

CITY OF JOHANNESBURG METROPOLITAN MUNICIPALITY

SUPPLY CHAIN MANAGEMENT POLICY: LAND

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

Date of adoption: _____

The council resolved to adopt this document as the Supply Chain Management Policy of the City of Johannesburg Metropolitan Municipality to replace the existing Supply Chain Management Policy in respect of land.

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Definitions

1. 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 –

“accounting officer” means the Municipal Manager of COJ;

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

“alienation” means, collectively the transfer of COJ land or rights in COJ land or granting rights to use, or control, or manage COJ land or interests therein through leasing, letting or hiring out arrangements, as contemplated in Chapter 5 of this Policy;

“asset” means a tangible or intangible resource capable of ownership;

“asset transfer regulations” means the regulations promulgated in terms of the Act and published in Government Gazette 31346 (Government Notice R878), effective from 1 September 2008;

“available vacant land” means land not necessary to provide minimum municipal services, including but not limited to gardens, parks and similar facilities which belong to COJ;

“basic municipal service” means a municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health, safety, or the environment;

“best use analysis” means a comprehensive study in respect of land identified for the purposes of alienation in terms of Chapter 5 of this Policy, on condition that the study covers at least the following matters:

- (a) physical land conditions;
- (b) legal restrictions (if any) in respect of the land;
- (c) the zoning of the land, as contemplated in the applicable town planning scheme;
- (d) environmental factors;
- (e) heritage factors;
- (f) an analysis of the economic area in which the land is situated;
- (g) the locality of the land and the context thereof;
- (h) an analysis of the market demand;

“board of directors” means the board of directors of JPC;

“broad based black economic empowerment” means the economic empowerment of all black people, including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to –

- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- (c) human resource and skills development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement; and
- (f) investment in enterprises that are owned or managed by black people;

“capital asset” means:

- (a) any immovable asset such as land, property or buildings; or
- (b) any movable asset that can be used continuously or repeatedly for more than one year in the production or supply of goods or services, for rental to others or for administrative purposes and from which future economic or social benefit can be derived, such as plant, machinery and equipment;

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

“COJ” means the City of Johannesburg Metropolitan Municipality, a metropolitan municipality duly established by virtue of Provincial Notice 6766 dated 1 October 2000, read with Sections 12 and 14 of the Structures Act;

“Code of Conduct” means the City of Johannesburg or the City of Joburg Property Company (Pty) Ltd's Code of Conduct for Supply Chain Management Practitioners and other role players as set out in the Supply Chain Management Policies for Goods and Services;

“City Manager” means the official appointed by the City as Municipal Manager and who will be acting as the Municipal Manager of the City, as contemplated in the Act as head of administration and who is also the accounting officer of COJ,;

“Commercial service” means a service other than a municipal service –

- (a) rendered by a private sector party or organ of state to COJ or any of its municipal entities on a commercial basis; and
- (b) which is procured by the COJ or any of its municipal entities through its Supply Chain Management Policy;

“Committee Officer” means a member of the various committees referred to in this Policy;

“community organizations” means clubs operated on a non-profit basis, common law voluntary associations established and controlled by constitution, public benefit organizations, church organizations, *bona fida* sports and recreational clubs, companies incorporated in accordance with the provisions of Section 21 of the Companies Act and such other organizations or persons approved by COJ from time to time as being organizations or persons essentially operating in relation to COJ property, on a non-profit basis;

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

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

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“the Council” means the municipal council of the COJ;

“depreciated replacement cost” in relation to a capital asset, means an amount equivalent to the cost to replace the capital asset on the date of transfer, adjusted by a deemed depreciated cost at the date of the transfer, taking into account the age and condition of the asset;

“disposal” in relation to a capital asset includes:

- (a) the demolition, dismantling or destruction of the capital asset; or

- (b) any other process applied to a capital asset, which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership;

“disposal management system” means the system contemplated in Regulation 40 of the Regulations;

“encumbrance” in relation to a capital asset, means a right to the capital asset that is held by a third party that limits the owner’s use of the asset;

“Executive Manager” means any Executive Manager of the JPC who is directly accountable to the Managing Director, including the Chief Finance Officer;

“fair market value” means, in relation to a capital asset, the value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the capital asset in an arms-length transaction;

“final award” means the final decision by the competent person or authority to award a bid;

“high value” in relation to a capital asset means that the fair market of the capital asset exceeds any of the following amounts:-

- (a) R50 000 000-00 (FIFTY MILLION RAND);
- (b) 1% of the total value of the capital assets of the municipality, as determined from the latest available audited annual financial statements of the municipality; or
- (c) an amount determined by resolution of the council of the municipality, which is less than (a) or (b);

“historical cost” in relation to a capital asset, means the original purchase price or cost of acquisition of the capital asset at the time the asset was acquired;

“independent valuer” means a person duly accredited to do valuations of land and who is registered in terms of the provisions of the Property Professionals Act and who is not an employee of COJ or any of its municipal entities and/or service utilities;

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

- (a) a member of –
 - (i) any municipal council;
 - (ii) any provincial legislature; or
 - (iii) the National Assembly or the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature;

“JOSHCO” means Johannesburg Social Housing Company (Pty) Ltd, registration number 2003/008063/07, a private company established by COJ to provide quality low cost housing services and products to the citizens of Johannesburg;

“JPC” means the City of Joburg Property Company (Pty) Ltd, a company duly registered in terms of the laws of South Africa, with registration number 2000/017147/07, wholly owned by the City of Johannesburg Metropolitan Municipality and as defined as a municipal entity in terms of the Act;

“land regularization program” means the COJ program adopted by Council, which addresses land access and ownership with the purpose of re-addressing past inequities in land tenure. The program seeks to:

- (a) create first time homeowners;
- (b) encourage investment in designated areas;

“long-term” means a contract with a duration period exceeding three years;

“long-term lease” means, for the purposes of Chapter 5 of this Policy, a lease period of more than 9 (nine) years and 11 (eleven) months, which lease shall be registered against the title deed of the property concerned;

“Manager” means a Manager of JPC who is directly accountable to an Executive Manager or the MD of JPC;

“Managing Director” means the Executive Officer appointed by the board of directors in conjunction with the council of COJ, acting as accounting officer of JPC, whose role will be as contemplated in the Act and the Systems Act;

“Municipal Capital Asset” means a capital asset of which the COJ is the owner;

“municipal entity” means JPC, which is a private company as defined in the Systems Act;

“municipal service” means a service that COJ, in terms of its powers and functions, provides or may provide to or for the benefit of the local community, irrespective of whether –

- (a) such a service is provided or to be provided by the COJ through an internal or an external mechanism, as contemplated in Section 76 of the Systems Act;

(b) fees, charges or tariffs are levied in respect of such a service or not;

“non-exempted capital asset” means a COJ capital asset which is transferred to another municipality or to a municipal entity, or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury as contemplated in Section 14(6) of the Act;

“Ordinance” means the Local Government Ordinance 17 of 1939;

“organ of state” means:-

- (a) a National department or National public entity;
- (b) a Provincial department or Provincial public entity;
- (c) a municipality or municipal entity; or
- (d) any other organ of state within the meaning assigned to ‘organ of state’ in Section 239 of the Constitution, namely:
 - any department of state of administration in the national, provincial or local sphere of Government; or
 - any other functionary or institution –
 - exercising a power of performing a function in terms of the Constitution or a provincial Constitution, or
 - exercising a public power or performing a public function in terms of any legislation;

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

- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (c) the **CIDB**;
- (d) the Competitions Act, 1998 (Act No. 89 of 1998);
- (e) the Municipal Supply Chain Management Regulations promulgated in terms of the Act;
- (f) the Asset Transfer Regulations promulgated in terms of the Act;
- (g) the Local Government Ordinance 17 of 1939;

“PAIA” means the Promotion of Access to Information Act 2000 (No. 2 of 2000);

“PAJA” means the Promotion of Administrative Justice Act, 2000;

“the/this Policy” means the Supply Chain management Policy for land adopted by the Council in terms of Section 111 of the Act, as amended from time to time and applies to the acquisition, disposal and transfer of non-exempted capital assets as contemplated in the Asset Transfer Regulations;

“poor” means persons or categories of persons objectively defined as ‘poor’ by COJ from time to time;

“private sector party” means a person who is not an organ of state;

“Proposal Call Bidding Process” means a process in terms of which the Council and/or JPC has called for development proposals;

“realisable value” in relation to a capital asset, means the amount of cash or cash equivalents that could currently be obtained by transferring the capital asset, less the estimated cost of completion and the estimated costs necessary to make the transfer;

“real rights” means a right held by a person in immovable property (other than the owner of the property) which limits the owners use and enjoyment of the property;

“the 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);

“right to use, control or manage” in relation to a capital asset, means a right to use, control or manage the capital asset for a period exceeding 1 (one) calendar month without ceding legal ownership in the asset (for example, when a right is acquired through a leasing, letting or hiring out arrangement);

“sale” means the transfer of COJ land, as contemplated in Chapter 3 of this Policy, and **“sell”** will have a corresponding meaning;

“sanitary lane” means Council owned tracts of land designated to facilitate access to properties for sewerage maintenance, waste water facilities and treatment, in order to address possible water pollution or soil contamination, mainly in use during the time when the bucket system was still in use and before the introduction of water born sewer systems. Sanitary lanes are categorized as follows:

- (a) lanes without restrictions;
- (b) lanes with restrictions, such as servitudes or other real rights registered against the land;
- (c) lanes with multiple properties, which include but are not limited to lanes adjacent to dwellings and commercial properties;

“service provider” –

- (a) in relation to a municipal service, means a private sector party or an organ of state appointed by COJ in terms of Chapter 8 of the Systems Act to perform a municipal service; or
- (b) in relation to a commercial service, means a private sector party or organ of state appointed in terms of the Supply Chain Management Policy of the COJ to render a commercial service to or for the COJ as an independent contractor;

“servitude” means a real right registered or to be registered in favour of the COJ over privately owned land, or a real right held or to be registered by a third party over City owned land;

“specific use facility” means commercial or industrial property belonging to COJ, which is designed and used for a specific activity or special operations, for example the premises where Egoli Gas is operating and which type of property will have to be rehabilitated to be used and zoned for a different activity;

“the state” means the Republic of South Africa, as contemplated in Section 1 of the Constitution;

“subsidiary asset” in relation to a capital asset, means an asset that forms an integral part of the capital asset, or of the operation or maintenance of the asset;

“supply chain management unit” means a unit comprised of officials of the City and JPC with the relevant delegations in terms of this Policy;

“Supply Chain Management Policy” means the Supply Chain Management Policy which COJ is required to have in terms of the MFMA;

“Structures Act” means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

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

“transfer” means, in relation to a capital or subsidiary asset, transfer of ownership in the asset as a result of a sale or other transaction;

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

CHAPTER 1

IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

Supply chain management policy

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

- (a) gives effect to –
 - (i) sections 9 and 217 of the Constitution; and
 - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act, Regulations and Asset Transfer Regulations;
- (b) is fair, equitable, transparent, competitive and cost effective;
- (c) complies with –
 - (i) the Regulations and the Asset Transfer Regulations; and
 - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
- (d) is consistent with other applicable legislation;
- (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres;
- (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector; and
- (g) promotes Broad Based Black Economic Empowerment and the Codes of Good Practice promulgated in terms of the Broad Based Black Economic Empowerment Act.

