

**NKANGALA DISTRICT  
MUNICIPALITY  
INFRASTRUCTURE  
PROCUREMENT AND DELIVERY  
MANAGEMENT POLICY  
2022/23**

## SUPPLY CHAIN MANAGEMENT POLICY FOR INFRASTRUCTURE PROCUREMENT AND DELIVERY MANAGEMENT

1	Scope .....	1
2	Terms, definitions and abbreviations .....	1
2.1	Terms and definitions .....	1
2.2	Abbreviations.....	5
3	General requirements.....	5
3.1	Delegations .....	5
3.2	Implementation of the Standard for Infrastructure Procurement and Delivery Management .....	6
3.3	Supervision of the infrastructure delivery management unit .....	7
3.4	Objections and complaints .....	7
3.5	Resolution of disputes, objections, complaints and queries.....	8
4	Control framework for infrastructure delivery management .....	9
4.1	Assignment of responsibilities for approving or accepting end of stage deliverables .....	9
4.2	Gateway reviews .....	10
4.2.1	Gateway reviews for major capital projects above a threshold of R50 million .....	10
5	Control framework for infrastructure procurement .....	10
5.1	Quotation process .....	10
5.2	Bidding process.....	11
6	Infrastructure delivery management requirements.....	15
6.1	Institutional arrangements .....	15
6.1.1	Committee system for procurement.....	15

6.1.2	Actions of an authorised person relating to the award of a contract or an order .....	20
6.1.3	Conduct of those engaged in infrastructure delivery .....	21
6.1.4	Measures to prevent abuse of the infrastructure delivery system.....	26
6.1.5	Awards to persons in the service of the state.....	27
6.1.6	Collusive tendering .....	28
6.1.7	Placing of contractors under restrictions .....	28
6.1.8	Complaints.....	29
6.2	Acquisition management .....	30
6.2.1	Unsolicited proposal .....	30
6.2.2	Tax and rates compliance .....	31
6.2.3	Declarations of interest .....	33
6.2.4	Invitations to submit expressions of interest or tender offers.....	33
6.2.5	Publication of submissions received and the award of contracts.....	34
6.2.6	Disposal committee.....	35
6.3	Reporting of infrastructure delivery management information.....	35
7	Infrastructure procurement .....	36
7.1	Procurement documents .....	36
7.2	Developmental procurement policy.....	38
7.3	Payment of contractors.....	38
7.4	Approval to utilise specific procurement procedures.....	38
7.5	Receipt and safeguarding of submissions .....	39
7.6	Opening of submissions .....	39
7.7	Use of another organ of state's framework agreement .....	40
7.8	Insurances.....	40
7.9	Written reasons for actions taken .....	42
7.10	Request for access to information .....	42

## **1 Scope**

This policy establishes the Nkangala District Municipality's policy for infrastructure procurement and delivery management in accordance with the provisions of the regulatory frameworks for procurement and supply chain management.

The scope 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 Nkangala District Municipality which are stored and issued to contractors or to employees;
- (b) the disposal or letting of land;
- (c) the conclusion of any form of land availability agreement;
- (d) the leasing or rental of moveable assets; and
- (e) public private partnerships.

## **2 Terms, definitions and abbreviations**

### **2.1 Terms and definitions**

In this Policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the MFMA, has the same meaning as in the act.

**Adjudication:** a form of dispute resolution where, unlike other means of resolving disputes involving a third party intermediary, the outcome is a decision by a third party which is binding on the parties in dispute and is final unless and until reviewed by either arbitration or litigation  
**advance payment:** sum of money paid to the contractor after the contract is signed but before work starts or goods or services or any combination thereof are supplied.

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

**Alteration:** changing, extending or modifying the character or condition of infrastructure

**Authorised person:** the municipal manager or chief financial officer 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

**Construction:** everything that is constructed or results from construction operations

**Contract management:** applying the terms and conditions, including the agreed procedures for the administration thereof

**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.

**Contractor:** person or organisation that contracts with the employer to provide goods or services or any combination thereof covered by the contract

**Control budget:** the amount of money which is allocated or made available to deliver or maintain infrastructure associated with a project or package, including site costs, professional fees, all service and planning charges, applicable taxes, risk allowances and provision for price adjustment for inflation

**Defect:** non-conformity of a part or component of the works to a requirement specified in terms of a contract.

**Document Committee:** a committee who is responsible to compile and approve specifications and all relevant aspects before a tender can be advertised.

**Evaluation Committee:** a committee who is responsible to evaluate tenders received and make a recommendation to the Tender Committee on how to proceed

**Employer:** organ of state intending to or entering into a contract with a contractor.

**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:**

- a) immovable assets which are acquired, constructed or which result from construction operations; or
- b) movable assets which cannot function independently from purpose-built immovable assets.

**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.

**Major capital project:** an infrastructure project or a series of interrelated infrastructure projects on a single site having an estimated cost, including those required for new facilities or systems to become fully operational, above a prescribed threshold.

**Major public entity:** a public entity included in the list in Schedule 2 to the Public Finance Management Act.

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

**Operations and maintenance support plan:** a plan which establishes the organisational structure required for the operation and maintenance of the works over its service life, and the office, stores, furniture, equipment, Information and Communications Technology (ICT), engineering infrastructure and staff training requirements.

**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.

**Package:** work which is grouped together for delivery under a single contract or an order

**Portfolio:** collection of projects or programmes and other work that are grouped together to facilitate effective management of that work to meet a strategic objective

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

**Procurement strategy:** selected packaging, contracting, pricing and targeting strategy and procurement procedure for a particular procurement

**Programme:** the grouping of a set of related projects in order to deliver outcomes and benefits related to strategic objectives which would not have been achieved had the projects been managed independently

**Principal:** a natural person who is a partner in a partnership, a sole proprietor, a director of 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).

