



Notice is hereby given in terms of Section 29 of the Local Government: Municipal Structures Act, Act 117 of 1998, that a **SPECIAL COUNCIL MEETING** of the 2021/2026 term of the Garden Route District Municipality will be held at the CA Robertson Council Chambers on **FRIDAY, 17 JUNE 2022** at **11:00** to consider the items as set out in the agenda.

*Kennis geskied hiermee ingevolge Artikel 29 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998, Wet 117 van 1998, dat 'n **SPESIALE RAADSVERGADERING** van die 2021/2026 termyn van die Garden Route Distriksmunisipaliteit gehou sal word in die CA Robertson Raadsaa op **VRYDAG, 17 JUNIE 2022** om **11:00** ten einde oorweging aan die items soos in die agenda uiteengesit, te skenk.*

Kukhutshwe isaziso ngokwemiqathango yoMhlathi 29 woRhulumente Basekhaya: Umthetho Wezolawulo loMasipala, 1998, uMthetho 117 wango 1998, sokuba **INTLANGANISO EKHETHEKILEYO** yexesha lika 2021/2026 loMasipala Wesithili se Garden Route izakubanjelwa kwiGumbi leBhunga CA Robertson, **NGOLWESIHLANU, 17 KWEYESILIMELA 2022** ngentsimbi ye **11:00** ukuqwalasela imiba ebekwe kwi agenda.

ALD GR WOLMARANS
SPEAKER
SPEAKER
SOMLOMO

MG STRATU
Municipal Manager
Munisipale Bestuurder
Mphathi Masipala

Date: 10 JUNE 2022

AGENDA

1. OPENING AND WELCOMING / OPENING EN VERWELKOMING / UVULO NOLWAMKELO

2. SILENT PRAYER (MEDITATION) / STILLE GEBED (MEDITASIE) / UMTHANDAZO OTHULEYO

3. ATTENDANCE OF MEMBERS / BYWONING VAN LEDE / AMALUNGU AKHOYO
 - 3.1 COUNCILLORS PRESENT / RAADSLEDE TEENWOORDIG / OOCEBA ABAKHOYO
 - 3.2 COUNCILLORS WITH LEAVE / RAADSLEDE MET VERLOF / OOCEBA ABAKWIKHEFU
 - 3.3 COUNCILLORS WITHOUT LEAVE / RAADSLEDE SONDER VERLOF / OOCEBA ABANGEKHO KWIKHEFU

4. NOTING OF THE PROVISIONS OF SCHEDULE 7 (CODE OF CONDUCT FOR COUNCILLORS) OF THE LOCAL GOVERNMENT MUNICIPAL STRUCTURES AMENDMENT ACT, 2021 / KENNISNAME VAN DIE VOORSKRIFTE VAN SKEDULE 7 (GEDRAGSKODE VIR RAADSLEDE) VAN DIE PLAASLIKE REGERING MUNISIPALE AANGEPASTE STRUKTURE WET, 2021 / UQWALASELO LWEMITHETHO-NEMIMISELO YOLUHLU 7 (INDLELA YOKUZIPHATHA KOCEBA) LOMTHETHO WORHULUMENTE BASEKHAYA WESIMO SOMASIPALA OLUNGISIWEYO WANGO 2021

5. DISCLOSURE OF INTERESTS BY COUNCILLORS AND OFFICIALS / VERKLARING VAN BELANGE DEUR RAADSLEDE EN AMPTENARE / UKUCHAZWA KOMDLA NGOOCEBA KUNYE NAMAGOSA

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Ald M Booysen
 Ald GR Wolmarans
 Cllr G van Niekerk
 Ald P Terblanche
 Ald S De Vries
 Cllr / Rdl / Ceba CN Lichaba
 Cllr / Rdl / Ceba NV Gungubele
 Cllr / Rdl / Ceba J Hoogbaard
 Cllr / Rdl / Ceba JG Meiring
 Cllr / Rdl / Ceba CA Swart
 Cllr / Rdl / Ceba K Malooi
 Cllr / Rdl / Ceba C Scheepers
 Cllr / Rdl / Ceba B van Noordwyk
 Cllr / Rdl / Ceba CP Taute
 Cllr / Rdl / Ceba D Acker
 Cllr / Rdl / Ceba JC Lambaatjeen
 Cllr / Rdl / Ceba LSS van Rooyen
 Cllr / Rdl / Ceba JR Canary
 Cllr / Rdl / Ceba RJ Hector
 Cllr / Rdl / Ceba SM Toto
 Ald V Gericke
 Ald IC Kritzinger
 Cllr / Rdl / Ceba DL Cronje
 Cllr / Rdl / Ceba HRT Stroebel
 Cllr / Rdl / Ceba TC Matika
 Cllr / Rdl / Ceba NT Seti
 Cllr / Rdl / Ceba N Ndayi
 Cllr / Rdl / NA Tswenga
 Ald RH Ruiters
 Cllr / Rdl / Ceba M Kannemeyer
 Cllr / Rdl / Ceba A Barker
 Cllr / Rdl / Ceba MA Mkonto
 Cllr / Rdl / Ceba JJ Cornelius
 Cllr / Rdl / Ceba A Steenkamp

1 X VACANT

1. **RE-STATEMENT OF THE GRDM SUPPLY CHAIN MANAGEMENT POLICY AND PREFERENTIAL PROCUREMENT POLICY IN ALIGNMENT TO THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, POST CONSTITUTIONAL COURT'S JUDGEMENT, CASE: CCT 62/22 ON 30 MAY 2022 / HERINSTELLING VAN DIE GRDM VOORSIENINGSKANAALBELEID EN VOORKEURVERKRYGINGSBELEID IN LYN MET DIE VOORKEURVERKRYGINGSREGULASIES, 2017, NA DIE KONSTITUSIONELE HOF UITSpraak, SAAK: CCT 62/22 OP 30 MEI 2022 / UKUBUYISELWA KOMGAQO WOLAWULO WLEMALINCITHO KUNYE NEOKUZHETHELA KWINTENGO NGOKUHAMBISELWANO NOMTHETHO WOKUZHETHELA INTENGO, WANGO 2017 EMVENI KWISIGWEBO SENKUNDLA YOMGAQO SISEKO, ITYALA:CCT 62/22 NGOMHLA 30 KUCANZIBE 2022**

EXECUTIVE MANAGER: FINANCIAL SERVICES (J-W DE JAGER)

2. **PURPOSE**

To inform Council of the Constitutional Court judgement and National Treasury communication that was published on 30 May 2022 relating to the validity of the 2017 Preferential Procurement Regulations.

Council to resolve to re-instate the GRDM Supply Chain Management Policy and the GRDM Preferential Procurement Policy that is aligned to the Preferential Procurement Regulations, 2017, that was previously adopted by Council through Council Resolution on 25 May 2021, Item B.1 - FINAL BUDGET 2021/2022 MTREF (MEDIUM TERM REVENUE AND EXPENDITURE FRAMEWORK).

3. **DELEGATED AUTHORITY**

Council

4. **EXECUTIVE SUMMARY**

Following the Constitutional Court judgement of the 16 February 2022 on the matter between the Minister of Finance and Afribusiness regarding the 2017 Preferential Procurement Regulations, the Minister of Finance lodged an application to the Constitutional Court seeking clarity on its judgement of the 16 February 2022. Judgement was handed down by the Constitutional Court on the 30th of May 2022.

According to the Court Judgement:

- a) Section 18(1) of the Superior Courts Act suspended the operation of the Supreme Court of Appeal's 12-month suspension of the invalidation of the 2017 Regulations.
- b) The countdown on the 12-month period of suspension commenced immediately after the date of the suspension. The countdown, however, was halted by the lodgement of the application for leave to appeal in the Constitutional Court.
- c) The count resumed on the 16 February 2022, when the Constitutional Court dismissed the Minister's appeal against the Supreme Court of Appeal's order.

Therefore, the Constitutional Court confirmed that the suspension of the declaration of the order of the invalidity of the 2017 Regulations is still valid for the remainder of the 12-month period, namely until 15 February 2023.

Therefore, this means the following:

- i. The 2017 Preferential Procurement Regulations in their entirety are still valid.
- ii. All exemptions granted to deal with the period of uncertainty following the Courts judgment of 16 February 2022, lapse from 30 May 2022.
- iii. All new procurement must be dealt with in accordance with the 2017 Regulations
- iv. All procurement advertised before 30 May 2022 must be dealt with in terms of the exemption and the internal procurement policy in place for the duration of the exemption.
- v. An organ of state may however decide to withdraw such a request for a quotation or an advert for a tender and request a new quotation or advertise a new tender that will be subject to 2017 Regulations.
- vi. The 2017 Regulation will remain in place until the 15 February 2023 unless new regulations are promulgated.

Communication from National Treasury to all organs of state requires that all organs of state should ensure that procurement policies are in line with the Constitutional Court judgement of the 16th of February 2022. That the 2017 Regulations will remain in place until the earlier of the 12-month period lapse or when new Regulations are promulgated.

Considering the recent developments and clarification issued by the Constitutional Court on 30 May 2022, Council must revert back to the Supply Chain Management Policy and Preferential Procurement Policy as per prior to the adoption of the amended policies on 29 March 2022 – attached as Annexure A and B. These policies must be effective 30 May 2022 – as per the NT and PT correspondence received post the publication of the Constitutional Court clarification. The policies that were in place for the interim period (29 March 2022 – 29 May 2022) were valid and a number of tenders were advertised in line with these.

5. RECOMMENDATIONS

Council adopts the following:

1. Adopt the GRDM Supply Chain Management Policy and Preferential Procurement Policy attached as Annexure A & B, effective 30 May 2022.
2. Council to take note of the Constitutional Court Judgement, Case CCT 62/22 and the outcomes thereof, Annexure C
3. Council to take note of the National Treasury Media Release, Further Communication on Constitutional Court Judgement Regarding the Preferential Procurement Regulations, 2017. Annexure D

4. Council to take note of the Provincial Treasury Circular No. 13 of 2022, with specific reference to par. 3.1 of the circular stating that municipalities must revert back to the application of the 2017 Preferential Procurement Regulations. Annexure E.

AANBEVELINGS

Dat die Raad die volgende aanvaar:

1. *Dat die Raad die Voorsieningskanaalbestuursbeleid en Voorkeurverkrygingsbeleid goedkeur soos aangeheg in Aanhangsel A en B, effektief 30 Mei 2022.*
2. *Dat die Raad kennis neem van die Konstitusionele Hof uitspraak, Saak CCT 62/22 en die uitkomst daarvan (Aanhangsel C).*
3. *Dat die Raad kennis neem van Nasionale Tesourie se media vrystelling en verdere kommunikasie rakende die Konstitusionele Hof uitspraak rakende die Voorkeurverkrygingsregulasie van 2017, (Aanhangsel D).*
4. *Dat die Raad kennis neem van Provinsiale Tesourie se Omsendbrief No 13 van 2022, met spesifieke verwysing na paragraaf 3.1 en die omsendbrief wat bepaal dat munisipaliteite moet terugkeer na die toepassing van die 2017 se Voorkeurverkrygingsregulasies (Bylae E.)*

IZINDULULO

IBhunga lamkele oku kulandelayo:

1. Sesokuba uMgaqo Wolawulo Lwencitho we GRDM kunye noMgaqo Wencitho Yokuzikhethela nedityaniswe njenge siFakelo A & B, zamkelwe ukususela ngomhla 30 kuCanzibe 2022.
2. IBhunga lithathele ingqalelo Isigwebo seNkundla yoMgaqo Siseko, iTyala CCT 62/22 kunye neziphumzo zaso, isiFakelo C.

3. IBhunga lithathele ingqalelo Intetho eKhutshwe nguNondyebo kaZwelonke, Nonxibelelwano banzi Malunga Nesigwebo Senkundla yoMgaqo Siseko malunga neMithetho Yokuzikhethela kwiNtengo, 2017. isiFakelo D.

4. IBhunga lithathele ingqalelo iSazinge No 13 sango 2022 sikaNondyebo wePhondo, ngokugxilise kumhlathi 3.1 wesazinge nesicaza ukuba oomasipala kufuneka baucle ekumiseleni Imithetho Yentengo Yokusikhethela. isiFakelo E.

6. DISCUSSION / CONTENTS

6.1. Background

In response to the Constitutional Court Judgement of 16 February 2022 declaring the Preferential Procurement Regulations, 2017 invalid, both the national treasury and the Western Cape Government Provincial Treasury have subsequently issued advisory notes and a Circular to advise municipalities on the interim arrangements.

National Treasury:

National Treasury has indicated that the National Minister has on urgent basis on the 04 March 2022, sought confirmation from the Constitutional Court whether the invalidity period of the Procurement Regulations has been and continues to be suspended. Confirmations is sought by way of declaration, variation and or clarification. Effectively guidance is required as to whether the procurement Regulations remain valid until 15 February 2023, unless repealed sooner.

National Treasury has in the interim, issued a letter on 25 February 2022 indicating that whilst awaiting the outcome of guidance from the constitutional Court, organs are advised that:

- i. Tenders advertised before 16 February 2022 be finalized in terms of PPPFR, 2017
- ii. Tenders advertised on or after 16 February 2022 be held in abeyance, and
- iii. No new tenders be advertised

The National Treasury subsequently on the 03 March 2022, issued a further letter indicating in summary that:

- i. The advice provided on the 25th of February 2022 excluded procurement with a rand value less than R30 000 obtained through quotations

- ii. Regulations will be issued providing for the thresholds for the points system. Note that the draft regulations in respect were subsequently issued on the 10 March 2022, with the comment period ending 11 April 2022
- iii. Until new regulations take effect that organs of state may in terms of section 3(c) of the Act request an exemption from the provisions of the Act for a specific procurement category of procurement requirements limiting this to procurement that cannot wait the new regulations or Constitutional Court's Guidance.

Western Cape Government, Provincial Treasury has stated the following in reference to National Treasury advisory notes / guidelines.

"It must be noted that the above letters do not have any binding effect in law, given that the format and content of the letters is advisory in nature and is not issued under any authority contained in the Municipal Finance Management Act (No. 56 of 2003) or otherwise.

However, the letter has now been issued to all organs of state and hence there is an obligation to assess the impact of the requirement to determine whether and to what extent the letters should be applicable to procuring institutions given that the Auditor General of South Africa may audit all subsequent procurement based on this advice."

Western Cape Government Provincial Treasury: Circular MUN No 06/2022

1. Municipalities should consider adopting the following interim measures to manage their own delivery risks. Such interim arrangements must be approved by Council of each Municipality:
2. Municipalities and Municipal entities should maintain the status quo and apply the Preferential Procurement Regulation (PPR), 2017, up until such time the constitutional court clarifies the applicable date of the invalidity of said regulations, or new procurement regulations come into effect
3. Use the preexisting point system with thresholds and associated formulas as per the PPR 2017, i.e., 80/20 preference point system for procurement with rand value equal to or above R30 000 up to R50 million and the 90/10 preference point system for procurement above R50 million all applicable taxes included.
4. Use the preexisting mechanism to address the evidence requirements as it relates to the allocation of point for preference i.e., B-BBEE certificates and affidavits give that these matters were not in dispute and will be covered by the new National Treasury Regulations
5. Sub-contracting requirements as contemplated in the PPR 2017 have also been declared invalid. However, the CIDB prescripts /regulations in terms empowerment impact assessment may still be concluded and sub-contracting as per the CIDB prescripts / regulations in terms of the different CIDB contracts may still be used in terms of the different contracting models for construction - related bids.

6. The status quo in terms of the advertisement and evaluation and awarding of quotations below R30 000 be maintained.
7. Accounting Officer of municipalities and municipal entity may, at their own discretion, apply these interim measures and revise their current policies to be tabled before council for approval and implementation.

Subsequently Constitutional Court passed a judgement on the appeal as per case CCT 62/22, which replaces all the interim arrangements as previously adopted during the period of uncertainty regarding the suspension period. The Preferential Procurement Regulations of 2017 remain valid for the 12 Month period of suspension of the order of the court.

6.2 Discussion

Constitutional Court has issued the final judgement on the matter giving clarity on the 12-month suspension period on the Supreme Court of Appeal Judgement. The Preferential Procurement Regulations of 2017 remain valid for the remainder of the suspension period or earliest promulgation of new regulations

Council to reinstate its Policies as previously approved and rescind the policies adopted subsequently as interim arrangement.

6.3 Financial Implications

Council must ensure that the SCM and Preferential Procurement Policy complies with the 2017 Preferential Procurement Regulations to prevent irregular expenditure and possible legal claims from unsuccessful tenderers for non-adherence to stated regulations.

6.4 Legal Implications

The Constitutional Court held that the 2017 Preferential Procurement Regulations are still applicable until February 2023 or until new Regulations has been promulgated, whichever occurs first. Non-compliance with the 2017 Preferential Procurement Regulations may lead to irregular expenditure and contravening the provisions of the Regulations. Adherence to the court case will also ensure that Council are not exposed to possible claims for non-compliance.

6.5 Staff Implications

None

6.6 Previous / Relevant Council Resolutions:

1. D.3 Review of GRDM Supply Chain Management Policy and Preferential Procurement Policy Following Constitutional Court Judgement on the Preferential Procurement Regulations, 2017. Resolution as taken at council meeting dated 29/03/2022

2. Council Resolution B.1 of 25 May 2021

6.7 Risk Implications

Primary risks for Garden Route District Council due to Con. Court Judgement include the following based on procurement that took place under the interim arrangement:

- i. Potential increase in Irregular expenditure due to non-adherence to Preferential Procurement Regulations, 2017
- ii. Audit risks, non-compliance, and interpretation challenges
- iii. Delay in procurement processes (including construction of the landfill site) if updated policies are not adopted timeously

6.8 COMMENTS FROM EXECUTIVE MANAGERS

6.8.1 COMMENTS FROM EXECUTIVE MANAGER CORPORATE SERVICES

Recommendations are supported.

6.8.2 COMMENTS FROM EXECUTIVE MANAGER FINANCIAL SERVICES

Recommendations are supported.

6.8.3 COMMENTS FROM EXECUTIVE MANAGER ECONOMIC DEVELOPMENT AND PLANNING

Supported.

6.8.4 COMMENTS FROM EXECUTIVE MANAGER ROADS AND TRANSPORT SERVICES

content of the report is noted.

6.8.5 COMMENTS FROM ACTING EXECUTIVE MANAGER COMMUNITY SERVICES

Considering the Constitutional Court judgement and National Treasury media release this department is in agreement with the recommendations.



SUPPLY CHAIN MANAGEMENT POLICY

Adopted by Council: COUNCIL RESOLUTION

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SUPPLY CHAIN MANAGEMENT SYSTEM

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3 Definitions

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

“Central Supplier Database (CSD)” means National Treasury's web based Vendor Management Database established as per MFMA circular No. 81, Municipal Finance Management Act No. 53 of 2003. www.csd.gov.za effective as 01 July 20016

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

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

“emergency” means is a serious, unexpected, unforeseen and potentially dangerous and damaging situation requiring immediate action and which is not due to lack of planning, if left unattended will cause a serious health/life threatening risk or adverse financial ramifications.

“e-Tender publication portal” means National Treasury's central web based publication platform to ensure goods, services and works are procured in a manner that is fair, equitable, transparent, competitive and cost effective by advertising centrally as an invitation to prospective bidders to submit bids. www.etenders.gov.za

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

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

“in the service of the state” means to be -

4.1 a member of -

- . any municipal council;
- i. any provincial legislature; or
- ii. the National Assembly or the National Council of Provinces;

4.2 a member of the board of directors of any municipal entity;

4.3 an official of any municipality or municipal entity;

4.4 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);

4.5 an executive member of the accounting authority of any national or provincial public entity; or

4.6 an employee of Parliament or a provincial legislature;

“contract of long term nature” means a contract with a duration period exceeding the three year MTREF period as per section 33 of the MFMA;

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

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

- 3.** the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- 4.** the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- 5.** the Construction Industry Development Board Act, 2000

“PPPFA” means the preferential Procurement policy framework Act, no 5 of 2000

“Executive Manager” reporting directly to the Accounting Officer" means an executive manager in the employment of the Garden Route District Municipality who heads a department and reports to the Municipal Manager

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

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

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

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

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

4 Supply chain management policy

1. All officials and other role players in the supply chain management system of the municipality must implement this Policy in a way that –

- gives effect to –
 - section 217 of the Constitution; and
 - Part 1 of Chapter 11 and other applicable provisions of the Act;
- is fair, equitable, transparent, competitive and cost effective;
- complies with –
 - the Regulatory framework prescribed in chapter 2 of the regulations; and
 - any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
- is consistent with other applicable legislation:
 - The Preferential Procurement Policy Framework Act
 - The Preferential Procurement Regulation, 2017
 - The Broad Based Black Economic Empowerment Act
 - The Construction Industry Development Board Act
 - The Local Government: Municipal Systems Act
 - The Promotion of Administrative Justice Act
 - The Promotion of Access to Information Act
- does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
- is consistent with national economic policy concerning the promotion of investments and doing business with the public sector
- assigns the responsibility for the implementation of policy to the Accounting Officer of the Municipality
- The Municipality may not act otherwise than in accordance with the supply chain management policy when –
 - Procuring goods or services
 - Disposing of goods no longer needed or which have become redundant
 - Disposing or letting of fixed assets, including land needed have proven

commercial value no longer required for basic municipal service

- Selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
- Selecting external mechanisms referred to in section 80(1)(b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act
- 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 –
 - 4 water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - 5 electricity from Eskom or another public entity, another municipality or a municipal entity.

5 Adoption and amendment of the supply chain management policy

1. The accounting officer must

- at least annually review the implementation of this Policy;
- review compliance to norms and standards cost efficiency of the supply chain management process; and
- when the accounting officer considers it necessary submit proposals for the amendment of this Policy to the council.