Applicability

3. (1) This Policy applies when the COJ acquires capital assets and disposes or transfers capital assets, or grant rights to use, control or manage capital assets.

(2) This Policy, except where provided otherwise, does not apply in respect of the procurement of goods and services, the disposal of goods no longer needed and the selection of contractors to provide assistance in the provision of municipal services (for which a separate policy exists) otherwise than in circumstances where Chapter 8 of the Systems Act applies.

Commitment

4. The COJ and JPC, individually and collectively, are committed to:
- (a) the implementation and full compliance of Supply Chain Management policies and practices as envisaged by the Act, Regulations and the Asset Transfer Regulations;
 - (b) fair, equitable, transparent and competitive Supply Chain Management practices and processes. In this regard, the COJ and JPC will comply with fair administrative processes in the implementation of this Policy;
 - (c) disposing or transferring of land and/or real rights at fair market value, unless the deviations policy or other legal exceptions apply;
 - (d) enhancing healthy and mutually beneficial relationships with bidders, based on integrity, honesty, professionalism and ethics;
 - (e) utilization of COJ's land ownership as leverage to ensure effective implementation of Broad Based Black Economic Empowerment objectives;
 - (f) enhance COJ's viability and competitiveness through effective and efficient Supply Chain Management practices and systems;
 - (g) stimulate 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 COJ;
 - (h) ensure confidential treatment of all information received and held by COJ and JPC;

- (i) comply with the objectives and provisions of the Competitions Act and demands of all bidders full compliance thereto;
- (j) adhere to the principles and provisions contained in PAIA.

Amendment of the supply chain management policy

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

Delegation of supply chain management powers and duties

6. (1) The Council has delegated certain powers and duties to the accounting officer which are necessary to enable the accounting officer –
- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
 - (i) Chapter 8 or 10 of the Act; and
 - (ii) this Policy;
 - (b) to maximise administrative and operational efficiency in the implementation of this Policy;

- (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of this Policy; and
- (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

(2) Section 79 of the Act and regulation 4(3) of the Regulations apply to the delegation and subdelegation of powers and duties delegated to an accounting officer in terms of **sub-paragraph (1)**.

(3) The Council may not delegate a decision in terms of Section 14(2) to the accounting officer, but the Council may delegate to the accounting officer its powers to make determinations referred to in Section 14(2)(a) and (b) of the Act in respect of movable capital assets below a value determined by the Council.

(4) The accounting officer may not subdelegate¹ any supply chain management powers or duties to a person who is not an official of COJ or to a committee which is not exclusively composed of officials of the COJ, on condition that JPC officials may act on the committees in an advisory capacity and to make recommendations;

(5) This paragraph may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in **paragraph 28** of this Policy.

¹ Regulation 4(3)(a)(i) and (ii)

Subdelegations

7. (1) The accounting officer may in terms of section 79 of the Act subdelegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of this Policy, but any such subdelegation must be consistent with **sub-paragraph (2)** of this paragraph and **paragraph 6** of this Policy.

(2) The power to make a final award² –

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

(3) An official or bid adjudication committee to which the power to make final awards has been subdelegated in accordance with **sub-paragraph (2)** above must within five days of the end of each month submit to the official referred to in **sub-paragraph (4)** below a written report containing particulars of each final award made by such official or committee during that month, including–

² Regulation 5(2)

- (a) the amount of the award;
 - (b) the name of the person to whom the award was made; and
 - (c) the reason why the award was made to that person.
- (4) A written report referred to in **sub-paragraph (3)** must be submitted –
- (a) to the accounting officer, in the case of an award by –
 - (i) the chief financial officer; or
 - (ii) a senior manager; or
 - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
 - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
 - (i) a manager referred to in **sub-paragraph (2)(c)(iii)**; or
 - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- (5) This paragraph may not be interpreted as permitting an official to whom the power to make final awards has been subdelegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in **paragraph 28** of this Policy.
- (6) No supply chain management decision-making powers may be delegated to an advisor or consultant.

Duties of City Manager

8. (1) The City Manager shall –
- (a) discharge the Supply Chain Management responsibilities conferred on him/her in terms of:-
 - (i) Chapter 8 and 11 of the Act;

- (ii) This Policy;
- (b) maximize administrative and operational efficiency in the implementation of this Policy;
- (c) enforce reasonable and cost-effective measures for the prevention of fraud, corruption, favoritism and unfair and irregular practices in the implementation of this Policy.

Oversight role

9. (1) The Council reserves its right to maintain oversight over the implementation of this Policy.

- (2) For the purposes of such oversight the accounting officer or the JPC's Managing Director must –
 - (a) (i) within 20 days of the end of each financial year, submit a report on the implementation of this Policy to the council and the board of directors; and
 - (ii) 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 a report to the accounting officer for submission to the council.

(3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor of the City and the board of directors.

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

Supply chain management unit

10. (1) A supply chain management unit is hereby established to implement this Policy.

(2) The supply chain management unit operates under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

Training of supply chain management officials

11. The training of officials involved in implementing this Policy should be in accordance with any Treasury guidelines on supply chain management training, the South African Qualification Act, the Skills Development Act and best practice.

CHAPTER 2

STRATEGIC ALIENATION OF COJ OWNED LAND

INTRODUCTION:

All COJ owned land is recorded in a land asset register, which may be identified for economic, social, community, municipal and other uses.

Purpose

12. (1) The purpose of the alienation strategy in this chapter is to:
- (a) provide a framework in terms of which COJ may, under specific circumstances, take a decision to sell COJ land or rights in COJ land, or to grant rights to use, control or manage COJ land or interests therein through long-term or short-term leases;
 - (b) ensure that irreplaceable land is not lost to COJ or the public, taking into consideration the principle that COJ land should not be sold, but should rather be made available for use or development purposes by means of long-term and short-term leases;
 - (c) ensure long-term recurring benefits to COJ,
 - (d) ensure that the asset value of COJ's land is increased over time, as a result of the value to be added by improving the land made available by means of long-term and short-term leases on the basis that the land will revert to COJ on expiry of the lease period;
 - (e) promote access to COJ land specifically to previously disadvantaged people;
 - (f) uplift and promote private sector involvement;

- (g) strengthen relationships between COJ and the community by being sensitive towards the community needs and expediting the process to make COJ land available;
- (h) align COJ policies with national and provincial development initiatives;
- (i) support the land regularization program;
- (j) stimulate competition;
- (k) advance, in general, constitutional values and principles.

Key principles in the decision making process

13. The following key policy principles shall be considered when a decision is taken to sell or lease COJ land or interests therein:

- (1) **(a) The sale of COJ land will be considered in instances where:**
- land is available for residential purposes, in order to promote property ownership within the area of jurisdiction of COJ.
 - land is to be sold to institutions, such as schools, universities, hospitals and community organizations, in circumstances where the land is required to enable such institutions to build long-term brands and reputation.
 - portions of land cannot be developed on its own due to its size or shape in circumstances where it is necessary to consolidate such land with adjacent privately owned land for development purposes.
 - the COJ requires to develop the land for a specific purpose or in a specific manner to meet its strategic goals, and such goals could not be achieved without the sale of the land.
 - the Council or delegated authority has considered an unsolicited development proposal, which contains a request to purchase the land and it considers the sale to be prudent in

the circumstances and complying with the deviations policy contained in Chapter 5 of this Policy.

(b) The letting of COJ land:

- COJ shall give preference to make land available through short-term and long-term leases, taking into consideration the following:
 - the value of the development proposed in respect of the land;
 - a determination to be made by COJ whether the prevailing circumstances justifies a long-term lease for a maximum period of 50 (fifty) years;
- A short-term lease is preferred over a long term lease in general, on condition, however, that the value of the development to be completed by a lessee should be considered and a determination made by Council as to whether the circumstances warrant a longer lease for a period of more than 3 years up to and including 50 years depending on the value of investment.

(2) When COJ considers the sale or lease of COJ land, or interests therein, as contemplated in sub-paragraphs (1)(a) and (1)(b) above, COJ has to give consideration to the deviation policy contained in Chapter 5 of this Policy.

(3) ASSESING BEST USE AND STRATEGIC SIGNIFICANCE

- (1) When considering the alienation of COJ land, a *'Best Use Analysis'* - study must be undertaken.

(2) The *'Best Use Analysis'* shall recommend the optimum use of the land, taking into consideration the 4 (four) goals set out in **sub-paragraphs (4)(a), (b), (c) and (d)** below, which address a combination of economic and social benefits. The recommendation regarding optimal use shall also include an analysis of the strategic significance of the proposed development of the land and shall make recommendations regarding the timing of the release of the land for alienation purposes, taking into consideration that it may be advantageous to delay the release of the land, if factors such as public demand and other economic factors were to be considered.

(4) The 4 (four) goals referred to in **sub-paragraph 3(2)** above are:

(a) SUPPORT COJ'S DEVELOPMENT OBJECTIVES

- Support the Housing Master Plan;
- The development of community facilities. ;
- The promotion of investment in 'underdeveloped areas';
- The promotion of development in public transport corridors;
- Support growth and development strategy;
- Promote a sustainable environment.

(b) ECONOMIC GROWTH

- Increase the value of private sector investment in the COJ's area of jurisdiction;
- Promote employment opportunities;
- Increase the income base of the COJ.

(c) SOCIAL TRANSFORMATION

- Promote Black Economic Empowerment;
- Promote the interest of emerging developers;
- Promote the interest of 'targeted groups';
- Promote training within the area of jurisdiction of the COJ.

(d) INCOME WILL BE SOURCED FROM

- The proceeds of sales and leases of COJ land;
- Facilitation fees payable to JPC.

CHAPTER 3 SUPPLY CHAIN MANAGEMENT SYSTEM

Format of supply chain management system

14. This Policy provides systems for –
- (i) acquisition management;
 - (ii) transfer or disposal management;
 - (iii) granting rights to use, control or manage municipal capital assets;

Part 1: Acquisition management: acquisition of capital assets

System of acquisition management

15. (1) The accounting officer must implement the system of acquisition management set out in this Part in order to ensure –
- (a) that capital assets (including land, servitudes and/or other real rights in land) are procured by JPC as agent of the COJ in accordance with authorized processes only.
 - (b) that the acquisition or expropriation of land and/or real rights is incurred in terms of an approved budget.
 - (c) that the approved expropriation notices and other approved standard agreements are used and complied with;
 - (d) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) When COJ intends to expropriate land, JPC is authorized to enter into direct negotiations with the owner of the land to acquire the land on behalf of COJ.
- (3) Should the negotiations to acquire the land not be successful, the council shall consider the acquisition of the land by means of an expropriation.

(4) Once the council has approved the expropriation, JPC is authorized to issue a notice to the owner in terms of PAJA, and once the procedures in terms of PAJA have been concluded and the time periods have expired, JPC is authorized to prepare and serve the notice of expropriation on the owner.

Part 2: Transfer or disposal of capital assets

This section deals with the transfer of land to private entities and organs of state

Disposal management

16. (1) The criteria for the transfer or disposal of capital assets will be subject to section 14 of the Act, and shall comply with the Regulations and the Asset Transfer Regulations.

(2) Assets may be disposed of by –

- (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
- (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
- (iii) selling the asset; or
- (iv) destroying the asset³.

