



SUPPLY CHAIN MANAGEMENT POLICY

2017

SUPPLY CHAIN MANAGEMENT POLICY
LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

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

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1. **DEFINITIONS**

In this Policy, the singular includes the plural and vice versa, any one gender includes both genders and, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and-

- 1.1 **"Accounting Officer"** means the Chief Executive Officer of the MBDA;
- 1.2 **"Chief Financial Officer"** means the official of the MBDA designated as such;
- 1.3 **"competitive bidding process"** means a competitive bidding process referred to in paragraph 12 (1) (d) of this Policy;
- 1.4 **"competitive bid"** means a bid in terms of a competitive bidding process;
- 1.5 **"construction works"** means the provision of goods and/or services for the construction, erection, development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including a building or engineering infrastructure;
- 1.6 **"contractor"** means a person or body of persons who undertakes to execute and complete construction works for an on behalf of the MBDA;
- 1.7 **"emergency"** includes, but is not limited, to the existence of one or more of the following:

- (a) the possibility of human injury or death or suffering and death of livestock and animals;
- (b) the possibility of damage to property;
- (c) the prevalence of human suffering or deprivation of rights;
- (d) the interruption of essential or support services which are critical to the effective functioning of the MBDA;
- (e) the possibility of serious damage to the natural environment;
- (f) the possibility that the security of the state could be compromised; and
- (g) the possibility that failure to take necessary action may result in the MBDA not being able to render an essential community service the prevailing situation or imminent danger should be of such a nature and scale that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process;

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

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

1.10 **“in the service of the state”** means to be –

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the National Assembly or the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;

- (c) an official of any municipality or municipal entity;
 - (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
 - (e) an executive member of the accounting authority of any national or provincial public entity; or
 - (f) an employee of Parliament or a provincial legislature;
- 1.11 **“long term contract”** means a contract with a duration period exceeding one year;
- 1.12 **“list of accredited prospective providers”** means the list of accredited prospective providers who meet and continue to meet any applicable listing criteria which the municipal entity must keep in terms of paragraph 14 of this policy which shall include but not be limited to any list of accredited prospective providers maintained by the Nelson Mandela Bay Metropolitan Municipality as the parent municipality of the MBDA;
- 1.13 **“MBDA”** means the Mandela Bay Development Agency.
- 1.14 **“other applicable legislation”** means any other legislation applicable to municipal supply chain management, including –
- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (c) the Construction Industry Development Board Act, 2000 (Act No.38 of 2000);
- (d) the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

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

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

1.17 **“the Regulations”** means the Municipal Supply Chain Management Regulations promulgated under the Act;

1.18 **“written quotations”** means quotations referred to in paragraph 12(1)(b) of this Policy;

CHAPTER 1
IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2. SUPPLY CHAIN MANAGEMENT POLICY

- (1) All officials and other role players in the supply chain management system of the MBDA must implement this Policy in a way that –
- (a) gives effect to –
 - (i) section 217 of the Constitution; and
 - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
 - (b) is fair, equitable, transparent, competitive and cost effective;
 - (c) complies with –
 - (i) the Regulations; and
 - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
 - (d) is consistent with other applicable legislation;
 - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
 - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.

- (2) This Policy applies when MBDA –
 - (a) procures goods or services;
 - (b) disposes goods no longer needed;
 - (c) selects contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
- (3) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
 - (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
- (4) Notwithstanding anything to the contrary contained in this policy, the MBDA shall not award a contract to a contractor in respect of the undertaking, carrying out or completion of any construction works or a portion thereof in terms of a competitive tender or quotation process provided for in this policy unless such contractor is registered with the Construction Industry Development Board established in terms of the Construction Industry Development Board Act No. 38 of 2000.

3. AMENDMENT OF THE SUPPLY CHAIN MANAGEMENT POLICY

- (1) The accounting officer must –

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

4. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES

- (1) The board of directors of the MBDA hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –

- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - (i) Chapter 10 of the Act; and
 - (ii) this Policy;
 - (b) to maximise administrative and operational efficiency in the implementation of this Policy;
 - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
 - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Section 106 of the Act applies to the subdelegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- (3) The accounting officer may not subdelegate any supply chain management powers or duties to a person who is not an official of the MBDA or to a committee which is not exclusively composed of officials of the municipal entity;
- (4) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

5. **SUBDELEGATIONS**

- (1) The accounting officer may in terms of Section 106 of the Act subdelegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such subdelegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.

- (2) The power to make a final award –
 - (a) above R10 million (VAT included) may not be subdelegated by the accounting officer;

 - (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be subdelegated but only to –
 - (i) the chief financial officer;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or

 - (c) not exceeding R2 million (VAT included) may be subdelegated but only to –
 - (i) the chief financial officer;
 - (ii) a senior manager;
 - (iii) a manager directly accountable to the chief financial officer or a senior manager; or
 - (iv) a bid adjudication committee.

- (3) An official or bid adjudication committee to which the power to make final awards has been subdelegated in accordance with

subparagraph (2) must within five days of the end of each month submit to the official referred to in subparagraph (4) a written report containing particulars of each final award made by such official or committee during that month, including–

- (a) the amount of the award;
- (b) the name of the person to whom the award was made; and
- (c) the reason why the award was made to that person.

(4) A written report referred to in subparagraph (3) must be submitted –

- (a) to the accounting officer, in the case of an award by –
 - (i) the chief financial officer;
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
- (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
 - (i) a manager referred to in subparagraph (2)(c)(iii); or
 - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.

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

(6) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been subdelegated, to

make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

- (7) No supply chain management decision-making powers may be delegated to a person who is not an employee of the MBDA.

6. OVERSIGHT ROLE OF THE BOARD OF DIRECTORS

- (1) The board of directors shall maintain oversight over the implementation of this Policy.
- (2) For the purposes of such oversight the accounting officer must –
 - (a) (i) within 20 days of the end of each financial year, submit a report on the implementation of this Policy to the board of directors, who must then submit the report to the accounting officer of the NMMM for submission to the council; and
 - (ii) whenever there are serious and material problems in the implementation of this Policy, immediately submit a report the board of directors, who must then submit the report to the accounting officer of the NMMM for submission to the council.
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the board of directors.
- (4) The reports must be made public in accordance with section 21A of the Municipal Systems Act.

7. SUPPLY CHAIN MANAGEMENT UNIT

- (1) A supply chain management unit is hereby established to implement this Policy.
- (2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of Section 106 of the Act.

8. TRAINING OF SUPPLY CHAIN MANAGEMENT OFFICIALS

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

CHAPTER 2 SUPPLY CHAIN MANAGEMENT SYSTEM

9. FORMAT OF SUPPLY CHAIN MANAGEMENT SYSTEM

This Policy provides systems for –

- (i) demand management;
- (ii) acquisition management;
- (iii) logistics management;
- (iv) disposal management;
- (v) risk management; and
- (vi) performance management.

Part 1: Demand management

10. SYSTEM OF DEMAND MANAGEMENT

- (1) The accounting officer must establish and implement an appropriate demand management system in order to ensure that the resources required by the MBDA support its operational commitments and its strategic goals outlined in the Mandate Document.
- (2) The demand management system must –
 - (a) include timely planning and management processes to ensure that all goods and services required by MBDA are quantified, budgeted for and timely and effectively delivered at the right locations and at the critical delivery dates, and are of the appropriate quality and quantity at a fair cost;

- (b) take into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature;
- (c) provide for the compilation of the required specifications to ensure that its needs are met; and
- (d) undertake appropriate industry analysis and research to ensure that innovations and technological benefits are maximized.

Part 2: Acquisition management

11. SYSTEM OF ACQUISITION MANAGEMENT

- (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
 - (a) that goods and services are procured by MBDA only in accordance with authorised processes, which shall include compliance with the Acquisition Management Directives annexed hereto marked "A";
 - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
 - (c) that the threshold values for the different procurement processes are complied with;
 - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and

- (e) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) This supply chain management policy, except where provided otherwise in the policy, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including -
- (a) water from the Department of Water Affairs or a public entity, another municipality or municipal entity; and
 - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
- (3) When procuring goods or services contemplated in section 110(2) of the Act, the accounting officer must make public the fact that such goods or services are procured otherwise than through the MBDA supply chain management system, including -
- (a) the kind of goods or services; and
 - (b) the name of the supplier.

12. RANGE OF PROCUREMENT PROCESSES

- (1) Goods and services may only be procured by way of –
- (a) petty cash purchases, up to a transaction value of R2 000 (VAT included) where applicable;
 - (b) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);

- (c) formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
 - (d) a competitive bidding process for–
 - (i) procurements above a transaction value of R200 000 (VAT included); and
 - (ii) the procurement of long term contracts.
- (2) The accounting officer may, in writing-
- (a) lower, but not increase, the different threshold values specified in subparagraph (1); or
 - (b) direct that –
 - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
 - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
 - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- (3) Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

13. GENERAL PRECONDITIONS FOR CONSIDERATION OF WRITTEN QUOTATIONS OR BIDS

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

- (a) has furnished that provider's –
 - (i) full name;
 - (ii) identification number or company or other registration number; and
 - (iii) tax reference number and VAT registration number, if any;
- (b) has submitted to the MBDA a tax clearance from the South African Revenue Services that the provider's tax matters are in order;
- (c) has, where applicable, submitted a "certificate of independent bid determination" in the prescribed form;
- (d) has certified that he and, in the event of the bidder being a company, that none of its directors, is indebted to the Nelson Mandela Bay Metropolitan Municipality or to any other municipality for rates, taxes and/or municipal services which are in arrear for a period of more than three (3) months and that no dispute exists between such bidder and the relevant municipality in respect of any such arrear amounts; and
- (e) has indicated –

- (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
 - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.
- (f) if it is a partnership, joint venture or consortium, that it has submitted an agreement in writing recording the establishment of such partnership, joint venture or consortium, signed by or on behalf of each of the parties thereto and providing, inter alia:
- (i) full details of each of the parties thereto;
 - (ii) which of the parties thereto is the representative of the relevant entity for the purposes of engagement with the MBDA; and
 - (iii) for the joint and several liability of the parties thereto for the due fulfillment of any contract concluded with the MBDA as a result of the bid.
- (g) has submitted proof that he/she/it is registered on the National Treasury Central Supplier Database.

14. **LISTS OF ACCREDITED PROSPECTIVE PROVIDERS**

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

15. **PETTY CASH PURCHASES**

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

- (a) the board of directors shall determine the terms on which the accounting officer may delegate responsibility for petty cash to any official reporting to the accounting officer;
- (b) the board of directors shall determine the maximum number of petty cash purchases or the maximum amounts per month for each official to whom such responsibility may be delegated;
- (c) the board of directors shall determine any types of expenditure from petty cash purchases that are excluded, where this is considered necessary; and
- (d) a monthly reconciliation report from each manager must be provided to the chief financial officer, including –
 - (i) the total amount of petty cash purchases for that month; and
 - (ii) receipts and appropriate documents for each purchase.