2. If the accounting officer submits proposed amendments to the council that differs from the model policy issued by the National Treasury, the accounting officer must –

- ensure that such proposed amendments comply with the Regulations; and
- 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. The desired outcome of the policy is to provide mechanism to ensure sound, sustainable and accountable Supply Chain Management within the Garden Route District Municipality while promoting the following LED objectives:

1. to stimulate and promote local economic development in a targeted and

focused manner as per **Regional Economic Development Strategy and Regional Economic Policy**;

2. to promote resource efficiency and reduce the negative environmental impact of daily operations of the Garden Route District;
3. to facilitate creation of employment and business opportunities for the people of the Garden Route District with particular reference to Preferential Procurement Policy Framework Act, 2000, Preferential Procurement Regulations, 2017, and **setting specific B-BEEE rating targets for all procurement above a range as determined by council over a period of the contract.**
4. to promote the competitiveness of regional businesses within approved Regional Economic Development Strategy;

6 Delegation of supply chain management powers and duties

- 1)The council hereby delegates all powers and duties to the accounting officer which are necessary to enable the accounting officer –
 - a)to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - i) Chapter 8 or 10 of the Act; and
 - ii) this Policy;
 - b)to 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)Sections 79 and 106 of the Act apply to the sub delegation of powers and duties delegated to an accounting officer in terms of subparagraph (1).
- 3)The accounting officer may not sub delegate any supply chain management powers or duties to a person who is not an official of municipality or to a committee which is not exclusively composed of officials of the municipality.
- 4)This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in paragraph 26 of this Policy.

7 Sub delegations

7.1 The accounting officer may in terms of section 79 or 106 of the Act sub delegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such sub delegation must be consistent with subparagraph (2) of this paragraph and paragraph 4 of this Policy.

7.2 The power to make a final award –

- above R 10 million (VAT included) may not be sub delegated by the accounting officer;
 - above R 2 million (VAT Included), but not exceeding R 10 Million (VAT Included), may be sub-delegated but only to –
 - the chief financial officer;
 - a Head of Department; or
 - a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
 - not exceeding R 2 million (VAT Included) may be sub-delegate but only to –
 - the chief financial officer;
 - a Manager directly accountable to Accounting Officer
 - a manager directly accountable to the Chief Financial Officer or a Senior Manager; or
- (iv) a bid adjudication committee.

7.3 An official or bid adjudication committee to which the power to make final awards has been sub delegated in accordance with subparagraph 5(2) must within five days of the end of each month submit to the accounting officer a written report containing particulars of each final award made by such official or committee during that month, including-

- (i) the amount of the award;
- (ii) the name of the person to whom the award was made; and
- (iii) the reason why the award was made to that person.

7.4 A written report referred to in subparagraph 5(3) must be submitted –

- to the accounting officer, in the case of an award by –
 - the chief financial officer;
 - a senior manager; or
 - a bid adjudication committee of which the chief financial officer

or a senior manager is a member; or

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

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

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

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

8 Oversight role of council

1.The council reserves its right to maintain oversight over the implementation of this Policy

2.For the purposes of such oversight the accounting officer must –

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

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

5.Section 117 of the MFMA prohibits a municipal councillor from being a member of a bid committee or attend any other committee evaluating or approving quotations or bids nor
may a Municipal Councillor attend any such meeting as an observer.

6. In order to create an environment where business can be conducted with integrity and in a fair and reasonable manner, this Policy will strive to ensure that the Municipal Manager and all representatives of Garden Route District Municipality involved in supply chain activities shall act with Integrity and in accordance with the highest ethical standards

7. All supply chain management representatives shall adhere to the code of conduct of municipal staff contained in schedule 2 of the Systems Act, and this Policy's Code of Ethical Standards

7. Supply chain management unit

- 1) A supply chain management unit is hereby established to implement this Policy.
- 2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.
- 3) The supply chain management unit shall operate as a centralised supply chain management function to administer and co-ordinate all the Supply Chain Management activities and functions of the municipality as described in this Policy unless a function or activity is specifically excluded by the accounting officer from the unit's term of reference
- 4) All Garden Route District officials shall act with integrity and adhere to the code of conduct of municipal staff contained in Annexure B of the Policy (Systems Act, schedule 2)

8. Training of supply chain management officials

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

Development Officer (HR) to facilitate the necessary training for the SCM officials to achieve the Minimum Competency Levels as required. Work based skills plan facilitated by Human Resources to form the basis for training of SCM officials.

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
- (vi) performance management

Part 1: Demand management

10. Demand Management System

- 1) The accounting officer must establish, through operational procedures, and implement an appropriate demand management system in order to ensure that the resources required by the municipality support its operational commitments and its strategic goals as outlined in the Integrated Development Plan.
- 2) The Municipality's Integrated Development Plan (IDP) is a comprehensive strategic document setting out how the Municipality intends to tackle its development challenges in a financial year. It is on the basis of the IDP that the resources of the municipality will be allocated and on which the budget is based.
- 3) The demand management system to ensure that each Head of the Department has a yearly plan that will include the following:
 - a) include timely planning and management processes to ensure that all goods and services required by the municipality / respective departments are quantified and budgeted for. Timely and effectively planning is executed to ensure they are delivered at the right location, at the critical delivery date, and are of the appropriate quality and quantity at a fair cost; *(All Executive / Senior Managers to oversee the Yearly Planning for their respective departments)*
 - 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.
 - d) To undertake appropriate industry analysis and research to ensure that

innovations and technological benefits are maximized.

- e) In dealing with suppliers and potential suppliers, the Municipality shall respond promptly, courteously and efficiently to enquiries, suggestions and complaints.

(4) Major Activities

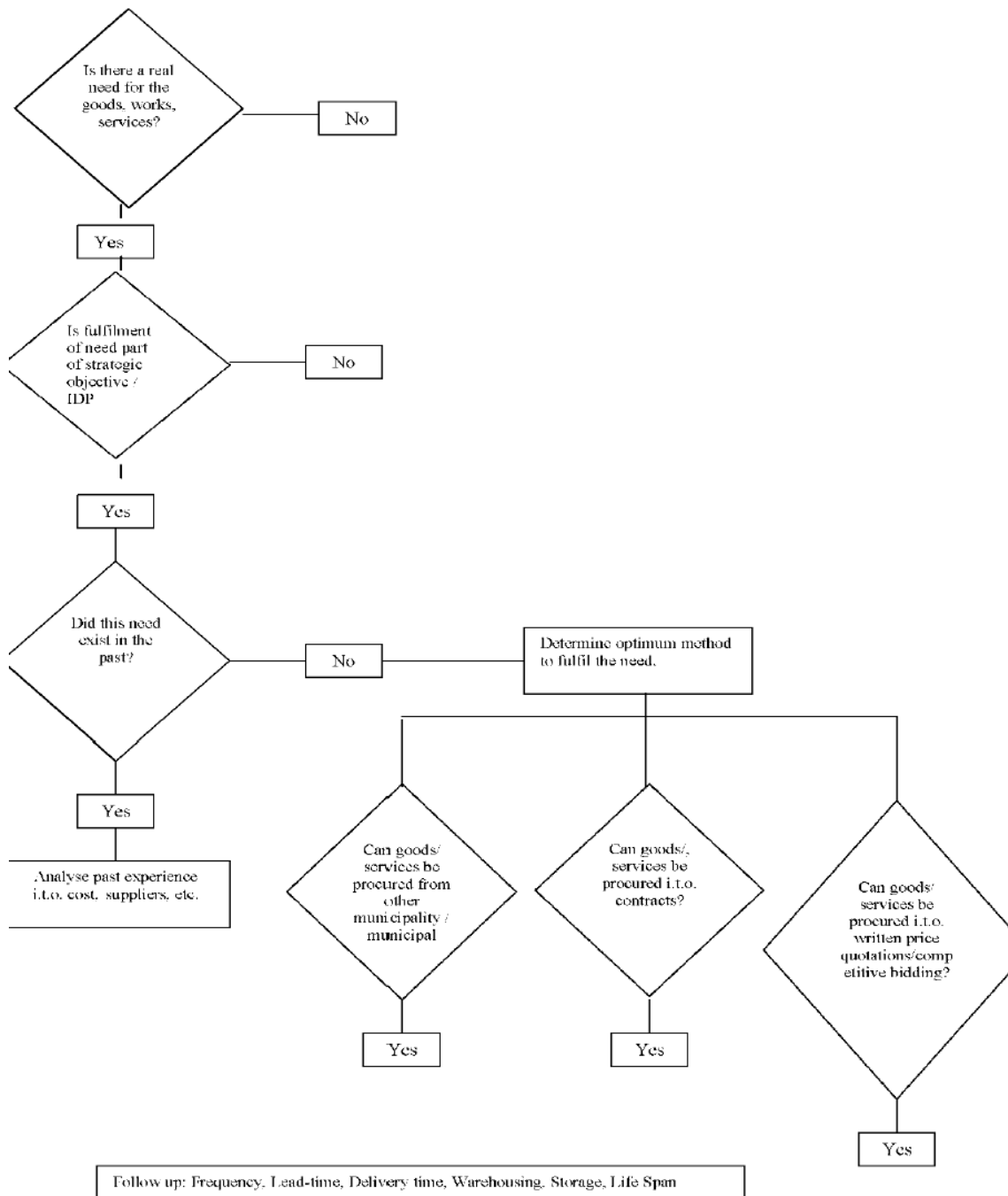
- a) Demand management to be executed following the tabling of the draft Integrated Development Plan (IDP) and draft budget by council or approval of the Adjustment budget by council, spending of funds subject to final approval of the budget by council and funds are available on the financial system.
- b) Establishing requirements
- c) Determining the needs
- d) Deciding on appropriate procurement strategy
- e) All procurement to be directly linked to the Demand Management Plan that will entail all envisaged planning for financial year ahead.
- f) Demand Management Plan of the respective departments to be reviewed by the Accounting Officer or Delegated Official and submitted to Supply Chain Management Unit for planning and execution.
- g) All deviations to be interrogated by the Accounting Officer against the Demand Management Plan and the Accounting officer to oversee the appropriate remedial steps to be implemented by the relevant executive / senior managers to prevent poor or lack of planning by departments

(5) Demand Management Plan to entail the following:

- a) establishing requirements and needs for the year ahead
- b) deciding on appropriate procurement strategies, use of quotations or bidding
- c) understanding the future needs;
- d) identifying the frequency of the need
- e) linking the requirement to the budget
- f) conducting expenditure analysis based on past expenditure
- g) determining requirement (including the internal capacity to implement)
- h) conducting commodity analyses in order to check for alternatives; and
- j) conducting industry analyses to establish market prices and strategic industry role players

Annexure:

Flowchart of the Demand Management Process

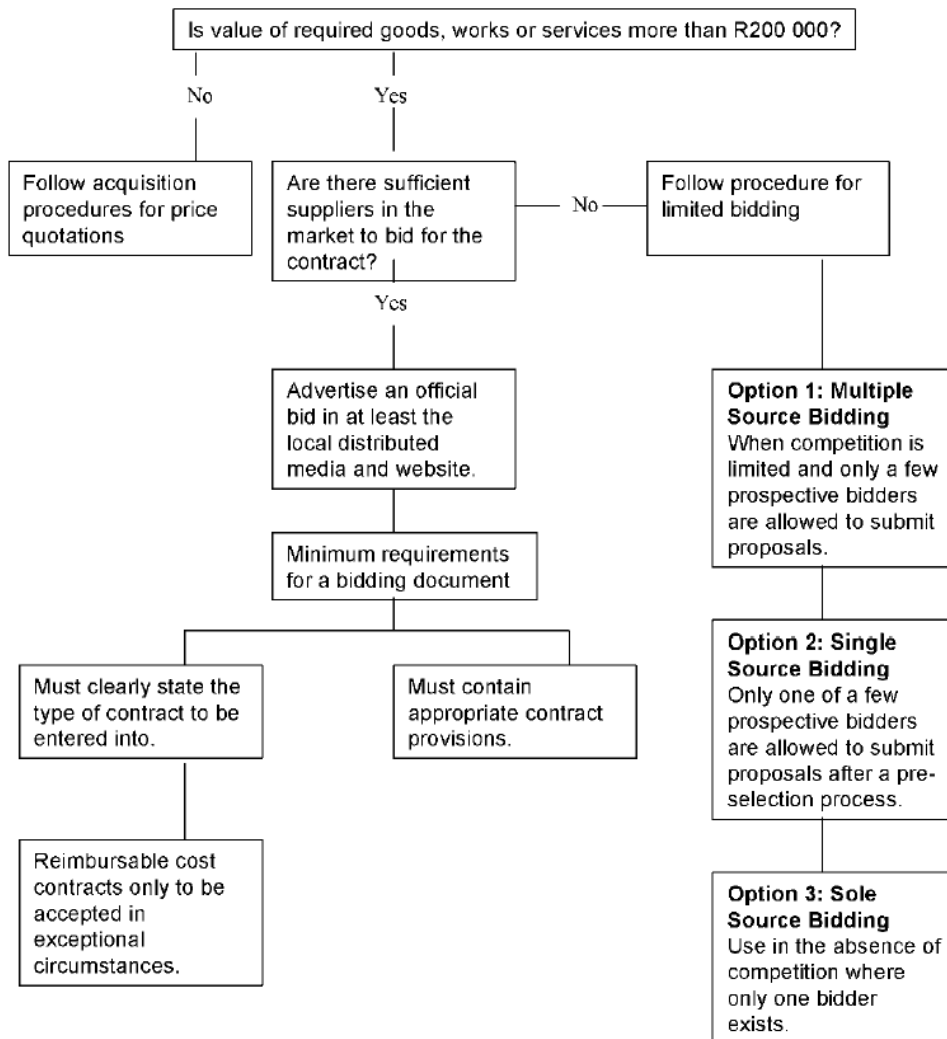


Part 2: Acquisition management

11. Acquisition management System

- (1) The Objective of the System of Acquisition Management is to ensure –
 - a) that goods and services are procured by the municipality in accordance with authorised processes only;
 - b) That expenditure on goods and services is incurred in terms of an *approved budget in terms of section 15 of the Act*;
 - c) that the threshold values for the different procurement processes are complied with;
 - d) That bid documentation, evaluation and adjudication criteria, and general conditions of contract are in accordance with any applicable legislation including PPPFA, and any condition of the CIDBA; and
 - e) That any Treasury guidelines / circulars on acquisition management are properly taken into account during the review of the SCM Policy.

- (2) When procuring goods or services contemplated in section 110(2) of the Act, including water from the department of Water Affairs, Public Entity, another municipality or a municipal entity; and electricity from Eskom or public entity, municipality or municipal entity; the accounting officer must make public the fact that such goods or services are procured otherwise than through the municipality's supply chain management system, including -
 - a) the kind of goods or services; and
 - b) the name of the supplier.



Strategic sourcing flow chart for competitive bidding for Items above R200 000 (Source: The Accounting Officer's guideline for Supply Chain Management)

12. Range of procurement processes

- (1) Goods and services may only be procured by way of -
 - a) petty cash purchases may be used up to a transaction value of R2 000, in accordance with the provisions of the Petty Cash Policy
 - b) written quotations for procurements of a transaction value over R2 000 up to R30 000 (VAT included);
 - c) formal written price quotations (informal tender) for procurements of a transaction value over R 30 000 up to R200 000 (VAT included); and
 - d) competitive bidding process (formal tender) for procurement above a transaction value of R 200 000 (VAT included)
- (2) The accounting officer may, in writing-
 - a) lower, but not increase, the different threshold values specified in subparagraph 12(1); or
 - b) direct that -
 - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2000;
 - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000
 - (iii) informal tender process be followed for procurement below R30k
 - (iv) 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.
- (4) 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 -
 - a. full name;

- b. identification number or company or other registration number; and
 - c. tax reference number and VAT number, if supplier is a register VAT vendor;
- (b) In the case of transactions exceeding R 30 000, including VAT:
- (i) A valid Tax clearance certificate or service provider tax verification details (SARS Pin number for e-filing independent verification) must accompany the bid documents. (Status verification on the day of award) *(The onus is for the bidder to ensure that their tax matters are in order.)*
- (ii) If the bid of the preferred bidder is not supported by a valid TAX Clearance Certificate, either as an attachment to the bid documents or on record in the case of suppliers registered on the Central Supplier Database of the National Treasury, the municipality reserves the right to request the Bidder to supply the municipality with a valid SARS (e-filing) TCS pin for independent verification on SARS e-filing within a prescribed period, failure of which will result in a disqualified bid. *(Within seven days of being notified by Supply Chain Management Office)*
- (c) has indicated -
 - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) if the provider is not a natural person, whether any of its directors, 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 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.
- (d) The Municipality is aware that not all service providers in the region are registered on the Central Supplier Database of National Treasury; although it's preferable and the intention of Government to limit transactions to registered suppliers on the National Treasury Central Supplier Database, the following is applicable to acquiring goods or services from service providers not registered on the database with regards goods and services below R30 000:
 - i. Where less than 3 services providers have been identified on the Central Supplier Database, alternative service providers not registered on the database maybe requested for additional quote(s) provided their tax matter are in order and can be independently verified on SARS e-filing. *(Such service providers must be encouraged and assisted subsequently*

- to register on the Central Supplier Database)
 - ii. Where quotations provided are not market related, prices quoted are significantly material above market price, an alternative quotation should be requested from an alternative vendor rendering the same goods and services even if not on the system vendor management system, provided their tax matters are in order and can be independently verified on SARS e-filing)
 - iii. A declaration form to be attached to the requisition sent to the service provider not listed on the database requesting declaration of not being in the service of the state.
 - iv. Supplier to be provided with the Municipal Declaration form for regulation 44 vetting and SARS compliance
- (e) Where the chosen vendor to render services or supply goods is in accordance to section 13(d) of the Garden Route District Municipality's Supply Chain Management System, the following must take place
- i. Provision can be made for purchases to be made from such a supplier for transactions below R30K
 - ii. Suppliers not registered on the Central Supplier Database with whom the Municipality transacts with frequently to be encouraged to register on the National Treasury's Central Supplier Database.
 - a) Where services or goods delivered are once off the CFO to provide authorisation for direct payment,
 - b) Where it is likely that the similar service or goods requested will be required in the future, then DATA Unit to be approached to engage with the service provider and facilitate the process of the vendor registering on the Central Supplier database
 - iii. The user department must inform Data Unit in Finance Department of such a service provider and request that assistance be provided to the service provider to be registered on the Central Supplier Database.

14. Lists of accredited prospective providers

(1) The accounting officer must -

- a) at least once a year through website, newspapers commonly circulating locally, or any other appropriate ways, invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers on the National Treasury's Central Supplier Database and the updated Municipal Supplier

Database

- b) Ensure use of The National Treasury Central Supplier Database, which is the database which lists the detail of all suppliers who have been registered and vetted in order to do business with the Municipality and Government
 - c) Ensure Prospective suppliers to be assisted with registering on the National Treasury's Central Supplier Database at any time, www.csd.gov.za
 - d) Ensure Minimum criteria for prospective suppliers is to be registered and approved on the National Treasury Central Supplier's Database
 - e) disallow the registration of any prospective supplier whose name appears on the National Treasury's Database of Restricted Suppliers and/or Register for Tender Defaulters and who is therefore prohibited from doing business with the public sector.
- (2) Vendors bidding for Informal/Formal tenders that are not registered on the National Treasury's Central Supplier Database are not precluded from submitting bids, but must however be registered and approved by the time the Bid is evaluated, failing which their bid may be declared non-responsive.
- a. All persons forming part of a Joint Venture or Consortium must be registered as such on the National Treasury's supplier Database and have obtained a joint venture or partnership B-BBEE certificate of the new entity.
 - b. Use of National Treasury's Central Supplier Database for procurement approved from the 31 December 2017

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 –

1. Petty Cash management resides with the relevant Head of Department and in the absence of a Petty Cash policy the following shall apply:
 - a) Only an Executive manager may approve or authorize the petty cash voucher.
 - b) The authorized petty cash voucher with the slip must be filed and recorded in a petty cash register.
 - c) The petty cash box must be stored away in safe place when it is not in use.
 - d) The designated personnel managing the petty cash to keep record of all transactions with the supporting document and avail it for inspection when required so.

- e) The Chief Accountant Expenditure to verify the petty cash reconciliation every time it is replenished.
 - f) Random cyclical petty cash review can be undertaken without prior notice where the need has been identified by the Office of the Chief Financial Officer.
2. each executive manager may allow petty cash purchases not exceeding an amount of R2 000 in each month;
 3. a monthly reconciliation report from each executive 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.
 4. the following types of expenditure may not be made from petty cash: all Labour or salary related expenditure

16. Written or verbal quotations

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

- a) Quotations must be obtained from at least three different providers preferably from National Treasury's Central Supplier Database, but not limited to, providers whose names appear on the list of accredited prospective providers, provided that if quotations are obtained from providers who are not listed, such providers can be requested to provide an a SARS e-filing pin for independent verification.
- 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 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 through formal written price quotations, are as follows:
- a) quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality and the National Treasury's central supplier database.
 - b) quotations may be obtained from providers who are not listed, provided that such providers are not listed on the national treasury's list prohibited suppliers;
 - 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, 1:

- a. when using the list of accredited prospective providers the accounting officer must promote on-going competition amongst providers by inviting all relevant providers to submit quotations. Rotation basis to be considered where pricing is competitive between bidders otherwise normal SCM process to be followed for an award.
- b) all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations (Informal Tender) must, in addition to the requirements of paragraph 17, be advertised for at least seven days on the website, an official notice board of the municipality and e-tender publication portal

- 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 sub delegation;
- e) offers up to R10 000 (VAT included) must be awarded based on compliance to specifications, ability and capability to deliver the goods and services and lowest price;
- f) Council to consider use of rotation basis for requesting Quotations up to R10 000 (VAT Included), to avoid supplier fatigue and encourage a broader allocation of work.
- g) offers up to R30 000 (VAT included) and above R10 000 must be awarded based on price (formal written quotation) after consideration of compliance to specifications, conditions of contract, ability and capability to deliver the goods and services
- h) the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations and formal written price quotations is not abused
- i) requirements for proper record keeping must be adhered to, such as:
 - i. completion of documents for audit purposes;
 - ii. ensuring the correctness of documents;
 - iii. before awards are made, proper review of documents must be undertaken.

