



JOBURG | SOWETO | ROODEPOORT

SUPPLY CHAIN MANAGEMENT POLICY

Adopted in terms of section 111 of the Municipal Finance Management Act, No 56 of 2003

Revision presented to:

- the Audit and Risk Committee for review on 18 July 2023
- the Board of Directors for approval on the 20 July 2023

APPROVED/NOT APPROVED

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09/10/2023

DATE



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CHAPTER 1

DEFINITIONS

1. DEFINITIONS

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

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

“CIDB Act” means the Construction Industry Development Board Act, 2000 (Act No 38 of 2000);

“JT” means Joburg Theatre SOC Ltd (trading as Joburg City Theatres) bearing Registration Number 2000/013032/07 incorporated in accordance with the company laws of the Republic of South Africa and being a municipal entity of the City of Johannesburg Metropolitan Municipality;

“JCT” means Joburg City Theatres representing Joburg Theatre, Roodepoort Theatre and Soweto Theatre;

“The Chief Executive Officer” means the official appointed by the Board of Directors as the Chief Executive Officer who will be acting as the Accounting Officer of JCT as contemplated in the Act;

“The Chief Financial Officer” means the official appointed by the Board of Directors as a Chief Financial Officer and shall perform such duties as narrated in section 81 of the MFMA.

“The City Manager” shall mean the official appointed by the City as the City Manager and who will be acting as the Accounting Officer of the City of Johannesburg Metropolitan Municipality as contemplated in the Act;

“the Board of Directors” means the Board of Directors of JCT, appointed in terms of the City’s policy on the appointment, resignations and rotations of the non-executive directors on its municipal entities;

“competitive bidding process” means a process whereby prospective service providers are invited through public media to submit bids and such bids are administered in a fair, transparent, competitive and cost effective manner;

“Code of Conduct” means the code of conduct attached to this Policy as Annexure A;

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

“construction works” means the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure;

“emergency” means an unforeseeable and/or sudden event, with materially harmful or potential harmful consequences for JCT that requires immediate action;

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

“Heads of Department” means any executive manager or senior manager who reports directly to the Chief Executive Officer or in the second reporting level;

“Fruitless and wasteful expenditure” means expenditure that was made in vain and would have been avoided had reasonable care been exercised;

“in the service of the state” means:–

- (a) an official of any municipality or municipal entity who has a contract of employment with the municipality or municipal entity and is employed on a permanent, temporary or short term basis;
- (b) an official or public servant of any national or provincial government as defined in terms of Public Services Act; (c) a person who –
 - (i) is a councillor of any municipal council as defined in the Local Government Municipal Structures Act (Act No 117 of 1998);
 - (ii) is a politician serving in any provincial legislature; or
 - (iii) is a politician serving in the National Assembly or the National Council of Provinces;
- (d) a member of the board of directors of the City of Johannesburg entities;
- (e) an official and a member of a government owned entity as defined in the Public Finance Management Act, (Act No 1 of 1999); and such meaning ascribed to it by National Legislation from time to time;
- (f) 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
- (g) who is an advisor or consultant contracted with the municipality or municipal entity;

“list of accredited prospective service providers” means a list of accredited prospective providers which JCT must keep in terms of section 25 of this policy;

- **“long term contract”** means a contract with a duration period exceeding one year;

- **“National Treasury circulars / guidelines”** means Supply Chain Management Circulars / Guidelines issued by National Treasury from time to time;

“other applicable legislation” means any other legislation applicable to Municipal Supply Chain Management, including, but not limited to:–

- (a) Municipal Finance Management Act and its Regulations;
- (b) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (c) the Preferential Procurement Regulations, 2022;
- (d) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (e) the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000);

“Practice Notes” means the Municipal Supply Chain Practice Notes issued from time to time by the Director: Supply Chain Management of the City in accordance with section 39 of this Policy;

“Regulations” means the Municipal Supply Chain Management Regulations promulgated in terms of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

“SCM Procedure Manual” means all Supply Chain Management Procedure Manual(s) issued by the Chief Financial Officer from time to time in accordance with section 36 of this policy;

“Service Provider” means a provider of goods and services required from time to time by Joburg City Theatres, duly accredited by Joburg City Theatres in terms of section 24 of this Policy;

“SMMEs / EMEs” means any business enterprise with a turnover of less than R5 million in terms of the Broad Based Black Empowerment Act (Act no 53 of 2003);

Define EME as per the Preferential Procurement Regulations, 2022;

“Supply Chain Management” means the systems approach to manage the entire flow of goods and services that will create and optimise value for customers in the form of products and services, which is specifically aimed at satisfying customer demands;

“Sole supplier” means a sole supplier contemplated in section 16.5 of this policy;

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

“the/this Policy” means the Supply Chain Management Policy adopted by JCT in terms of Section 111 of the Act, as amended from time to time;

“Two stage bidding process” means two stage competitive bidding process contemplated in section 16.3.2 of this Policy;

“Written quotations” means written quotations contemplated in section 16.2 of this Policy;

and

“Unsolicited bid/s” means unsolicited bids contemplated in section 16.6 of this Policy;

CHAPTER 2

ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

2. PURPOSE OF THE POLICY

The purpose of this policy is to regulate all Supply Chain Management practices within JCT. This policy implements the Supply Chain Management practices as envisaged by the Act and its Regulations. All employees must adhere, implement and observe the provisions of this policy.

3. EFFECTIVE DATE

This policy is effective from the date of adoption thereof by JCT's board of directors.

4. PRINCIPLES ASCRIBED TO IN THIS POLICY

This policy ascribes to a procurement system which:-

- (a) Is fair, equitable, transparent, competitive and cost effective in terms of Section 217 of the Constitution of South Africa, No 108 of 1996;
- (b) Enhances uniformity in Supply Chain Management systems between organs of state in all spheres;
- (c) Is consistent with the Economic Transformation Policy Framework;
- (d) Is consistent with the enterprise development programmes approved by the City of Johannesburg which are not limited to EPWP, job pathway and other policies and programmes that sees to aggressively advance the empowerment of the SMMEs and previously disadvantaged communities;
- (e) Embraces the principles of efficient environmental management;
- (f) Is consistent with the Broad Based Black Economic Empowerment Act 53 of 2000 and any Codes promulgated thereunder in the Government Gazette; and
- (g) Is consistent with the Preferential Procurement Regulations 2022.

5. JCT's COMMITMENT

JCT through management, and its officials individually and collectively, is committed to:

- (a) the implementation and full compliance of Supply Chain Management policy and practices as envisaged by the Act and its Regulations;
- (b) fair, equitable, transparent and competitive Supply Chain Management practices and processes. To this extent, JCT will accord all, a fair administrative process whenever procuring or disposing of goods and services;
- (c) sourcing goods and services at competitive market prices taking into account the Total Cost of Ownership (TCO) concept and value adding principles;
- (d) enhancing healthy and mutually beneficial relationships with providers of goods and services and business units, based on integrity, honesty, professionalism and ethics;
- (e) utilization of JCT buying power as leverage to ensure effective implementation of Broad Based Black Economic Empowerment objectives;
- (f) enhance JCT's viability and competitiveness through effective and efficient Supply Chain Management practices and systems;
- (g) economic development of local communities, Small Medium and Micro enterprises, women-owned enterprises, youth-owned and disabled-owned enterprises within the area of jurisdiction of JCT;
- (h) high ethical business practices and conduct, and expects the same of suppliers doing business with JCT as set out in the Code of Conduct for Supply Chain Management practitioners and other role players attached as Annexure A;
- (i) confidential treatment of all information received and held by JCT and its officials;
- (j) fulfilling the objectives and provisions of the Competitions Act, 89 of 2001 as amended and shall use their best endeavours to ensure full compliance by all suppliers thereto;
- (k) the principles and provisions contained in the Promotion of Access to Information Act, 2 of 2000;
- (l) fully support the Proudly South African Campaign and will as far as practical seek to award business to service providers with high local content in their products and services;
- (m) the principles and provisions of the Promotion of Administrative Justice Act, 3 of 2000.

6. APPLICABILITY OF THIS POLICY

- (1) This policy is applicable to JCT (Joburg Theatre, Roodepoort Theatre and Soweto Theatre) and must be strictly adhered to when:-
 - (a) procuring goods or services;
 - (b) disposing of goods no longer needed; and
 - (c) selecting service providers other than in circumstances where Chapter 8 of the Systems Act applies.

- (2) Sub-paragraph (1) above does not apply when procuring goods and services under contracts secured by other organs of state under the circumstances contemplated in section 21.

7. REVIEW AND AMENDMENT OF THIS POLICY

- (1) The Chief Executive Officer must submit all subsequent amendments of this policy to the Board of Directors for approval. Such amendments must be in line with the Model Policy and Regulations as compiled by National Treasury and any National Treasury Guidelines. Deviations from the Model Policy or Regulations are to be reported to the City, National and Provincial Treasury.

- (2) The Chief Executive Officer, through the Chief Financial Officer, must at least annually, or more frequently if required, review the implementation of this policy to determine to what extent, if any, this policy needs to be amended in order to remain relevant to changed circumstances.

- (3) Amendments to this policy shall be presented to the Audit and Risk Committee for review and to the company's Board of Directors for approval.