**Rehabilitation:** extensive work to bring infrastructure back to acceptable functional conditions, often involving improvements

**Repair:** physical action taken to restore the required function of a faulty item

**Retention sum:** sum retained for a certain period to offset costs which may arise from the contractor's failure to comply fully with the contract service delivery agreement: an agreement

between two or more organs of state setting out the terms and conditions and roles and responsibilities regarding infrastructure delivery which promotes and facilitates inter-institutional relations and the principles of participation, cooperation and coordination

**Service life:** the period of time after acquisition or construction during which the infrastructure or its parts meet or exceed the performance demanded or expected to be fulfilled

**Stage:** a collection of logically related activities in the infrastructure delivery cycle that culminates in the completion of a major deliverable

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

**Statutory permission:** any relevant approval, consent or permission in terms of any legislation required to plan and deliver the infrastructure target contract: a cost reimbursement contract in which a preliminary target cost is estimated and on completion of the work the difference between the target cost and the actual cost is apportioned between the parties to the contract on an agreed basis.

**Tender Committee:** a committee that makes a final decision (award, cancellation or referral to the accounting officer for final decision) on a tender.

**Value for money:** the optimal use of resources to achieve intended outcomes

**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

FIDPM Framework for Infrastructure Delivery and Procurement Management

MFMA Municipal Finance Management Act

NDM Nkangala District Municipality

<sup>6</sup> This clause aligns with SCM Regulation 49 issued in terms of the MFMA.



TDP Targeted development programme

### **3 General requirements**

#### **3.1 Delegations**

3.1.1 The council of Nkangala District Municipality hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer 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 accounting officer or a delegated official of Nkangala District Municipality<sup>1</sup>.

3.1.3 The accounting officer shall for oversight purposes:

- (a) within 30 days of the end of each financial year, submit a report on the implementation of this policy and the equivalent policy to the council of the Nkangala District Municipality;
- (b) whenever there are serious and material problems in the implementation of this policy, immediately submit a report to the council;
- (c) within 30 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**

<sup>7</sup> This clause aligns with SCM Regulation 49 issued in terms of the MFMA.

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>2</sup>

3.2.2 Pre-feasibility and feasibility reports are required on major capital projects or as determined, if necessary, by the General Manager Technical Services.<sup>3</sup>

3.2.3 Stage 3 to 7 are required for major capital projects or as determined, if necessary, by the General Manager Technical Services.<sup>4</sup>

### **3.3 Supervision of the infrastructure delivery management unit<sup>5</sup>**

3.3.1 The infrastructure delivery management functions related to the supply chain management process will be performed by the officials in the Supply Chain Management Unit under direct supervision of the Manager Finance.

3.3.2 The infrastructure delivery management functions related to the construction process will be performed by the officials in the relevant departments.

### **3.4 Objections and complaints<sup>6</sup>**

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.

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<sup>2</sup> Any deviation to the provisions of this standard must be reported to National Treasury and the relevant treasury.

<sup>3</sup> Sub-clause 4.1.1.4 c) of the standard permits an organ of states' policy to require that pre-feasibility and feasibility reports are required, notwithstanding the test provided for in this sub-clause to determine if such reports are required.

<sup>4</sup> Sub-clause 4.1.1.1 of the standard permits stages 3 to 9 where the work does not involve the provision of new infrastructure or the rehabilitation, refurbishment, alteration of existing infrastructure. Stages 5 and 6 to be omitted where there is sufficient information to proceed to stage 7 is contained in the stage 4 deliverable. The policy may require that certain types of work (e.g. specific types of maintenance) need to pass through all the stages. If this is the case, the policy may require the application of all the stages for specific types of projects.

<sup>5</sup> SCM Regulation 7 which is issued in terms of the MFMA requires each municipality to establish a supply chain management unit to implement its supply chain management policy, which where possible, should operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of Section 82 of the MFMA. There are benefits in establishing SCM units for general goods and services and infrastructure and to delegate the supervision to a person other than the chief financial officer.

<sup>8</sup> This clause aligns with SCM Regulation 49 issued in terms of the MFMA.

### **3.5 Resolution of disputes, objections, complaints and queries<sup>7</sup>**

- 3.5.1 The accounting officer shall appoint an independent and impartial person, not directly involved in the infrastructure delivery management processes or supply chain process to assist in the resolution of disputes between the 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 Nkangala District 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 accounting officer or a designated person/s appointed by the accounting officer, depending on the nature of the dispute, objection or complaint, 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 accounting officer 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 Provincial Treasury of the Mpumalanga 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 Provincial Treasury of the Mpumalanga does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

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<sup>7</sup> This clause aligns with SCM Regulation 50 issued in terms of the MFMA.

## 4 Control framework for infrastructure delivery management

### 4.1 Assignment of responsibilities for approving or accepting end of stage deliverables<sup>8</sup>

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

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

Stage			Person assigned the responsibility for approving or accepting end of stage deliverables
No	Name		
0	Project initiation (Business case)		<b>Council</b> accepts the initiation report (Process flow: Departmental General Manager/Unit Head - Accounting Officer – Council)
1	Infrastructure planning		<b>Accounting Officer</b> approves the infrastructure plan (Process flow: Departmental General Manager/Unit Head - Accounting Officer)
2	Strategic resourcing		<b>Accounting Officer</b> approves the delivery and / or procurement strategy (Process flow – General Manager/Unit head, Divisional Manager Supply Chain, – relevant Departmental General Manager/Unit Head –
3	Pre-feasibility (R50 million)		<b>General Manager Technical Services</b> accepts the pre-feasibility report
	Preparation and briefing (<R50 million)		<b>General Manager Technical Services</b> accepts the strategic brief
4	Feasibility (R50 million)		<b>General Manager Technical Services</b> in co-operation with the General Manager/Unit head accepts the feasibility report
	Concept and viability (< R50 million)		<b>General Manager Technical Services</b> in co-operation with the General Manager/Unit head accepts the concept report
5	Design development (Design output)		<b>General Manager Technical Services</b> in co-operation with the General Manager/Unit head accepts the design development report
6	Design documentation	6A Production information	<b>General Manager/Unit head in co-operation with the General Manager Technical Services</b> accepts the parts of the production information which are identified when the design development report is accepted as requiring acceptance
		6B Manufacture, fabrication and construction information	The <b>Project (Contract) Manager</b> in co-operation with the General Manager/Unit head accepts the manufacture, fabrication and construction information