19. Competitive bidding process

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.
3. Verification by the Chief Financial Officer prior to advertisement of bids above R10

million. The following information must be submitted by the executive/senior manager responsible for the vote to the CFO prior to the public advertisement of any bids in excess of R10 million (all applicable Taxes included):

- (i) Proof that the budgetary provision exists for procurement of the goods and services and /or infrastructure projects;
- (ii) Any ancillary budgetary implications related to the bid, for example, if the project is for the acquisition of a municipal asset, does budgetary provision exist for the operation of the asset, maintenance cost relating to the asset, administration costs and rehabilitation/renewal costs;
- (iii) Any Multi-years budgetary implications, for example, if the project will take more than one financial year, the estimated expenditure per financial year
- (iv) Goods, service and/or infrastructure projects above the value of R10 million (all applicable taxes included) may only be advertised after the CFO has verified in writing that budgetary provision exists for the commencement of the particular project
- (v) Requirements may not be deliberately split into part or items of lesser value merely to avoid the information being submitted
- (vi) Contracts above the value of R10 million(all applicable taxes included) may only be awarded to the preferred bidder after Chief Financial Officer has verified in writing that the budgetary provision exists for the acquisition of the goods, infrastructure projects and/or services and that it is consistent with the Integrated Development Plan.
- (vii) Requirements of MFMA Circular No. 62 Municipal Finance Management Act No. 56 of 2003 relating to procurement of goods and services in excess of 10 million, be implemented dealing with procurement goods or services contracts in excess of R10 million

20. Process for competitive bidding

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

- (a) Compilation of bidding documentation as detailed in paragraph 21;
- (b) Public invitation of bids as detailed in paragraph 22;
- (c) Site meetings or briefing sessions as detailed in paragraph 22;
- (d) Handling of bids submitted in response to public invitation as

detailed in paragraph 23;

- (e) Evaluation of bids as detailed in paragraph 28;
- (f) Award of contracts as detailed in paragraph 29;
- (g) Administration of 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 with which bid documentation for a competitive bidding process must comply in addition to the requirement as listed in section 13, 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, upgrading or refurbishment of buildings or infrastructure;
- (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements
 - (aa) for the past three years; or
 - (bb) since their establishment if established during the past three years;
 - (ii) a certificate signed by the bidder certifying that the bidder

has no undisputed commitments for municipal services towards a Municipality or other service provider in respect of which payment is overdue for more than 30 days;

- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.
- (f) compel bidders to declare their previous supply chain management practices and state whether or not they:
 - a. have been found guilty by a court of law or a structure established by council or the accounting officer for handling alleged abuses of the Municipality or the municipal entity's supply chain management system or committed any improper conduct in relation to such a system
 - b. have been convicted of fraud or corruption during the past five years
 - c. have wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years
 - d. have been listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of

Corrupt activities Act 12 of 2004.

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, the website of the municipality, e-Tender Publication Portal of National Treasury or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
 - (b) The information contained in a public advertisement, must include -
 - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subparagraph (2) of this policy;
 - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality ;and
 - (iii) date, time and venue of any proposed site meetings or briefing sessions.;
 - (iv) In accordance with MFMA circular 83, advertisement of bids and the publication of notices in respect of awarded bids, unsuccessful bids, cancelled bids, deviations, variations and extensions of existing contracts of a municipality to be published on the e-Tender publication Portal from date of approval of the policy.
 - (v) Notices of cancelled bids must be published on the same day, or at least the day after a municipality decided to cancel a bid on e-Tender Publications Portal.
 - (vi) Notices of all awards to suppliers through deviations from competitive bidding, Awards through variations and extensions of existing contracts; must be published on the e-Tender Publications Portal within seven working days after the award was made

website.

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—
 - i. does not allow any preferred bidder a second or unfair opportunity;
 - ii. is not to the detriment of any other bidder; and
 - iii. 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) Informal tenders to be evaluated and awarded by the Bid Evaluation committee

27. Bid specification committee

- (1) A bid specification committee should only review specifications compiled by the user department only after being signed off by the head of the user department.
 - a) Head of the Department should satisfy themselves that all tenders initiated in the department, formal or informal are aligned or included in the Department's Demand management plan and provided for in the approved budget or adjustment budget
 - b) Every tender, formal or informal, before being submitted to the Supply Chain Management Unit must have the following:
 - a) User Department to identify the appropriate person(s) to compile the relevant specification
 - b) Ensure that the relevant technical expertise would be available in assessing the Technical requirements
 - c) The Risk officer to be invited to all Bid Specification Committee meeting as part of the risk assessment process. Risk assessment may include the content below or alternative as the risk officer may deem appropriate:
 - a) –
 - I. **Legislative/legal requirements** – prescripts that govern process and legislative requirements
 - II. **Deliverables** – pre define the deliverables and

parameters, no open ended contracts with specific reference to use of consultants

- III. **Time frames** – critical deadlines to be defined, realistic time frames set
- IV. **Municipal resources** – funding of the project is provided in the approved budget, either as own resources or alternative funding sources
- V. **Costs** – project roll out cost to give a realistic indication of market conditions (basis for assessing value for money)
- VI. **Political Risk** – Item linked to Integrated Development Plan of the municipality

(2) Final 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 labelling 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 2017; 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) A bid specification committee must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved if not a member of the Bid Adjudication Committee, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.
- (5) It is preferable that the Accounting officer nominate municipal officials and establish a permanent Bid Specification Committee composed of varying expertise. Specific technical expertise to be co-opted on an ad hoc basis for a specific commodity or goods if needs be
- (6) should a member declare a conflict of interest at any stage, the member may not form part of the Bid Specification Committee and if necessary to reach a quorum the member must be replaced by a member of suitable expertise.

28. Bid evaluation committee

- (1) A bid evaluation committee must -
 - (a) evaluate bids (formal & Informal) in accordance with -
 - (i) the specifications for a specific procurement; and
 - (ii) the points system set out in terms of paragraph 27(2)(f);
 - (b) evaluate each bidder's ability to execute the contract;
 - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
 - (d) submit to the Bid Adjudication Committee a report and recommendations regarding the award of the formal bid or any other related matter.
 - (e) evaluate and award Formal written quotations (Informal Tender)
- (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 municipality.
- (c) It is preferable that the Accounting officer to nominate municipal officials and establish a permanent Bid Evaluation Committee composed of varying expertise. Specific technical expertise to be co-opted on an ad hoc basis for a specific commodity or goods if needs be
- (d) Should a member declare a conflict of interest at any stage, the member may not form part of the Bid Evaluation Committee and if necessary to reach a quorum the member must be replaced by a member of suitable expertise

29. Bid adjudication committee

- (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 municipality 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 municipality; 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
 - (i) *Should an award be made to a bidder not recommended by the Bid Evaluation Committee on justifiable grounds, the decision must be noted and made available to the Auditor general for audit purposes.*
- (7) The accounting officer must comply with section 114 of the Act within 10 working days.
- (8) Should a member declare a conflict of interest at any stage, the member may not form part of the Bid Adjudication Committee and if necessary to reach a quorum the member must be replaced by a member of suitable expertise

30. Asset Disposal committee

- 1) The accounting officer or delegated authority will implement a mechanism to dispose of movable and immovable assets.
- 2) The accounting officer to establish an Asset Disposal Committee / Property Task Team, composed of line managers / designated personnel and on ad hoc basis may co-opt additional members with specific expertise
 - a) Line manager are regarded as asset managers / designated personnel
 - b) The nominated Asset Disposal Committee/ Property Task Team to oversee the asset disposal process of the municipality
- 3) Asset Disposal Committee / Property Task Team to meet as needs be in the financial year and assess any formal requests for Asset Disposals
- 4) Asset disposal dates to be determined by the committee following an assessment of the assets to be disposed
- 5) Detailed records of the committee, for reporting purposes, must be kept of all activities and should consist of at least, but not limited to,
 - a) Disposal verification schedule
 - b) Disposal schedule
- 6) Asset Disposal Committee / Property task team to establish a Disposal Management Standard operating procedure in accordance to the Supply Chain Management policy and aligned to the Asset Management Policy.
- 7) The committee to assess and ensure adequate insurance cover for Council Properties within the risk appetite of council

Specialised Forms of Procurement

31. Procurement of banking services

- (1) Subject to section 33 of the MFMA, any contract for banking services –
 - (a) shall be procured through competitive bids;
 - (b) shall 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).

- (4) Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

32. 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 comments on the submission and the municipality disagree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

33. Procurement of goods and services under contracts secured by other organs of state (piggy backing)

- (i) 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;
 - d. that other organ of state and the provider have consented to such procurement in writing.
 - e. the initial contract agreement needs to be valid and binding

in terms of paragraph 22(1).

- (4) Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

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- (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.
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- (4) If SITA comments on the submission and the municipality disagree with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

33. Procurement of goods and services under contracts secured by other organs of state (piggy backing)

- (i) 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;
 - d. that other organ of state and the provider have consented to such procurement in writing.
 - e. the initial contract agreement needs to be valid and binding

- at the time "of piggy backing "; once the contract is terminated there is no longer a contract to "piggy back" from
- f. where a contract is not linked to a period with a particular end date, the contract will terminate once the obligation outlined in the contract are completed or the final object is received and accepted.
 - g. any other organ of state wishing to "piggy back" from contracts as mentioned in subsection (1)(f) can only be granted permission while current contract with Garden Route District Municipality is active. (if contract has lapsed section 32 application may not be granted)

(ii) 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.

34. 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.

35. Proudly South African Campaign / Proudly Garden Route Campaign

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

- a) Preferential procurement framework Policy Act, 2000: Preferential Procurement Regulations, 2017, Regulation 8, Local production and Content and any subsequent circulars relating to designated sectors and local content thresholds
- b) In the absence of designated sector for a particular commodity by the

Department of Trade and Industry or National Treasury, Garden Route District may include as a specific condition of tender, that locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered

- c) Any prequalification criteria in the acquisition of goods or services that seeks to address localisation and empowerment local entities; must be in accordance with an approved Local Economic Development Strategy or Policy of Council that is in line with relevant regulatory framework or statute.

(2) The district to develop and support Proudly Garden Route Brand and products to the extent that all things being equal, preference is given to procuring local goods and services in accordance to section 35(1)(b) and Section 35(1)(c); in alignment to section 3(4) of the Policy. The aim is in support of the regional economic strategy and developing a vibrant economy in the Garden Route economic corridor.

36. Appointment of consultants

- (1) The accounting officer may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurement is made.
- (2) Consultancy services must be procured through competitive bids if
 - (a) the value of the contract exceeds R 200 000 (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 municipality.
- (5) Should the Municipality have a Council approved Policy with regards to the

appointment of consultants that is aligned to Treasury Guidelines; such policy would override this section of the Supply Chain Management Policy.

37. 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 procure any required goods or services through any convenient process, which may include direct negotiations, but only
 - I. in an emergency and subsequently the department to take into account in the review of their annual Demand Management Plan
 - 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
 - V. in any other exceptional case where it is impractical or impossible to follow the official procurement processes e.g. any purchase on behalf of the District Municipality at a public auction sale; 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 37(1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements.
- (3) Subparagraph (2) does not apply to the procurement of goods and services contemplated in paragraph 11(2) of this policy.
- (4) Emergency Dispensation – Conditions warranting Emergency dispensation include the existence of one or more of the following
 - i. The possibility of human injury or death

- ii. The prevalence of human suffering or deprivation of rights
- iii. The possibility of damage to property, or suffering and death of livestock and animals
- iv. The interruption of essential services, including transportations and communication facilities or support services critical to the effective functioning of the District or the B Municipalities within the District
- v. The possibility of serious damage occurring to the natural environment
- vi. The possibility that the security of the state could be compromised

(5) Single Source selection – Justification for single source selection must be examined in the context of the overall interest of the Garden Route District Municipality and the project

- i. Single source selection may be appropriate only if it represents a clear advantage over competition for services that represent a natural continuation of previous work carried by the consultant, and continuity of downstream work is considered essential.
- ii. The reasons for single source selection must be fully motivated in a report and approved by the Bid Adjudication Committee prior to conclusion of a contract.
- iii. Detailed specification with defined scope and details of deliverables must be set before work can commence guiding the consultants and providing set the parameters to which they may operate with. No contract may be open ended without addressing specific needs analysis approved by the Accounting Officer or delegated authority beforehand.

38. Transversal bids

- 1) Accounting officer or delegated authority to approve initiation (shared services) or participation of transversal bids by Garden Route District Municipality
- 2) Transversal bids will only be relevant when the municipality wishes to invite a tender/bid itself and other municipalities or wishes to participate in a tender together with other municipalities or organs of state from the initial phase or it is prescribed through a circular by the National Treasury.
- 3) This form of bidding is different than when participating in a tender invited by another organ of state as referred to in SCM Treasury regulation 32 or section 33 of the Garden Route District Supply Chain Management Policy

- 4) Chief Financial Officer to arrange and provide advice, assist and guide the transversal procurement process and ensure that technical and governance requirements are met
- 5) Arrange implies drawing up a the business case, obtaining formal approval from affected municipalities and the Accounting Officer to proceed, the planning, organising, logistical and bid administration requirements by the custodian Municipality
- 6) Where transversal bids are contemplated, it should result in lower unit cost or economies of scale or other corporate advantage as demonstrated by the required business case.
- 7) Where the custodian municipality other than Garden Route District Municipality has identified the need for transversal tender, it must ensure that the procurement of goods or services or both is procured in terms of the section 217 of the constitution of the Republic of South Africa and any other relevant legislation and prescripts
- 8) Formal written consent must be obtained by the participating municipalities or other organs of state before the tender process is initiated.
- 9) When Garden Route District Municipality initiates the transversal tender written consent obtained from the accounting officers of other municipalities or organs of state must mention a review and consensus of needs analysis, specification, risk assessment and, defined desired outcomes
- 10) The Custodian Municipality will take full responsibility for the arrangement and conclusion of the bid process, inclusive of the formalisation of the contracting arrangements noting that each participating municipality, depending on the requirements and the nature of the contract, may have to sign a separate service level agreement with the selected service provider.
- 11) Provision in the agreement amongst participating municipalities or organs of state should make provision for participating entities to second their own official with the relevant expertise to participate, observe or offer advice to the initiating entity.

39. Unsolicited bids

- 1) In accordance with section 113 of the Act, Garden Route Council is under 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 party or entity that has made the unsolicited 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 and justifiable by the accounting officer subject to relevant consultation.
- 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 may consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, with comments from
Provincial and National Treasury
- 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 municipality to the bid may be entered into or signed within 30 days of the submission.

40. 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 bidder if they are listed as non-compliant on the National Treasury's Central Supplier Database
 - e) Reject any bid from a bidder-
 - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
 - f) 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;
 - g) 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
- h) reject the bid of any bidder if that bidder or any of its directors –
 - i. has abused the supply chain management system of the municipality or has committed any improper conduct in relation to such system;
 - ii. has been convicted for fraud or corruption during the past five years;
 - iii. has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - iv. has been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (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), (f) or (g) of this policy.
- (3) The Municipality takes cognisance of the provisions of Chapter 2 of the Competition Act no. 89 of 1998
 - ☐ PART A - Restrictive practices;
 - ☐ PART B - Abusive of a Dominant position; and
 - ☐ PART C - Exemption from application of chapter 2.
- (4) The accounting officer must also provide measures for the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendation or decisions that were made, taken or in any way influenced by:
 - i. Councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors in schedule 1 of the Systems Act; or
 - ii. Municipal officials in contravention of item 4 or 5 of the Code of Conduct for the Municipal Staff member set out in schedule 2 of the Systems Act
- (5) The Bid Adjudication and Evaluation Committee to take cognisance of the provisions of the Competition Act no 89 of 1998 during the evaluation and award of the tender.
- (6) Accounting Officer or any other delegated personnel of Garden Route DM, is prohibited from deliberately placing order for goods, service and /or infrastructure projects from suppliers, receiving such goods, services and/or infrastructure projects and arranging with suppliers for such goods,

services and/or infrastructure projects to be invoiced and paid for in another financial year

(7) The above prohibition does not apply to multi-year contracts and projects adopted over multi-years in terms of the MFMA sections 19 and 33.

40 (B). CONTRACT MANAGEMENT

- (1) All contracts entered into by the municipality in the tender process referred to in paragraph 18 & 19 of this Policy must:
 - a. Be in writing
 - b. Stipulate the terms and conditions of the contract or agreement which must include provisions for providing for:
 - I. The termination of the contract or agreement in the case of non or under performance
 - II. Dispute resolution mechanisms to settle disputes between parties
 - III. A periodic review of contract or agreement
 - IV. Any other matters as maybe prescribed
 - c. Include General conditions of contract as prescribed by national treasury
 - d. Specify the duration of the contract
 - e. Specify the repayments terms in respect of the goods or services supplied
 - f. Be monitored by the Directorate of the municipality which requested the goods and services to ensure that all the contracts requirements are met.
- (2) Unauthorised or breaches of the contract as in paragraph 40(B) above by the supplier or service provider must be reported to the Legal Department for initiating appropriate action as well as to the SCM Unit which must record the details of such deviation and breaches.
- (3) Departmental Heads shall be responsible for ensuring that contract managers:
 - a. Are assigned to all contracts within the department Head's area of responsibility
 - b. Are adequately trained so that they can exercise the necessary formalities in signing up the contract and/or issuing the purchase order(s);
 - c. Ensure that contracts related to the procurement of goods and services are captured on the Municipality's record management system
 - d. Ensure that all original contract documentation is lodged at registrar
 - e. Manage all contract variations and ensure any variations are administered in accordance with any treasury guidelines or relevant statute
 - f. Manage any contract disputes and lodge with the relevant authority and

the legal department where disputes could not be resolved

- g. Ensure suppliers performance review is undertaken against the project deliverables
 - h. Maintain appropriate formal records and correspondence regarding the project and contract for reference point
 - i. Act with care and diligence and observe all accounting and legal requirements
- (4) Management of expansion or variation of order against the original contract: The expansion or variation of contracts against the original contract and prevention of contract manipulation.
- a) Contracts may be expanded or varied by not more than 20% of the original value for Construction related goods, services and/ or infrastructure projects.
 - b) Contracts for all other goods and/or services may be varied by not more than 15% of the original value of the contract.
 - c) Any expansion or variation in excess of the above mentioned thresholds must be dealt with in terms of the provisions of section 116(3) of the MFMA which will be regarded as an amendment to the contract
 - d) The above is not applicable to transversal term contracts, facilitated by the relevant treasuries on behalf of Municipalities and specific term contracts. The latter refers to contracts where required quantities are not specified or are unknown and the award is based on creating a facility.

Part 3: Logistics, Disposal, Risk and Performance Management

41. Logistics management

- (1) The accounting officer must establish and implement an effective system of logistics management, which must include -
 - a) the monitoring of spending patterns on types or classes of goods and services incorporating, where practical, the coding of items to ensure that each item has a unique number;
 - b) the setting of inventory levels that includes minimum and maximum levels and lead times wherever goods are placed in stock;
 - c) the placing of manual or electronic orders for all acquisitions other than those from petty cash;
 - d) before payment is approved , certification by the responsible officer that the goods and services are received or rendered on time and is in accordance with the order, the general conditions of contract and specifications where

applicable and that the price charged is as quoted in terms of a contract;

- e) appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- f) regular checking to ensure that all assets including official vehicles are properly managed, appropriately maintained and only used for official purposes; and
- g) monitoring and review of the supply vendor performance to ensure compliance with specifications and contract conditions for particular goods or services.

General Logistics

(2) Placing Orders

- a) Purchase orders will be created with reference to requisitions where the supply source is either bids or quotations on Garden Route District Document Management System or financial system.
- b) Purchase order approval will be system based and authorised by the delegated authority (No manual process to be followed unless in exceptional circumstances, financial system is not accessible for unreasonable prolonged periods without clear indication when the system malfunction would be restored or there is power shortages or there is no power back up in place, however approval in writing to be obtained from the Chief financial officer authorising such process and giving guidance on the ratification process)
- c) All purchases orders will be captured on Garden Route District's Financial and or Document Management System at stores, and ensure that proper audit trail exist. (no one may issue an order apart from a delegated officials)
- d) In respect of goods and services (with exception of professional services where there are other mechanisms place for accepting a bid), no work shall commence or goods be delivered before an official order has been placed with the vendor
- e) Garden Route District Municipality shall not be held liable for payment of any goods delivered or services rendered in contravention of clause (41)(2)(d) of the Garden Route District Municipality

(3) Receiving of Goods

- 1) Goods received note (GRV) will be completed for all goods and services received by the municipality in the following manner:
 - I. Goods delivered or services rendered to be received by the user department that issued the requisition at the location indicated in the requisition and the purchase order unless if it's a store item that should be delivered at the municipality's respective stores.
 - II. The official receiving the goods must inspect and agree the content of service provider's delivery note to Garden Route District Municipality's official order placed and agree to the following:
 - a) Delivery note to indicate Garden Route District Official Order number and the official to confirm the order number to be legitimate
 - b) Description of the type of goods on the delivery note, brand, the quantity of goods and the total cost of the goods or service to be agreed to the official order before any acceptance of goods and signing off of any delivery document
 - III. Deliveries where no official orders can be matched to an official order may not be accepted by the municipality, acceptance of such is seen as exposure of Council to Financial Risk
 - IV. On matching of the delivery note to the purchase order, the receiving official to inspect the goods or service being delivered against the content of the delivery note and the following to be agreed as faithful representation at hand:
 - a) The description of goods and services being delivered or rendered to the municipality
 - b) The quantity of goods being delivered
 - c) The quality of the goods or service being delivered or rendered to the municipality (damaged goods or goods with past expiry period may not be accepted)
 - V. Any discrepancies, shortfalls against the order, damaged goods, incorrect goods or any other discrepancy to be recorded in permanent marking and signed off by both the Municipality's receiving official and the supplier and delivering agent.
 - VI. Goods exceeding the quantities ordered or deviating from the description or quality should not be accepted and should be noted and communicated to the supplier formally and communicated to Finance Department (Creditors Unit)
 - VII. On acceptance of the Goods or services subsequent to the above

mentioned process, an internally generated Good Received Note should be generated recording the goods or services received and their quantity and total cost and signed off.

- VIII. All relevant documentation (original documentation) related to any delivery of goods or receipt of service from external service providers to be sent to Finance Department (Creditors unit immediately)
- IX. Failure to record crucial information and omission of discrepancies that result in the municipality incurring a financial loss will be dealt with in accordance with municipality's disciplinary code of conduct or the equivalent.
- X. Failure to forward all the relevant documentation to creditors department timeously can result in appropriate actions against the responsible official

(4) Stock Logistics

- I. Stock or inventory to be valued as per accounting policy of the Municipality in line with the relevant accounting practise
- II. Input VAT to be claimed upon purchase and output VAT is accounted for at the time of issue according to the accounting policy
- III. Stock items shall be systematically replenished using the re-order point or minimum level as set in the financial system
- IV. Issuing of stock shall be systematically administered through the financial system against internal orders or requisitions that are duly authorised
- V. Stores function is centralised and managed through the 3 stores of the municipality, George, Oudsthoorn and Riversdale. (Fuel through the stores and fuel depots)

42. Disposal management

- (1) The criteria for the disposal or letting of assets, including unserviceable, redundant or obsolete assets are as provided in **sections 14 and 90** of the Municipal Finance Management Act, and the Municipal Asset Transfer Regulations, 2008.
- (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.
- v. In terms of the donations policy

- (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 charge 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.

