality does not abandon its claim and all amounts recovered in reduction of a debt subsequent to its writing-off shall be recorded in the books of the municipality as income.



THE NEWCASTLE  
**MUNICIPALITY**  
NEWCASTLE KWAZULU-NATAL

**SUPPLY CHAIN MANAGEMENT POLICY (DRAFT)**

**2020/2021**

**Approved by Council on 29 May 2020**

**SUPPLY CHAIN MANAGEMENT POLICY OF THE  
NEWCASTLE MUNICIPALITY**

**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT NO 56 OF 2003**

Date of adoption: 29 May 2021

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

Document Number:	Policy No:	Revision:	DD-001/2019	Signature
Author		Designation:	Director of SCM	
Reviewed By:		Designation:	Accounting Officer	
Recommended For EXCO Approval By:		Designation:	Accounting Officer	
Recommended For Council Approval By:		Designation:	Chairperson – Audit And Risk Committee	
Approved By:		Designation:	Chairperson – Council	
Effective Date:		Review Date:		

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## 1. Policy Statement / Preamble

The Municipal Finance Management Act, (Act No.56 of 2003), as amended, provides that the Newcastle Municipality has a duty to take effective and active measures to be financially efficient, effective, transparent and economical through its supply chain management (SCM) processes.

## 2. Purpose

The purpose of this policy is to regulate the supply chain management functions and systems of the municipality.

## 3. Objective

- a. To provide a framework to implement the provisions of section 217 of the Constitution of the Republic of South Africa in order to:
- b. Implement a policy that is fair, equitable, transparent, competitive and cost effective and complies with all the applicable provisions of the Municipal Finance Management Act (MFMA).
- c. Ensure consistency with the legal framework for MSCM.
- d. Ensure that the municipality's strategic objectives are achieved.

## 4. Definitions

In this SCM 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 19 (1) (d) of this SCM 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 19 (1) (c) of this SCM Policy;

**“Family member”** means a parent, sibling, child or spouse of a member

**“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;
- a) a member of the board of directors of any municipal entity;
- b) an official of any municipality or municipal entity;
- c) 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);
- d) a member of the accounting authority of any national or provincial public entity; or
- e) 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 Newcastle Municipality must keep in terms of paragraph 21 of this SCM policy;

**‘Member’** means a person appointed by the accounting officer/authority to a bid evaluation panel, either as the chairperson, or as an ordinary member or secretariat, for purposes of conducting the evaluation of either transaction advisor bids or PPP bids as a representative of the institution

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

- a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);
- d) Preferential Procurement Regulations, 2017

**‘Privileged or confidential information’** means any information:

- a) determined by the institution to be privileged or confidential
- a) discussed in closed session by the bid evaluation panel
- b) which if disclosed would violate a person's right to privacy
- c) declared to be privileged, confidential or secret in terms of any law including, but not limited to, information contemplated in sections 34(1);35(1); 36(1); 37(1)(a); 38(a); 39(1)(a); 40 or 43(1) of the Promotion of Access to Information Act, 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 19(1)(b) of this SCM Policy.

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

**“B-BBEE status level of contributor”** means the B-BBEE status receive by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

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

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

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

**“designated group”** means-

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

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

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

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

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

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

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

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

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

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

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

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

**“rural area”** means-

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

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

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

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

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

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

**“Collusive Bidding/tendering”** occurs Collusive bidding/tendering (or bid rigging) occurs when business, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and/ or services for purchasers who wish to acquire goods and /or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

**“Irregular expenditure”** means Irregular expenditure means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including the MFMA.

**“Preferential Procurement legislation”** The Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000) and it's associated Preferential Procurement Regulations of 2017.

## 5. Abbreviations

Abbreviation	Description
B-BBEE	Broad-Based Black Economic Empowerment
CFO	Chief Financial Officer
CIDB	Construction Industry Development Board
CSD	Central Supply Database
MFMA	Municipal Finance Management Act
PO	Purchase Order

PPP	Public Private Partnership
PPPFA	Preferential Procurement Policy Framework Act
SCM	Supply chain management
TOR	Terms of Reference

## 6. Legislative Framework

This policy is underpinned by the following pieces of legislation:

- The Constitution of the RSA, Act 108 of 1996, as amended
- Municipal Finance Management Act, (Act No. 56 of 2003), as amended (MFMA)
- Municipal Supply Chain Regulations (MSCM)
- All National Treasury and KwaZulu-Natal Provincial Treasury Practice Notes, Circulars, letters and instruction notes issued from time to time
- The Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000
- The Preferential Procurement Regulations issued in 2017
- The Broad-based Black Economic Empowerment Act, the Strategy and the Codes of Good Practice
- Construction Industry Development Board Act No 38 of 2000 and its Regulations
- The Prevention and Combating of Corrupt Activities Act
- Promotion of Administrative Justice Act, Act No 3 of 2000
- Promotion of Access to Information Act, Act No 2 of 2000
- Protected Disclosures Act, Act No 26 of 2000
- The Competition Act, Act No 89 of 1998
- The King III Report on Corporate Governance for South Africa
- All other relevant acts, as well as the general legal environment within which contracts will be executed

## **CHAPTER 1**

### **IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY**

#### **7. Supply chain management policy**

7.1 All officials and other role players in the supply chain management system of the Newcastle Municipality must implement this SCM 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.

7.2. This SCM Policy applies when the Newcastle 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.

7.3. This SCM 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.

#### **8. Amendment of the supply chain management policy**

8.1. The accounting officer must –

(a) at least annually review the implementation of this SCM Policy; and

(b) when the accounting officer considers it necessary, submit proposals for the amendment of this SCM Policy to the Newcastle Municipal Council.

8.2. If the accounting officer submits proposed amendments to the Newcastle Municipal Council that differs from the model policy issued by the National Treasury, the accounting officer must

(a) ensure that such proposed amendments comply with the Regulations; and

(b) report any deviation from the model policy to the National Treasury and the KwaZulu-Natal Provincial Treasury.

- 8.3. 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.

## **9. Delegation of supply chain management powers and duties**

- 9.1. The Newcastle Municipal Council hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –
- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) this Policy;
  - (b) to 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.
- 9.2. Sections 79 and 106 of the Act apply to the sub-delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- 9.3. The accounting officer may not sub-delegate any supply chain management powers or duties to a person who is not an official of the Newcastle Municipality or to a committee which is not exclusively composed of officials of the Newcastle Municipality;
- 9.4. 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 31 of this Policy.

## **10. Sub-delegations**

- 10.1. The accounting officer may in terms of section 79 or 106 of the Act sub-delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this SCM Policy, but any such sub-delegation must be consistent with subparagraph (2) of this paragraph and paragraph 9 of this SCM Policy.
- 10.2. The power to make a final award:
- (a) above R2 million (VAT included) may not be sub-delegated by the accounting officer;
  - (b) above R200 000 (VAT included), but not exceeding R2 million (VAT included), may be sub-delegated but only to a bid adjudication committee of which the chief financial officer and senior management are members.
- 10.3. The bid adjudication committee must within five (5) days of the end of each month submit to the Accounting Officer a written report containing particulars of each final award made by The bid adjudication committee during that month, including:
- (a) the amount of the award;
  - (b) the name of the person to whom the award was made; and
  - (c) the reason why the award was made to that person.
- 10.4. Paragraph 10.3 does not apply to procurements out of petty cash.

- 10.5. This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been sub-delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 38 of this SCM Policy.
- 10.6. No supply chain management decision-making powers may be delegated to an advisor or consultant.

## **11. Responsibilities**

### **(a) Role of the Municipal Manager**

- (i) Ensures strict adherence to the guidelines provided in the SCM Policy.
- (ii) Implementation of the SCM Policy and submission of quarterly reports.
- (iii) Annual review of targets and the SCM Policy.
- (iv) Approves the inclusion of a service provider in the Municipality supply chain management system after rehabilitation of the service provider according to statutory requirements.
- (v) Appoints the members of the bid committees.

### **(b) Role of Directors**

Each director shall be responsible and accountable for:

- (i) exercising the powers, performing the functions and discharging the duties conferred or assigned to him in terms of this SCM Policy;
- (ii) implementing the SCM Policy and any procedural and other prescripts issued in terms of the SCM policy within his area of responsibility;
- (iii) ensuring compliance with the SCM Policy and any procedural and other prescripts issued in terms of the SCM policy within his area of responsibility;
- (iv) developing, or causing to be developed, draft specifications for the procurements by his directorate exceeding an amount of R 500 (VAT inclusive);
- (v) properly planning for and, as far as possible, accurately estimating the costs of the provision of services, works or goods for which offers are to be solicited;
- (vi) selecting the appropriate preference point goals to be utilised in the evaluation of offers;
- (vii) achieving any objectives and targets set with regard to procurements and disposals;



(c) The role of the Chief Financial Officer

- (i) Is the custodian of the SCM Policy and report on progress regarding its implementation.
- (ii) Has overall management of the quotation and competitive bidding process from solicitation to processing of invoice payment.
- (iii) Promotes corporate approach by encouraging standardization of items purchased within the Municipality to realize economies of scale.
- (iv) Ensures that procurements and disposals are effected through practices that demonstrate compliance to all relevant legislation.
- (v) Is responsible for managing procurements and disposals to ensure that the supply chain management system of the Municipality is adhered to.
- (vi) Ensures that the procurements and disposal process followed adheres to preference targets without compromising price, quality, service delivery and developmental objectives.
- (vii) Is responsible for ensuring that all employees involved in the supply chain management process receive the necessary training to support implementation of the SCM Policy.
- (viii) Is responsible for establishing the amount to be paid by prospective service providers as a non-refundable deposit for enquiry documents issued by the Municipality.
- (ix) Is responsible for the verification of the applications of service providers for possible inclusion in the Suppliers' Database.
- (x) Shall submit regular reports to the Accounting Officer, who will in turn submit to the Finance Portfolio Committee; regarding progress and any matters of importance relating to the SCM Policy.

(d) The role of Advisors

The Municipal Manager may procure the services of advisors to assist in the execution of the supply chain management function. These advisors must be obtained through a competitive bidding process. No advisor may however form part of the final decision-making process regarding the awarding of bids, as this will counter the principle of vesting accountability with the Municipal Manager. The Municipal Manager may not delegate decision-making authority to a person other than an official.