16. **WRITTEN QUOTATIONS**

The conditions for the procurement of goods or services from R2000.00 to R10 000.00 (VAT included) through written quotations, are as follows:

- (a) Quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the MBDA,

provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria referred to in paragraph 14(1)(b) and (c) of this Policy;

- (b) to the extent feasible, providers must be requested to submit such quotations in writing;
- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
- (d) the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
- (e) if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

17. FORMAL WRITTEN PRICE QUOTATIONS

- (1) The conditions for the procurement of goods or services from R10 000.00 to R200 000.00 (VAT included) through formal written price quotations, are as follows:
 - (a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the MBDA;
 - (b) quotations may be obtained from providers who are not listed on the list of accredited prospective providers of the MBDA, provided that such providers meet the listing criteria for

registration subject to authorization by the Accounting Officer or any official delegated by the Accounting Officer;

- (c) if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer, and
 - (d) the accounting officer must record the names of the potential providers and their written quotations.
- (2) A designated official referred to in subparagraph (1) (c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subparagraph.

18. PROCEDURES FOR PROCURING GOODS OR SERVICES THROUGH WRITTEN OR VERBAL QUOTATIONS AND FORMAL WRITTEN PRICE QUOTATIONS

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

- (a) when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers by inviting providers to submit quotations on a rotation basis;
- (b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of paragraph 17, be advertised for at

least seven days on the website and an official notice board of the MBDA;

- (c) offers received must be evaluated on a comparative basis taking into account unconditional discounts;
- (d) the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a subdelegation;
- (e) offers below R30 000 (VAT included) must be awarded based on compliance to specifications and conditions of contract, ability and capability to deliver the goods and services and lowest price;
- (f) acceptable offers, which are subject to the preference points system (PPPFA and associated regulations), must be awarded to the bidder who scored the highest points;
- (g) the board of directors shall determine the requirements for proper record keeping.

19. COMPETITIVE BIDS

- (1) Goods or services above a transaction value of R200 000 (VAT included) and long term contracts may only be procured through a competitive bidding process, subject to paragraph 11(2) of this Policy.
- (2) No requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of

procuring the goods or services otherwise than through a competitive bidding process.

20. PROCESS FOR COMPETITIVE BIDDING

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

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

21. **BID DOCUMENTATION FOR COMPETITIVE BIDS**

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

- (a) take into account –
 - (i) the general conditions of contract and any special conditions of contract, if specified;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction works;
- (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted and to complete a certificate of independent bid determination in the prescribed form;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
 - (aa) for the past three years; or

- (bb) since their establishment if established during the past three years;
- (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or MBDA is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

22. PUBLIC INVITATION FOR COMPETITIVE BIDS

- (1) The procedure for the invitation of competitive bids, is as follows:
 - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally (unless the invitation for competitive bids is directed at a panel of accredited service providers duly established for a defined period by the MBDA

in terms of a publicly advertised process and, in such instance, the invitation for competitive bids shall be forwarded to all such accredited panel service providers), the website of the MBDA or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin) and on the website of the CIDB in respect of construction works having a value in excess of R30 000.00; and

(b) the information contained in a public advertisement, must include –

(i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;

(ii) a statement that bids may only be submitted on the bid documentation provided by the MBDA;and

(iii) date, time and venue of any proposed site meetings or briefing sessions.;

(2) The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.

- (3) Bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

23. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS

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

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

- (i) record in a register all bids received in time;
- (ii) on written request make the register available for inspection;
and
- (iii) publish the entries in the register and the bid results on its notice board and website;
- (iv) date stamp the returnable schedules, pricing schedules as well as the bills of quantities (if applicable).

24. NEGOTIATIONS WITH PREFERRED BIDDERS

- (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
 - (a) does not allow any preferred bidder a second or unfair opportunity;
 - (b) is not to the detriment of any other bidder; and
 - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.

25. TWO-STAGE BIDDING PROCESS

- (1) A two-stage bidding process is allowed for –
 - (a) large complex projects;

- (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
 - (c) long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.

26. COMMITTEE SYSTEM FOR COMPETITIVE BIDS

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

- (a) paragraph 27, 28 and 29 of this Policy; and
 - (b) any other applicable legislation.
- (5) The accounting officer may apply the committee system to formal written price quotations.

27. BID SPECIFICATION COMMITTEES

- (1) A bid specification committee must compile the specifications for each procurement of goods or services by the MBDA.
- (2) Specifications –
 - (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
 - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
 - (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
 - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;

- (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word “equivalent”;
 - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001; and
 - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of paragraph 22 of this Policy.
- (3) Samples –
- (a) where samples are called for in bid documentations, samples (marked with the bid and item number as well as the bidder's name and address) shall be delivered separately to the addressee mentioned in the bid documents;
 - (b) bids may not be included in parcels containing samples;
 - (c) samples are not submitted as required in the bid documents or within any further time stipulated by the MBDA in writing, then the bid concerned may be declared non-responsive;
 - (d) samples shall be supplied by a bidder at his/her own expense and risk. The MBDA shall not be obliged to pay for such samples or compensate for the loss thereof, unless otherwise specified in the bid documents, and the MBDA

- shall reserve the right not to return such samples and to dispose of them at its own discretion;
- (e) if a bid is accepted for the supply of goods according to a sample submitted by the bidder, that sample will become the contract sample;
 - (f) all goods/materials supplied shall comply in all respects to the approved contract sample.
- (4) A bid specification committee must be composed of one or more officials of the MBDA, preferably the manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (5) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.
- (6) Where a bid specification is compiled with due regard to the findings and recommendations contained in a prior, associated feasibility study, the person, advisor or corporate entity who or which prepared the said feasibility study may be prohibited from bidding for the resulting contract in circumstances where such person, advisor or corporate entity may obtain an unfair advantage or where a conflict of interest may arise.

28. BID EVALUATION COMMITTEES

- (1) A bid evaluation committee must –
 - (a) evaluate bids in accordance with –

- (i) the specifications for a specific procurement as read in conjunction with this policy; and
 - (ii) the points system set out in terms of paragraph 27(2)(f).
 - (b) evaluate each bidder's ability to execute the contract;
 - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
 - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A bid evaluation committee must as far as possible be composed of-
- (a) officials from departments requiring the goods or services; and
 - (b) at least one supply chain management practitioner of the MBDA.

29. BID ADJUDICATION COMMITTEES

- (1) A bid adjudication committee must –
 - (a) consider the report and recommendations of the bid evaluation committee; and

- (b) either –
 - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
 - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.

- (2) A bid adjudication committee must consist of at least four senior managers of the MBDA which must include –
 - (a) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer; and
 - (b) at least one senior supply chain management practitioner who is an official of the MBDA; and
 - (c) a technical expert in the relevant field who is an official, if such an expert exists.

- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.

- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.

- (5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
 - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
 - (ii) notify the accounting officer.
- (b) The accounting officer may –
 - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
 - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The accounting officer must comply with section 114 of the Act within 10 working days.

30. PROCUREMENT OF BANKING SERVICES

- (1) A contract for banking services –

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

31. PROCUREMENT OF IT RELATED GOODS OR SERVICES

- (1) The accounting officer may request the State Information Technology Agency (SITA) to assist with the acquisition of IT related goods or services through a competitive bidding process.
- (2) Both parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs if –
- (a) the transaction value of IT related goods or services required in any financial year will exceed R50 million (VAT included);
or

- (b) the transaction value of a contract to be procured whether for one or more years exceeds R50 million (VAT included).
- (4) If SITA comment on the submission and the MBDA disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

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

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

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

33. PROCUREMENT OF GOODS NECESSITATING SPECIAL SAFETY ARRANGEMENTS

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

34. PROUDLY SA CAMPAIGN

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

- (1) Firstly – suppliers and businesses within the municipality or district;
- (2) Secondly – suppliers and businesses within the relevant province;
- (3) Thirdly – suppliers and businesses within the Republic.

35. APPOINTMENT OF CONSULTANTS

- (1) The accounting officer may procure consulting services using the CIDB guidelines for procurement of Consulting Engineering services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made. Appointment of consultants will be in line with annexure E of this policy
- (2) Consultancy services must be procured through competitive bids if
 - (a) the value of the contract exceeds R200 000 (VAT included);
or
 - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by this policy for competitive bids, bidders must furnish particulars of –
 - (a) all consultancy services provided to an organ of state in the last five years; and
 - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The accounting officer must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the MBDA.

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

- (1) The accounting officer may –
 - (a) dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
 - (i) in an emergency;
 - (ii) if such goods or services are produced or available from a single provider only;
 - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
 - (iv) acquisition of animals for zoos and/or nature and game reserves; or
 - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
 - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report

them to the next meeting of the board of directors and include as a note to the annual financial statements.

- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.

37. UNSOLICITED BIDS

- (1) In accordance with section 113 of the Act there is no obligation to consider unsolicited bids received outside a normal bidding process.
- (2) The accounting officer may decide in terms of section 113(2) of the Act to consider an unsolicited bid, only if –
 - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - (c) the person who made the bid is the sole provider of the product or service; and
 - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If the accounting officer decides to consider an unsolicited bid that complies with subparagraph (2) of this policy, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with –

- (a) reasons as to why the bid should not be open to other competitors;
 - (b) an explanation of the potential benefits if the unsolicited bid were accepted; and
 - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) The accounting officer must submit all written comments received pursuant to subparagraph (3), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account –
- (a) any comments submitted by the public; and
 - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and

the National Treasury the reasons for rejecting or not following those recommendations.

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

38. COMBATING OF ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM

- (1) The accounting officer must–
- (a) take all reasonable steps to prevent abuse of the supply chain management system;
 - (b) investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
 - (i) take appropriate steps against such official or other role player; or
 - (ii) report any alleged criminal conduct to the South African Police Service;
 - (c) check the National Treasury’s database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
 - (d) reject any bid from a bidder–

- (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipal entity, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the MBDA or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if –
 - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person;
and
- (g) reject the bid of any bidder if that bidder or any of its directors: –

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

Part 3: Logistics, Disposal, Risk and Performance Management

39. LOGISTICS MANAGEMENT

The accounting officer must establish and implement an effective system of logistics management, which must include -

- (a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
- (b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;

- (c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
- (d) before payment is approved , certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- (e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- (f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- (g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

40. DISPOSAL MANAGEMENT

- (1) The disposal or letting of immovable and movable assets, shall be undertaken in compliance with Section 90 of the Act, and the Asset Transfer Regulations; and
- (2) Assets may be disposed of by –
 - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;

- (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
 - (iii) selling the asset; or
 - (iv) destroying the asset.
- (3) The accounting officer must ensure that –
- (a) immovable property is sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
 - (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;
 - (c) firearms are not sold or donated to any person or institution within or outside the Republic unless approved by the National Conventional Arms Control Committee;
 - (d) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise;
 - (e) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed;
 - (f) where assets are traded in for other assets, the highest possible trade-in price is negotiated; and

- (g) in the case of the free disposal of computer equipment, the provincial department of education is first approached to indicate within 30 days whether any of the local schools are interested in the equipment.
- (4) This paragraph shall be read with and applied in conjunction with the Municipal Asset Transfer Regulations 2008 promulgated under the Act.