43. Risk management

- a) Risk Management unit, to be serve as part of the Bid Specification Committee and Bid Evaluation Committee in facilitating and evaluation of risk identified in the procurement of goods and services.
- b) Risk management assessment will be guided by the risk assessment process in line with Risk Management guidelines and standards. The process may include the following:
 - i. The identification of risks on a case by case basis
 - ii. The allocation of risks to the party best suited to manage such risks;

- iii. Acceptance of the cost of the risk where the cost of transferring the risk is higher than that of retaining it
 - iv. The management of risk in a pro-active manner and the provision of adequate cover for the residual risk; and
 - v. The assignment of relative risks to the contracting parties through clear and unambiguous contract documentation
- c) Risk management will duly assess corporate risk and identify mitigating controls

44. Performance management

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

44
(A).

- 1) The official that receives goods or services on behalf of the Council, or manages the contract which was entered into as a result of a competitive bidding process, to ensure that the goods or services have been delivered in accordance with the service level agreement governing the contractual relationship
- 2) In the case of non-performance or unsatisfactory performance by a supplier, the user department concerned, in consultation with contracts management unit, must issue a notice to the supplier or service provider in writing notifying them of terms contravened and requesting immediate remedial action to comply with the contract terms; failing which:
 - Legal Services / contracts management unit to be consulted for appropriate action.
- 3) In the case of goods and services supplied in response to a quotation invited by the municipality, the official that initiated the requisition or received the goods or services on behalf of council, should complete a goods received voucher (GRV) and note any discrepancies that may require the attention of the service provider if any.
- 4) In the case of goods or services procured through a tender process as specified in terms of the policy, paragraph 18(b) and 19, the contract manager or designated person must ensure that goods or services requested have been provided in accordance with service level agreement before the final payment is settled..
- 5) Final review should consider the following:
 - a) Satisfactory element of the quality and standard of the goods and services received and quality of workmanship.
 - b) Include details, supported by formal written notifications to the supplier regarding non- performance or poor service delivery.
 - c) Include recommendation on any further actions to be taken against the supplier in terms of paragraph 40 B of the policy.

Part 4: Other matters

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

45.

- (1) No award from R30 000 and above 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.
- (3) If SARS does not respond within 7 days such person's tax matters may for purposes of subparagraph (1) be presumed to be in order.
- (4) In cases of uncertainty on Tax affairs of the service provider, Service provider to provide the municipality with SARS e-filing pin code for independent verification by the municipality.
- (5) That Garden Route Council adopt MFMA circular No. 90, Tax Compliance Status, in the finalisation of awards made for transaction above R30 000 on Tax related matters.

Prohibition on awards to persons in the service of the state

46. 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 executive director, manager, principal shareholder or stakeholder is a person in the service of the state; or
 - c) a person who is an advisor or consultant contracted with the municipality.

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

47. The accounting officer must ensure that the notes to the annual financial statements disclose particulars of any award of more than R 2 000 to a person who is a spouse, child or parent of a person in the service of the state, or 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.

48. Ethical standards

- (1) The code of ethical standards as set out in the *"National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management"* is hereby established for officials and other role players in the supply chain management system of the Municipality in order to promote -
 - a. mutual trust and respect; and
 - b. an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) A breach of the code of ethics must be dealt with as follows -
 - a) in the case of an employee, in terms of the disciplinary procedures of the municipality envisaged in section 67(1)(h)

of the Municipal Systems Act;

- b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach.
- c) In all cases, financial misconduct must be dealt with in terms of chapter 15 of the Act.

49. Inducements, rewards, gifts and favours to municipalities, officials and other role players

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant -
 - a) any inducement or reward to the municipality for or in connection with the award of a contract; or
 - b) any reward, gift, 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.

50. 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.

51. Objections and complaints

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

52. 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 municipality 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.

53. Contracts providing for compensation based on turnover

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

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

54. Construction Industry Development Board (CIDB)

The Construction Industry Development Board (CIDB) has been established by government to promote uniform application of policy to the construction industry.

a) When calling for construction related bids:

- I. The prescribed CIDB (uniformity bid documents) must be utilised
- II. Only contractors registered with CIDB may be used
- III. All projects must be advertised on the i-tender or e-tender system
- IV. Consultants used in the procurement process must adhere to the CIDB legislation
- V. Consultants used in the procurement process are prohibited to provide goods, works or service related to the project; and
- VI. Subcontract arrangements and joint venture initiatives must be aligned to CIDB guidelines and requirements

b) When evaluating construction related bids

- I. The validity of the contractor's registration on the CIDB website must be verified
- II. The bidders documents must be assessed against the prescribed CIDB contractor requirements
- III. Calculations for joint venture grading must be done according to the CIDB prescriptions

- c) All construction related procurement and projects above minimum threshold R50 million should be undertaken in accordance with the Infrastructure Delivery and Procurement Management (IDPM) – Refer to Annexure C
- d) Other matters
 - I. all projects approved by the municipality must be registered with the CDIB
 - II. contracts registered on the i-tender systems must be update and completed
 - III. non-performance and non-compliance of contractors must be **reported to the CIDB as per CIDB guidelines**

55. Commencement

This Policy takes effect on date of adoption by council and should be reviewed annually.

ANNEXURE A

PROCESS FOR THE OBTAINING OF GOODS AND SERVICES

The following process must be followed in terms of the Municipal Finance Management Act, Act 56 2003, Garden Route Supply Chain Management Policy and the Supply Chain Regulations to obtain goods and services.

1. PURCHASES

1.1 Purchase of all goods/services (capital and non-capital)

Value of Goods and	Procurement	Delegated Approval	SCM Policy
<input type="checkbox"/> R0 – R2000	Petty Cash	Executive	Supply Chain
<input checked="" type="checkbox"/> R 2 000 up to R 30 000 (VAT Incl.)	Minimum of 3 x written quotations preferably selected from	As per delegation register	Supply Chain Management Policy
<input type="checkbox"/> R 30 000 but up to R 200 000 (Inform	Informal Tender process; (successful bidder must be registered on the	As per delegation register	Supply Chain Management Policy
<input type="checkbox"/> R200 000 or Long Term Contracts	Formal Tender process to be followed. (Successful Bidder	As per delegation through the appointed	Supply Chain Management Policy
Deviation below 10%	Through procurement system of the municipality	Final approval by the Executive Manager of the	Supply Chain Management Policy
Deviations above	Through procurement system of the municipality (Tax	Final approval by the	Supply Chain Management

2. REQUISITIONS

Requisitions must be approved in terms of the relevant delegation register as approved by the Accounting Officer or delegated authority.

3. ORDERS

I. **Capital purchases**

Requisitions are verified by the Asset Management Section.

II. **Non capital purchases**

All orders are issued through Stores.

SUPPLY CHAIN MANAGEMENT POLICY

A. >R 0 – R30 000: 3 x Written Quotations

- i. User department or initiator to put in requisition to the Buyers to obtain a minimum of three quotations. Preference to be given to suppliers listed on the National Treasury's Central Supplier Database, however if there is less than three suppliers identified on the database, potential additional suppliers not listed on the database to be identified and requests for quotation obtained.
- ii. If the preferred supplier is not listed on the Database the following to occur:
 - a) Procurement to take place through an approval by the CFO for direct payment to be obtained. Minimum supplier listing criteria to be fulfilled, i.e. Tax Clearance Certificate, regulation 44 declarations etc.
 - b) User departments to identify Key service providers within their operations and urge them to register on the National Treasury's Central Supplier Database
 - c) Deviations below Quotation R 10 000 to be approved by the Executive Manager of the relevant department.
 - d) The order number will be generated by the chief clerk at stores and forwarded to User department for action

B. R30 000 – R200 000: 3 x Informal tenders

- i. User department to initiate the procurement process by compiling specifications and forwarding them to Supply Chain Management via the electronic procurement system. (Specifications approved by the Head of the Department)
- ii. SCM Unit to facilitate the procurement process throughout the procurement life cycle until the award.

Procurement Life Cycle to involve the following:

- a) Specifications to serve before the specification committee
- b) Approved specifications will be advertised on the website, e-tender, notice board and send to potential suppliers registered on the accredited supplier database subject to review by Specs Committee and sign off by the Accounting Officer
- c) On submission, Informal tenders must be placed in the tender box and will be opened on the closing date as per time specified on the advertisement.
- d) Summary of informal tenders will be compiled by Supply Chain Management Officer.

- e) User department to provide the technical evaluation against pre-set evaluation criteria and submit to SCM Unit to evaluate the Responsive
- f) Formal Written Price Quotations(Informal Tenders) will be evaluated and awarded by the Bid Evaluation Committee
- g) Competitive Bids (Formal tenders) will be evaluated by the Bid Evaluation committee and recommendation submitted to bid adjudication committee for final award.
- h) Service Level Agreements to be compiled by legal services for all goods and services procured through Informal and Formal Tenders; signed off by both parties before goods and services may be procured

C. >R200 000: Formal Tenders & Long Term Contracts

- i. User department sends a request for a formal tender through to SCM Unit via Collaborator with the specifications.
- ii. SCM Unit to facilitate the procurement process throughout the procurement life cycle until the award.

Procurement Life Cycle to involve the following:

- iii. Specifications to serve before the specification committee
- iv. Reviewed and approved specifications to be approved by the accounting officer and Executive Manager of the department initiating the tender before advertising takes place
- v. Approved specifications will be advertised on the municipal website, e tender, notice board and send to potential suppliers registered on the accredited supplier database
- vi. The Tender number and closing date will be allocated by the SCM Unit.
- vii. Tender advertisement will be compiled and placed by the SCM Unit.
- viii. Standard tender documents will be provided to prospective tenderers by the SCM Unit.
- ix. Tenders will be opened on the date and time as specified in the advertisement.
- x. Summary of tenders will be compiled by Supply Chain Management Officer.
- xi. User department to provide the technical evaluation against pre-set evaluation criteria and submit to SCM Unit to evaluate the Responsive bidders in accordance with the Supply Chain Management Regulations.
- xii. The Bid Evaluation Committee to evaluate and make recommendations to the Bid Adjudication committee.
- xiii. The Bid Adjudication Committee can only adjudicate and on contracts up to 10 million.
- xiv. Tenders greater than R10 million will be awarded by the Accounting Officer after recommendations by the Bid Adjudication Committee

- xv. Service Level Agreements must be complied and signed by both parties before goods and services may be procured in excess of R30 000
- xvi. Successful / unsuccessful tenderers will be notified of the Bid Adjudication Committee's decision.
- xvii. After awarding the formal tender, the User Department will be informed of the outcome and they are to complete a Service Level agreement before any requisition can be generated

5. **SERVICE LEVEL AGREEMENTS**

User department to liaise with Legal Services (contract management unit) on the compilation of service level agreements for all tenders (formal and Informal). Process guidance for compilation of Service Level Agreements to be in accordance with Contract Management process.

6. **Performance Management:**

- (i) Each department to monitor the performance of each supplier to whom tenders have been issued under. The process flow for monitoring performance of service providers to be undertaken on the collaborator system and all the relevant compulsory review comments is completed.
- (ii) It is important that all communication with the service provider regarding the dissatisfaction of the work performed or goods delivered be documented and the service provider be afforded the opportunity to rectify it and respond accordingly. Where the final assessment of the service provider or supplier remains substandard after engaging with the service provider, legal services to facilitate the process going forth with the legal remedies available

7. **STANDARD OPERATING PROCEDURES FOR PROCURING ACCOMMODATION AND FLIGHTS**

7.1 Accommodation

- i. Out of town trip form to be duly completed and approved by the designated authority.
- ii. The Official concerned is to provide the designated central co-ordinator for the department with the supporting documentation indicating the reason for accommodation.
- iii. The secretary to source a minimum of three quotations from the internet or any other available resource, identify the lowest quote and proceed with the booking subject to availability OR refer the specifications to the Travel Agent Appointed by Council

- iv. The designated personnel in a particular department to initiate a requisition on collaborator, uploading all the relevant documentation, and route the requisition to the relevant official for approval.(Request CSD Number)
- v. The approved requisition will be routed via collaborator to the Chief Accountant at Stores, who will inspect the documentation. Item to follow the procurement process as per the electronic procurement system.
- vi. Once the payment has been processed, proof of payment to be forwarded by DATA office to the designated personnel that initiated the requisition/booking. (GRV to be generated by departments before payment)
- vii. The designated personnel to forward the proof of payment to both the service provider (Bed & Breakfast or Hotel) / Travel Agent Appointed by council and the official for whom accommodation has been reserved for.

Provision made in the Travel and Subsistence policy to serve as the guideline:

7.2 Compensation

7.2.1 Accommodation:

- i. Travel and subsistence policy to serve as a guideline regarding the type of Accommodation and rating that is appropriate as approved by council.
- ii. Where such accommodation is available, the rate for a single room will be payable.
- iii. If a representative stays with a relative or friend, Subsistence and travel policy of Council to be complied with
- iv. The payments for overnight accommodation will be paid directly through Creditors Department to the authorised place of accommodation.
- v. Request for payment of reservation must be submitted within reasonable period before departure to enable the administration to process the reservation.
- vi. Tax/Invoices for accommodation to be submitted to creditors department for completeness of documentation

7.2.2 Personnel of council may not circumvent procurement process and place their own preferred booking and claim reimbursement. Any emergency cases where accommodation is sourced outside the procurement process, permission to be obtained prior from the executive manager of the department or the alternative relevant authority.

7.3 Booking of Airline Tickets

- a) Designated personnel in the department should be provided with the following document or invitation for workshop/meeting/conference to be attended with the following details
 - i. Where the event will take place
 - ii. Date and Starting time
 - iii. Date of closure and time of finish
- b) Arrangements for flights to be centralised around the designated personnel in the department, i.e. PA to the Executive Manager
- c) Deviations for items costing up to R10,000 can be approved by the Executive Manager of the relevant department, Final approval for Deviations above R10 000 to be reviewed by the CFO and approved by the Municipal Manager.
- d) Payments of flights to follow due process as approved
- e) When bookings are made, the following information is required by the designated personnel:
 - I. Approval from Municipal Manager for attendance of the meeting
 - II. Copy of ID of the passenger
 - III. Passenger's cell-phone number, which will be used to forward a confirmation e-mail with flight details from the chosen airline
 - IV. Vote from which expenditure will be paid

7.4 For rental vehicle hire:

- i. Designated personnel in the department to make the necessary arrangement subject to availability of the vehicles. The class of the vehicle to be guided by the Travel and Subsistence Policy of Council

7.5 Catering

Refer to the catering policy as approved by council.

Annexure B



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

In accordance with regulation 46(4) and 46(5) of the Local Government Municipal Finance Management Act, 2003: Municipal Supply Chain Management Regulations, the supply chain management policy of a municipality or municipal entity is required take into account the National Treasury's code of conduct for supply chain management practitioners and other role players. Alternatively a municipality or municipal entity may adopt the National Treasury code of conduct. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity.

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

General Principles

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

- 1.1 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.
- 1.2 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 –

- (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 or as may be set by council;
- (d) 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, or in any award of a contract by the municipality ;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- (h) should not place him/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
- (i) 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 municipality 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
 - (iii) 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 **Garden Route District Council** 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

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

Bid Specification / Evaluation / Adjudication Committees

- 6.1 Bid specification, evaluation and adjudication committees should implement supply chain management on behalf of the council in an honest, fair, impartial, transparent, cost-effective and accountable manner.
- 6.2. Bid evaluation / adjudication committees should be familiar with and adhere to the prescribed legislation, directives and procedures in respect of supply chain management in order to perform effectively and efficiently.
- 6.3 All members of bid adjudication committees should be cleared by the 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 council; or

6.4.2 amend or tamper with any price quotation / bid after its submission.

6 Combative Practices

a) 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.

I, an employee of Garden Route District Municipality, hereby acknowledges the Garden Route District Municipality's Code of Conduct for Supply Chain Management and commits to abide by it in the spirit to which it is intended for.

- I acknowledge that my integrity can only be affirmed by how I am deemed by others and therefor will uphold the Supply Chain Management Policy of the Municipality to the letter and spirit to which it is intended for.
- I will refrain from any conduct which may be deemed to be fraudulent in nature or could be seen as bringing disrepute to the image of Council.
- I acknowledge my responsibility for continuous professional development in familiarising myself with the changes in the relevant and applicable legislation of Supply Chain Management and any other relevant procurement legislation.

Signature

Name of Official

Date of Signature

ANNEXURE C**Supply Chain Process for Infrastructure Delivery and Procurement Management**

The Council resolves in terms of section 168 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), in reference to SCM Regulation 3(2), this Policy prescribes the standards and gateways system requirements and principles which municipalities must adhere to when procuring infrastructure related services linking to CIDB and ISO standards and ethos, therefore to adopt the following SCM Framework for Infrastructure Delivery and Procurement Management of the Garden Route District Municipality, for procurement in excess of R50 million rand.

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Foreword

In 2012, the Infrastructure Delivery Management System (IDMS) was adopted as the chosen government wide system for infrastructure delivery in South Africa. In the same year (2012), the National Treasury, together with the eight metropolitan municipalities, initiated the customisations of the IDMS for implementation by municipalities. The product of that engagement became the Cities Infrastructure Delivery Management Toolkit (CIDMT), focusing mainly on cities or metros.

In order to establish a common approach to infrastructure delivery across all organs of state, the Standard for Infrastructure Procurement and Delivery Management (SIPDM) was issued for adaptation and adoption by municipalities in terms of Circular 77.

In the process of implementing and institutionalising the SIPDM, institutions expressed concerns regarding the operational challenges imposed by aspects of the SIPDM. This constraint was further compounded when the Preferential Procurement Regulations, 2017 were promulgated and effected, resulting in conflict between the SIPDM and the Regulations.

The National Treasury, in consultation with relevant stakeholders, initiated the SIPDM review process, which resulted in the development of the Local Government Framework for Infrastructure Delivery and Procurement Management (LGFIDPM). The LGFIDPM provides for minimum requirements for effective governance of infrastructure delivery and procurement management.

Introduction

- a) The Integrated Development Plan (IDP) is the principal strategic planning instrument for municipalities. The IDP process requires a robust process of gathering and synthesising information related to the medium to long-term management of the municipality's infrastructure needs.
- b) The preparation of Roads and Storm Water Services, Water and Sanitation Services, Waste Disposal Services, Electricity Services and Community Facilities and Municipal Buildings, Infrastructure Asset Management Plans (IAMPs) enables municipalities to rank projects and determine budgets, based on a holistic view of local needs and priorities; and serves as a source of valuable information in preparing the IDP.
- c) Through the Infrastructure Delivery Management System, Cities Infrastructure Delivery Management System was developed to provide a holistic system for the management of infrastructure based on the requirements of SANS 55001: Asset management tailored for application in South African metropolitan spaces and specifically in support of the country's spatial transformation agenda.
- d) There is need to develop an infrastructure delivery management system tailor-made for all municipalities (excluding cities) which should integrate asset management strategy, policy to guide infrastructure planning, delivery management and decision making. The LGFIDPM introduces the initial process focusing on the project processes of the infrastructure delivery management and infrastructure procurement.
- e) The Framework for Infrastructure Procurement Management should be implemented together with the project management processes, to ensure alignment, integration and efficient and effective service delivery.

1. Scope

- 1.1 The Local Government FIDPM applies to organs of state which are subject to the Municipal Finance Management Act (MFMA).
- 1.2 The Framework provides minimum requirements for the implementation of Infrastructure Delivery and Procurement Management through the:
 - a) Project processes for infrastructure delivery management, and
 - b) Infrastructure procurement gates.
- 1.3 The Framework specifies the allocation of responsibilities for performing activities and making decisions at project stages and procurement gates.

5 Terms and Definitions

Approved: Officially agreed and signed-off by an Accounting Officer or a delegated person / body.

Construction: Everything constructed or resulting from construction operations.

Employer: Organ of state intending to, or entering into, a contract with a contractor.

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

Gateway review: An independent review of the available information at a gate upon which a decision is made whether to proceed to the next process, or not.

Infrastructure:

- immovable asset, which is acquired, constructed or results from construction operations; or
- Movable asset, which cannot function independently from purpose-built immovable asset(s).

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

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

Organ of State: Any department of state or administration in the national, provincial and local sphere of government.

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

Project: A unique set of processes consisting of coordinated and controlled activities with start and end dates, performed to achieve the project objective.

Stage: A collection of periodical and logically related activities in the Project Management Control Stages that culminates in the completion of an end of stage deliverable.

6 ABBREVIATIONS

CIDB Construction Industry Development

Board IDP Integrated Development Plan

FIDPM Framework for Infrastructure Delivery and Procurement

Management MFMA Municipal Finance Management Act

PSP Professional Service Provider

PPPFA Preferential Procurement Policy Framework Act

SCM Supply Chain Management

SDBIP Service Delivery Budget Implementation Plan

7 NORMATIVE REFERENCES

4.1 Acts of Parliament

The following referenced Acts of Parliament are indispensable in the application of this document:

- Architectural Profession Act, 2000 (Act No. 44 of 2000)
- Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
- Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- Construction Industry Development Board Act, 2000 (Act No. 38 of 2000)
- Division of Revenue Act (Annual)
- Engineering Profession Act, 2000 (Act No. 46 of 2000)
- Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000)
- Municipal Finance Management Act, (No. 56 of 2003)
- Local Government: Municipal Systems Act, 2000 (Act No. 32 Of 2000)
- National Archives and Record Services of South Africa Act, 1996 (Act No. 43 of 1996)
- Occupational Health and Safety Act, 1993 (Act No. 85 of 1993)
- Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000)
- Public Finance Management Act, 1999 (Act No. 1 of 1999)
- Quantity Surveying Profession Act of 2000 (Act No. 49 of 2000)
- Other Sector Specific Acts of Parliament.

4.2 Regulations issued in terms of the MFMA and MFMA Circulars

- i) Regulations issued in terms of the MFMA
- ii) Preferential Procurement Policy Framework Act Regulations (PPPFA of 2017 or as amended from time to time) and circulars.

4.3 Standards

- i) Applicable Construction Industry Development Board Standard for Uniformity
- ii) Construction Sector Code

4.4 Management System

- i) System in place
- ii)

4.5 National Treasury Guidelines

- i) Local Government Capital Asset Management Guideline and Planning Guidelines
- ii) Budget Facility for Infrastructure (BFI).

4.6 Department of Cooperative Governance and Traditional Affairs Guidelines

- i) Guidelines for Infrastructure Asset Management in Local Government.

