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SUPPLY CHAIN MANAGEMENT POLICY

VERSION 9

APPROVED BY THE BOARD: 30 JULY 2020

SUPPLY CHAIN MANAGEMENT POLICY

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LIST OF ACRONYMS

1	B-BBEE	Broad-Based Black Economic Empowerment
2	B-BBEEA	The Broad-Based Black Economic Empowerment Act, Number 53 of 2003
3	CFO	The Chief Financial Officer
4	cidb	Construction Industry Development Board
5	CoJ	The City of Johannesburg Metropolitan Municipality
6	CPA	Contract Price Adjustment
7	CSD	Central Supplier Database
8	EME	Exempted Micro Enterprise
9	FD	Financial Director
10	IT	Information Technology
11	JV	Joint Venture
12	JW	Johannesburg Water (SOC) Ltd
13	KPI	Key Performance Indicator
14	MFMA	The Local Government : Municipal Finance Management Act, Number 56 of 2003
15	MOE	Municipal Owned Entity
16	MSCMR	The Municipal Supply Chain Management Regulations in terms of Section 112 of the MFMA, published in Government Gazette Number 27636 of 30 May 2005
17	PAIA	Promotion of Access to Information Act No.2 of 2000
18	PAJA	Promotion of Administrative Justice Act No.3 of 2000
19	PPPFA	The Preferential Procurement Policy Framework Act, Number 5 of 2000
20	QSE	Qualifying Small Enterprise
21	RFI	Request for Information
22	RFP	Request for Proposal
23	RFT	Request for Tender
24	ROE	Rate of Exchange
25	SCMU	Supply Chain Management Unit
26	SCMP	Supply Chain Management Policy
27	SMME	Small Medium and Micro Enterprise
28	the dtic	The Department of Trade, Industry and Competition
29	VAT	Value Added Tax

1. PREAMBLE

WHEREAS Johannesburg Water SOC Ltd is a State Owned Company (hereinafter referred to as JW), incorporated in terms of the Companies Act, Number 71 of 2008. JW is wholly-owned by the City of Johannesburg Metropolitan Municipality (CoJ);

AND WHEREAS Section 217 of the Constitution of the Republic of South Africa of 1996 requires all organs of state to contract for goods or services in accordance with a system which is fair, equitable, transparent, competitive and cost effective;

AND WHEREAS Section 111 of the Local Government: Municipal Finance Management Act No. 56 of 2003 (the Act) requires each municipal entity to have and to implement a supply chain management policy which gives effect to the provisions of Chapter 11 of the Act;

AND WHEREAS Section 2 of the Preferential Procurement Policy Framework Act No. 5 of 2000 requires each organ of state to determine its preferential procurement policy and to implement it within the framework of the Act;

NOW THEREFORE Johannesburg Water as a municipal entity adopts the following SCM policy as set out hereafter:

2. DEFINITIONS

In this Policy document, unless the context otherwise indicates, a word or expression used shall bear the same meaning as indicated below:

2.1	all applicable taxes	includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.
2.2	B-BBEE status level of contributor	means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of Section 9(1) of the Broad-Based Black Economic Empowerment Act.
2.3	Bid	means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals. This meaning is used interchangeably with the term tender as defined.
2.4	B-BBEE Procurement Recognition Level	a percentage determined from the scorecard that determines how much an entity can claim as B-BBEE spend on purchases of goods/services/assets made.
2.5	Bid rigging	a scheme in which competitors conspire and join to artificially

		increase the prices of goods and/or services offered in bids. It may also include carving up the potential business between the conspirators.
2.6	Bid adjudication committee	the Committee constituted in terms of the Municipal Supply Chain Management Regulations, Regulations 26 and 29, for the purpose of adjudicating bids and to make awards and recommendations to the Managing Director for procurement of goods and/or services by JW as per the Delegations of Authority.
2.7	Bid evaluation committee	the Committee constituted in terms of the Municipal Supply Chain Management Regulations, Regulations 26 and 28, for the purpose of evaluation of bids and make recommendations to the Bid Adjudication Committee for procurement of goods and/or services by JW.
2.8	Bid specification committee	the Committee constituted in terms of the Municipal Supply Chain Management Regulations, Regulations 26 and 27, for the purpose of compiling the specifications for the procurement of goods and/ or services by JW.
2.9	Black designated groups	<p>a) black people who are youth as defined in the National Youth Commission Act of 1996, including enterprises that are more than 50% owned and controlled by black youth who are South African citizens;</p> <p>b) black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act; including any enterprise that is more than 50% owned and controlled by such people with disabilities;</p> <p>c) black women , including enterprises that are either an EME or Start-up that is more than 50% owned and controlled by black female South African citizens;</p> <p>d) black people living in rural and any under developed areas;</p> <p>e) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution;</p> <p>any broad based ownership scheme or co-operative in which black participants enjoy a right to economic interest that is more than 50% of the total exercisable voting rights.</p>
2.10	Black people	<p>a) generic term which means Africans, Coloureds, Indians as well as Chinese; in terms of the B-BBEE Act, includes only natural persons who are citizens of the Republic of South Africa (RSA) by birth or descent; or are citizens of the RSA by naturalization:</p> <p>a) occurring before the commencement date of the Constitution of the RSA Act No. 108 of 1996; or</p> <p>f) occurring after the commencement date of the Constitution of the RSA Act No. 108 of 1996 but who, without the Apartheid policy would have qualified for naturalization</p>

		before then.
2.11	Broad-Based Black Economic Empowerment	the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to: a) increase the number of black people that manage, own and control enterprises and productive assets; b) facilitate ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises; c) human resource and skills development; d) achieving equitable representation in all occupational categories and levels in the workforce; and e) preferential procurement; and b) investment in enterprises that are owned and managed by black people in terms of the B-BBEE Act No. 53 of 2003 (B-BBEEA).
2.12	Board of directors	the directors of the Company appointed in terms of section 93E of the Municipal Systems Act, acting as a Board, or as a sub-committee of the Board to jointly oversee the activities of JW.
2.13	Cancellation of a bid	involves a termination of a bid as outlined in the policy.
2.14	Comparative price	means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
2.15	Compile	gathering and putting together of information, documents, illustrations, designs or other material into a single compilation for future use.
2.16	Completion in ink	includes completion of tender documents electronically.
2.17	Calendar day	any day of the year that includes weekends and public holidays.
2.18	Co-bidding	f) the practice whereby a bidder is a party to more than one bid or quotation.
2.19	Collusion	an agreement between rival businesses that attempts to disrupt the market's equilibrium, which involves people cooperating or working together when they should be competing against each other.
2.20	Consortium	short-term arrangement in which several firms (from the same or different industry sectors) pool their financial and human resources to undertake a project that benefits all members of the group.
2.21	Contract	an agreement that results from the acceptance of a tender or price quotation.
2.22	Co-operative	means a cooperative registered in terms of section 7 of the Cooperatives Act No. 14 of 2005).
2.23	Convener	a person who leads and directs the meeting towards a justifiable and reliable outcome.

2.24	Designated sector	a sector, sub-sector or industry that has been designated by the dtic in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods that meet the stipulated minimum threshold for local production content.
2.25	Deviation	a departure from the official procurement processes as laid down in the SCM policy and MFMA Regulation 36.
2.26	Disqualification	a process in which a bidder is excluded from the evaluation process as they failed to meet the requirements as described in Annexure A;
2.27	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.
2.28	Emergency	sudden, unexpected, or impending situation that may cause injury, loss of life, damage to the property, and/or interference with the normal activities of a person or firm and which, therefore, requires immediate attention and remedial action and where the adherence to normal procurement procedures is not appropriate.
2.29	Enterprise and supplier development	a process aimed at contributing to the development, sustainability and financial and operational independence of benefiting entities which include; Exempted Micro Enterprises and/or Qualifying Small Enterprises which are more than 50% black owned.
2.30	Executive manager	an official responsible for the executive management of a department and reporting directly to the Managing Director.
2.31	Financial director	the finance executive who reports to the Managing Director and to the board of directors, and additionally sits on the board, normally referred to as the CFO
2.32	Formal written price quotation	a written price quotation formally requested in terms of JW's Request for Quotation process for goods and services up to R200 000 including VAT
2.33	Fronting	a deliberate circumvention or attempted circumvention of the B-BBEE Act and the Codes, it commonly involves reliance on data or claims of compliance based on misrepresentations of facts, whether made by the party claiming compliance or by any other person.
2.34	Fruitless and wasteful expenditure	expenditure that was made in vain and would have been avoided had reasonable care been exercised.
2.35	Functionality	means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents or the measurement according to predetermined norms, as set out in the tender document, of a service or commodity that is designed to be practical and useful, working

		or operating, taking into account, among other factors, the quality, reliability and viability.
2.36	Generic enterprise	an entity with a turnover above R50 million in terms of the B-BBEE Act.
2.37	Imported content	that portion of the bid price represented by the cost of parts or materials which have been or are still to be imported (whether by the suppliers or the suppliers subcontractors or any other third party) the costs of which are inclusive of the costs abroad, plus freight and other importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry excluding value added tax.
2.38	In the service of the state	a member of- a) any municipal council; b) any provincial legislature; or c) the National Assembly or the National Council of Provinces; d) a member of the board of directors of any municipal entity; an official of any municipality or municipal entity; e) 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); an executive member of the accounting authority of any national or provincial public entity; or an employee of Parliament or a provincial legislature.
2.39	Initiator	an authorized JW official responsible for commencing a procurement process for tender and non-tender purposes.
2.40	Irregular expenditure	expenditure that is not in accordance with the requirements of the Supply Chain Management Policy and the MFMA and other applicable Acts (Municipal System Act; Public Office Bearers Act) and not condoned in terms of those Acts.
2.41	Joint venture	is an association of persons formed between two or more parties to undertake an economic activity together; the purpose thereof is to combine expertise, equity, property, capital, efforts, skills and knowledge in an activity for the execution of a contract.
2.42	Listing criteria	conditions established by the Company from time to time for evaluation of the suitability of prospective suppliers for inclusion in the List of Accredited Prospective Suppliers.
2.43	List of accredited prospective suppliers	a list of prospective suppliers, accredited in terms of the database approved by National Treasury (CSD), categorized per commodity and per type of service.
2.44	Local content	that portion of the bid or tender price that is not included in the imported content, provided that local manufacturing takes place and is calculated in accordance with the local formula SATS 1286 in designated sectors required to meet the

		stipulated minimum thresholds set by the dtic
2.45	Long term contract	a contract with a period exceeding one year.
2.46	Managing Director	in relation to a municipal entity, an official of the entity referred to in section 93 of the Act and includes a Chief Executive Officer or the Managing Director or his delegate or person acting as such.
2.47	Military veteran	has the meaning assigned to it in section 1 of the Military Veterans Act No. 18 of 2011).
2.48	Multiple awards	award of separate (partial) contracts to two or more bidders for the same item/contract/service, where the award of a single contract would not be beneficial or advantageous to JW.
2.49	Multiple bid	a situation where a tenderer submits more than one bid for the same tender/ transaction.
2.50	Non-responsive bidder	a potential bidder who does not meet the requirements of a responsive bidder.
2.51	Organ of state	in terms of Preferential Procurement Policy Framework Act 5 of 2000 a) a national or provincial department as defined in the Public Finance Management Act No.1 of 1999 (PFMA); b) a municipality as contemplated in the Constitution; c) Parliament; d) a provincial legislature; and a constitutional institution defined in the Public Finance Management Act No.1 of 1999. any other institution or category of institutions included in the definition of "organ of state" in section 239 of the Constitution and recognized by the Minister by notice in the Government Gazette.
2.52	payment	refers to the monetary obligation of an organization for goods and services obtained from the other party.
2.53	People with disabilities	has the meaning assigned to it in Section 1 of the Employment Equity Act No. 55 of 1998)
2.54	Pre-qualification of bidders	screening of potential contractors, suppliers, or vendors (on the basis of factors such as experience, managerial ability, technical know-how, reputation, work history, etc.) for the purpose of developing a list of qualified bidders.
2.55	Pre-qualification for preferential procurement	the qualification of bidders with the intent and purpose of advancing certain designated groups.
2.56	Proof of B-BBEE status level of contributor	means: a) the B-BBEE status level certificate issued by an authorized body or person; b) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or any other requirement prescribed in terms of the Broad – Based Black Economic Empowerment Act.
2.57	QSE Qualifying	means a Qualifying Small Enterprise in terms of a code of

	Small Enterprise	<p>good practice on black economic empowerment issued in terms of Section (9) 1 of the Broad - Based Black Economic Empowerment Act;</p> <p>e) a Qualifying Small Entity with a turnover of between R10 million and R50 million in terms of the B-BBEE Act.</p>
2.58	Rand value	means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.
2.59	Ratification	<p>confirmation or condonation of an action or occurrence which was not pre-approved and may not have been authorized by the Managing Director who then subsequently adopts the act/s of the official/employee;</p> <p>a report seeking condonation must be routed via the Board and Council, to Treasury where there has been a violation of the supply chain management policy or any other legislation.</p>
2.60	Responsive or acceptable bid	<p>a bid that meets the following requirements complies in all respects with the specification and conditions of the bid:</p> <p>a) all the prescribed bid forms have been completed and signed to enable evaluation thereof;</p> <p>b) the bidder complies with all requirements as prescribed by the CSD;</p> <p>the bidder has the necessary capacity and ability to execute the contract.</p>
2.61	Restricted bidder	a bidder/ supplier listed in the Register of Tender Defaulters or listed in the Register of Restricted Bidders maintained by National Treasury or JW as a person prohibited from doing business with the public sector.
2.62	Request for Information	c) a process of soliciting responses in the form of information from interested parties for the sake of developing specifications for a particular scope/good/service.
2.63	Request for Proposal	a process of soliciting responses in two parts, viz a Technical and a Financial offer through an open invitation process due to the technical aspects of the scope being of primary importance.
2.64	Rural area	<p>means :</p> <p>a) a sparsely populated area in which people farm or depend on natural resources including villages and small towns that are dispersed through the area, or</p> <p>an area including a large settlement which depends on migratory labour and remittances and government social grants for survival, and may have traditional land tenure.</p>
2.65	Secondee	c) a JW official who is temporarily appointed as a member of a bid committee by the Managing Director to replace the permanently appointed member who is absent from a meeting due to illness, leave, official matters or any other

		matter preventing that person from attending the meeting.
2.66	Senior manager	manager responsible for the day to day management activities within a department and reports directly to executive manager or general manager.
2.67	Service provider	any person that offers a service, skills or expertise; including a supplier of goods.
2.68	Sole provider	only provider of goods or services due to its specialized; singular/ unique characteristics or performance capability;
2.69	Small business organization	b) any entity, whether or not incorporated or registered under any law, which consists mainly of persons carrying on small business concerns in any economic sector, or which has been established for the purposes of promoting the interests of or representing small business concerns, and includes any federation consisting wholly or partly of such association, and also any branch of such organization; as defined in the National Small Enterprise Act, Act No.102 of 1996.
2.70	Special conditions of contract	provisions of a contract that is peculiar to the project under consideration and do not fall under the general conditions. Whenever there is conflict, the provisions of the special conditions shall prevail over those in the general conditions.
2.71	Start-up Enterprise (SUE)	a recently formed or incorporated entity that has been in operation for no more than 1 year. A Start-up entity does not include any newly constituted enterprises which are merely a continuation of a pre-existing enterprise. A Start-up must be measured as an EME for the first year following their formation or incorporation, regardless of the expected total revenue of the Start-up enterprise.
2.72	Sub-contracting	<p>in terms of the PPPFA, the prime contractor's assigning or leasing or making out to work, or employing , another person to support such prime contractor in the execution of part of a project in terms of the contract;</p> <p>The CIDB also provides for sub-contracting as follows:</p> <p>a) specialist subcontractors; those that undertake specialist services, especially building or engineering services such as electrical, plumbing and heating, ventilating and air-conditioning (HVAC);</p> <p>b) generalist and specialist trade subcontractors; those that offer general trade services or specialises on specific trades such as painting and brickwork– many of which are general contractors that use subcontracting as a means to get work during periods of tough competition but can and often prefer to work as main contractors; and</p> <p>c) labour-only subcontractors; i.e. skilled tradesmen that provide labour-only services, while the main contractor</p>