**12. Oversight role of council**

12.1. The Newcastle Municipal Council reserves its right to maintain oversight over the implementation of this SCM Policy.

12.2. For the purposes of such oversight the accounting officer must:

- (a) within 30 days of the end of each financial year, submit a report on the implementation of this SCM Policy and the supply chain management policy of any municipal entity under sole or shared control of the municipality, to the council of the municipality; and
- (b) whenever there are serious and material problems in the implementation of this SCM Policy, immediately submit a report to the Newcastle Municipal Council

12.3. The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the Mayor of the Newcastle Municipality.

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

**13. Supply Chain Management Unit**

13.1. A supply chain management unit is hereby established to implement this SCM Policy.

13.2. 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.

**14. Training of supply chain management officials**

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

## **PART B**

### **SUPPLY CHAIN MANAGEMENT SYSTEM**

#### **15. Format of supply chain management system**

15.1. This SCM Policy provides systems for –

- (a) demand management;
- (b) acquisition management;
- (c) logistics management;
- (d) disposal management;
- (e) risk management; and
- (f) performance management.

#### Chapter 1: Demand management

#### **16. System of demand management**

16.1. The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by Newcastle Municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan.

16.2 The demand management system must –

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

#### **17. Duties of Supply Chain Management Unit**

- (a) During consultations between the Supply Chain Management Unit and directors, all reasonable efforts shall be made to determine :
  - (i) the desired date and time at which a specific contract must be awarded;
  - (ii) the desired date and time when specific goods must be delivered, services rendered or work executed;
  - (iii) the place where any goods to be supplied shall be delivered;
  - (iv) the quantity and quality of any goods to be supplied; and

**18. System of acquisition management**

- 18.1. The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
- (a) that goods and services are procured by the Newcastle 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 and regulations on acquisition management are properly taken into account.
- 18.2. When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the Newcastle Municipality's supply chain management system, including -
- (a) the kind of goods or services; and
  - (b) the name of the supplier.

**19. Range of procurement processes**

- 19.1. Goods and services may only be procured by way of –
- (a) petty cash purchases, up to a transaction value of R2 000 (VAT included);
  - (b) written or verbal quotations for procurements of a transaction value of R2 000 up to R10 000 (VAT included);
  - (c) formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
  - (d) a competitive bidding process for:
    - (i) procurements above a transaction value of R200 000 (VAT included); and
    - (ii) the procurement of long term (period) contracts.
- 19.2. The accounting officer may, in writing-
- (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
  - (b) direct that –
    - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
    - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
    - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.

19.3. 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 SCM 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.

#### 19.4. Approval authorities / delegations

- (a) The Supply Chain Management Policy must act in support of the Delegations Policy for approval authority for acquisitions in accordance with paragraphs 19.1, 19.2 and 19.3.

#### 20. 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;
- (b) has authorized the Newcastle 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.

#### 21. Lists of accredited prospective providers

##### 21.1. The accounting officer must –

- a) keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements through written or verbal quotations and formal written price quotations; and
- b) at least once a year, where applicable, 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 (*refer to database form for listing criteria*); 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.
- e) disallow listing of prospective providers that are not registered with the National Treasury's central supplier database (CSD)

- 21.2. 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.

## **22. Petty cash purchases**

**22.1.** The conditions for procurement of goods by means of petty cash referred to in paragraph 19 (1) (a) of this Policy, are as follows –

- (a) The Chief Financial Officer may, in writing, delegate the responsibility to monitor Petty Cash purchases to the Accountant: Revenue/Income Officer.
- (b) Goods and services may only be procured by way of petty cash, up to a transaction value of R500 (VAT included).
- (c) A maximum of five petty cash purchases per month will be allowed for each departmental section.
- (d) Total petty cash may not exceed R3 000.00 for each calendar month for the whole municipality.
- (e) Petty cash may only be used for the following types of expenditure: refreshments, catering, gifts, wheel repairs, and other small items.
- (f) a monthly reconciliation report from the Accountant Revenue must be submitted to the Chief Financial Officer, including –
  - (i) the total amount of petty cash purchases for that month; and
  - (ii) receipts and appropriate documents for each purchase.

**22.2** For the implementation of the petty cash purchases, refer to Newcastle Municipality Petty Cash Policy.

## **23. Written or verbal quotations**

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

- (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers on National Treasury's Central Supplier Database (CSD) and the Newcastle Municipality's list of accredited prospective providers provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria set out in paragraph 20(1)(b) and (c) of this SCM Policy;
- (b) to the extent feasible, providers must be requested to submit such quotations in writing;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
- (d) the accounting officer 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.

## **24. Formal written price quotations**

**24.1.** 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 on National Treasury's Central Supplier Database (CSD) and the Newcastle Municipality's list of accredited prospective providers.

- (b) quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria set out in paragraph 19(1)(b) and (c) of this SCM Policy;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
- (d) the accounting officer must record the names of the potential providers and their written quotations.

24.2. 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.

## **25. Procedures for procuring goods or services through written or verbal quotations and formal written price quotations**

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

- (a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 23, be advertised for at least seven days on the website and an official notice board of the Newcastle Municipality.
- (c) quotations will only be accepted from providers whose names appear on the list of accredited prospective providers on National Treasury's Central Supplier Database (CSD) and/or the Newcastle Municipality's list of accredited prospective providers.
- (d) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (e) the accounting officer 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 below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price; offers above R30 000 (VAT included), the accounting officer should apply the prescripts of the Preferential Procurement Policy Framework Act, Act 5 of 2000 and its associated Regulations.
- (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;

## **26. Competitive bids**

- 26.1. Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 18(2) of this SCM Policy.
- 26.2. No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.
- 26.3 Subcontracting as condition of bid;
- (a) If feasible to subcontract for a contract above R10 million, it should also advance the designated groups.
  - (b) The bid should specify in the conditions of the bid that the bidder should subcontract the minimum of 40% of the value of the contract to
    - i) an EME or QSE;
    - ii) an EME or QSE which is at least 51% owned by black people;
    - iii) an EME or QSE which is at least 51% owned by black people who are youth;
    - iv) an EME or QSE which is at least 51% owned by black people who are woman;
    - v) an EME or QSE which is at least 51% owned by black people who are disabilities;
    - vi) an EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships;
    - vii) a cooperative which is at least 51% owned by black people;
    - viii) an EME or QSE which is at least 51% owned by black people who are military veterans or;
    - vx) more than one of the categories referred to in paragraphs i) to viii)
  - (c) The Municipality must provide the list of suppliers registered on Newcastle Municipality Supplier database as well as National treasury database complying with paragraph (b) to the bidder for the bidder to select a supplier.
  - (d) The bidder may select more than one subcontractor to subcontract provided that the subcontracted value does not exceed 40% of the value of the contract.
- 26.4. Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and subcontracting
- 26.4.1. The Newcastle Municipality shall,
- (a) determine and stipulate in the tender documents:
    - (i) the preference point system applicable to the tender as envisaged in regulations 6 or 7; or
    - (ii) if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;



- (b) determine whether pre-qualification criteria are applicable to the tender as envisaged in regulation 4;
- (c) determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in regulation 8;
- (d) determine whether compulsory subcontracting is applicable to the tender as envisaged in regulation 9; and
- (e) determine whether objective criteria are applicable to the tender as envisaged in regulation 11.

## 26.5. Pre-qualification criteria for preferential procurement

26.5.1 The Newcastle Municipality, where applicable, shall apply pre-qualifying criteria to advance certain designated groups, wherein the Newcastle Municipality shall 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 40% 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

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

## 27. 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 29;
- (b) Public invitation of bids as detailed in paragraph 30;
- (c) Site meetings or briefing sessions as detailed in paragraph 30;
- (d) Handling of bids submitted in response to public invitation as detailed in paragraph 31;
- (e) Evaluation of bids as detailed in paragraph 40;
- (f) Award of contracts as detailed in paragraph 41;
- (g) Administration of contracts
- (h) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
- (i) Proper record keeping

- (j) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes. All original contracts shall be deposited with the Accounting Officer within a week of signing the contract and a copy shall be kept in the departmental file while another copy shall be delivered to the SCM unit.

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

## **29. Public invitation for competitive bids**

29.1. The procedure for the invitation of competitive bids is as follows:

- (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the Newcastle Municipality or any other appropriate ways (which may include an advertisement in the (Government Tender Bulletin and eTender Portal); 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 SCM policy;
    - (ii) a statement that bids may only be submitted on the bid documentation provided by the Newcastle Municipality; and date, time and venue of any proposed site meetings or briefing sessions.;
    - (iii) that bids may only be accepted from providers that are registered with the National Treasury's central data base and/or the list of accredited service providers of the Newcastle Municipality
- 29.2. The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- 29.3. Bids submitted must be sealed.
- 29.4. Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.
- 29.5. All competitive bids should be included on the eTender Portal as per circular 83.
- 30. 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
    - (iii) bids received after the closing time should not be considered and returned unopened immediately and the reason as to why the bid cannot be considered.
  - (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
  - (c) No information, except the provisions in subparagraph (b), relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
  - (d) The accounting officer must –
    - (i) record in a register all bids received in time;
    - (ii) make the register available for public inspection; and
    - (iii) publish the entries in the register and the bid results on the website.

### **31. Negotiations with preferred bidders**

- 31.1. The accounting officer or delegated official may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –

- (a) does not allow any preferred bidder a second or unfair opportunity;
- (b) is not to the detriment of any other bidder; and
- (c) does not lead to a higher price than the bid as submitted.

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

## **32. Two-stage bidding process**

32.1. 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.

32.2. 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.

32.3. In the second stage final technical proposals and priced bids should be invited.

## **33. Issuing of bid documentation**

- (a) Bid documents and any subsequent notices shall only be issued by the SCM Unit or authorized department.
- (b) A non-refundable bid charge, as required in the bid notice, may be raised by the Municipality for bid documents.
- (c) Details of all prospective bidders who have been issued with bid documents shall be recorded by the SCM Unit or authorized department. Such details shall include:
  - (i) the legal and full name of the person/company/closed corporation/firm drawing documents;
  - (ii) a contact person;
  - (iii) a contact telephone number;
  - (iv) a contact fax number;
  - (v) a postal address;
  - (vi) an e-mail address;
- d) Details recorded shall remain confidential for the duration of the bid period.