8 FRAMEWORK FOR INFRASTRUCTURE DELIVERY

5.1 The Infrastructure Delivery Management Project Processes

- a) The project process of infrastructure delivery management contains control stage deliverables at the end of each stage. Table 1 outlines the stage deliverables that must be approved. The control stages are specific to project management processes; and outline and describe the stages in the life of a project from start to end. The specific stages are determined by the specific project's governance and control needs. The stages follow a logical sequence with a specified start and end. The deliverable is considered to have passed through the relevant stage when it is approved and signed off. The project then moves on to the next sequential stage. It is expected that the Garden Route Municipality's project implementation process reflects an engagement between the Budget Treasury Office, IDP, SCM, and all strategic role players when developing and approving projects. It is also expected that there should be engagements with the National and Provincial Treasury where appropriate or where projects dictate so.

Table 1: Project stage deliverables

Stage		Project Stage Deliverables
No	Name	End of Stage Deliverables
1	Initiation	<p>Initiation Report or Pre-feasibility Report</p> <p>5. The Initiation Report defines project objectives, needs, acceptance criteria, organisation's priorities and aspirations, and procurement strategies, which set out the basis for the development of the Concept Report.</p> <p>Or</p> <p>6. A Pre-feasibility Report is required on Mega Capital Projects, to determine whether to proceed to the Feasibility Stage; where sufficient information is presented to enable a final project implementation decision to be made. Mega capital projects should be determined in the municipality's policy approved by the Municipal Council.</p> <p>Stage 1 is complete when the Initiation Report or Pre-feasibility</p>

2	Concept	<p>Concept Report or Feasibility Report</p> <ul style="list-style-type: none"> i. The Concept Stage presents an opportunity for the development of different design concepts to satisfy the project requirements developed in Stage 1. This stage presents alternative approaches and an opportunity to select a particular conceptual approach. The objective of this stage is to determine whether it is viable to proceed with the project, premised on available budget, technical solutions, time frame and other information that may be required. ii. The Concept Report should provide the following minimum information:
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Stage		Project Stage Deliverables
No	Name	End of Stage Deliverables
		<ul style="list-style-type: none"> a) Document the initial design criteria, cost plan, design options and the selection of the preferred design option; or the methods and procedures required to maintain the condition of infrastructure, or the project. b) Establish the detailed brief, scope, scale, form and cost plan for the project, including, where necessary, the obtaining of site studies and construction and specialist advice. c) Provide an indicative schedule for documentation and construction, or maintenance services, associated with the project. d) Include a site development plan, or other suitable schematic layouts, of the works. e) Describe the statutory permissions, funding approvals and utility approvals required to proceed with the works associated with the project. f) Include a baseline risk assessment for the project and a health and safety plan, which is a requirement of the Construction Regulations issued in terms of the Occupational Health and Safety Act. g) Contain a risk report, need for further surveys, tests, investigations, consents and approvals, if any, during subsequent stages. <p>iii. A Feasibility Report must provide the following minimum information:</p> <ul style="list-style-type: none"> a. Details regarding the preparatory work covering: <ul style="list-style-type: none"> i. A needs and demand analysis with output specifications. ii. An options analysis. b. A viability evaluation covering: <ul style="list-style-type: none"> i. A financial analysis. ii. An economic analysis, if necessary. c. A risk assessment and sensitivity analysis; d. A professional analysis covering: <ul style="list-style-type: none"> i. A technology options assessment. ii. An environmental impact assessment. iii. A regulatory due diligence. e. An implementation readiness assessment covering:
3	Design Development	Design Development Report <ul style="list-style-type: none"> 1) The Design Development Report must, as necessary: <ul style="list-style-type: none"> • Develop, in detail, the approved concept to finalise the design and definition criteria.

Stage		Project Stage Deliverables
No	Name	End of Stage Deliverables
		<ul style="list-style-type: none"> Establish the detailed form, character, function and costings. Define the overall size, typical detail, performance and outline specification for all components. Describe how infrastructure, or elements or components thereof, are to function; and how they are to be safely constructed, be commissioned and be maintained. Confirm that the project scope can be completed within the budget, or propose a revision to the budget. <p>Stage 3 is complete when the Design Development Report is approved</p>
4	Design Documentation	<p>Design Documentation</p> <p>(vii) Design documentation provides:</p> <ul style="list-style-type: none"> the production information that details performance definition, specification, sizing and positioning of all systems and components that will enable construction; the manufacture, fabrication and construction information for specific components of the work, informed by the production information. <p>Stage 4 is complete when the Design Documentation Report is approved</p>
5	Works	<p>Completed Works capable of being used or occupied</p> <p>4) Completion of the Works Stage requires:</p> <ol style="list-style-type: none"> Certification of the completion of the works in accordance with the provisions of the contract; or Certification of the delivery of the goods and associated services in accordance with the provisions of the contract. <p>Stage 5 is complete when the Works Completion Report is approved</p>
6	Handover	<p>Works which have been taken over by the user or owner; Completed Training; Record Information</p> <p>(5) The handover stage requires the following activities to be undertaken:</p> <ol style="list-style-type: none"> Finalise and assemble record information which accurately reflects the infrastructure that is acquired, rehabilitated, refurbished or maintained; Hand over the works and record information to the user organisation and, if necessary, train end user staff in the operation of the works. <p>Stage 6 is complete when the Handover/Record Information Report is approved</p>

7	Close-Out	Defects Certificate or Certificate of Final Completion; Final Account; Close-Out Report
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Stage		Project Stage Deliverables
No	Name	End of Stage Deliverables
		<p>(6) The Close-Out Stage commences when the end user accepts liability for the works. It is complete when:</p> <ul style="list-style-type: none"> a) Record information is archived; b) Defects certificates and certificates of final completion are issued in terms of the contract; c) Final amount due to the contractor is certified in terms of the contract; d) Close-Out Report is prepared by the Implementer and approved by the Municipality. <p>Stage 7 is complete when the Close-out Report is approved.</p>

- b) Procurement of PSPs and Contractors can occur at different points in the project stages.
- c) Additional stages may be added to the described stages above, if deemed necessary. For example, additional stages could include those necessary to ensure that project activities are appropriately carried out and stages linked. Contract activities would, in many instances, be contingent upon the requirements of the specific contract being used.
- d) For project progress using the project stages, reporting must be for the deliverable achieved in the stage immediately prior to the 'in progress' stage. For example, if a project is shown as being at Stage No. 3 (Design Development), it implies that the deliverable for Stage No. 2 (i.e. the Concept Report) has been achieved; and that the deliverable for Stage 3 (i.e. the Design Development Report) is in the process of being prepared.
- e) Where an organ of state engages another organ of state to provide agency services, a service delivery agreement must be developed that outlines the roles and responsibilities for each organ of state; and establishes a relationship between the client and the implementer. The development of all deliverables should be carried out in a cooperative and consultative manner between the Client and Implementer parties. All deliverables must be developed and signed off in compliance with the specific service delivery agreement.

c) Gateway Reviews

5.2.1 Gateway reviews for mega capital projects : Value > R50 000 000

- i. The MFMA (Act 56 of 2003), section 19 (2) states: "Before approving a capital project in terms of subsection (1)(b), the council of a municipality must consider the projected cost covering all financial years from the start until the project is operational; and the future operational costs and revenue on the project, including municipal tax and tariff implications."
- ii. The (LGFIDPM) Local Government Framework for Infrastructure Delivery and Procurement Management, prescribes the Gateway Review at the end of stage 2, as the minimum requirement to comply with section (i) above.

- iii. The focus of such a review must be on the quality of the documentation in the first instance, and thereafter on:
 - a. Deliverability: the extent to which a project is deemed likely to deliver;
 - b. Expected benefits: within the declared cost, time and performance area;
 - c. Affordability: the extent to which the project's level of expenditure and financial risk can be accepted, given the organisation's overall financial position, both singly, and when considering its other current and projected commitments; and
 - d. Value for money: The optimum combination of whole life costs and quality (or fitness of purpose), to meet the user's requirements.
- iv. A gateway review team must comprise of not less than three persons who are neither involved, nor associated with the project, but have a broad understanding of the subject matter.
- v. A gateway review must be led by a person who has experience in the planning of infrastructure projects and is registered as a professional with a statutory council under the built environment professions. The members of the team must, as relevant, have expertise in the key technical areas, cost estimating, scheduling and implementation of similar projects.
- vi. It is the duty of the institution's Accounting Officer or Authority to appoint a team responsible for the gateway review of his or her institution.
- vii. The gateway review team must base its findings primarily on:
 - a) The information contained in the end-of-stage deliverable;
 - b) Supplementary documentation, if any, provided by key staff and obtained during an interview process; and
 - c) Interviews with key staff members and stakeholders.
- viii. The gateway review team must issue a report at the conclusion of a gateway review, which reflects the team's assessment of the information at the end of a stage; and provides findings or recommendations on areas where further work should be undertaken to improve such information.
- ix. The gateway review findings must be classified by the gateway review team as:
 - a) Critical: Findings that pose adverse effect to the project or package. Critical findings are findings related to the stage deliverable that are wholly unacceptable.
 - b) Major: Findings that pose a potentially adverse effect to the project or package. Major findings are serious findings and are in direct violation of key legislation, e.g. The Constitution of the Republic of South Africa, the MFMA or the PPPFA.
 - c) Minor: Findings that do not pose any adverse effect to the project or package. Minor findings indicate the need for improvement of practices and processes.
- x. A Stage 2 deliverable must not be approved until such time that all findings have been resolved.

6.1 FRAMEWORK FOR INFRASTRUCTURE PROCUREMENT

(1) INTRODUCTION

The framework for infrastructure procurement outlines the minimum infrastructure procurement policy requirements for municipal planning and implementation.

The strategic direction set in the Integrated Development Plan (IDP) informs the framework for infrastructure procurement. For example, procurement strategies must be aligned to the municipality's developmental and internal transformation needs, as specified in the IDP.

(2) MINIMUM REQUIREMENT FOR INFRASTRUCTURE PROCUREMENT

- a) Infrastructure procurement must be undertaken in accordance with all applicable Infrastructure Procurement related legislation and this Framework.
- b) Infrastructure procurement must be implemented in accordance with the procurement gates prescribed in clause 6.3 below.
- c) The Accounting Officer must ensure that a budget is available for the duration of the project, in line with MFMA provisions for capital and operating budgets.
- d) The Accounting Officer must ensure that cash flow management processes are in place to meet payment obligations within the time periods specified in the contract.
- e) Procurement gates provided in 6.3 below must be used, as appropriate, to:
 - (i) Authorise commencement of activities that lead to the next control gate;
 - (ii) Confirm conformity with requirements; and/or
 - (iii) Provide information to eliminate any cause of non-conformity and to prevent reoccurrence.
- f) The authorisation to proceed to the next procurement gate must be given by a delegated person or body. The delegated person or body must be able to apply relevant built environment knowledge and skill to achieve the intended results required at the relevant procurement gate. The level of detail contained in the documentation on which a decision to proceed to the next procurement gate is made, must be sufficient to enable an informed decision.
- g) The Accounting Officer must develop and implement effective and efficient emergency procurement procedures, including relevant approval delegation, in compliance with relevant legislation.
- h) The Accounting Officer must develop and implement an effective and efficient infrastructure disposal policy in line with the Municipal Asset Transfer Regulations. The institution may consider disposal strategies aligned to their internal disposal policy, prior to proceeding with the procurement strategy.
- i) The Accounting Officer must keep records of Procurement Gate Approvals, in a manual or electronic format, with the following minimum requirements:
 - (i) Procurement gate;
 - (ii) Delegated person/s or body;
 - (iii) Date on which the approval request was received;
 - (iv) Date on which the approval was actioned; and
 - (v) Signature of the delegated person or body.
- j) All assets must be recorded in the municipal asset register as required by the GRAP standards.

6.3 Infrastructure Procurement Gates

6.3.1 Procurement Gate 1 (PG 1)

- a) Initiate a procurement process;
- b) **Minimum Requirement for PG 1:**
 - i. Establish and clarify the procurement need, aligned to the municipality's development and transformation priorities specified in the IDP.
 - ii. Determine a suitable title for the procurement, to be applied as the project description
 - iii. Prepare the broad scope of work for the procurement.
 - iv. Perform market analysis.
 - v. Estimate the financial value of proposed procurement and contract for budgetary purposes, based on the broad scope of work.
 - vi. Confirm the budget.
 - vii. Compliance with section 33 of the MFMA with respect to community and stakeholder consultation.
- c) **PG 1 is complete when a designated person or body makes the decision to proceed/not to proceed, with the procurement of the infrastructure.**

6.3.2 Procurement Gate 2 (PG 2)

- a) Approve procurement strategy to be adopted.
- b) **Minimum Requirement for PG 2:**
 - i. Develop a procurement strategy aligned to the institutional procurement strategy;
 - ii. Establish contracting and pricing strategy comprising of an appropriate allocation of responsibilities and risks; and the methodology for contractor payments.
 - iii. Identify service required for works.
 - iv. Decide on contracting strategy.
 - v. Decide on pricing strategy.
 - vi. Decide on form of contract.
 - vii. Establish opportunities for promoting preferential procurement in compliance with legislative provisions and the Construction Sector Code.
- c) **PG 2 is complete when a delegated person or body approves the procurement strategy that is to be adopted.**

6.3.3 Procurement Gate 3 (PG 3)

- a) Approve procurement documents.
- b) **Minimum requirements for PG 3:**
 - 1) Prepare procurement documents that are compatible with:
 - i. approved procurement strategies.
 - ii. project management design documentation.
- c) PG 3 is complete when the Bid Specification Committee approves the procurement document. .

6.3.4 Procurement Gate 4 (PG 4)

- a) Confirm that cash flow processes are in place to meet projected contractual obligations.
- b) **Minimum requirement for PG 4**
 - 6.3.4.b.1 Confirm that cash flow processes are in place to meet contractual obligations.
 - 6.3.4.b.2 Establish control measures for settlement of payments within the time period specified in the contract.
- c) **PG 4 is complete when a delegated person or body confirms in writing that cash flow processes are in place; and control measures are established for the procurement to take place.**

6.3.5 Procurement Gate 5 (PG 5)

- a) Solicit tender offers.
- b) **Minimum requirements for PG 5**
 - 6.3.5.b.1 Invite contractors to submit tender offers.
 - 6.3.5.b.2 Receive tender offers.
 - 6.3.5.b.3 Record tender offers.
 - 6.3.5.b.4 Safeguard tender offers.
- c) **PG 5 is complete when tender offers received are recorded and safeguarded by a delegated person from the SCM unit.**

6.3.6 Procurement Gate 6 (PG 6)

- a) Evaluate tender offers premised on undertakings and parameters established in procurement documents.
- b) **Minimum Requirement for PG 6:**
 - 6.3.6.b.1 Determine whether tender offers are complete.
 - 6.3.6.b.2 Determine whether tender offers are responsive.
 - 6.3.6.b.3 Evaluate tender submissions.
 - 6.3.6.b.4 Review minimum compliance requirements for each tender.
 - 6.3.6.b.5 Perform a risk analysis.
 - 6.3.6.b.6 Prepare a report on tender offers received, and on their achievement of minimum compliance.
- c) **PG 6 is complete when the chairperson of the Bid Evaluation Committee approves the BEC report.**

6.3.7 Procurement Gate 7 (PG 7)

- a) Award the contract.
- b) **Minimum Requirement for PG 7:**
 - 6.3.7.b.1 Bid adjudication committee review of the BEC evaluation report.
 - 6.3.7.b.2 Bid Adjudication Committee makes an award.
 - 6.3.7.b.3 Accounting Officer approval of the tender process.
 - 6.3.7.b.4 Notify successful tenderer and unsuccessful tenderers of the outcome.
 - 6.3.7.b.5 Sign contract document.
 - 6.3.7.b.6 Formally accept tender offer.
- c) **PG 7 is complete when the Accounting Officer, or the Bid Adjudication**

Committee where delegated, confirms that the tenderer has provided evidence of complying with all requirements stated in the tender data and formally accepts the tender offer in writing, and issues the contractor with a signed copy of the contract.

6.3.8 Procurement Gate 8 (PG 8)

- a) Administer and monitor the contract.
- b) **Minimum Requirements for PG 8:**
 - 1) Finance department to:
 - i. Capture contract award data.
 - ii. Manage cash flow projection.
 - iii. Administer contract in accordance with the terms and provisions of the contract.
 - i. Delivery department to:
 - 2) Ensure compliance with contractual requirements.
- c) **PG 8 is complete when a delegated person captures the contract completion/termination data (close out reports and relevant documents), including payment certificates due**



PREFERENTIAL PROCUREMENT POLICY

Adopted by Council COUNCIL RESOLUTION DC



Garden Route District Municipality, the leading, enabling and inclusive district, characterised by equitable and sustainable development, high quality of life and equal opportunities for all.

In order to achieve its vision, the Garden Route District Council accepted the mission below. The Garden Route District Municipality as a category C local authority strives, to deliver on our mandate through:

- Unlocking resources for equitable, prosperous and sustainable development.
- Provide the platform for coordination of bulk infrastructure planning across the district.
- Provide strategic leadership towards inclusive / radical / rigorous socio-economic transformation to address social, economic and spatial injustice.
- Redress inequalities, access to ensure inclusive services, information and opportunities for all citizens of the district.
- Initiate funding mobilisation initiatives/ programmes to ensure financial sustainability.
- Coordinate and facilitate social development initiatives.

Foreword:**Section 217 of the Constitution of the Republic of South Africa -**

1. When an organ of state in the national, provincial or Local sphere of Government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.
2. Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –
 - a) Categories of preference in allocation of contracts; and
 - b) The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination
3. National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

Section 2 of Preferential Procurement Policy Act of 2000 –

1. An organ of state must determine its preferential procurement policy and implement it within the following framework:
 - (a) A preference point system must be followed
 - (b)
 - i. for contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 90 points for price
 - ii. For contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 80 points
 - (c) Any other acceptable tenders which are higher in prices must score fewer points, on pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with prescribed formula
 - (d) The specific goals may include –
 - i. Contracting with persons or categories of persons from designated sectors on the basis of race, gender or disability
 - ii. Implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994
 - (e) Any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender
 - (f) The contract must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer; and

(g) Any contract awarded on account of false information furnished by the tenderer in order to secure preference in terms of this Act, may be cancelled at the sole discretion of the organ of state without prejudice to any other remedies the organ of state may have.

(h) Any Goals contemplated in subsection (1)(e) must be measurable, quantifiable and monitored for compliance

Exemption

The minister may, on request, exempt an organ of state from any or all the provisions of this Act if-

- (a) It is in the interest of national security
- (b) The likely tenderers are international suppliers; or
- (c) It is in the public interest

In Accordance with the Garden Route District Council's Supply Chain Management Policy, Section 3(4)

The desired outcome of the policy is to provide mechanism to ensure sound, sustainable and accountable Supply Chain Management with the Garden Route District Municipality while promoting the following Regional Economic and development objectives:

- 1) to stimulate and promote local economic development in a targeted and focused manner as per Regional Economic Development Strategy and Regional Economic Policy;
- 2) to promote resource efficiency and reduce the negative environmental impact of daily operations of the Garden Route District;
- 3) to facilitate creation of employment and business opportunities for the people of the Garden Route District with particular reference to Preferential Procurement Policy Framework Act, 2000, Preferential Procurement Regulations, 2017, and setting specific B-BEEE rating targets for all procurement above a range as determined by council over a period of the contract.
- 4) to promote the competitiveness of regional businesses within approved Regional Economic Development Strategy in line with relevant Framework Act;

In Accordance with the Garden Route District Council's Supply Chain Management Policy, section 35

35. Proudly South African Campaign / Proudly Garden Route Campaign

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

- a) Preferential procurement framework Policy Act, 2000: Preferential Procurement Regulations, 2017, Regulation 8, Local production and Content and any subsequent circulars relating to designated sectors and local content thresholds
- b) In the absence of designated sector for a particular commodity by the Department of Trade and Industry or National Treasury, Garden Route District may include as a specific

condition of tender , that locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered

- c) Any prequalification criteria in the acquisition of goods or services that seeks to address localisation and empowerment local entities; must be in accordance with an approved Local Economic Development Strategy or Policy of Council that is in line with relevant regulatory framework or statute.*

(2) The district to develop and support Proudly Garden Route Brand and products to the extent , that all things being equal, preference is given to procuring local goods and services in accordance to section 35(1)(b) and Section 35(1)(c); in alignment to section 3(4) of the Policy. The aim is in support of the regional economic strategy and developing a vibrant economy within the Garden Route economic corridor.

Conclusion:

In order for council to realise its vision and mission, key strategies and policies must be put in place to translate the vision into a tangible reality.

Preferential procurement policy should be applied in within the ambit of to the Regional Economic and Development Strategy of the Garden Route and Klein Karoo. Its application and implementation should be transparent, measurable, fulfil sector specific objectives of regional economic and development strategy for transformation and empowerment with an underlying premise of value for money.

Successful implementation requires an organization wide approach, with each department given an economic transformation and empowerment agenda for implementation. Departmental Demand Management plan that translates into a Procurement Plan should have set targets for empowerment, economic transformation and upliftment of the previously disadvantaged for each department.

Economic Development and Planning Department to partake in the process of setting targets for the organization with clear guidelines for their measurement. Tangible results can only be achieved if the Economic Transformation and Empowerment Agenda is a tone set from the top with each Head of Department being directly accountable on this key performance indicator.