<sup>8</sup> The terms “approve” and “accept” have the meanings “officially agree to” and “receive as adequate, valid, or suitable give an affirmative answer to a proposal”, respectively. Approvals will typically take place at a senior management level whilst acceptances can be made at a lower level. Approvals and acceptances can be granted by individuals or committees.

Where a municipality implements a project on behalf of an organ of state, acceptance / approval of end of stage deliverables may have to be granted in consultation with such an organisation. Alternatively, it may be assigned to a party to an agency agreement developed in accordance with the provisions of clauses 5.2 of the standard. As a result, Table 1 may have to differentiate between own infrastructure and client institution's infrastructure. It may also have to differentiate between the value and type of projects.

Stage		Person assigned the responsibility for approving or accepting end of stage deliverables
No	Name	
7	Works	The <b>Project (Contract) Manager</b> in co-operation with the Functional Manager certifies completion of the works or the delivery of goods and associated services (Minutes, payment certificates.)
8	Handover	The <b>Project (Contract) Manager</b> accepts liability for the works (close out report).
9	Package completion	The <b>Project (Contract) Manager</b> certifies the defects certificate in accordance with the provisions of the contract The <b>Project (Contract) Manager</b> certifies final completion in accordance with the provisions of the contract <b>General Manager Technical Services</b> accepts the close out report

## 4.2 Gateway reviews

**4.2.1 Gateway reviews for major capital projects above a threshold of R50 million** The accounting officer in co-operation with the General Manager Technical Services 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 and provide the Manager: Supply Chain Management with the written appointments for administrative purposes.

## 5 Control framework for infrastructure procurement

### 5.1 Quotation process

**5.1.1** 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:<sup>9</sup>

- (a) the delegated General Manager/Unit head 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 delegated General Manager/Unit head person may award the contract if satisfied that the quotation conforms to the specifications, value for money is received aligned with the standard; and
- (c) the delegated SCM officials may award the contract if satisfied that all legal requirements were met and issue an order.

## **5.2 Bidding process**

**5.2.1** 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.

**5.2.2** 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.

**Table 2 (Table 3 in Standard): Procurement activities and gates associated with the formation and conclusion of contracts above the quotation threshold**

Activity		Sub-Activity (see Table 3 of the standard)		Key action	Person assigned responsibility to perform key action
1*	Establish what is to be procured	1.3 <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.	General Manager Technical Services in co-operation with the General Manager/Unit head
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	General Manager Technical Services in consultation with the Divisional Manager Supply Chain and Accounting Officer. See approved Strategic Sourcing document.
3	Solicit tender offers	3.2 <b>PG3</b>	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	Document committee, Chairperson of Document Committee and Director Engineering and Planning Service or relevant Departmental General Manager/Unit Head
		3.3 <b>PG4</b>	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place: Tender threshold: below R10 million Tender threshold: above R10 million	Divisional Manager Budget and Expenditure and/or Chief Financial Officer
4	Evaluate tender offers	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	Chairperson of evaluation committee
		4.7 <b>PG6</b>	Confirm recommendations contained in the tender evaluation report	Review recommendations of the evaluation committee and refer back to evaluation committee for reconsideration or make recommendation for award	Tender committee
5	Award contract	5.3 <b>PG7</b>	Award contract	Award of tender (threshold: below R10 million) Award of tender (threshold: above R10 million) Formally accept the tender offer in writing and issue the contractor with a signed copy of the contract	Tender Committee Accounting Officer  Accounting Officer or a delegated official

Activity		Sub-Activity (see Table 3 of the standard)		Key action	Person assigned responsibility to perform key action
		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	Department / SCM official / Expenditure Clerk
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	Accounting Officer in cooperation with the General Manager Technical Services
		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	Accounting Officer or a delegated official or external service provider (depending on the nature of the dispute)
		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	Approve amount of time and cost overruns up to the threshold	General Manager Technical Services in co-operation with the CFO
		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 at award of a contract or the issuing of an order by more than 15%, respectively.	Approve amount of time and cost overruns above the threshold	General Manager Technical Services request, CFO recommend and Accounting Officer for approval
		6.8 <b>PG8E</b>	Obtain approval to cancel or terminate a contract	Approve amount	Accounting Officer
		6.9 <b>PG8F</b>	Obtain approval to amend a contract	Approve proposed amendment to contract in terms of Section 116 of the MFMA	Council

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

<b>Activity</b>		<b>Key action</b>	<b>Person assigned responsibility to perform key action</b>
<b>1 FG1</b>	Confirm justifiable reasons for selecting a framework contactor where there is more than one framework agreement covering the same scope of work	Confirm reasons submitted for not requiring competition amongst framework contractors or instruct that quotations be invited	Accounting Officer or delegated official
<b>3 FG2</b>	Obtain approval for procurement documents	Grant approval for the issuing of the procurement documents	General Manager Technical Services
<b>4 FG3</b>	Confirm that budgets are in place	Confirm that finance is available for the procurement to take place Tender threshold: below R10 million Tender threshold: above R10 million	Divisional Manager Budget and Expenditure Chief Financial Officer
<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	General Manager Technical Services