		<p>provides the materials and supervision.</p> <p>In labour-only subcontracting the main contractor provides the materials and does most of the supervision and management of the works while trade contractors make their own arrangements regarding materials and are more responsible for their oversight.</p>
2.73	Supplier	is a person that supplies goods and services upon being awarded a contract either through tender, RFQ or any other legitimate process.
2.74	Stipulated minimum threshold	means the minimum threshold stipulated in terms of Regulation 8 (1) (b).
2.75	Technical expert	a senior manager with technical knowledge and understanding, relative to the item under consideration (in the BAC) for the department concerned.
2.76	Tender	a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works, goods, through price quotations, advertised competitive tendering processes or proposals. This term is used interchangeably with the term bid as defined herein.
2.77	The Act	any reference to the Act in this Policy refers to the MFMA.
2.78	Total cost of ownership (TCO)	total cost of ownership is the consideration of all components of an offer to arrive at a single cost which includes inter alia, servicing, maintenance, wear and tear, consumables, support, amongst other, etc.
2.79	Total revenue	means total income of an entity from its' operations as determined under IFRS and GRAP.
2.80	Township	means an urban living area that any time from late 19 th Century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994.
2.81	Trust	means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.
2.82	Variation order	an order generated for requirements in excess of initial ordered quantities identified through a further need. Such additional requirements may arise through unforeseen circumstances, urgency or emergency and where the adherence to normal procurement procedures will hinder progress or will not be advantageous or where the invitation of competitive prices is not recommended or is not practical.
2.83	Withdrawal of a bid	a removal of a bid as a result of a deficiency/error noted in the bid document or procurement process.
2.84	Working day	a day (excluding Saturdays, Sundays and Public Holidays) in which business transactions can take place/or work can be done, normally business hours from 08h00 to 17h00.
2.85	Youth	has the meaning assigned to it in Section 1 of the National

3. SCOPE OF APPLICATION

- 3.1 This Supply Chain Management Policy applies to all lawful procurement undertaken by JW including the disposal of immovable and movable assets as well as any decisions on any licensing and concession, public private partnerships and sale of state owned assets or businesses.
- 3.2 However, this Supply Chain Management Policy does not apply in the following instances:
- 3.2.1 If JW contracts with another organ of state as contemplated in section 110 (2) of the MFMA for:
- 3.2.1.1 the provision of goods or services to JW;
 - 3.2.1.2 the provision of a municipal service or assistance in the provision of a municipal service; or
 - 3.2.1.3 the procurement of goods and services under a contract by that other organ of state, provided that the other organ of state has secured the contract by means of a competitive bidding process and the relevant supplier has agreed to such procurement. The other organ of state must confirm in writing that the contract was secured through a competitive bidding process.
- 3.2.2 For the procurement of goods and services contemplated in Regulation 11(2) of the SCM Regulations (contracting with another organ of state) including:
- 3.2.2.1 the procurement of water from the Department of Water and Sanitation or a public entity, another municipality or a municipal entity; and
 - 3.2.2.2 electricity from Eskom or another public entity, another municipality or a municipal entity.
- 3.2.3 Where JW procures goods or services as contemplated in section 110(2) of the MFMA, JW must make public the fact that it procures such goods or services otherwise than through its supply chain management system, including-
- 3.2.3.1 the kind of goods or services; and
 - 3.2.3.2 the name of the supplier

4. ADOPTION AND AMENDMENT OF SCM POLICY

- 4.1 The Managing Director must –
 - 4.1.1 at least annually review the implementation of this policy; and
 - 4.1.2 when considered necessary, submit proposals for the amendment of this policy to the Board of Directors.
- 4.2 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.
- 4.3 The Managing Director must in terms of section 99 (2) (h) of the Act, take all reasonable steps to ensure that JW as a municipal entity implements this supply chain management policy.

5. REGULATORY FRAMEWORK

This Supply Chain Management Policy is guided by the following legislative framework:

5.1 Constitution of the Republic of South Africa 1996

The Constitution (Section 217 (1) states:

- 5.1.1 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;
- 5.1.2 Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for;
 - 5.1.2.1 categories of preference in the allocation of contracts; and
 - 5.1.2.2 the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination;
- 5.1.3 National Legislation must prescribe a framework within which the policy referred to in Subsection (2) must be implemented”.

5.2 The Local Government: Municipal Finance Management Act No. 56 of 2003

- 5.2.1 This Act is intended to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of Government; and to provide for matters connected therewith.
- 5.2.2 The Act establishes treasury norms for the local spheres of Government and hence standardises broad principles with an emphasis on effective accountability for the Supply Chain Management Policy and its' implementation processes.

5.3 The Municipal Supply Chain Management Regulations (in terms of Section 168 of the MFMA) by Notice 868 of 30 May 2005

The MSCMR provides for the establishment and implementation of Supply Chain Management Policies and provide a framework for the required Supply Chain Management of a municipal entity. Significant inclusions are:

- 5.3.2 developing integrated and consistent management of demand, acquisitions, logistics, disposal and supply chain performance;
- 5.3.2 promoting uniformity in procurement;
- 5.3.3 introducing a competitive process for the appointment of consultants;
- 5.3.4 establishing minimum reporting requirements for Managing Directors or authorities; and
- 5.3.5 prescribing minimum norms and standards for Supply Chain Management practices in municipal entities.

5.4 The Preferential Procurement Policy Framework Act No. 5 of 2000

- 5.4.1 To give effect to Section 217(3) of the Constitution by providing a framework for the implementation of the Procurement Policy contemplated in section 217(2) of the Constitution; and to provide for matters connected therewith.

Award of contracts to tenderers not scoring highest points:

- 5.4.1.1 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 PPPFA, if there are objective criteria justifying such award.

5.4.1.2 If an organ of state intends to apply objective criteria in terms of section 2 (1) (f) of the PPPFA, the organ of state must stipulate the objective criteria in the tender documents.

5.4.2 In terms of the PPPFA, all organs of state are bound to evaluate suppliers of goods and services on a preference points system; the 80:20 and 90:10 models. Contracts must therefore be awarded to the bidder who scores the highest points unless there are objective grounds justifying the award to another tenderer

5.5 Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2017

5.5.1 The Preferential Procurement Regulations 2017 are premised on three interrelated government policy objectives:

- 5.5.1.1 Socio-economic transformation,
- 5.5.1.2 promotion of small enterprises, cooperatives, rural and township enterprises and
- 5.5.1.2 promotion of local industrial development.

5.5.2 The PPPFA 2017 Regulations were promulgated to harmonise the B-BBEE legislation, with government procurement policy, under the broader auspices of economic transformation and empowerment, placing a particular emphasis on the use of locally produced goods, and the tendering company's B-BBEE rating. These 2017 PPPFA Regulations will further enhance the participation of Historically Disadvantaged Individuals (HDIs) and small, medium and micro enterprises (SMMEs) in the public-sector procurement system.

5.5.3 The Regulations will ensure use of public procurement as a catalyst to promote radical socio-economic transformation; the empowerment of small enterprises, rural township enterprises and designated groups; and the promotion of local industrial development.

5.5.4 The Regulations focus on the need by all organs of state and public entities to specify conditions that only locally produced goods or locally manufactured goods meeting the stipulated minimum threshold for local production and content will be considered for certain designated sectors. They also afford organs of state the freedom to choose to apply pre-qualifying criteria to advance certain designated groups.

5.5.5 There is also a requirement to sub-contract for contracts valued above R30 million, if feasible, in order to advance designated groups.

5.6 Broad-Based Black Economic Empowerment Act No. 53 of 2003 and the dtic Codes of Good Practice and sector transformation charters

5.6.1 The B-BBEEA establishes a legislative framework for the promotion of black economic empowerment. B-BBEE empowers the Minister of Trade and Industry to issue Codes of Good Practice and Publish Transformation Charters on black economic empowerment;

5.6.1.1 to promote the achievement of the constitutional right to equality, increase broad-based and effective participation of black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution; and

5.6.1.2 To establish a national policy on broad-based black economic empowerment so as to promote the economic unity of the nation, protect the common market, and promote equal opportunity and equal access to government services.

5.7 The Promotion of Administrative Justice Act, No. 3 of 2000

The PAJA gives effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in Section 33 of the Constitution.

5.8 The Promotion of Access to Information Act No. 2 of 2000

In terms of PAIA interested parties may require information to be provided by JW. JW is bound to furnish such information subject to the requirements of this Act.

5.9 The Construction Industry Development Board Act No. 38 of 2000 and its Rules and Regulations

The CIDB requires contractors in the construction industry to be accredited and graded. Only contractors registered with the CIDB may be considered for construction related projects.

5.10 The Prevention and Combating of Corrupt Activities Act No. 12 of 2004

This Act seeks to combat corrupt activities in the Supply Chain Management process. Of particular importance to JW as municipal entity are the following:-

5.10.1 general offence of corruption;

5.10.2 offences in respect of corrupt activities relating to public officers;

5.10.3 offences in respect of corrupt activities relating to members of legislative authority;

5.10.4 offences of receiving or offering of unauthorized gratification by or to party to an employment relationship;

5.10.5 offences in respect of corrupt activities relating to contracts;

5.10.6 offence relating to acquisition of private interest in contract or agreement;

5.10.7 duty to report corrupt transactions;

5.10.8 register for Tender Defaulters.

5.11 Municipal Systems Act, No. 32 of 2000

Provides for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all; to define the legal nature of a municipality as including the local community within the municipal area, working in partnership with the municipality's political and administrative structures; to provide for the manner in which municipal powers and functions are exercised and performed; to provide for community participation.

5.12 Companies Act No. 71 of 2008

The Act was formed against the backdrop of a general corporate reform policy, in order to promote the competitiveness and development of the South African Economy by encouraging entrepreneurship, and employment opportunities by simplifying the procedures for forming companies and reducing costs associated with the formalities of forming a company.

The purposes of the Act are, inter alia, to promote compliance with the Bill of Rights as provided in the Constitution in the application of the company law, to encourage transparency and high standards of corporate governance and provide for the balancing of rights and obligations of shareholders and directors

6. ROLES AND RESPONSIBILITIES

6.1 Responsibilities of JW'S Board of Directors

6.1.1 The Board of Directors, (herein referred to as the Board), must review and approve the SCMP (in line with MSCMR 3). The Board must review and approve any subsequent amendments to the SCM Policy.

6.1.2 The Board must delegate such additional powers and duties to Managing Director so as to enable the Managing Director to discharge the supply chain management responsibilities conferred on Managing Directors by the MSCMR 4.

6.1.3 The Board must maintain oversight over the implementation of the SCMP.

- 6.1.4 For the purposes of such oversight, the Managing Director must in terms of MSCMR 6(2) (a), within 20 days of the end of each financial year, submit a report on the implementation of SCMP to the Board of Directors, who must then submit the report to the Managing Director of the parent municipality for submission to the Council. In terms of MSCMR 6(3) Managing Director must, within 10 days of the end of each quarter, submit a report to the Board on the implementation of the SCMP.
- 6.1.5 The Board shall receive reports in terms of Section 116(2) (d) of the Act from the Managing Director concerning the management of contracts and the performance of contractors
- 6.1.6 The Board shall receive reports from the Managing Director in terms of MSCMR 36(2) and Clause 40 of this policy concerning deviations from, and ratification of minor breaches of procurement processes.
- 6.1.7 The Board shall in terms of MSCMR 46 (3) receive declarations of rewards, gifts, favors, hospitality or other direct or indirect benefit, made by the Managing Director and ensure that such declarations are recorded in the register.
- 6.1.8 On discovery of any irregular expenditure or any fruitless and wasteful expenditure, The Board of Directors must in terms of Section 102 of the Act promptly report, in writing, to the Mayor and Municipal Manager of the CoJ and the Auditor-General:
 - 6.1.8.1 particulars of the expenditure; and
 - 6.1.8.2 any steps that have been taken:
 - 6.1.8.2.1 to recover the expenditure
 - 6.1.8.2.2 to prevent the recurrence of the expenditure
 - 6.1.8.3 promptly report to the South African Police Service any:
 - 6.1.8.3.1 irregular expenditure that may constitute a criminal offence; and
 - 6.1.8.3.2 other losses suffered which resulted from suspected criminal conduct

6.2 Responsibilities of the Managing Director

JW's Managing Director

- 6.2.1 must take all reasonable steps to ensure that proper mechanisms and separation of duties in the Supply Chain Management system are in place to minimize the likelihood of fraud, corruption, favoritism and unfair and irregular practices.
- 6.2.2 implement the SCMP. No person may impede the Managing Director in fulfilling this responsibility.
- 6.2.3 must make determinations in respect of disposals of movable capital assets in terms of the delegation, to the Managing Director by the CoJ Council.
- 6.2.4 if a bid other than the one recommended in the normal course of implementing the SCMP is approved, the Managing Director must, in terms of Section 114 of the Act—notify the Auditor-General, the relevant provincial treasury and the National Treasury and also the parent municipality, of the reasons for deviating from such recommendation.
- 6.2.5 In terms of Section 116 (2) of the Act, the Managing Director must:
 - 6.2.5.1 take all reasonable steps to ensure that a contract or agreement procured through SCMP is properly enforced;
 - 6.2.5.2 monitor on a monthly basis the performance of the contractor under the contract or agreement;
 - 6.2.5.3 establish capacity in JW:
 - 6.2.5.3.1 to assist the Managing Director in carrying out its duties as set out in paragraphs 6.2.5.1 and 6.2.5.2 above;
 - 6.2.5.3.2 to oversee the day-to-day management of all contracts agreements; and
 - 6.2.5.3.3 regularly report to the Board on the management of the contracts and agreements and the performance of the contractors
 - 6.2.5.3.4 The Managing Director must in terms of MSCMR 6(2)(a) (ii), within 20 days of the end of each financial year, submit a report on the implementation of the SCMP to the Board, who must then submit the report to the accounting officer of the parent municipality for submission to the Council.
 - 6.2.5.3.5 In terms of MSCMR 6(3) the Managing Director must, within 10 days of the end of each quarter, submit a report to the Board on the implementation of the SCMP

6.3 Responsibilities of JW officials exercising financial management

- 6.3.1 Each official of JW exercising financial management responsibilities must take all reasonable steps within that official's area of responsibility to ensure –
- 6.3.2 that the system of financial management and internal control established for the entity is carried out diligently;
- 6.3.3 that the financial and other resources of the entity are utilized effectively, efficiently, economically and transparently;
- 6.3.4 that any irregular expenditure, fruitless and wasteful expenditure and losses are prevented;
- 6.3.5 that the provisions of the Act to the extent applicable to that official, including any delegations in terms of Section 106 are complied with.