- (4) When amending this 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 business, must be taken into account.

- (5) The Chief Executive Officer shall in terms of section 62 (1)(f)(iv) of the Act, take all reasonable steps to ensure that JCT implements this policy.

8. OVERSIGHT ROLE OF THE BOARD OF DIRECTORS

- (1) The Board of Directors has an oversight role over the implementation of this Policy.
- (2) For the purposes of such oversight, the Chief Executive Officer shall submit the various reports contemplated in paragraph 10.1 and 10.2 below respectively for consideration by the Board of Directors.

9. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES

- (1) The Chief Executive Officer, in terms of section 79(1) of the Act, hereby delegates Supply Chain Management Powers and duties as set out in Annexure B.
- (2) The Chief Executive Officer shall be entitled at all times to withdraw or amend the delegations contained in Annexure B or to determine new delegations, should the need therefore arise.

10. REPORTING REQUIREMENTS

10.1 Reporting by the Chief Executive Officer to the Board of Directors

The Chief Executive Officer must submit the following reports to the Board of Directors:-

- (a) Reports on a quarterly basis on all transactions / purchases above R1 000 000.00;
- (b) Quarterly reports, or as soon as it is practically possible, containing particulars of each final award made by the Adjudication Committees during that quarter, including:—
 - (i) the amount of the award;
 - (ii) the name of the person to whom the award was made;
 - (iii) the reason why the award was made to that service provider;
 - (iv) the B-BBEE status level of contribution of the service provider; and

- (c) Quarterly consolidated reports on the implementation of this policy within 10 days of the end of each quarter, or as soon as it is practically possible;
- (d) Annual consolidated reports on the implementation of this policy within 20 days of the end of each financial year, or as soon as it is practically possible;
- (e) Quarterly report on all deviations and ratifications in the implementation of this policy and any remedial action taken or envisaged, where applicable;
- (f) Report on awards of unsolicited bids, as soon as it is practically possible after the award of such bids;
- (g) Report on all awards to close family members of persons in the service of the State or has been in the service of the State in the previous 12 months;
- (h) Report on any abuses found and the remedial actions taken;
- (i) Report on all declarations made and gifts received by employees;
- (j) Whenever there are serious and material problems in the implementation of this Policy, immediately submit a report to the board of directors, who must then submit the report to the accounting officer of the parent municipality for submission to the council.

10.2 Reporting by the Chief Financial Officer to the Chief Executive Officer

The Chief Financial Officer must submit the following to the Chief Executive Officer:-

- (a) Report on non-compliance, deviations and remedial action proposed or taken by relevant Heads of Departments;
- (b) Report on the operations of the Supply Chain Management Unit on a monthly basis;
- (c) Report containing particulars of each final award made by the Heads of Departments during that month, as soon as it is practically possible after such awards, including:-
 - (i) the amount of the award;
 - (ii) the name of the person to whom the award was made;
 - (iii) the reason why the award was made to that person; and
 - (iv) the B-BBEE status of the service provider;
- (d) Report on all practice notes issued and proposed amendments to the SCM Procedure Manual.

10.3 Reporting by the Heads of Departments to the Chief Financial Officer via the Supply Chain Manager

- (a) Heads of Departments must submit details of performance against plans versus the spend for the quarter.
- (b) Heads of Departments must submit monthly petty cash procurement reports;
- (c) Heads of Departments must submit a report of all bids awarded in designated sectors with a stipulated minimum threshold on local content.
- (d) Heads of Departments must submit monthly reports on final awards of transactions below R 30 000, or such higher threshold as may be determined from time to time, as soon as it is practically possible after such awards, including:-
 - (i) the amount of the award;
 - (ii) the name of the person to whom the award was made;
 - (iii) the B-BBEE status of the service provider; and
- (e) Heads of Departments will submit reports outlining the quarterly expenditure versus budget to the Finance Office.

10.4 Reporting by the Heads of Departments to the Adjudication Committee on the utilization of Approved and Established Panels of Service Providers (via the Finance Manager/Supply Chain Manager)

Heads of Departments must submit monthly reports to the Adjudication Committee on the appointment of service providers. All such reports shall be routed through the Finance Manager and consolidated quarterly.

10.5 Reporting by the Chief Executive Officer to the City of Johannesburg

The Chief Executive Officer must within 7 days of the end of each quarter, submit a spend report and the implementation of the municipal entity's supply chain management policy to the, MMC: Community Development and/or the City Manager. All such reports shall be routed through the City of Johannesburg's Group Governance.

10.6 Reporting by JCT to the City of Johannesburg for submission to National Treasury and / or Provincial Treasury

The Chief Financial Officer on behalf of JCT shall submit the following reports to the City of Johannesburg via Group Governance -

- (a) Reports on contracts and/or transactions to the value of R100 million and more;
- (b) Reports on supplier or director thereof that has abused the Supply Chain Management system and has been found guilty of improper conduct;
- (c) Reports on awards of unsolicited bids;
- (d) Report on any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is:- (i) A provider or prospective provider of goods or services;
(ii) A recipient or prospective recipient of goods disposed or to be disposed;
- (e) Reports on all awards of more than R2,000.00 to a close family member of persons in the service of the state or has been in the service of the state in the previous 12 months;
- (f) Reports on abuses of Supply Chain Management and the remedial steps taken;
- (g) Reports on contracts awarded with a duration that extends beyond three years; and
- (h) Reports on any deviation from the Model Policy or Regulations as contemplated in paragraph 7(1) above.

10.7 Publication of reports on the official website of JCT

All reports indicated above, excluding reports referred to in sub-paragraph (3) above, will be made public by the Supply Chain Manager through the official website of JCT.

10.8 Publication of all CIDB projects on the CIDB website

All construction projects are to be reported on the CIDB website from commencement phase to completion.

11. SUPPLY CHAIN MANAGEMENT UNIT

The Supply Chain Management office / Governance and Compliance, reports to the Chief Financial Officer of JCT.

12. TRAINING OF SUPPLY CHAIN MANAGEMENT EMPLOYEES

The training of employees involved in implementing this Policy will be in accordance with any applicable National Treasury guidelines on Supply Chain Management training, South African Qualification Act 58 of 1995, the Skills Development Act 97 of 1998.

CHAPTER 3

FRAMEWORK OF SUPPLY CHAIN MANAGEMENT

13. SUPPLY CHAIN MANAGEMENT SYSTEMS

This Policy provides systems for –

- (a) demand management (PART 1);
- (b) acquisition management (PART 2);
- (c) logistics management (PART 3);
- (d) disposal management (PART 4) (e) risk management (PART 5); and
- (e) performance management (PART 6).