**34. Validity periods**

- (a) The period for which bids are to remain valid and binding shall be indicated in the bid documents. The period is calculated from the closing time and bids shall remain in force and binding until the end of the final day of the period.
- (b) This period of validity may be extended by mutual consent in writing between the Municipality and the bidder, provided that the original validity period has not expired, and that all bidders shall have an opportunity to extend such period.
- (c) If, in exceptional circumstances, it becomes necessary to extend the bid period, a notice shall be published in the press at least one week prior to the original bid closing date. This notice shall also be posted on the notice boards at designated Municipal offices, and a notice to all bidders of bids received at that stage to this effect shall be issued.

**35. Bid Prices and Contract Periods for Engineering and Construction Contracts**

- (a) For all contract periods equal to or exceeding one year in duration, an appropriate contract price adjustment formula shall be specified in the bid documents.
- (b) In general, where contract periods do not exceed one year in duration, the bid shall be a fixed price bid (not subject to contract price adjustment). However, if as a result of any extension of time granted, the duration of a fixed price contract exceeds one year, the contract will automatically be subject to contract price adjustment acceptable to both parties for that period by which the extended contract period exceeds such one year. An appropriate contract price adjustment formula shall be specified in the bid documents.
- (c) Notwithstanding the above arrangement, where the bid validity period is extended, then contract price adjustment may be applied.
- (d) An appropriate contract period must be specified for all engineering and construction contracts. The time for completion shall be stated in number of weeks.
- (e) In case where the price adjustment is gazetted by the Government, the price adjustment should be automatically applied regardless of the timeframe. The adjustment value should be in line with the gazetted adjustment.

**36. Samples**

When samples are called for in the bid documents, samples (marked with the bid and item number as well as the bidder's name and address) shall be delivered to the addressee mentioned in the bid documents by no later than the closing time of the bid. Bids shall not be included in parcels containing samples.

If samples are not submitted as requested, the bid concerned may be declared non responsive.

Samples shall be supplied by a bidder at his own expense and risk. The Municipality shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents, and shall reserve the right not to return such samples and to dispose of them at its own discretion.

Where a bid is accepted for the supply of goods according to a sample submitted by the bidder, such sample shall become the contract sample. All goods/materials supplied shall comply in all respects to the contract sample.

### **37. Committee system for competitive bids**

- 37.1. A committee system for competitive bids is hereby established, consisting of the following committees for each procurement process or cluster of procurements as the accounting officer may determine:
- (a) a bid specification committee;
  - (b) a bid evaluation committee; and
  - (c) a bid adjudication committee;
- 37.2. The accounting officer appoints the members of each committee, taking into account section 117 of the Act; and
- 37.3. A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.
- 37.4. The committee system must be consistent with –
- (a) paragraph 38, 39 and 40 of this SCM Policy; and
  - (b) any other applicable legislation.
- 37.5. The accounting officer may apply the committee system to formal written price quotations.
- 37.6. The following persons shall not be eligible to become members of a bid committee –
- (a) a councilor of any municipality; and
  - (b) a member of the Municipality's audit committee or performance audit committee.
  - (c) No councilor of any municipality may attend a meeting of a bid committee in any capacity, nor may a councilor make a presentation or representations to or conduct an interview with a bid committee in any capacity.
- 37.7. A bid committee established in terms of this chapter shall perform its functions, exercise its powers and discharge its duties independently and without fear, favor or prejudice.

### **38. Bid Specification Committee**

- 38.1. A bid specification committee must compile specifications for each procurement of goods or services by the Newcastle Municipality.
- 38.2. Specifications –
- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

- (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or 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 2001, as amended; and
- (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 29 of this SCM Policy.

38.3. A Bid Specification Committee must be composed of one or more managers responsible for the function involved and may, when appropriate, include external specialist advisors.

38.4. 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.

### **39. Bid Evaluation Committee**

39.1. A bid evaluation committee must –

- (a) evaluate bids in accordance with –
  - (i) the specifications and conditions for a specific procurement; and
  - (ii) the points system set out in terms of paragraph 38(2)(f).
- (b) evaluate each bidder's ability to execute the contract;
- (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and; the bidder submitted the required original tax clearance certificate and other clearance / registration forms as prescribed by various acts and / or in the bid documentation; and
- (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

39.2. A Bid Evaluation Committee must as far as possible be composed of-

- (a) Directors from departments requiring the goods or services.
- (b) At least one Supply Chain Management Practitioner of the Newcastle Municipality

### **40. Bid Adjudication Committees**

40.1. A bid adjudication committee must –

- (a) consider the report and recommendations of the bid evaluation committee; and
- (b) either –

- (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
  - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- 40.2. A Bid Adjudication Committee must consists of at least four Strategic Executive Directors of the Newcastle Municipality-
  - (a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and at least one senior supply chain management practitioner who is an official of the Newcastle Municipality; and
  - (b) a technical expert in the relevant field who is an official, if such an expert exists.
- 40.3. The Accounting Officer must appoint the Chairperson of the Bid Specification Committee, Bid Evaluation Committee and Bid Adjudication Committee If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- 40.4. 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. Members of the Bid Evaluation Committee may present their recommendations / reports to the Bid Adjudication committee and clarify issues but shall not have any voting powers.
- 40.5. If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee,
  - (a) the bid adjudication committee must prior to awarding the bid –
    - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
    - (ii) Notify the accounting officer.
  - b) The accounting officer may –
    - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
    - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- 40.6. The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- 40.7. The accounting officer must comply with section 114 of the Act within 10 working days
- 40.8. Meetings of bid committees and decision-making
  - (a) The chairperson of the relevant bid committee shall determine the date, time and venue of meetings of the committee concerned. At least three working days written notice shall be given of a meeting of a bid committee to all the members.



- (b) A majority of the members of a bid committee must be present before the committee concerned may consider any matter.
- (c) Members of the committee can only be represented by another person who is acting or seconded to the meeting on his behalf for that day.
- (d) Decisions of a bid committee shall be taken by a majority of the members present at a meeting voting in favor of, or against, a question.
- (e) The Municipal Manager shall make appropriate arrangements to ensure that secretarial and such other administrative support services as may be required are provided to a bid committee.
- (f) Minutes shall be kept of each meeting of a bid committee. Such minutes shall :
  - (i) be considered and adopted, with or without amendments, as a true and accurate reflection of the proceedings at, and resolutions taken during a bid committee meeting, by the relevant committee at its first meeting next ensuing;
  - (ii) be signed by the person presiding at the meeting when they are approved; and
  - (iii) shall prima facie be evidence of the proceedings at a meeting of the relevant committee until the contrary is proven.
  - (iv) after approval be submitted to the SCM Unit, together with the tender documents concerned, for the calling of tenders or quotations where applicable.

#### **41. Procurement of banking services**

##### **41.1. 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.

41.2. The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.

41.3 The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of paragraph 30(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

#### **42. Procurement of IT related goods or services**

42.1. The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.

42.2. Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.

42.3. The accounting officer must notify SITA together with a motivation of the IT needs if –

- (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included); or
  - (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- 42.4. If SITA comments on the submission and the Newcastle Municipality disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the KwaZulu-Natal Provincial Treasury and the Auditor-General.

#### **43. Procurement of goods and services under contracts secured by other organs of state**

- 43.1. The accounting officer may procure goods or services under a contract secured by another organ of state, but only if –
- (a) the need has to be identified, as resources required by Newcastle Municipality support its operational commitments and its strategic goals outlined in the Integrated Development Plan as well as the Procurement plan.
  - (b) specifications must be compiled by the Bid specification Committee and must be approved by the Accounting Officer prior to the engagement of that organ of the state.
  - (c) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - (d) there is no reason to believe that such contract was not validly procured;
  - (e) there are demonstrable discounts or benefits to do so; and
  - (f) that other organ of state and the provider have consented to such procurement in writing.
- 43.2. 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.

#### **44. Procurement of goods necessitating special safety arrangements**

- 44.1. 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.
- 44.2. Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership, cost advantages and environmental impact and must be approved by the accounting officer.

#### **45. Proudly SA Campaign**

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

#### **46. Appointment of consultants**

- 46.1. The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- 46.2. Consultancy services must be procured through competitive bids if
  - (a) the value of the contract exceeds R200 000 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- 46.3. In addition to any requirements prescribed by this SCM policy for competitive bids, bidders must furnish particulars of –
  - (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- 46.4. 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 Newcastle Municipality.
- 46.5. The accounting officer must put measures in place to ensure that skills transfer does occur to avoid over reliance on consultants by the project managers.

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

- 47.1. The accounting officer may –
  - (a) dispense with the official procurement processes established by this SCM 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.
- 47.2. The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this SCM policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- 47.3. Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 18(2) of this SCM policy.

#### **48. Unsolicited bids**

- 48.1. In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- 48.2. The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- 48.3. If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this SCM 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.
- 48.4. The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the KwaZulu-Natal Provincial Treasury for comment.
- 48.5. The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- 48.6. A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- 48.7. 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 KwaZulu-Natal Provincial Treasury.
- 48.8. If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the KwaZulu-Natal Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- 48.9. 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 Newcastle Municipality to the bid may be entered into or signed within 30 days of the submission.

#### **49. Combating of abuse of supply chain management system**

##### **49.1. The accounting officer must–**

- (a) take all reasonable steps to prevent abuse of the supply chain management system;
- (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this SCM 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 Newcastle Municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or any bidder who failed to produce a valid original tax clearance certificate issued by SARS to certify that the tax matters of a certain bidder are in order or necessary arrangements were made with SARS. or
  - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the Newcastle 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 Newcastle 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).

##### **49.2. The accounting officer must inform the National Treasury and KwaZulu-Natal Provincial Treasury in writing of any actions taken in terms of subparagraphs (1)(b)(ii), (e) or (f) of this SCM policy.**

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

#### **50. Logistics Management**

- 50.1. The accounting officer must establish and implement an effective system of logistics management, which must include -
- (a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
  - (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
  - (c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
  - (d) before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
  - (e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
  - (f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
  - (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.
  - (h) The SCM Unit shall be responsible and accountable for the establishment, management and operation of store facilities for the Municipality, which shall consist of a main store and such satellite stores in other areas within the Municipality as may be necessary.
  - (i) The Supply Chain Manager shall be responsible and accountable for:
    - (i) The day-to-day operation of the Municipality's store facilities;
    - (ii) Determining the range and nature of items that will be carried in the main store facility and satellite stores;
    - (iii) Setting of inventory levels;
    - (iv) Timely placement of orders when stock levels are low;
    - (v) Receiving and distribution of goods; and
    - (vi) Expediting orders.