41. RISK MANAGEMENT

- (1) The accounting officer must determine the criteria for the identification, consideration and avoidance of potential risks in the supply chain management system.
- (2) Risk management must include –
 - (a) the identification of risks on a case-by-case basis;
 - (b) the allocation of risks to the party best suited to manage such risks;
 - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
 - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
 - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

42. PERFORMANCE MANAGEMENT

- (1) The accounting officer must establish and implement an internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised supply chain management processes were followed and whether the objectives of this Policy were achieved.
- (2) Monthly monitoring of service providers and blacklisting thereof will be in line the National Treasury guidelines

Part 4: Other matters**43. PROHIBITION ON AWARDS TO PERSONS WHOSE TAX MATTERS ARE NOT IN ORDER**

- (1) No award above R15 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person the accounting officer must first check with SARS whether that person's tax matters are in order by examining the Tax Clearance Certificates that each bidder shall be required to submit when tendering.

44. PROHIBITION ON AWARDS TO PERSONS IN THE SERVICE OF THE STATE

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

- (a) who is in the service of the state;

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

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

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

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

46. ETHICAL STANDARDS

- (1) A code of ethical standards is hereby established for officials and other role players in the supply chain management system of the MBDA in order to promote –
 - (a) mutual trust and respect; and
 - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

- (2) An official or other role player involved in the implementation of this Policy –
- (a) must treat all providers and potential providers equitably;
 - (b) may not use his or her position for private gain or to improperly benefit another person;
 - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
 - (d) notwithstanding subparagraph (2) (c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
 - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipal entity;
 - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;

- (g) must be scrupulous in his or her use of property belonging to MBDA;
 - (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
 - (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
 - (i) any alleged fraud, corruption, favouritism or unfair conduct;
 - (ii) any alleged contravention of paragraph 47(1) of this Policy; or
 - (iii) any alleged breach of this code of ethical standards.
- (3) Declarations in terms of subparagraphs (2)(d) and (e) -
- (a) must be recorded in a register which the accounting officer must keep for this purpose;
 - (b) by the accounting officer must be made to the board of directors of the MBDA who must ensure that such declarations are recorded in the register.
- (4) The National Treasury's code of conduct must also be taken into account by supply chain management practitioners and other role players involved in supply chain management.

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

47. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS TO MUNICIPALITY, MUNICIPAL ENTITY, OFFICIALS AND OTHER ROLE PLAYERS

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –
- (a) any inducement or reward to the MBDA for or in connection with the award of a contract; or
 - (b) any reward, gift, favour or hospitality to –
 - (i) any official; or
 - (ii) any other role player involved in the implementation of this Policy.

- (2) The accounting officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.
- (3) Subparagraph (1) does not apply to gifts less than R350 in value.

48. SPONSORSHIPS

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

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

49. OBJECTIONS AND COMPLAINTS

- (1.) Persons aggrieved by decisions taken in the implementation of this supply chain management system, may lodge within 14 days of the decision, a written objection or complaint against the decision.
- (2.) The successful bidder may not commence any work until the expiry of the fourteen (14) day period referred to in 49.1 or until such time as any objection or complaint has been resolved, whichever is the latter.

50. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

- (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –
 - (a) to assist in the resolution of disputes between the MBDA and other persons regarding -
 - (i) any decisions or actions taken in the implementation of the supply chain management system; or
 - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
 - (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.
- (2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (3) The person appointed must –
 - (a) strive to resolve promptly all 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.

- (4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
 - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
 - (b) no response is forthcoming within 60 days.
- (5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (6) This paragraph must not be read as affecting a person's rights to approach a court at any time.

51. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

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

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

52. CONTRACT MANAGEMENT – ISSUE OF VARIATION ORDERS

- (1) The accounting officer or nominee may, subject to sub-paragraphs 52.2 to 52.4, authorize the issue of variation orders in respect of contract specifications or conditions of contract in order to accommodate the costs of additional work either unforeseen when contracts were awarded for infrastructure projects, essential or necessary additional work or in instances where factors beyond the control of an appointed contractor have led or will lead to a delay in a contract completion date.
- (2) A variation order may only be issued after:-
 - (a) the need for such order has been fully motivated by the responsible project manager and supported by the accounting officer; and
 - (b) the Chief Financial Officer has certified that funds are available to cover the costs of the required additional work.
- (3) A request for the issue of a variation order in an amount exceeding R200 000.00 shall first be referred to the Bid Adjudication Committee which considered the initial bid for approval provided that the accounting officer may constitute a new Bid Adjudication Committee for this purpose and the Bid Adjudication Committee may not approve the variation of contract by more than 20% for construction related contracts and 15% for goods and services of the original value of the contract and any amount beyond the aforementioned thresholds shall be reported to the board of directors of the MBDA.

- (4) No request for a variation order may be approved in circumstances where new bids may be invited for the additional work concerned.
- (5) The responsible project manager shall keep a proper record of all variation orders issued in respect of a project.
- (6) The original copy of an issued variation order shall be filed with the original bid and contract documents.
- (7) The responsible project manager shall, on completion of additional work or the expiry of any extended contract period authorized by a variation order, certify that the terms and conditions of such variation order have been complied with.

53. FRONTING

- (1) For the purposes of this paragraph, "fronting" shall include the under-mentioned acts on the part of a tenderer or any person or party associated with a tenderer:
 - (a) window dressing: This includes cases in which black people are appointed or introduced to an enterprise on the basis of tokenism and may subsequently be discouraged or inhibited from substantially participating in the four activities of the enterprise concerned and/or be discouraged or inhibited from substantially participating in the declared areas and/or levels of their participations;
 - (b) Benefit diversion: This includes initiatives where the economic benefits received by an organization for having B-BBEE status do not flow to black people in a ratio specified by law;

- (c) Opportunistic intermediaries: This includes enterprises that have concluded agreements with other enterprises in order to leverage the opportunistic intermediaries favourable B-BBEE status in circumstances where the agreement involved:
 - (i) significant limitations or restrictions on the identity of the opportunistic intermediaries suppliers, service providers, clients or customers;
 - (ii) the maintenance of their business operations in a context reasonably considered improbable having regard to resources; and
 - (iii) terms and conditions that are not negotiated at arms length on a fair and reasonable basis.
- (2) where the accounting officer detects fronting, he shall act against the tenderer concerned in accordance with paragraph 14 of the Acquisition Management Directives annexed hereto marked Annexure "A" and, in addition report such fronting to the Department of Trade and Industry.

54. COMMENCEMENT

This Policy takes effect on the date of its adoption by the Board of Directors of the MBDA.

ANNEXURE “A”

ACQUISITION MANAGEMENT DIRECTIVES

1. DEFINITIONS

- 1.1 “**Act**” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- 1.2 “**B-BBEE**” means broad-based black economic empowerment as defined in Section 1 of the Broad-Based Black Economic Empowerment Act;
- 1.3 “**B-BBEE status level of contributor**” means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 1.4 “**black designated groups**” has the meaning assigned to it in the codes of good practice issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 1.5 “**black people**” has the meaning assigned to it in Section 1 of the Broad-Based Black Economic Empowerment Act namely Africans, Coloureds and Indians:
 - 1.5.1 who are citizens of the Republic of South Africa by birth or decent; or

- 1.5.2 who became citizens of the Republic of South Africa by naturalization before 27 April 1994, or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;
- 1.6 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 1.7 **“co-operative”** means a co-operative registered in terms of Section 7 of the Co-Operatives Act, 2005 (Act No. 14 of 2005);
- 1.8 **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 1.9 **“designated group”** means:
- 1.9.1 Black designated groups;
 - 1.9.2 Black people;
 - 1.9.3 Women;
 - 1.9.4 People with disabilities; or
 - 1.9.5 Small enterprises, as defined in Section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
- 1.10 **“designated sector”** means a sector, sub-sector or industry or product designated in terms of Paragraph 8.1 hereof;

- 1.11 “**EME**” means an exempted micro-enterprise in terms of a code of good practice on black economic empowerment issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act and, for the purposes hereof, an enterprise with an annual Total Revenue of R10 million or less;
- 1.12 “**functionality**” means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;
- 1.13 “**military veteran**” has the meaning assigned to it in Section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011);
- 1.14 “**National Treasury**” has the meaning assigned to it in Section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- 1.15 “**people with disabilities**” has the meaning assigned to it in Section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998);
- 1.16 “**price**” includes all applicable taxes less all unconditional discounts;
- 1.17 “**proof of B-BBEE status level of contributor**” means:
- 1.17.1 The B-BBEE status level certificate issued by an authorised body or person;
- 1.17.2 A sworn Affidavit as prescribed in the B-BBEE Codes of Good Practice; or

1.17.3 Any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act;

1.18 “**QSE**” means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act and, for the purposes hereof, a Measured Entity with an annual Total Revenue of between R10 million and R50 million;

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

1.20 “**rural area**” means:

1.20.1 a sparsely populated area in which people farm or depend on natural resources including villages and small towns that are dispersed through the area; or

1.20.2 an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have a traditional land tenure system;

1.21 “**stipulated minimum threshold**” means the minimum threshold stipulated in Paragraph 8.1.2;

1.22 “**tender**” means a written offer in a prescribed or stipulated form in response to an invitation by the MBDA for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals;

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

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

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

2. **APPLICATION**

These directives apply in accordance with the Act and the Regulations promulgated thereunder.

3. **IDENTIFICATION OF PREFERENCE POINT SYSTEM, DESIGNATED SECTOR, PRE-QUALIFICATION CRITERIA, OBJECTIVE CRITERIA AND SUBCONTRACTING**

The MBDA shall, in relation to any tender

3.1 determine and stipulate in the tender documents:

3.1.1 the preference point system applicable to the tender as envisaged in Paragraphs 6 or 7; or

3.1.2 if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will

be used to determine the applicable preference point system;

- 3.2 determine whether prequalification criteria are applicable to the tender as envisaged in Paragraph 4;
- 3.3 determine whether the goods or services for which a tender is to be invited, are in a designated sector for local production and content as envisaged in Paragraph 8;
- 3.4 determine whether compulsory subcontracting is applicable to the tender as envisaged in Paragraph 9; and
- 3.5 determine whether objective criteria are applicable to the tender as envisaged in Paragraph 11.