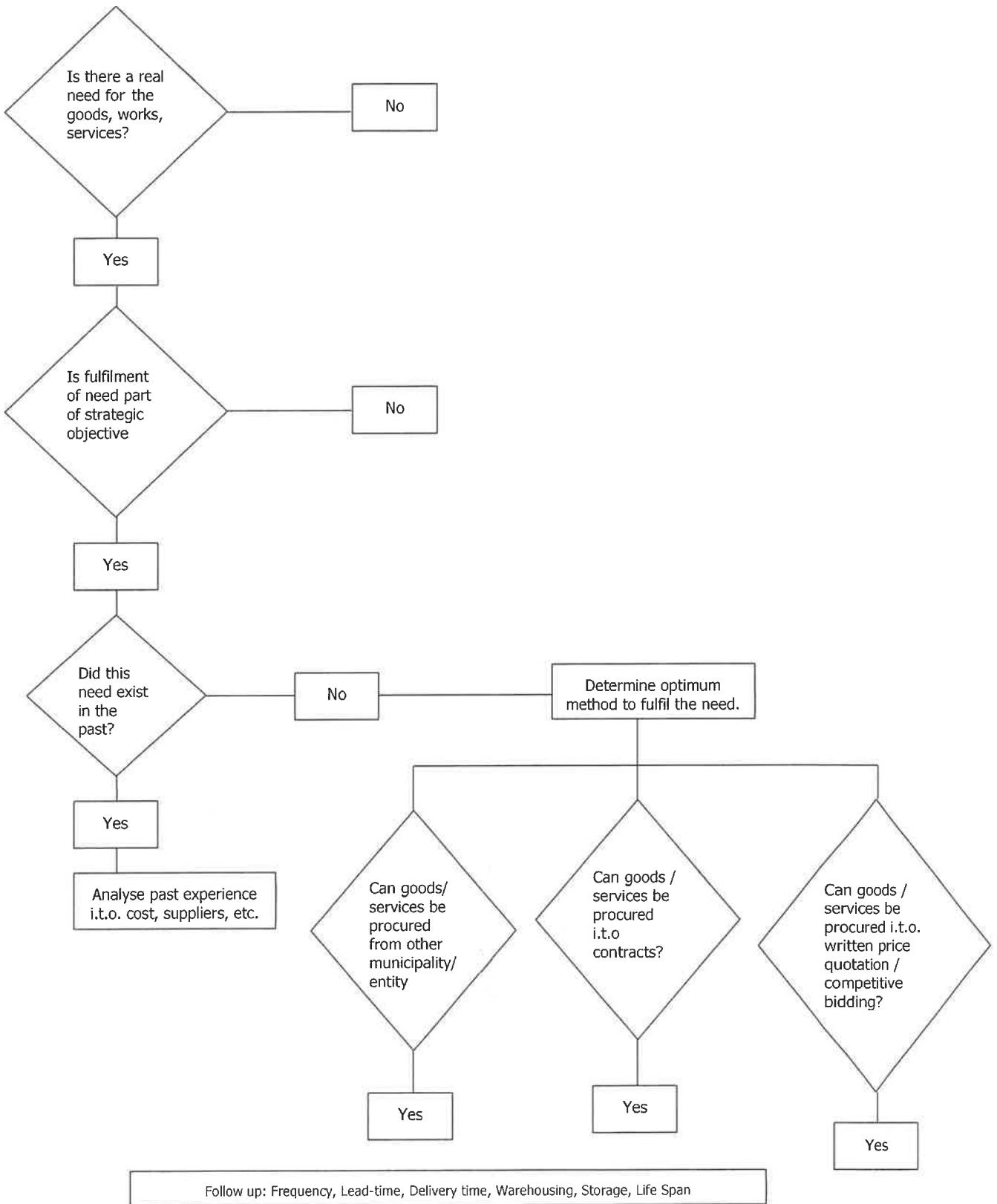
PART 1: DEMAND MANAGEMENT

14. DEMAND MANAGEMENT

To implement an effective and efficient Supply Chain Management system that espouses cost savings, - JCT ascribes to the following principles of demand management:-

- (a) consolidation of the JCT requirements through the Supply Chain Management Unit to maximize economies of scale in the case of acquisitions of a repetitive nature;
- (b) clearly articulated requirements and specifications that meet the needs and expectations of multiple users. The specifications shall be unbiased, functional and not brand specific;
- (c) acquisition of all goods and services required must be quantified , budgeted for and timely and effectively delivered at the right location and at the critical delivery dates, and are appropriate quality and quantity at a fair cost;
- (d) similar requirements will necessitate one contract;
- (e) where necessary Industry Analysis and Research should be undertaken to ensure best value for money.

Flowchart of the Demand Management Process



PART 2: ACQUISITION MANAGEMENT

15. SYSTEM OF ACQUISITION MANAGEMENT

- (1) JCT shall, subject to sub-paragraph (5) only proceed with the acquisition of goods and services for which there is an approved budget. The onus will be on the relevant Head of Departments to ensure that funds are available. For any unplanned needs, permission shall be sought from the respective Executive Manager.
- (2) Accounting officers of municipal entities must submit procurement plans to the accounting officer of the parent municipality prior to commencement of each financial year. It is noted that due to the nature of the theatre business this will not be practical, however all care will be taken to ensure compliance to this policy's requirements.
- (3) The Chief Financial Officer shall prior to advertisement of bids above R1 million verify with heads of departments that:
 - (a) Budgetary provision exists for procurement of goods, services and/or infrastructure projects;
 - (b) Any ancillary budgetary implications related to the bid, have budgetary provision for the operation of the asset, maintenance costs relating to the asset, administration costs and rehabilitation/renewal costs;
 - (c) Estimated expenditure per year is provided for any project with multi-year budgetary implication, for example, if a project will take more than one financial year.
- (4) JCT's acquisition management will ensure:
 - (a) that goods and services are procured by JCT in accordance with authorised processes only;
 - (b) that expenditure on goods and services is incurred in terms of an approved budget;

- (c) that the threshold values for the different procurement mechanisms as contained in Table 1 below are complied with;
 - (d) that bid documentation, including compiled specification where applicable, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
 - (e) that any National Treasury guidelines on acquisition management are properly taken into account.
- (5) This Policy, except where otherwise provided for herein, does not apply in respect of the procurement of goods and services contemplated in section 110 (2) of the Act, including:
- (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
 - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.
- (6) The following information will be made public whenever goods or services contemplated in section 110 (2) of the Act are procured other than through the Supply Chain Management System –
- (a) the kind of goods or services;
 - (b) the name of the supplier;
 - (c) the total value of the contract or project; and
 - (d) delivery / completion period for the kind of goods or service.
- (7) Notwithstanding the provisions of sub-paragraph (1) above, JCT may during any given financial year commence with the procurement processes with the view of procuring goods or services in respect of an ensuing financial year, provided that:
- (a) the order for such goods or services shall only be placed after the commencement of the ensuing financial year; and
 - (b) budgetary provision has been made for the resultant expenditure.

16. PROCUREMENT MECHANISMS

- (1) JCT shall adhere to the principles of fair, equitable and transparent procurement systems whenever sourcing goods and services from the market.
- (2) All cost escalations pertaining to established contracts are to be reported to the Board of Directors.
- (3) When procuring goods and services on behalf of JCT, the appropriate procurement mechanisms as listed in the Table 1 hereunder, shall apply;

TABLE 1

PROCUREMENT MECHANISM	TOTAL TRANSACTION VALUE
Petty Cash Purchases	R nil to R2,000 (VAT Inclusive)
Written Quotations	R2,001 to R29,999 (VAT Inclusive)
Formal Written Quotations	R30,000 to R200,000 (VAT Inclusive) When procuring goods or services subject to paragraph 16.2(10) below.
Competitive Bidding Process	Above R200,000 (VAT Inclusive)
Negotiations	Any Value
Sole Suppliers	Any Value
Unsolicited Bids	Any Value
Quotations solicited from established panels	Any Value

16.1 PETTY CASH PURCHASES

- (1) Petty cash purchases may be allowed in certain cases it is not possible or economically viable to procure goods and services through written quotation or competitive bidding processes. This situation will arise where the total costs of engaging in written quotation or competitive bidding far outweighs the value of the item(s) or services been sought.

- (2) Petty cash purchases shall be limited to the procurement of items or services below R2,000 (VAT inclusive) only. The amount of R2,000 (VAT inclusive) should be the total value of all of the department's requirements for a particular item or service per occasion, or the requirements must be so incidental that it is not viable/feasible for JCT to establish a contract or keep stock.

16.2 WRITTEN QUOTATIONS

- (1) To ensure that transparent and equitable objectives are adhered to at all times when procuring different goods and services, JCT shall use the written quotation mechanism when:-
 - (a) the total value of goods and services is within the ranges of R2,000 and R30,000.00 inclusive of VAT. These thresholds shall, where possible, apply to the yearly consolidated requirements of JCT; and;
 - (b) Goods and services are required from service providers on any panel approved by the finance department, in which event the provisions of sub-paragraph 8 below shall apply.
- (2) For this procurement mechanism, quotations must be obtained from three different service providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective provider of JCT,; **Provided that in such event, the relevant Head of Department shall ensure that the service provider so appointed shall submit a fully compliant application to register on the official database of JCT within 14 days from date of appointment, failing which JCT shall be entitled to terminate the appointment of such service provider with immediate effect.**
- (3) Such quotations must be obtained in writing from at least three different suppliers, subject to sub-paragraph 8 below. As far as possible all suppliers must be afforded an opportunity to quote on a rotational basis to promote ongoing competition amongst providers.

- (4) Offers received must be evaluated on a comparative basis taking into account unconditional discounts.
- (5) Should it not be possible to obtain three quotations, the reasons must be recorded and supported by the Supply Chain Manager or the Head of Department as per delegated authorities.
- (6) If there are frequent requirements, which the amount per individual transaction is less than R200,000 per user, such requirements must be consolidated and a contract be established through competitive bidding process.
- (7) Splitting of requirements with the sole intention of circumventing this procurement mechanisms listed shall not be allowed.
- (8) All written quotations solicited above the R30,000 threshold must be processed in accordance with the Preferential Procurement Policy Framework Act and its Regulations.
- (9) In the event of the appointment of service providers on any panel approved by the appropriate authority, the preferred bidder shall be appointed by the relevant Bid Adjudication Committee contemplated in Annexure B, after having obtained quotations from all of the service providers in that category of goods and services of the approved panel of service providers: provided that:
 - (a) Service providers shall be afforded at least 3 days (or less in case of emergencies) to provide their quotations; and
 - (b) In the event of the appointment of attorneys, it shall not be necessary to obtain three quotations, on condition that as far as possible attorneys shall be appointed on a rotational basis.

(c) In the event of predetermined rates that are standardized, allocation of work will be on a rotational basis to ensure fair and equitable distribution of work to the respective service providers.

(10) All requirements in excess of R30 000 (VAT included) that are to be procured by means of written quotations, excluding goods or services available on contract and goods and services to be procured from service providers on any panel of service providers approved by the appropriate authority, must be advertised for at least seven days on the official website and notice board of JCT.

16.3 COMPETITIVE BIDDING PROCESS

16.3.1 GENERAL CONDITIONS APPLICABLE TO A COMPETITIVE BIDDING PROCESS

- (1) In order to ensure transparency and equitability when procuring goods and services, JCT shall use competitive bidding when:-
 - (a) Procuring goods or services above the value of R200 000.00 (VAT inclusive); and
 - (b) Procuring goods and services requiring long-term contracts as defined.
- (2) Services classified as essential shall only be procured through competitive bidding process.
- (3) Competitive bidding process mechanism will be handled in accordance with the approved procedures.
- (4) Splitting of requirements with the sole intention of circumventing any of the procurement mechanisms in this policy will not be allowed.