1. Definitions

In this Policy, unless the context indicates otherwise, any word or expression to which a meaning have been assigned in the Act must bear the meaning so assigned-

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
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. "designated group"	<p>1.8.1. black designated groups;</p> <p>1.8.2. black people;</p> <p>1.8.3. women;</p> <p>1.8.4. people with disabilities;</p> <p>1.8.5. small enterprises, as defined in section 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996); or</p> <p>1.8.6. emerging enterprises which are enterprises, owned, managed and controlled by people listed in 1.8.1 – 1.8.4, persons and which is overcoming business impediments arising from the legacy of apartheid;</p>
1.9. "designated sector"	means a sector, sub-sector or industry or product designated in terms of regulation 8(1)(a) of Preferential procurement Regulation of 2017

1.10. "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
1.11. "functionality"	means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents
1.12. "military veteran"	has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011)
1.13. "National Treasury"	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
1.14. "people with disabilities"	has the meaning assigned to it in section 1 of the Employment Equity Act, 1998 (Act No. 55 of 1998)
1.15. "price"	includes all applicable taxes less all unconditional discounts
1.16. "proof of B-BBEE status level of contributor"	<p>Means:</p> <p>1.16.1.the B-BBEE status level certificate issued by an authorised body or person</p> <p>1.16.2.a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or</p> <p>1.16.3.any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act</p>
1.17. "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
1.18. "Rand value"	means the total estimated value of a contract in Rand, calculated at the time of the tender invitation
1.19. "rural area"	<p>means-</p> <p>1.19.1.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</p> <p>1.19.2.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</p>

1.20. “stipulated minimum threshold	means the minimum threshold stipulated in terms of regulation 8(1)(b)
1.21. “the Regulation”	means the Preferential Procurement Regulation, 2017
1.22. “township”	means an urban living area that any time from the late 19th century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994
1.23. “treasury”	has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)
1.24. “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, Objectives & General Requirements

- 2.1. This Policy complies with the framework of the PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000.
- 2.2. This Policy was developed in terms of the PREFERENTIAL PROCUREMENT REGULATIONS, 2017.
- 2.3. This Policy applies to the Garden Route District Municipality and the objectives are to:
 - 2.3.1. Provide clarity on the municipality's approach to procurement, particularly with regards to requirements of preferential procurement;
 - 2.3.2. Provide access to contracts for historical disadvantaged individuals;
 - 2.3.3. Promote participation by SMMEs;
 - 2.3.4. Promote capacity development and skills transfer;
 - 2.3.5. Promote Local Economic Development and endeavour to ensure the attainment of the award of at least 40% of all procurement within the boundaries of the Garden Route District Municipality.
 - 2.3.6. To redress inequalities of the past and promote broader inclusion of the previously marginalised into the mainstream of the formal economy with a targeted approach of at least 30% of procurement be earmarked to companies with a BBBEE level 1
- 2.4. General requirements
 - 2.4.1. Any specific goal required for consideration in the bidding process must be clearly determined by the Bid Specification Committee and be defined in the bid documentation, taking into account prescriptions of the Construction Industry Development Board [CIDB] in respect of construction related contracts.
 - 2.4.2. Outputs required will be quantified and will form part of the contractual arrangement upon awarding of the contract.

3. Identification of preference point system, designated sector, pre-qualification criteria, objective criteria and sub-contracting

3.1. The Municipality must-

3.1.1. determine and stipulate in the tender documents-

- (i) the preference point system applicable to the tender as envisaged in Section 6 or 7; or
- (ii) if it is unclear which preference point system will be applicable, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system;

3.1.2. determine whether pre-qualification criteria are applicable to the tender as envisaged in Section 4;

3.1.3. 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 Section 8;

3.1.4. determine whether compulsory sub-contracting is applicable to the tender as envisaged in Section 9; and

3.1.5. determine whether objective criteria are applicable to the tender as envisaged in Section 11.

4. Pre-qualification criteria for preferential procurement

4.1. If the Municipality decides to apply pre-qualifying criteria to advance certain designated groups, the Municipality 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;

4.1.3. a tenderer sub-contracting a minimum of 30% to-

- (i) an EME or QSE which is at least 51% owned by black people;
- (ii) an EME or QSE which is at least 51% owned by black people who are youth;
- (iii) an EME or QSE which is at least 51% owned by black people who are women;
- (iv) an EME or QSE which is at least 51% owned by black people with disabilities;
- (v) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
- (vi) a cooperative which is at least 51% owned by black people;
- (vii) an EME or QSE which is at least 51% owned by black people who are military veterans;
- (viii) an EME or QSE.
- (ix) a local emerging enterprise

4.1.4. Local emerging contractors, registered with the CIDB, from designated sector individuals/communities who will be assisted with targeted contract opportunities.

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

5. Tenders to be evaluated on functionality

- 5.1. The Municipality must state in the tender documents if the 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. the 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-
 - (i) low that it may jeopardise the quality of the required goods or services; or
 - 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 Section 11.

6. 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million

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

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

Where-

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{min} = Price of lowest acceptable tender.

- 6.2. The following table must be used to calculate the score out of 20 for B-BBEE:

B-BBEE Status Level of Contributor Number of Points

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18

3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 6.3.** A tenderer must submit proof of its B-BBEE status level of contributor.
- 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 sub-contracting 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 sub-contractor is an EME that has the capability to execute the sub-contract.
- 6.6.** The points scored by a tenderer for B-BBEE in terms of section 6.2 must be added to the points scored for price under sub-section (1).
- 6.7.** The points scored must be rounded off to the nearest two decimal places.
- 6.8.** Subject to section 6.9 and section 11, the contract must be awarded to the tenderer scoring the highest points.
- 6.9.** If the price offered by a tenderer scoring the highest points is not market-related, the municipality may not award the contract to that tenderer.
- 6.10.** The Municipality may-
- 6.10.1.** negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
- 6.10.2.** 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;
- 6.10.3.** 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.
- 6.11.** If a market-related price is not agreed as envisaged in section 6.10.3, the Municipality must cancel the tender.
- 7. 90/10 preference point system for acquisition of goods or services with Rand value above R50 million**
- 7.1.** The following formula must be used to calculate the points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

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

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:

B-BBEE Status Level of Contributor Number of Points

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

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

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

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 sub-contracting 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 sub-contractor is an EME that has the capability to execute the sub-contract.

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

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

7.8. Subject to sub-section (9) and section 11, the contract must be awarded to the tenderer scoring the highest points.

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

7.10. The Municipality may-

- 7.10.1. negotiate a market-related price with the tenderer scoring the highest points or cancel the tender;
- 7.10.2. 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;
- 7.10.3. 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.
- 7.11. If a market-related price is not agreed as envisaged in section 7.10.3., the Municipality 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, sub-sector or industry or product in accordance with national development and industrial policies for local production and content, where only locally produced services or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content, taking into account economic and other relevant factors; and
 - 8.1.2. stipulate a minimum threshold for local production and content.
- 8.2. The Municipality 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 Municipality of any designation made in terms of section 8(1) through a Circular.
- 8.4. If there is no designated sector, The Municipality may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.
- 8.5. The threshold referred to in Section 8.4 must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.
- 8.6. A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

9. Sub-contracting as condition of tender

- 9.1. If feasible to sub-contract for a contract above R30 million, The Municipality must apply sub-contracting to advance designated groups.
- 9.2. If The Municipality applies sub-contracting as contemplated in Sub-Section (1), the Municipality must advertise the tender with a specific tendering condition that the successful tenderer must sub-contract 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-sections 2.1 – 2.8.
- 9.3. The Municipality 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-Section (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 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 Municipality intends to apply objective criteria in terms of section 2(1)(f) of the Act, the Municipality must stipulate the objective criteria in the tender documents.

12. Conditions

- 12.1. Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered.
- 12.2. The Municipality must, when calculating comparative prices, take into account any discounts which have been offered unconditionally.
- 12.3. A discount which has been offered conditionally must, despite not being taken into account for evaluation purposes, be implemented when payment is processed.
- 12.4. Points scored must be rounded off to the nearest 2 decimals places.
- 12.5. A trust, 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.

- 12.6. A trust, 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.
- 12.7. When the Municipality is in need of a service provided by only Higher Education institutions, such services must be procured through a tendering process from the identified Higher Education institutions.(limited Bidding)
- 12.8. Higher Education institutions referred to in sub-Section (12.7) will be required to submit their B-BBEE status in terms of the specialized scorecard contained in the B-BBEE Codes of Good practice.

13. Declarations

- 13.1. A tender must, in the manner stipulated in the document, declare that-
 - 13.1.1. the information provided is true and correct;
 - 13.1.2. the signatory to the tender document is duly authorised; and
 - 13.1.3. documentary proof regarding any tendering issue will, when required, be submitted to the satisfaction of the Municipality.

14. Sub-contracting after award of tender

- 14.1. A person awarded a contract may only enter into a sub-contracting arrangement with the approval of the Municipality.
- 14.2. A person awarded a contract in relation to a designated sector, may not sub-contract 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.
- 14.3. A person awarded a contract may not sub-contract 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 sub-contracted to an EME that has the capability and ability to execute the sub-contract.

15. Cancellation of tender

- 15.1. The Municipality may, before the award of a tender, cancel a tender invitation if-
 - 15.1.1. due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
 - 15.1.2. funds are no longer available to cover the total envisaged expenditure;
 - 15.1.3. no acceptable tender is received; or
 - 15.1.4. there is a material irregularity in the tender process.
- 15.2. The decision to cancel a tender invitation in terms of Sub-Section (1) must be published in the same manner in which the original tender invitation was advertised.
- 15.3. The Municipality may only with the prior approval of the relevant Treasury cancel a tender invitation for the second time.

16. Remedies

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

16.1.1. inform the tenderer accordingly;

16.1.2. give the tenderer an opportunity to make representations within 14 days as to why-

- i. the tender submitted should not be disqualified or, if the tender has already been awarded to the tenderer, the contract should not be terminated in whole or in part;
- ii. if the successful tenderer sub-contracted a portion of the tender to another person without disclosing it, the tenderer should not be penalised up to 10 percent of the value of the contract; and
- iii. the tenderer should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state; and

16.1.3. if it concludes, after considering the representations referred to in sub-section (1)(b), that-

- (i) such false information was submitted by the tenderer-
 - (aa) disqualify the tenderer or terminate the contract in whole or in part; and
 - (bb) if applicable, claim damages from the tenderer; or
- (ii) the successful tenderer sub-contracted a portion of the tender to another person without disclosing, penalise the tenderer up to 10 percent of the value of the contract.

16.2. The Municipality must-

16.2.1. inform the National Treasury, in writing, of any actions taken in terms of Sub-Section (1);

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

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

16.3. The National Treasury may request The Municipality to submit further information pertaining to Sub-Section 1 within a specified period.

16.4. The National Treasury must-

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

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

17. Circulars and guidelines

17.1. The National Treasury may issue-

17.1.1. a circular to inform Municipality of any matter pertaining to these Regulations; or

17.1.2. a guideline to assist Municipality with the implementation of any provision of these Regulations.

18. Short title and commencement

18.1. This Policy is called the Garden Route District Municipality Preferential Procurement Policy and took effect upon Council approval, May 2018, and should be reviewed annually.



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 62/22

In the matter between:

MINISTER OF FINANCE

Applicant

and

**SAKELIGA NPC
(PREVIOUSLY KNOWN AS AFRIBUSINESS NPC)**

First Respondent

RULE OF LAW PROJECT

Second Respondent

ECONOMIC FREEDOM FIGHTERS

Third Respondent

Neutral citation: *Minister of Finance v Sakeliga NPC (previously known as Afribusiness NPC) and Others* [2022] ZACC 17

Coram: Jafta J, Khampepe J, Madlanga J, Majiedt J, Mhlantla J, Pillay AJ, Theron J, Tlaletsi AJ, Tshiqi J.

Judgment: Madlanga J (unanimous)

Decided on: 30 May 2022

ORDER

On application for direct access to the Constitutional Court of South Africa on an urgent basis:

The application is dismissed with costs, including costs of two counsel.

JUDGMENT

MADLANGA J (Jafta J, Khampepe J, Majiedt J, Mhlantla J, Pillay AJ, Theron J, Tlaletsi AJ and Tshiqi J concurring):

[1] This matter was decided without an oral hearing. The crisp question for determination is whether an order given by this Court in *Afribusiness*¹ is susceptible to variation; does the order in any way lack clarity? By a majority decision, this Court – in *Afribusiness* – dismissed an appeal by the present applicant, the Minister of Finance (Minister), against a judgment of the Supreme Court of Appeal. In its judgment, the Supreme Court of Appeal had declared invalid the Preferential Procurement Regulations.² These are Regulations that were made by the Minister in terms of the Preferential Procurement Policy Framework Act.³ The Supreme Court of Appeal suspended the declaration of invalidity for 12 months to enable corrective action.

[2] The Minister now brings an urgent application for direct access seeking a variation of the order that dismissed his appeal. He claims that this Court’s order is ambiguous or lacks clarity and is thus susceptible to variation. According to the Minister, the only thing that gives rise to the perceived problem with the order is a footnote in the minority judgment.⁴ Here is how the problem is said to arise. With reference to the Supreme Court of Appeal’s 12-month suspension of the declaration of

¹ *Minister of Finance v Afribusiness* [2022] ZACC 4; [2022] JOL 52147 (CC) (*Afribusiness*).

² Preferential Procurement Regulations, GN R32 GG 40553, 20 January 2017.

³ 5 of 2000.

⁴ *Afribusiness* above n 1 at fn 28.

invalidity, the footnote says “[t]he period of suspension expired on 2 November 2021”. This date is the end of 12 months from the date of the Supreme Court of Appeal’s order. The Minister observes that the statement in the footnote was “very respectfully in conflict with section 18(1) of the Superior Courts Act”.⁵ The Minister correctly highlights the fact that this Court’s majority judgment does not respond to the content of the footnote. He says “the incorrect statement [in the footnote] is the only articulation of this . . . Court’s position on the suspension period granted by the [Supreme Court of Appeal]”. The Minister concludes that the majority’s omission to address the content of the footnote has resulted in lack of clarity. If I understand the Minister correctly, he suggests that this is exacerbated by the fact that this Court’s order simply says the appeal is dismissed⁶ and “does not purport to set aside, replace, substitute or in any way vary the order of the [Supreme Court of Appeal]”.

[3] The confusion gives rise to three possible interpretations of this Court’s order, so claims the Minister. First, the Minister submits that in terms of section 18(1) of the Superior Courts Act the operation of the order of the Supreme Court of Appeal was suspended from the date the Minister lodged an application for leave to appeal to this Court on 23 November 2020. And the operation of that order started running again when this Court dismissed the appeal on 16 February 2022. Second, the order may be interpreted to mean that the Regulations were invalidated with immediate effect and prospectively from the date of dismissal of the appeal and without any suspension. Third, and in accordance with the doctrine of objective constitutional invalidity, the order may be interpreted to mean that the invalidation is with effect from the date the Regulations were promulgated.

[4] The Minister avers that each of these interpretations has support from different interest groups. He submits that, as a result of these three possible interpretations, this Court’s order is a candidate for variation in terms of rule 42(1)(b) of the

⁵ 10 of 2013.

⁶ This Court’s order simply said: “The appeal is dismissed with costs, including the costs of two counsel.”

MADLANGA J

Uniform Rules of Court, which is made applicable to this Court by rule 29 of this Court's Rules. Rule 42(1)(b) provides that "[t]he court may . . . *mero motu* [of its own accord] or upon application of any party affected, rescind or vary . . . an order or judgment in which there is an ambiguity, or patent error or omission, but only to the extent of such ambiguity, error or omission".

[5] The Minister submits that the patent error, patent omission, and ambiguity that render this Court's order liable to variation in terms of rule 42(1)(b) consist in the content of the footnote referred to earlier.

[6] The Minister submits that variation is the "cleanest and least burdensome" way to correct the lack of clarity in the order. Variation would require only minor clerical edits to the order of the majority judgment and a correction of the footnote in the minority judgment.

[7] The first respondent, Sakeliga NPC (Sakeliga), which was cited by its previous name, Afribusiness NPC, in the application for leave to appeal to this Court, opposes the present application. The Rule of Law Project and the Economic Freedom Fighters, the second and third respondents, respectively, have opted not to enter the fray. Sakeliga contends that the application is an exercise in futility, an abuse of the process of this Court and a waste of judicial resources. It argues that there is no need for the relief sought by the Minister as the period of suspension is regulated by the Superior Courts Act. That is so because, when the order is looked at in the light of the Superior Courts Act, there is no ambiguity, error or omission. The argument continues that this is a matter of arithmetical calculation. According to Sakeliga, this entails a simple calculation in accordance with the provisions of section 18(1) of the Superior Courts Act. What the Minister is seeking to achieve is an amendment of the order of the Supreme Court of Appeal, which stands as a result of this Court's dismissal of the appeal. The Minister cannot get that outcome using rule 42, submits Sakeliga.

MADLANGA J

[8] Sakeliga also argues that footnote 28 of the minority judgment is of no consequence and cannot affect the majority judgment.

[9] What must I make of these submissions?

[10] The application does warrant direct access. *Zuma* tells us that it would be inappropriate for any other court to entertain an application in terms of rule 42 pertaining to an order made by this Court.⁷

[11] Coming to the merits, the springboard of this application is the perceived confusion caused by the content of footnote 28 of the minority judgment. The majority judgment opens by clearly stating what it agrees with in the minority judgment.⁸ That does not include the content of footnote 28. In any event, a minority judgment is just that. Unless parts of it have been adopted either expressly or impliedly, I do not understand how it can affect the meaning of an order granted by the majority. The footnote has certainly not been adopted expressly. Nor do I see a basis for an argument that it has been adopted impliedly. It is worth noting that the Minister says the majority judgment is “silent” on the content of the footnote. There is no basis whatsoever for suggesting that the majority judgment adopted the content of footnote 28 of the minority judgment. Therefore, the footnote could not have given rise to any confusion in this Court’s order.

[12] Crucially, the Minister is aware of the import of section 18(1) of the Superior Courts Act. He says in terms of this section the operation of the order of the Supreme Court of Appeal was suspended from the date the Minister lodged an application for leave to appeal to this Court on 23 November 2020. The law is, and has always been, clear on the issue. In *Ntsemeza* the Supreme Court of Appeal traces the

⁷ *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State (Council for the Advancement of the South African Constitution and Democracy in Action as Amicus Curiae)* [2021] ZACC 28; 2021 JDR 2069 (CC); 2021 (11) BCLR 1263 (CC) at para 49.

⁸ *Afribusiness* above n 1 at para 96.

law from the common law position before any statutory intervention.⁹ It quotes *South Cape Corporation*, which held:

“Whatever the true position may have been in the Dutch Courts, and more particularly the Court of Holland . . . it is today the accepted common law rule of practice . . . that generally the execution of a judgment is automatically suspended upon the noting of an appeal, with the result that, pending the appeal, the judgment cannot be carried out and no effect can be given thereto, except with the leave of the court which granted the judgment. To obtain such leave the party in whose favour the judgment was given must make special application The purpose of this rule as to the suspension of a judgment on the noting of an appeal is to prevent irreparable damage from being done to the intending appellant, either by levy under a writ of execution or by execution of the judgment in any other manner appropriate to the nature of the judgment appealed from.”¹⁰

[13] Plainly, execution of a judgment means giving effect to the judgment. And reference to “execution of the judgment in any other manner *appropriate to the nature of the judgment* appealed from”¹¹ gives a wide meaning to the word “execution”. We should not be led to think it relates only to execution under a writ of execution. Put simply, it means giving effect to the order, whatever its nature. So, the suspension of the execution of a judgment means “the judgment cannot be carried out and no effect can be given thereto”.¹² And that applies to whatever it is that is required to be done or has to take place in terms of the judgment.

[14] In what effectively amounted to “a restatement of the common law”, rule 49(11) of the Uniform Rules of Court provided:

“Where an appeal has been noted or an application for leave to appeal against or to rescind, correct, review or vary an order of a court has been made, the operation and

⁹ *Ntsemeza v Helen Suzman Foundation* [2017] ZASCA 93; 2017 (5) SA 402 (SCA) at para 19.

¹⁰ *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 544H-545B.

¹¹ Emphasis added.

¹² *South Cape Corporation* above n 10 at 544H.

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execution of the order in question shall be suspended, pending the decision of such appeal or application, unless the court which gave such order, on the application of a party, otherwise directs.”

This rule has since been repealed.¹³

[15] The position is now governed by section 18(1) of the Superior Courts Act. This section provides:

“Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.”¹⁴

This too is in line with the common law position which has already been explained. And “operation” which the section couples with “execution” (“operation and execution”) does not alter the legal position stated above.

[16] Based on this clear statutory position, the operation and execution of the order of the Supreme Court of Appeal was halted. In practical terms, what happened immediately after that order was granted was that the countdown on the 12-month period of suspension began. But the countdown was halted on the 21st day by the lodgment of the application for leave to appeal in this Court.¹⁵ Because section 18(1) suspends the operation and execution of a judgment “pending the decision of the

¹³ Rule 49(11) was repealed by means of GN R317 GG 38694, 17 April 2015.

¹⁴ Section 18(2) and (3) provides:

“(2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.”

¹⁵ The Supreme Court of Appeal made the order of invalidation on 2 November 2020, and the application for leave to appeal to this Court was lodged on 23 November 2020.

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application [for leave to appeal] or appeal”, the countdown resumed after this Court dismissed the appeal on 16 February 2022. Unsurprisingly, the Minister does realise that this is how the order ought to be interpreted. He says he is seeking confirmation that—

“the [Supreme Court of Appeal’s] order as a whole was suspended when the Minister applied for leave to appeal to this Court; that the order of suspension by the [Supreme Court of Appeal], once suspended by the application for leave to appeal, did not take effect until this Court dismissed the Minister’s appeal; and that the declaration of invalidity as ordered by the [Supreme Court of Appeal] remains suspended and the period of suspension commenced running again after this Court dismissed the Minister’s appeal on 16 February 2022.”

For the reasons I have given, there is no need for this clear legal position to be confirmed.

[17] As at 16 February 2022, of the 12-month period of suspension, less than a month had elapsed.

[18] With the legal position as plain as it is, I do not understand how the confusion we hear about from the Minister could have arisen. It could have arisen only if the Minister and the interest groups to which he refers interpreted the order without due regard to the law; that is, the provisions of section 18(1). Of course, there is no justification for interpreting the order in a vacuum.

[19] In sum, there is no substance in the Minister’s submissions.

[20] The Director-General of the National Treasury, who is the deponent to the Minister’s founding affidavit, informs this Court that subsequent to the dismissal of the appeal and as a result of the perceived problem with the order, he sent out a communication, the effect of which was to halt government procurement pending the

outcome of the present application. Obviously, this decision was the result of a misunderstanding of the law. It has nothing to do with the order of this Court.

[21] The Minister sought several alternative remedies in the event of the variation order prayed for not being granted.¹⁶ The springboard for all the relief sought – main and alternative – is the idea that there is something wrong with this Court’s order. Well, there is not. That must mean the alternative relief must also fail.