4. PRE-QUALIFICATION CRITERIA FOR PREFERENTIAL PROCUREMENT

- 4.1 If the MBDA decides to apply prequalifying criteria to advance certain designated groups, the MBDA must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond:
 - 4.1.1 a tenderer having a stipulated minimum B-BBEE status level of contributor;
 - 4.1.2 an EME or QSE or an EME or QSE having an Enhanced B-BBEE recognition level for an EME or QSE as may be determined by the MBDA having regard to any applicable Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act;

4.1.3 a tenderer subcontracting a minimum of 30% to

- 4.1.3.1 an EME or QSE which is at least 51% owned by black people;
- 4.1.3.2 an EME or QSE which is at least 51% owned by black people who are youth;
- 4.1.3.3 an EME or QSE which is at least 51% owned by black people who are women;
- 4.1.3.4 an EME or QSE which is at least 51% owned by black people with disabilities;
- 4.1.3.5 an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- 4.1.3.6 a cooperative which is at least 51% owned by black people;
- 4.1.3.7 an EME or QSE which is at least 51% owned by black people who are military veterans;
- 4.1.3.8 an EME or QSE.

4.2 A tender that fails to meet any prequalifying criteria stipulated in the tender documents is an unacceptable tender.

5. **EVALUATION OF TENDERS ON FUNCTIONALITY.**

- 5.1 The MBDA shall indicate in the invitation to submit a tender if that tender will be evaluated on functionality.
- 5.2 The evaluation criteria for measuring functionality must be objective.
- 5.3 The tender documents must specify:
 - 5.3.1 evaluation criteria for measuring functionality;
 - 5.3.2 the points for each criteria and, if any, each sub-criterion; and
 - 5.3.3 the minimum qualifying score for functionality.
- 5.4 The minimum qualifying score for functionality for a tender to be considered further:
 - 5.4.1 must be determined separately for each tender; and
 - 5.4.2 may not be so:
 - 5.4.2.1 low that it may jeopardise the quality of the required goods or services; or
 - 5.4.2.2 high that it is unreasonably restrictive.
- 5.5 Points scored for functionality must be rounded off to the nearest two decimal places.

- 5.6 A tender that fails to obtain the minimum qualifying score for functionality as indicated in the tender documents is not an acceptable tender.
- 5.7 Each tender that obtained the minimum qualifying score for functionality must be evaluated further in terms of price and the preference point system and any objective criteria envisaged in Paragraph 11.

6. THE 80/20 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES FOR RAND VALUE EQUAL TO OR ABOVE R30 000.00 AND UP TO R50 MILLION

- 6.1 The following formula must be used to calculate the points out of 80 for price in respect of a tender with a Rand value equal to, or above R30 000 and up to a Rand value of R50 000 000.00, inclusive of all applicable taxes:

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

Where

- P_s = Points scored for price of tender under consideration;
 P_t = price of tender under consideration; and
 P_{\min} = price of lowest acceptable tender.

- 6.2 The following table must be used to calculate the score out of 20 for B-BBEE subject to 6.2.1 and 6.2.2 below:

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

6.2.1 Or, in respect of an Exempted Micro Enterprises where the generic Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act applies:

6.2.1.1 such Exempted Micro Enterprise shall be deemed to have a B-BBEE status of “Level Four Contributor” which qualifies for twelve points; or

6.2.1.2 the following Enhanced B-BBEE levels of recognition shall apply to Exempted Micro Enterprises having an Enhanced B-BBEE level of recognition:

Black Ownership of EME	Deemed B-BBEE Status Level of Contributor	Number of Preference Points
100% black owned	1	20
At least 51% black owned	2	18

Paragraph 6.2.1 is subject, however, at all times to any applicable Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act.

Despite 6.2.1 above, an EME is allowed to be measured in terms of the QSE scorecard should it wish to maximize its points and move to a higher B-BBEE recognition level.

6.2.2 Or, in respect of a Qualifying Small Enterprise having an Enhanced B-BBEE recognition level where the generic Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act applies, the following Enhanced B-BBEE level of recognition shall apply to such Qualifying Small Enterprise:

Black Ownership of QSE	Deemed B-BBEE Status Level of Contributor	Number of Preference Points
100% black owned	1	20
At least 51% black owned	2	18

Paragraph 6.2.2 is subject, however, at all times to any applicable Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act.

6.3 A tenderer must submit proof of its B-BBEE status level of contributor which:

6.3.1 In the instance of an EME shall be in the form of an Affidavit or a Certificate issued by the Companies and Intellectual Property Commission (CIPC) on an annual basis, confirming the following:

6.3.1.1 Annual Total Revenue of R10 million or less;
and

6.3.1.2 Level of Black ownership.

6.3.2 In the instance of an QSE shall be in the form of an Affidavit on an annual basis, confirming the following:

6.3.1.1 Annual Total Revenue of R50 million or less;
and

6.3.1.2 Level of Black ownership.

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

6.4.1 may only score points out of 80 for price; and

6.4.2 scores 0 points out of 20 for B-BBEE.

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

6.6 The points scored by a tenderer for B-BBEE in terms of Sub-paragraph 6.2 must be added to the points scored for price under Sub-paragraph 6.1.

6.7 The points scored must be rounded off to the nearest two decimal places.

6.8 Subject to Sub-paragraph 6.9 and Paragraph 11, the contract must be awarded to the tenderer scoring the highest points.

6.9

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

6.9.2 The MBDA may:

6.9.2.1 negotiate a market related price with the tenderer scoring the highest points or cancel the tender;

6.9.2.2 if the tenderer does not agree to a market related price, negotiate a market related price

with the tenderer scoring the second highest points or cancel the tender;

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

6.9.3 If a market related price is not agreed as envisaged in subparagraph 6.9.2.3, the MBDA must cancel the tender.

7. THE 90/10 PREFERENCE POINT SYSTEM FOR ACQUISITION OF GOODS OR SERVICES WITH RAND VALUE ABOVE R50 MILLION

7.1 The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 000 000.00, inclusive of all applicable taxes:

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

Where

P_s = Points scored for price of tender under consideration;

P_t = price of tender under consideration; and

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

7.2 The following table must be used to calculate the points out of 10 for B-BBEE subject to 7.2.1 and 7.2.2 below:

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

7.2.1 Or, in respect of an Exempted Micro Enterprises where the generic Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act applies:

7.2.1.1 such Exempted Micro Enterprise shall be deemed to have a B-BBEE status of “Level Four Contributor” which qualifies for twelve points; or

7.2.1.2 the following Enhanced B-BBEE levels of recognition shall apply to Exempted Micro Enterprises having an Enhanced B-BBEE level of recognition:

Black Ownership of EME	Deemed B-BBEE Status Level of Contributor	Number of Preference Points
100% black owned	1	10
At least 51% black owned	2	9

Paragraph 7.2.1 is subject, however, at all times to any applicable Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act.

Despite 7.2.1 above, an EME is allowed to be measured in terms of the QSE scorecard should it wish to maximize its points and move to a higher B-BBEE recognition level.

7.2.2 Or, in respect of a Qualifying Small Enterprise having an Enhanced B-BBEE recognition level where the generic Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act applies, the following Enhanced B-BBEE level of recognition shall apply to such Qualifying Small Enterprise:

Black Ownership of QSE	Deemed B-BBEE Status Level of Contributor	Number of Preference Points
100% black owned	1	10
At least 51% black owned	2	9

Paragraph 7.2.2 is subject, however, at all times to any applicable Code of Good Practice issued in terms of the Broad-Based Black Economic Empowerment Act.

7.3 A tenderer must submit proof of its B-BBEE status level of contributor which:

7.3.1 In the instance of an EME shall be in the form of an Affidavit or a Certificate issued by the Companies and Intellectual Property Commission (CIPC) on an annual basis, confirming the following:

7.3.1.1 Annual Total Revenue of R10 million or less;
and

7.3.1.2 Level of Black ownership.

7.3.2 In the instance of an QSE shall be in the form of an Affidavit on an annual basis, confirming the following:

7.3.2.1 Annual Total Revenue of R50 million or less;
and

7.3.2.2 Level of Black ownership.

7.4 A tenderer failing to submit proof of B-BBEE status level of contribution or is a noncompliant contributor to B-BBEE may not be disqualified, but:

7.4.1 may only score points out of 90 for price; and

7.4.2 scores 0 points out of 10 for B-BBEE.

- 7.5 A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.
- 7.6 The points scored by a tenderer for B-BBEE contribution in terms of Sub-paragraph 7.2 must be added to the points scored for price under Sub-paragraph 7.1.
- 7.7 The points scored must be rounded off to the nearest two decimal places.
- 7.8 Subject to Sub-paragraph 7.9 and Paragraph 11, the contract must be awarded to the tenderer scoring the highest points.
- 7.9
- 7.9.1 If the price offered by a tenderer scoring the highest points is not market related, the MBDA may not award the contract to that tenderer.
- 7.9.2 The MBDA may:
- 7.9.2.1 negotiate a market related price with the tenderer scoring the highest points or cancel the tender;
- 7.9.2.2 if the tenderer does not agree to a market related price, negotiate a market related price with the tenderer scoring the second highest points or cancel the tender;

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

7.9.3 If a market related price is not agreed as envisaged in Sub-paragraph 7.9.2.3, the MBDA must cancel the tender.

8. LOCAL PRODUCTION AND CONTENT

8.1 The Department of Trade and Industry may, in consultation with the National Treasury:

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

8.1.2 stipulate a minimum threshold for local production and content.

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

8.3 The National Treasury must inform the MBDA of any designation made in terms of Sub-paragraph 8.1 through a circular.

8.4

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

8.4.2 The threshold referred to in Sub-paragraph 8.4.1 must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.

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

9. SUBCONTRACTING AS CONDITION OF TENDER

9.1 If feasible to subcontract for a contract above R30 million, the MBDA must apply subcontracting to advance designated groups.

9.2 If the MBDA applies subcontracting as contemplated in Sub-paragraph 9.1, the MBDA must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to:

9.2.1 an EME or QSE;

9.2.2 an EME or QSE which is at least 51% owned by black people;

- 9.2.3 an EME or QSE which is at least 51% owned by black people who are youth;
 - 9.2.4 an EME or QSE which is at least 51% owned by black people who are women;
 - 9.2.5 an EME or QSE which is at least 51% owned by black people with disabilities;
 - 9.2.6 an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
 - 9.2.7 a cooperative which is at least 51% owned by black people;
 - 9.2.8 an EME or QSE which is at least 51% owned by black people who are military veterans; or
 - 9.2.9 more than one of the categories referred to in Sub-paragraphs 9.2.1 to 9.2.8.
- 9.3 The MBDA must make available the list of all suppliers registered on a database approved by the National Treasury to provide the required goods or services in respect of the applicable designated groups mentioned in Sub-paragraph 9.2 from which the tenderer must select a supplier.