16.3.2 TWO-STAGE COMPETITIVE BIDDING PROCESS

- (1) A two-stage bidding process may be followed:-

- (a) When the requirements are not easily determinable and it is ideal to engage the market in firming up the requirements;
 - (b) When sensitive projects requiring security clearance prior to the award or where it is undesirable to prepare complete detailed technical specifications;
 - (c) In the case of complex projects that require multiple stages before award and are requiring a period of three years;
- (2) For large complex projects where it may be undesirable to prepare complete detailed technical specification or long term projects with a duration exceeding three (3) years, a two-stage competitive bidding process shall ascribe to the following:
- (a) The first stage entails the issuing by Joburg City Theatres of a technical proposals on conceptual designs or performance specifications subject to technical as well as commercial clarifications and adjustments.;
 - (b) Final technical proposal and price bids shall be invited in the second stage.

16.4 NEGOTIATIONS

- (1) The necessary prior approval or mandate to negotiate with any service providers must be obtained in writing from the relevant Adjudication Committee or Accounting Officer, as the case may be.
- (2) The negotiation mechanism may be used when:-
 - (a) procuring goods and services from single or sole suppliers;
 - (b) annual price increases in respect of existing contracts are requested;
 - (c) terms and conditions in respect of existing contracts require amendment; (d) finalising the award of business with preferred bidders provided that:
 - (i) such negotiations do not allow any preferred bidder a second or unfair opportunity;

- (ii) such negotiations are not to the detriment of any other bidder;
- (iii) such negotiations do not lead to a higher price than the bid as submitted;
- (iv) the circumstances contemplated in paragraph 17.2(6) below apply;
- (v) the preferred bidder's quoted price exceeds 11% or 25% premium for the promotion of B-BBEE objectives as provided for in the revised Preferential Procurement Regulations, 2022 for both quotations and bids;
- (vi) Such negotiations must be aimed at realizing cost effectiveness in the procurement of goods and services where the market rates are easily determinable for both quotations and bids; and
- (vii) The above must be exercised in a fair, equitable, transparent and competitive manner that will not unduly disadvantage other bidders and compromise the integrity of the processes.

(3) The approval or mandate to negotiate must at least include the following:

- (a) Reasons for negotiations;
- (b) Negotiations parameters;
- (c) Objectives of the negotiations;
- (d) Names of identified service provider (s) to negotiate with; and (e) Names of the persons authorised to conduct the negotiations.

(4) The outcome of the negotiations must be approved by the relevant Adjudication Committee or the Chief Executive Officer or delegated authority, as the case may be, before award

- (a) Records of all negotiations must be kept.

16.5 SOLE SUPPLIERS

(1) Procuring goods and services from sole supplier occurs when:-

- (a) Only one service provider manufactures or renders goods and services due to unique nature of the requirements;

- (b) Goods and services already in JCT's value chain/employ are supplied only by an Original Equipment Manufacturer (OEM) or by a licensed agent thereof; or (c) There is a requirement for compatibility, continuity and/or alignment.
- (2) Authorised agents must produce:
- (a) an appropriate letter from the relevant OEM before the award is made; and (b) documentary evidence confirming its status as a licensed owned agent.

16.6 UNSOLICITED BIDS

- (1) Unsolicited bids are bids that are preemptively submitted by the prospective service provider (s) to JCT without any requirements been identified and advertised by JCT. This situation arises when the supplier(s) identify an opportunity to render services or supply products not ordinarily required by JCT, or where the need for such services or goods have not yet been identified by JCT.
- (2) JCT shall not be obliged to consider unsolicited bids received outside the normal bidding processes.
- (3) JCT may consider an unsolicited bid, but only if:-
- (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
 - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages;
 - (c) the person or entity who submitted the bid is the sole provider of the product or service; and
 - (d) the reasons for not going through the normal bidding processes are approved by the Chief Executive Officer

- (4) If the Chief Executive Officer decides to consider an unsolicited bid that complies with sub-paragraph (3) above, the decision must be made public in accordance with section 21A of the Municipal Systems Act, together with:
 - (a) reasons as to why the bid should not be open to other competitors;
 - (b) an explanation of the potential benefits if the unsolicited bid is accepted;
 - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the date the decision has been published.

- (5) JCT shall submit all written comments received pursuant to sub-paragraph (4), including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.

- (6) The Executive Adjudication Committee must consider the unsolicited bid and may award the bid or make a recommendation to the Chief Executive Officer, depending on its delegations.

- (7) A meeting of the Executive Adjudication Committee to consider an unsolicited bid must be open to the public.

- (8) When considering the matter, the Executive Adjudication Committee must take into account;
 - i. any comments submitted by the public, as well as the response received from the unsolicited bidder, if any; and
 - ii. any written comments and recommendations of the National Treasury or the relevant provincial treasury.

- (9) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the Chief Executive Officer must submit to the Auditor General and the

Provincial and National treasury the reasons for rejecting or not following those recommendations.

- (10) The submission referred to in sub-paragraph (9) must be made within 7 days after the decision on the award of the unsolicited bid is taken, but no contract committing JCT to the bid shall be entered into or signed within 30 days of the submission.
- (11) JCT reserves the right:
 - i. not to award the business to the bidder that has made the unsolicited bid;
 - ii. to award the business to any competitive bidder instead of the unsolicited bidder; and/or
 - iii. to reject any bidder who may have generated an unsolicited bid having used privileged information owned by JCT.

16.7 PROCUREMENT OF CONSULTING SERVICES (APPOINTMENT OF CONSULTANTS)

- (1) JCT may procure consulting services provided that any Treasury Guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) Consultancy services must, subject to paragraph 16.2(8) above, be procured through competitive bids if:-
 - (a) The value of the contract exceeds R200,000 (VAT included); or (b) The duration period of the contract exceeds one year
- (3) In addition to any requirements prescribed by this Policy for competitive bids, bidders must furnish particulars of;
 - (a) All consultancy services provided to an organ of state in the last five years; and
 - (b) Any similar consultancy services provided to an organ of state in the last five years.

- (4) Copyright in any document produced, and the patent rights and ownership in any plant, machinery, thing, system or process designed or devised by a consultant in the course of the consultancy service shall vest in JCT.
- (5) The Chief Executive Officer shall introduce such steps as may be required to ensure that the provisions of sub-paragraph (4) above are complied with.

17. GENERAL CONDITIONS APPLICABLE TO THE CONSIDERATION OF WRITTEN QUOTATIONS OR BIDS

17.1 General Conditions

(1) JCT shall not consider signed written quotations or bids, unless the provider who submitted the quotation or bid has submitted:

- (a) a signed binding quotation or bid that contains the service provider's:–
 - (i) full name; and
 - (ii) identity number or company or other registration number;
- (b) a signed the declaration form under oath:-
 - (i) stating whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
 - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
 - (iii) stating whether a spouse, child or parent of the service provider or of a director, manager, shareholder, or stakeholder referred to in sub-paragraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months; and
 - (iv) declaring any conflict of interest the provider may have in the transaction for which the quotation or bid is submitted;
- (c) a copy of Form VAT 103 as proof of VAT registration, is applicable;

- (d) an original valid Tax Clearance Certificate;
- (e) a certificate signed by the provider certifying that the service provider has no undisputed commitments for municipal services towards the City or other service provider in respect of which payment is overdue for more than 90 days, or certifying that an appropriate agreement has been entered into between the City and the relevant service provider for the repayment of all undisputed commitments for municipal services, in respect of which no payment is overdue for more than 90 days.
- (f) If the value of the transaction is expected to exceed R10 million (VAT included):
 - (i) and the service provider is required by law to prepare annual financial statements for auditing, its audited financial statement-
 - (aa) for the past three years; or
 - (bb) since its establishment, if established during the last three years.
 - (ii) particulars of any contract awarded to the provider by an organ of state during the past five years, including particulars of any material noncompliance or dispute concerning the execution of such contract; and
 - (iii) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the republic of south Africa, and, if so, what portion and whether any portion of payment from JCT is expected to be transferred out of the Republic

17.2 Rejection of Bids / Non-Responsive Bids

- (1) Bidding documents must provide for the rejection of all bids if and when deemed necessary. This is justified when there is lack of effective completion or bids are not substantially responsive, provided that lack of competition should not be determined solely on the basis of the number of bidders.
- (2) If all bids were rejected, JCT must review the causes justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.

- (3) If rejection is due to lack of competition, wider advertising should be considered.
- (4) If the rejection was due to most or all of the bids being non responsive, new bids may be invited from the initially pre-qualified bidders, or with the agreement of the Chief Executive Officer, from only those that submitted in the first instance.
- (5) All bids should not be rejected solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds JCT's pre-bid cost estimates by a substantial margin, JCT must investigate the causes for the excessive cost and consider requesting new bids as described above.
- (6) Alternatively to sub-paragraph (5), JCT may negotiate with the identified preferred bidder (s) to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility that can be reflected in a reduction of the contract price, provided that a substantial reduction in the scope or modification to the contract documents may require re-bidding.
- (7) The Chief Executive Officer's prior approval must be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the identified preferred bidder.
This approval should be recorded for auditing purposes.