7. ETHICAL STANDARDS

7.1 Principles and standards of ethical conduct

7.1.1 The principles and standards of ethical conduct by supply chain management personnel and others are established to encourage adherence to an uncompromising level of integrity. They are designed to heighten awareness and acceptance of appropriate conduct and to emphasize the role of ethics in the decision-making process. They are not intended to supplement but complement the organization's policies pertaining to ethical practice.

7.1.2 These principles and standards are intended to be a model for implementation.

Further, their observance is required of all those who influence the supply chain management process, including supply chain management practitioners, executive and senior managers, project engineers, and others who are in one way or another involved in the supply chain management process.

7.1.3 Information contained in this policy is intended to provide insight for handling difficult day-to-day issues in ways that have a positive long-term impact. Standards and guidelines cannot take the place of good judgment. When in doubt, officials are expected to consult with management, professional colleagues and, of course, their conscience.

7.2 The MSCMR prescribes the following ethical standards:

- 7.2.1 JW's procurement process shall be fair, equitable, transparent and cost-competitive. The procurement process will be managed to give due importance to:
 - 7.2.1.1 observance of ethical principles and the fostering of ethical behavior by all JW officials, suppliers and other role-players.
 - 7.2.1.2 detecting and combating fraud, corruption, favoritism and unfair and irregular practices.
- 7.2.2 JW will establish and maintain a code of ethical standards to promote:
 - 7.2.2.1 mutual trust and respect; and
 - 7.2.2.2 an environment where business can be conducted with integrity and in a fair and reasonable manner.
- 7.2.3 JW's code of ethical standards requires that an official or other role-player involved in the implementation of the JW's SCMP
 - 7.2.3.1 must declare to the Managing Director details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to a close family member, partner or associate of that person;
 - 7.2.3.2 must declare to the Managing Director details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by JW.
 - 7.2.3.3 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;
 - 7.2.3.4 must be scrupulous in his or her use of property belonging to JW;
 - 7.2.3.5 must assist the Managing Director in combating fraud, corruption, favoritism and unfair and irregular practices in the Supply Chain Management System; and

- 7.2.3.6 must report to the Managing Director any alleged irregular conduct in the Supply Chain Management System which that person may become aware of, including -
 - 7.2.3.6.1 any alleged fraud, corruption, favoritism or unfair conduct;
 - 7.2.3.6.2 any alleged contravention or
 - 7.2.3.6.3 any alleged breach in the code of ethical standards.

- 7.2.4 All declarations in terms of 7.2.3.1 and 7.2.3.2 above must be recorded in a register which the Managing Director must keep for this purpose.

- 7.2.5 All declarations made by the Managing Director must be made to the Board who must ensure that such declarations are recorded in the register.

- 7.2.6 Measures will be instituted to ensure that appropriate action is taken against any official or other role-player who commits a breach of the code of ethical standards.

- 7.2.7 No unauthorized communication by JW officials with suppliers or prospective suppliers will be permitted. The following communications will be considered to be unauthorised:
 - 7.2.7.1 communication with a supplier or other person in connection with any bid (tender or quotation) which has as its intention, or which has the result of, providing information to the supplier or the general public concerning:
 - 7.2.7.1.1 any report submitted to any person or committee in connection with JW's Supply Chain Management process;
 - 7.2.7.1.2 any proceedings of, recommendation, resolution or award adopted or made by a bid committee or designated official;
 - 7.2.7.1.3 the identity of any JW official who is, or who will be involved in the bid evaluation process;
 - 7.2.7.1.4 the identity of, or any information concerning any other supplier approached for a bid, or from whom a bid has been received;

- 7.2.7.1.5 the content of any bid received from any other bidder;
 - 7.2.7.1.6 JW's estimate of the supplier cost of the goods or services forming the content of the bid;
 - 7.2.7.1.7 the award to any bidder of any bid, or the non-award to any bidder or disqualification of any bidder from the bid evaluation process.
- 7.2.7.2 communication with any supplier concerning any bid, tender or quotation which has as its intention any purpose other than the clarification of the bid submitted by the supplier to enable proper evaluation of the bid, or to request extension of the validity of the bid submitted,
- 7.2.8 No interference in JW's procurement process by any person will be permitted. No person may amend or tamper with any tenders, quotations, bids or contracts after receipt thereof by JW. Where it is established that any JW official has so interfered in JW's procurement process, disciplinary steps shall be taken against such JW official which may include dismissal.
- 7.2.9 Where it is determined that recommendations or decisions forming part of the procurement process were unlawfully or improperly made, taken or influenced, such recommendations or decisions shall become invalid.
- 7.2.10 Disciplinary steps will be taken against any JW official established to have acted improperly with regards to 7.2.7, 7.2.8 and 7.2.9.
- 7.2.11 JW will at all times ensure procedural fairness in the operation of its supply chain management processes. Such processes will include:
- 7.2.11.1 communicating to suppliers the requirements of any bid, tender or quotation;
 - 7.2.11.2 that JW requires from its suppliers the observance of high ethical standards in the provision of information to JW concerning a bid, tender or quotation, and in the fulfillment of any contractual obligation;
 - 7.2.11.3 communicating to suppliers that, should any information communicated to JW concerning any bid, tender or quotation be found to be incorrect, JW will take action to investigate and evaluate deficiencies in the information provided and, if necessary, take action against the supplier concerned;

- 7.2.11.4 communicating to suppliers the process that will be followed in investigating and adjudicating allegations of incorrect disclosure or non-performance.
- 7.2.11.5 communicating identified areas of factual incorrectness or non-performance to suppliers concerned;
- 7.2.11.6 affording suppliers the opportunity to reply to concerns so notified;
- 7.2.11.7 affording suppliers the right to a hearing;
- 7.2.11.8 deciding on the action, if any, to be taken against any supplier
- 7.2.11.9 communicating to the supplier concerned the results of any action taken by JW.

7.3 National Treasury prescribes the following ethical standards

- 7.3.1 In addition to ethical standards mentioned above (7.1 and 7.2), all officials and other role players in a supply chain management process or system are required to comply with the highest ethical standards is stipulated in the National Treasury's Code of Conduct for Supply Chain Management Practitioners with a view to promoting mutual trust and respect and an environment where business can be conducted with integrity and in a fair and reasonable manner. Furthermore, supply chain management practitioners and other role players –
 - 7.3.1.1 must recognize and disclose any conflict of interest that may arise;
 - 7.3.1.2 must treat all providers and potential providers equitably;
 - 7.3.1.3 may not use his or her position for private gain or to improperly benefit another person;
 - 7.3.1.4 may not accept any reward, gift, favor, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person; (but not applicable to gifts of less than R350 in value);
 - 7.3.1.5 must ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act;
- 7.3.2 Supply Chain Management Training
 - 7.3.2.1 All JW officials with a supply chain management responsibility or mandate shall be provided with adequate relevant training to enable them to understand and perform their responsibilities.
 - 7.3.2.2 Training shall include workshops, short courses, formal courses, in-house training with respect to best practice circulars, policy documentation and operating procedures

amongst other. The guidelines issued by National Treasury will form the basis of any training.

7.4 The Municipal Systems Act prescribes the following standards for directors and staff

Section 93H of the Municipal Systems Act sets out the duties of directors of municipal entities as follows:

7.4.1 The Board of Directors of a municipal entity must-

- 7.4.1.1 provide effective, transparent, accountable and coherent corporate governance and conduct effective oversight of the affairs of the municipal entity;
- 7.4.1.2 ensure that it and the municipal entity comply with all applicable legislation and agreements;
- 7.4.1.3 communicate openly and promptly with the parent municipality of the municipal entity; and
- 7.4.1.4 deal with the parent municipality of the municipal entity in good faith

7.4.2 A director must-

- 7.4.2.1 disclose to the board of directors and to the representative of the parent municipality, any direct or indirect personal or business interest that the director or his or her spouse or partner may have in any matter before the board, and must withdraw from the proceedings of the board when that matter is considered, unless the board decides that the director's direct or indirect interest in the matter is trivial or irrelevant; and
- 7.4.2.2 at all times act in accordance with the Code of Conduct for directors referred to in section 93L”.

7.5 Code of Conduct for Directors and Members of Staff

Schedules 1 and 2 of the Municipal Systems Act provides for a Code of Conduct for Councillors and Members of Staff of a municipal entity. Breaches of the Code will be dealt with in accordance with the same Act, including the necessary changes pertaining to Directors of Municipal Entity, Johannesburg Water in this case.

7.6 Breaches of Code

7.6.1 The Board of a municipal entity may-

- 7.6.1.1 investigate and make a finding on any alleged breach of a provision of this Code by a director; or
- 7.6.1.2 establish a special committee –
 - 7.6.1.2.1 to investigate and make a finding on any alleged breach; or
 - 7.6.1.2.2 to make appropriate recommendations to the board of directors.
- 7.6.2 If the Board or special committee finds that a director has breached a provision of this Code, the Board may
 - 7.6.2.1 issue a formal warning to the director;
 - 7.6.2.2 reprimand the director;
 - 7.6.2.3 fine the director; or
 - 7.6.2.4 recommend to the parent municipality that the director be removed or recalled in terms of section 93G of MSA
- 7.6.3 The Board of a municipal entity must inform a parent municipality of that entity of any action taken against a director in terms of 7.6.2
- 7.6.4 The Code of Conduct for municipal staff members contained in Schedule 2 of the MSA applies, with the necessary changes, to members of staff of a municipal entity.
- 7.6.5 For purposes of this section, any reference in Schedule 1 or 2 of the MSA to a “councilor”, ‘MEC for local government in the province”, “municipal council”, “municipality” and “rules and orders” must unless inconsistent with the context or otherwise clearly inappropriate be construed as a reference to a director of a municipal entity, parent municipality, board of directors, municipal entity and procedural rules, respectively.

8. OBLIGATIONS OF BIDDERS

Bidders are required to comply with the following requirements:

8.1 Eligibility

Only bids that comply with the criteria stated in the Bid Document will be considered.

8.2 Cost of bidding

JW will not compensate the bidder/s for any costs incurred in the preparation and submission of all bids even if it is cancelled by JW, unless on exceptional circumstances.

8.3 Briefing sessions and site visits

8.3.1 Briefing sessions

8.3.1.1 When so stipulated in the tender advertisement and tender document bidders are required to attend a briefing session at which they may familiarize themselves with the proposed work, services or supply, location and so forth and raise questions, where provided for in the Bid Document. These meetings may be conducted at the location where the project is required or at JW premises (as advised by JW) such that prospective bidders are able to view and evaluate the environment where the work is required in order to assist in compiling their response.

8.3.1.2 Failure to attend a briefing session when compulsory, will result in the disqualification of that bidder.

8.3.1.3 JW officials participating in these meetings must ensure that the attendance register and the minutes of the meeting are published on the JW website

8.3.1.4 JW reserves the right to have virtual briefing sessions where possible

8.4 Bid clarifications

8.4.1 Bidders may seek clarification regarding any aspect of the tender or bid documents in writing.

8.4.2 The written request for clarification must be sent to and reach the responsible Supply Chain Specialist at least 7 calendar days before the closing date.

8.4.3 Responses to the bid clarifications will be communicated to all bidders via the JW website, etender portal or email.

8.5 Pricing the bid

Bidders are required to include in their rates / prices all costs, duties, taxes and levies. Furthermore, the VAT component must be shown separately as an addition to the bid total of the prices.

8.6 Fixed Rates

8.6.1 It is preferred that bidders provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the Conditions of Contract, e.g. Contract Price

Adjustment. The rates and prices should be stated in South African Rand unless instructed otherwise as an additional condition in the Bid Document.

- 8.6.2 Alternatively, non- firm prices/ rates may be submitted. However, bidders are required to indicate the factors influencing such price/rates and to provide (as an annexure) how adjustments will be effected during the contract term.
- 8.6.3 In respect of imported items, the percentage of the tender price affected by Rate of Exchange (ROE) must be indicated as well as the rate of exchange applicable at the time of tender.
- 8.6.4 In respect of locally manufactured items, the actual components of the price must be indicated in percentage form and which components will be affected for adjustments. Profit will not be an element for adjustment.

8.7 Alterations to documents

- 8.7.1 Bidders are required not to make alterations or additions to the bid documents except to comply with instructions issued by JW.
- 8.7.2 In instances where errors are made during the completion of the tender document, bidders are required to authenticate each and every alteration by the authorized signatory by inserting either his/her initial or signature next to the alteration.
- 8.7.3 Where alterations are made in respect of the pricing component (i.e. errors made on the Bill of Quantity), the pricing schedule or the Form of Offer, such alteration must be authenticated by the authorized signatory by inserting either his/her initial or signature next to the alteration, and an accompanying letter from the tenderer on their official letterhead indicating such alterations.
- 8.7.4 Any and all alterations to the tender documents must be signed or initialled by the tenderer's authorised signatory and an accompanying letter (for price alterations) from the tenderer on their official letterhead indicating such alterations.
- 8.7.5 Corrections may not be made using correction fluid, correction tape or the like.
- 8.7.6 Failure to adhere to the above requirements will result in the disqualification of the bid.

8.8 Submitting a bid

8.8.1 Bidders are required to submit a bid for providing the whole works, services or supply identified in the bid advertisement or document. However, where the services or items to be supplied consists of elements/component which are separable without adversely affecting the contract, tenderers may submit for all elements / components of the contract or may confine their bids to those elements/ components which they are able to supply.

8.8.1.1 Non-adherence to this requirement will result in the disqualification of the bid.

8.8.2 Bids obtained in hard copy must be submitted in their entirety. Where bid documents are downloaded via the etender portal, such documents must also comply with submission requirements as described therein, and must be bound in such a way that pages will not go missing.

8.8.3 Tender documents may be completed electronically without altering or tampering with any of the terms, conditions, specifications etc. in the tender documents. Bids that are received contrary to this requirement will be disqualified.

8.9 Completion of Bid document

Bid documents must be completed using non-erasable black ink. Bids that are received contrary to this requirement will be disqualified.

8.10 JW Reservations

JW reserves the right to award contracts and tenders at its discretion on the basis of the following:

- 8.10.1 in whole or in part ;
- 8.10.2 to more than one tenderer;
- 8.10.3 to the highest point scoring bidder;
- 8.10.4 lowest priced bidder [procurement below R30 000 (not in terms of the point scoring system)]
- 8.10.5 to a bidder not scoring the highest points (based on objective grounds in terms of section 2 (1) (f) of the PPPFA)
- 8.10.6 not to consider any bid with justifiable reasons.

9. JW'S UNDERTAKING/COMMITMENT

9.1 Bid Opening

- 9.1.1 JW undertakes to open bids in the presence of the bidders' representatives who choose to attend at a time and place stated in the Bid Document. Bids for which an acceptable notice of withdrawal has been submitted will not be opened.
- 9.1.2 The name of each bidder and the bid total price, (where practical) will be announced during the opening of bids.
- 9.1.3 The bids must be deposited in the tender box on or before the closing time and date. Submissions not complying with these requirements will not be accepted under any circumstances.

9.2 Late Bids

- 9.2.1 Bids received after the closing time or date will not be accepted under any circumstances and such bidders will be informed accordingly and will be requested to collect the bid documents at their cost.
- 9.2.2 Details of all late bids must be recorded in the report submitted to the BAC.

9.3 Notice to unsuccessful bidders

- 9.3.1 JW undertakes to notify unsuccessful bidders that their bids have not been accepted after the successful bidder has been informed in writing.
 - 9.3.1.1 Letters must be issued simultaneously with letters to successful bidders
- 9.3.2 The letter must include reasons for being unsuccessful.
- 9.3.3 In the event of allegations of misrepresentation, acts in contravention of the Supply Chain Management Policy or any other unethical conduct is leveled against any bidder/s, JW undertakes to provide such bidder/s with an opportunity to respond to such allegations before a final decision is made.