10. CRITERIA FOR BREAKING DEADLOCK IN SCORING

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

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

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

11. AWARD OF CONTRACTS TO TENDERERS NOT SCORING THE HIGHEST POINTS.

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

11.2 If the MBDA intends to apply objective criteria in terms of Section 2(1)(f) of the Act, the MBDA must stipulate the objective criteria in the tender documents.

12. SUBCONTRACTING AFTER AWARD OF TENDER

12.1 A person awarded a contract may only enter into a subcontracting arrangement with the approval of the MBDA.

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

12.3 A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the

person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

13. CANCELLATION OF TENDER

13.1 The MBDA may, before the award of a tender, cancel a tender invitation if:

13.1.1 due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;

13.1.2 funds are no longer available to cover the total envisaged expenditure;

13.1.3 no acceptable tender is received; or

13.1.4 there is a material irregularity in the tender process.

13.2 The decision to cancel a tender invitation in terms of Sub-paragraph 13.1 must be published in the same manner in which the original tender invitation was advertised.

13.3 The MBDA may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

14. REMEDIES

14.1 Upon detecting that a tenderer submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of these Directives which will affect or has affected the evaluation of a

tender, or where a tenderer has failed to declare any subcontracting arrangements, the MBDA must:

14.1.1 inform the tenderer accordingly;

14.1.2 give the tenderer an opportunity to make representations within 14 days as to why:

14.1.2.1 the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;

14.1.2.2 if the successful tenderer subcontracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and

14.1.2.3 the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and

14.1.3 if it concludes, after considering the representations referred to in Sub-paragraph 14.1.2 that:

14.1.3.1 such false information was submitted by the tenderer:

14.1.3.1.1 disqualify the tenderer or terminate the contract in whole or in part; and

14.1.3.1.2 if applicable, claim damages from the tenderer; or

14.1.3.2 the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

14.2

14.2.1 The MBDA must:

14.2.1.1 inform the National Treasury, in writing, of any actions taken in terms of Sub-paragraph 14.1;

14.2.1.2 provide written submissions as to whether the tenderer should be restricted from conducting business with any organ of state; and

14.2.1.3 submit written representations from the tenderer as to why that tenderer should not be restricted from conducting business with any organ of state.

14.2.2 The National Treasury may request the MBDA to submit further information pertaining to Sub-paragraph 14.1 within a specified period.

14.3 The National Treasury must:

14.3.1 after considering the representations of the tenderer and any other relevant information, decide whether to restrict the tenderer from doing business with any organ of state for a period not exceeding 10 years; and

14.3.2 maintain and publish on its official website a list of restricted suppliers.

15. CONSORTIUMS OR JOINT VENTURES AND CONDITIONS

15.1 A consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

15.2 A consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.

15.3 All successful tenderers shall be obliged to conclude employment contracts with their employees failing which the MBDA reserves the right to terminate the awarded contract.

15.4 All successful tenderers shall pay their workers a remuneration not less than that recommended and regulated by the Department of Labour.

15.5 Contracts concluded with successful tenderers shall, where applicable, contain appropriate penalty provisions.

16. SAVING PROVISION

Any tender advertised before 1 April 2017 shall be dealt with in accordance with the Acquisition Management Directives and Supply Chain Management Policy of the MBDA as adopted on 23 April 2014.

ANNEXURE “B”

A CODE OF CONDUCT FOR SUPPLY CHAIN MANAGEMENT PRACTITIONERS AND OTHER ROLE PLAYERS

1. GENERAL PRINCIPLES

- 1.1 The MBDA commits itself to a policy of fair dealing and integrity in the conducting of its business. Officials and other role players involved in supply chain management (SCM) are in a position of trust, implying a duty to act in the public interest. Officials and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.
- 1.2 Officials and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.
- 1.3 Officials and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

2. **CONFLICT OF INTEREST**

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

- 2.1 must treat all providers and potential providers equitably;
- 2.2 may not use his or her position for private gain or to improperly benefit another person;
- 2.3 may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- 2.4 must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- 2.5 must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by the MBDA;
- 2.6 must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- 2.7 must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;

- 2.8 should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties; and
- 2.9 should not take improper advantage of their previous office after leaving their official position.

3. **ACCOUNTABILITY**

- 3.1 Practitioners are accountable for their decisions and actions to the public.
- 3.2 Practitioners should use public property scrupulously.
- 3.3 Only accounting officers or their delegates have the authority to commit the MBDA to any transaction for the procurement of goods and / or services.
- 3.4 All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make any false or misleading entries into such a system for any reason whatsoever.
- 3.5 Practitioners must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system.
- 3.6 Practitioners must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including
 - (i) any alleged fraud, corruption, favouritism or unfair conduct;

- (ii) any alleged contravention of the policy on inducements, rewards, gifts and favours to municipalities or municipal entities, officials or other role players; and any alleged breach of this code of conduct.

3.7 Any declarations made must be recorded in a register which the accounting officer must keep for this purpose. Any declarations made by the accounting officer must be made to the board who must ensure that such declaration is recorded in the register.

4. OPENNESS

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

5. CONFIDENTIALITY

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

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

6. BID SPECIFICATION /EVALUATION / ADJUDICATION COMMITTEES

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

7. COMBATIVE PRACTICES

Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:

- (i) Suggestions to fictitious lower quotations;
- (ii) Reference to non-existent competition;

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

ANNEXURE “C”

SUPPLY CHAIN MANAGEMENT GUIDELINES ON APPEALS, OBJECTIONS, COMPLAINTS AND RESOLUTION OF DISPUTES

1. PREAMBLE

These guidelines provide for procedural mechanisms for persons or service providers whose rights have been adversely affected or negatively impacted upon by the supply chain management processes, actions or related decisions of the MBDA.

These guidelines must be implemented in a way that gives effect to:

- a) the provisions of the Promotion of Administrative Justice Act ;
- b) section 217 of the Constitution;
- c) sections 49 and 50 of the MBDA Supply Chain Management Policy;
and
- d) section 62 of the Local Government: Municipal Systems Act; and
- e) any other applicable legislation or policy.

2. THE RIGHT TO LODGE AN APPEAL, OBJECTION OR COMPLAINT

Persons or service providers aggrieved by decisions taken in the implementation of the MBDA Supply Chain Management policy or system or in the awarding of business, may, within 14 days of the award lodge a written appeal, objection or complaint to the CEO of the MBDA detailing the following:

- 2.1 The tender/bid/contract or the quotation reference number;
- 2.2 The part of the Policy, Regulations or Act that has been violated;
- 2.3 The details of the violation;
- 2.4 Reasons for the appeal, objection or complaint;
- 2.5 The department involved;
- 2.6 Relief sought.

3. PERSON APPOINTED AS AUTHORITY

- 3.1 The CEO of the MBDA may appoint an independent or impartial person, from outside or within the MBDA as the appeal authority and as well as to deal with complaints, objections and assist in the resolution of any disputes in terms hereof and to investigate and propose any dispute resolution.
- 3.2 Subject to clause 7, in consideration of an appeal the authority must confirm, vary or revoke the decision, but no such variation or revocation may detract from any rights that may have accrued as a result of the decision.

- 3.3 The person so appointed must be someone who was not involved in the bid or transaction in question.
- 3.4 The duties and functions of such a person are to be contained in the Terms of Appointment, and must include:
- (a) striving to resolve promptly, but within 60 days, all appeals, disputes, objections, complaints or queries received ; and
 - (b) submission of regular reports to the CEO of the MBDA on all disputes, objections, complaints or queries received, attended to or resolved.
- 3.5 The CEO, or another official designated by the CEO, is responsible for assisting the appointed person to perform his or her functions effectively.

4. DISPUTES RELATING TO CONTRACTS

Disputes relating to running contracts or completed contracts must be resolved strictly according to the disputes resolution mechanism provided for in the contract document or service level agreement.

5. REFERRAL OF DISPUTES TO TREASURY

The aggrieved party has the right to submit disputes not resolved by the CEO within 60 days to the NMBMM.

6. REFERRAL OF DISPUTES TO THE COURT

Provisions of these guidelines do not prohibit or infringe on the rights of any person to approach the Court of Law regarding the dispute in question;

7. CONSIDERATION OF APPEAL BY APPEAL AUTHORITY

7.1 The appeal authority must commence with the appeal within 3 weeks and it must be decided on within 60 days;

7.2 The appeal authority will determine its own procedure for hearing an appeal;

7.3 The appeal authority will consider the appeal and could either confirm, vary or revoke the decision, without detracting from any rights that may have accrued as a result of the decision;

7.4 The appeal authority must consider all requests for hearings and may also initiate a hearing should it be deemed necessary;

7.5 The appeal authority may decide to undertake a site inspection if deemed necessary;

7.6 The appeal authority may consider the appeal on the written documentation before it without the appellant being present;

7.7 The appeal authority may request clarity on any aspect of the appeal verbally or in writing;

- 7.8 The appeal authority will be entitled to instruct any official to give testimony before the appeal authority, with reasonable prior notice to such official;
- 7.9 All evidence on which the original decision was based must be presented to the appeal authority;
- 7.10 The appeal authority will apply its mind to the facts and come to a conclusion independently, but will be entitled to obtain and duly consider any advice on the matter, especially in complex and difficult instances.

8. APPEAL HEARINGS

- 8.1 The purpose of the hearing is to gather further information for the sake of clarity;
- 8.2 A hearing should not be seen as a court of law and therefore no cross-examination may take place;
- 8.3 Questions may only be asked by the appeal authority to obtain further clarity;
- 8.4 The appellant may be represented by a legal advisor;
- 8.5 At the discretion of the appeal authority, interested and affected parties may make submissions to the appeal authority;

9. CONVEYANCE OF DECISION PERTAINING TO APPEAL

- 9.1 The appeal authority will notify the CEO in writing of its decision and provide reasons thereof;

- 9.2 The CEO will then officially notify the appellant in writing of the outcome of the appeal. The relevant official will be requested to notify all other affected parties;

- 9.3 In cases where the official has to negotiate/liaise further with the appellant regarding the matter, the CEO will communicate the decision to the official who will then be requested to liaise further with the appellant;

ANNEXURE “D”

MBDA CODE OF ETHICS AND GIFTS POLICY GUIDELINES

1. PREAMBLE

1.1 Subject to Section 47 of the MBDA Supply Chain Management Policy, a code of ethical standards and gift policy guidelines is hereby established for all officials and other role - players in the supply chain management system of the MBDA in order to promote and protect the interest thereof.

1.2 All officials and other role-players in the Supply Chain Management System must promote these interests by way of:

1.2.1 mutual trust and respect and;

1.2.2 create an environment where business can be conducted with integrity and in a fair and reasonable manner

2. DEFINITIONS

2.1 “**Benefit**” includes any tangible or intangible advantages or profits gained, such as, but not limited to, tickets to sporting, theatrical or other events, invitations to lunches, dinners, promotions or travel.