17.3 Cancellation of bids

In the event a bid being cancelled, the relevant Head of Department must submit a report requesting permission for cancellation the bid stating the reasons for such cancellation from the Accounting Officer prior to the bidders being made aware of.

For construction related projects a cooling period of six months is to be adhered to unless permission is sought and granted by CIBD.

18. PUBLIC INVITATION AND BID DOCUMENTATION FOR COMPETITIVE BIDS

18.1 PROCEDURE

- (1) The following procedure shall apply to the invitation of competitive bids:
 - (a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, JCT's website or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
 - (b) The information contained in a public advertisement, must include:
 - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included) or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to sub-paragraphs (2) and (5) below;
 - (ii) a statement that bids may only be submitted on the bid documentation provided by JCT; and
 - (iv) the date, time and venue of any proposed site meetings or briefing sessions.
- (2) The Chief Executive Officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow official procurement process.
- (3) All bids submitted must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.
- (5) In the case of a two-stage bidding process for transactions over R10 million (VAT included), a closing date of 30 days shall apply in respect of at least one of the stages whilst a closing

date of 14 days shall apply to the other stage. The relevant Head of Department may determine which closing date period shall apply to which stage.

- (6) Bid documentation for a competitive bidding process must:- (a) take into account –
- (i) the general conditions of contract and any special conditions of contract, if specified;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction or which the bid is submitted.
- (d) 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 in accordance with the provisions of applicable South African Law.
- (e) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish-
- (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements-
 - (aa) for the past three years; or
 - (bb) since their establishment if established during the past three years;
 - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other services provider in respect of which payment is overdue for more than 90 days, or certifying that an appropriate agreement has been entered into between JCT and the relevant service provider for the repayment of all undisputed commitments

for municipal services, in respect of which no payment is overdue for more than 90 days;

- (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
- (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
- (v) 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 in accordance with the provisions of applicable South African Law.

18.2 REQUIREMENTS FOR THE INVITATION OF BIDS THAT INCLUDES FUNCTIONALITY AS A CRITERION

(1) All bids that have a functionality aspect must adhere to the following:

- (a) The invitation to bid must indicate that the bid will be evaluated on functionality. Bid invitation should clearly stipulate that the bid will be evaluated on functionality in order to give prospective bidders insight to the evaluation criteria and an understanding that the bidder will be required to demonstrate certain level of functional competence in order to compete effectively for the requirement for which a bid has been invited.
- (b) The bid document must indicate the evaluation criteria for measuring functionality. All the functional elements that will form part of the evaluation should be specified. Such elements should be quantifiable and measurable and clear guidelines in terms of how such are going to be evaluated should be given in order to ensure that the evaluation panel has a common understanding on how to evaluate and score bidders on functionality.

- (c) The bid document must indicate the weight for each criterion.
Each functionality element must be allocated a weight and such must be in accordance with the significance of that element in relation to the totality of the functionality aspect. In essence, each element must be allocated a weight that demonstrates its worth relative to other elements that are going to be evaluated.
- (d) The applicable values as well as minimum threshold for functionality.
The range of values that are going to be utilised in the computation of the scores must be stipulated upfront and no deviations should be allowed once such has been decided even though such a deviation might not affect the final outcome.
- (e) The minimum participation threshold that a company must obtain for functionality in order to be considered for further evaluation must be outlined and all bidders who do not meet the required threshold must be disqualified.
- (f) All bids that do not have functionality element shall be evaluated and adjudicated on a straight 90/10 or 80/20 point system respectively, where 90 or 80 points will be for the price and 10 or 20 points will be for specific goals. Points under specific goals will be allocated for HDI, Woman, Youth, Disability and Locality (using CSD report and ID's of Directors).
- (g) The assessment of functionality must first be done in terms of the evaluation criteria and the minimum threshold stipulated in the bid invitation. In other words, bids must first be evaluated and scored on the functionality elements.
- (h) Only those bidders that meet the minimum threshold shall be considered for the subsequent stages of the evaluation process and all those who did not meet the minimum threshold shall be disqualified and not considered further.
- (i) Functionality will be scored out of 100 points.

All bids that meet the set minimum threshold out of the 100 points for functionality must be evaluated. This implies that all bids that have been disqualified in terms of functionality are all considered for further evaluation on price and B-BBEE status level of contribution, where 80 or 90 points must be used for price only and the 20 or 10 points are used for specific goals. The outcome of the evaluation of functionality no longer has bearing on the subsequent stages of the evaluation process for all those bidders that have met the set minimum threshold.

19. PROCEDURE FOR HANDLING, OPENING AND RECORDING OF BIDS

- (1) The following procedures for the handling, opening and recording of bids shall apply:
 - (a) Bids-
 - (i) must be opened in public;
 - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
 - (iii) received after the closing time shall not be considered and shall be returned unopened without delay.
 - (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and if practical, also each bidder's total bidding price;
 - (c) No information, except the information referred to in sub-paragraph (b), relating to the bid shall be disclosed to bidders or other persons until the successful bidder is notified of the award; and
 - (d) The Chief Executive Officer or delegated nominee must –
 - (i) record all bids received in time in an appropriate register;
 - (ii) make the bid opening register available for public inspection; and
 - (iii) publish the entries in the register and the bid results on the website.

**20. DEVIATIONS FROM AND RATIFICATION OF MINOR BREACHES OF THE PROCUREMENT PROCESSES
IN TERMS OF REGULATION 36 OF THE MUNICIPAL SUPPLY CHAIN MANAGEMENT
REGULATIONS**

- (1) Deviations from procurement mechanism contained in this policy are not encouraged and shall only be allowed in the circumstances provided for in this paragraph.
- (2) The Chief Executive Officer may:
 - (a) deviate from the official procurement processes contained in this policy and approve the procurement of any required goods or services through any convenient process, which may include direct negotiations, but only-
 - (i) in an emergency;
 - (ii) if such goods or services are produced or available from a single/sole provider as contemplated in paragraph 16.5 above;
 - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile; and/or
 - (iv) in any other exceptional case where it is impractical or impossible to follow the official procurement processes.
 - (b) ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties, which are purely of a technical nature.
 - (c) Reasons for any deviation or ratification must be motivated and recommended by the responsible Head of Department in the report for consideration by the Chief Executive Officer;
 - (d) The Chief Executive Officer must record the reasons for any approved deviation or ratification in terms of sub-paragraphs (2)(a) and (b), must report them at the next meeting of the Board of Directors and must include any such deviation or ratification as a note to the annual financial statements.
 - (e) Sub-paragraph 3 does not apply to the procurement of goods and services contemplated in paragraph 16(5) of this policy.

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

- (1) The Chief Executive Officer may approve the procurement of goods and/or services under a contract secured by another organ of state, only if: –
 - (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
 - (b) there is no reason to believe that such contract was not validly procured;
 - (c) there are demonstrable discounts or benefits to do so; and
 - (d) the other organ of state and the provider has consented to such procurement in writing;
 - (e) goods or services required by JCT are similar to those on contract.
 - (f) the goods are procured under similar terms and conditions.
- (2) The respective departments within JCT must solicit prior approval from the Accounting Officer for participation in a contract established by other organs of state.
- (3) Subparagraphs (1) (c) and (d) above does not apply if JCT procures goods or services through a contract secured by the City or any of its entities, however the accounting officer or delegated head of department must grant such authority in writing;
- (4) The above must not be exercised to defeat the purpose and intentions of the competitive bidding process and must be considered as a mechanism of last resort.

22. SUPPLY CHAIN MANAGEMENT COMMITTEE SYSTEMS

- (1) JCT shall, through its Supply Chain Management committee system, ensure that the acquisition process for goods and services is open, fair and transparent.
- (2) The committee system ensures that objectivity, value for money and cost effective principles are espoused in all phases of the adjudication process.
- (3) JCT will make use of the following committees in the manner detailed hereunder:

TABLE 2

Committee	Function	Composition
Bid Specification Committee	Compiling specifications incorporating set criteria for JCT's requirements to be acquired.	At least three theatre officials, comprising: officials from the user department, and SCM representatives. When necessary City officials and/or external specialist advisors.
Bid Evaluation Committee	Evaluation of bids, compilation of comprehensive reports & making recommendations for consideration by the respective adjudication committees.	At least three theatre officials, comprising: officials from the user department, SCM representatives and Representative from the finance office and when necessary City officials and/or external specialist advisors.
Adjudication Committee	Consideration of the recommendations, making final awards and/or referring back to the Bid Evaluation Committee for further analyses.	As per delegations – paragraph 22.4 (2).