## **6 Infrastructure delivery management requirements**

### **6.1 Institutional arrangements**

#### **6.1.1 Committee system for procurement<sup>10</sup>**

##### **6.1.1.1 General**

- 6.1.1.1.1 A committee system comprising out of a document committee, evaluation committee and tender committee shall be applied to all procurement procedures where the estimated value of the procurement exceeds the financial threshold for quotations and to the putting in place of framework agreements.
- 6.1.1.1.2 The evaluation committee shall, where competition for the issuing of an order amongst framework contractors takes place and the value of the order exceeds the financial threshold for quotations, evaluate the quotations received. See par. 4.2.3.2 and 4.2.3.4 of the standard.
- 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 document, evaluation or tender committee.
- 6.1.1.1.5 Committee decisions shall as far as possible be based on the consensus principle i.e. the general agreement characterised by the lack of sustained opposition to substantial issues. Committees shall record their decisions in writing. Such decisions shall be kept in a secured environment for a period of not less than five years after the completion or cancellation of the contract

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<sup>10</sup> SCM Regulation 26 of the MFMA requires that a committee system be established for procurement above the threshold for quotations. A municipality may require that the tender committee (bid adjudication committee) also deal with quotations. The principle of segregation (an internal control designed to prevent error and fraud by ensuring that at least two individuals are responsible for the separate parts of any task) is dealt with the committee system in the standard as follows:

- procurement gate 3: a technical evaluation of procurement documents and an approval of such documentation;
- procurement gate 5: a technical evaluation of submissions and an authorization to proceed with the next phase of a procurement process; and
- procurement gate 6: a tender evaluation and a recommendation to award a contract.

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.

#### **6.1.1.2 Document committee**

- 6.1.1.2.1 The accounting officer, in co-operation with the General Manager Technical Services, shall appoint in writing on a procurement by procurement basis or per written delegation for a grouping of projects:

- (a) the persons to review the procurement documents and to develop a procurement documentation review report in accordance with clause 4.2.2.1<sup>11</sup> of the standard; and
- (b) the members of the document committee.

- 6.1.1.2.2 The document committee shall comprise one or more persons. The chairperson shall be an employee of Nkangala District Municipality with requisite skills. Other members shall, where relevant, include a representative of the end user or the department requiring infrastructure delivery.

- 6.1.1.2.3 No member of, or technical adviser or subject matter expert who participates in the work of any of the procurement committees or a family member or associate of such a member, may tender for any work

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<sup>11</sup> The approval of procurement documents at Procurement Gate 3 or Framework Agreement Gate 2 shall be based on the contents of a procurement documentation review report. Where the procurement relates to the provision of new infrastructure or the rehabilitation, refurbishment or alteration of existing infrastructure, such a report shall be prepared by one or more persons who participated in the review and who are registered as:

- (a) a professional architect or professional senior architectural technologist in terms of the Architectural Profession Act or a professional landscape architect or a professional landscape technologist in terms of the Landscape Architectural Profession;
- (b) a professional engineer or professional engineering technologist in terms of the Engineering Profession Act; or
- (c) a professional quantity surveyor in terms of the Quantity Surveying Professions Act.

associated with the tender which is considered by these committees. See clause 6.1.3.2.1.

### **6.1.1.3 Evaluation committee**

6.1.1.3.1 The accounting officer in co-operation with the General Manager Technical Services shall appoint on a procurement by procurement basis in writing:

- (a) the persons to prepare the evaluation and, where applicable, the quality evaluations, in accordance with clauses 4.2.3.2<sup>12</sup> and 4.2.3.4<sup>13</sup> of the standard, respectively; and
- (b) the members of the evaluation committee.

6.1.1.3.2 The evaluation committee shall comprise of not less than three people. The chairperson shall be an employee of Nkangala District Municipality with requisite skills. Other members shall include a Divisional Manager Supply Chain<sup>14</sup> and always include at least one official from the department requiring infrastructure delivery.

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

- (a) the capability and capacity of a tenderer to perform the contract;
- (b) the tenderer's tax and municipal rates and taxes compliance status (CSD);

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<sup>12</sup> The evaluation report shall be prepared by one or more persons who are conversant with the nature and subject matter of the procurement documents or the framework contract, and who are registered as:

- (a) a professional architect or professional senior architectural technologist in terms of the Architectural Profession Act;
- (b) a professional engineer or professional engineering technologist in terms of the Engineering Profession Act;
- (c) a professional landscape architect or a professional landscape technologist in terms of the Landscape Architectural Profession;
- (d) a professional project manager or a professional construction manager in terms of the Project and Construction Management Professions Act; or
- (e) a professional quantity surveyor in terms of the Quantity Surveying Profession Act.

<sup>13</sup> Submissions shall be evaluated strictly in accordance with the provisions of the procurement documents (see Annex C of SANS 10845-3 and Annex C of SANS 10845-4, as relevant). Where quality is evaluated, at least three persons who satisfy the requirements of 4.2.3.2 shall undertake such evaluation. Quality shall be scored in terms of the prompts for judgement, with fixed scores assigned to each prompt, either individually and averaged or collectively, as appropriate.

<sup>14</sup> A Divisional Manager Supply Chain in the context of infrastructure delivery includes a built environment professional.

- (c) confirm that the tenderer's municipal rates and taxes and municipal service charges are not in arrears;
- (d) the Compulsory Declarations have been completed; and
- (e) the tenderer is not listed in the National Treasury's Register for Tender Defaulters or the List of Restricted Suppliers (CSD).

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 document committee or a family member or associate of such a member, may be considered by the evaluation committee.

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

#### **6.1.1.4 Tender committee**

6.1.1.4.1 The tender committee shall be appointed by the accounting officer in writing.

6.1.1.4.2 The tender committee shall comprise the following persons or their mandated delegate:<sup>15</sup>

(a) The chairperson will be an employee of the municipality with the requisite skills.