#### **51. Disposal management**

- 51.1. The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act, are as follows:
- (a) The Newcastle Municipal Council has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services;

- (b) The Newcastle Municipal Council has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset to the Municipality.
- (c) The accounting officer of the Newcastle Municipality shall have delegated authority to transfer ownership as a result of a sale or other transaction, or otherwise permanently dispose of a capital asset not needed to provide the minimum level of basic municipal services, with a value of up to R1 000 000.
- (d) The Newcastle Municipal Council shall authorize transfer ownership as a result of a sale or other transaction, or otherwise permanently dispose of a capital asset not needed to provide the minimum level of basic municipal services, with a value of greater than R1 000 000 by resolution of a municipal council meeting open to the public.

51.2. Assets may be disposed of by –

- (a) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
- (b) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- (c) selling the asset; or
- (d) destroying the asset.

51.3. The accounting officer must ensure that –

- (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
- (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
- (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
- (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; as determined by council from time to time
- (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.

## **52 Disposal and lease of municipal land**

52.1. The Newcastle Municipality has a core responsibility to acquire and avail land and buildings, in the first instance, for its own use for purposes of developing and maintaining municipal infrastructure, promoting service delivery and facilitating social and economic development and spatial integration. Future land requirements must be acknowledged and immovable property should be held in reserve for this purpose.

52.2. In acquiring, managing, developing and releasing land, the Newcastle Municipality must consider the best interests of the municipality (and thus its residents) rather than that of

individuals when entering into real estate transactions. Maximum benefit should be given to the Municipality and thereby the community.

- 52.3. The Newcastle Municipality should act in the best interests of its citizens, and it therefore follows that the Newcastle Municipality will not singularly follow the historic processes and values of the market. Moreover, because the historic accumulation of land and property is highly varied, this must be acknowledged in terms of future transactions. Certain interventions may be necessary in land transactions pursued by the Newcastle Municipality as compared to those of the private land and property market. The private market is concerned with maximizing capital gain, as against the role of the municipality in acting in the best interests of its citizens.
- 52.4. The Newcastle Municipality must act in support of sectoral policies such as economic development, environment management, land use, housing, social and community infrastructure and culture and recreation.
- 52.5. Any land assets unrelated to these uses is deemed surplus.
- 52.6. Market forces shall be the point of departure in all transactions.

### **53. Categories of Land**

The municipality's land assets are categorized as follows:

- (a) land intended for residential development
- (b) land intended for commercial and industrial purposes
- (c) land intended for social purposes including religious, education and institutional purposes
- (d) land intended to be developed for sport and recreation purposes
- (e) land intended for agricultural purposes

### **54. Manner of disposal of various categories of land**

- (a) Land incapable of development in its own right within predominantly residential areas e.g. sanitary lanes and unutilized substation erven will be offered in ownership to the respective adjoining owners at market value. The purchaser will be liable for all costs of possible relocation of services, rezoning, survey, registration and transfer. The creation of a free standing lot will in each instance be the preference of Council in order that new residential opportunities are created.
- (b) Residential land capable of development in its own right shall be offered for sale by means of an invitation to bid or public auction subject to an upset price that is market related but taking into account historical individuals. Residential land intended for sale for the development and sale to the beneficiaries of a housing programme of the national or provincial government shall be offered for sale by private treaty at a price determined by council provided that the plight of the poor is taken into account.
- (c) Residential land that has been acquired for a capital project which has yet to commence and which is thus not immediately required by the municipality will be offered on a short term lease basis. The rental payable shall be market related unless determined otherwise by council. The property will be offered on private treaty at no cost to Council.



- (d) Commercial land that is incapable of development on its own right will be offered to the respective adjoining owners at market value. The purchaser will be responsible for all costs associated with the possible relocation of services, rezoning, survey, registration and transfer
- (e) Commercial and industrial land capable of development in its own right will be offered for sale by public competition (either by public auction or invitation to bid as the council may prefer from time to time. Sale of land will be subject to an upset value that is market related and such other conditions supporting the policies and programmes of the municipality.
- (f) Land located within an area of specific focus or which is subject to a specific development or social programme may be offered for sale or lease as the council may determine on a case by case basis through an invitation to bid. In such cases the maximization of returns will not necessarily be the determining factor and the aims of the municipality will be clearly articulated in the bid documentation. Land in this category may be allocated to take into account historically disadvantaged individuals.
- (g) Commercial and industrial land not immediately required for the municipality needs will be offered on a short term basis and the notice period will vary based on when the property will be required. The rental will be at market related rates unless determined otherwise by council in the interest of the public.
- (h) Ownership of social sites shall be by means of an invitation to bid. Bidders will be subject to a screening process that will take into account amongst other things the community, the nature of the organization and its ability to discharge its intentions. The sale shall be subject to a predetermined market related price or as may be determined by council
- (i) Amateur sports bodies are those bodies that are providing sporting facilities. Land will be offered in an open bidding process on a leasehold basis and will preclude discrimination and will be subject to development clauses to ensure the discharge of intentions. The rental will be established on the basis of a nominal rental for the total land component on the lease as may be approved by the municipality. The lessee will be liable for rates and services consumed as prescribed by the Newcastle Municipality's tariff of charges.
- (j) Land for professional sport
  - (i) in instances where there is commercial benefit to be derived by the owner or shareholders of a club a differentiation will be made from those agreement for amateur sport in terms of rental payable
  - (ii) land for rental will be at its full economic value or a percentage of all financial turnover and such percentage will be determined by the Municipality from time to time. The contribution the sport makes to the economic development will be taken into consideration in determining such percentage.
  - (iii) the sporting organization's liability to rates shall be in accordance with the rates policy.
- (k) Land for agricultural purposes

Agricultural land shall be offered for sale by means of an invitation to bid, subject to an upset price that is market related and will take into consideration the historical disadvantaged. The land shall be leased to community groups on a case by case basis taking into consideration the municipal social programmers and the historically disadvantaged.

## **55. Unsolicited proposals for land**

The municipality will follow the following procedure for unsolicited proposals for land development

- (a) proposals received will be evaluated by the municipality.
- (b) realistic propositions will be advertised in the media to solicit competitive proposals or objections from the public.
- (c) if a response is received from the public, a competitive
- (d) will be called for by means of an invitation to bid.
- (e) the sale will be by way of market value unless the development is in the plight of the poor in which case the council determines to price land on a case by case basis.

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

If a service provider acts on behalf of the Newcastle 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 Newcastle Municipality must stipulate –

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

## **57. Risk management**

57.1. The criteria for the identification, consideration and avoidance of potential risks in the supply chain management system, are as follows:

57.2. 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.

## **58. Performance management**

The accounting officer 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 SCM Policy were achieved.

## **59. Contract Management**

### **59.1. Service Level Agreements**

- (a) Contracts concluded for the procurement of goods and services should be made subject to the conclusion of a service level agreement.
- (b) It is the responsibility of each directorate concerned to ensure that a valid and legally binding contract is entered into between the municipality and the successful bidder in line with the bid specifications, after approval of the bid as mentioned above.
- (c) In the event that a suitable contract has not been included in the bid documentation, a copy of the approval and all relevant documentation must be provided to Legal Services timely for the drafting of a suitable contract.
- (d) After signing of the contract by the parties, the directorate concerned must ensure that copies are made available to all role players including the Supply Chain Management Unit. The originally signed copy must be filed at the main records who will act as custodian of all procurement contracts of the municipality.
- (e) The directorate concerned is responsible, in consultation with the Supply Chain Management Unit and Legal Services, to ensure that service providers comply with the provisions of the contract, and in the event of a possible breach of contract or proposed amendment to the contract, to submit a report in this regard to the Municipal Manager.
- (f) In case where a panel of service providers are appointed with the similar scope of works, it is the responsibility of the user-department, for which the contract was procured, to ensure that the appointed service providers are fairly rotated in a transparent manner and such rotation must be done in consultation with the Supply Chain Management Unit.

### **59.2. Extension/Expansion of contracts**

The Accounting Officer must as far as possible refrain from extending/expanding contracts and for allowing a variation orders as this increases risk, reflects possible flaws in planning and creates an uncompetitive environment that may possibly unfairly prejudice other possible vendors. Extensions should only be granted if it makes economic sense and provided that it can be justified in terms of fairness, equitableness, transparency, competitiveness and cost effectiveness.

## **60. Remedies in case of death, sequestration, liquidation or judicial management**

- (a) In the event of the death of a contractor or the provision of or final sequestration of his or her estate or of his or her cession or transfer of contract without the approval of the Newcastle Municipality or of the surrender of his or her estate or his or her reaching a compromise with his or her creditors or of the provisional of final liquidation of a contractor's company or placing of its affairs under judicial management, the council must without prejudice to any rights it may have, exercise any of the following:
  - (i) Cancel the contract and accept any of the bids which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved from liability for any claim which has risen or may arise against the contractor in respect of supplies not delivered or work not carried out under the contract, and the Newcastle Municipality shall have the right to hold

and retain all or any of the securities and retention moneys held by it at the date of the aforementioned occurrences until such claim has been satisfied or

- (ii) Allow the executor, trustee, liquidator or judicial manager as the case may be for and on behalf of and at the expense and cost of the estate of the contractor to carry on and complete the contract.
  
- (b) In the event of the contract being cancelled by the municipality in the exercise of its rights in terms of these conditions, the contractor should be liable to pay council any losses sustained and or additional costs or expenditure incurred as a result of such cancellation and Council should have the right to recover such losses, damages or additional costs by means of set off from moneys due or which may become due in terms of the contract or any other contract or from a guarantee provided for the due fulfillment of the contract and until such time as the moneys or guarantee as security have been determined for any loss which the Council may suffer or have suffered. The contractor must be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise in the supply or service rendered.
  
- (c) Transfer of contract  
The contractor must not abandon, transfer, assign or sublet a contract or part thereof without the written permission of the Council.