¹⁶ The notice of motion reads:

“Take notice that the applicant (the Minister) hereby applies in terms of rules 12(1), 18 and 29 of the Rules of the Constitutional Court, read with rule 42 of the Uniform Rules of Court and (to the extent necessary) section 167(6)(a) of the Constitution, for an order:

1. Enrolling this application as an urgent application and, insofar as may be necessary, dispensing with the procedures prescribed by the Rules of the Constitutional Court, and directing that the application be heard as one of urgency under rule 12(1) thereof;
2. Granting the Minister direct access to the Constitutional Court in terms of section 167(6)(a) of the Constitution.
3. Varying the order of the Constitutional Court in the matter CCT 279/20 (main case) to make clear:
 - 3.1. that the operation of the period of suspension in paragraph 2(a) of the order of the Supreme Court of Appeal was suspended pending the Constitutional Court’s decision of the appeal in the main case, and recommenced from 16 February 2022, being the date of the Constitutional Court’s order; and
 - 3.2. that tender processes conducted by organs of state under the Preferential Procurement Regulations, 2017, are not affected until the expiration of the suspension period,

and by—

 - 3.2.1 inserting appropriate sub-paragraphs to the order of the majority judgment of Madlanga J; and
 - 3.2.2 to the extent necessary, excising the second sentence of footnote 28 from the minority judgment of Mhlantla J.
4. In the *alternative* to, or together with, the relief sought in paragraph 3 and 4 above, granting declaratory relief to the effect that the import of the judgment and order of the Constitutional Court in the main case is what is set out in 3.1 and 3.2 above.
5. In the *further alternative* to the relief sought in paragraphs 3 and 4 above, granting declaratory relief to the effect that the import of the judgment and order of the Constitutional Court in the main case is what is set out in 3.1 and 3.2 above.
6. In the *further alternative* to paragraphs 3, 4 and 5 above, by declaring that the declaration of invalidity shall operate prospectively only from the date of this Court’s judgment.
7. Ordering any of the respondents who oppose the application to pay the Minister’s costs, including the costs of two counsel, on a joint and several basis with any other respondent who opposed the application.
8. Granting further and/or alternative relief.”

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Order

[22] Consequently, the following order is made:

The application is dismissed with costs, including costs of two counsel.

For the Applicant:

N Maenetje SC and M Stubbs instructed
by the State Attorney, Pretoria

For the First Respondent:

T Strydom SC and J P Slabbert
instructed by Kriek Wassenaar and
Venter Incorporated



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

FURTHER COMMUNICATION ON CONSTITUTIONAL COURT JUDGMENT REGARDING PREFERENTIAL PROCUREMENT REGULATIONS, 2017

Following the Constitutional Court's judgment of 16 February 2022 on the matter between the Minister of Finance and Afribusiness regarding the 2017 Preferential Procurement Regulations (the 2017 Regulations), the Minister of Finance launched an application to the Constitutional Court seeking clarity on its judgement of 16 February 2022. Judgment was handed down by the Constitutional Court today, 30 May 2022.

According to the Constitutional Court's judgment of today-

- section 18(1) of the Superior Courts Act suspended the operation of the Supreme Court of Appeal's 12-month suspension of the invalidation of the 2017 Regulations;
- in practical terms, the countdown on the 12-month period of suspension commenced immediately after the date of suspension. The countdown, however, was halted by the lodgement of the application for leave to appeal in the Constitutional Court; and
- the countdown resumed on 16 February 2022, when the Constitutional Court dismissed the Minister's appeal against the Supreme Court of Appeal's order.

Therefore, the Constitutional Court confirmed that the suspension of the declaration of the order of invalidity of the 2017 Regulations is still valid for the remainder of the 12-month period, namely until 15 February 2023. This means that-

- the 2017 Regulations in their entirety are still valid.
- from today all exemptions granted to deal with the period of uncertainty following the Court's judgment of 16 February 2022, lapse (according to the condition in the letters of exemptions);
- from today all new quotations must be requested and tenders must be advertised, and dealt with, in accordance with the 2017 Regulations;
- a quotation requested or a tenders advertised before today must be dealt with in terms of the exemption and the internal procurement policy in place for the duration of the exemption. An organ of state may however decide to withdraw such a request for a quotation or an advert for a tender and request a new quotation or advertise a new tender that will be subject to 2017 Regulations; and
- the 2017 Regulations will remain in place until 15 February 2023 unless new regulations are promulgated before that date.

National Treasury is currently considering the public comments on the draft Preferential Procurement Regulations published on 10 March 2022 and will prepare final regulations that accord with the Constitutional Court's judgment of 16 February 2022.

Organs of state should, by 16 February 2023, ensure that procurement policies in line with the Constitutional Court's judgment of 16 February 2022 are in place or, if new Preferential Procurement Regulations are promulgated, when these Regulations take effect.

Issued by National Treasury

Date: 30 May 2022

Enquiries: Communications Unit

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**Western Cape
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THE PROVINCIAL AUDITOR

MASTER RECORDS OFFICIAL: BUSINESS INFORMATION AND DATA MANAGEMENT

THE HEAD OF DEPARTMENT: LOCAL GOVERNMENT

THE CHIEF DIRECTOR: LOCAL GOVERNMENT BUDGET ANALYSIS – NATIONAL TREASURY (MR J HATTINGH)

THE CHIEF DIRECTOR: MFMA IMPLEMENTATION – NATIONAL TREASURY (MR TV PILLAY)

WESTERN CAPE GOVERNMENT WAY FORWARD IN RESPONSE TO THE CLARIFICATION PROVIDED BY THE CONSTITUTIONAL COURT ON 16 FEBRUARY 2022, AS IT RELATES TO THE SUSPENSION OF INVALIDITY OF THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017

1. PURPOSE

- 1.1 The purpose of this circular is to notify accounting officers on the clarification provided by the Constitutional Court as sought by the National Treasury in respect of the suspension of invalidity of the Preferential Procurement Regulations, 2017.

2. BACKGROUND

- 2.1 On Wednesday, 16 February 2022, the Constitutional Court handed down judgment in the application for leave to appeal against a judgment and order of the Supreme Court of Appeal (SCA). This application was brought by the national Minister of Finance ("the Minister") against Afribusiness NPC, and concerns the validity of the Preferential Procurement Regulations, 2017 ("Procurement Regulations" as referred to in the judgment) promulgated by the Minister on 20 January 2017, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 ("Procurement Act" as referred to in the judgment).
- 2.2 The SCA declared the entire Procurement Regulations invalid on the basis that the content of the Regulations exceeded the Minister's power on what could permissibly be regulated on in terms of section 5 of the Procurement Act and section 217 of the Constitution.
- 2.3 In view of the above the Western Cape Government (WCG) issued Treasury Mun Circular 06/2022 to provide guidance on the interim arrangements, in response municipalities took a varied approach which included the following:
- a) municipalities and municipal entities should maintain the status quo and apply the Preferential Procurement Policy Framework Regulations, 2017 (PPPFR) up until such time as the Constitutional Court clarifies the applicable date of the invalidity of said Regulations, or new Procurement Regulations come into effect;
 - b) use the pre-existing points system with thresholds and associated formulas as per the PPPFR, 2017 i.e., 80/20 preference point system for procurement with a rand value equal to or above R30 000 up to R50million and the 90/10 preference point system for procurement above R50million (all applicable taxes included);
 - c) use the pre-existing mechanism to address the evidence requirements as it relates to the allocation of points for preference i.e., B-BBEE certificates and affidavits given that these matters were not in dispute and will be covered by the new National Treasury regulations;
 - d) sub-contracting requirements as contemplated in the 2017 Procurement Regulations have also been declared as invalid. However, the cidb prescripts/regulations in terms of empowerment impact assessments may still be concluded and sub-contracting as per the cidb prescripts/regulations in terms of the different cidb contracts may still be used in terms of the different contracting models for construction-related bids;
 - e) the status quo in terms of the advertisement and evaluation and awarding of quotations below R30 000 to be maintained; and
 - f) request for exemption from the Act in terms of section 2 of the PPPFA Act.

- 2.4 The judgement handed down by the Constitutional Court on 30 May 2022 in respect of the clarification sought by the National Treasury, **(hereto attached as Annexure A)**, confirms that the suspension of the declaration of the order of invalidity of the **2017 Regulations is still valid for the remainder of the 12-month period, hence the 2017 Regulations are still in forceable.**
- 2.5 In response to the Constitutional Court Judgment handed down on 30 May 2022, the National Treasury (NT) issued a media statement **(hereto attached as Annexure B)** indicating that:
- a) The **2017 Regulations in their entirety remains valid;**
 - b) **All exemptions granted to deal with the period of uncertainty following the Court's judgment of 16 February 2022, lapse** (according to the condition in the letters of exemptions);
 - c) **From 31 May 2022, all new quotations must be requested, and tenders must be advertised, and dealt with, in accordance with the 2017 Regulations;**
 - d) A quotation requested or a tender advertised before 30 May 2022 must be dealt with in terms of **the exemption and the internal procurement policy in place for the duration of the exemption.** An organ of state may however decide to withdraw such a request for a quotation or an advert for a tender and request a new quotation or advertise a new tender that will be subject to the 2017 Regulations; and
 - e) The 2017 Regulations will remain in place until **15 February 2023** unless new regulations are promulgated before that date (this date was however incorrectly calculated by the NT and should be **26 January 2023**).
- 3. WAY FORWARD FOR THE MUNICIPALITIES UP UNTIL THE NEW REGULATIONS COMES INTO EFFECT**
- 3.1 Given that the Constitutional Court judgment confirmed that the suspension of the declaration of the order of the invalidity of the **2017 Regulations is still valid for the remainder of the 12-month period, i.e until 26 January 2023**, municipalities must revert to the application of the 2017 Regulations.
- 3.2 In preparation of the promulgation of the new PPPFA Regulations, 2022, of which the date to be determined by the National Treasury, municipalities are requested to ensure that there's a process under way to finalise its preferential procurement policies in line with the PPPFA Act in terms of Section 2.(1) which states that *"An organ of state must determine its preferential procurement policy and implement it within the following framework"*.
- 3.3 In the interim, **municipalities must apply the local content and production requirements for designated sectors when advertising bids including quotations** together with all the applicable National Treasury MFMA Circulars until such time that the NT and dtic have determined a legal and viable modality for implementation.
- 3.4 The Provincial Treasury will be working together with municipalities and municipal entities to assist in drafting the preferential procurement policies in consultation with the broader SCM cadre, CFO Forum, and Municipal Managers Forum to seek consensus and buy-in for approval to their respective Municipal Councils.
- 3.5 The Provincial Treasury will re-engage the Department of Trade and Industry and Competition (DTIC) and National Treasury to suspend the local content and production designated sectors and/or retract the instruction notes as well as to determine an alternative way of implementing local content and production in liaison with the province by utilising the Joint Working Group (JWG) established in the Province prior to the Constitutional Court judgment.

- 3.6 The Provincial Treasury will approach and engage the Auditor-General (AG) on the approach applied within the province for audit purposes.

4. REQUEST

- 4.1 Accounting officers and accounting authorities must note the content of this Provincial Treasury Circular and communicate these requirements to officials under their control and responsible for the functions depicted in this Circular.
- 4.2 Municipalities and municipal entities should record all risks, impacts on service delivery and budgetary implications as part of their record of decision and keep this as evidence for audit purposes.
- 4.3 Municipalities and municipal entities must ensure that all policy decisions taken during the interim period is retracted and ensure all SCM Policies are aligned to the 2017 Regulations and adopted by Council to ensure compliance with the Constitutional Court Judgment handed down on 30 May 2022.

5. ENQUIRIES

- 5.1 All enquiries in respect of this circular or any other enquiries in respect of procurement planning must be directed to: SupplyChainManagement.HDMFMA@westerncape.gov.za

 Digitally signed by
RODNEY
Date: 2022.06.06
18:03:19 +02'00'

RODNEY MOOLMAN
DIRECTOR: LOCAL GOVERNMENT SUPPLY CHAIN MANAGEMENT

1. **UPPER LIMITS OF THE SALARIES, ALLOWANCES AND BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS FOR THE FINANCIAL YEAR 2021/2022 / BOONSTE PERKE VAN DIE SALARISSE, TOELAE EN VOORDELE VAN VERSKILLENDE LEDE VAN MUNISIPALE RADE VIR DIE 2021/2022 FINANSIËLE JAAR / AMABAKALA APHEZULU EMIVUZO,IZIBONELELO NENZUZO ZAMALUNGU AMABHUNGA OMASIPALA AHLUKILEYO KWIXESHA LONYAKA MALI KA 2021/2022**

REPORT FROM THE EXECUTIVE MANAGER: CORPORATE SERVICES (B HOLTZHAUSEN) MANAGER: HUMAN RESOURCES (N KLAAS)

2 PURPOSE

To consider the Upper Limits of the salaries, allowances and benefits of the different members of Municipal Councillors as issued on 02 June 2022.

3. DELEGATED AUTHORITY

Council

4. EXECUTIVE SUMMARY

The purpose of the report is to consider the new Upper limits of the salaries, allowances and benefits for councillors of the different members of Municipal Councils. The implementation date as per paragraph 19 of the Government Gazette (attached below), is effective from 01 July 2021.

5. RECOMMENDATIONS

1. That Council approves the upper limits of the Salaries, allowances and benefits of different members of municipal Councils as published on 02 June 2022 in the Government Gazette, No 11440.
2. That the office of the MEC for Local Government be informed of Council's Resolution, for concurrence .
3. That Council notes that implementation will only take place after obtaining the concurrence from the MEC for Local Government.

4. That the remuneration package or allowance in respect of a Councillor appointed to the District Municipality Council will be in accordance with the applicable tables published in the attached Government Gazette.

AANBEVELINGS

1. *Dat die Raad die Boonste Perke van die salarisse, toelaes en voordele van die verskillende lede van die verskillende lede van Munsipale Raadslede goedkeur, soos gepubliseer op 02 Junie 2022 in die Staatskoerant No11440.*
2. *Dat die LUR vir Plaaslike Regering in kennis gestel word van die Raadsbesluit, vir instemming.*
3. *Dat die Raad neem kennis dat implementering slegs sal plaasvind nadat die instemming van die LUR vir Plaaslike Regering verkry is.*
4. *Dat die vergoedingspakket of toelaag ten opsigte van 'n Raadslid wat by die Distriksmunisipaliteit aangestel is, in ooreenstemming sal wees met die toepaslike tabelle wat in die aangehegte Staatskoerant gepubliseer was.*

IZINDULULO

1. Sesokuba iBhunga liphumeze amabakala aphezulu eMivuzo, izibonelelo kunye nenzuzo ezahlukeneyo zamalungu amaBhunga oomasipala napapashwe ngomhla 02 kweyeSilimela 2022 kwiNcadi kaRhulumente, No 11440.
2. Sesokuba i-ofisi ypoMphathiswa Worhulumente Basekhaya aziswe ngesigqibo sebhunga, ngokwemvumelwano.
3. Sesokuba iBhunga lithathele ingqalelo ukuba ukumselwa kuzakwenziwa emveni kokufunyanwa kwesivumelwano soMphathiswa Worhulumente Wasekhaya.
4. Sesokuba isibonelelo semivuzo okanye izibonelelo ngokuphathelene noCeba ochongelwe kwiBhunga loMasipala Wesithili sizakwayamaniswa noluhlu olupapashwe kwiNcwadi kaRhulumente edityanisiweyo.

6.1 BACKGROUND

The Government Gazette confirms in their attached Notice the new Upper limits of the salaries, allowances and benefits of the different members of Municipal Councilors for the year of 2021/2022.

6.2 DISCUSSION

On an annual basis the Minister of COGTA in consultation with the Member of the Executive council responsible for Local Government, determines the upper limits of the Salaries, allowances and benefits of different members of municipal councils. Whereafter this will be submitted to the MEC for consideration.

6.3 FINANCIAL IMPLICATIONS

The increase in council lor remuneration as per the newly issued Government Gazette amounts 3%. Applying this to GRDM the amount equates an amount of R350 000.

Provision has been made for or a 5% increase in the budget for Councillor remuneration for both the 2021/2022 as well as 2022/2023 financial year. \

Therefore sufficient provision has been made in the approved budgets for the implementation of the newly issued upper limits.

6.4 LEGAL IMPLICATIONS

Council must obtain concurrence of the MEC for Local Government before implementing the provisions of the notice (upper limits) and failure to adhere to the necessary approval may lead to irregular expenditure.

Constitution of Republic of South Africa, 1996

Basic Conditions of Employment Act, Act 56 of 2003

Labour Relations Act, Act 66 of 1995

6.5 STAFF IMPLICATIONS

No staff implications for the implementation of the upper limits for Councillors .

6.6 PREVIOUS / RELEVANT COUNCIL RESOLUTIONS:

None

6.7 RISK IMPLICATIONS

Not all municipalities might approve the upper limits which may result in GRDM responsible for the difference in the remuneration packages, this is mitigated by recommendation number 4 of the report.

6.8 COMMENTS FROM EXECUTIVE MANAGERS

6.8.1 COMMENTS FROM EXECUTIVE MANAGER CORPORATE SERVICES

The recommendations contained in the report is supported.

6.8.2 COMMENTS FROM EXECUTIVE MANAGER FINANCIAL SERVICES

Recommendations are supported.

6.8.3 COMMENTS FROM EXECUTIVE MANAGER ECONOMIC DEVELOPMENT AND PLANNING

The recommendations is supported.

6.8.4 COMMENTS FROM EXECUTIVE MANAGER ROADS AND TRANSPORT SERVICES

The content of the report is noted.

6.8.5 COMMENTS FROM ACTING EXECUTIVE MANAGER COMMUNITY SERVICES

Considering the new upper limits structure for councillors this department agrees with the recommendations



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Regulation Gazette

No. 11440

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF CO-OPERATIVE GOVERNANCE

NO. R. 2126

2 June 2022

REMUNERATION OF PUBLIC OFFICE BEARERS ACT, 1998
(ACT NO. 20 OF 1998)**DETERMINATION OF UPPER LIMITS OF THE SALARIES, ALLOWANCES
AND BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS**

Under the powers vested in me by sections 7(1), 8(5)(a) and 9(5)(a) of the *Remuneration of Public Office-bearers Act*, 1998 (Act No. 20 of 1998), I, Nkosazana Clarice Dlamini Zuma, Minister for Cooperative Governance and Traditional Affairs, after –

- (a) consultation with the member of the Executive Council responsible for local government in each province; and
- (b) taking into consideration the matters listed in paragraphs (a) to (i) of section 7(1) of the Act,

hereby determine the upper limits of the salaries, allowances and benefits of the different members of municipal councils as set out in the Schedule.



NKOSAZANA CLARICE DLAMINI ZUMA, MP
MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
DATE: 01-06-2022

SCHEDULE

PREAMBLE

The salary and allowances of a councillor are determined by that municipal council by resolution of a supporting vote of the majority of its members, in consultation with the member of the Executive Council responsible for local government in each province, having regard to the upper limits as set out hereunder, the financial year of a municipality and affordability of municipality to pay within the different grades of the remuneration of councillors, including the austerity measures as approved by national Cabinet.

For purposes of implementation of this Government Notice, "in consultation with" means that a municipal council must obtain concurrence of the MEC for local government prior to the implementation of the provisions of this Notice.

1. Definitions

In this Schedule, unless the context indicates otherwise, a word or phrase to which a meaning has been assigned in the *Remuneration of Public Office-bearers Act*, 1998 (Act No. 20 of 1998) (hereinafter referred to as "the Act") and the *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998) (hereinafter referred to as "the Structures Act"), has that meaning and –

"basic salary" means the salary component of a councillor that excludes a travel allowance as provided in item (9)(1), housing allowance as provided in item 9(2), the municipal contribution to a pension fund as provided in item 12(1) and municipal contribution to a medical aid scheme as provided in item 12(2);

"full-time councillor" means a councillor who has been elected or appointed to an office which has been designated as full-time in terms of section 18(4) of the Structures Act;

"grade" in relation to this Notice means the grade of municipal council as determined in terms of item 4;

"MEC" means the member of the Executive Council of a province responsible for local government in the province;

"oversight committee" means a committee of the municipal council established in terms of section 79 or 79A of the Structures Act;

"part-time councillor" means a councillor other than a full-time councillor;

"pension fund" means any pension, provident or retirement annuity fund established and registered in terms of, and subject to, any law governing the registration and control of pension funds in the Republic of South Africa and to which an office bearer contributes or any pension scheme approved by Parliament for such office bearers;

"SETAs" means the Sector Education and Training Authorities established in terms of section 9 of the *Skills Development Act*, 1998 (Act No. 97 of 1998);

“special risk cover” means an insurance cover, provided to a councillor by the municipality, which covers the loss of or damage to a councillor’s personal immovable or moveable property and assets, excluding property used by such councillor for business purposes, as well as life and disability cover, for any loss or damage caused by riot, civil unrest, strike or public disorder;

“tools of trade” means the resources provided by a municipal council to a councillor to enable such councillor to discharge his or her duties in the most efficient and effective manner, and at all times remain the assets of the municipality concerned;

“total municipal income” means gross income in respect of a metropolitan, local or district municipality based on actual income received as stated in the audited financial statements of that municipality for the 2020/21 financial year. The gross income for the municipality will include the following:

- rates on property;
- fees for services rendered by the municipality, or on its behalf by a municipal entity;
- surcharges;
- other authorised taxes;
- levies and duties;
- income from fines for traffic offences and contravention of municipal by-laws or legislation assigned to the local sphere of government;
- regional services council replacement grant for district municipalities;
- interest earned on invested funds other than national and provincial conditional grants;
- rental for the use of municipal movable or immovable property; and
- amounts received as agent for other spheres of government.

The gross income excludes the following:

- transfers and / or grants from the national fiscus and provincial fiscus, with the exception of regional services council replacement grant for district municipalities; and
- all value added tax (VAT) refunds.

“total population” means the official statistics of the population residing in the area of jurisdiction of a metropolitan, local or district municipality, as published in the Community Survey 2016: Statistical Release No. P0301, in terms of the *Statistics Act*, 1999 (Act No. 6 of 1999); and

“total remuneration package” means the annual total cost to a municipality of a basic salary component, a motor vehicle allowance as provided in item 9(1), housing allowance as provided in item 9(2), the municipal contribution to a pension, provident or retirement annuity fund as provided in item 12(1) and municipal contribution to a medical aid scheme as provided in item 12(2) to a councillor in a municipal financial year.