9.4 Rejection of non-responsive bids

JW undertakes to reject a non-responsive bid and not allow it to be subsequently made responsive by correction or deletion of the error, defects or omissions except in instances as outlined in Addendums appended to those tender documents.

9.5 Test for responsiveness

- 9.5.1 Prior to evaluation, JW will determine whether each bid properly received meets the requirements of the Conditions of the Bid, has been properly signed and is responsive to the requirements of the Bid documents.
- 9.5.2 A responsive bid will be one which conforms to all the terms, conditions, specifications and fully satisfies the requirements of the bid documents without any material deviation or qualification.
- 9.5.3 A material deviation or qualification is one which in JW's opinion would:
 - 9.5.3.1 Detrimentally affect the scope, quality, or performance of the works, services or supply identified in the contract.
 - 9.5.3.2 Change JW's or the bidders' risks and responsibilities under the contract.
 - 9.5.3.3 Affect the competitive position of the bidders presenting responsive bids, if it were to be rectified.

9.6 Arithmetical errors

- 9.6.1 Correction of arithmetic errors shall be done after determining the *Highest Ranking bidder* based on the score obtained for price and scores obtained for preferential procurement.
- 9.6.2 JW undertakes to check the highest scoring bid for arithmetical errors and correcting them as follows:
 - 9.6.2.1 Construction related tenders
 - 9.6.2.1.1 JW shall check for arithmetic errors using the following sequence:
 - 9.6.2.1.1.1 Check the amount in words against the amount in figures on the *Form of Offer*,
 - 9.6.2.1.1.2 Check the *Form of Offer* against the *Summary Schedule Total*,
 - 9.6.2.1.1.3 Check the *Section Sub-Totals* per section against the *Summary Total* for summation errors,
 - 9.6.2.1.1.4 Check the *Section Sub-Totals* in the *Summary Schedule* against *Section Sub-Totals* in the *Bill of Quantities*.
 - 9.6.2.1.1.5 Check the *Section Sub-Totals* against the Item Totals for summation errors.

- 9.6.2.1.1.6 Check the *Item Totals* against the product of the *Item Rate* and the *Quantity Provided*.
- 9.6.2.2 In respect of the Form of Offer, where there is a discrepancy between the amounts in figures and the amount in words, the amount in words shall govern. The amount in figure will be adjusted to correspond with the amount in words
- 9.6.2.3 If a bill of quantities or price schedule applies arithmetic errors will be treated as follows:
 - 9.6.2.3.1 Where there is an error in the *Total* of the prices either as a result of other corrections required by this checking process or in the Tenderer's addition of prices, the *Total* of the prices shall govern and the tenderer will be asked to revise selected *Item Prices* (and their *Rates* if *Bills of Quantities* apply) to achieve the *Tendered Total* of the prices.
- 9.6.2.4 Where there is an error in the *Line Item Total* resulting from the product of the *Item Rate* and the *Quantity*, the *Line Item Total* shall govern and the *Item Rate* shall be corrected.
- 9.6.2.5 Where there is an obvious misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate ~~will~~ shall be corrected.
- 9.6.2.6 Where there is an obviously gross misplacement of the decimal point in the *Line Item Total*, the *Line Item Total* as quoted shall govern, and the *Item Rate* shall be corrected taking into consideration any risks associated with implementing such corrections
- 9.6.2.7 Clarification session(s) shall be held with Tenderer where errors are highlighted and corrections made are explained. Tenderer is afforded an opportunity to give additional input, accept or reject corrections made.
 - 9.6.2.7.1 In the event that Tenderer accepts corrections made. JW to proceed with evaluation.
 - 9.6.2.7.2 In the event that Tenderer rejects the correction(s) made, JW should review the Tenderer's motivation and risks associated with proposed change.

9.6.2.8 Risk related to the Arithmetic Corrections shall be assessed. Where risks are identified, tenderers shall provide JW with any other material or information that has a bearing on the tender offer, the tenderer's commercial position (including joint venture agreements), quotations preferencing arrangements or samples of materials considered necessary by JW for the purpose of a full and fair risk assessment.

9.6.2.9 Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the JW request, or fails to attend any meeting in which it has been formally invited to clarify any issue, the tender offer will be regarded as non-responsive.

9.7 Cancellation of tenders

9.7.1 JW may prior to the award of a tender, cancel a tender invitation if:

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

9.7.1.2 funds are no longer available to cover the total envisaged expenditure, or

9.7.1.3 no acceptable tenders are received or

9.7.1.4 there is a material irregularity in the tender process

9.7.2 The decision to cancel a tender invitation in terms of sub-regulation (1) must be published in the same manner in which the original tender invitation was advertised.

9.7.3 JW may only with the prior approval of the relevant treasury cancel a tender invitation for the second time.

10 PREFERENTIAL PROCUREMENT

10.1 Preferential procurement allows for the allocation of points to enterprises which are B-BBEE compliant.

10.1.1 Tenders (including price quotations) with a Rand value equal to, or above R30 000 (including VAT) will be evaluated on a point-scoring system as follows and in line with the revised Preferential Procurement Regulations No. 40553 published on the 20 January 2017 and also incorporating the B-BBEEA Codes:

10.1.1.1 For Rand values equal to or above R30 000 and up to R50,000,000 (Including VAT) - the 80/20 preference point system will be used.

10.1.1.2 For Rand values above R50,000,000 (including VAT) - the 90/10 preference / point system will be used.

10.2 Application of preference point scoring system

10.2.1 In line with the applicable PPPFA Regulations as amended, preferential points must be awarded to a tenderer for attaining the B-BBEE status level of contributor in accordance with the table below:

B-BBEE Status Level of Contribution	Number of Points (based on 80/20)	Number of Points (based on 90/10)
1	20	10
2	18	9
3	14	6
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
Non-compliant contributor	0	0

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

10.2.3 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 only points for price will be allocated and zero points for B-BBEE.

10.3 Points for Price

10.3.1 Points will be awarded in respect of price/cost as follows:

10.3.1.1 A maximum of 90 points will be allocated to Price/Cost on the following basis:

$$N_p = 90 \left\{ 1 - \frac{(P - P_m)}{P_m} \right\}$$

Where N_p = the number of bid adjudication points awarded for price

P_m = the price of lowest responsive bid, adjusted to a common base if applicable.

P = the price of the responsive bid under consideration, adjusted to a common base if applicable.

10.3.1.2 A maximum of 80 points will be allocated to Price/Cost on the following basis:

$$N_p = 80 \left\{ 1 - \frac{(P - P_m)}{P_m} \right\}$$

Where N_p = the number of bid adjudication points awarded for price

P_m = the price of lowest responsive bid, adjusted to a common base if applicable.

P = the price of the responsive bid under consideration, adjusted to a common base if applicable.

10.4 Application of Functionality

10.4.1 There may be instances where functionality (i.e. technical or quality aspect) is of critical importance. In such instances, bids are evaluated for functionality prior to the application of points for price and preference. In this regard the evaluation criteria will prescribe various criteria to be satisfied in respect of functionality for a tender to be considered further. The criteria will specify the requirements (points or checklist) to be satisfied in order to be considered further.

10.4.2 The evaluation of tenders on functionality should therefore be approached in the following manner:

10.4.2.1 The tender invitation must indicate if the tender will be evaluated on functionality

10.4.2.2 The evaluation criteria for measuring functionality must be objective and clearly specified in the invitation to submit a tender

10.4.2.3 The tender document must specify-

10.4.2.3.1 the measuring criteria for functionality

- 10.4.2.3.2 the points for each criteria and , if any, each sub-criterion; and
- 10.4.2.3.3 the minimum qualifying score for functionality
- 10.4.2.4 the minimum qualifying score for functionality for a tender to be considered further-
 - 10.4.2.4.1 must be determined separately for each tender and
 - 10.4.2.4.2 may not be so
 - 10.4.2.4.2.1 low that it may jeopardise the quality of the required goods or services, or
 - 10.4.2.4.2.2 high that it is unreasonably restrictive
- 10.4.2.5 Points scored for functionality must be rounded off to the nearest two decimal places
- 10.4.2.6 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 Regulation 11 (refers to section 2 (1) (f) of the PPPFA)
- 10.4.2.7 No tender shall proceed to further evaluation if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation. Tenderers may also be required to obtain a minimum specified score per criterion. Only tenders that have achieved the minimum qualifying score for functionality and where applicable the minimum qualifying score per criterion, must be evaluated further in terms of the preference point system prescribed above.
- 10.4.2.8 The criteria for functionality must be proposed by the user department, in compliance with the requirements of this policy and recommended by the Bid Specification Committee to the Managing Director for approval (i.e. prior to public invitation of competitive bids). This must be indicated in the evaluation criteria of the bid document.
- 10.4.2.9 All bids shall specify the evaluation criteria as well as the points system applicable thereto. Under no circumstances may additional evaluation criteria be added to those originally indicated in the bid documentation nor may the evaluation criteria be amended or omitted after closing of the bid.

10.5 Criteria for breaking deadlock in scoring

- 10.5.1 Total points scored must be rounded off to two (2) decimal places

- 10.5.2 If two or more tenderers score equal total points, the successful tenderer must be the one scoring the highest preference (B-BBEE) points.
- 10.5.3 If functionality is part of the evaluation process and two or more tenderers have scored 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.
- 10.5.4 If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots by the BEC.

11. ENTERPRISE AND SUPPLIER DEVELOPMENT

The major objectives of this programme are as follows:

- 11.1 Increase local procurement through capacity building by linking Enterprise Development and Supplier Development with Preferential Procurement
- 11.2 Develop and implement an Enterprise Development plan and Supplier Development plan for qualifying beneficiaries
- 11.3 Support procurement from designated groups in order to increase their participation in the main stream economy
- 11.4 Implement Enterprise and Supplier Development Contributions where applicable as per the B-BBEE Codes
- 11.5 Develop and promote interventions that would ensure that small business organization gain access to JW's procurement and other business opportunities.
- 11.6 Earmark and award procurement opportunities in terms of the EPWP framework issued by the National Department of Public Works and or other development initiatives at Provincial and National government level.
- 11.7 Implement specific programmes that would call for black designated groups to be prequalified via an open public invitation (Emerging Contractor Development Programme), including locality to alleviate poverty and redress uneven regional development
- 11.8 The general principles to ensure the successful implementation of the above programmes shall be the following:
 - 11.8.1 Where tenderers are required to assist in the achievement of one of the above objectives during the contract period, the development objective/s shall be specified and described in the tender document at tender stage.

11.8.2 The development objective(s) shall be publicly advertised and be the subject of an open invitation to participate for both the tenderers and/or designated group.

11.8.3 Programmes shall have clearly identifiable objectives, measurable performance indicators capable of being evaluated and the progress monitored and reported.

12. PREFERENTIAL PROCUREMENT

12.1 Should Johannesburg Water decide to apply pre-qualifying criteria to advance certain designated groups it must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond:

12.1.1 A tenderer having a stipulated minimum B-BBEE status level of contributor;

12.1.2 An EME or QSE;

12.1.3 A tenderer subcontracting a minimum of 30% to:

12.1.3.1 An EME or QSE which is at least 51% owned by black people;

12.1.3.2 An EME or QSE which is at least 51% owned by black people who are youth;

12.1.3.3 An EME or QSE which is at least 51% owned by black people who are women;

12.1.3.4 An EME or QSE which is at least 51% owned by black people with disabilities;

12.1.3.5 An EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships

12.1.3.6 a cooperative which is at least 51% owned by black people;

12.1.3.7 An EME or QSE which is at least 51% owned by black people who are military veterans;

12.1.3.8 An EME or QSE.

12.2 A tender that fails to meet any pre-qualifying criteria stipulated in the tender document is an unacceptable tender and must be disqualified.

12.3 Sub-Contracting as a condition of tender in terms of Regulation 9 of the PPPFA:

12.3.1 If feasible JW must subcontract 30% or more of the value of a contract above R30 million, to advance designated groups.

12.3.2 If JW applies subcontracting as contemplated in 12.3.1 above , it must advertise the tender with a specific tendering condition that the successful tenderer must subcontract a minimum of 30% of the value of the contract to one or more of the following categories

12.3.2.1 An EME or QSE

12.3.2.2 An EME or QSE which is at least 51% owned by black people

12.3.2.3 An EME or QSE which is at least 51% owned by black people who are youth

12.3.2.4 An EME or QSE which is at least 51% owned by black people who are women

12.3.2.5 An EME or QSE which is at least 51% owned by black people with disabilities

12.3.2.6 An EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships

12.3.2.7 A co-operative which is at least 51% owned by black people

12.3.2.8 An EME or QSE which is at least 51% owned by black people who are military veterans;

12.3.2.9 More than one of the categories referred to in paragraphs 12.3.2.1 to 12.3.2.8

12.4 Subcontracting post tender award in terms of Regulation 12 of the PPPFA

12.4.1 In cases where a tenderer is not compelled to subcontract but nonetheless wishes to subcontract, then the consent of JW to do so must be obtained.

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

12.4.3 Where such consent is granted, a person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

13. PROUDLY SA CAMPAIGN

JW will, where possible and practical, procure services and products produced in South Africa.

14. LOCAL PRODUCTION AND CONTENT

- 14.1 JW must comply with all requirements in the procurement of goods as designated by the Department of Trade and Industry.
- 14.2 The Department of Trade and Industry may, in consultation with the National Treasury-
 - 14.2.1 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
 - 14.2.2 stipulate a minimum threshold for local production and content.
- 14.3 JW 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.
- 14.4 The National Treasury must inform organs of state (through a circular) of any designation made in terms of regulation 8 (1) of PPPFA Regulations.
- 14.5 If there is no designated sector, an organ of state 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.
- 14.6 The threshold referred to in 14.5 must be in accordance with the standards determined by the Department of Trade and Industry in consultation with the National Treasury.
- 14.7 A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.

15. DELEGATION AND SUB-DELEGATION OF SCM POWERS AND DUTIES

- 15.1 The Board of Directors must delegate such additional powers and duties to the Managing Director as are necessary to enable the Managing Director to discharge the Supply Chain Management responsibilities conferred on Managing Directors by the MFMA.
- 15.2 The Managing Director may further sub-delegate the powers referred to in 15.1 above as follows:

- 15.2.1 For values exceeding R200 000 (including VAT) up to a maximum of R5 million (including VAT) approval is delegated to the Bid Adjudication Committee.
 - 15.2.2 For values exceeding R5 million (including VAT), the Bid Adjudication Committee recommends for final approval by the Managing Director.
 - 15.2.3 For values not exceeding R200 000 (including VAT), the delegations as reflected in the relevant Standard Operating Procedure (SOP) will apply.
- 15.3 In the interest of fairness and competitiveness, no contract may be entered into for a period longer than 36 months, unless authorized by the Managing Director. In exceptional cases where a contract has to run for a period longer than the 36 month period, this must be fully motivated by the user, clearly outlining the complexity of the contract, future financial obligations, nature of contract, legislative requirements and any other implications that may negatively impact on the company. Authority to enter into a contract longer than 3 years must be approved by the Managing Director.
- 15.4 No decision-making in terms of any supply chain management powers and duties may be delegated to a consultant or anyone not employed by JW.