## **61. Penalties**

- 61.1. Where a contract has been awarded on the strength of preference point information furnished by the contractor, which after the conclusion of the relevant contract is proved to have been incorrect, the Municipality may in addition to any other legal remedy it may have to recover from the contractor all costs, losses or damages incurred or sustained by the municipality as a result of the award of the contract and /or
  - (a) cancel the contract and claim damages which the municipality may suffer as a result of having to make less favourable arrangements and /or
  - (b) impose on the contractor a penalty not exceeding 5% of the value of the contract

## **Chapter 4: Other Matters**

### **62. Prohibition on awards**

#### **6.2.1 To persons whose tax matters are not in order:-**

- (a) No award may be made in terms of this SCM Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (b) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order.
- (c) If SARS does not respond within 7 days such person's tax matters may, for purposes of subparagraph 63(a), be presumed not to be in order.

#### **6.2.2 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 SCM 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 Newcastle Municipality.

#### **6.2.3 To persons whose Municipal services are not in order:-**

- (a) The bidders must make sure that their directors Municipal services in which they are staying are for the period of not more than 30 days are in order.
- (b) Those that reside within the Newcastle Municipality should make an arrangement with the Municipality prior to the award being made.

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

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

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

### **64. Ethical standards**

64.1. A code of ethical standards is hereby established for officials and other role players in the supply chain management system of the Newcastle 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.

64.2. Code of conduct

64.2.1. Supply Chain Management Practitioners and all other role players involved in Supply Chain Management are:

- (a) to act at all times with fidelity, honesty, integrity and in the best interests of the Newcastle Municipality and the general public it serves
- (b) to diligently perform the duties of a member efficiently, effectively and strictly in accordance with the rules of bidding and bid evaluation, as set out in the bid documentation and according to all relevant instructions given by the institution
- (c) to properly prepare for and attend each meeting of the bid committees applicable, and failing this to withdraw as a member
- (d) to act at all times in accordance with the relevant legislation and regulations,
- (e) specifically, to comply with the *Code of Conduct for the Municipalities*.
- (f) to recognise the public's right to access to information in the interests of administrative justice
- (g) to take the utmost care in ensuring that there is reasonable protection of the records of the institution and all bid documentation
- (h) not to misuse the position or privileges of a member, or privileged or confidential information obtained as a member
- (i) to carry out duties with the skill and care expected from a person of knowledge and experience, and to exercise due judgment
- (j) not to unfairly discriminate against any bidder on the grounds of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language
- (k) not to abuse any position in the public services to promote or prejudice the interest of any political party or interest group
- (l) to give the Auditor-General all the information and explanations it requires to carry out its functions
- (m) to report to the appropriate authorities any case of fraud, corruption, nepotism, mal-administration and any other acts which constitute an offence or which are prejudicial to the public interest, arising during the bid evaluation panel proceedings
- (n) to declare, diligently, accurately and honestly, in the declaration of interest, all personal and/or business interests that I or a family member may have in any business of any bidder, and to willingly abide by any decision of the chairperson of the bid evaluation panel or the accounting officer/authority to withdraw as a member of the panel because of this.
- (o) to be open and honest about all decisions and actions taken regarding the bid evaluation, and to give clear reasons for these, which can be accurately recorded.

- (p) not to make any dishonest allegations about any bidder
- (q) not to make any false or misleading entries into the records of the bid evaluation panel
- (r) to make no contractual commitments related to the bid, to any bidding party, on behalf of the institution.
- (s) to proactively protect privileged or confidential information of the bid evaluation panel from theft, unauthorized disclosure or inappropriate use, and specifically:
  - (i) not respond to any queries relating to the bid evaluation on behalf of the institution, unless expressly authorised in writing by the accounting officer/authority to do so.
  - (ii) not to speak to or correspond carelessly with any person (fellow member, colleague, friend, family member or otherwise) on any matter related to the bid evaluation
- t) not to use his position for private gain or to improperly benefit another person, not to request, solicit or accept any reward, gift or favor in return for voting or not voting in a particular way on any matter, or for disclosing privileged or confidential information.
- u) not to accept or agree to later accept, any 'kickbacks' in the form of money, favours, inappropriate gifts or anything else of value from a member of the public, government, a political or social movement, or any stakeholder or potential stakeholder which is or may be viewed as aimed at influencing or directing the evaluation of the bids.
- v) to disclose immediately to the chairperson or the accounting officer/authority any attempted inducement or offers of perks that may be construed as aimed at influencing or directing the evaluation of the bids
- w) to report to the chairperson of the panel any invitations to any kind of entertainment by any party that may be construed as being associated in any way with the outcome of the bid evaluation
- x) to not vote at, attend or participate in any other way in any meeting or hearing in relation to any matter before the bid evaluation panel, if any interest prevents me from carrying out my member functions in a fair, unbiased and proper way in accordance with this code of conduct.

#### 64.2.2 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 Newcastle 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.

### **65. Inducements, rewards, gifts and favors to municipalities, officials and other role players**

- 65.1 a) 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 –

- b) any inducement or reward to the Newcastle Municipality for or in connection with the award of a contract; or
  - c) any reward, gift, favor or hospitality to –
    - (i) any official; or
    - (ii) any other role player involved in the implementation of this SCM Policy.
  - d) all declarations must be recorded in a register which the accounting officer must keep.
- 65.2. The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- 65.3. Subparagraph (1) does not apply to gifts less than R350.00 in value.
- 66. Sponsorships**
- The accounting officer must promptly disclose to the National Treasury and the KwaZulu-Natal 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.
- 67. Objections and complaints**
- 67.1 Persons aggrieved by decisions or actions taken in the implementation of this supply chain management system, may lodge within 14 days of the decision or action –
- (a) if the objection or complaint is against the procurement process, submit a written objection or complaint against the decision or action to the accounting officer of the municipality who shall, in turn, refer the written objection or complaint to the independent and impartial person referred to in paragraph 68.2 for resolution or
  - (b) if such complaint or objection is against the award of a bid, lodge a written appeal with the Municipal Bid Appeals Tribunal in accordance with the provisions of paragraph 68.3
- 67.2 Resolution of objections and complaints against procurement process
- (a) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes to assist in the resolution of objections and complaints between the municipality and any other person regarding -
    - (i) the implementation of the procurement process in terms of the supply chain management system; or
    - (ii) any matter arising from the implementation of the procurement process in terms of the supply chain management system.



(b) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

(c) The person appointed must –

- (i) strive to resolve promptly all objections and complaints received; and
- (ii) submit reports to the accounting officer on all such objections and complaints received, attended to or resolved.

(d) If the independent and impartial person, is of the view that a matter which should be dealt with in terms of paragraph 67.3, he or she shall forthwith refer the matter to the Municipal Bid Tribunals and that Tribunal shall then hear and determine the matter in accordance with the provisions of paragraph 67.3.

(e) An objection or complaint may be referred to the KwaZulu-Natal Provincial Treasury if:

- (i) the objection or complaint is not resolved within 60 days; or
- (ii) no response is forthcoming within 60 days.

(f) If the Provincial Treasury does not or cannot resolve the matter, the objection or complaint may be referred to the National Treasury for resolution.

#### 67.3. Municipal Bid Appeals Tribunal

(a) 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.

(b) The accounting officer of the municipality, in consultation with the Provincial Treasury, shall appoint the Chairperson, Deputy Chairperson and Members of the Municipal Bid Appeals Tribunal.

(c) 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.

(d) 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 67(3)(c)

(e) There shall be no further appeal against a decision of the Municipal Bid Appeals Tribunal.

## Chapter 5: Preferential Procurement Management

### 68. Preferential Procurement Management

Offers for the procurement of goods and services shall be in line with the applicable procurement legislation, namely the Preferential Policy Framework Act, 2000 (Act No 5 of 2000) and its associated Preferential Procurement Regulations, and the Broad-Based Black Economic Empowerment Act, 2003 (Act No 53 of 2003). Offers for the procurement of goods and services shall be adjudicated on the following criteria:

#### 68.1. Evaluation of bids on functionality

- (a) The Newcastle Municipality shall indicate on the invitation to submit a bid if a bid shall be evaluated on functionality.
- (b) The evaluation criteria for measuring functionality shall be objective.
- (c) Where bids are evaluated on functionality, the following shall be clearly specified in the invitation to submit a bid –
  - (i) The evaluation criteria for measuring functionality
  - (ii) The weight of each criterion
  - (iii) The applicable value; and
  - (iv) The minimum qualifying score for functionality
- (d) No bid shall be regarded as an acceptable bid if it fails to achieve a minimum score for functionality as indicated in the bid invitation.
- (e) Bidders that have achieved the minimum qualifying score for functionality shall be evaluated further for preference point systems prescribed in paragraphs 68.2 and 68.3 of this SCM Policy.

#### 68.2. The 80/20 Preferential Point System

- (a) The following formula shall be used to calculate preference points in respect of bids (including price quotations) with a Rand value equal to, or above R 30 000 up to a Rand value of R 50 000 000 (all applicable taxes included):

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

Where

- Ps = Points scored for price of bid or offer under consideration.
- Pt = Price of tender under consideration.
- P min = Price of lowest acceptable tender

The Newcastle Municipality may apply the formula in paragraph a) for quotations with a value less than R30 000, if and when appropriate.

- (b) Subject to sub-paragraph 68.2(c) points shall be awarded to a bidder attaining the B-BBEE status level contributor in accordance with the table below.

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

(c) A maximum 20 points shall be allocated in accordance with sub-paragraph 68.2(b) of this SCM policy.

(d) The points scored by the bidder in respect of B-BBEE contribution contemplated in sub-paragraph 68.2 (b) shall be added to the points scored for price as calculated in sub-paragraph 68.2 (a) of this SCM policy.

(e) Subject to sub-paragraph 68.4 of this SCM policy the contract shall be awarded to a bidder who scores the highest number of points.

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

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

(b) The organs of state may-

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

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

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

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

### 68.3. The 90/10 Preferential Point System

(a) The following formula shall be used to calculate preference points in respect of bids with a Rand value above of R50 000 000 (all applicable taxes included):

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

Where

Ps = Points scored for price of tender under consideration.

Pt = Price of tender under consideration.

P min = Price of lowest acceptable tender.

- (b) Subject to sub-paragraph 68.3(c) points shall be awarded to a bidder attaining the B-BBEE status level contributor in accordance with the table below.

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

- (c) A maximum 10 points shall be allocated in accordance with sub-paragraph 68.3(b) of this SCM policy.

- (d) The points scored by the bidder in respect of B-BBEE contribution contemplated in sub-paragraph 68.3(b) shall be added to the points scored for price as calculated in sub-paragraph 68.3(a) of this SCM policy.