(b) The other members will be the members of Bid Adjudication Committee.

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

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<sup>15</sup> The chairperson needs to be an employee of the municipality with requisite skills. Other members should be employees of the municipality and include at least four senior managers including the chief financial officer, a Divisional Manager Supply Chain and a technical expert in the relevant field, if such municipality has such an expert.

6.1.1.4.4 The tender committee shall:

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

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

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

6.1.1.4.7 The tender committee shall report to the accounting officer 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.

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

- (a) made a misrepresentation or submitted false documents in competing for the contract or order; or

(b) been convicted of a corrupt or fraudulent act in competing for any contract during the past five years.

6.1.1.4.9 The tender committee may on justifiable grounds and after following due process, disregard the submission of any tenderer if that tenderer or any of its Departmental General Manager/Unit Heads, 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 of the Mpumalanga 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**

6.1.2.1.1 The award of contracts shall take place in line with the system of delegations for tenders and quotations.

6.1.2.1.2 The delegated authority or person shall:

- (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.

6.1.2.1.3 The Tender Committee shall immediately notify the accounting officer if a tender other than the recommended tender is awarded or where the recommendation is changed to rectify an irregularity.

6.1.2.1.4 The accounting officer may –

- (a) after due consideration of the reasons for the deviation, ratify or reject the decision of the tender committee referred to in paragraph 6.1.2.1.3; and
- (b) if the decision of the tender committee is rejected, refer the decision of the tender committee back to that committee for reconsideration.

6.1.2.1.5 The accounting officer must, within 10 working days, notify the Auditor-General, the National Treasury and Provincial Treasury of the Mpumalanga, of the reasons for deviating from such recommendation in writing.

#### **6.1.2.2 Issuing of an order/appointment letter**

A delegated official or committee shall, if the value of an order issued in terms of a framework contract, is within his or her delegation, consider the recommendation of the evaluation committee, as relevant, and either:

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

All appointment letters shall be issued by the Accounting Officer

### **6.1.3 Conduct of those engaged in infrastructure delivery<sup>16</sup>**

#### **6.1.3.1 General requirements**

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

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

6.1.3.1.2 All personnel and agents engaged in Nkangala District Municipality infrastructure delivery management system shall:



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<sup>16</sup> Sub clause 5.1 d) of the standard requires that the municipality's policy establish ethical standards for those involved in the procurement and delivery of infrastructure. This clause is aligned with the provisions of SCM Regulation 46 (Ethical standards) issued in terms of the MFMA and National Treasury's Code of Conduct for Divisional Manager Supply Chains

- (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 Nkangala District Municipality in combating corruption and fraud within the infrastructure procurement and delivery management system;
- (k) not disclose information obtained in connection with a project except when necessary to carry out assigned duties;
- (l) not make false or misleading entries in reports or accounting systems; and
- (m) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.

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

### **6.1.3.2 Conflicts of interest**

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

- (a) disclose in writing to the employee of the Nkangala District Municipality to whom they report, or to the person responsible for managing their contract, if they have, or a family member or associate has, any conflicts of interest (MBD 4); and
- (b) not participate in any activities that might lead to the disclosure of Nkangala District Municipality proprietary information.

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

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

- (a) the accounting officer has approved that the agent may submit a tender;
- (b) Nkangala District Municipality states in the tender data that such an agent is a potential tenderer;
- (c) 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
- (d) the document 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
- (e) disclose to outsiders, prices which have been quoted or charged to [name of municipality or municipal entity].

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 Nkangala District Municipality and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

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

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

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

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

- 6.1.3.5.1 The employees and agents of Nkangala District Municipality shall not, directly or indirectly, accept or agree or offer to accept any gratification from any other person including a commission, whether for the benefit of themselves or for the benefit of another person, as an inducement to improperly influence in any way a procurement process, procedure or decision.
- 6.1.3.5.2 The employees and agents of Nkangala District Municipality as well as their family members or 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 Nkangala District Municipality shall not purchase any items at artificially low prices from any tenderer, respondent or contractor or any potential contractor at artificially low prices which are not available to the public.
- 6.1.3.5.4 All employees and agents of Nkangala District Municipality may for the purpose of fostering inter-personal business relations accept the following:
- (a) meals and entertainment, but excluding the cost of transport and accommodation;
  - (b) promotional material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc.;
  - (c) incidental business hospitality such as business lunches or dinners, which the employee is prepared to reciprocate;
  - (d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation, provided that such tickets are not of a recurrent nature; and

(e) gifts in kind other than those listed in a) to d) which have an intrinsic value greater than R350 unless they have declared them to the accounting officer.<sup>17</sup>

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 Nkangala District Municipality shall without delay report to the accounting officer 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 Nkangala District Municipality shall promptly report to the accounting officer any alleged improper conduct which they may become aware of, including any alleged fraud or corruption.

#### **6.1.4 Measures to prevent abuse of the infrastructure delivery system<sup>18</sup>**

6.1.4.1 The accounting officer or appropriately delegated authority 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 Provincial Treasury of the Mpumalanga of those steps;
- (b) report to the South African Police Service any conduct that may constitute a criminal offence;

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<sup>17</sup> SCM Regulation permits the receipt of gifts and hospitality provided that they are declared to the accounting officer

<sup>18</sup> The requirement to prevent abuse of the supply chain management system is aligned with the provisions of SCM Regulation 38 issued in terms of the MFMA.

- (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:
  - (i) 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
  - (ii) 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<sup>19</sup>**

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 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) an executive 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

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<sup>19</sup> The clause aligns with SCM Regulation 44 issued in terms of the MFMA.

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<sup>20</sup>**

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<sup>21</sup>**

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;

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<sup>20</sup> The standard requires the inclusion of the Compulsory Declaration in all procurement documents. This sub-clause aligns with SCM Regulation 44 issued in terms of the MFMA and SANS 10845-3 which is incorporated by reference in the standard.