2.2 “**Corruption**” means the abuse of a position of employment by the offering or acceptance of a benefit that is not legally due, for the commission of an act in connection with that position of

employment, as defined in the Prevention and Combating of Corrupt Activities Act, No 12 of 2004.

- 2.3 **“Employee”** includes employees, temporary employees, independent contractors and employees/contractors of contracted service providers, of the MBDA.
- 2.4 **“Employee’s Family”** includes the employee’s spouse or equivalent, sibling, parent, grandparent, child, grandchild and any person who is a blood relation of the employee.
- 2.5 **“Gift”** includes items, goods, services, information or money in whatever form, from which the recipient may derive benefit, as well as any other benefit or gratuity, but does not include:
- 2.5.1 Official MBDA branded goods or items;
 - 2.5.2 Official MBDA sponsored functions, promotions or hospitality events;
 - 2.5.3 Official donations made on behalf of MBDA; or items, goods, services, information or money in whatever form provided or obtained from third parties in terms of an official contract with MBDA.
- 2.6 **“Gratuity”** includes any sum of money paid in respect of any defined task or project other than the contracted remuneration paid by MBDA
- 2.7 **“Supplier”** includes existing and potential vendors, contractors, sourcing partners, service providers, distributors, and consultants who supply goods or services to the MBDA, as well as any other

third parties who may in future become suppliers or vendors of goods or services to the MBDA.

3. **OBJECTIVES**

The primary objectives of the policy guidelines are following:

- 3.1 To provide guidance on the behaviours expected in accordance the MBDA values.
- 3.2 To promote transparency and avoid business–related conflicts of interest.
- 3.3 To document the process for the acceptance, receiving, and giving of gifts.
- 3.4 To comply with the legal requirements relating to the prohibition of corruption.
- 3.5 By ensuring the above is implemented, MBDA will be able to:
 - 3.5.1 allow employees, where appropriate, to accept, receive, and give gifts, provided that these gifts do not interfere with or have the potential to interfere with their responsibilities to MBDA, improperly influence the judgments expected of them when acting on behalf of MBDA, or amount to corruption in any way.
 - 3.5.2 protect employees from misplaced charges of conflict of interest or corruption by providing a mechanism for the acceptance, receipt, and giving of gifts by employees.

3.5.3 avoid any unjustified perception of bias or self-interest by employees acting in situations where the MBDA has approved the acceptance, receipt, and giving of gifts by employees.

4. **SCOPE**

- 4.1 These policy guidelines are applicable to all employees of the MBDA; and
- 4.2 Regulate processes and procedures in accordance with existing legal duties and obligations that an employee owes the MBDA, and should therefore not be construed or applied in a manner contrary to such duties and obligations, nor is it designed to replace such duties and obligations.

5. **OWNERSHIP**

It is the responsibility of each Department of the MBDA to ensure the implementation of this policy and for taking reasonable steps to ensure that all employees are aware of the contents thereof.

6. **GIFT REGISTERS**

- 6.1 By the first day of each month each Department must ensure that Gift Registers relating to gifts accepted and received, as well as gifts given, are maintained and submitted to the CFO.
- 6.2 The information disclosed is to be captured, recorded, stored and retrieved for a minimum period of 3 years.

7. PROHIBITION ON THE ACCEPTANCE AND RECEIPT OF GIFTS

No official or person who is a supplier or prospective supplier of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of, may, directly or through a representatives or intermediary promise, accept, offer or grant:

- 7.1. any inducement or reward to an official, any Structure or Committee of the MBDA, either to individual members or collectively for or in connection with the award of a contract; or
- 7.2. any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person; and
- 7.3. notwithstanding clauses 7.1 and 7.2, must declare to the CEO details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;

8. PROCESS AND REQUIREMENTS

Any official or other person referred to in terms of clause 7 must:

- 8.1 declare to the CEO details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by the MBDA;
- 8.2 must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of

a contract in which that person, or any close family member, partner or associate, has any private or business interest;

8.3 must assist the CEO in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system;

8.4 must report to the CEO any alleged irregular conduct in the supply chain management system which that person may become aware of, including;

8.4.1 any alleged fraud, corruption, favouritisms or unfair conduct;

8.4.2 any alleged contravention of this policy; or

8.4.3 any alleged breach of this code of ethical standards

9. SPECIFICALLY PROHIBITED GIFTS

9.1 All travel by officials or their immediate families at the expense of suppliers, vendors, clients or third parties is specifically prohibited;

9.2 Notwithstanding the provisions of clause 9.1, travel may only be undertaken where prior written approval has been obtained;

9.3 The acceptance or receipt of cash (bank notes, cheques, any negotiable instrument or equivalent) is specifically prohibited.

10. PROCEDURE FOR THE ACCEPTANCE AND RECEIPT OF GIFTS

10.1 Only gifts involving a monetary value of less than R350.00 received on no more than one occasion from any one supplier during a

financial year, may be received or accepted by an official of the MBDA, from suppliers, clients or third parties;

10.2 Not more than 1 gift may be accepted or received from the same supplier, client or third party in any given three-month period;

10.3 When receiving or accepting such gifts in terms of clause 10.1, the following conditions apply:

10.3.1 The acceptance or receipt thereof must, in accordance with clause 6, be disclosed as soon as it is practically possible, but within 30 days of receipt;

10.3.2 Disclosure in a Gift Register must take place on the prescribed form.

10.3.3 In the event of any doubt whatsoever, disclosure must still be made in the prescribed format.

10.3.4 Irrespective of the value of the gift or due consent by the CEO, under no circumstances may the acceptance or receipt of a gift take place in circumstances that may constitute corruption or conflict of interest as envisaged by the MBDA Supply Chain Management Policy.

11. SPECIAL CONSIDERATIONS

11.1 Where it would be reasonably deemed to be impractical, impossible or inappropriate to refuse to accept or receive a gift that has been offered, such gift may be accepted, with the proviso that such acceptance or receipt is disclosed as soon as it is practically possible, but within 30 days in accordance with clause 6; and

11.2 The CEO condones such receipt and acceptance.

12. CONDITIONS FOR THE GIVING OF GIFTS

The provisions of clauses 10 and 11 are also applicable in the instances of where gifts are given.

13. NON-COMPLIANCE AND REPORTING

13.1 Non-compliance with this code and policy guidelines and/or any procedures as set out herein, may amount to the breach of the Code of Conduct in terms of the Local Government: Municipal Systems Act;

13.2 The provisions of this code and policy guidelines do not prohibit or detract from any other appropriate measures of reporting that may be utilized by any person in reporting any suspected activities or incidents of corruption.

ANNEXURE “E”

APPOINTMENT OF CONSULTANTS

1. DEFINITION

“**Consultant**” means a person or entity who provides services which require knowledge based expertise, skills and resources, and includes professional service providers.

2. INTRODUCTION

The accounting officer may appoint consultants for the following reasons:

- a) To complement and supplement the MBDA’s capacity and capability;
- b) To provide specialised services for limited periods without any obligation of permanent employment;
- c) To benefit from superior knowledge, transfer of skills and upgrading of a knowledge base while executing an assignment;
- d) To provide independent advice on the most suitable approaches, methodologies and solutions of projects.

3. GENERAL

The accounting officer may procure consulting services provided that any National Treasury guidelines in this respect are taken into account and, in the case of consultancy services related to the built environment and

construction works, that guidelines of the Construction Industry Development Board are taken into account.

The procurement method shall be determined by the scope of the assignment, the quality of the service, the complexity of the assignment and whether assignments are of a standard or routine nature or require specialist inputs.

4. DATA BASE OF PROFESSIONAL SERVICE PROVIDERS

4.1 The accounting officer may establish a database of pre-qualified consultants. The database shall be valid for a period determined by the accounting officer or for a maximum period of 3 years, with an option for an annual review process to accommodate operational requirements and the addition of consultants to the database within the validity period of the current database.

4.2 The data base shall categorize registered consultants in terms of:

4.2.1 The scope of services commonly required (legal services, engineering and construction services, financial services, project management services, social services, health services, environmental services, media and communication services, IT services, etc.)

4.2.2 Where relevant the work categories associated with the professional service and professional responsibility.

4.3 The accounting officer may determine minimum eligibility criteria to ensure that a consultant has a basic capability to provide the required service. The eligibility criteria may include the following:

- 4.3.1 The consultant must (if feasible) have an established office in the MBDA area staffed by at least one suitably qualified and experienced person who is registered with the relevant professions legislated governing body,
- 4.3.2 The consultant must certify that is a natural or juristic persons whose primary business is to provide independent services to employers and which, if a sole practitioner, has a professionally registered person as a principal, or if a partnership, close corporation or company, has its principals registered with the relevant professions legislated governing body,
- 4.3.3 The consultant has demonstrable and verifiable work experience in the professional service category.
- 4.3.4 The consultant must have a minimum level of professional indemnity cover appropriate for the appointment.

5. PROCUREMENT OF CONSULTANTS

5.1 Written price quotation

- 5.1.1 If practical, expedient and unless prevented by reason of confidentiality considerations, where the estimated value of fees is less than or equal to R30 000 including VAT and the duration of the appointment is less than one year, written price quotations shall be obtained from at least three different consultants whose names appear on the relevant supplier database for the consultancy service required.

5.1.2 The quotes shall be evaluated on the basis of the price/preference points system described in this Policy.

5.1.3 On conclusion of the selection process all consultants who were requested to provide quotations shall be rotated to the bottom of the relevant supplier database.

5.2 Formal written price quotation

5.2.1 If practical, expedient and unless prevented by reason of confidentiality considerations, where the estimated value of fees is less than or equal to R200 000 including VAT and the duration of the appointment is less than one year, formal written price quotations shall be obtained from at least three different consultants who are suitably qualified, experienced, have the necessary resources and whose names appear on the relevant supplier database for the consultancy service required.

5.2.2 The quotes shall be evaluated on the basis of the price/preference points system described in this Policy.

5.2.3 On conclusion of the selection process all consultants who were requested to provide quotations shall be rotated to the bottom of the relevant supplier database.

5.3 Competitive bidding process

5.3.1 If practical, expedient and unless prevented by reason of confidentiality considerations, where the estimated value of fees exceeds R200 000 including VAT and the duration of the appointment will exceed one year, the selection of consultants shall be by means of a competitive bidding process from consultants who are suitably qualified,

experienced, have the necessary resources and whose names appear on the relevant supplier database for the consultancy service required.

5.3.2 If practical, expedient and unless prevented by reason of confidentiality considerations, where the estimated value of fees does not exceed R1,0 million including VAT:

5.3.2.1 Bids shall be invited from at least five different consultants who are suitably qualified, experienced, have the necessary resources and whose names appear on the relevant supplier database for the consultancy service required.

5.3.2.2 The bids shall be evaluated on the basis of functionality and the price/BEE points system described in this Policy.