- (e) Subject to sub-paragraph 68.4 of this SCM policy the contract shall be awarded to a bidder who scores the highest number of points.

68.4. A contract may be awarded to a bidder that did not score the highest total number of points, only in accordance with section 2(1) (f) of the Preferential Procurement Policy Framework Act, 5 of 2000.

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

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

(b) The organs of state may-

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

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

(iii) if the tenderer scoring the second highest points does not agree to a market-related

price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender.

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

## **69. Cancellation and Re-invitation of Bids**

69.1. In the application of the 80/20 preference point system

- (a) in the event that, in the application of the 80/20 preference point system as stipulated in the bid documents, all bids received exceed the estimated Rand value of R 1 000,000, the bid invitation shall be cancelled.
- (b) If one or more acceptable bids received are within the prescribed threshold of R1 000 000, all bids received must be evaluated on the 80/20 preference point systems.

69.2. In the application of the 90/10 preference point system

- (a) in the event that, in the application of the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to, or below the estimated Rand value of R 1 000,000, the bid invitation shall be cancelled.
- (b) If one or more acceptable bids received are above the prescribed threshold of R1 000 000, all bids received must be evaluated on the 90/10 preference point systems.

69.3. The Newcastle Municipality shall, after cancellation of a bid invitation as contemplated in sub-paragraphs 69.1 (a) and 69.2(a), re-invite bidders and shall, in the bid documents stipulate the correct preference point system to be applied.

69.4. The Newcastle Municipality shall, prior to the award of a bid, cancel a bid if –

- (a) due to changed circumstances, there is no longer a need for the services, works or goods requested; or
- (b) funds are no longer available to cover the total envisaged expenditure; or
- (c) no acceptable bids are received

## **70. Preference Point System for Disposals**

70.1. Formula

- (a) The following formula must be used to calculate the points for price in respect of competitive bids for disposals :
  - (i) equal to or above R 30 000 up to a value of R 50 000, 000:

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

Where –

Ps = Points scored for comparative price of bid or offer under consideration  
 Pt = Comparative price of bid / offer under consideration  
 Ph = Comparative price of highest acceptable bid or offer

(ii) with a value above R 50 000,000:

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

Where –

Ps = Points scored for comparative price of bid / offer under consideration  
 Pt = Comparative price of bid / offer under consideration  
 Ph = Comparative price of highest acceptable bid / offer

- (b) A maximum of 10 or 20 points, as the case may be, may be awarded to a bidder for B-BBEE status level of contribution.
- (c) The points scored by a bidder in respect of B-BBEE status level contribution must be added to the points scored for price.
- (d) Only the bid with the highest number of points scored may be selected.

## 70.2 Conditions

- (a) Only a bidder who has completed and signed the declaration part of the bid documentation shall be considered.
- (b) The Newcastle Municipality shall, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- (c) The Newcastle Municipality shall, when effecting payment, implement a discount which has been offered conditionally despite it being not taken into account for evaluation purposes.
- (d) A trust, consortium or joint venture shall qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits B-BBEE status level certificate
- (e) A person shall not be awarded points for B-BBEE status level if it indicated in the bid documents that such a bidder intends subcontracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- (f) 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 than the person concerned, unless the contract is sub-contracted to an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- (g) 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 contract is reduced to below the stipulated minimum threshold.

## 70.3. Declarations

A bidder must, in the manner stipulated in the bid document, declare that:

- (a) The information provided regarding any claim of points for B-BBEE status level is true and correct;
- (b) the signatory to the bid document is duly authorised; and
- (c) documentary proof regarding any bidding issue will, when required, be submitted to the satisfaction of the Newcastle Municipality.

#### 70.4. Remedies

Where a contract has been awarded on the strength of B-BBEE status level of contribution furnished by the bidder or contractor which, after the conclusion of the relevant contract, is proved to have been claimed or obtained on a fraudulent basis, the Newcastle Municipality may, in addition to any other legal remedy it may have:

- a) disqualify the person from the bidding process
- b) recover from the contractor all costs, losses or damages incurred or sustained by the municipality as a result of that contractor's conduct;
- c) cancel the contract and claim damages which the municipality may suffer as a result of having to make less favourable arrangements due to such cancellation;
- d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders or directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* rule has been applied; and
- e) forward the matter for criminal prosecution

### 71. Local Production and Content

71.1. The bidding conditions may stipulate a minimum threshold of local production and content, as contemplated in regulation 16 of the new Preferential Procurement Regulations, NO. R32 dated 20 January 2017, where for such bids locally produced goods. Services or works or locally manufactured goods are of critical importance.

71.2. Every bid issued in terms of sub-paragraph 71.1 must be measurable and audited.

### 72. Variation order

72.1 Contracts may be expanded or varied by not more than 20% 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.

72.2 Any variation order that is above 5% below the required threshold of 20% 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 should serve the Bid Evaluation Committee and the Bid Adjudication Committee prior to the approval by the Accounting Officer.

72.3 Any expansion or variation in excess of these thresholds must be dealt with in terms of the provisions of section 116(3) of the MFMA which will be regarded as an amendment to the contract.

- 72.4 The contents of the above paragraph are not applicable to transversal term contracts, facilitated by the relevant treasuries on behalf of municipalities and, specific term contracts. The latter refers to orders placed as and when commodities are required and at the time of awarding contracts, the required quantities were unknown.

### **73. Payments of Service Providers**

- 73.1 Payments should be paid within 30 days from the receipt of dully acceptable invoice.
- 73.2 Verification of debt due to Newcastle Municipality by the directors of the company will be made prior to the payment being released.
- 73.3 Any payments due to Newcastle Municipality should first be recovered from the invoice due to the service provider



## **PART C**



**THE NEWCASTLE  
MUNICIPALITY**  
NEWCASTLE KWAZULU-NATAL

### **Supply Chain Management Policy for Infrastructure Procurement and Delivery Management**

**Adopted on 29 May 2020**

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## 1 Scope

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

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

## 2 Terms, definitions and abbreviations

### 2.1 Terms and definitions

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

**agent:** person or organization that is not an employee of Newcastle Municipality that acts on **its** behalf in the application of this document

**authorised person:** the municipal manager or chief executive or the appropriately delegated authority to award, cancel, amend, extend or transfer a contract or order

**conflict of interest:** any situation in which:

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

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

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

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

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

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

**gratification:** an inducement to perform an improper act

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

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

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

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

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

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

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

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

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

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

## **2.2 Abbreviations**

For the purposes of this document, the following abbreviations apply

CIDB: Construction Industry Development Board

SARS: South African Revenue Services

## **3 General requirements**

### **3.1 Delegations**

**3.1.1** The **Council of Newcastle Municipality** hereby delegates all powers and duties to the Municipal Manager which are necessary to enable the Municipal Manager to:

- a) discharge the supply chain management responsibilities conferred on accounting officers in terms of Chapter 8 or 10 of the Local Government Municipal Finance Management Act of 2003 and this document;
- b) maximise administrative and operational efficiency in the implementation of this document;
- c) enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this document; and

- d) comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Local Government Municipal Finance Management Act of 2003 Act.

**3.1.2** No departure shall be made from the provisions of this policy without the approval of the Municipal Manager of Newcastle Municipality

**3.1.3** The Municipal Manager shall for oversight purposes:

- a) within 30 days of the end of each financial year, submit a report on the implementation of this the policy and the equivalent policy of any municipal entity under the sole or shared control of the Newcastle Municipality, to the council of the Newcastle Municipality<sup>3</sup> / within 20 days of the end of each financial year, submit a report on the implementation of this policy to the board of Strategic Executive Directors, who must then submit the report to the municipal manager of Newcastle Municipality for submission to the council;
- b) whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the Council, who must then submit the report to the municipal manager of Newcastle Municipality for submission to the council;
- c) within 10 days of the end of each quarter, submit a report on the implementation of the policy to the Mayor; and
- d) make the reports public in accordance with section 21A of the Municipal Systems Act of 2000.

## **3.2 Implementation of the Standard for Infrastructure Procurement and Delivery Management**

**3.2.1** Infrastructure procurement and delivery management shall be undertaken in accordance with the all applicable legislation and the relevant requirements of the latest edition of the National Treasury Standard for Infrastructure Procurement and Delivery Management.<sup>5</sup>

## **3.3 Supervision of the infrastructure delivery management unit**

The Infrastructure Delivery Management Unit shall be directly supervised by the Chief Financial Officer

## **3.4 Objections and complaints**

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

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

**3.5.1** The Municipal Manager shall appoint an independent and impartial person, not directly involved in the infrastructure delivery management processes to assist in the resolution of disputes between the Newcastle Municipality and other persons regarding:

- a) any decisions or actions taken in the implementation of the supply chain management system;
- b) any matter arising from a contract awarded within the Newcastle Municipality's infrastructure delivery management system; or
- c) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

**3.5.2** The Municipal Manager or Designated Person shall assist the person appointed in terms of 3.5.1 to perform his or her functions effectively.

**3.5.3** The person appointed in terms of 3.5.1 shall:

- a) strive to resolve promptly all disputes, objections, complaints or queries received; and
- b) submit monthly reports to the Municipal Manager on all disputes, objections, complaints or queries received, attended to or resolved.