16. EXTENSION OF CONTRACTS

Contracts may be extended in the following instances:

- 16.1 Where a contract contains a provision that JW has an option to extend at its discretion, and the option to extend is exercised, such contract may be extended, but not for longer than 12 months, and not more than once. The exercising of options to extend must be routed via the BEC, BAC and the Managing Director (if the total contract value exceeds R5m including VAT).
- 16.2. Contracts which do not contain an option to extend may be extended through a process as provided for, by Circular 62 routed via the BEC, BAC and the Managing Director but only in the following circumstances:
 - 16.2.1 no responsive tender was received and continuation of services is essential until a new contract is finalized.
 - 16.2.2 due to operational needs, while requirements are being reviewed for a new tender process to be initiated.
 - 16.2.3 the new tender could not be finalized timeously. It is incumbent on user departments in conjunction with the Supply Chain Management Unit to take steps necessary to ensure that whenever practically possible new contracts are awarded timeously before expiry of current contracts.
 - 16.2.4 any other justifiable circumstance in which it is impractical or impossible to award a new contract to replace a current contract.

17. EXPANSION OR VARIATION OF ORDERS AGAINST THE ORIGINAL CONTRACT

- 17.1 The expansion or variation of orders against the original contract may only be agreed upon by not more than 20% for construction related goods, services and/or infrastructure projects and 15% for all other goods and/or services of the original value of the contract.
- 17.2 Any expansion or variation in excess of these thresholds (in 17.1) 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. Accordingly, a contract or agreement procured through the supply chain management policy may be amended by the parties, but only after-
 - 17.2.1 the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
 - 17.2.2 the local community—
 - 17.2.2.1 has been given reasonable notice of the intention to amend the contract or agreement; and
 - 17.2.2.2 has been invited to submit representations to the municipality or municipal entity.
- 17.3 The contents of the above paragraph are not applicable to transversal term contracts, facilitated by the relevant treasuries on behalf of municipalities and municipal entities and, specific term contracts. The latter refers to orders placed as and when commodities are required and at the time of awarding contracts, the required quantities were unknown
- 17.4 Furthermore, anything beyond the abovementioned thresholds must be reported to the board of directors in terms of the company's procurement compliance oversight processes.

18. ESTABLISHMENT OF A SUPPLY CHAIN MANAGEMENT UNIT

- 18.1 The Supply Chain Management Unit will operate under the direct supervision of the Financial Director or an official to whom this duty has been delegated in terms of Section 82 of the MFMA.
- 18.2 JW's Supply Chain Management Policy will be implemented by the Supply Chain Management Unit established in terms of the MFMA

19. SYSTEM OF DEMAND MANAGEMENT

JW will develop and implement an effective system of demand management in order to ensure that the resources required to support JW's strategic and operational commitments are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy JW's needs.

20. SYSTEM OF ACQUISITION MANAGEMENT

20.1 JW will implement an effective system of acquisition management to ensure -

20.1.1 goods and services are procured by JW in accordance with authorized processes only.

20.1.2 that expenditure on goods and services is incurred in terms of an approved budget in terms of Section 15 of the MFMA;

20.1.3 that the threshold values for the various processes are complied with; and

20.1.4 that bid documentation, evaluation and adjudication criteria, and general conditions of contract, are in accordance with any applicable legislation.

20.1.5 No procurement may take place or a purchase order issued to a supplier whose compliance in terms of Central Supplier Database (CSD) requirements are not in order. Further, all suppliers must be registered on the CSD

20.2 If JW procures goods or services in terms of Section 110(2) of the Act (i.e. by contracting with another organ of state), JW will make public on it's website the fact that it procures such goods or services otherwise than through its Supply Chain Management system, including -

20.2.1 the kinds of goods or services; and

20.2.2 the name of the supplier

21. RANGE OF PROCUREMENT PROCESSES

21.1 JW's Supply Chain Management Policy provides for the procurement of goods and services by way of the following processes:

21.1.1 A petty cash process, for procurement up to a transaction value of R2 000 (VAT included). One quotation, proof of purchase or a receipt will be required to support the purchase.

21.1.2 A formal written price quotations process for procurement of a transaction value over R2 000 up to R200 000 (VAT included).

- 21.1.3 A competitive bidding process for procurements above a transaction value of R200 000 (VAT included) and for the procurement of long-term contracts.
- 21.2 JW's Managing Director may lower, but may not increase the above thresholds.
- 21.3 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. Procurement of 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 Supply Chain Management Policy.
- 21.4 The range of procurement processes in terms of Regulation 12 of the PPPFA is summarized as follows :

TRANSACTION VALUE (VAT INCLUDED)	PROCUREMENT PROCESS
UP TO R2 000	1 WRITTEN QUOTATION
OVER R2 000,00 UP TO R200 000	FORMAL WRITTEN PRICE QUOTATIONS- AT LEAST 3 WRITTEN QUOTATIONS
OVER R200 000,00 AND LONG TERM CONTRACTS	COMPETITIVE BIDS

22. GENERAL PRECONDITIONS FOR CONSIDERATION OF WRITTEN QUOTATIONS OR BIDS

JW will not consider a written quotation or bid unless the provider who submitted the quotation or bid:

- 22.1 has furnished JW with that provider's
- 22.1.1.1 full name;
 - 22.1.1.2 identification number or company registration number or other registration number;
 - 22.1.1.3 tax clearance Pin as issued by SARS
 - 22.1.1.4 information that it is registered on the Central Supplier Database
 - 22.1.1.5 VAT certificate (if applicable)
 - 22.1.1.6 valid Municipal Account
 - 22.1.1.7 valid BBBEE certificate or affidavit
- 22.2 has indicated -

- 22.2.1 whether he or she is in the service of the state, or has been in the service of the state in the previous 12 months;
- 22.2.2 if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous 12 months; or
- 22.2.3 whether a spouse, child or parent of the provider or of a director, manager, shareholder, or stakeholder referred to in Clause 48.5 below is in the service of the state or has been in the service of the state in the previous 12 months.

23. LIST OF ACCREDITED PROSPECTIVE PROVIDERS

- 23.1 JW's Managing Director will:
 - 23.1.1 keep a list of accredited prospective providers of goods and services approved by National Treasury and JW that must be used for JW's procurement requirements through verbal or written quotations;
 - 23.1.2 encourage prospective providers of goods and services to apply for registration on National Treasury's Central Supplier Database.
 - 23.1.3 specify the listing criteria for accredited prospective providers; and
 - 23.1.4 disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- 23.2 The list will be updated on an ongoing basis during the year to include any additional prospective providers and any new commodities or types of service. Prospective suppliers will therefore be allowed to submit applications for a listing in the JW supplier database at any time once uploaded onto the database approved by National Treasury and being successful on an advertised request for quotation or tender.
- 23.3 The list will be compiled per commodity and type of service.
- 23.4 JW's Managing Director shall from time to time determine financial values above which prospective suppliers will be subjected to:
 - 23.4.1 Special screening for financial viability.
 - 23.4.2 Security clearance.

24. VERBAL QUOTATIONS

Verbal quotations are only acceptable in cases of an emergency. Where verbal quotations are sought (by an official who has the delegated authority), the supply or service may only be obtained once the service provider has confirmed such quotation in writing. A purchase order will only be issued against a written confirmation.

25. FORMAL WRITTEN PRICE QUOTATIONS

25.1 The following conditions will apply to the procurement of goods and service up to R200 000 including VAT through formal written price quotations:

25.1.1 Quotations must be obtained in writing from at least three different providers whose names appear on the database of accredited prospective providers approved by National Treasury's Central Supplier Database.

25.1.2 if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the Senior Manager: Supply Chain Management Unit or his / her delegate and

25.1.3 the Managing Director must record the names of the potential providers and their written quotations.

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

The following procedures will be followed for the procurement of goods or services through verbal quotations or formal written price quotations:

26.1 all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of Clause 26 above, be advertised for at least seven calendar days on the JW website and on the official notice board of JW;

26.2 the Managing Director must take all reasonable steps to ensure that the procurement of goods and services through written or verbal price quotations is not abused;

26.3 the Managing Director or Financial Director must on a monthly basis be notified in writing of all verbal and formal written price quotations accepted by an official acting in terms of a sub-delegation; and

26.4 proper records will be kept which will include all requests for quotations, all quotations received and documentation detailing all decisions taken and the reasons for such decisions.

27. COMPETITIVE BIDS

27.1 Goods or services above a transaction value of R200 000 (VAT included) and long-term contracts will be procured by JW only through a competitive bidding process.

27.2 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.

27.3 Process for competitive bidding:

JW will prescribe procedures for each of the following stages:

27.3.1 the compilation of bidding documentation;

27.3.2 the public invitation of bids;

27.3.3 sale of bid documents, accounting for revenue and depositing thereof into JW's bank account;

27.3.4 site meeting or briefing sessions, if applicable;

27.3.5 the handling of bids submitted in response to public invitation;

27.3.6 the evaluation of bids;

27.3.7 the award of contracts;

27.3.8 the administration of contracts; and

27.3.9 proper record-keeping.

27.4 Framework Agreements

27.4.1 Framework Agreements are designed for the purpose of inviting bids from providers to carry out work on an "as and when" instructed basis over a set term, within a defined scope of work but without committing to any quantum of goods, services or works. Framework agreements can be concluded with suppliers who have satisfied all technical requirements to provide the required goods or services as described in the scope.

27.4.2 Acceptance of prices/ rates at the time of concluding the agreement may be optional as follows:

27.4.2.1 the accepted price/ rates of the various suppliers will be used to determine their cost of the scope identified or

27.4.2.2 rates/ prices can be obtained when a scope / work package is identified and suppliers approached are required to provide such costs

- 27.4.3 In both the above scenarios, the point scoring system (as indicated in the tender) must be applied and award must be made to the highest scoring supplier unless there are justifiable reasons not to do so.
- 27.4.4 The essential elements of a framework agreement are as follows:
 - 27.4.4.1 Contract only with one or more service providers who have the resources and capability to carry out the work that is likely to be instructed
 - 27.4.4.2 Lay down the basis by which service providers are to be remunerated for instructed work
 - 27.4.4.3 Identify the extent and location of the work covered by the contract. The instructing of work outside of the defined scope of a framework is not permitted and will be seen as circumventing the tendering process.
 - 27.4.4.4 Provides for competition amongst the service providers where there are no justifiable reasons for issuing an order to a particular service provider, in which case all such service providers may be invited to submit quotations to execute the work.
 - 27.4.4.5 Service providers may only proceed with work associated with a particular task when given an official purchase order that instructs them to do so
 - 27.4.4.6 No order or instruction to do work may be issued after the end date of the term of the framework agreement. However where work commenced before the end of the term of a framework contract, this may continue until the end of date provided in the order or purchase instruction.

28. BID DOCUMENTATION FOR COMPETITIVE BIDS

Documentation for the competitive bidding process must comply with the following criteria:

28.1 The bid documentation must -

28.1.1 take into account -

28.1.1.1 the general conditions of contract;

28.1.1.2 any Treasury guidelines on bid documentation

- 28.1.1.3 the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure
- 28.1.1.4 the contract conditions specified from time to time for building and civil contracts which are as follows:
 - 28.1.1.4.1 General Conditions of Contract (GCC) as issued by the South African Institution of Civil Engineering (SAICE) is for the procurement of engineering and construction works
 - 28.1.1.4.2 International Federation of Consulting Engineers (FIDIC) is applied as follows:
 - 28.1.1.4.2.1 Conditions of Contract for Works of Civil Engineering Construction: The Red Book
 - 28.1.1.4.2.2 Conditions of Contract for Electrical and Mechanical Works including Erection on Site: The Yellow Book
 - 28.1.1.4.2.3 Conditions of Contract for Design-Build and Turnkey: The Orange Book
 - 28.1.1.4.3 New Engineering Contracts (NEC) which is intended to be suitable for any sector of the industry, including civil, building, nuclear, oil & gas
 - 28.1.1.4.4 The Joint Building Contracts Committee (JBCC) which is applicable to projects related to the building industry
- 28.1.2 include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- 28.1.3 compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- 28.1.4 if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish -
 - 28.1.4.1 if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements or if the bidder is not required by law to prepare financial statement and this is required in terms of tender conditions to assess the bidders financial position, their unaudited financial statements prepared by a registered Managing Director –

- 28.1.4.1.1 for the past three years; or
- 28.1.4.1.2 since their establishment if established during the past three years;
- 28.1.4.1.3 The submitted financial statements will be analysed and will result in either the acceptance or rejection of the bid based on the risk assessment.
- 28.1.4.1.4 Failure by the bidder to provide the financial statements will result in disqualification.

28.1.4.2 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 90 days;

28.1.4.3 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;

28.1.4.4 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 JW is expected to be transferred out of the Republic;

28.1.5 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; (refer Clause 52)

28.1.6 The tender conditions must allow for an Alternative Dispute Resolution process although each party has the right to approach a Court at any time during the dispute. These will take the following form:

28.1.6.1 negotiation/ consultation;

28.1.6.2 mediation;

28.1.6.3 arbitration

28.2 The bid documentation shall specify the warranty or guarantee period to apply to the goods or services required, if any, normally 12 months from date of delivery.

29. PUBLIC INVITATION FOR COMPETITIVE BIDS

29.1 the following procedure will apply for competitive bids:

- 29.1.1 Any invitation to prospective bidders to submit bids must be by means of a public advertisement in newspapers commonly circulating locally (if required) , the JW website, the cidb website for construction related projects, the etender portal or any other appropriate ways.
- 29.1.2 The public advertisement must contain at least the following information:
 - 29.1.2.1 the closing 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
 - 29.1.2.2 a statement that bids may only be submitted on the bid documentation provided by JW.
- 29.2 The Managing Director may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- 29.3 A motivation for shorter closing period must accompany the BSC submission for consideration. If supported, must thereafter be submitted to the Managing Director for approval.
- 29.4 bids submitted to JW must be sealed
- 29.5 where bids are requested in electronic format, such bids may be supplemented by sealed hard copies
- 29.6 tender documents downloaded from the etender portal must also comply with all submission requirements as applicable to hard copy versions purchased
- 29.7 Where a bid is specifically called from Consortia or Joint Ventures, the bid conditions must indicate the following:
 - 29.7.1 save where necessitated by sole supplier/standardization considerations, a bidder may only form part of one consortium or joint venture and may not become a member of more than one consortium or joint venture;
 - 29.7.2 the consortium or joint venture must indicate each member's contribution to the project as well as the percentage of such contribution by completion and submission of the appropriate Consortium or joint venture agreement

- 29.7.3 a completed and signed JW 10 (Preference points claim form) must be submitted with the tender in respect of each member
- 29.8 Failure by the bidder to adhere to (29.7.1), (29.7.2) and (29.7.3) above will result in the disqualification of the tender.
- 29.9 Evaluation in terms of preferential procurement will be subject to points allocations for JVs, consortiums and trusts will be based on the individual member proof of B-BBEE level status of contributor submitted or as stipulated by the relevant B-BBEE sector scorecard, e.g construction requires a consolidated B-BBEE certificate for JVs / Consortium.
- 29.10 Multiple bids are not permissible from the same bidder, including JVs and consortiums for the same bid which is perceived as co-bidding or collusive bidding.

30. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS

- 30.1 The following procedures will apply to the handling, opening and recording of bids;
- 30.1.1 Bids-
- 30.1.1.1 must be opened only in public; and
- 30.1.1.2 must be opened at the same time and as soon as possible after the period for submission of bids has expired;
- 30.1.2 if any bidders or members of the public are present at the opening of the tenders the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; and
- 30.1.3 the Managing Director or his delegate shall-
- 30.1.3.1 record in a register all bids received in on time;
- 30.1.3.2 make the register available for public inspection; and
- 30.1.3.3 publish the entries in the register and the responses received on the JW website.
- 30.2 Communication with bidders
- 30.2.1 May only take place to obtain clarity on the offer submitted and shall not have the effect of affording a bidder a second opportunity to tender. All communication and responses must be in writing and shall be filed for record purposes.