<sup>21</sup> This sub-clause is aligned with the requirements of SCM Regulation 38 issued in terms of the MFMA.



- (e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards Nkangala District Municipality; or
- (f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of Nkangala District 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 contract manager shall prepare a report on the matter and make a recommendation to the accounting officer for placing the contractor or any of its principals under restrictions from doing business with the Nkangala District Municipality.

6.1.7.3 The accounting officer may, as appropriate, upon the receipt of a recommendation made in terms of 6.1.7.2 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 Nkangala District Municipality for a period of time.

6.1.7.4 The Divisional Manager Supply Chain or delegated official shall:

- (a) record the names of those placed under restrictions in an internal register which shall be accessible to employees and agents of Nkangala District Municipality who are engaged in procurement processes; and
- (b) notify the National Treasury and Provincial Treasury of the Mpumalanga 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 Nkangala District Municipality's infrastructure delivery management system shall be addressed to the accounting officer. Such complaints shall be in writing.

6.1.8.2 The accounting officer or the designated person appointed by the accounting officer shall investigate all complaints regarding the infrastructure procurement and delivery management system and report on actions taken to

the accounting officer (in cases where a designated person is appointed), who will decide on what action to take.

## **6.2 Acquisition management**

### **6.2.1 Unsolicited proposal<sup>22</sup>**

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

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

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

- (a) the 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 and an

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<sup>22</sup> The clause aligns with SCM Regulation 37 issued in terms of the MFMA.

invitation to the public or other potential suppliers and providers to submit their comments within 30 days after the notice;

- (b) the Nkangala District Municipality' has obtained comments and recommendations on the offer from the National Treasury and Provincial Treasury of the Mpumalanga;
- (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 Provincial Treasury of the Mpumalanga; and
- (d) the provisions of 6.2.1.3 are complied with.

6.2.1.3 The accounting officer 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 Provincial Treasury of the Mpumalanga 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<sup>23</sup>**

### **6.2.2.1 SARS tax clearance**

- 6.2.2.1.1 The tax status of supplier must be confirmed on the CSD before a contract can be awarded and a printout of the CSD must be attached to the award.
- 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 Nkangala District Municipality shall upon detecting that a tenderer or contractor is not tax compliant, immediately notify such person of such status.

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<sup>23</sup> This sub-clause aligns with the provisions of SCM Regulation 43 issued in terms of the MFMA.

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 SCM that it intends challenging its tax compliance status with SARS;

- (a) a contract may be awarded to a non-compliant tenderer if such a tenderer is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status;
- (b) an order may be awarded to a non-compliant contractor if such a contractor is able to remedy its tax compliance status within a period not exceeding 10 working days after being duly notified of its non-compliant status;
- (c) 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;
- (d) before authorising a further payment due to a non-compliant contractor who has failed to remedy its tax compliance status after receiving a first warning, a second and final warning shall be issued to such contractor;
- (e) no payments may be released for any amounts due in terms of the contract due to a non-compliant contractor if, after a period of 30 calendar days have lapsed since the second warning was issued, the non-compliant contractor has failed to remedy its tax compliance status.

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

#### **6.2.2.2 Municipal rates and taxes<sup>24</sup>**

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 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 the Nkangala District Municipality or in the employ of the state;  
or
- (b) have a family member or a business relation with a person who is in the employ of the state.

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

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 the Nkangala District Municipality's website and on the National Treasury eTender Publication Portal.<sup>25</sup> Advertisements shall be placed by a Divisional Manager Supply Chain and or by a consulting engineer if necessary.

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 a Divisional Manager Supply Chain.

6.2.4.3 Where deemed appropriate by the Document Committee or General Manager Technical Services, an invitation to tender and a call for an expression of interest shall be advertised in suitable local and national

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<sup>25</sup> This sub-clause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of awards on the eTender Publication Portal.

<sup>24</sup> This sub-clause aligns with the provisions of SCM Regulation 38 issued in terms of the MFMA.

<sup>26</sup> This sub-clause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of awards on the eTender Publication Portal.

newspapers and the Government Tender Bulletin as directed by such person. Advertisements shall be placed by a Divisional Manager Supply Chain or a consultant or agent appointed by Nkangala District municipality.

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 accounting officer.

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>26</sup>**

6.2.5.1 The Divisional Manager Supply Chain 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 Divisional Manager Supply Chain shall publish within 7 working days of the award of a contract the following on the Nkangala District 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;

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<sup>26</sup> This sub-clause aligns with National Treasury Instruction No 1 of 2015/2016 – Advertisement of bids and the publication of awards on the eTender Publication Portal.

- (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 Divisional Manager Supply Chain shall submit within 7 working days of the award of a contract the information required by National Treasury on the National Treasury e-Tender Publication Portal regarding the successful and unsuccessful tenders. Submissions shall be made by Divisional Manager Supply Chain.

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 placed by Divisional Manager Supply Chain.

#### **6.2.6 Disposal**

**6.2.6.1** Disposal will be dealt with and give effect to:

- (a) Regulation 40 of the Supply Chain Management Regulations which requires an effective system for the disposal or letting of assets including unserviceable, redundant or obsolete assets;
- (b) the Municipal Asset Transfer Regulations; and
- (c) Clause 10 of the Standard.

Subject to sections 14 and 90 of the Municipal Finance Management Act (MFMA) and any other applicable legislation and to the Management and Administration of Immovable Property Policy.

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

A supply chain management official in co-operation with other departments shall submit any reports required in terms of the standard to the National Treasury or Provincial Treasury of the Mpumalanga.