22.1 BID SPECIFICATION COMMITTEE

- (1) A bid specification committee must compile the technical specifications for each requirement.
- (2) The technical specifications: –
 - (a) must be drafted in an unbiased manner to allow all potential service providers to offer their goods or services;
 - (b) must take account of any accepted standards such as those issued by South Africa Bureau of Standards (SABS), the International Standards Organisation (ISO), or an authority accredited or recognised by the South African National Accreditation System (SANAS);
 - (c) must be functional and not be outcome based or brand inclined;
 - (d) must consider the requirements of the Preferential Procurement Regulations, 2022, in relation to the procurement of goods and services that have been designated for local production and content.
 - (e) must not create trade barriers in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;

- (f) shall 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 words “equivalent”;
 - (g) must indicate each specific goal for which points shall be awarded in terms of the points system set out in the Preferential Procurement Regulations 2022; and
 - (h) must be approved by the Chief Executive Officer or his/her delegated nominee prior to publication of the invitation for bids in terms of paragraph 19 and 20 of this policy.
- (3) The bid specification committee must be composed of at least three officials, comprising: officials with the Table 2, and preferably include the manager responsible for the function, and shall, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting bids.

22.2 BID EVALUATION COMMITTEE

- (1) The Bid Evaluation Committee must check the National Treasury’s database of restricted suppliers prior to recommending any bid to ensure that no recommended bidder or any of its directors is listed as a person prohibited from doing business with the public sector.
- (2) A bid evaluation committee must;–
- (a) evaluate bids in accordance with
 - (i) the approved specification; and
 - (ii) the points system set out in the Preferential Procurement Regulations, 2022.
 - (b) evaluate each bidder’s capability to execute the contract from a technical, financial and commercial perspective;
 - (c) ascertain whether the bidder complies to all the general conditions as set out in paragraph 17.1 above; and

- (d) submit to the Adjudication Committee a report and recommendations regarding the award of the bid or any other related matter pertaining to the bid/s.

(2) A bid evaluation committee must be composed of at least three officials of JCT in compliance with the Table 2, and preferably include-

- (a) officials from departments requiring the goods or services; and
- (b) at least one supply chain management practitioner.

22.3 DATABASE OF RESTRICTED SUPPLIERS OF PERSONS PROHIBITED FROM DOING BUSINESS WITH THE PUBLIC SECTOR

The Supply Chain Manager reserves the right to reject application to register on the database of service providers or deactivate status of a registered supplier if such suppliers are listed on the National Treasury's list of restricted suppliers.

22.4 BID ADJUDICATION COMMITTEE

(1) A bid adjudication committees must-

- (a) consider the report and recommendations compiled by the bid evaluation committee; and (b) either-

- (i) depending on its delegations, make a final award or a recommendation to the Chief Executive Officer to make the final award; or
- (ii) make another recommendation to the Chief Executive Officer on how to proceed with the relevant procurement.

- (c) Consider Bids in public, however the public shall not participate in the proceedings and deliberations of the bid adjudication committees. In line with MFMA regulations no counsellors may participate or be in attendance at bid adjudication committee meetings

(2) A bid adjudication committee must consist of at least four senior managers of JCT, which must include-

- (a) the Chief Financial Officer or, if the Chief Financial Officer is not available, a representative designated by the Chief Financial Officer; and

- (b) at least one senior supply chain management practitioner who is an employee of the theatre.
 - (c) a technical expert in the relevant field who is an official, if such an expert exists; and
 - (d) any other officials which the Chief Executive Officer may deem appropriate.
- (3) The Chief Executive Officer must appoint the Chairperson of the bid adjudication committees. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid:-
 - (i) ensure in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and; (ii) notify the Chief Executive Officer.(b) The Chief Executive Officer may-
 - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a) above; and
 - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The Chief Executive Officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The Chief Executive Officer shall, in accordance with Section 114 of the Act, notify the City, Auditor-General, the Provincial Treasury and National Treasury (via Group Governance)

within 10 working days where a bid, other than the one recommended in the normal course of implementing this policy, has been approved.

- (8) The bid adjudication committees must consider all reports and recommendations of the bid evaluation committee in terms of their respective mandate/Terms of References as determined from time to time.
- (9) The bid adjudication committees shall make the award based on their satisfaction with the integrity of the bid evaluation process being followed and compliance to the policy.

23. CONTRACT MANAGEMENT

- (1) A contract or agreement procured through the supply chain management system of an entity must:
 - (a) be in writing;
 - (b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for:-
 - i. the termination of the contract or agreement in the case of non or underperformance;
 - ii. dispute resolution mechanisms to settle disputes between the parties; iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; or if material conditions change; and
 - iv) any other matters that may be prescribed.
- (2) The Head of Department must:-
 - (a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the entity is properly enforced;

- (b) monitor on a monthly basis the performance of the contractor under the contract or agreement;
 - (c) establish capacity in the administration of the department-
 - i. to assist the HOD in carrying out the duties set out in paragraphs (a) and (b); and
 - ii. to oversee the day-to-day management of the contract or agreement;
 - (d) regularly report to the relevant oversight body of the municipality, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.
- (3) The Head of Department shall ensure the implementation and application of the Group Contract Management Policy and Framework in the process of contracting and also contract management.

24. GREEN PROCUREMENT

All procurement requirements are to be undertaken in line with the principles of green procurement in order to conserve the environment.

- a) Environmental credentials for goods and / or service providers must be included in the bid specifications / terms of reference to enforce compliance departments and service providers.

25. SUPPLIER MANAGEMENT AND DEVELOPMENT

- (1) JCT ascribes to sound principles and practices directed at supplier management and development to ensure the following:
 - (a) equal opportunities on a rotational basis where possible for all service providers, except for continuity, compatibility, alignment and cost effectiveness of the goods and / or professional services required by JCT;
 - (b) development and management of SMME and BBBEE; and
 - (c) mutually beneficial relationships based on fairness, transparency, trust and good ethical conduct.

- (2) To ensure that the above mentioned objectives are met JCT must:-
 - (a) keep a list of accredited prospective service providers of goods and services;
 - (b) at least once a year through public invitation including the JCT website <http://www.joburgtheatreptyltd.co.za/>, invite prospective service providers of goods or services to apply for accreditation and registration;
 - (c) specify the listing criteria for accredited prospective service providers; and
 - (d) the list will be updated at least quarterly to make provision for new registrations
- (3) JCT will not register and/or do business with service providers whose names appear on the National Treasury's database as a person or entity prohibited from doing business with the public sector.

26. PENALTIES FOR ABUSE OF SUPPLY CHAIN MANAGEMENT

- (1) No abuse or contravention of this Policy shall be tolerated. Any abuse or contravention of the Policy shall be brought to the attention of the Chief Executive Officer for further consideration.
- (2) Employees who abuses or contravenes this policy shall be dealt with in terms of clause 26(1) above.
- (3) Service providers and their directors who have been found guilty of abusing this policy will be barred/suspended from doing business with JCT and National Treasury will be informed accordingly.
- (4) JCT reserves the right to criminally prosecute any person found to have violated or abused this policy.
- (5) The JCT reserves the right to cancel or not to award business to service provider/s found to have:

- (a) unfairly influenced the process of award and have been found guilty of improper conduct;
 - (b) been convicted for fraud or corruption during the past 5 years;
 - (c) wilfully neglected, reneged and/or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - (d) been listed in the Register for Bid Defaulters in terms of Section 29 of the Prevention and Combating of Corrupt Activities Act No 12 of 2004.
- (6) All employees are expected to assist JCT in fighting corruption and to this extent are encouraged to report all suspicious acts in terms of JCT's Anticorruption Policy.

PART 3 and 4:

(LOGISTICS MANAGEMENT)

INVENTORY MANAGEMENT AND ASSET DISPOSAL

27. INVENTORY MANAGEMENT

- (1) JCT is committed to the following principles of inventory management:
 - (a) consolidation of stock items to avoid duplication and redundancy;
 - (b) operating and managing the stores in an efficient and cost effective manner;
 - (c) maintaining an effective item identification system;
 - (d) avoid fruitless and wasteful expenditure by disposing redundant material on time;and
 - (e) designing and implementing internal control systems that seek to ensure that JCT minimises theft, and avoid losses.

- (2) To ensure achievements of the goals set out in sub-paragraph (1) above, JCT will ensure that:-
 - (a) items are coded to ensure each item has a unique identification number for the purposes of monitoring spending patterns on types or classes of goods and assets;

- (b) stock items are kept in clearly marked bins located in the store /warehouses to enable ease of identification at all times;
 - (c) all stores / warehouses must be kept in a clean, safe, tidy and systematic condition to comply with the health and safety standards;
 - (d) minimum and maximum inventory levels and lead times will be set for all categories of goods kept at the stores/warehouses to ensure continuity of supply. User departments are responsible for providing demand forecast to enable effective and efficient inventory management.
 - (e) appropriate measures will be taken to minimise the risk, associated with the keeping of stock/goods, to JCT, as well as management of stock- outs;
 - (f) ordering and receiving of stock must be done according to the Inventory Management Procedure manual.
- (3) JCT will ensure appropriate standards of internal controls and stores/ warehouse management are in place to ensure goods placed in stores are secured and only used for the purpose they were purchased;
- (4) JCT will ensure that all assets including JCT vehicles are properly managed, appropriately maintained and only used for official purposes.