**3.5.4** A dispute, objection, complaint or query may be referred to the Western Cape Provincial Treasury if:

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

**3.5.5** If the Western Cape Provincial Treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

## **4 Control framework for infrastructure delivery management**

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

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

### **4.2 Gateway reviews**

#### **4.2.1 Gateway reviews for major capital projects above a threshold**

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

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

Stage		Person/Body assigned the responsibility for approving or accepting end of stage deliverables	Output	Project Value
No	Name			
0	Project initiation	Council accepts the initiation report	Approved IDP	Above R200 000
1	Infrastructure planning	Strategic Executive Director: Technical approves the Services infrastructure plan	Approved Budget	Above R200 000
2	Strategic resourcing	Strategic Executive Director: Technical approves the delivery and Services / or procurement strategy		Above R200 000

3	Pre-feasibility		[Strategic Executive Director: Technical Services accepts the pre-feasibility report		Above R200 000
	Preparation and briefing		[Strategic Executive Director: Technical Services accepts the strategic brief		Above R200 000
4	Feasibility		Strategic Executive Director: Technical Services accepts the feasibility report		Above R200 000
	Concept and viability		Strategic Executive Director: Technical Services accepts the concept report		Above R200 000
5	Design development		Strategic Executive Director: Technical Services accepts the design development report	Designs	Above R200 000
6	Design documentation	6A Production information	Strategic Executive Director: accepts the parts of the Technical Services which are identified when the design development report is accepted as requiring acceptance	Designs	Above R200 000
		6B Manufacture, fabrication and construction information	The contract manager accepts the manufacture, fabrication and construction information	Designs	Above R200 000

Stage		Person assigned the responsibility for approving or accepting end of stage deliverables	Output	Project Value
No	Name			
7	Works	The contract manager certifies completion of the works or the delivery of goods and associated services		Above R200 000
8	Handover	The owner or end user accepts liability for the works		Above R200 000
9	Package completion	The contract manager or supervising agent certifies the defects certificate in accordance with the provisions of the contract The contract manager certifies final completion in accordance with the provisions of the contract <i>[Strategic Executive Director: Technical Services]</i> accepts the close out report		Above R200 000

## 5 Control framework for infrastructure procurement

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

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

- a) Bid Documentation Committee shall grant approval for the issuing of the procurement documents, based on the, contents of a documentation review report developed in accordance with the provisions of the standard;
- b) the Bid Adjudication Committee may award the contract if satisfied with the recommendations contained in the evaluation report prepared in accordance with the provisions of the standard or alternatively make a recommendation to the Municipal Manager to award if the value exceeds R10 million.

**5.3** The responsibilities for taking the key actions associated with the issuing of an order in terms of a framework agreement shall be as stated in Table 3.

## 6 Infrastructure delivery management requirements

### 6.1 Institutional arrangements

#### 6.1.1 Committee system for procurement

##### 6.1.1.1 General

**6.1.1.1.1** A committee system comprising the Bid Specification committee, Bid evaluation committee and Bid Adjudication committee shall be applied to all procurement procedures where the estimated value of the procurement exceeds R200 000 and to the putting in place of framework agreements.



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

**6.1.1.1.3** The persons appoint in writing as technical advisors and subject matter experts may attend any committee meeting.

**6.1.1.1.4** No person who is a political officer bearer, a public office bearer including any councillor of a municipality, a political advisor or a person appointed in terms of section 12A of the Public Service Act of 1994 or who has a conflict of interest shall be appointed to a Bid specification, Bid evaluation or Bid Adjudication committee.

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

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

#### **6.1.1.2 Bid Specification committee**

**6.1.1.2.1** The Municipal Manager shall appoint in writing a standing committee to review the procurement documents and to develop a procurement documentation review report in accordance with clause 4.2.2.1 of the standard.

**6.1.1.2.2** The Bid specification committee shall comprise of a Chairperson, Vice Chairperson and three (3) members of which one (1) is the responsible official and one (1) is a SCM official. The chairperson shall be an employee of Newcastle Municipality with requisite skills.

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

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

<b>Activity</b>	<b>Sub-Activity (see Table 3 of the standard)</b>		<b>Key action</b>	<b>Person assigned responsibility to perform key action</b>
1*	Establish what is to be procured	1.3 <b>PG1</b> Obtain permission to start with the procurement process	Make a decision to proceed / not to proceed with the procurement based on the broad scope of work and the financial estimates.	Strategic Executive Director: Technical Services
2*	Decide on procurement strategy	2.5 <b>PG2</b> Obtain approval for procurement strategies that are to be adopted including specific approvals to approach a confined market or the use of the negotiation procedure	Confirm selection of strategies so that tender offers can be solicited	Strategic Executive Director: Technical Services
3	Solicit tender offers	3.2 <b>PG3</b> Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Bid specification Committee
		3.3 <b>PG4</b> Confirm that budgets are in place	Confirm that finance is available for the procurement to take place	Strategic Executive Director: Financial Services/Manager: Budgets
	Evaluate	4.2 <b>PG5</b> Obtain authorisation to proceed with next phase of tender process in the qualified, proposal or competitive negotiations procedure	Review evaluation report, ratify recommendations and authorise progression to the next stage of the tender process	[Strategic Executive Director: Technical Services

4	tender offers	4.7 <b>PG6</b>	Confirm recommendations contained in the tender evaluation report	Review recommendations of the bid evaluation committee and refer back to bid evaluation committee for reconsideration or make recommendation for award	Bid Adjudication committee
	5	5.3 <b>PG7</b>	Award contract	Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract	<i>[authorised person]</i> <i>Accounting Officer</i>
	Award contract	5.5 <b>GF1</b>	Upload data in financial management and payment system	Verify data and upload contractor's particulars and data associated with the contract or order	<i>[designated person]</i> <i>SCM</i>

\* Applies only to goods and services not addressed in a procurement strategy developed during stage 2 (strategic resourcing) of the control framework for infrastructure delivery management

Table 2 (concluded)

Activity	Sub-Activity	Key action	Person assigned responsibility to perform key action
6 Administer contracts and confirm compliance with requirements	6.4 <b>PG8A</b> Obtain approval to waive penalties or low performance damages.	Approve waiver of penalties or low performance damages	<i>[Strategic Executive Director: Technical Services]</i>
	6.5 <b>PG8B</b> Obtain approval to notify and refer a dispute to an adjudicator	Grant permission for the referral of a dispute to an adjudicator or for final settlement to an arbitrator or court of law	Manager: Legal Services
	6.6 <b>PG8C</b> Obtain approval to increase the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion at the award of a contract or the issuing of an order up to a specified percentage <sup>21</sup>	Approve amount of time and cost overruns up to the threshold	<i>[Project Management Unit Manager]</i>
	6.7 <b>PG8D</b> Obtain approval to exceed the total of prices, excluding contingencies and price adjustment for inflation, or the time for completion of a contract or the issuing of an order 20% and 30%, respectively at award of a by more than	Approve amount of time and cost overruns above a the threshold	<i>[municipal manager or chief executive or, depending upon the value, a appropriately delegated authority ]</i>

	6.8 <b>PG8E</b>	Obtain approval to cancel or terminate a contract	Approve amount	[Strategic Executive Director: Technical Services]
	6.9 <b>PG8F</b>	Obtain approval to amend a contract	Approve proposed amendment to contract	[Strategic Executive Director: Technical Services]

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

Activity	Key action	Person assigned responsibility to perform key action
<b>1 FG1</b> Confirm justifiable reasons for selecting a framework contractor where there is more than one framework agreement covering the same scope of work	Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited	<i>Accounting Officer or designated official</i>
<b>3 FG2</b> Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	<i>Accounting Officer or designated official</i>
<b>4 FG3</b> Confirm that budgets are in place	Confirm that finance is available so that the order may be issued	<i>[designated person e.g. programme manager or financial Strategic Executive Director]</i>
<b>6 FG4</b> Authorise the issuing of the order	If applicable, review evaluation report and confirm or reject recommendations. Formally accept the offer in writing and issue the contractor with a signed copy of the order	<i>CFO or designated official</i>



### **6.1.1.3 Bid Evaluation committee**

**6.1.1.3.1** The Municipal Manager shall appoint in writing:

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

**6.1.1.3.2** The bid evaluation committee shall comprise of a Chairperson, Vice Chairperson and three (3) members of which one (1) is the responsible official and one (1) is a SCM official. The chairperson shall be an employee of Newcastle Municipality with requisite skills.

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

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

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

**6.1.1.3.5** The chairperson of the evaluation committee shall promptly notify the Municipal Manager of any respondent or tenderer who is disqualified for having engaged in fraudulent or corrupt practices during the tender process.

### **6.1.1.4 Bid Adjudication Committee**

**6.1.1.4.1** The Bid Adjudication committee shall comprise the following persons or their mandated delegate:

- a) the Chief Financial Officer;
- b) Vice chairperson (manager in the budget and treasury office reporting directly to the CFO)
- c) At least one senior SCM practitioner who is an official of the Municipality;
- d) 2 x officials in top management positions employed by Newcastle Municipality
- e) Secretary (official from the SCMU with no voting rights);

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

**6.1.1.4.3** The bid adjudication committee shall:



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

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

**6.1.1.4.5** The bid adjudication committee shall consider the merits of an unsolicited offer and make a recommendation to the municipal manager.

**6.1.1.4.6** The bid adjudication committee shall report to the municipal manager any recommendation made to award a contract to a tenderer other than the tenderer recommended by the evaluation committee, giving reasons for making such a recommendation.

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

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

**6.1.1.4.8** The bid adjudication committee may on justifiable grounds and after following due process, disregard the submission of any tenderer if that tenderer or any of its Strategic Executive Directors, members or trustees or partners has abused the delivery management system or has committed fraud, corruption or any other improper Conduct in relation to such system. The National Treasury and the Provincial Treasury shall be informed where such tenderers are disregarded.

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

### **6.1.2.1 Award of a contract**

**6.1.2.1** The municipal manager shall, if the value of the contract inclusive of VAT, is within his or her delegation, consider the report(s) and recommendations of the bid adjudication committee and either:

- a) award the contract after confirming that the report is complete and addresses all considerations necessary to make a recommendation and budgetary provisions are in place; or

- b) decide not to proceed or to start afresh with the process.

**6.1.2.2** The municipal manager shall immediately notify the bid adjudication committee if a tender other than the recommended tender is awarded, save where the recommendation is changed to rectify an irregularity. Such person shall, within 10 working days, notify in writing the Auditor-General, the National Treasury and Western Cape Provincial Treasury, and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation.

#### **6.1.2.3 Issuing of an order**

The authorised person shall, if the value of an order issued in terms of a framework contract, is within his relevant, and either:

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

### **6.1.3 Conduct of those engaged in infrastructure delivery**

#### **6.1.3.1 General requirements**

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

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

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

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a family member or an associate;
- b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;
- c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;
- d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;

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

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

#### **6.1.3.2 Conflicts of interest**

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

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

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

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

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

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

#### **6.1.3.3 Evaluation of submissions received from respondents and tenderers**

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

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

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

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

#### **6.1.3.4 Non-disclosure agreements**

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

#### **6.1.3.5 Gratifications, hospitality and gifts**

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

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

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

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

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

- a) meals and entertainment, but excluding the cost of transport and accommodation;
- b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;
- c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;
- d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and
- e) gifts in kind other than those listed in a) to d) which have an intrinsic value greater than R350 unless they have declared them to the Municipal Manager.