5.3.2.3 On conclusion of the selection process all consultants who were requested to provide bids shall be rotated to the bottom of the relevant supplier database

5.3.3 If practical, expedient and unless prevented by reason of confidentiality considerations, where the estimated value of fees exceeds R1million including VAT

5.3.3.1 Bids shall be invited from all the service providers who are suitably qualified, experienced, have the necessary resources and whose names appear on the relevant supplier database for the consultancy service required.

5.3.3.2 The bids shall be evaluated on the basis of functionality and the price/preference points system described in this Policy.

5.3.3.3 On conclusion of the selection process the appointed consultant shall be rotated to the bottom of the relevant supplier database.

6. SINGLE-SOURCE SELECTION

6.1 Single-source selection of a consultant may be utilised only if it is in the interests of the MBDA and it presents clear advantages over competition in cases where:

6.1.1 The consultancy service represents a natural continuation of previous work carried out by the consultant and continuity of the service is considered beneficial or essential,

6.1.2 In an emergency and where rapid selection is essential,

6.1.3 For small projects and where the estimated value of fees does not exceed R2 000 including VAT,

6.1.4 When only one consultant is qualified or has experience and expertise of exceptional worth for the project.

6.2 In cases where the estimated value of fees for a single-source selection of a consultant exceeds R200 000 including VAT the appointment must be approved by the Bid Adjudication Committee. In cases where the estimated value of fees for a single-source selection of a consultant does not exceed R200 000 including VAT the appointment must be approved by Supply Chain Management.

ANNEXURE “F”**RULES OF ORDER REGULATING THE CONDUCT
OF MEETINGS OF THE BID COMMITTEES****Index**

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1. **DEFINITIONS**

In these rules, unless inconsistent with the context

- 1.1 **“Accounting Officer”** means the CEO of the MBDA;
- 1.2 **“Member”** also includes an alternate member;
- 1.3 **“Committee”** means the –
 - 1.3.1 Bid Specification Committee;
 - 1.3.2 Bid Evaluation Committee; or
 - 1.3.3 Bid Adjudication Committee.
- 1.4 **“MFMA”** means the Local Government: Municipal Finance Management Act, 2003;
- 1.5 **“SCM Policy”** means the supply chain management policy adopted by the MBDA in terms of section 111 of the MFMA; and

- 1.6 “**SCM Regulations**” means the Municipal Supply Chain Management Regulations published in GNR.868 of 30 May 2005, as amended;

2. MANDATE, ROLE AND FUNCTION OF THE SUPPLY CHAIN MANAGEMENT BID COMMITTEES.

- 2.1 Sections 79 and 106 of the MFMA empower Accounting Officers to delegate powers or duties to an official to assist the Accounting Officer in ensuring the achievement of the aims of a specific provision of the MFMA.
- 2.2 Chapter 11 of the MFMA prescribes that municipalities/ municipal entities must have and maintain a Supply Chain Management (SCM) system that is fair, equitable, transparent, competitive and cost-effective.
- 2.3 Regulation 26 of the Municipal SCM Regulations stipulates that a municipality’s/municipal entity’s SCM system must provide for a committee system for Competitive Bids consisting of at least a Bid Specification, Bid Evaluation and Bid Adjudication Committee.
- 2.4 In order to meet their obligations, committee members must be familiar with and adhere to all relevant SCM Legislation, Policy, Guides and Circulars.
- 2.5 The integrity of Supply Chain Practitioners must never be compromised and the highest level of professional competence must be maintained. Furthermore, courteous conduct is expected of all committee members.

2.6 Each member as well as all officials rendering administrative support must sign an Attendance Register and Undertaking of Confidentiality and Impartiality declaration form at each Bid Committee meeting. Members are to declare that they will:

2.6.1 accept the confidentiality of the meeting;

2.6.2 not make known anything regarding the meeting, unless officially authorised; and

2.6.3 not purposefully favour or prejudice anybody.

3. APPLICATION AND INTERPRETATION OF RULES

3.1 These rules apply to all meetings of the –

3.1.1 Bid Specification Committee;

3.1.2 Bid Evaluation Committee; and

3.1.3 Bid Adjudication Committee;

3.2 The chairperson of a committee may give a ruling in respect of any eventuality for which these rules do not provide.

3.3 The ruling of the chairperson must be recorded in the minutes.

3.4 These rules must be applied in conjunction with the SCM Policy, SCM Regulations, and the MFMA.

3.5 Rule 10 is applicable to all officials of the MBDA and other role players irrespective of membership of the bid committees.

4. TERMS OF REFERENCE FOR BID COMMITTEES

4.1 Bid Specification Committee must-

4.1.1 Compile or interrogate specifications submitted to the committee for each procurement of goods or services.

4.1.2 If satisfied with the specification, will approve for publication for the invitation for bids in terms of Section and/or Regulation 22 of the SCM Policy/Regulations.

4.2 A Bid Evaluation Committee must -

4.2.1 Evaluate bids in accordance with the specifications for a specific procurement; and the points system set out in the SCM Policy and in terms of the Preferential Procurement Policy Framework Act; and in the event of non-compliance thereof and the Bid Evaluation Committee may issue an instruction for re-tendering;

4.2.2 Evaluate each bidder's ability to execute the contract;

4.2.3 Check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and

4.2.4 Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

4.3 A bid adjudication committee must –

4.3.1 Consider the report and recommendations of the Bid Evaluation Committee; and

4.3.2 either -

4.3.2.1 depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or

4.3.2.2 make another recommendation to the Accounting Officer how to proceed with the relevant procurement

4.3.3 Regulation 29 stipulates that the Bid Adjudication Committee must consider the recommendations/reports of the Bid Evaluation Committee and, depending on the delegated powers, make:

4.3.3.1 a final award; or

4.3.3.2 a recommendation to the accounting officer to make a final award; or

4.3.3.3 another recommendation to the accounting officer on how to proceed with the relevant procurement.

5. DUTIES AND POWERS OF THE VARIOUS COMMITTEE MEMBERS

5.1 Chairperson

5.1.1 The Chairperson:

5.1.1.1 has a casting vote as well as a deliberate vote;

5.1.1.2 retains all his/her rights as a member;

- 5.1.1.3 may adjourn a meeting;
- 5.1.1.4 may rule on points of order which will be final;
- 5.1.1.5 may withdraw any proposal or other matters under discussion before it is put to the vote; and
- 5.1.1.6 convene extraordinary committee meetings on request.

5.1.2 The Chairperson shall:

- 5.1.2.1 maintain order during a meeting and ensure that business is conducted in an orderly manner;
- 5.1.2.2 before opening a meeting, ensure that a quorum is present;
- 5.1.2.3 protect the rights of every member;
- 5.1.2.4 vacate his / her seat to the vice chairperson, should he/she wish to partake in a discussion in a partial manner;
- 5.1.2.5 ensure all members have opportunity to speak on any matter before the committee;
- 5.1.2.6 deal with items in sequence of the agenda;
- 5.1.2.7 ensure that members know exactly what they are required to vote on;

- 5.1.2.8 ensure that only one member holds the floor at any one time;
- 5.1.2.9 provide guidance by directing the meeting, but shall not dominate;
- 5.1.2.10 conduct meetings in a formal manner; and
- 5.1.2.11 formulate clearly the decisions to be minuted and sign and approve the minutes after they have been verified by the committee as a true and correct record of the meeting.

5.2 Vice-Chairperson

- 5.2.1 The Vice-Chairperson has the same powers and duties as those of members and in addition, where necessary, shall –
 - 5.2.1.1 in the absence of the chairperson, preside as chairperson; and
 - 5.2.1.2 take the seat of and act as chairperson, should the chairperson have a conflict of interest in any matter being considered.
- 5.2.2 In the event that both the Chairperson and Vice-Chairperson are absent from a meeting, the members present may elect one of their members to preside at such meeting.

5.3 Secretary

5.3.1 The Secretary shall –

- 5.3.1.1 in conjunction with the Chairperson/Vice Chairperson compile an agenda and determine dates of meetings;
- 5.3.1.2 give notice of proposed meetings to Committee members;
- 5.3.1.3 process and distribute all submissions/reports together with the agenda to Committee members at least three working days before the actual meeting takes place;
- 5.3.1.4 minute all decisions taken at meetings;
- 5.3.1.5 adhere strictly to the stipulations of the National Archives of South Africa Act, No. 43 of 1996 and accompanying directives;
- 5.3.1.6 ensure that the proceedings at meetings are recorded appropriately;
- 5.3.1.7 give written feedback of all decisions taken by the Committee; and
- 5.1.3.8 be responsible for all the Administrative tasks of the Committee.

5.4 Members

5.4.1 Members of the Committee shall –

- 5.4.1.1 be fully conversant with the powers and limitations of the committee as well as all directives pertaining to Supply Chain Management, including the relevant Sections of the Constitution, Municipal Finance Management Act and accompanying Regulations, Preferential Procurement Policy Framework Act and accompanying Regulations, Broad Based Black Economic Empowerment Act and its related strategy, all directives issued by the National Treasury/relevant Provincial Treasury as well as the delegated powers issued by the Accounting Officer and at all times act in accordance with above-mentioned Legislation, Regulations and Procedures;
- 5.4.1.2 apply their minds to matters at hand in order to take meaningful and accountable decisions and in the event of doubt or uncertainty, to propose that matters be referred back for clarification;
- 5.4.1.3 in advance, furnish a written apology when unable to attend a meeting;
- 5.4.1.4 strive to be punctual for meetings and to stay for the duration of a meeting;
- 5.4.1.5 prepare properly for each meeting by studying the agenda and submissions/reports;

5.4.1.6 be familiar with meeting procedures in order to make a contribution in the correct manner; and

5.4.1.7 refrain from repetition and duplication of contributions by other members.

5.4.2 Members have the right to –

5.4.2.1 have advance knowledge of the agenda;

5.4.2.2 submit proposals and participate in proceedings;

5.4.2.3 vote; and

5.4.2.4 have a dissenting voice and have the reasons thereof recorded.

5.5 Co-opted members/advisors

5.5.1 Co-opted members/advisors have the same powers and duties as members, excluding the right to vote on any matter under discussion.

5.5.2 Members of the Bid Evaluation Committee may present their recommendations / reports to the Bid Adjudication Committee and clarify any issues but shall not have any voting powers.

5.6 Observers

The Chairperson may, on request, allow officials to attend a meeting as observers. Observers have no participation in the proceedings, except to advise the Representative (member) or the

Committee if permitted by the Chairperson. Observers should be cautioned to maintain the confidentiality of the discussions.

6. MEETING PROCEDURES

6.1 Notice of meetings

6.1.1 The agenda of a meeting serves as the programme of the meeting and unless the Committee decides otherwise, the items and sequence may not be changed during the meeting.

6.1.2 In order to afford members the opportunity to prepare for the meeting, the agenda shall be made available to members at least three working days before the actual meeting.