(3) The accounting officer must ensure that –

- (a) immovable property is sold only at fair market value except when the public interest or the plight of the poor demands otherwise;
- (b) movable assets are sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous;

³ Regulation 40(2)

Part 3: Transfer or disposal of non-exempted capital assets⁴

17. (1) The purpose of this part is to regulate the transfer and permanent disposal of non-exempted capital assets by the COJ to private sector parties or organs of state⁵, in order to comply with Section 14(2) of the Act⁶.

(2) This part does not permit the transfer or disposal of municipal capital assets needed to provide the minimum level of basic municipal services as contemplated in Section 14(1) of the Act and does not apply to the transfer of⁷:

- non-exempted capital assets in terms of a public-private partnership agreement as contemplated in Section 120 of the Act and the Municipal Public-Private Partnership regulations published by Government Notice No. 309 of 2005; or
- housing on municipal land and the transfer of that municipal land for the poor to beneficiaries of such housing;

(3) When transferring or disposing a non-exempted capital asset, the following steps have to be taken:

- (a) a determination whether a public participation process is required;
- (b) if a public participation process is required, the submission of a request to the Council to authorize the public participation process;
- (c) the authorization by the Council of the public participation process;
- (d) the conducting by the accounting officer or his delegated authority of the public participation process;
- (e) the making by the municipal council of the required determinations and the taking of a principle decision that a capital asset may be transferred or disposed of.

⁴ Chapter 2 of the Asset Transfer Regulations

⁵ Regulation 2 (a) of the Asset Transfer Regulations

⁶ Regulation 4 of the Asset Transfer Regulations

⁷ Regulation 4(3)(a) and (b) of the Asset Transfer Regulations

The procedures and detailed requirements in respect of each of the above steps are set out below:

(4) **Public participation process required:**

A public participation process is required in the following circumstances⁸:

- (i) when a high value capital asset is transferred or disposed of;
or
- (ii) if the combined value of any capital assets intended to be transferred or disposed of in any financial year exceeds 5% of the total value of COJ's assets as determined from its latest financial statements, in which event the public participation process must be complied with in relation to all capital assets proposed to be transferred or disposed of in that year;

(5) **Request for authorization:**

(a) Once it has been determined that a public participation process is required, a written request must be submitted to the Council to authorize the public participation process and the request must be accompanied by an information statement stating:⁹

- (i) the valuation of the capital asset to be transferred or disposed of and the method of valuation used to determine that valuation;
- (ii) the reasons for the proposal to transfer or dispose of the capital asset;
- (iii) any expected benefits to the COJ that may result from the transfer or disposal;

⁸ Regulation 5(2) of the Asset Transfer Regulations

⁹ Regulation 5(3)(b) of the Asset Transfer Regulations

- (iv) any expected proceeds to be received by the COJ from the transfer or disposal; and
 - (v) any expected gain or loss that will be realized or incurred by the COJ arising from the transfer or disposal;
- (b) the value of the capital asset must, for purposes of paragraph 5(a)(i) above, be determined in accordance with the accounting standards that the COJ is required by legislation to apply in preparing its annual financial statements¹⁰ and in the absence of sufficient guidance in those accounting standards regarding the valuation of capital assets, any of the following valuation methods must be applied¹¹:
- historical cost of the asset, adjusted for accumulated depreciation in any impairment losses as at the proposed date of transfer or disposal;
 - fair market value of the asset;
 - depreciated replacement cost of the asset; or
 - realizable value of the asset.

Public participation process:

- (6) After the Council has authorized the accounting officer to conduct a public participation process and at least 60 days before the meeting referred to in **sub-paragraph 7** below, comply with the following¹²:
- (i) make public the proposal to transfer or dispose the capital asset together with the information statement referred to in **sub-paragraph 5(a)** above;
 - (ii) invite the local community and other interested parties to submit comments or representations;
 - (iii) solicit the view and recommendations of the National Treasury and the Provincial Treasury on the matter;

¹⁰ Regulation 5(4) of the Asset Transfer Regulations

¹¹ Regulation 5(5) of the Asset Transfer Regulations

- (iv) comply with Section 21 of the Systems Act by publishing the notification through the media:
 - in a local newspaper(s) published in the area of jurisdiction of the COJ;
 - in a newspaper(s) circulating in its area of jurisdiction and determined by the COJ as a newspaper of record; or
 - by means of radio broadcasts covering the area of jurisdiction of the COJ;
- (v) any notification must be in the official language determined by the COJ, having regard to language preferences and uses within its area of jurisdiction;
- (vi) a copy of every notice that must be published in the Provincial Gazette or the media in terms of the Systems Act, or any other applicable legislation, must be displayed at the COJ and JPC offices;
- (vii) when the COJ invites the local community to submit written comments or representations on any matter before the Council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the COJ or the JPC, named in the invitation, will assist that person to transcribe that person's comments or representations;
- (viii) when COJ or JPC requires a form to be completed by a member of the local community, a staff member of the COJ or JPC must give reasonable assistance to the persons who cannot read or write, to enable such persons to understand and complete the form;
- (ix) if the form relates to the payment of money to the COJ or JPC, the assistance must include an explanation of its terms and conditions;

¹² Regulation 6(a) and (b) of the Asset Transfer Regulations

- (x) all documents that must be made public by the COJ or JPC in terms of the Systems Act, MFMA or other applicable legislation must be conveyed to the local community –
- by displaying the documents at the COJ's head and satellite offices and libraries, as well as the offices of JPC;
 - by displaying the documents on the COJ and JPC's official website;
 - by notifying the local community of the place, including the website address, where detailed particulars concerning the documents can be obtained;
- (xi) if appropriate, any notification in terms of the requirements above, must invite the local community to submit written comments or representations to the COJ or JPC in respect of the relevant documents.

Principle decision and required determinations

- (7) (a) Within 60 days of the conclusion of a public participation process, the Council has to determine¹³, on reasonable grounds, that the capital asset is not needed to provide a minimum level of basic municipal services and consider the fair market value of the asset and the economic and community value to be received in exchange for the capital asset, and
- (b) As a consequence of the determinations set out in **sub-paragraph 7(a)** above, the Council approved, in principle,¹⁴ that the capital asset may be transferred or disposed of, on

¹³ Regulation 5(1)(b) of the Asset Transfer Regulations

¹⁴ Regulation 5(b)(i) and (ii) of the Asset Transfer Regulations

condition that the Council must take the following into consideration¹⁵:

- (i) whether the capital asset may be required for COJ at a later date;
- (ii) the expected loss or gain that is expected to result from the proposed transfer or disposal;
- (iii) the extent to which any compensation to be received in respect of the proposed transfer or disposal will result in a significant economic or financial cost or benefit to COJ;
- (iv) the risk and rewards associated with the operation or control of the capital asset that is to be transferred or disposed of in relation to the interests of the COJ;
- (v) the effect that the proposed transfer or disposal will have on the credit rating of the COJ, its ability to raise long-term or short-term borrowings in the future and its financial position and cash flow;
- (vi) any limitations or conditions attached to the capital asset on the transfer or disposal of the asset, and the consequences of any potential non-compliance with those conditions;
- (vii) investment analysis and option analysis reports;
- (viii) the estimated cost of the proposed transfer or disposal;
- (ix) the transfer of any liabilities and reserve funds associated with the capital asset;
- (x) any comments or representations on the proposed transfer or disposal received from the local community and other interested persons;

¹⁵ Regulation 7 of the Asset Transfer Regulations

- (xi) any written views and recommendations on the proposed transfer or disposal by the National Treasury and the relevant Provincial Treasury;
 - (xii) the interests of any affected organ of state, the strategic, legal and economic interests of the COJ and the interests of the local community; and
 - (xiii) compliance with the legislative regime applicable to the proposed transfer or disposal.
- (c) An approval in principle that a non-exempted capital asset may be transferred or disposed of may be given subject to any conditions, including conditions specifying¹⁶:
- (i) the manner in which the capital asset is to be sold or disposed of;
 - (ii) a floor price or minimum compensation for the capital asset;
 - (iii) whether the capital asset may be transferred or disposed of for less than its fair market value in which event there has to be compliance with the deviations policy set out below;
 - (iv) a framework within which direct negotiations for the transfer or disposal of the asset must be concluded with another person if transfer or disposal is subject to direct negotiations.

Public participation not required:

(8) In circumstances where a public participation process is not required, the following steps are eliminated:

- (a) the application for authorization of a public participation process; and
- (b) the decision to grant authorization for the participation process,

¹⁶ Regulation 11 of the Asset Transfer Regulations

on condition that the Council still has to take a principle decision and comply with the requirements set out in **sub-paragraph 7** above.

Disposal management system:

(9) The transfer or disposal of a non-exempted capital asset may only take place in accordance with COJ's disposal management system irrespective of the value of the capital asset or whether the capital asset is to be transferred to a private sector party or an organ of state¹⁷.

(10) The disposal management system does not apply to the transfer of a non-exempted asset under the following circumstances¹⁸:

- (a) if the COJ:
 - (i) reviews its service delivery mechanisms for the performance of a municipal service as contemplated in Chapter 8 of the Systems Act;
 - (ii) appoints a private sector party through a competitive bidding process as the service provider for the performance of that municipal service; and
 - (iii) transfers the capital asset as an integral component of the performance of that municipal service to that service provider; or
 - (iv) appoints a private sector party or organ of state through a competitive bidding process as the service provider for the performance of a commercial service; and
 - (v) transfers the capital asset as an integral component of the performance of that commercial service to that service provider.

¹⁷ Regulation 12(1) of the Asset Transfer Regulations

¹⁸ Regulation 12(2) of the Asset Transfer Regulations

(11) The COJ may negotiate directly with the selected service provider regarding the transfer of a capital asset referred to **sub-paragraph 10** above.¹⁹

(12) COJ may not commence with the disposal or direct negotiations unless approval in principle has been given that the relevant capital asset may be transferred or disposed of.²⁰

(13) In respect of the direct negotiation process, COJ must consider the gain or loss that will:

- (a) result from the transfer or disposal of the capital asset; and
- (b) be recorded in the accounting records of the COJ.²¹

(14) For the avoidance of doubt, it is recorded that the disposal management system requires a resolution in terms of Section 14(2) of the MFMA.

Compensation:²²

(15) The compensation payable for the transfer of a non-exempted capital asset must, subject to the transfer of a non-exempted capital asset under circumstances set out in **sub-paragraph 15(c)** below –

- (a) be consistent with criteria applicable to compensation set out in the disposal management system; and
- (b) reflect market value if the asset is transferred to a service provider for the performance of a commercial service;
- (c) if, on account of the public interest in particular in relation to the plight of the poor, if it is intended to transfer a non-exempted capital asset for less than its market value, the provisions of the deviations policy set out below shall apply;

¹⁹ Regulation 12(3) of the Asset Transfer Regulations

²⁰ Regulation 12(4) of the Asset Transfer Regulations

²¹ Regulation 12(5) of the Asset Transfer Regulations

²² Regulation 13 of the Asset Transfer Regulations

(16) If COJ intends to transfer a non-exempted capital asset to a private sector party or an organ of state following the selection through a competitive bidding process of a service provider for the performance of a municipal service, or for the performance of a commercial service:

- (a) all assets needed or directly related to the performance of that service, must be properly identified to distinguish those assets from COJ's other assets;
- (b) all decisions in respect of the determinations required and the principle decision that the asset may be transferred, must be taken as an integral part of the broader decision making process on the appointment of a service provider for the performance of that service; and
- (c) all documents prepared for the purpose of these decisions, must be taken into account in any feasibility study conducted to determine the financial and other implications of appointing a service provider for the performance of that service.