- 30.2.2 If this communication occurs through a meeting format, the minutes and the attendance register of such meeting shall be kept as part of the record
- 30.3 Extension of validity
 - 30.3.1 Bid validity may be extended if justified under exceptional circumstances. All bid validity extensions shall be requested in writing from all bidders before the bid validity expiry date.
 - 30.3.2 Bid validity may be extended for a period not exceeding 150 days or for shorter periods cumulatively not exceeding 150 days. This shall be the final extension and a bid may not be extended beyond this 150 day period.
 - 30.3.3 Bid validity must be extended before expiry of the validity period in operation at the relevant time and shall only be extended if bidders consent to such extension in writing without introducing any new or further conditions.
 - 30.3.4 This is subject to the proviso that should any bidders fail to respond to the validity extension request which shall also be in writing, within the stipulated time period, the relevant bidders shall be deemed to have voluntarily withdrawn their bids. Such withdrawal will not negate or adversely affect the extension of validity of the bid if other bidders have consented to the extension.
- 30.4 Negotiation with preferred bidders
 - 30.4.1 JW's Managing Director or delegated official may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation:
 - 30.4.1.1 does not allow any preferred bidder a second or unfair opportunity;
 - 30.4.1.2 is not to the detriment of any other bidder; and
 - 30.4.1.3 does not lead to a higher price than the bid submitted.
- 30.5 Negotiations with a Tenderer presenting a price which is not market related
 - 30.5.1 if the price offered by the tenderer scoring the highest points is not market-related, JW may not award the contract to that tenderer
 - 30.5.2 if the price offered by the highest points scoring tenderer is not market related JW may-

- 30.5.2.1 negotiate a market – related price with the tenderer scoring the highest points or cancel the tender
 - 30.5.2.2 If the tenderer does not agree to a market- related price, negotiate a market related- price with the tenderer scoring the second highest points or cancel the tender
 - 30.5.2.3 If the tenderer scoring the second highest price 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
- 30.5.3 If a market related price is not agreed as envisaged in paragraph 30.5.2.3 above, JW must cancel the tender
- 30.6 Award of contracts to the highest points scoring tenderer
 - 30.6.1 Contracts must be awarded to the tenderer who scores the highest points, unless objective criteria in addition to those contemplated in section 2 (1) (d) and (e) of the PPPFA justify the award to another tenderer.
 - 30.6.2 If JW intends to apply objective criteria in terms of the above, it must stipulate the applicable objective criteria in the tender documents
 - 30.6.3 If the price of the highest scoring tenderer is not market related the relevant contract shall not be awarded unless a market related price is negotiated as contemplated in 30.5.2 above
- 30.7 The negotiation team may comprise a representative from Legal, Finance and the BEC.
- 30.8 Minutes of such negotiations must be kept for record purposes.

31. TYPES OF BIDDING PROCESSES

31.1 Two-stage bidding process

A two-stage bidding process is permitted for:

- 31.1.1 Large and complex projects;
 - 31.1.2 Projects where it may be undesirable to prepare complete detailed technical specifications;
 - 31.1.3 Long-term projects with a duration period exceeding three years.
- 31.2 In the first stage, technical proposals or conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.

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

31.2 Request for tender

In this process responses are solicited from potential tenderers through an open tender process whereby they need to respond with an offer relative to a predetermined scope either for goods or services which may be awarded to one or more tenderers.

31.3 Request for Proposal (two envelope system)

31.3.1 In this process, responses are requested from potential tenderers in two parts, viz a Technical and Financial proposals are submitted in separate sealed envelopes.

31.3.2 On the day of closing, only the technical proposal is opened and names of tenderers and read out.

31.3.3 Only when the technical evaluation is completed, will the second opening take place, ie opening of the financial proposal. At this session, only those who have met the minimum technical requirements will have their financial proposal opened and prices/cost read out if practical. Those that did not satisfy technical requirements will have their financial proposals returned unopened.

31.4 Request for Information (RFI)

31.4.1 This process is normally adopted when the exact specification/ scope cannot be determined due to lack of information, technological changes and the market is accessed through an open process to solicit such latest information available.

31.4.2 Information when received is analysed and a scope / specification is compiled and a closed tender process follows whereby the invitation is confined only to those who are generally responsive to the RFI

31.5 Expression of Interest

31.5.1 This process is similar to the RFI except that in this instance some of the information is available but not adequate to solicit bids. Therefore a public invitation is extended whereby the objective is described and interested parties are requested to respond. Indicative costs are also requested for budgetary purposes only.

31.5.2 The same process will follow as for the RFI upon evaluating the responses received.

31.6 Open public bid adjudication

- 31.6.1 In line with the initiative of the City of Johannesburg Municipality to improve transparency and to build public confidence in the procurement system, Johannesburg Water will adjudicate all items included in the agenda of the Bid Adjudication Committee in public.
- 31.6.2 To this effect, members of the public will be invited to attend such sessions on specific dates through notices published in appropriate media, preferably the media utilized to advertise the bids viz, the JW website † whereby the date, time, venue and the items to be adjudicated will be published.
- 31.6.3 Parties attending this meeting will only maintain an observer status and may not participate or raise any matters of concern. All such attendees must complete and sign the attendance register in circulation at the meeting.
- 31.6.4 The public adjudication process will be conducted within the following framework:
- 31.6.4.1 Provide a written notice of intention to hold a bid adjudication committee meeting at least 3 calendar days prior to the meeting taking place.
 - 30.6.4.1.1 In exceptional circumstances notices will be published 24 hours prior to the meeting
 - 30.6.4.1.2 In instances beyond Johannesburg Water's control (eg. But not limited to Website technical problems) the notices may not be issued prior to the meeting
 - 31.6.4.2 Publish an agenda of all the items to be adjudicated in appropriate media which may include the JW website.
 - 31.6.4.3 Details of the date and venue of the committee meeting
 - 31.6.4.4 Members of the public will only be observers and may not engage in any discussion or raise any matters with members of the adjudication panel
 - 31.6.4.5 Any member of the public may attend any adjudication committee meeting regardless of whether they submitted a tender or not
 - 31.6.4.6 Any cancellation of a bid adjudication committee meeting shall also be published to notify the public of such cancellation where practicable.

32. COMMITTEE SYSTEM FOR COMPETITIVE BIDS

- 32.1 The Managing Director will institute and maintain a committee system for competitive bids consisting of:
 - 32.1.1 a Bid Specification Committee;
 - 32.1.2 a Bid Evaluation Committee;
 - 32.1.3 a Bid Adjudication Committee.
- 32.2 The Managing Director may appoint a neutral or independent observer (to any committee) to perform an attendance or oversight process when it is appropriate for ensuring fairness and promoting transparency;
- 32.3 The committee system must be consistent with 32.7 to 32.10 below and with any applicable legislation;
- 32.4 JW's Managing Director may determine that the committee system also be applied to formal written price quotations;
- 32.5 Secretarial services for the committee system will be provided by JW Company Secretariat;
- 32.6 No councilor of any municipality or non-executive board member of JW may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.

32.7 Bid Specification Committee (BSC)

- 32.7.1 The request to initiate a tender process for a particular procurement must be authorized by the Executive Manager or Head of Department of the user department and accompanied with a confirmation of funds must be submitted to Supply Chain for inclusion in the submission to the BSC.
- 32.7.2 The BSC must compile the specifications for each procurement of goods or services by JW in terms of Regulation 27(1) of the MSCMR.
- 32.7.3 These specifications must thereafter be approved by the Managing Director in terms of 27 (2) (g) of the MSCMR.
- 32.7.4 The composition of the BSC must be in terms of Reg. 27 (3) of the MSCMR to include one or more officials of the municipality or municipal entity, preferably the manager responsible for the function and may when appropriate include external specialist advisors.
- 32.7.5 Specifications:
 - 32.7.5.1 must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

- 32.7.5.2 must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organization, or an authority accredited or recognized by the South African National Accreditation System with which the equipment or material or workmanship should comply;
- 32.7.5.3 where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
- 32.7.5.4 may not create trade barriers in contract requirements in the form of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
- 32.7.5.5 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";
- 32.7.5.6 must indicate each specific goal for which points may be awarded in terms of the points system set out in the JW's Supply Chain Management Policy; and
- 32.7.5.7 must be approved by the Managing Director or his delegate prior to the public invitation for competitive bids.

32.7.6 The Bid Specification Committee must be composed of the following:

32.7.6.1 Chairperson

Has a casting vote only when chairing, but have an ordinary vote when not chairing.

32.7.6.2 Deputy Chairperson

Has a casting vote only when chairing, but have an ordinary vote when not chairing.

32.7.6.3 Voting Members

User Department Representative
 Supply Chain Practitioner
 Deputy Chairperson (only when not chairing)
 Finance Representative

32.7.6.4 Non-voting Members

Technical Advisor
 Legal Advisor as required
 Secretariat

32.7.6.5 All permanent voting members shall be appointed in writing by the Managing Director.

32.7.6.6 The user department representative shall be nominated by the Executive / Head of Department of the department concerned and approved by the Managing Director

32.7.6.7 Minutes of the meeting are required and will be facilitated by the JW Secretariat. Each member (excluding the Chairperson) is entitled to a vote, and 3 members (including the Chairperson) are required for a quorum. The Chairperson does not have a member vote. In the case of a tie, the Chair is to exercise a casting vote. If the chairperson is absent from the meeting, the Deputy Chairperson will preside. If both the Chairperson and Deputy Chairperson are absent, the members present shall elect a chair to preside.

32.7.6.8 The Deputy Chairperson does not have a member vote when chairing a meeting

32.7.6.9 No person, employee, advisor or corporate entity involved with the Bid Specification Committee, or director of such a corporate entity, may bid for any resulting contracts.

32.7.6.10 All permanent members shall be appointed in writing and renewed after every 12 months or earlier as dictated by circumstances

32.8 Bid Evaluation Committee

32.8.1 In terms of Reg. 28 (1) of the MSCMR the Bid Evaluation Committee must –

32.8.1.1 Evaluate bids in accordance with -

32.8.1.1.1 The specifications for a specific procurement;
and

32.8.1.1.2 The points system as set out in JW's Supply Chain Management Policy and as disclosed in the bid specification and as described in terms of the Preferential Procurement Policy Framework Act.

32.8.1.1.3 The achievement of the best value for money.

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

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

32.8.1.4 Submit to the Bid Adjudication Committee a report and recommendations regarding the award of the bid or any other related matter;

- 32.8.2 The Bid Evaluation Committee in terms of Reg. 28 (2) of the MSCMR must as far as possible be composed of :
- 32.8.2.1 Officials from departments requiring the goods or service.
 - 32.8.2.2 At least one supply chain management practitioner.
- 32.8.3 each committee constituted to—comprise of a minimum—of three members appointed in writing by the Managing Director.
- 32.8.4 The members will be appointed on an annual basis for a period of twelve (12) months.
- 32.8.5 The BEC members shall nominate a chairperson in their first meeting (for the specific tender), preferably from the user department's representative(s).
- 32.8.6 The SCM Specialist will be the convener of the BEC.
- 32.8.7 Technical and legal advisors may be appointed (by the Managing Director) when necessary.

32.9 Site visits

- 32.9.1 Site visits are actual visits conducted by JW whereby the bidder's physical place of business is inspected and evaluated to ensure the existence of the business, its facilities, resources and capability.
- 32.9.2 The purposes of these visits are normally conducted for short listed bidders as follows:
- 32.9.2.1 evaluation during a tender process whereby various elements as predetermined are allocated scores to arrive at a conclusion whether the tenderer satisfies requirements or not.
 - 32.9.2.2 bidders whose sites are to be visited by JW must give access to the premises to JW personnel and must be available to provide any information required by JW during the site visit.

32.10 Bid Adjudication Committee (BAC)

- 32.10.1 In terms of Reg. 29 (1) of the MSCMR, the Bid Adjudication Committee must:
- 32.10.1.1 consider the report and recommendations of the Bid Evaluation Committee; and
 - 32.10.1.2 either -

- 32.10.1.2.1 depending on its delegations, make a final award or a recommendation to the Managing Director to make the final award;
or
- 32.10.1.2.2 make another recommendation to the Managing Director how to proceed with the relevant procurement.

32.10.2 The BAC must in terms of Regulation 29 (2) of the MSCMR consist of at least four senior managers of the municipal entity which must include:

- 32.10.2.1 The CFO (Financial Director in this case of JW) or his/her delegate.
- 32.10.2.2 at least one Senior SCM practitioner or his/her delegate who is an official of the municipality entity and
- 32.10.2.3 a technical expert in the relevant field who is an official of the municipal entity

32.10.3 The Managing Director in terms of Regulation 29 (3) of the MSCMR must appoint the chairperson. If the chairperson is absent from the meeting, the members of the committee who are present must elect one of them to preside.

32.10.4 The Bid Adjudication Committee must be composed of the following:

32.10.4.1 Chairperson

Has a casting vote only when chairing, but have an ordinary vote when not chairing

32.10.4.2 Deputy Chairperson

Has a casting vote only when chairing, but have an ordinary vote when not chairing

32.10.4.3 Voting Members

Deputy Chairperson (only when not chairing)

Financial Director

Senior Manager: Supply Chain Management

Any other two Senior Managers

A Technical expert (who shall be a senior manager relative to the item under consideration for the department concerned)

32.10.4.4 Non-voting Members:

Legal Advisor (as required)

Secretariat

32.10.4.5 Minutes of the meeting are required and will be facilitated by the JW Secretariat.

32.10.4.6 Each BAC member duly appointed is entitled (excluding the Chairperson) to a vote. A minimum of four (4) members which must include supply chain management, finance and user technical expert and a chairperson are required for a quorum. The Chairperson does not have a member vote. In the case of a tie, the Chairperson is to exercise a casting vote.

32.10.4.7 If the Chairperson is absent from the meeting, the Deputy Chairperson will preside. If both the Chairperson and Deputy Chairperson are absent, the members of the committee who are present must elect one of them to preside at the meeting.

32.10.4.8 The Deputy Chairperson does not have a member vote when chairing a meeting

32.10.4.9 An official who is a voting member at any one bid committee or involved in the technical evaluation or assisted in the evaluation of the bid may not vote at another bid committee.

32.10.4.10 For continuity, each voting member on a bid committee shall have a secondee who will be appointed by the Managing Director in writing.

32.11 Advisors and consultants are prohibited from voting at any bid committee.

32.11.1 If a Bid Adjudication Committee decides to award a bid other than the one recommended by the Bid Evaluation Committee, the Bid Adjudication Committee must refer such matter back to the Bid Evaluation Committee indicating reasons in writing why the recommended tenderer cannot be considered for award.

32.11.2 The Bid Evaluation Committee must be afforded reasonable time to review the Bid Adjudication Committee's comments, review the recommendation or respond with reasons why the initial recommendation should remain unchanged.

32.11.3 The Managing Director may -

32.11.3.1 After due consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee referred to in [32.11.1](#) above; and

32.11.4 If the decision of the Bid Adjudication Committee is rejected, refer the decision of the Bid Adjudication Committee back to that committee for reconsideration.

32.11.5 The Managing Director may at any stage of a bidding process, refer any recommendation made by the Bid Evaluation Committee or the Bid Adjudication Committee back to that committee for reconsideration of the recommendation.