## 7 Infrastructure procurement

### 7.1 Procurement documents

7.1.1 The forms of contract that may be used are as follows:

**Table 10: Approved forms of contract related to the delivery and maintenance of infrastructure**

Form of contract	Code	Intended usage
<b>Construction Industry Development Board (CIDB)</b>		
CIDB Standard Professional Service Contract	SPSC	Professional services
CIDB General Conditions of Purchase	-	An order form type of contract for low-value goods without any incidental work or services on or before a specified date being required.
CIDB Contract for the Supply and Delivery of Goods	-	Simple, regional purchase of readily available materials or commodities which require almost no management of the buying and delivery process, minimal testing, installation and commissioning on delivery.
CIDB General Conditions of Service	-	An order form type of contract where low-value services on or before a specified date are required.
<b>International Federation of Consulting Engineers (FIDIC)</b>		
FIDIC Short Form of Contract	Green Book	Building or engineering works of relatively small capital value, or for relatively simple or repetitive work, or for work of short duration. Use for design by employer- or contractor-designed works.
FIDIC Conditions of Contract for Construction for Building and Engineering Works designed by the Employer	Red Book	Building or engineering works designed by the employer. (The works may include some elements of contractor-designed works.)
FIDIC Conditions of Contract for plant and design-build for electrical and mechanical plant, and for building and engineering works, designed by the contractor	Yellow Book	The provision of electrical or mechanical plant and the design and construction of building or engineering works.
FIDIC Conditions of Contract for EPC Turnkey Projects	Silver Book	The provision on a design and construct (turnkey) basis of a process or power plant, of a factory or similar facility, or an infrastructure project or other type of development.
FIDIC Conditions of Contract for Design, Build and Operate Projects	Gold Book	"Green field" building or engineering works which are delivered in terms of a traditional design, build and operate sequence with a 20-year operation period. (The contractor has no responsibility for the financing of the project/package or its ultimate commercial success.)
<b>South African Institution of Civil Engineering (SAICE)</b>		
SAICE General Conditions of Contract for Construction Works	GCC	Engineering and construction, including any level of design responsibility.
<b>Joint Building Contracts Committee (JBCC)</b>		
JBCC Principal Building Agreement	PBA	Buildings and related site works designed by the employer.

<b>Form of contract</b>	<b>Code</b>	<b>Intended usage</b>
JBCC Minor Works Agreement	MWA	Buildings and related site works of simple content designed by the employer.
Institution of Civil Engineers (ICE)		
NEC3 Engineering and Construction Contract	ECC	Engineering and construction including any level of design responsibility.
NEC3 Engineering and Construction Short Contract	ECSC	Engineering and construction which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the employer and contractor.
NEC3 Professional Services Contract	PSC	Professional services, such as engineering, design or consultancy advice.
NEC3 Professional Services Short Contract	PSCC	Professional services which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the client and consultant.
NEC3 Term Service Contract	TSC	Manage and provide a service over a period of time.
NEC3 Term Service Short Contract	TSSC	Manage and provide a service over a period of time, or provide a service which does not require sophisticated management techniques, comprises straightforward work and imposes only low risks on both the employer and contractor.
NEC3 Supply Contract	SC	Local and international procurement of high-value goods and related services, including design.
NEC3 Supply Short Contract	SSC	Local and international procurement of goods under a single order or on a batch order basis and is suitable for use with contracts which do not require sophisticated management techniques, and impose only low risks on both the purchaser and the supplier.

7.1.2 The strategic sourcing or type of project will determine which form of contract will be used.

7.1.3 The Nkangala District Municipality's pre-approved templates for Part C1 (Agreements and contract data) of procurement documents shall be utilised to obviate the need for legal review prior to the awarding of a contract. All modifications to the standard templates shall be approved by accounting officer or General Manager Technical Services prior to being issued for tender purposes.

7.1.3 Disputes arising from the performance of a contract shall be finally settled in a South African court of law.<sup>27</sup>

<sup>27</sup> This sub-clause aligns with SCM Regulation 21 issued in terms of the PFMA.

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

- (a) consultancy services;<sup>28</sup> and
- (b) goods and services or any combination thereof where the total of the prices is expected to exceed R10 m including VAT.<sup>29</sup>

## **7.2 Developmental procurement policy**

The strategic resourcing document will determine which specific goals will be met. The beneficiaries are included in the Preferential Procurement Regulations.

## **7.3 Payment of contractors<sup>30</sup>**

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

## **7.4 Approval to utilize specific procurement procedures<sup>31</sup>**

7.4.1 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 accounting officer shall authorise the use of the negotiated procedure above the thresholds provided in the standard; and
- (b) the accounting officer 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

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<sup>28</sup> The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

<sup>29</sup> The clause aligns with SCM Regulation 35(3) issued in terms of the MFMA.

<sup>30</sup> The Section 65 of the MFMA requires municipal manager to settle all contractual obligations and pay all money owing within 30 days of receiving the relevant statement or invoice.

<sup>31</sup> This clause is necessary to enable the standard to be implemented.

7.4.2 The person authorised to pursue a negotiated procedure in an emergency is the accounting officer or a delegated official.

## **7.5 Receipt and safeguarding of submissions**

7.5.1 A dedicated and clearly marked tender box shall be made available to receive all submissions made and the address of the tender box shall be included in the invitation to bid.

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

## **7.6 Opening of submissions**

7.6.1 Submissions shall be opened by an opening panel comprising out of two delegated officials appointed in writing who have declared their interest or confirmed that they have no interest in the submissions that are to be opened. A representative of the department will also be part of the opening panel.

7.6.2 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:
  - (i) submissions are received late, unless otherwise permitted in terms of the submission data;
  - (ii) submissions were submitted by a method other than the stated method,
  - (iii) submissions were withdrawn in accordance with the procedures contained in SANS 10845-3; and.
  - (iv) 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.

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

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

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

## **7.7 Use of another organ of state's framework agreement<sup>32</sup>**

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

## **7.8 Insurances<sup>33</sup>**

7.8.1 Contractors shall be required to take out all insurances required in terms of the contract or as determined by the General Manager Technical Services or a delegated official depending on the nature and scope of the contract.