2. Allocation of number of points for total municipal income

The number of points allocated for the total municipal income of a municipality is as follows:

TOTAL MUNICIPAL INCOME			NUMBER OF POINTS
R 0	-	R 10,000,000	8.33
R 10,000,001	-	R 50,000,000	16.67
R 50,000,001	-	R 200,000,000	25.00
R 200,000,001	-	R 1,500,000,000	33.33
R 1,500,000,001	-	R 2,000,000,000	41.67
More than R2,000,000,000			50.00

3. Allocation of number of points for total population

The number of points allocated for the total population within a municipality is as follows:

TOTAL POPULATION			NUMBER OF POINTS
0	-	50,000	8.33
50,001	-	100,000	16.67
100,001	-	250,000	25.00
250,001	-	550,000	33.33
550,001	-	1,800,000	41.67
More than 1,800,000			50.00

4. Determination of grade of municipal council

The sum of the number of points allocated to a municipal council in terms of items 2 and 3 of the Notice, determines the grade of such municipal council as follows:

GRADE OF MUNICIPAL COUNCIL	POINTS
1	0 to 16.66
2	16.67 to 33.33
3	33.34 to 50.00
4	50.01 to 66.67
5	66.68 to 83.35
6	83.36 and above

5. Upper limits of the annual total remuneration packages of full-time councillors

The upper limits of the annual total remuneration packages of full-time councillors are as follows:

GRADE	TOTAL REMUNERATION PACKAGE			
	EXECUTIVE MAYOR OR MAYOR	SPEAKER, DEPUTY EXECUTIVE MAYOR OR DEPUTY MAYOR	MEMBER OF THE EXECUTIVE COMMITTEE OR MAYORAL COMMITTEE, WHIP OR CHAIRPERSON OF A SUBCOUNCIL	CHAIRPERSON OF OVERSIGHT COMMITTEE
6	1,446,388	1,168,131	1,100,361	1,068,083
5	1,078,407	862,723	808,804	785,080
4	920,656	736,530	690,808	670,243
3	886,685	709,349	665,015	651,654
2	830,248	664,199	628,615	610,176
1	806,059	650,986	610,297	615,055
The system of plenary type of municipalities ceased to exist from 1 November 2021 and all mayors must be remunerated according to the total remuneration package column of executive mayor or mayor.				

6. Upper limit of annual total remuneration package or allowance in respect of appointed councillors

(1) A councillor appointed to a district council in terms of section 23(1)(b) of the Structures Act, may be paid the upper limit of the total remuneration package or allowance as follows:

- (a) If the councillor is appointed as speaker, mayor, executive mayor, member of a mayoral committee, member of an executive committee, chairperson of oversight committee, part-time member of a district council, such councillor is entitled to an amount equal to the difference between the total remuneration package that the councillor receives as a member of the local council and the total remuneration package allocated to that office in the district council in terms of items 5, 6, 7, 8, 9, 10, 11 and 12, as the case may be.
- (b) If the total remuneration package payable to the councillor as a member of the local council is equal to or higher than the total remuneration package that an appointed councillor to the district council receives, such a councillor is, in addition to the total remuneration package received at the local council, entitled to a sitting allowance not exceeding R1,136.32: Provided that this allowance is limited to R1,136.32 per day, regardless of the number of meetings of the district council or committees of that council that are attended by such councillor on a specific day.

(2) A district municipality is responsible for –

- (a) the payment of the remuneration or the allowance referred to in sub-item (1); and
- (b) the reimbursement of travel expenses not exceeding the applicable tariffs prescribed by the national department responsible for transport for the use of privately-owned vehicles incurred by a councillor for the execution of official duties on behalf of that district municipality, in terms of that district council's policy.

7. Upper limit of allowance in respect of councillors serving in the governance and intergovernmental structures of organised local government

(1) (a) A councillor designated by organised local government to serve in a governance structure of organised local government must, in addition to the total remuneration package applicable to that councillor, be paid an allowance not exceeding R1,136.32 per sitting and actual attendance of any meeting: Provided that the allowance is limited to R1,136.32 per day, irrespective of the number of meetings attended by such councillor on a specific day.

- (b) A councillor designated by organised local government to represent organised local government at any intergovernmental structure, including national and provincial executive authorities, must in addition to the total remuneration package applicable to that councillor, be paid an allowance not exceeding R1,136.32 per sitting and actual attendance of such structure: Provided that the allowance is limited to R1,136.32 per day, irrespective of the number of attendances by such councillor on a specific day.

(2) Organised local government is responsible for –

- (a) the payment of the allowance referred to in sub-item (1);
- (b) the payment of accommodation expenses incurred for attending a meeting of governance and intergovernmental structures in terms of applicable organised local government policy; and
- (c) reimbursement of travel expenses, not exceeding the applicable tariffs prescribed by the national department responsible for transport for the use of privately-owned vehicles, incurred by a councillor for attending a meeting of governance and intergovernmental structures.

8. Upper limits of the annual total remuneration packages of part-time councillors

The upper limits of the annual total remuneration packages of part-time councillors are as follows:

GRADE	TOTAL REMUNERATION PACKAGE				
	EXECUTIVE MAYOR OR MAYOR	SPEAKER, DEPUTY EXECUTIVE MAYOR OR DEPUTY MAYOR	MEMBER OF THE EXECUTIVE COMMITTEE OR MAYORAL COMMITTEE OR WHIP	CHAIRPERSON OF OVERSIGHT COMMITTEE	OTHER PART-TIME MEMBERS
6	810,755	685,866	613,857	595,851	541,681
5	601,610	481,289	451,208	437,970	341,275
4	513,611	410,888	385,208	373,908	291,356
3	494,655	395,724	370,999	360,107	280,603
2	463,169	370,535	347,379	337,188	262,744
1	449,672	359,737	337,256	327,361	254,788

The system of plenary type of municipalities ceased to exist from 1 November 2021 and all mayors must be remunerated according to the total remuneration package column of executive mayor or mayor.

9. Upper limits of allowances of full-time and part-time councillors

The upper limits of allowances of full-time and part-time councillors, that constitute part of the annual total remuneration package, are as follows:

- (1) Motor vehicle and travel allowance
 - (a) A councillor listed in item 5 and 8 of this Notice may, in line with applicable legislation, structure his or her total remuneration package to provide for motor vehicle allowance.
 - (b) If a councillor structures his or her total remuneration package to provide for motor vehicle allowance, the councillor must submit proof of ownership of a private motor vehicle to the municipality and have the vehicle available for official duties.
 - (c) A councillor who uses a privately-owned vehicle for execution of official duties on behalf of the municipality, may be reimbursed for official kilometres travelled, in addition to the total remuneration package of a councillor as determined in terms of items 5 and 8 of the Notice, not exceeding the applicable tariffs as prescribed by the national department responsible for transport and in terms of the municipal council's policy.

- (d) A councillor who utilises a privately-owned vehicle for official purposes must, for purpose of claiming kilometres travelled, keep a travel logbook containing the following information relating to actual official and private kilometres travelled per month as may be determined from time to time by the South African Revenue Service:
 - (i) Date of travel;
 - (ii) Kilometres travelled; and
 - (iii) Travel details, where to and reason for the trip.
 - (e) A councillor may, in exceptional circumstances and upon good cause shown, and with the approval of the Mayor or Speaker, utilise the municipal-owned vehicle for official purposes: Provided that the municipal council must, in line with applicable legislation and approved municipal council policy, exercise prudent financial management to ensure that the provision of motor vehicle does not undermine the need to prioritise service delivery and sustain viable municipalities.
 - (f) If a councillor uses a municipal-owned motor vehicle for official purposes, such councillor will not be reimbursed for kilometres travelled.
- (2) Housing allowance

A councillor may structure his or her salary to provide for housing allowance as part of the total remuneration package.

10. Out of pocket expenses

A councillor may, in addition to the total remuneration package, be reimbursed for reasonable and actual out of pocket expenses incurred during the execution of official or ceremonial duties, in accordance with the applicable municipal council policy.

11. Upper limits of cell phone allowance for councillors

A councillor may, in addition to the annual total remuneration package provided for in terms of items 5 and 8 respectively, be paid a cell phone allowance not exceeding R3,400.00 per month inclusive of mobile data, in accordance with the applicable municipal council policy.

12. Upper limits of pension, provident or retirement annuity fund contributions and medical benefits of councillors

- (1) Pension, provident or retirement annuity funds contributions
 - (a) A councillor may participate in a pension, provident or retirement annuity fund registered in terms of the *Pension Funds Act, 1956* (Act No. 24 of 1956).

- (b) If a councillor elects to participate in a pension, provident or retirement annuity fund, the municipal council must deduct from that councillor's salary, the monthly contributions and pay the contributions to a pension, provident or retirement annuity fund to which the councillor is a member in accordance with the rules of such pension, provident or retirement annuity fund. The contributions by the municipal council and the councillor are included in the total remuneration package as a total cost to the municipality.

(2) Medical Aid Scheme

- (a) A councillor may participate in a medical aid scheme registered in terms of the *Medical Schemes Act*, 1998 (Act No. 131 of 1998).
- (b) If a councillor elects to participate in a medical aid scheme, the municipal council must deduct from that councillor's salary, the monthly contributions and pay the contributions to a medical aid scheme to which the councillor is a member in accordance with the rules of such medical aid scheme. The contributions by the municipal council and the councillor are included in the total remuneration package as a total cost to the municipality.

13. Special risk cover

(1) A municipality must, in addition to the annual total remuneration packages as provided in items 5 and 8 respectively, take out risk insurance cover, to provide for an insurance cover, provided to a councillor by the municipality, which covers the loss of or damage to a councillor's personal immovable or moveable property and assets, excluding property used by such councillor for business purposes, as well as life and disability cover, for any loss or damage caused by riot, civil unrest, strike or public disorder. The special risk insurance on residential property is limited to R1,5 million while on vehicles it is limited to R750,000. The life and disability insurance cover is limited to 2 times the total remuneration package of a councillor.

(2) In the event where the residential property of a councillor was damaged or destroyed as a result of riot, civil unrest, strike or public disorder, the municipality may, subject to affordability, provide alternative accommodation to the affected councillor, for a period of 30 days from the date of such an incident.

(3) Notwithstanding sub-item (2), the municipal council may, on good cause shown, provide alternative accommodation for a further period not exceeding 30 days.

(4) A councillor is obliged to submit to the municipality details of property, assets and beneficiaries to be covered by the special risk insurance upon request. A councillor who fails to submit the required details referred to herein forfeits the benefits associated with the special risk insurance cover.

(5) If a councillor already belongs to another special risk cover, such councillor must declare to the municipality the details of property, assets and beneficiaries to be covered by the special risk insurance.

14. Tools of trade

(1) A municipal council may extend the following tools of trade to a councillor:

	TOOLS OF TRADE	APPLICABLE TO:
(a)	Braille reader.	All visually impaired councillors.
(b)	Office space and furniture; Parking bay; Business cards; Calculators; Letter-heads; Stationery; Toner cartridges; Diaries; Postage costs; Office telephone; and Appropriate mobile technology and multi-digital office (excluding cell phones and as per item 11), including facsimile, printer, photocopier and scanner.	Full-time councillors, part-time executive mayors or mayors, part-time deputy executive mayors or deputy mayors, part-time speakers, part-time members of mayoral committee or members of executive committee, part-time chairpersons of oversight committees and whips.
(c)	Laptop or tablet.	All councillors.
(d)	Official accommodation and furniture where it currently exists.	Full-time Executive Mayors or Mayors.
(e)	Business cards; Calculators; Letter-heads; Stationery; and Diaries.	Part-time councillors and the usage must comply with policy directives of the municipality.
(f)	Postage costs; Office telephone; and Multi-digital office, facsimile, printer, photocopier and scanner.	Part-time councillors to have access to these tools of trade at the municipal offices.
(g)	Personal security.	Executives Mayors, Mayors and Speakers are entitled to two bodyguards. Deviation from the norm must only be based on the recommendations of the South African Police Service.
		All councillors, subject to a threat and risk analysis conducted by the South African Police Service.

(2) If a municipal council makes available tools of trade in terms of sub-item (1), such a municipal council must take into account accessibility, affordability and cost control, equity, flexibility, simplicity, transparency, accountability and value of tools of trade.

(3) The tools of trade must be insured by the council with the exception of sub-item (1)(g).

(4) The application of sub-item (1) is subject to concurrence by the MEC.

15. Capacity building

(1) The municipal council must develop and adopt a skills development plan and personal development plan prior to any councillor undergoing training.

(2) A municipality must make a provision in its budget for development and implementation of capacity building programme for a councillor during the term of office of that councillor.

(3) Capacity building programmes consist of short courses or programmes as provided for in the training, education and development policy and skills development plan of the municipality, including training conducted by national departments, associated government agencies and SETAs, provincial departments, municipalities and organised local government.

(4) The capacity building and training programme must take into consideration the capacity needs to fulfil a councillor's statutory obligations and affordability by a municipality.

16. Overpayment

(1) Any remuneration paid to a councillor of a municipality otherwise than in accordance with section 167(1) of the *Local Government: Municipal Finance Management Act, 2003* (Act No. 56 of 2003) including any bonus, bursary, loan, advance or other benefit, is an irregular expenditure and the municipality –

- (a) must recover that remuneration from the political office bearer or member;
- (b) may not write-off any expenditure incurred by the municipality in paying or giving that remuneration; and
- (c) must be reported to the MEC within 30 days of becoming aware.

(2) The MEC must report to the Minister –

- (a) any transgression of subsection (1); or
- (b) any non-compliance with this Notice,

within 14 days from the date when the MEC became aware of such transgression or non-compliance.

17. Information to be submitted to the Minister

(1) A municipality must submit to the MEC, by not later than 31 August 2022, a report containing the following information in respect of its serving councillors for the 2021/22 financial year on an official letterhead of the municipality, signed by the executive mayor or mayor, as the case may be:

- (a) Total number of councillors;
- (b) Designation;
- (c) Part-time or full-time;
- (d) Name of incumbent;
- (e) Gender;
- (f) Total municipal income;
- (g) Total population;
- (h) Grading of municipal council;
- (i) Date concurrence in terms of item 14(4) granted by the MEC;
- (j) Total remuneration package;
- (k) Total budget for personal security; and
- (l) Any allowance(s) payable to a councillor.

(2) Upon receipt of the data referred to in sub-item 1, the MEC must submit a consolidated report of all municipalities in the province to the Minister by not later than 31 October 2022.

18. Transitional measures and repeal of *Government Gazettes*

(1) If a municipality has no audited financial statements for the 2020/21 financial year by the date of publication of this Notice, the audited financial statements for the 2019/20 financial year apply.

(2) If the grading of a municipality degrades as a result of the redetermination of the grade of municipal council as set out in item 4 of this Notice, a councillor who was in office as at 30 June 2021 retains the total remuneration package as determined in terms of Government Notice No. 475, *Government Gazette* No. 43246 of 24 April 2020 and the councillor is entitled to the applicable cost of living adjustment: Provided that the data used by the municipality for determination of the grading of a municipal council is correct.

(3) The Notice replaces *Government Gazette* No. 43246 of 24 April 2020 and *Government Gazette* No. 45420 of 2 November 2021.

19. Short title and commencement

This Notice is called the Determination of Upper Limits of Salaries, Allowances and Benefits of Different Members of Municipal Councils and takes effect from 1 July 2021.

CIRCULAR 16 / 2022

FROM : CHIEF EXECUTIVE OFFICER

**TO : SALGA PROVINCIAL CHAIRPERSONS
EXECUTIVE MAYORS / MAYORS
SPEAKERS
CHIEF WHIPS
MUNICIPAL MANAGERS**

**CC : PROVINCIAL DIRECTORS OF OPERATIONS
CHIEF OFFICERS**

DATE : 07 JUNE 2022

UPPER LIMITS OF THE SALARIES, ALLOWANCES AND BENEFITS OF DIFFERENT MEMBERS OF MUNICIPAL COUNCILS FOR THE 2020/2021 FINANCIAL YEAR

1. PURPOSE OF THE CIRCULAR

With reference to SALGA Circular 14/2022 dated 17 May 2022, SALGA hereby confirms that the written comments received from Municipalities on the draft Upper Limits Notice, were submitted to the Minister of Cooperative Governance and Traditional Affairs, Honourable Dr Nkosazana Dlamini-Zuma on the 25 May 2022.

This circular seeks to further:

- Confirm the Final Upper Limits of the Salaries, Allowances and Benefits of Different Members of Municipal Councils for the 2021/22 Financial Year as published in the **Government Gazette No. 46470 of 2 June 2022** attached hereto as **Annexure A** for implementation;
- Advise municipalities of the key features of the final Notice and applicable process to be followed when implementing the Upper Limits Notice for the 2020/21 Financial year; and
- Re-enforce our commitment to continue lobbying and advocating for the introduction of a remuneration system of Public Office Bearers guided by principles outlined in this circular.

2. BACKGROUND AND CONTEXT

In terms of Section 219(1) and (5) of the Constitution, read with Section 8(4) of the Independent Commission for the Remuneration of Public Office Bearers (Commission Act), the Independent Commission for the Remuneration of Public Office Bearers (“the Commission”) is mandated to make annual recommendations relating to the salaries and/or upper limits of the salaries, allowances, benefits and the resources (tools of trade) required by the Public Office Bearers (POBs) that will enable them to perform their duties effectively.

Further, Section 7 of the Remuneration of Public Office Bearers Act, 1998 empowers the Minister responsible for local government to determine the upper limits of the remuneration for Municipal Councillors after consultation with Members of the Executive Councils (MECs) responsible for local government in each province and after, inter alia, taking into consideration the recommendations of the Commission.

Therefore, with reference to the attached Final Notice No. 20 on the Determination of Upper Limits of the Salaries, Allowances and Benefits of Different Members of Municipal Councils for the 2021/22 Financial Year as published in the Government Gazette No. 46470 of 2 June 2022.

3. IMPLEMENTATION MEASURES OF THE UPPER LIMITS NOTICE

The salaries and allowances of a Municipal Councillor are determined by the Municipal Council by resolution of a supporting vote of the majority of its members, in consultation with the MECs responsible for local government in each province, having regard to the upper limits as set out hereunder, the financial year and affordability of a municipality to pay within the different grades of the remuneration of councillors, including the austerity measures as approved by National Cabinet.

3.1 Municipal Managers should note that the Upper Limits Notice **MAY NOT BE IMPLEMENTED** before respective Municipal Councils have considered a report on the upper limits and have resolved on the levels of remuneration which will apply in that Municipality. This consideration must occur with regard to the financial year (in this instance 2021/22) within which the payments will have to be made, and the affordability thereof for municipalities. This implies that the budget for the year in question must reflect the liability to pay the level of remuneration determined by the council and this must in turn be cash funded.



- 3.2 Before implementation, it is necessary for a council to consult with the MEC responsible for Local Government in the Province, motivating the affordability and demonstrating that the liability has been budgeted for. Failure to follow these steps will result in **AN ADVERSE AUDIT OPINION** being expressed by the Auditor General.
- 3.3 In instances where a council has not made the necessary budgetary provisions to support increased remuneration, it will be necessary for it to consider the determination and resolve specifically **not to increase** the remuneration payable. The Council is still left with the option to re-prioritise its budget to accommodate the salary increases within the prescripts of the Municipal Finance Management Act.
- 3.4 It will be necessary for councils to **apply the formula** contained in paragraphs 2, 3 and 4 of the gazette, **in order to determine which grade of a Municipality** they are. It should be noted that this formula applies to Metropolitan District and Local Municipalities.
- 3.5 The upper limits of the annual total remuneration package of various categories of full-time and part time Municipal Councillors are contained in paragraph 5 and 8 respectively of the gazette. It should be noted that the amount contained under “*total remuneration*” requires that **every Municipal Councillor who elects to include the motor vehicle allowance in his or her salary structure must specifically provide for it**. If a Municipal Councillor structures his or her total remuneration package to provide for motor vehicle allowance, a Municipal Councillor must submit proof of ownership of a private motor vehicle. In providing for the travelling allowance, the attention of Municipal Councillors should be drawn to the reality that this allowance is granted to cover costs incurred on travelling for official business, which excludes travel between the place of residence and ordinary place of work. Although fully taxable on assessment, only 80% of the allowance is subject to the deduction of PAYE.
- 3.6 Further, this does not mean that only 80% is taxable. The full allowance remains taxable and any unspent portion will be included in a Municipal Councillor’s taxable income and a Municipal Councillor would be required to account to the South African Revenue Service (SARS) for the use of such an allowance. Municipal Councillors who **DO NOT HAVE MOTOR VEHICLES** and/or who are likely to have difficulties accounting to SARS for this allowance are advised **NOT TO INCLUDE THE TRAVEL ALLOWANCE IN THE SALARY STRUCTURE**.
- 3.7 It should be clarified that the total remuneration package **INCLUDES** the travel allowance, housing allowance, municipal contribution to pension fund and municipal contribution to the medical aid scheme. The allowances that are provided for in the notice and applicable for Municipal Councillors form the total remuneration package. **No** additional contribution must be made by the municipality.



3.8 Additionally, over and above the annual total remuneration package provided for in terms of items 5 and 8 respectively, Municipal Councillors may be paid a cell phone allowance not exceeding R3 400.00 per month inclusive of mobile data, in accordance with the applicable municipal council policy.

3.9 Municipalities must take out the special risk insurance, insurance on residential property is limited to R1.5 million while on vehicles it is limited to R750 000. The life and disability insurance cover is limited to 2 times the total remuneration package of a Municipal Councillor. A Municipal Councillor is **obliged** to submit to the municipality details of the property, assets and beneficiaries to be covered by the special risk insurance upon request. A Municipal Councillor **who fails to submit** the required details referred to herein **forfeits the benefits** associated with the special risk insurance cover.

3.10 This Notice on the Determination of Upper Limits of the Salaries, Allowances and Benefits of Different Members of Municipal Councils takes effect from **1 July 2021**.

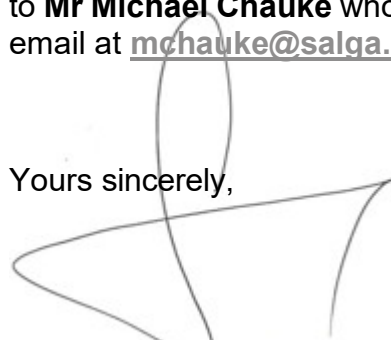
4. LOBBYING FOR THE INTRODUCTION OF A REMUNERATION SYSTEM OF PUBLIC OFFICE BEARERS

SALGA wishes to reinforce its commitment to continue lobbying and advocating for the introduction of a remuneration system of Public Office Bearers that is anchored on the following principles:

- That Public Office Bearers in local government ought to be remunerated in line with other Public Office Bearers at National and Provincial Governments;
- That all councillors ought to be full time due to the nature of their work; and
- That capacity building programmes for councillors should include tertiary education where funds are available, and this must be in line with their requirements as councillors.

For further information regarding the implementation of the upper limits, queries should be directed to **Mr Michael Chauke** who is the **Specialist: Inclusive Governance and Councillor Welfare** via email at mchauke@salga.org.za or alternatively on cell number **076 061 7598**.

Yours sincerely,



XOLILE GEORGE
CHIEF EXECUTIVE OFFICER