32.11.6 The Managing Director must comply with Section 114 of the MFMA within 10 working days. Section 114 of the MFMA provides:

32.11.6.1 If a tender other than the one recommended in the normal course of implementing the Supply Chain Management Policy of a municipal entity is approved, the Managing Director of the municipal entity must, in writing, notify the Auditor-General, the relevant Provincial Treasury and the National Treasury and also the parent municipality, of the reasons for deviating from such recommendation.

32.11.6.2 32.11.6.1 does not apply if a different tender was approved in order to rectify an irregularity.

32.11.7 Reporting requirements

In terms of the reporting requirements of the BAC in terms of sections 5(3), 5(4)(a) and 5(4)(b) of the MSCMR, it will be the responsibility of the SCMU to compile and submit reports on activities of the BAC and Managing Director on a monthly and Quarterly basis to EXCO and the Board

32.11.8 The functioning and operations of all Bid Committees as well as composition will be defined in the Bid Committee Terms of Reference and must be strictly adhered to.

32.12 Probity Audits

The Managing Director may, at his or her discretion, decide to have a specific tender audited by JW's Internal Audit Department prior to the award of the tender.

33. CONTRACT REQUIREMENTS

33.1 Contracts:

33.1.1 must be in writing;

33.1.2 must contain dispute resolution mechanisms to settle disputes between parties;

33.1.3 must contain a cancellation clause for non-performance in terms of the contract conditions, force majeure, or for any other required reason;

- 33.1.4 may contain a penalty clause if applicable;
- 33.1.5 must contain a provision for the review of a contract or agreement once every three years in the case of a contract or agreement for longer than three years

- 33.2 Construction contracts shall include any documents relating to health and safety that may be required by the Occupational Health and Safety Act No. 85 of 1993 and any applicable Regulations thereunder.

- 33.3 Material amendments of the contract may be implemented only with the approval of the relevant delegated authority.

- 33.4 Provision must be made for a periodic report on the performance in terms of the contract to the relevant delegated authority. The Managing Director must periodically report to the Board of Directors of JW on contract performance.

- 33.5 The conditions of the contract will stipulate that failure on the part of parties to perform their obligations under the contract will not be considered as a default if such failure is the result of an event of force majeure as defined in the conditions of the contract.

34. RETENTION

A reasonable retention amount, (usually 10% of the contract value) may be provided for in the contract, to be released upon fulfillment of the contractor's contractual obligations. Instances where such retentions will be required include:

- 34.1 all construction related projects;
- 34.2 in respect of machinery and equipment supplied and commissioned; and/or
- 34.3 in any other instance as determined by JW

35. PERFORMANCE-GUARANTEE

- 35.1 Performance guarantees may be required in instances where there may be an element of risk to the extent that JW may suffer financially or operationally. Subject to 35.2.3 below performance guarantees are required for all construction related contracts and may be required for non-construction related contracts if deemed necessary by the relevant user department.

- 35.2 Performance guarantees are subject to the following conditions:
 - 35.2.1 the minimum amount of such performance-guarantee will be 10% of the applicable contract value;
 - 35.2.2 the maximum period within which a performance-guarantee must be submitted by the contracting party to JW shall be as follows:

- 35.2.2.1 In the case of non-construction related contract 21 days commencing from the date of the letter of award / appointment;
 - 35.2.2.2 In the case of construction related contract 28 days commencing from the date of the project hand-over meeting.
 - 35.2.2.3 In either instance above, JW reserves the right to extend such submission period on justifiable grounds and circumstances which it shall determine
- 35.2.3 the Managing Director or delegated representative shall have the discretion to waive the requirement of the performance-guarantee in construction contracts where the contracting party is an EME or QSE as follows:
- 35.2.3.1 in these cases, as an alternative to the requirement for submission of a performance-guarantee, the relevant delegated authority shall have the discretion to apply alternative measures to provide protection to JW comparable to what would have been enjoyed under the performance-guarantee, e.g. by retaining a percentage of each invoice until such time as the required performance-guarantee value has been reached. The conditions for release of such retained amounts shall be the same as those applicable to release of a performance-guarantee;
- 35.2.4 the relevant delegated authority shall have the discretion to extend the time period for the submission of the performance-guarantee to JW.
- 35.2.5 No work shall commence nor may the site handover take place until the performance guarantee is received from the supplier.
- 35.3 Failure to submit the performance-guarantee within the stipulated period will be regarded as a breach of contract entitling JW to cancel the contract and claim damages from the contractor.
- 35.4 The performance-guarantee will be in a format acceptable to JW, from a bank or any other financial institution acceptable to JW and will be valid until the contract is duly fulfilled.
- 35.5 The name of the contractor appearing on the performance-guarantee will correspond with the name on the tender document.

36. PROCUREMENT OF BANKING SERVICES

- 36.1 A contract for the provision of banking services to JW:
 - 36.1.1 must be procured through competitive bids;

- 36.1.2 must be consistent with Section 85 of the MFMA (Opening of bank accounts and bank accounts); and (account under CoJ currently)
- 36.1.3 may not be for a period of more than five years at a time.
- 36.2 The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- 36.3 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.
- 36.4 Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act 94 of 1990).

37. PROCUREMENT OF INFORMATION TECHNOLOGY-RELATED GOODS AND SERVICES

- 37.1 JW's Managing Director may request the State Information Technology Agency (SITA) to assist JW with the acquisition of IT-related goods or services through a competitive bidding process.
- 37.2 The parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to SITA.
- 37.3 The Managing Director must notify SITA, together with a motivation of the IT needs of JW, if:
 - 37.3.1 the transaction value of IT-related goods or services required by JW in any financial year will exceed R50 million (VAT included); or
 - 37.3.2 the transaction value of a contract to be procured by JW whether for one or more years exceeds R50 million (VAT included).
- 37.4 If SITA comments on the submission and JW disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the Council, the National Treasury, the relevant Provincial Treasury and the Auditor-General.

38. PROCUREMENT OF GOODS NECESSITATING SPECIAL SAFETY ARRANGEMENTS

- 38.1 The acquisition and storage of goods in bulk (other than water) that necessitate special safety arrangements, including gasses and fuel, will be restricted.
- 38.2 Storage in bulk of such goods will only be permitted by the Managing Director upon justification by the General Manager: Operations, which justification

must be based on sound reasons, including the total cost of ownership and cost advantages for JW.

39. APPOINTMENT OF CONSULTANTS

- 39.1 JW's Managing Director may procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- 39.2 A contract for the provision of consultancy services to a municipal entity must be procured through competitive bids if -
 - 39.2.1 the value of the contract exceeds R200 000 (VAT included); or
 - 39.2.2 the duration period of the contract exceeds one year.
- 39.3 In addition to any requirements for competitive bids as per clause 27 above, bidders must furnish JW with particulars of -
 - 39.3.1 All consultancy services provided to an organ of state in the last five years; and
 - 39.3.2 Any similar consultancy services provided to an organ of state in the last five years.
- 39.4 JW 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 JW.

40. DEVIATIONS FROM OFFICIAL PROCUREMENT PROCESSES AND RATIFICATION OF PROCESSES: TO BE CONDUCTED IN TERMS OF THE DELEGATIONS GRANTED

- 40.1 JW's Managing Director may dispense with the official procurement processes established by the Policy and procure any required goods or services through any convenient process, which may include direct negotiations, but only;
 - 40.1.1 in an emergency;
 - 40.1.2 if such goods or services are produced or available from a Single provider only;
 - 40.1.3 for the acquisition of special works of art or historical objects where specifications are difficult to compile;

- 40.1.4 in any other exceptional case where it is impractical or impossible to follow the official procurement process; and
- 40.2 JW's Managing Director may 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.
- 40.3 Approval of deviations by the Managing Director.
 - 40.3.1 For deviations exceeding R200 000 (inclusive of VAT) the following procedure is applicable:
 - 40.3.1.1 review of the proposed deviation by the Bid Adjudication Committee (from the user department) for recommendation to the Managing Director.
 - 40.3.1.2 approval of the recommendation by the Managing Director.
 - 40.3.2 For deviations up to and including R200 000 (inclusive of VAT) the following procedure is applicable:
 - 40.3.2.1 approval in terms of the various delegations referred to in the relevant Standard Operating Procedure (SOP).
 - 40.3.2.2 subsequent ratification by the Managing Director on a monthly and quarterly basis.
- 40.4 The Managing Director must record the reasons for any deviations in terms of 41.1 and 41.2 above and report them to the next meeting of the Board of Directors. This does not apply to contracting with another organ of state including purchase of water and electricity.

41. UNSOLICITED BIDS

- 41.1 In terms of Section 113 of the MFMA, JW is not obliged to consider unsolicited bids received outside a normal bidding process.
- 41.2 If JW decides to consider an unsolicited bid, it may do so only if:
 - 41.2.1 the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - 41.2.2 the product or service will be exceptionally beneficial to, or have exceptional cost advantages for JW;

- 41.2.3 the person who made the bid is the sole provider of the product or service; and
 - 41.2.4 the reasons for not going through the normal bidding processes are found to be sound by the Managing Director.
- 41.3 If JW decides to consider an unsolicited bid that complies with clause 41.2 above, JW must make its decision public in accordance with Section 21A of the Municipal Systems Act, together with:
- 41.3.1 its reasons as to why the bid should not be open to other competitors;
 - 41.3.2 an explanation of the potential benefits for JW were it to accept the unsolicited bid; and
 - 41.3.3 an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- 41.4 Once JW has received written comments pursuant to clause 41.3 above, it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant Provincial Treasury for comment.
- 41.5 The Bid Evaluation and Adjudication Committees must consider the unsolicited bid and may award the bid or make a recommendation to the Managing Director, depending on its delegations.
- 41.6 The meetings of the Bid Evaluation and Adjudication Committees to consider an unsolicited bid must be open to the public.
- 41.7 When considering the matter, the Bid Evaluation and Adjudication Committees must take into account -
- 41.7.1 Any comments submitted by the public; and
 - 41.7.2 Any written comments and recommendations of the National Treasury or the relevant Provincial Treasury.
- 41.8 If any recommendations of the National Treasury or Provincial Treasury are rejected or not followed, the Managing Director must submit to the Auditor General the relevant Provincial Treasury and the National Treasury the reasons for rejecting or not following those recommendations. Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing JW to the bid may be entered into or signed within 30 days of the submission.

42. COMBATING OF ABUSE OF THE SUPPLY CHAIN MANAGEMENT SYSTEM

- 42.1 In order to combat the abuse of the Supply Chain Management System, the Managing Director may take all reasonable steps to prevent such abuse which may include:
 - 42.1.1 investigating any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with the Supply Chain Management Policy, and when justified:
 - 42.1.1.1 take appropriate steps against such official or other role player; or
 - 42.1.1.2 report any alleged criminal conduct to the South African Police Service.
 - 42.1.2 checking 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;
 - 42.1.3 rejecting any bid from a bidder -
 - 42.1.3.1 if any municipal rates and taxes owed by that bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - 42.1.3.2 who during the last five years has failed to perform satisfactorily on a previous contract with JW or any other organ of state after written notice was given to that bidder that performance was unsatisfactory.
 - 42.1.4 rejecting 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;
 - 42.1.5 cancelling a contract awarded to a person if -
 - 42.1.5.1 the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - 42.1.5.2 an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
 - 42.1.6 rejecting the bid of any bidder if that bidder or any of its directors -
 - 42.1.6.1 has abused the Supply Chain Management System of JW or has committed any improper conduct in relation to such system;

- 42.1.6.2 has been convicted for fraud or corruption during the past five years.
- 42.1.6.3 has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
- 42.1.6.4 has been listed in the Register of Tender Defaulters in terms of Section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).

42.2 Measures to combat abuse of the supply chain management system:

42.2.1 If in the opinion of the Managing Director there is evidence that a tenderer has in a tender or in submitting a tender, committed any fraudulent or corrupt act in connection with the tender or committed any related misdeed set out hereinafter which will be deemed to be fraudulent or corrupt acts unless the contrary is proved, the Managing Director shall be entitled to reject such tender/offer or cancel any resultant contract concluded with the tenderer in one or more of the following instances:

- 42.2.1.1 Supplying false information in the tender documents or in the declaration as contained in the non-collusion form (JW 14) or where confidential information that has been obtained in a fraudulent or corrupt manner to gain an unfair advantage in the supply chain process
- 42.2.1.2 Bid rigging or arranging to obtain the highest possible price by eliminating competition or to tender.
- 42.2.1.3 Collusion or entering into any agreement or acting in concert with any of its competitors, in connection with the tender which agreement or concerted action has the effect of destroying or reducing the competitive character of the tender, influencing the price to be paid by Johannesburg Water, reducing the quality of performance by the tenderer or stifling development and innovation
- 42.2.1.4 Having a member, owner, shareholder, CEO, director or any other official who is a member, owner, shareholder, CEO, director or official in another tenderer for the same tender, where such dual capacity has in the Managing Director's opinion the potential to affect the competitive nature of that tender detrimentally
- 42.2.1.5 .Giving to or receiving from any official of Johannesburg Water any commission, fee, rebate, gift or entertainment or any other valuable consideration

42.3 Before a tender or contract is rejected in terms of the above actions, the Managing Director shall put evidence to the tenderer and afford it an opportunity to show that the abuse of the supply chain process of which the tenderer is suspected, had not taken place. If upon evaluating the explanation and it appears, on the balance of probability that such abuse had in fact occurred. The tender or contract shall be rejected or cancelled as the case may be, upon the tenderer or contractor being-furnished with written reasons of for the decision.

42.4 The Managing Director must inform the National Treasury and relevant Provincial Treasury in writing of any actions taken in terms of 42.1.1.2, 42.1.4 and 42.1.5 above.

43. LOGISTICS MANAGEMENT

JW must implement an effective system of logistics management in order to provide for the setting of inventory levels, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, vendor performance, and maintenance and contract administration.

44. DISPOSAL MANAGEMENT

44.1 JW will implement an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to Section 90 of the Act.

44.2 JW may not transfer ownership as a result of a sale or other transaction or otherwise dispose of a capital asset needed to provide the minimum level of basic municipal services.

44.3 JW may transfer ownership or otherwise dispose of a capital asset other than an asset contemplated in section 90 (1) of the Act, but only after the council of its parent municipality, in a meeting open to the public:

44.3.1 has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and

44.3.2 has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset,

44.4 A decision by the council of the CoJ that a specific capital asset is not needed to provide the minimum level of basic municipal services may not be reversed by the CoJ or by JW after that asset has been sold, transferred or otherwise disposed of.