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<sup>32</sup> This clause aligns with SCM Regulation 32 issued in terms of the MFMA and clause 7.3 of the Standard.

<sup>33</sup> Align with the manner in which the municipality wishes to manage risk.

7.8.2 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 General Manager Technical Services.

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

**Table 4: Minimum insurance cover**

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

7.8.4 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 General Manager Technical Services.

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

7.8.6 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than the value stated in Table 4 in respect of each claim,

without limit to the number of claims, unless otherwise directed by the [designated person] in relation to the nature of the service that they provide.

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

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

## **7.9 Written reasons for actions taken**

7.9.1 Written reasons for actions taken shall be provided by the contract manager.

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

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

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

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

## **7.10 Request for access to information**

7.10.1 Should an application be received in terms of Promotion of Access to Information Act of 2000 (Act 2 of 2000), the “requestor” should be referred to the Nkangala District Municipality’s Information Manual which

establishes the procedures to be followed and the criteria that have to be met for the “requester” to request access to records in the possession or under the control of Nkangala District Municipality’s.

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

## **8 Potentially emerging contractors**

8.1 Council has adopted a support program (TDP) for the development of emerging contractors through the application of the Potentially Emerging status (PE) of the Construction Industry Development Board (CIDB) as per council resolution DM455/06/2015

8.2 Potentially emerging (PE) contractors registered with the CIDB and listed in the contractor development programme of the NDM may be considered for evaluation on one grade higher than the contractor’s registered grading with CIDB as per clause 25(8) of the CIDB regulations.

The tender value range applicable to PE contractors are as follows:

<b>Grade</b>	<b>Current (TVR)</b>	<b>Proposed adjustment (TVR)</b>
1	200 000	500 000
2 & 1PE	650 000	1 000 000
3 & 2PE	2 000 000	3 000 000
4 & 3PE	4 000 000	6 000 000
5 & 4PE	6 500 000	10 000 000
6 & 5PE	13 000 000	20 000 000
7 & 6PE	40 000 000	60 000 000
8 & 7PE	130 000 000	200 000 000
9 & 8 PE	No limit	N/A

8.3 The TDP must be procured through the indirect targeting model

The NDM may specify the intention to develop contractors through the application of a Targeted Development Programme (TDP) through an open procurement process. The risk to the NDM must be adequately managed while



balancing the intention to:

- Improve the grading status of the contractor; and/or
- Support the improved performance and quality of work of the contractor.

#### 8.4 support to PE

NDM will continue to provide the following support to PE contractors

- Continuously convene meeting with the suppliers to alleviate the fears of non-payment by contractors
- Make direct payment to suppliers as a means of financial management
- Ensure payment to contractors within 14 days on receipt of a correct invoice as opposed to 30 days
- No discount may be charged for early payment
- Appoint engineers for full time supervision as additional services in order to assist contractors technically on site

#### 8.5 Procurement process

- An invitation to allow the participation of the PE status tenderers on a particular project is at the discretion of the NDM, on condition that such an invitation is supported by that NDM's policy statement on the use of the PE status as a policy instrument for contractor development.
- The invitation to tender must reference the name of the development programme in compliance with the CIDB prescripts.
- The PE status contractor tenderers responding to an open tender that is not restricted to participants of a TDP (such as a CDP) must be cognisant of the fact that they will be subjected to the same rules and conditions for tendering as prescribed by the CIDB for non-PE status contractor tenderers.
- The Standard for Uniformity in Construction Procurement clearly requires that if, for a particular contract, the NDM chooses to use the provisions, then the tender notice must be worded as described in 4.5.7 of the Standard for Uniformity in Construction Procurement. It is clear from 4.5.7 of the Standard for Uniformity in Construction Procurement that if the wording of 4.5.7 is not used in the tender notice then the provisions may not be used.

"It is estimated that tenderers should have a CIDB contractor grading of ... or ... or higher. ... or ... potentially emerging enterprises who satisfy criteria stated in the Tender Data may submit tender offers."

This means that the PE status contractor and the non-PE status contractor will be evaluated on the same criteria stated in the tender data. During the evaluation process, contractors must meet the eligibility criteria and thereafter be evaluated on functionality criteria. Those contractors that meet the functionality threshold may then be further evaluated on the price and preference model. The contractor that scores the highest points

may be awarded the tender.

Clause F.2.1 of the CIDB Standard Conditions of Tender prohibits a tenderer from submitting a tender unless he or she is eligible to do so. Clause F.3.8 obligates the NDM to reject a tender offer should it not comply with the requirements of the conditions of tender. The eligibility criteria cannot be amended after the closing of tenders to make a tenderer eligible for the award of a contract.

- Where participation in a TDP is made a condition of the tender, if the award is made to a PE status contractor, the developmental support stated as part of the client's policy statement, must be made available to the contractor.
- All awards to CIDB registered contractors must be registered on the CIDB Register of Projects, as prescribed

#### 8.6 Reporting

- Regulation 18(1) of the CIDB prescripts require that an NDM must, within 21 working days from the date on which a contractor's offer to perform a construction work contract is accepted in writing by the NDM, register the award and indicate the application of PE status in terms of that award (as per Regulation 21(3)).
- NDM must adhere to the guidelines for a TDP in the identification and award of projects through an indirect or direct procurement model for the purpose of development of PE status contractors.
- Non-compliance to Regulation 25 (8) may result in a negative audit finding. According to Regulation 21(4), if an organ of state fails to register a project in terms of these regulations, the CIDB is compelled to report that failure by that organ of state to the Auditor-General as an offence.

### 9 Commencement

This policy will take full effect on 1 July 2022 or earlier depending on National Treasury review of policy framework and standard.