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

6.1.3.5.6 Employees and agents of Newcastle Municipality shall without delay report to the Municipal Manager any incidences of a respondent, tenderer or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision.

#### **6.1.3.6 Reporting of breaches**

Employees and agents of Newcastle Municipality shall promptly report to the Municipal Manager any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

#### **6.1.4 Measures to prevent abuse of the infrastructure delivery system<sup>27</sup>**

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

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

- 2) an employee or other role player committed any corrupt or fraudulent act during the tender process or during the execution of that contract.

#### **6.1.5 Awards to persons in the service of the state**

**6.1.5.1** Any submissions made by a respondent or tenderer who declares in the Compulsory Declaration that a principal is one of the following shall be rejected:

- a) a member of any municipal council, any provincial legislature, or the National Assembly or the National Council of Provinces;
- b) a member of the board of Strategic Executive 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.

**6.1.5.2** The notes to the annual financial statements of the municipality shall disclose particulars of an award of more than R 2000 to a person who is a family member of a person identified in 6.1.5.1 or who has been in the previous 12 months. Such notes shall include the name of the person, the capacity in which such person served and the amount of the award.

#### **6.1.6 Collusive tendering**

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

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

#### **6.1.7 Placing of contractors under restrictions**

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

- a) withdrawn such tender or quotation after the advertised closing date and time for the receipt of submissions;
- b) after having been notified of the acceptance of his tender, failed or refused to commence the contract;

- c) had their contract terminated for reasons within their control without reasonable cause;
- d) offered, promised or given a bribe in relation to the obtaining or the execution of such contract;
- e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards Newcastle Municipality, or
- f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of Newcastle Municipality that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements,

**6.1.7.2** The Manager: Legal Services shall prepare a report on the matter and make a recommendation to the Municipal Manager for placing the contractor or any of its principals under restrictions from doing business with the Newcastle Municipality

**6.1.7.3** The Municipal Manager may, as appropriate, upon the receipt of a recommendation made in terms of 6.1.7.1 and after notifying the contractor of such intention in writing and giving written reasons for such action, suspend a contractor or any principal of that contractor from submitting a tender offer to Newcastle Municipality for a period of time.

**6.1.7.4** The Manager: Legal Services shall:

- a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of Newcastle Municipality who are engaged in procurement processes; and
- b) notify the National Treasury and Western Cape Provincial Treasury and , if relevant, the Construction Industry Development Board, of such decision and provide them with the details associated therewith.

## **6.1.8 Complaints**

**6.1.8.1** All complaints regarding the Newcastle Municipality's infrastructure delivery management system shall be addressed to the Municipal Manager. Such complaints shall be in writing.

**6.1.8.2** The Manager: Legal Services shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to the Municipal Manager who will decide on what action to take.

## **6.2 Acquisition management**

### **6.2.1 Unsolicited proposal**

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

- a) the goods, services or any combination thereof that is offered is a demonstrably or proven unique innovative concept;
- b) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement is vested in the person who made the offer;

- c) the offer presents a value proposition which demonstrates a clear, measurable and foreseeable benefit for Newcastle Municipality;
- d) the offer is in writing and clearly sets out the proposed cost;
- e) the person who made the offer is the sole provider of the goods or service; and
- f) Newcastle Municipality finds the reasons for not going through a normal tender processes to be sound.

**6.2.1.2** The Municipal Manager may only accept an unsolicited offer and enter into a contract after considering the recommendations of the bid adjudication committee if:

- a) the intention to consider an unsolicited proposal has been made known in accordance with Section 21A of the Municipal Systems Act of 2000 together with the reasons why such a proposal should not be open to other competitors, an explanation of the potential benefits for the Municipality and an invitation to the public or other potential suppliers and providers to submit their comments within 30 days after the notice;
- b) Newcastle Municipality has obtained comments and recommendations on the offer from the National Treasury and Western Cape Provincial Treasury;
- c) the tender committee meeting which makes recommendations to accept an unsolicited proposal was open to the public and took into account any public comments that were received and any comments and recommendations received from the National Treasury and Western Cape Provincial Treasury; and
- d) the provisions of 6.2.1.3 are complied with.

**6.2.1.3** The Municipal Manager shall, within 7 working days after the decision to award the unsolicited offer is taken, submit the reasons for rejecting or not following the recommendations to the National Treasury, the Western Cape Provincial Treasury and Auditor General. A contract shall in such circumstances not be entered into or signed within 30 days of such submission.

## **6.2.2 Tax and rates compliance**

### **6.2.2.1 SARS tax clearance**

**6.2.2.1.1** No contract may be awarded or an order issued where the value of such transaction exceeds R 30 000, unless a tenderer or contractor is in possession of an original valid Tax Clearance Certificate issued by SARS provided that the tenderer is not domiciled in the Republic of South Africa and the SARS has confirmed that such a tenderer is not required to prove their tax compliance status.

**6.2.2.1.2** In the case of a partnership, each partner shall comply with the requirements of 6.2.2.1.1.

**6.2.2.1.3** No payment shall be made to a contractor who does not satisfy the requirements of 6.2.2.1.2. An employee of Newcastle Municipality shall upon detecting that a tenderer or contractor is not tax compliant, immediately notify such person of such status.

**6.2.2.1.4** Notwithstanding the requirements of 6.2.2.1.1 and 6.2.2.1.3 the following shall apply, unless a person who is not tax compliant indicates to the Manager: SCM, Assets & Insurance that it intends challenging its tax compliance status with SARS,



- a) a non-compliant contractor shall be issued with a first warning that payments in future amounts due in terms of the contract may be withheld, before the authorising of any payment due to such contractor;
- b) before authorising a further payment due to a non-compliant contractor who has failed to remedy its tax compliance status after receiving a first warning, a second and final warning shall be issued to such contractor;
- c) no payments may be released for any amounts due in terms of the contract due to a non-compliant contractor if, after a period of 30 calendar days have lapsed since the second warning was issued, the non-compliant contractor has failed to remedy its tax compliance status.

**6.2.2.1.5** Newcastle Municipality may cancel a contract with a non-compliant contractor if such a contractor fails to remedy its tax compliance status after a period of 30 calendar days have lapsed since the second warning was issued in terms of 6.2.2.1.4e).

#### **6.2.2.2 Municipal rates and taxes**

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

#### **6.2.3 Declarations of interest**

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

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

#### **6.2.4 Invitations to submit expressions of interest or tender offers**

**6.2.4.1** All invitations to submit tenders where the estimated value of the contract exceeds R200 000 including VAT, except where a confined tender process is followed, and expressions of interest shall be advertised on Newcastle Municipality's website and on the National Treasury eTender Publication Portal. Advertisements shall be placed by the delegated official within the SCM unit

**6.2.4.2** Advertisements relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.4.1 be advertised on the CIDB website. Advertisements shall be placed by the designated official within the SCM unit.

**6.2.4.3** Where deemed appropriate by the Manager: SCM, Assets & Insurance an invitation to tender and a call for an expression of interest shall be advertised in suitable local and national newspapers and the Government Tender Bulletin as directed by such person. Advertisements shall be placed by the designated person within the SCM unit.

**6.2.4.4** Such advertisements shall be advertised for a period of at least 30 days before closure, except in urgent cases when the advertisement period may be shortened as determined by the Municipal Manager.

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

#### **6.2.5 Publication of submissions received and the award of contracts<sup>35</sup>**

**6.2.5.1** The designated official with the SCM unit shall publish within 10 working days of the closure of any advertised call for an expression of interest or an invitation to tender where the estimated value of the contract exceeds R200 000 including VAT on the municipality's or municipal entity's website, the names of all tenderers that made submissions to that advertisement, and if practical or applicable, the total of the prices and the preferences claimed. Such information shall remain on the website for at least 30 days.

**6.2.5.2** The designated official with the SCM unit shall publish within 7 working days of the award of a contract the following on Newcastle Municipality's website

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

**6.2.5.3** The designated official with the SCM unit shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury eTender Publication Portal regarding the successful and unsuccessful tenders.

**6.2.5.4** The award of contracts relating to construction works which are subject to the Construction Industry Development Regulations issued in terms of the Construction Industry Development Act of 2000 shall in addition to the requirements of 6.2.5.3 be notified on the CIDB website. The notification shall be made by the designated official with the SCM unit.

#### **6.2.6 Disposal committee**

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

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

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

### **6.3 Reporting of infrastructure delivery management information**

The Manager: SCM, Assets & Insurance shall submit any reports required in terms of the standard to the National Treasury or Western Cape Provincial Treasury.

## **7 Infrastructure procurement**

### **7.1 Procurement documents**

7.1.1 Newcastle Municipality's preapproved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilised to obviate the need for legal review prior to the awarding of a contract. All modifications to the standard templates shall be approved by the Municipal Manager prior to being issued for tender purposes.

7.1.2 Disputes arising from the performance of a contract shall be finally settled in a South African court of law.

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

- a) consultancy services; and
- b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT.

### **7.3 Developmental procurement**

The approved Preferential Procurement Policy of Council will address developmental aspects

### **7.4 Payment of contractors**

Newcastle Municipality shall settle all accounts within 30 days of invoice or statement as provided for in the contract.

### **7.5 Approval to utilise specific procurement procedures**

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

- a) The municipal manager shall authorise the use of the negotiated procedure above the thresholds provided in the standard.
- b) The Municipal Manager shall authorise the approaching of a confined market except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in the standard and which can be dealt with or the risks relating thereto arrested within 48 hours; and
- c) the proposal procedure using the two-envelope system, the proposal procedure using the two-stage system or the competitive negotiations procedure<sup>45</sup>.

7.5.2 The person authorised to pursue a negotiated procedure in an emergency is the Head of the Department.

## **7.6 Receipt and safeguarding of submissions**

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

**7.6.2** The tender box shall be fitted with a lock and the key kept by a designated official within the SCM unit. Such personnel shall be present when the box is opened on the stipulated closing date for submissions.

## **7.7 Opening of submissions**

**7.7.1** Submissions shall be opened by an opening panel comprising at least two designated officials in the SCM unit who have declared their interest or confirmed that they have no interest in the submissions that are to be opened.

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

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

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

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

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

## 7.8 Use of another organ of state's framework agreement

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

## 7.9 Insurances

**7.9.1** Contractors shall be required to take out all insurances required in terms of the contract.

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

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

**Table 4: Minimum insurance cover<sup>52</sup>**

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

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