Pre-conditions - transfer to service providers of municipal or commercial services:²³

- (17) (a) If a service provider is appointed for the performance of a municipal service, or for the performance of a commercial service, COJ may, as may be agreed with the service provider, and on condition that the capital asset is not needed to provide the minimum level of basic municipal services, transfer to the service provider all capital assets, including subsidiary assets, essential to the performance of that service.

²³ Regulation 14 of the Asset Transfer Regulations

- (b) Capital and subsidiary assets that may be transferred as contemplated above as essential to the performance of the service may include:
- (i) plant, machinery and equipment and any other movable assets used for or in connection with that service;
 - (ii) land, property and buildings and other immovable structures used for or in connection with that service, irrespective of whether the land, property, buildings or other immovable structures are classified as investment property in the accounting records of the COJ;
 - (iii) intangible assets recorded in the accounting records of the COJ as an integral part of that service;
 - (iv) receivables, both short-term and long-term, provided that the transfer does not undermine the legal recoverability of such receivables by the person to whom the assets are transferred;
 - (v) investments, including the instruments referred to in Regulation 6 of the Municipal Investment Regulations published by Government Notice No. R.308 of 2005;
 - (vi) cash and bank balances derived from the performance of that service; and
 - (vii) any cash reserves associated with the performance of that service.

Transfer of municipal assets to service providers appointed through competitive bidding.²⁴

- (18) (a) If the service provider is appointed for the performance of a municipal service or for the performance of a commercial service, the COJ may, as may be agreed with the service provider, and subject to Section 14(1) of the Act, transfer to that service provider all capital assets, including subsidiary assets, essential to the performance of that service.
- (b) Capital and subsidiary assets that may be transferred in terms of sub-paragraph 17(a) above, as essential to the performance of the commercial service or municipal service (as the case may be) may include:
- (i) plant, machinery and equipment and any other movable assets used for in connection with that service;
 - (ii) land, property and buildings and other immovable structures used for and in connection with that service, irrespective of whether the land, property, buildings or other immovable structures are classified as investment property in the accounting records of the COJ;
 - (iii) intangible assets recorded in the accounting records of the COJ as an integral part of that service;
 - (iv) receivables, both short-term and long-term, provided that the transfer does not undermine the legal recoverability of such receivables by persons to whom the assets are transferred;
 - (v) investments, including the instruments referred to in Regulation 6 of the Municipal Investment Regulations published by Government Notice R.308 of 2005;

²⁴ Regulation 15 of the Asset Transfer Regulations

- (vi) cash and bank balances derived from the performance of that service; and
- (vii) any cash reserves associated with the performance of that service.

Transfer agreements.²⁵

(19) Assets to be transferred in terms of this part of the Policy may only take place in accordance with a written agreement concluded between the COJ and the receiving private sector party or organ of state and the following minimum terms and conditions have to be included in the transfer agreement:

- (a) a sufficient description of the capital asset to be transferred, in order to identify the asset;
- (b) particulars of any subsidiary assets that are transferred with the capital asset;
- (c) particulars of any liabilities transferred with the asset;
- (d) the amount of compensation payable to the COJ for the transfer of the asset or assets and the terms and conditions of payment; and
- (e) the effective date from which the risk and accountability for the asset or assets is transferred to the receiving private sector party or organ of state.

(20) If a capital asset is transferred following the selection through a competitive bidding process of a service provider for the performance of a municipal service, or for the performance of a commercial service, the transfer agreement must in addition contain provisions for:

- (a) a termination of the contract in the case of non or under performance;
- (b) a dispute resolution mechanism to settle disputes between the parties;

²⁵ Regulation 17 of the Asset Transfer Regulations

- (c) a periodic review of the agreement once every 3 years, in the case of an agreement for longer than 3 years; and
- (d) may be incorporated into any service delivery agreement or procurement contract to be concluded with the service provider.

Access to transfer agreements:²⁶

(21) A transfer agreement in terms of this part of the Policy must be made available in its entirety to the Council and may not be withheld from public scrutiny except as provided for in terms of the PAIA.

Part 4: Transfer of exempted capital assets to organs of state²⁷

18. (1) This part of the Policy regulates the transfer of exempted capital assets to organs of state²⁸, which qualify for such transfers in terms of Section 14(6) of the Act.²⁹

(2) Section 14(1) to (5) of the Act does not apply if COJ transfers a capital asset to an organ of state in any of the following circumstances:³⁰

- (a) when the transfer of the capital asset emanates from a review by COJ of its service delivery mechanisms for the performance of a municipal service in terms of Chapter 8 of the Systems Act and COJ appoints another organ of state as the preferred option for the performance of the service;
- (b) when the transfer of the capital asset emanates from a re-organization of powers and functions between the COJ and one of its municipal entities, including asset transfers contemplated in Section 84 of the Act;

²⁶ Regulation 18 of the Asset Transfer Regulations

²⁷ Chapter 3 of the Asset Transfer Regulations

²⁸ Regulation 19 of the Asset Transfer Regulations

²⁹ Regulation 2(b) of the Asset Transfer Regulations

- (c) when the transfer of the capital asset emanates from an assignment of any of the powers or functions of the COJ to another organ of state by national legislation or in terms of a power contained in national legislation, including an assignment of powers or functions following:
 - (i) an adjustment of the division of powers and functions between a district municipality and local municipalities within the district in terms of Section 84 of the Structures Act;
 - (ii) an authorization in terms of Section 84(3) of the Structures Act; or
 - (iii) a re-demarcation of municipal boundaries in terms of the Structures Act;
- (d) when municipal housing or land is transferred to a national or provincial organ of state for housing for the poor, or in terms of a national or provincial housing policy;
- (e) when the transfer of a capital asset to an organ of state is required or permitted in terms of national legislation and that legislation determines the conditions of the transfer; or
- (f) any other circumstances not provided in the sub-paragraphs above, provided that:
 - (i) the capital asset to be transferred is determined by a resolution of the Council to be not needed for the provision of the minimum level of basic municipal services and to be a surplus to the requirements of the COJ; and
 - (ii) if the capital asset is to be transferred for less than fair market value, COJ takes into account:

³⁰ Regulation 20 of the Asset Transfer Regulations

- whether the capital asset may be required for the COJ under its sole or shared control at a later date;
- the expected loss or gain that is expected to result from the proposed transfer;
- the extent to which any compensation to be received in respect of the proposed transfer will result in a significant economic or financial cost or benefit to the COJ;
- the risks and rewards associated with the operation or control of the capital that is to be transferred in relation to the interest of COJ;
- the affect that the proposed transfer will have on the ability of the COJ to raise long-term or short-term borrowings in the future;
- any limitations or conditions attached to the capital asset or the transfer of the asset, and the consequences of any potential non-compliance with those conditions;
- the estimated cost of the proposed transfer;
- the transfer of any reserve funds associated with the capital asset;
- the interest of any affected organ of state, COJ's own strategic legal and economic interest and the interest of the local community;
- compliance with the legislative regime applicable to the proposed transfer;

(3) Any transfer of a municipal capital asset to an organ of state in the circumstances describe in **sub-paragraph 2** above may be effected only in accordance with this part of the Policy and any other legislation specifically regulating the transfer of the asset, but in the event of any consistence between a provision of this part of the Policy, the Asset Transfer Regulations and such other legislation, the other legislation will prevail.

Transfer of municipal capital assets to organs of state not exempted:

(4) When the circumstances referred to in sub-paragraphs 2 and 3 above do not apply, Sections 14(1) to (5) of the Act and part 3 of this Policy must be applied if COJ transfers a capital asset to an organ of state, including when the asset is transferred in the course of an ordinary commercial transaction between COJ and the organ of state.³¹

COJ decision making process for transfer of exempted capital assets:³²

(5) If COJ is to transfer an exempted capital asset to an organ of state in connection with the performance of a municipal service or a re-organization of powers or functions:

- (a) all decisions relating to the transfer of the capital asset must be taken by COJ as an integral part of the broader decision making process on the selection of a service provider for the performance of the municipal service, or on the re-organization of powers or functions in terms of the legislation applicable to that process;
- (b) any document prepared by the COJ for the purpose of conducting a public participation process to involve the community in decision-making, must include details of the proposed transfer of the capital asset; and

³¹ Regulation 21 of the Asset Transfer Regulations

³² Regulation 22 of the Asset Transfer Regulations

- (c) the proposed transfer of the capital asset must be taken into account in any feasibility study conducted to determine the financial and other implications of the selection of the service provider for the performance of a municipal service or of the re-organization of powers or functions.

(6) If the feasibility study referred to in **sub-paragraph 5** above indicates that there will be a significant increase in the costs of the COJ after the transfer of the capital to the organ of state, COJ must demonstrate:

- (a) how the cost can be minimized by considering the sharing of administrative, information, technology or financial costs between the COJ and the organ of state;
- (b) how much revenue can be generated by the organ of state, which will be available to the COJ to off-set any increase costs it will incur as a result of the transfer; and
- (c) the extent to which COJ can rationalize its administrative, information, technology and financial costs subsequent to the transfer;
- (d) COJ must take all reasonable steps to ensure that the transfer will result in the continuation of the municipal service concerned, at least at the same or better level that would otherwise have been rendered by it, had it not transferred the asset.

Identification of exempted capital assets to be transferred to organs of state:³³

(7) Before transferring an exempted capital asset to an organ of state in any of the circumstances set out in **paragraph 18** above, COJ must:

- (a) properly identify the capital asset, including –

³³ Regulation 23 of the Asset Transfer Regulations

- (i) in the case of a transfer emanating from the circumstances referred to in **paragraph 18(2)(a)** above, all other assets needed for or directly related to, and staff associated with, the performance of the municipal service concerned;
 - (ii) in the case of a transfer emanating from the circumstances referred to in **paragraph 18(2)(b)** above, all other assets needed for or directly related to, and staff associated with, the exercise of the power of function concerned; or
 - (iii) in the case of a transfer emanating from the circumstances referred to in **paragraph 18(2)(c)** above, all other assets needed for or directly related to the capital asset; and
- (b) distinguish that asset and staff from the other assets and staff of the COJ.

Transfer of exempted capital assets to provide minimum level of basic municipal services.³⁴

(8) If COJ transfers an exempted capital asset to an organ of state which is needed to provide the minimum level of basic municipal services, such transfer may only be effected on condition that:

- (a) ownership in the capital asset must immediately revert to the COJ should the organ of state for any reason cease to render the service or is unable to render the service;
- (b) the organ of state may not without the written approval of the COJ:
 - (i) transfer the capital asset to another person;
 - (ii) dispose of the capital asset;

³⁴ Regulation 24 of the Asset Transfer Regulations

- (iii) grant a right to another person to use, control or manage the capital asset; or
- (iv) encumber the capital asset in any way;

(9) Prior to transferring the exempted capital asset needed to provide the minimum level of basic municipal service, COJ must be satisfied that the organ of state to which the asset is to be transferred can demonstrate the ability to adequately maintain and safeguard the asset.

(10) The transfer agreement, service delivery or other agreements between the COJ and the organ of state to which the asset is to be transferred, must reflect the conditions set out in **sub-paragraph (8)** above.