28. ASSET DISPOSAL MANAGEMENT

- (1) The process of asset disposal should be transparent, competitive, equitable, fair and comply with Supply Chain Management Processes and practices;
- (2) Where possible asset disposal transactions should be through a public bidding process or public auction;
- (3) The appointment of auctioneers should be through competitive bidding mechanism;

- (4) Prior to the disposal of assets, reasonable efforts must be made to ensure that no other organ of state may have need of the items, except for IT equipment and theatre equipment, in which case the Provincial Department of Education and Arts and Culture institutions must be given the first right of refusal;
- (5) Appropriate policies and procedures must be followed when donating assets that are no longer required by JCT.
- (6) The cost of disposal in an environmentally and safe manner must be included in the lifecycle costs assessment of all products.
- (7) The respective departments must assume a responsibility of ensuring that all assets are indeed redundant / obsolete / unserviceable prior to disposal.

PART 5: RISK MANAGEMENT

29. RISK MANAGEMENT

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

- (3) Due care must be taken in the bid administration and management process to minimise the risk of litigation by unsatisfied service provider/s.
- (4) The Supply Chain Management Unit must ensure where third party software or license agreement/s is used, the service provider must own / must have the right of use of any intellectual property attached to the license. Any damages for non-compliance will be for the suppliers account.

PART 6: PERFORMANCE MANAGEMENT

30. Performance Management

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

CHAPTER 4

GENERAL MATTERS

31. PROHIBITION ON AWARDS TO PERSONS WHOSE TAX MATTERS ARE NOT IN ORDER

- (1) Service providers whose tax matters are not known or have not been declared to be in order by the South African Revenue Services are not eligible to be awarded business by JCT. Original Tax Clearance Certificate is a mandatory requirement for all procurement mechanisms listed in this policy above R15 000 with the exception of petty cash purchases.
- (2) It is the service provider's responsibility to provide JCT with a valid and original Tax Clearance Certificate and failure to do so will result in automatic disqualification. It is an offence to deregister for Vat purposes after obtaining business from JCT without advising JCT accordingly. Should JCT establish that a service provider has deregistered after the contract award and is claiming VAT, JCT will summarily cancel the contract, prohibit the offender from doing future business with JCT and/or lay criminal charges against the offender. Section 43 (2 and 3) of the Supply Chain Management Regulations will be applied when necessary.

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

- (1) JCT will not, subject to such amendments to the Act and exemptions as the Minister may promulgate from time to time, award contracts to service providers who are owned directly or indirectly by the following categories of persons-
 - (a) Person in the service of the state; or
 - (b) If that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in service of the state; or
 - (c) who is an advisor or consultant contracted within the municipality or municipal entity.

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

- (1) Awarding of contracts by employees in decision-making positions to close family members or friends shall not be encouraged. To this extent, all senior managers shall make full disclosure of businesses owned by close family and / or friends on an annual basis and no such individuals shall directly or indirectly be involved in the awarding of such business transactions.
- (2) The Chief Executive Officer must ensure that the notes to the annual financial statements 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, which particulars shall include:–
 - (a) the name of that person;
 - (b) the capacity in which that person is in the service of the state; and (c)
the amount of the award.

34. HANDLING PROPRIETARY INFORMATION

- (1) All information designed and prepared for JCT is deemed as proprietary. No such information may be distributed, modified or customized for third parties without the prior written permission.
- (2) All service provider information shall be as treated confidential.
- (3) In appropriate instances, JCT may require security clearance and confidentiality agreements to be entered into with service providers.

35. SPONSORSHIPS

- (1) The Chief Executive Officer must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is-

- (a) provider or prospective recipient of goods or services; or
 - (b) a recipient or prospective recipient of goods disposed or to be disposed.
- (2) All sponsorships by JCT to external organisations or parties shall be subject to such terms and conditions as the Board of Directors may determine from time to time, which terms and conditions shall be deemed to be incorporated into this policy by means of Practice Notes contemplated in paragraph 41 below.

36. RESOLUTIONS OF DISPUTES OBJECTIONS, COMPLAINTS AND QUERIES

- (1) Persons or service providers aggrieved by decisions or actions taken in the implementation of Supply Chain Management system or in the awarding of business, may, within 10 days of the decision lodge a written complaint, objection or query to the Chief Executive Officer detailing the following:- (a)
- The bid or the quotation reference number;
 - (b) The part of JCT Policy, Regulations or Act that has been violated;
 - (c) The details of the violation;
 - (d) The department involved; (e) Relief sought:
- Provided that no person aggrieved by any such decisions or actions shall be entitled to lodge such complaint, objection or query after expiry of the period of 10 days, unless the Chief Executive Officer has on good cause shown, condoned the late lodging thereof.
- (2) The Chief Executive Officer must appoint an independent or impartial person, from outside or within the City, to investigate the complaint, objection or query concerned and propose an appropriate resolution. The person so appointed must be someone who was not involved in the transaction in question.
- (3) Disputes relating to running contracts or completed contracts will be resolved strictly according to the disputes resolution mechanism provided for in the contract document.

- (4) Provisions of this paragraph do not prohibit or infringe on the rights of any party to approach any Court of Law for appropriate relief regarding the dispute in question, provided that:
- (a) the laws of the Republic of South Africa shall apply to all and any disputes resulting from the implementation of the policy, or any contract entered into in terms of the policy; and
 - (b) only a South African Court of Law of competent jurisdiction shall decide such dispute.

37. CONTRACTS PROVIDING FOR COMPENSATION BASED ON TURNOVER

- (1) Should the compensation payable to any service provider be determined as an agreed percentage of turnover for the service rendered or the amount collected on behalf of JCT, the contract between the service provider and JCT must:–
- (c) contain a cap on the compensation payable to such service provider; and
 - (d) stipulate that such compensation shall be performance based.

38. LIST OF ACCREDITED SERVICE PROVIDERS

- (1) The Chief Executive Officer must ensure that:(a) the City keeps a list of accredited prospective providers of goods and services that must be used for the procurement requirement of JCT through written quotations and formal written price quotations;
- (b) at least once a year through newspapers commonly in circulation in the area of jurisdiction of JCT, the website of the JCT and any other appropriate ways, prospective provider of goods or services is invited to apply for evaluation and listing as accredited prospective providers;
 - (c) the listing criteria for accredited prospective providers is specified; and
 - (d) 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, is disallowed.
- (2) The list of accredited prospective providers must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services.

- (3) Prospective providers shall be allowed to submit applications for inclusion on the list of accredited service providers at any time.
- (4) The list of accredited prospective provider must be compiled per commodity and per type of service.
- (5) Separate applications for inclusion on the list of accredited service providers must be submitted for each subsidiary company within a holding company that desires to be included on the list of accredited service providers.

39. SCM PROCEDURE MANUAL, PRACTICE NOTES AND NATIONAL TREASURY GUIDELINES (1) The Chief Financial Officer may from time to time through the Supply Chain Manager issue practice notes and amendments to the SCM Procedure Manual as may be deemed expedient for the implementation of this policy.

- (2) Any such amendments to the SCM Procedure Manual and Practice Notes referred to in subparagraphs (1) above, and any National Treasury Guidelines that may be issued by National Treasury from time to time, shall upon the issuing thereof be deemed to be incorporated in and form part of this policy.

40. INDUCEMENTS, REWARDS, GIFTS AND FAVOURS

- (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be of may either directly or through a representative or intermediary promise, offer or grant -
 - (a) any inducement or reward to the City for or in connection with the award of a contract; or
 - (b) any reward, gift favour or hospitality to-
 - (i) any official; or
 - (ii) any other role player involved in the implementation of the policy.
- (2) The Chief Executive Officer must promptly report any alleged contravention of subparagraph (1) to the National Treasury for consideration whether the offending

person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

- (3) Sub-paragraph (1) does not apply to gifts less than R350 in value.

41. ETHICAL STANDARDS

- (1) The Code of Conduct for SCM practitioners and other role players involved in SCM (**the Code of Conduct**) attached to this policy as Annexure A, is hereby adopted for employees and other role players in the SCM system of JCT in order to promote:-
- (a) mutual trust and respect; and
 - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) A breach of the Code of Conduct shall be dealt with as follows-
- (a) in the case of an employee, in terms of the disciplinary procedures of JCT envisaged in section 67(1)(h) of the Municipal Systems Act;
 - (b) in the case a role player who is not an employee, through other appropriate means in recognition of the severity of the breach; and
 - (c) in all cases, financial misconduct must be dealt with in terms of Chapter 15 of the Act.

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

1. PURPOSE

1.1 The purpose of this Code of Conduct is to ensure that all business transactions take place in an environment of honesty, integrity, fair competition and respect for South African Laws. This Code outlines the City's expectations from all its employees and service providers who participate, directly or indirectly, in the Supply Chain Management activities. The main aim is to promote:-

- (a) mutual trust and respect; and
- (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

1.2 Failure to adhere to this Code shall not be tolerated and shall be punishable by JCT.

2.