- 44.5 The council of the CoJ may delegate to the Managing Director of JW its power to make the determinations in respect of movable capital assets of the entity below a value determined by the council of the CoJ.
- 44.6 Any transfer of ownership of a capital must be fair, equitable, transparent and competitive and consistent with the supply chain management policy.
- 44.7 Clauses 44.2 and 44.3 do not apply to the transfer of a capital asset to a municipality or another municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury provided that such transfers are in accordance with a prescribed framework.
- 44.8 The Managing Director may dispose of movable assets to a value of R5million in terms of the delegation granted by the Council of the CoJ in terms of Section 90 (4) of the MFMA.
- 44.9 The system of disposal management provides for the following ways through which assets may be disposed:
- 44.9.1 transferring the asset to another organ of state in terms of provisions of the MFMA enabling the transfer of assets;
 - 44.9.2 transferring the asset to another organ of state at market related value or, where appropriate, free of charge;
 - 44.9.3 selling the asset; or
 - 44.9.4 destroying the asset;
 - 44.9.5 immovable property may be sold only at market-related prices except when the public interest or the plight of the poor demands otherwise;
 - 44.9.6 movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to JW;
 - 44.9.7 in the case of the free disposal of computer equipment, the Provincial Department of Education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
 - 44.9.8 in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;
 - 44.9.9 JW will ensure that:

- 44.9.1 immovable property is let at market-related rates except when the public interest or the plight of the poor demands otherwise;
- 44.9.2 fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
- 44.9.3 where assets are traded in for other assets, the highest possible trade-in price is negotiated;

44.10 Disposals Committee

- 44.10.1 JW shall establish a Disposal Committee comprising of personnel appointed by the Managing Director.
- 44.10.2 The committee shall comprise of the following members who are appointed by the Managing Director for a period of 12 months:
 - 44.10.2.1 *Permanent members*
 - 44.10.2.1.1 GM: Finance – Chairperson
 - 44.10.2.1.2 Senior Manager: SCMU
 - 44.10.2.1.3 Senior Manager: Financial Accounting (Deputy Chairperson)
 - 44.10.2.1.4 Senior Manager: Engineering Services Unit
 - 44.10.2.1.5 GM: Operations
 - 44.10.2.2
If any of the above members are unable to attend, the secondee appointed will attend on their behalf.
- 44.10.3 Secretarial services will be provided by Governance and Legal
- 44.10.4 The various user departmental representatives must be present at committee meetings and participate only in instances where they have an interest in assets that are supposed to be disposed of relative to their department, i.e. a recommendation to the committee:
- 44.10.5 The disposal of any asset or redundant goods must be motivated to the Disposals Committee after all other administrative procedures have been effected and that the Finance Department has been informed accordingly.
- 44.10.6 The Disposals Committee must consider reports (herein referred to as “the reports”) compiled by the user departments in terms of

Regulation 40 of the MFMA and Clause 41 of the Supply Chain Policy for redundant and obsolete items or items which can no longer serve its purpose. The committee may consider disposals of inventory items, movable assets, as well as any immovable and capital assets.

44.10.7 The committee must ensure that:

44.10.7.1 All processes have been followed and adhered to by the user to dispose of an asset / item

44.10.7.2 where possible, items which can be of use at another institution may be identified and considered for donation

44.10.7.3 Where possible the items should be disposed at no_cost to Johannesburg Water

44.10.7.4 Only in exceptional instances may disposals take place at a cost to Johannesburg Water

44.10.7.5 All legislative requirements are adhered to in disposing of items which may be hazardous to the environment

44.10.7.6 Ensure reasonableness of offers are made to purchase the items

44.10.7 This committee shall meet at least once every quarter or when the need arises

44.11 Function, role and authority

The committee has the authority and power to:

44.11.1 manage all disposals of movable (obsolete and redundant) capital assets

44.11.2 the letting of fixed property for the company

44.11.3 receive motivations from user departments on the mode of disposal for the disposal of assets

44.11.4 consider recommendations made to it

44.11.5 provide alternative mode of disposal as appropriate

44.11.6 approve recommendations within a delegated authority of R1m (including VAT)

44.11.7 make recommendations to the Managing Director for values exceeding R1m to R5m(Including VAT)

44.11.8 consider and review processes and procedures on disposals, including SOP 8 (System of Disposal Management)

44.12 Role of the user department

44.12.1 In order to ensure that the Disposals Committee functions effectively, it will to a large extent be dependent on the various user departments under whose custodianship the asset remain.

44.12.2 Finance and Assets Management Departments will in conjunction with User departments be responsible for:

- 44.12.2.1 updating the asset register whenever a new asset is acquired
- 44.12.2.2 updating the asset register whenever an asset is taken off the asset register
- 44.12.2.3 inspect and identify assets for potential re-use where applicable
- 44.12.2.4 identify assets for disposal and recommend the mode of disposal
- 44.12.2.5 physical disposal of the asset upon receipt of approval to do so
- 44.12.2.6 maintain a database of all redundant / obsolete assets for disposal
- 44.12.2.7 recommend the write-off of stock/ materials where these have expired or been damaged through handling etc.

45. RISK MANAGEMENT

JW must implement an effective system of risk management for the identification, consideration and avoidance of potential risks in the Supply Chain Management System. This system of risk management will include:

- 45.1 the identification of risks on a case-by-case basis;
- 45.2 the allocation of risks to the party best suited to manage such risks;
- 45.3 acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
- 45.4 the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
- 45.5 the assigning of the relative risks to the contracting parties through clear and unambiguous contract documentation.

46. PERFORMANCE MANAGEMENT

JW will implement an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorized supply chain management process are being followed and whether the desired objectives are being achieved.

47. PROHIBITIONS

47.1 General prohibitions

47.1.1 No decision-making in terms of any supply chain management powers and duties may be delegated to an advisor or consultant.

47.1.2. No person may

47.1.2.1 interfere with JW Supply Chain Management Systems;

47.1.2.2 amend or tamper with any tenders, contracts or bids after their submission.

47.1.3 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. Procurement of 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 Supply Chain Management Policy.

47.1.4 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.

47.1.5 Neither a member of a Bid Specification Committee or the Bid Evaluation Committee, nor an advisor or person assisting the Bid Evaluation Committee, may be a member of a Bid Adjudication Committee.

47.1.6 Bid matching will not be allowed under any circumstances.

47.1.7 Co-bidding is prohibited

47.1.8 Prohibition on incurring expenditure otherwise than in terms of an approved budget. JW may incur expenditure only in terms of its approved budget.

47.1.9 Prohibition on contracting with persons convicted of fraud and corruption. JW will not contract with persons convicted of fraud and corruption within five years prior to submission of the tender or bid.

47.1.10 no award may be made to a person/ supplier who is not registered in the Central Supplier Database (CSD) or who is not compliant with all CSD requirements.

47.2 Fronting

When it is established that a tenderer has misrepresented facts to benefit from the Preferential Points system, Regulation 14 (1) of the PPPFA will become applicable.

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

47.3.1 Subject to 48.3.2 below no award may be made to a person / supplier whose tax matters are not compliant as per the Central Supplier Database

47.3.2 a bidder to be recommended for award who is not tax compliant will be afforded a period of seven (7) days to do the necessary to become tax compliant. During this period JW will monitor the bidders' tax compliance status and if the bidder does not become tax compliant within this period, the bidder will be eliminated.

47.4 Prohibition on contracting with persons, who willfully neglected, reneged or failed to comply with a government contract within five years

JW will not contract with persons who willfully neglected, reneged or failed to comply with a government contract within five years prior to submission of the tender or bid. This prohibition will include partnerships, companies, close corporations, joint ventures or similar groupings and their subsidiaries, associates and related parties whose partners, principal equity stake holders or executive management have been so convicted or have so willfully neglected, reneged or failed to comply with a government contract.

47.5 Prohibition on award to persons in the service of the state

Irrespective of the procurement processes followed, JW may not make any award to a person:

47.5.1 who is in the service of the state;

47.5.2 if that person is not a natural person, of which any director manager, principal shareholder or stakeholder is a person in the service of the state; or

47.5.3 who is an advisor or consultant contracted with JW.

47.5.4 No person, advisor, or corporate entity involved with the Bid Committees, or director of such a corporate entity, may bid for any resulting contract

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

The notes to JW's annual financial statements must disclose particulars of any award of more than R2 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 -

48.1 the name of that person;

48.2 the capacity in which that person is in the service of the state; and

48.3 the amount of the award.

49. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS TO JW, OFFICIALS OF JW AND OTHER ROLE-PLAYERS

49.1 No person who is a provider or prospective provider of goods or services to JW, or a recipient or prospective recipient of goods disposed of by JW, may either directly or through a representative or intermediary promise, offer or grant -

49.1.1 any inducement or award of R350 or more to JW for or in connection with the award of the contract; or

49.1.2 any award gift, favor or hospitality of R350 or more to -

49.1.2.1 any official of JW entity; or

49.1.2.2 any other role player involved in the implementation of the Supply Chain Management Policy of JW.

49.2 JW's Managing Director must promptly report any alleged contravention of 46.1 above 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.

50. SPONSORSHIPS

JW's Managing Director must promptly disclose to the National Treasury and the relevant Provincial Treasury any sponsorship promised, offered or granted to JW, whether directly or through a representative or intermediary, by any person who is -

50.1 a provider or prospective provider of goods or services to JW; or

50.2 a recipient or prospective recipient of goods disposed or to be disposed of, by JW.

51. OBJECTIONS AND COMPLAINTS

- 51.1 Persons aggrieved by decisions or actions taken by JW in the implementation of its Supply Chain Management System may, within 14 days of the decision or action, lodge a written objection or complaint to JW against the decision or action.
- 51.2 JW will maintain fairness by:
 - 51.2.1 communicating to suppliers the process that will be following investigating and adjudicating allegations of incorrect disclosure or non-performance;
 - 51.2.2 communicating identified areas of factual incorrectness, or non-performance, to suppliers concerned;
 - 51.2.3 affording suppliers the opportunity to reply to concerns so notified;
 - 51.2.4 affording suppliers the right to a fair hearing;
 - 51.2.5 deciding on the action, if any, to be taken against any supplier;
 - 51.2.6 communicating to the supplier concerned the results of any action taken by JW.

52. RESOLUTION OF DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

- 52.1 JW's Managing Director shall appoint an independent and impartial person not directly involved in JW's Supply Chain Management processes
 - 52.1.1 to assist in the resolution of disputes between JW and other persons regarding -
 - 52.1.1.1 any decisions or actions taken by JW in the implementation of its supply chain management system;
or
 - 52.1.1.2 any matter arising from a contract awarded in the course of its supply chain management system; or
 - 52.1.1.3 to deal with objections, complaints and queries regarding any such decisions or actions or any matters arising from such contract.
- 52.2 The CoJ and JW may for purposes of clause 52.1 above appoint the same person.
- 52.3 JW's Managing Director, or another official designated by the Managing Director, is responsible for assisting the appointed person to perform his or her functions effectively.

- 52.4 The person appointed must -
 - 52.4.1 strive to resolve promptly all disputes, objections, complaints or queries received; and
 - 52.4.2 submit monthly reports to the Managing Director on all disputes, objections, complaints or queries received, attended to or resolved.
- 52.5 A dispute, objection, complaint or query may be referred to the relevant Provincial Treasury if:
 - 52.5.1 the dispute, objection, complaint or query is not resolved within 60 days; or
 - 52.5.2 no response is received from JW within 60 days.
- 52.6 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;
- 52.7 This section must not be read as affecting a person's rights to approach a court at any time.
- 52.8 A dispute, objection, complaint or query may be referred for mediation and arbitration, should the aggrieved parties fail to resolve the matter at hand.

53. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

If a service provider acts on behalf of JW 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 JW must stipulate -

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

54. CONTRACT MANAGEMENT

- 54.1 JW's Managing Director must:
 - 54.1.1 take all reasonable steps to ensure that a contract or agreement procured through JW's Supply Chain Management Policy is properly enforced;

- 54.1.2 monitor on a monthly basis the performance of the contractor under the contract or agreement;
- 54.1.3 establish capacity in JW:
 - 55.1.3.1 to assist the Managing Director in carrying out the duties set out in paragraphs 54.1.1.and 54.1.2
 - 55.1.3.2 to oversee the day-to-day management of the contract agreement; and
- 54.1.4 regularly report to the Board of Directors of the entity, on the management of the contract or agreement and the performance of the contractor.
- 54.1.5 JW is obliged to take action against suppliers who perform unsatisfactorily in the fulfillment of contracts;
- 54.1.6 take such action that may include disqualification / restriction from participation in future JW procurement;
- 54.2 The Managing Director shall regularly report to the Board of Directors and the Council of the City of Johannesburg on the management of all contracts.
- 54.3. Contractor performance
 - 54.3.1 Key performance indicators should be developed, and the contractor's performance should be measured against these indicators.
 - 54.3.2 Formulate supplier performance scorecards and evaluate supplier performance through such scorecards and ratings.
 - 54.3.3 The following key performance issues shall be measured through scorecards:
 - 54.3.3.1 Quality (i.e. product or service or works)
 - 54.3.3.2 Delivery (i.e. responsiveness)
 - 54.3.3.3 Financial performance (i.e. total cost of ownership)
 - 54.3.3.4 Empowerment (i.e. B-BBEE status level)
 - 54.3.3.5 Health, safety and environmental issues
 - 54.3.3.6 Any other identified issues relating to performance

55. CESSIONS

- 55.1 The Contract once awarded is personal to the contractor who shall not cede (the obligation to perform on the contract), wholly or partially, to any other

person without the prior written consent of the Managing Director or his nominee, and on such conditions as he or his nominee may approve.

55.2 A contractor requiring such cession shall furnish the name, address, ownership, registration and any other details relating to the proposed cessionary as JW may require, together with reasons for such cession in writing, as well as the cessionary's written consent to the cession.

55.3 The relevant BEC shall evaluate the proposed cession and determine whether it may be recommended for acceptance.

55.4 A cession may only be recommended for acceptance if such acceptance does not prejudice JW in any way and if it does not result in one or more of the following situations:

55.4.1 The contract being ceded to a cessionary whose name appears in the Register of Restricted Tenderers kept by National Treasury or in the register kept by JW.

55.4.2 An increase in the contract price or any other additional cost or expenditure being incurred by JW

55.4.3 The preferential points in terms of the PPPFA, and in particular the points which would have been awarded to the cessionary had the cessionary tendered for that contract in the first instance, being less than the preferential points awarded to the contractor. For this purpose the cessionary must be evaluated and accredited in terms of JWs' supply chain requirements and National Treasury requirements (CSD)

55.4.4 Upon completion of the evaluation, a report must be compiled by the user department, which report must contain a recommendation indicating whether the cession should be accepted or not. If the cession is recommended for acceptance, the conditions governing such acceptance must also be determined.

55.4.5 The report must be presented to the BEC and BAC respectively for consideration and further submission to the Managing Director for approval.

56. CONTRACTING WITH PARTIES GUILTY OF UNETHICAL BEHAVIOUR OR WHO HAVE PERFORMED UNSATISFACTORILY IN THE FULFILMENT OF PREVIOUS CONTRACTS

JW will take appropriate action against suppliers who are found to have provided false information, who have performed unsatisfactorily in the fulfillment of a contract

previously awarded to them, or who have endeavored to improperly influence the award of any bid, tender or quotation.

56.1 Restrictions to participation

56.1.1 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 the PPPFA regulations which will affect or has affected the evaluation of a tender, or where a tenderer had failed to declare any sub-contracting arrangements, JW must

56.1.1.1 Inform the tenderer accordingly;

56.1.2 Give the tenderer an opportunity to make representations within 14 days as to why

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

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

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

56.1.3 if JW concludes, after considering the representations referred to in clause 56.1.2 above, that

56.1.3.1 such false information was submitted by the tenderer

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

56.1.3.1.2 if applicable, claim damages from tenderer; or

56.1.3.2 the successful tenderer subcontracted a portion of the tender to another person without disclosing, penalize the tenderer up to 10% of the value of the contract.

56.1.4 JW must;

56.1.4.1 .Inform the National Treasury, in writing, of any actions taken in terms of clause 56.1 above;

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

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

56.1.2.2 The National Treasury may request JW to submit further information pertaining to clause 56.1 above within a specified period.

56.1.5 The National Treasury must

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

56.1.5.2 Maintain and publish on its official website a list of restricted suppliers.

57. This Policy shall be called the Johannesburg Water Supply Chain Management Policy.

58. EFFECTIVE DATE: 2020-07-01

WikiWater #304322