(11) If the organ of state replaces, upgrades or improves the capital asset transferred to it, the compulsory conditions set out above remain applicable to the new upgraded or improved capital asset as if it were the original capital asset.

(12) This sub-paragraph does not apply to a capital asset needed to provide the minimum level of basic municipal services which is transferred to an organ of state in the circumstances referred to in **paragraphs 18(1)(c) or 18(1)(d)** above.

Transfer of exempted capital assets:³⁵

(13) If COJ appoints an organ of state as the service provider for the performance of a municipal service or if a power or function of COJ is assigned to an organ of state, the COJ must, as may be agreed with the organ of state, transfer to that organ of state all capital assets, including subsidiary assets, essential to the performance of that municipal service or the exercise of that power or function.

³⁵ Regulation 25 of the Asset Transfer Regulations

(14) Capital and subsidiary assets that may be transferred in terms of sub-paragraph 13 above may include:

- (a) plant, machinery and equipment and other movable assets used for and in connection with the service, power or function referred to in that sub-paragraph;
- (b) land, property and buildings and other immovable structures used for or in connection with that service, power or function, irrespective of whether the land, property and buildings or other immovable structures are classified as investment property in the accounting records of the COJ;
- (c) intangible assets recorded in the accounting records of the municipality or municipal entity as an integral part of that service, power or function;
- (d) receivables, both short-term and long-term, provided that the transfer does not undermine the legal recoverability of such receivables by the organ of state;
- (e) investments, including the instruments referred to in Regulations 6 of the Municipal Investment Regulations published in Government Notice No. R.308 of 2005;
- (f) cash and bank notes derived from the performance of that service, power of function; and
- (g) cash equal to the residual value of assets and liabilities, as well as any reserve funds associated with that service, power or function, or alternatively ensure that the organ of state has appropriate access to the cash resources of the COJ;

Transfer of borrowings:³⁶

(15) If COJ transfers an exempted capital asset to an organ of state, any borrowings or other amounts owing by the COJ, specifically associated with the asset being transferred, or with its acquisition, operation or maintenance, must also be transferred to the organ of state.

(16) If the transfer of an exempted capital asset by COJ emanates from the appointment of an organ of state as the service provider for the performance of a municipal service, or the assignment of a power or function of the COJ to an organ of state, any borrowings or other amounts owing by COJ, specifically associated with the performance of that municipal service or the exercise of that power or function, must also be transferred to the organ of state.

(17) In addition, a portion of the outstanding balance of general borrowings on capital expenditure by the COJ, which is attributable or associated with the capital asset being transferred, or the performance of the relevant municipal service or with the exercise of the relevant power or function, must also be transferred to the organ of state, in a ratio of total value of capital assets been transferred to the organ of state to total value of all capital assets of the COJ as it appears in its accounting records.

(18) **Sub-paragraphs (15), (16) or (17) apply only if:**

- (a) the creditor to whom the amount is owned consents to the transfer to the organ of state of the amount owing; and
- (b) any legal, operational, administrative or other constraints do not prevent the transfer to the organ of state of the amount owing.

³⁶ Regulation 26 of the Asset Transfer Regulations

(19) If a borrowing or other amount owing is transferred to an organ of state in terms of **sub-paragraphs (15), (16) or (17)** the organ of state:

- (a) replaces the COJ as the debtor in relation to the borrowing or amount owing; and
- (b) becomes liable for the borrowing or amount owing as fully and effectually as if it originally entered into the agreement with the creditor.

(20) If, for any reason a borrowing or other amount owing referred to in **sub-paragraphs (15), (16) or (17)** is not transferred to the organ of state:

- (a) the COJ remains liable for the amount owing to the creditor; and
- (b) the COJ and the organ of state must enter into an agreement whereby the organ of state undertakes to compensate the COJ for all payments made by it to the creditor.

(21) A borrowing or other amount referred to in **sub-paragraphs (15), (16) or (17)** must be identified and allocated to the organ of state on a reasonable basis.

Transfer of staff:³⁷

(22) If COJ transfers an exempted capital asset to an organ of state and the transfer of that asset gives rise to the transfer to the organ of state of staff associated with the asset, the staff transfer must be consistent with legislation regulating staff transfers in those circumstance, including any applicable labour legislation and legislation regulating the transfer of liabilities associated with such staff.

³⁷ Regulation 27 of the Asset Transfer Regulations

Compensation for transfer of exempted capital assets:³⁸

(23) COJ may receive compensation for the value of the exempted capital assets transferred to the organ of state as may be agreed with the organ of state.

(24) The value of an asset must for purposes of **sub-paragraph (23)** above be determined in accordance with **sub-paragraph (25)** below.

Valuation of exempted assets:³⁹

(25) The value of a capital asset or any subsidiary assets transferred to an organ of state in terms of this part of the Policy must be determined in accordance with the accounting standards that the COJ is required by legislation to apply and preparing its annual financial statements.

(26) In the absence of sufficient guidance in the accounting standards of the COJ regarding the valuation of assets, any of the following valuation methods must be applied:

- (a) the historical cost of the asset, adjusted for accumulated depreciation and any impairment losses as at the date of transfer of the asset;
- (b) fair market value of the asset;
- (c) depreciated replacement cost of the asset; or
- (d) realizable value of the asset;

(27) The value of liabilities transferred to an organ of state in terms of this sub-paragraph, must be determined in accordance with the accounting standards that the COJ is required by legislation to apply in preparing its annual financial statements.

³⁸ Regulation 28 of the Asset Transfer Regulations

³⁹ Regulation 29 of the Asset Transfer Regulations

(28) In the absence of sufficient guidance in the COJ's accounting standards regarding the valuation of liabilities attached to those assets, any of the following valuation methods must be applied:

- (a) the settlement value of the liability, which is the amount that will be paid or the value of the service that will be provided to settle the liability when due;
- (b) the nett present value of the liability, of discounting future settlement values to present values.

Transfer agreements – exempted assets:⁴⁰

(29) (1) COJ may transfer assets and liabilities in terms of this part of the Policy to an organ of state only in accordance with a written transfer agreement concluded between the COJ and the organ of state.

(2) The transfer agreement must:

- (a) set out the terms and conditions of the transfer, including as a minimum:
 - (i) a sufficient description of the capital asset being transferred, in order to identify the asset;
 - (ii) particulars of any subsidiary assets that are transferred with the capital asset;
 - (iii) details of all staff that will be affected and the legislation in terms of which such staff will be transferred;
 - (iv) particulars of any liabilities transferred with the asset;
 - (v) the amount of any compensation payable to the COJ for the transfer of the asset and the terms and conditions of payment;

⁴⁰ Regulation 30 of the Asset Transfer Regulations

- (vi) the effective date from which the risk and accountability for the asset or assets is transferred to the organ of state;
- (vii) in instances in which the organ of state is required or chooses to use the billing, information, technology or other administrative structure of the COJ in the operation of the asset, the terms and conditions of such usage, together with a basis of compensation for such usage, and the financial risk exposure to the COJ;
- (viii) details of any staff of the COJ that will be available to the organ of state on a temporary or defined basis in the operation of the asset, together with a basis of compensation for such staff and the financial risk exposure to the COJ
- (ix) where the asset is to be used by both the COJ and the organ of state, the basis of how the asset is to be shared, as well as how the cost and benefits of the shared assets will be apportioned between the parties;
- (x) the value of the asset determined in accordance with **paragraphs 27 and 28** above;
- (xi) appropriate evidence to support the valuation of the asset; and
- (xii) details of any encumbrances, rights and servitudes applicable to the asset.

- (b) state that the transfer is effected on the basis of the provision of this part of the Policy read with Regulation 32(b) of the Asset Transfer Regulations and that these provisions must for the purpose be regarded as forming part of the agreement; and
- (c) be signed on behalf of the COJ and the organ of state.

(3) If the capital asset is transferred following the appointment of an organ of state as the service provider for the performance of a municipal service, the transfer agreement:

- (a) must provide for:
 - (i) contract termination in the case of non or under performance, which may be linked to the termination of any service delivery agreement entered into between the parties;
 - (ii) dispute resolution mechanisms to settle disputes between the parties;
 - (iii) a periodic review of the agreement whether the service delivery agreement to which it is linked is reviewed in terms of the Systems Act, but at least once every 3 years in the case of an agreement for longer than 3 years; and
 - (iv) requirements for the organ of state to maintain and safeguard the asset for its intended purpose, taking into account the condition of the asset and its estimated remaining life at the date of transfer;
- (b) may contain:
 - (i) limitations or restrictions on the use or subsequent transfer of the asset; and

- (ii) limitations and conditions by which an asset may be used for the provision of security over any borrowings of the organ of state;
- (c) may be incorporated into any service delivery agreement to be concluded with the organ of state as service provider.

Impact of asset transfers:⁴¹

(30) Before entering into a transfer agreement as contemplated in **sub-paragraph (29)** above, COJ must consider the effect that the transfer of an asset will have on:

- (a) its credit rating and ability to raise long-term or short-term funds in the future; and
- (b) its financial position and cash flow.

(31) Sub-paragraph (30) does not apply if the asset is transferred to an organ of state in the circumstances referred to in **paragraphs 18(1)(c), (d) or (e)** above.

Due diligence:⁴²

(32) Before entering the transfer agreement as contemplated in this part of the Policy, the organ of state to whom the capital asset is to be transferred must undertake and document a due diligence review on the asset and any liabilities transferred to it.

(33) The results of the due diligence must be taken into account in any decision to transfer a capital asset in terms of this part of the Policy.

⁴¹ Regulation 31 of the Asset Transfer Regulations

⁴² Regulation 32 of the Asset Transfer Regulations

Part 5: Rights to use, control or manage municipal capital assets through leasing, letting or hiring out arrangements⁴³

19. (1) The purpose of this part is to regulate the granting of rights to use, control or manage capital assets in circumstances where Section 14 of the Act and parts 3 and 4 of this Policy do not apply.⁴⁴ In addition, this part of the Policy does not apply to:

- the granting of rights to use, control or manage capital assets in terms of public-private partnerships agreements as contemplated in Section 120 of the Act and the Municipal Public-Private Partnership Regulations published by Government Notice No. 309 of 2005; or
- rights on municipal land to housing for the poor to beneficiaries of such housing.⁴⁵

(2) If the right to use control or manage a capital asset:⁴⁶

- (a) is granted for an indefinite or undetermined period;
- (b) is granted for a period which exceeds:
 - the useful life of a capital asset;
 - the economic usefulness of the capital asset and which would require the asset in order to remain economically useful, to be substantially upgraded, altered or replace during the period for which the right is granted, or confers on the person to whom the right is granted:
 - (i) an option to buy or acquire ownership in the capital asset; or
 - (ii) the power to use, control or manage the capital asset as if that person is the beneficial (but not legal) owner of the asset,

⁴³ Chapter 4 of the Asset Transfer Regulations

⁴⁴ Regulation 2(2)(c) of the Asset Transfer Regulations

⁴⁵ Regulation 33(2) of the Asset Transfer Regulations

⁴⁶ Regulation 33(3) of the Asset Transfer Regulations

the provisions under part 3 (transfer or disposal of non-exempted capital assets) and part 4 (transfer of exempted capital assets to organs of state) above must be complied with;

(3) When COJ grants a right to use, control or manage a capital asset, the following steps have to be taken:

- (a) a determination whether a public participation process is required;
- (b) if a public participation process is required, the submission of a request to the Council to authorize the public participation process;
- (c) the authorization by the Council of a public participation process;
- (d) the conducting by the account officer of a public participation process;
- (e) an approval in principle by the Council that the right may be granted.