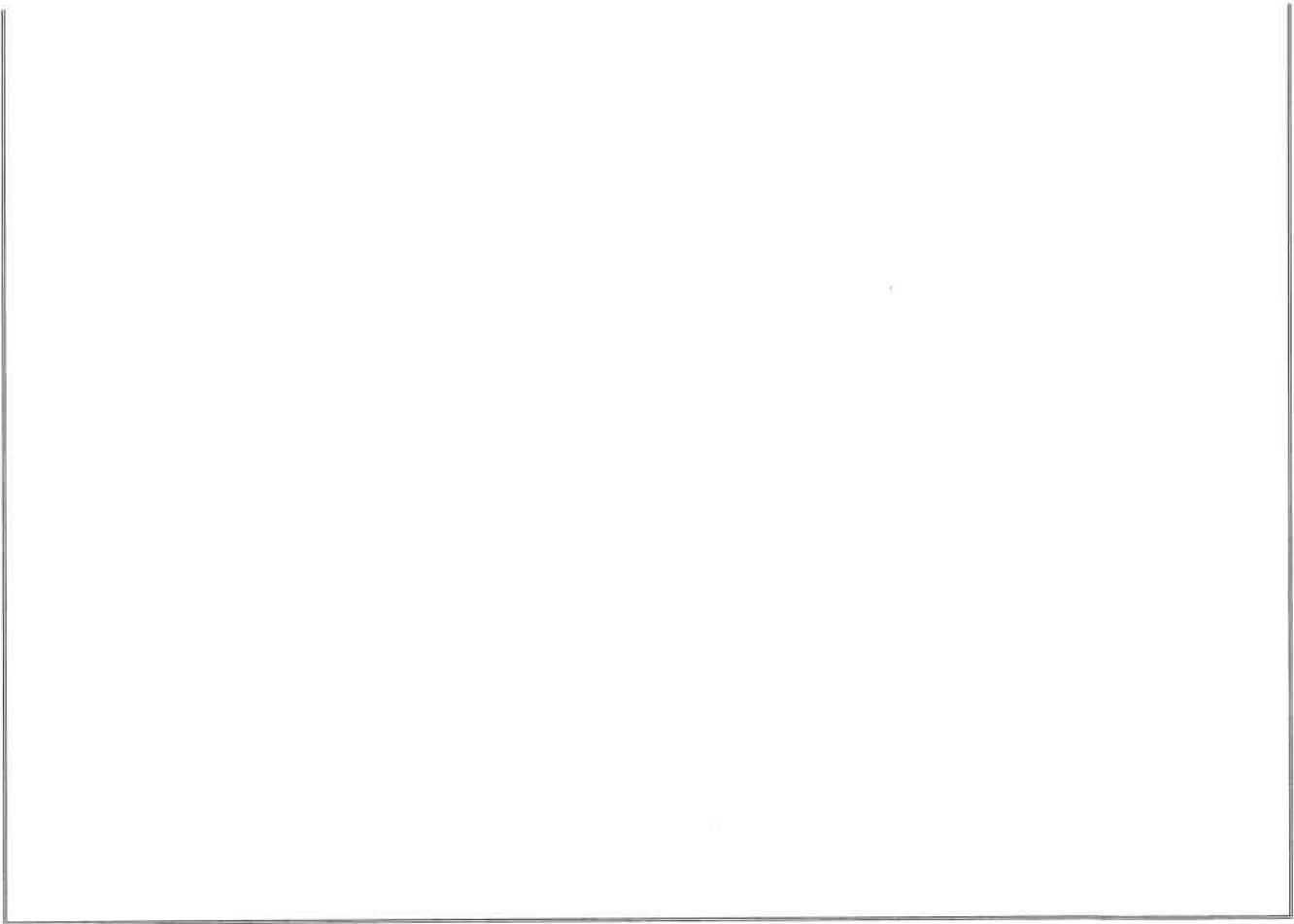
GENERAL PRINCIPLES

2.1 JCT commits itself to a policy of fair dealing and integrity in the conducting of its business.

Employees and other role players involved in Supply Chain Management (SCM) are in a position of trust, implying a duty to act in the public interest. Employees and other role players should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or provider/contractor for themselves, their family or their friends.

2.2 Employees and other role players involved in SCM should ensure that they perform their duties efficiently, effectively and with integrity, in accordance with the relevant legislation, policies and guidelines. They should ensure that public resources are administered responsibly.

2.3 Employees and other role players involved in SCM should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.



3. EMPLOYEE ETHICAL CONDUCT

3.1 An employee or other role player involved with Supply Chain Management:-

- (i) must treat all providers and potential providers equitably;
- (ii) may not use his or her position for private gain or to improperly benefit another person;
- (iii) must not interfere with Supply Chain Management processes and system in order to influence the outcome of an award by tampering with any price quotations and bids;
- (iv) must keep all information, including service providers information, as confidential. Only the duly authorized official will communicate the outcome of the bidding process;
- (v) must not be soliciting price quotations / bids from bidders / contractors whose names appear on the Register for Tender Defaulters;
- (vi) must not exploit errors in price quotations / bids;
- (vii) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person, of a value more than R350;
- (viii) must declare to the Chief Executive Officer and Chief Financial Officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person and record them on the declaration register to be kept by each manager and signed off on quarterly basis by the respective delegated employee;
- (ix) must declare to the Chief Executive Officer and Chief Financial Officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process, or in any award of a contract by JCT ;
- (x) 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;

- (xi) must declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest;
- (xii) should not place him/herself under any financial or other obligation to outside individuals or organizations that might seek to influence them in the performance of their official duties;
- (xiii) should not take improper advantage of their previous office after leaving their official position; and
- (xiv) Employees must report to the Chief Executive Officer and Chief Financial Officer any alleged irregular conduct in the Supply Chain Management system which that person may become aware of, including:-
 - (a) any alleged fraud, corruption, favouritism or unfair conduct;
 - (b) any alleged contravention of the policy on inducements, rewards, gifts and favours to the City or municipal entities, employees or other role players; and (c) any alleged breach of this code of conduct.

3.2 JCT is committed to the highest standard of integrity and any employee transgressing this code will be dealt with in accordance with JCT Disciplinary Code of Conduct.

4.

RECORD KEEPING

4.1 The Human Resource Department must keep an up to date gift register and records of all declarations made by the employees with regards to:-

- (a) Business interest held by the employees;
- (b) Business interest held by the family members; and
- (c) Interest in a business transaction where conflict of interest exist

4.2 JCT must keep records of all declarations.

5.

SERVICE PROVIDERS ETHICS

5.1 Service providers are expected to assist JCT in enforcing good ethical conduct from its employees and:-

- (a) must not induce or reward the employees for contract awarded or to be awarded;
- (b) must not put undue pressure on employees;
- (c) must not assist or offer financial relief to employees in financial difficulties;
- (d) must not request from employees information about JCT's operations or competitors information; and
- (e) must not offer favours or hospitality to employees of which the value thereof is above R350.

5.2

Service providers are expected to comply with this policy fully and failure to do so will lead to barring or black listing from doing business with JCT. The names of service providers defaulting will be submitted to National Treasury for black listing.

DELEGATIONS OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES

1. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES TO THE CHIEF EXECUTIVE OFFICER

- (1) The Board of Directors hereby delegates the following powers and duties to the Chief Executive Officer, excluding those directly assigned to the Chief Executive Officer as accounting officer in terms of the Act and any other applicable legislation, which are necessary to enable the Chief Executive Officer-
- (a) to discharge the Supply Chain Management responsibilities conferred on accounting officers in terms of:-
 - (i) Chapter 8, 10 and 11 of the Act;
 - (ii) The Supply Chain Management Policy of JCT;
 - (b) to maximise administrative and operational efficiency in the implementation of the Policy;
 - (c) to enforce reasonable and cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this policy.
 - (d) to approve the composition of any Bid Specification and Bid Evaluation Committees; and
 - (e) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) JCT may sub-delegate any power and duty delegated to him in terms of sub-paragraph (1) to any official or to a committee which is exclusively composed of officials of JCT.

2. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES BY JCT

- (1) The Chief Executive Officer, in terms of section 79 of the Act, hereby sub- delegates, subject to sub-paragraph 2 below, the following Supply Chain Management powers and duties assigned to the Chief Executive Officer in terms of the Act:-

- (a) to the Chief Financial Officer for the implementation of Supply Chain Management policies and practices in terms of this Policy, the Act and its Regulations;
- (b) to the Adjudication Committee the power to make a recommendation to the Accounting Officer to make final awards, as follows:

Committee	Chairperson	Value
Executive Adjudication Committee (BAC)	Chief Financial Officer or nominated Executive Manager	> R 2 million and above VAT inclusive for the contract.

- (c) The Chief Financial Officer & Chief Operating Officer
 - i. the authority to make final awards from R10 000 to R2 000 000 (inclusive of VAT), after having complied with paragraph 16.2 above; (d) Heads of Departments:
 - i. the authority to make final awards up to R10 000 (inclusive of VAT), including petty cash purchases contemplated in paragraph 16.1 above;
 - ii. the authority to make appointments from established panel of service providers approved by an appropriate authority within JCT, in the manner contemplated in paragraph 16.2 above, after having obtained a minimum of three quotations from any of the service provider on such a panel;
- (e) A Head of Department shall be entitled to further sub-delegate the authority referred to in sub-paragraph (d) above to any person under his or her control, subject to such conditions as the relevant Head of Department may determine.
- (f) The Chief Executive Officer shall be entitled at all times to withdraw or amend the delegations contained in sub-paragraph (1) above or to determine new delegations, should the need therefore arise.