6.2 Submissions/reports to the Committee

All submissions/reports to the Committee must be in writing, substantiated and channelled through the Bid Specification Committee or Bid Evaluation Committee or Bid Adjudication Committee.

6.3 Minutes

6.3.1 The minutes will be the written record reflecting in a brief, clear and impartial manner the decisions of the Committee. The signed minutes will serve as proof of the decisions of the Committee.

6.3.2 Should a member wish to have a specific matter other than a decision recorded, it must be specifically requested. A

member's reasons for a dissenting voice must also be recorded.

6.3.3 Proceedings are also recorded (e.g. tape) to enable the secretary to prepare verbatim reports when required by a court of law. Further details on requirements for the recording of meetings can be found in the National Archives of South Africa Act, No. 43 of 1996 and accompanying directives.

6.4 Attendance register and undertaking of confidentiality and impartiality

Members will be required to sign a combined Attendance Register and Undertaking of Confidentiality and Impartiality declaration at each meeting). This must be retained and form part of the committee minutes.

6.5 Conflict of interest

Where a member of a Bid Adjudication Committee has a conflict of interest with any item to be considered by the Committee, it is imperative that this be recorded in the minutes and the member vacates the meeting room prior to any discussion. An example minute could read as follows:

"[member's name] declared an interest in the following item and vacated the meeting room at [insert exact time]

Insert minutes of item under discussion showing resolution/decision of the committee accordingly

At the conclusion of the discussion [member's name] was invited to return to the meeting room at [insert exact time]"

6.6 Chairperson

6.6.1 Each meeting will be presided over by the Chairperson. In the absence of the chairperson, the vice-chairperson will preside as Chairperson, in which case he/she will occupy the chair for the duration of the meeting, even if the Chairperson should arrive during the course of the meeting. If the Vice-Chairperson was not appointed, the Committee must elect another member to act as Chairperson.

6.6.2 Every member attending the meeting owes respect to the Chairperson and may be removed if that person does not respect the authority of the chair.

6.7. Conduct of Committee Members

6.7.1 A member's conduct at the meeting must not infringe on the rights of others. The rules of conduct are based on mutual respect for the rights of each other and respect for the purpose of the meeting.

6.7.2 Members must accept that –

6.7.2.1 The chairperson must be respected;

6.7.2.2 The chairperson has the right to interrupt and ask a member to stop speaking if the address is repetitive or irrelevant to the matter under discussion;

- 6.7.2.3 A member must stop speaking if ruled out of order by the chairperson;
- 6.7.2.4 Decisions are taken by general consensus or by a majority show of hands when a matter is decided upon by voting;
- 6.7.2.5 Once a decision has been taken it is final and not open for discussion unless additional information which was not available at the time of decision making can be produced;
- 6.7.2.6 Information and documentation are confidential;
- 6.7.2.7 A member (including the chairperson or vice-chairperson) shall beforehand declare his/her interest regarding any matter serving before the Committee and the member will then excuse her/himself and vacate the meeting room during the discussion of that matter. No discussion by the member concerned will be allowed prior to the serving of that submission/report and such a member may not retain that specific submission/report. Any personal interest that may infringe, or might reasonably be deemed to infringe on a member's impartiality in any matter relevant to their duties must be recorded;
- 6.7.2.8 Outvoted members must abide by the majority decision of the Committee; and

6.7.2.9 No communication should be made with a bidder/contractor by any member prior to or after any meeting.

6.8. Confidentiality

6.8.1 Save for purposes of or during bid committee meetings, no information regarding any bid may be revealed or disclosed or communicated to/with the members of the public until an award has been made and has been officially published as such.

6.8.2 The relevant department, official or project manager must disclose to the bid committees all details of any communication, queries or requests for information relating to a bid, irrespective whether such communication, query or request is made by such department, official, project manager or by a third party.

6.9. Attendance at Meetings

6.9.1 Every member attending a meeting of the committee must sign his or her name in the attendance register kept for such purpose.

6.9.2 A member must attend each meeting except when-

6.9.2.1 leave of absence is granted; or

6.9.2.2 the member is required to withdraw in terms of law.

6.10. Leave of Absence

6.10.1 A member who wishes to absent himself or herself from meetings must prior to such meeting, obtain leave of absence from the chairperson.

6.10.2 A member, who has obtained leave of absence from the chairperson, must ensure that an alternate attends the meeting of a committee in his or her stead.

6.11. Sanction for Non-attendance

6.11.1 The Chairperson of a committee must report any absence by a member to the Accounting Officer for appropriate action by means of the following

6.11.1.1 Written report to be submitted to the Accounting Officer with reasons pertaining to his/her continuous absenteeism

6.11.1.2 To use his own discretion to consider removal from the committee and replace with a suitable official.

6.12. Quorum

6.12.1 A majority of the total number of persons appointed to a committee constitutes a quorum, provided that in the case of the Bid Adjudication Committee, all four senior managers referred to in rule 4(3) must be present.

6.12.2 If there is no quorum at the time for which the meeting is scheduled, the chairperson of a committee must approach the alternate member(s) to attend.

7. DECISIONS

- 7.1 A committee must attempt to take decisions by consensus.
- 7.2 If consensus cannot be achieved on any matter such matter must be decided by a supporting vote of a majority of the members present.
- 7.3 A member must vote when called upon to do so by the chairperson.
- 7.4 If on any question there is an equality of votes, the chairperson of the committee must exercise a casting vote in addition to his /her deliberative vote.

8. REASONS FOR DECISIONS

- 8.1 A committee must motivate its decisions.
- 8.2 The chairperson of a committee must ensure that the reasons for decisions are minuted.

9. REFERRAL OF DECISIONS

- 9.1 The Chairperson of a Bid Specification Committee must submit the specifications for each procurement to the to the relevant department for approval prior to publication of the invitation for bids.

- 9.2 The Chairperson of a Bid Evaluation Committee must submit his/her committee's report and recommendations regarding the award of a bid or any other related matter to the Chairperson of the Bid Adjudication Committee.

10. DECISIONS OF THE BID ADJUDICATION COMMITTEE

10.1 Bid Adjudication Committee must ensure that:

- 10.1.1 all necessary bid documents have been submitted;
- 10.1.2 disqualifications are justified and that valid and accountable reasons / motivations were furnished for passing over of bids;
- 10.1.3 scoring has been fair, consistent and correctly calculated and applied; and
- 10.1.4 declarations of interest have been taken cognizance of.
- 10.1.5 If a bid other than the one recommended by the Bid Evaluation Committee is approved by the Bid Adjudication Committee, the accounting officer, or a senior official delegated by the accounting officer, must first be notified and he/she may, after consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee.
- 10.1.6 If the decision of the Bid Adjudication Committee to approve a bid other than the one recommended by the Bid Evaluation Committee is ratified, the Auditor-General, the relevant provincial treasury and the National Treasury and, in the

case of a Municipal Entity, the Parent municipality must be notified of the reasons for deviating from such recommendation.

10.1.7 The Bid Adjudication Committee must also consider and rule on all recommendations/reports regarding the amendment, variation, extension, cancellation or transfer of contracts awarded.

10.2 The Bid Adjudication Committee may also, if and when required to do so, consider for approval the recommendations of the Bid Specification Committee in order to ensure that:

10.2.1 the need forms part of the strategic goals and objectives contained in the municipality's Integrated Development Plan (IDP)

10.2.2a proper and unbiased specification is compiled for the specific requirement;

10.2.3 proper Terms of Reference are drawn up for the service required clearly indicating the scope of the requirement, the ratio between price and functionality, the evaluation criteria as well as their weights and values;

10.2.4 strategic sourcing principles were applied and that the market was properly researched and analysed

10.2.5 the necessary funds are available in the approved budget;

10.2.6 if and when applicable, in addition to the General Conditions of Contract, appropriate Special Requirements and Conditions of Contract are specified;

10.2.7 the preference point system and appropriate goals are identified and points allocated for these goals, consistent with the requirements of the Preferential Procurement Regulations; and

11. ADMITTANCE OF PUBLIC

11.1 All the meetings of the Bid Committees are not open to the public except as contemplated by Section 37 (6) of this policy.

11.2 The chairpersons of the Bid Committees must take reasonable steps to regulate public access to meetings.

12. APPROVAL OF RULES

12.1 These rules or any amendment thereof must be approved by the Accounting Officer in terms of the powers conferred on the Accounting Officer by section 115 of the MFMA.

Certificate of Approval

I have today approved the above Rules of Order Regulating the Conduct of Meetings of the Bid Committees.

Accounting Officer

MBDA

ANNEXURE "G"

PERFORMANCE MANAGEMENT OF SERVICE PROVIDERS

In terms of section 42 of the Supply Chain Management policy which states:

"The Accounting Officer must establish and implement an internal monitoring system in order to determine, on the basis of retrospective analysis, whether the authorized supply chain management processes were followed and whether the objectives of the policy were achieved"

and Section 116(2)(b) of the Municipal Finance Management Act, which states:

"The Accounting Officer of a Municipal Entity must monitor on a monthly basis the performance of the contractor under the contract or agreement".

Supply Chain Management Unit (SCMU) has developed a process that needs to be followed by all Project Managers within NMBM that are involved in the implementation of SCM Policy in order to comply with regulations mentioned above and National Treasury requirements. The following procedure and steps must be followed in order for the defaulters to be blacklisted in the National Treasury Defaulters database. Should Project Managers notice that the contractor/service provider is in breach of conditions of contract the following should be followed:

1. Inform the contractor/service provider or person(s) in writing of deviations eminent from the contractual agreement.

2. Allow the contractor/service provider and / or person(s) fourteen (14) calendar days to provide reasons of not complying with the conditions of the contract as stipulated in the service level agreement.
3. Allow the contractor/service provider and / or person(s) the right to respond and consider any reasons submitted by the contractor and / or person(s) in terms of paragraph (1).
4. If no improvements liaise with SCMU – Contract Management and Compliance Sections to mediate.
5. A meeting will be called by the SCMU and Legal Services will be present where minutes will be taken and signed by all present with resolutions to be implemented.
6. Failure to implement the resolutions, Project Manager must impose the penalties as per the signed Service Level Agreement.
7. In the event that a contract has to be terminated, Legal Services will advise on the legal aspects in relation to the termination contract.
8. Impose the restriction or amended restriction.
9. Inform the contractor/service provider and/ or person(s) of the decision;
and
10. SCMU will inform the National Treasury within five working days of such restriction, particulars of the person(s) to be restricted (including, where applicable, names of the restricted persons, identity numbers, trade name of enterprises, company registration numbers, income tax reference numbers and vat registration numbers), the reason(s) for the restriction, the period of restriction and the date of commencement of the restriction.

Right of appeal by the contractor/service provider

A contractor/service provider or any other person restricted by the Accounting Officer in this manner has a right to contest this restriction in a Court of Law.