The procedures and detailed requirements in respect of each of the above steps are set out below:

(4) **Public participation process required**.⁴⁷

A public participation process is required in the following circumstances:

- (i) if the capital asset in respect of which a proposed right is to be granted has a value in excess of R10 million; and
- (ii) a long-term right is proposed to be granted in respect of the capital asset.

⁴⁷ Regulation 35 of the Asset Transfer Regulations

- (5) Only the Council may authorize the public participation process (if required);

(6) **Request for authorization:**⁴⁸

Once it has been determined that a public participation process is required, a written request must be submitted to the Council to authorize the public participation process and the request must be accompanied by an information statement stating:

- (i) the reasons for the proposal to grant a long-term right to use, control or manage the capital asset;
- (ii) any expected benefits to COJ that may result from the granting of the right;
- (iii) any expected proceeds to be received by COJ from the granting of a right.

(7) **Public participation process:**⁴⁹

After the Council has authorized the accounting officer to conduct a public participation process and at least 60 days before the meeting referred to in **sub-paragraph (8)** below comply with the following:

- (i) make public the proposal to grant the relevant right, together with the information statement referred to in **sub-paragraph 6(a)** above;
- (ii) invite the local community and other interested parties to submit comments or representations; and
- (iii) solicit views and recommendations of the National Treasury and the Provincial Treasury on the matter.
- (iv) comply with Section 21 of the Systems Act by publishing the notification through the media:

⁴⁸ Regulation 34(3)(b) of the Asset Transfer Regulations

⁴⁹ Regulation 35 of the Asset Transfer Regulations

- in a local newspaper(s) published in the area of jurisdiction of the COJ;
 - in a newspaper(s) circulating in its area of jurisdiction and determined by the COJ as a newspaper of record; or
 - by means of radio broadcasts covering the area of jurisdiction of the COJ;
- (v) any notification must be in the official language determined by the COJ, having regard to language preferences and uses within its area of jurisdiction;
- (vi) a copy of every notice that must be published in the Provincial Gazette or the media in terms of the Systems Act, or any other applicable legislation, must be displayed at the COJ and JPC offices;
- (vii) when the COJ invites the local community to submit written comments or representations on any matter before the Council, it must be stated in the invitation that any person who cannot write may come during office hours to a place where a staff member of the COJ or the JPC, named in the invitation, will assist that person to transcribe that person's comments or representations;
- (viii) when COJ or JPC requires a form to be completed by a member of the local community, a staff member of the COJ or JPC must give reasonable assistance to the persons who cannot read or write, to enable such persons to understand and complete the form;
- (ix) if the form relates to the payment of money to the COJ or JPC, the assistance must include an explanation of its terms and conditions;
- (x) all documents that must be made public by the COJ or JPC in terms of the Systems Act, MFMA or other applicable legislation must be conveyed to the local community –

- by displaying the documents at the COJ's head and satellite offices and libraries, as well as the offices of JPC;
 - by displaying the documents on the COJ and JPC's official website;
 - by notifying the local community of the place, including the website address, where detailed particulars concerning the documents can be obtained;
- (xi) if appropriate, any notification in terms of the requirements above, must invite the local community to submit written comments or representations to the COJ or JPC in respect of the relevant documents.

(8) **Principle decision.**⁵⁰

- (a) Within 60 days of the conclusion of the public participation process, the Council has to approve, in principle, that the right may be granted, on condition that the Council must take the following into consideration:⁵¹
- (i) whether the capital asset may be required for the COJ at a later date;
 - (ii) the extent to which the compensation for the right to use, control or manage the capital asset together with the estimated value of any improvements or enhancements to the asset that the private sector party or organ of state to whom the right is granted will be required to make, will result in a significant economic or financial benefit for COJ;

⁵⁰ Regulation 34(1)(b) of the Asset Transfer Regulations

⁵¹ Regulation 36 of the Asset Transfer Regulations

- (iii) the risk and awards associated with the use, control or management of the capital asset in relation to the interests of COJ;
 - (iv) any comments or representations on the proposed granting of the right received from the local community and other interested persons;
 - (v) any written views and recommendations on the proposed granting of the right by the National Treasury and the relevant Provincial Treasury;
 - (vi) the interests of any affected organ of state, the strategic, legal and economic interests of the municipality and municipal entity and the interests of the local community; and
 - (vii) compliance with the legislative regime applicable to the granting of the right;
- (b) An approval in principle that the right to use, control or manage a capital asset may be granted may be given subject to any conditions, including conditions specifying:⁵²
- (i) the type of right that may be granted, the period for which it is to be granted and the manner in which it is to be granted;
 - (ii) the minimum compensation to be paid for the right; and
 - (iii) a framework within which direct negotiations for the granting of the right must be conducted, if the granting of the right is subject to direct negotiations;

⁵² Regulation 40 of the Asset Transfer Regulations

(9) **Public participation not required:**

In circumstances where a public participation process is not required, the following steps are eliminated:

- (a) the application for authorization of a public participation process; and
- (b) the decision to grant authorization for the participation process, on condition that the Council still has to take a principle decision and comply with the requirements set out in **sub-paragraph (8)** above.

(10) **Disposal management system:**⁵³

(1) The right granted may only be in accordance with COJ's management disposal system irrespective of:

- (a) the value of the asset;
- (b) the period for which the right is to be granted; or
- (c) whether the right is to be granted to a private sector party or organ of state;

(2) The disposal management system does not apply to the granting of a right to use, control or manage a capital asset under the following circumstances:⁵⁴

- (a) If the COJ:
 - (i) reviews its service delivery mechanisms for the performance of a municipal service as contemplated in Chapter 8 of the Systems Act;
 - (ii) selects through a competitive bidding process a private sector party or appoints an organ of state as

⁵³ Regulation 41(1) of the Asset Transfer Regulations

⁵⁴ Regulation 41(2) of the Asset Transfer Regulations

the service provider for the performance of that municipal service; and

- (iii) grants the service provider the right to use, control or manage that capital asset as an integral component for the performance of that municipal service;
 - (iv) selects through a competitive bidding process a private sector party or organ of state as the service provider for the performance of a commercial service; and
 - (v) grants the service provider the right to use, control or manage that capital asset as an integral component of the performance of that commercial service;
- (b) the right to use, control or manage that capital asset as granted as part of the re-organization of powers or functions between the COJ and any of its municipal entities;
 - (c) the right to use, control or manage that capital asset as granted in circumstances referred to in Section 110(2) of the Act; or
 - (d) the right to use, control or manage that capital asset as granted to another organ of state in any other circumstances not provided in (a) – (c) above, provided that that the capital asset is determined by a resolution of the council to be surplus to the requirements of the COJ;

(3) COJ may negotiate directly with a private sector party or organ of state to whom the right to use, control or manage the capital asset is to be granted.

(4) Before granting the right to use, control or manage a capital asset, the municipality or municipal entity must be satisfied that the private sector party or organ of state to whom the right is to be granted can demonstrate the ability to adequately maintain and safeguard the asset.

(5) **Pre-conditions for granting of long-term rights**⁵⁵

If COJ intends to grant to a private sector party or an organ of state a long-term right to use, control or manage a capital asset with a value in excess of R10 million following the selection of that private sector party or organ of state as the service provider for the performance of a municipal service, or for the performance of a commercial service:

- (i) all assets needed or directly related to the performance of that service must be properly identified to distinguish those assets from the other assets of the COJ;
- (ii) the decision required relating to the granting of the right must be taken as an integral part of the broader decision making process on a selection of a service provider for the performance of that service; and
- (iii) all documents prepared for the purpose of that decision must be taken into account in any feasibility study conducted to determine the financial and other implications of appointing a service provider for the performance of that service;

(6) **Continuation of municipal service**:⁵⁶

If a right to use, control or manage a capital asset is granted to be used for in connection with a municipal service, all reasonable steps to ensure that the granting of the right will result in the continuation of the service, at least at the same or better level than would otherwise have been rendered by the municipality, has to be taken.

⁵⁵ Regulation 42 of the Asset Transfer Regulations

⁵⁶ Regulation 43 of the Asset Transfer Regulations

(7) If the right to use, control or manage a capital asset is granted and the asset is needed to provide the minimum level of basic municipal services, such right may only be granted on condition that:⁵⁷

- (a) the granting of the right immediately lapses should the private sector party or organ of state to whom the right is granted for any reason cease or become unable to render the service for which the capital asset is used; and
- (b) the private sector party or organ of state to whom the right is granted may not without the written consent of the COJ grant the right to another person to use, control or manage the capital asset;

(8) **Agreements.**⁵⁸

The right to use, control or manage a capital asset to a private party or organ of state may only be by way of a written agreement concluded between the parties and such agreement should comply with the provisions of Regulation 45(2) of the Asset Transfer Regulations and must include, as a minimum:

- (a) a sufficient description of the capital asset in respect of which the right is granted, in order to identify the asset;
- (b) particulars of any subsidiary assets that are to be made available with the capital asset;
- (c) the period for which the right is granted;
- (d) the amount of compensation payable to the COJ for the granting of the right and the terms and conditions of payment;
- (e) requirements for the private sector party or organ of state to whom the right is granted to maintain and safeguard the asset for its intended purpose, taking into account the

⁵⁷ Regulation 44 of the Asset Transfer Regulations

⁵⁸ Regulation 45 of the Asset Transfer Regulations

condition of the asset and its estimated remaining life at the date of granting of the right;

- (f) where the asset is to be used by the COJ and the public sector party or organ of state to whom the right is granted, the basis of how the asset is to be shared, as well as how the cost and benefit of the shared asset will be apportioned between the parties;
- (g) the extent to which the public sector party or organ of state to whom the right is granted will be required to make improvements or enhancements to the asset and the terms and conditions regulating such improvements or enhancements;
- (h) a statement to the effect that the risk and accountability for the asset is transferred to the public sector party or organ of state to whom the right is granted;
- (i) the effective date from which the risk and accountability for the asset is transferred; and
- (j) a clause disallowing the private sector party or organ of state to whom the right is granted from ceding or sub-contracting the right to another person; and
- (k) be signed on behalf of COJ and the private sector party or organ of state to whom the right is granted.

(9) If a long-term right to a capital asset with a value in excess of R10 million is granted following the selection of a service provider for the performance of a municipal service, or for the performance of a commercial service, such agreement:

- (a) must contain provision for:
 - (i) contract termination in the case of non or under performance;

- (ii) dispute resolution mechanisms to settle disputes between the parties; and
 - (iii) a periodic review of the agreement once every 3 years in the case of an agreement for longer than 3 years;
- (b) may be incorporated into any service delivery agreement or procurement contract to be concluded with the service provider.
- (10) **Access to agreements:**⁵⁹
- An agreement granting a right to use, control or manage a capital asset to a private sector party or an organ of state –
- (a) must be made available in its entirety to the Council of the COJ; and
 - (b) may not be withheld from public scrutiny except as provided for in terms of the PAIA.

Part 6: General

20. (1) The transfer of an asset or the granting of a right to use, control or manage an asset does not affect any existing encumbrances, rights or servitudes attached to the asset.⁶⁰

(2) The transfer or disposal of an asset or the granting of a right to use, control or manage an asset in terms of Parts 3 to 5 of this Policy must be given to and formalized in accordance with any legislation applicable to such transfers, disposals or granting of rights.⁶¹

⁵⁹ Regulation 46 of the Asset Transfer Regulations

⁶⁰ Regulation 48 of the Asset Transfer Regulations

⁶¹ Regulation 49 of the Asset Transfer Regulations

(3) Parts 3, 4 and 5 of this Policy are governed and must be interpreted and implemented in accordance with the following principles:

- (a) **valuations principle**, which means the need to attach a value to the transfer or disposal of a municipal asset, in order to ensure that the interest of the COJ and of its stakeholders are not prejudiced by the transfer or disposal;
- (b) **continuity of service principle**, which means the need to ensure the uninterrupted continuance of a municipal service when a municipal capital asset that is being used in the delivery of that service, is transferred or disposed of, particularly when the asset is used in the provision of the minimum level of basic municipal services;
- (c) **risk transfer principle**, which means the need to transfer risk relating to a municipal capital asset in accordance with the transfer of that asset; and
- (d) **asset preservation principle**, which means the need to prevent the indiscriminate or unsustainable transfer of a municipal capital asset, in order not to undermine the ability of the COJ to render or expand municipal services in the longer term.

(4) Until such time that the Ordinance is repealed, the COJ shall be obliged to comply with the applicable provisions of the Ordinance in addition to compliance with the provisions of the Act, the Regulations and the Asset Transfer Regulations.

CHAPTER 4 COMPETITIVE BIDS

Part 1: Competitive bidding

21. Capital assets may only be transferred or disposed of and rights to use, control or manage municipal capital assets may only be granted through a competitive bidding process after compliance with the provisions of the Regulations and the Asset Transfer Regulations, unless the deviations policy, as set out in Chapter 5 below, applies.

Process for competitive bidding

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

- (a) Compliance with the Regulations and Asset Transfer Regulations;
- (b) Compilation of bidding documentation as detailed in **paragraph 23**;
- (c) Public invitation of bids as detailed in **paragraph 24**;
- (d) Site meetings or briefing sessions as detailed in **paragraph 24**;
- (e) Handling of bids submitted in response to public invitation as detailed in **paragraph 25**;
- (f) Evaluation of bids as detailed in **paragraph 30**;
- (g) Award of contracts as detailed in **paragraph 31**;
- (h) Administration of contracts
 - (i) After approval of a bid, the accounting officer and the bidder must enter into a written agreement.
- (i) Proper record keeping
- (i) Original / legal copies of written contracts agreements should be kept in a secure place for reference purposes.

Bid documentation for competitive bids

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

- (a) take into account –
 - (i) the general conditions of contract and any special conditions of contract, if specified;
 - (ii) any Treasury guidelines on bid documentation; and
 - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
- (b) include the preference points system to be used, goals as contemplated in the Preferential Procurement Regulations and evaluation and adjudication criteria, including any criteria required by other applicable legislation;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
 - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
 - (aa) for the past three years; or
 - (bb) since their establishment if established during the past three years;
 - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
 - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;

- (e) stipulate in which manner disputes have to be settled.

Public invitation for competitive bids

24. (1) The procedure for the invitation of competitive bids, is as follows:

(a) Any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of JPC 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-paragraph (2)** of this Policy;
- (ii) a statement that bids may only be submitted on the bid documentation provided by JPC; and
- (iii) date, time and venue of any proposed site meetings or briefing sessions.;

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

(3) Bids submitted must be sealed.

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

Procedure for handling, opening and recording of bids

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

- (a) Bids—
 - (i) must be opened only in public;
 - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired; and
 - (iii) received after the closing time should not be considered and returned unopened immediately.
- (b) Any bidder or member of the public has the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price;
- (c) No information, except the provisions in **sub-paragraph (b)**, relating to the bid should be disclosed to bidders or other persons until the successful bidder is notified of the award; and
- (d) The accounting officer must —
 - (i) record in a register all bids received in time;
 - (ii) make the register available for public inspection; and
 - (iii) publish the entries in the register and the bid results on the website.

Negotiations with preferred bidders

26. (1) The accounting officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation —

- (a) does not allow any preferred bidder a second or unfair opportunity;
- (b) is not to the detriment of any other bidder; and

(2) Minutes of such negotiations must be kept for record purposes.

Two-stage bidding process

27. (1) A two-stage bidding process is allowed for –
- (a) large complex projects;
 - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
 - (c) long term projects with a duration period exceeding three years.

(2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.

(3) In the second stage final technical proposals and priced bids should be invited.

Part 2: Committee System for competitive bids

28. (1) A committee system for competitive bids is hereby established, consisting of the following committees for each transfer or disposal or the granting of rights to use, manage or control COJ land or rights therein:

- (a) a bid specification committee;
- (b) a bid evaluation committee; and
- (c) a bid adjudication committee which will, depending on the value of the transaction, either be:
 - (i) a City Central Adjudication Committee; or
 - (ii) a City Executive Adjudication Committee.

(2) JPC is authorized by COJ to administer the various committees on COJ's behalf.

(3) The accounting officer appoints the members of each committee, taking into account Section 117 of the Act in terms of which councilors are barred from serving on municipal tender committees; and

(4) A neutral or independent observer, appointed by the accounting officer, must attend or oversee a committee when this is appropriate for ensuring fairness and promoting transparency.

(5) The committee system must be consistent with –

- (a) this Policy; and
- (b) the Act, Regulations and Asset Transfer Regulations; and
- (c) any other applicable legislation.

(6) COJ committees are structured in accordance with the attached schedule;

Bid specification committees

29. (1) A bid specification committee must compile the specifications for the transfer or disposal of capital assets by the COJ or the granting of rights to use, manage or control COJ capital assets.

(2) Specifications –

- (a) must be drafted in an unbiased manner to allow all potential bidders to submit their bids and offers;
- (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
- (c) must, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;

- (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
- (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the word "equivalent";
- (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001; and
- (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of **paragraph 25** of this Policy;
- (h) the additional functions of the Bid Specification Committee are set out in the schedule.

(3) The bid specification committee is composed in the manner set out in the schedule.

(4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

- (5) The Bid Specification Committee is implemented as follows:-
- (a) monthly meetings will be held by the Bid Specification Committee and shall be annually constituted by the Council and will be specified by the Manager: Supply Chain Management;
 - (b) each department representative shall notify the Manager: Procurement 10 (ten) days prior to the meeting of the intended transactions to be dealt with by the Bid Specification Committee;

- (c) the Manager: Supply Chain Management will complete an agenda and shall circulate same to all the Committee members 5 (five) days before the scheduled meeting;
- (d) each department representative will compile a detailed pack of documentation for each member relating to the tender, the minimum documents are:-
 - (i) a declaration of interest form and attendance form to be completed by each member of the Committee;
 - (ii) a draft bid document which also compels bidders to declare any conflict of interest that they may have in the transaction for which the bid is submitted and a call to the public to submit any objections to the right to use, control or manage (over 10 years) the transfer of the land and/or real right in terms of Section 14(2) of the Act;
 - (iii) the requirements for the bid (which shall include the use of the land, period of the right to use, control or manage the land and/or real right and any further special conditions and specifications);
 - (iv) the fair market value of the land and/or real right;
 - (v) the required Section 14(2) resolution as prescribed by the Act;
 - (vi) the public participation requirement where applicable in terms of the Asset Transfer Regulations;
 - (vii) any Treasury guidelines on bid documentation;
 - (viii) the draft bid documentation must also include any evaluation and adjudication criteria including any criteria required by any other applicable legislation and/or policies (including the COJ policies on Black Economic Empowerment);
 - (xi) draft bid documentation must stipulate the manner in which any disputes must be settled;

- (x) should the value of the transaction be expected to exceed R10 million VAT included, the following must be included in the draft bid document:-
 - (aa) if the bidder is required by law to prepare annual financial statements for auditing, the audited annual financial statements shall be those for the past 3 (three) years or since the establishment (if established in the past 3 (three) years);
 - (bb) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for Municipal Services towards a Municipality or other service provider in respect of which payment is overdue for more than 30 (thirty) days;
 - (cc) particulars of any contracts awarded to the bidder by an organ of state during the past 5 (five) years, including particulars of any material non-compliance or dispute concerning the execution of such contracts;
 - (dd) a statement indicating whether any portion of the goods or services (for the development of the land and/or servitude area) are expected to be sourced from outside the Republic and if so, what portion;
- (xi) a valid SARS certificate.

(6) In addition, the Bid Specification Committee must:-

- (a) Compile the technical specifications for the bid document.
- (b) The technical specifications:-
 - (i) must be drafted in an unbiased manner to allow all bidders equal opportunity to bid;
 - (ii) must take account of any accepted standards such as those issued by South African Bureau of Standards (SABS), the International Standards Organization (ISO), or an authority

accredited or recognized by the South African National Accreditation System (SANAS);

- (iii) must be functional and not be outcome based or brand inclined;
- (iv) must not create trade barriers in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
- (v) 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 characteristic of the work, in which case such reference must be accompanied by the words "equivalent";
- (vi) must indicate each specific goal for which points shall be awarded in terms of the points system set out in the Preferential Procurement Regulations 2001 and any other relevant legislation and/or policies (including any COJ policies on Black Economic Empowerment) of the COJ; and

(7) The department representative will amend the draft bid document as per the recommendation of the Bid Specifications Committee.

(8) No person, advisor or corporate entity involved with the Bid Specifications Committee, or director of such corporate entity, shall bid for any resulting bids.

Bid evaluation committees

30. (1) A bid evaluation committee must –
- (a) evaluate bids in accordance with –
 - (i) the specifications for a specific procurement; and
 - (ii) the points system set out in terms of **paragraph 29(2)(f)**.
 - (b) evaluate each bidder's ability to execute the contract;

- (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears, and;
- (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter;
- (e) check that the valuation (if applicable) is not more than 12 months old, failing which a new valuation has to be obtained.

(2) The bid evaluation committee is composed as set out in the schedule

(3) Practical Implementation of the Bid Evaluation Committee:

- (a) monthly meetings will be held by the Bid Evaluation Committee and shall be annually constituted and will be specified by the Manager: Procurement;
- (b) each department representative shall notify the Manager: Procurement 10 (ten) days prior to the meeting of the intended transactions to be dealt with by the Bid Evaluation Committee;
- (c) the Manager: Supply Chain Management will compile an agenda and shall circulate same to all the Committee members 5 (five) days before the scheduled meeting;
- (d) each department representative will compile a detailed pack of documentation for each committee member relating to the bid, the minimum documents are:-
 - (i) a declaration of interest form and attendances form to be completed by each member of the Committee;
 - (ii) a copy of the original bid document as well as copies of each of the bids received (the original documents shall be made available at the Evaluation of the tender);
 - (iii) the scorecard recommended by the Bid Specification Committee;
 - (iv) a summary of the bid received;

- (v) Section 14(2) resolution for the transfer or disposal of land and/or real rights and/or the granting of rights to use, manage or control capital assets;
 - (vi) the resolution by the Council on any objections received;
 - (vii) minutes signed by all committee members of the Bid Specification Committee.
- (4) A Bid Evaluation Committee must:-
- (a) Evaluate the bids in accordance with scorecard and specifications recommended by the Bid Specification Committee and the point system as set out by the Bid Specification Committee;
 - (b) Evaluate each bidder's ability to execute the contract (from inter alia a technical, financial and commercial perspective);
 - (i) evaluate each bidder's compliance with Broad Based Black Economic Empowerment Act and/or any other applicable legislation or Policy;
 - (ii) check in respect of the recommended bidder whether the municipal rates, taxes and municipal service charges are not in arrears or that there is a valid arrangement to settle the debts;
 - (iii) the Committee Officer will compile and submit a report and recommendation regarding the award of the bid (as evaluated by the Bid Evaluation Committee), and any other related matters to the Manager: Procurement, who will in turn submit same to the relevant Adjudication Committee
 - (c) The additional functions of the Bid Specification Committee are set out in the schedule.

Bid adjudication committees

31. (1) A bid adjudication committee must –

- (a) consider the report and recommendations of the bid evaluation committee;
and
- (b) either –
 - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award;
or
 - (ii) make another recommendation to the accounting officer how to proceed with the bid.

(2) The bid adjudication committee is composed as set out in the schedule.

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

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

(5) (a) If the bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –

- (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears, and;
- (ii) notify the accounting officer.

(b) The accounting officer may –

- (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in **sub-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 accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The accounting officer must comply with section 114 of the Act within 10 working days.
- (8) Practical Implementation of the Bid Adjudication Committee:
- (a) monthly meetings will be held by the Bid Adjudication Committee and shall be annually constituted by the Board and will be specified by the Manager: Procurement;
 - (b) each user department representative shall submit a report from the Bid Evaluation Committee to the Manager: Supply Chain Management 10 (ten) days prior to the meeting of the intended transactions to be dealt with by the Bid Adjudication Committee;
 - (c) the Manager: Supply Chain Management will compile an agenda and a pack which will include the minutes of the Bid Specification Committee and the Bid Evaluation Committee signed by all voting members and reports of the Bid Evaluation Committee and shall circulate same to all the Committee members 5 (five) days before the scheduled meeting;

- (d) a declaration of interest form and attendances form will be completed prior to commencement of the Adjudication by each member of the Committee;
 - (e) the Committee Officer present at the Bid Evaluation Committee will make available for inspection the original bid documents and scorecards of the Bid Evaluation Committee members on the day the bid is Adjudicated;
 - (f) the Manager: Supply Chain Management shall keep minutes of the Bid Adjudication Committee meetings;
 - (g) the award will be published on the JPC web-site not later than 10 (ten) days after the Bid Adjudication has finally resolved the awardal of the tender.
- (9) A Bid Adjudication Committee must:
- (a) The additional functions of the Bid Specification Committee are set out in the schedule.

32. Reporting requirements

32.1 Reporting by the Adjudication Committee to the JPC General Manager: Asset Management:-

- (1) The Adjudication Committee must submit the following to the JPC General Manager: Asset Management -
 - (a) final awards or recommendations made by the Adjudication Committee within 5 working days of the end of the months of each months;
 - (b) non-compliance, deviations and remedial action proposed or taken;
 - (c) construction projects awarded or recommended;

- (d) minutes of the Committees on a monthly basis;
- (e) particulars of each final award or recommendation made by the Adjudication Committee during that month within 5 working days of the end of each month, including:-
 - (i) the amount of the award;
 - (ii) the name of the person to whom the award was made or recommended;
 - (iii) the reasons why the award was made or recommended to that person.

32.2 Reporting by the JPC General Manager: Asset Management to the Managing Director

- (1) The JPC Executive Manager: Asset Management must submit the following bi-monthly reports to the Managing Director:-
 - (a) progress report on the implementation of this Policy within 7 working days of the end of each quarter;
 - (b) progress report on operations of the Supply Chain Management Unit;
 - (c) deviations in the implementation of this Policy and any remedial action taken or envisaged;
 - (d) a report containing particulars of each final award or recommendation made by the Adjudication Committee during that month, within 7 working days of the end of each month, including:-
 - (i) the amount of the award;
 - (ii) the name of the person to whom the award was made or recommended;
 - (iii) the reason why the award was made or recommended to that person; and

- (e) will submit a consolidated report from various reports by JPC General Managers outlining the Quarterly Income received in respect of the transfer and/or disposal of land or real rights therein and from lease agreements compared with the income budgeted.

32.3 Reporting by the Managing Director to the Board of Directors

- (1) The Managing Director must submit the following reports to the Board of Directors:-
 - (a) progress report on implementation and operation of this Policy within 10 working days of the end of each quarter;
 - (b) consolidated report on the implementation of this Policy within 20 days of the end of each financial year;
 - (c) deviations in the implementation of this Policy and any remedial action taken or envisaged;
 - (d) particulars of each final award or recommendation made by the Adjudication Committee during that month, including:-
 - (i) the amount of the award;
 - (ii) the name of the bidder to whom the award was made or recommended;
 - (iii) the reason why the award was made or recommended to that bidder;
 - (e) all awards to close family members (with a value of more than R2 000), or persons in the service of the State or Government or Municipal Owned Entities or who have been in the service of the State in the previous 12 months or if the employee mentioned above is actively or inactively a director, manager or principal shareholder of the bidder concerned, or is a member of the board of directors of a municipal entity within its area of jurisdiction or who is an advisor or consultant contracted to COJ or JPC for the purpose of assisting COJ or JPC with defining of requirements, drafting of specifications or evaluation of the bids;

- (f) any abuses found and the remedial actions taken;
- (g) all declarations made and gifts received by employees;
- (h) will submit a report from the JPC General Manager: Asset Management outlining the Quarterly Income received in respect of the transfer and/or disposal of land or real rights therein and from lease agreements compared with the income budgeted;
- (i) the Managing Director shall report quarterly to the Board in respect of all transfers, leases, disposals of land and/or real rights to another organ of state.

32.4 Reporting by the Board of Directors to the City Manager

- (1) The Board of Directors must, within twenty (25) days of the end of the financial year submit a report to the City Manager on the implementation of this Policy.
- (2) The following must be included in the report to the City Manager:-
 - (a) report on all transfers or disposals of land or real rights therein and leases;
 - (b) report on bidder or official that has abused the Supply Chain Management system and has been found guilty of improper conduct;
 - (c) any sponsorship or donation promised, offered or granted, whether directly or through a representative or intermediary, by any person who is:-
 - (i) a lessee or prospective lessee;
 - (ii) a holder or a prospective holder of a real right
 - (d) any bidder or prospective bidder that has been found guilty of inducing or bribing COJ or JPC employees for the award of any bid;

- (e) all awards to close family members (with a value of more than R2 000), or persons in the service of the State or Government or Municipal Owned Entities or who have been in the service of the State in the previous 12 months or if the employee mentioned above is actively or inactively a director, manager or principal shareholder of the service provider concerned, or is a member of the board of directors of a municipal entity within its area of jurisdiction or who is an advisor or consultant contracted to the JPC for the purposes of assisting the JPC with defining of requirements, drafting of specifications or evaluation of the bids;
- (f) abuses of Supply Chain Management and the remedial steps taken;
- (g) contracts awarded of which the duration extends beyond three years.

32.5 Reporting by the City Manager to the Council

The City Manager must submit the following reports to the Council:-

- (a) progress report on implementation of this Policy within 10 working days of the end of each quarter;
- (b) consolidated report on the implementation of this Policy within 30 days of the end of each financial year;
- (c) deviations in the implementation of this Policy and any remedial action taken or envisaged;
- (d) particulars of each final award or recommendation made by the Adjudication Committee during that month, including:-
 - (i) the amount of the award;
 - (ii) the name of the bidder to whom the award was made or recommended;
 - (iii) the reason why the award was made or recommended to that bidder; and

- (iv) details of the lease and transfer plan versus the income for the month;
- (e) all awards to close family members (with a value of more than R2 000), or persons in the service of the State or Government or Municipal Owned Entities or who have been in the service of the State in the previous 12 months or if the employee mentioned above is actively or inactively a director, manager or principal shareholder of the service provider concerned, or is a member of the board of directors of a municipal entity within its area of jurisdiction or who is an advisor or consultant contracted to the JPC for the purpose of assisting the JPC with defining of requirements, drafting of specifications or evaluation of the bids;
- (f) any abuses found and the remedial actions taken;
- (g) all declarations made and gifts received by employees;
- (h) quarterly report to the Mayoral Committee in respect of all and any transfer, lease and/or disposal of land and/or real right to another organ of state or municipal owned entities.

32.6 Reporting by the City to National Treasury and/or Provincial Treasury

The City must submit the following reports to National Treasury and/or Provincial Treasury:-

- (a) report on all purchases of land paid for in foreign currency;
- (b) report on contracts and/or transaction to the value of R100 million and more;
- (c) report on any bidder thereof that has abused the Supply Chain Management system and have been found guilty of improper conduct;
- (d) any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is a recipient or prospective recipient of land disposed or to be disposed;

- (e) any bidder that has been found guilty of inducing or bribing COJ or JPC employees for the award of business;
- (f) all awards to close family members (with a value of more than R2 000), or persons in the service of the State or Government of Municipal Owned Entities or who have been in the service of the State in the previous 12 months or if the employee mentioned above is actively or inactively a director, manager or principal shareholder of the service provider concerned, or is a member of the board of directors of a municipal entity within its area of jurisdiction or who is an advisor or consultant contracted to the JPC for the purposes of assisting the JPC with defining of requirements, drafting of specifications or evaluation of the bids;
- (g) abuses of Supply Chain Management and the remedial steps taken;
- (h) contracts awarded of which the duration extends beyond 3 (three) years.

32.7 Reporting by COJ to the Department of Trade and Industry

COJ must submit to Department of Trade and Industry a report on all transactions/contracts to the value of R100 million and more. All reports indicated above will be made public through the official website of COJ.

32.8 Publication of reports

The reports of the JPC and the Adjudication Committee shall be made available to public in accordance with Section 21A of the Systems Act.

CHAPTER 5 DEVIATIONS POLICY

Purpose

33. (1) The purpose of the deviations policy in this chapter is twofold:
- (a) to provide a framework in terms of which COJ may, under specific circumstances, transfer or dispose of land or rights in land, or grant rights to use, control or manage land or interests in land through leasing, letting or hiring out arrangements for less than fair market value; and
 - (b) to transfer or dispose of land or to grant use, control or management rights pertaining to land, through other methods than the competitive bidding process.
- (2) It is acknowledged that COJ's right to deviate from the fair market value principle and to use other methods than the competitive bidding process, is limited and governed by the following principles:
- (a) on account of the public interest. The public interest shall be determined on constitutional principles, including but not limited to the principle of equality, as contemplated in Section 9(1) of the Constitution, and in particular Section 9(2) of the Constitution in terms of which measures (such as this Policy) to protect or advance persons or categories of persons disadvantaged by unfair discrimination, may be taken; and/or
 - (b) in consideration to the plight of the poor.⁶²
- (3) The public interest may also be taken into consideration in exceptional circumstances and in emergencies.

⁶² Regulation 13(2) of the Asset Transfer Regulations and Regulation 40(b)(i) and (ii)

(4) If COJ, on account of the public interest, in particular in relation to the plight of the poor, intends to transfer a non-exempted capital asset for less than its fair market value, COJ must, when considering the proposed transfer, take into account:⁶³

- (a) the interest of:
 - (i) the state; and
 - (ii) the local community;
- (b) the strategic and economic interest of the COJ, including the long-term effect of the decision on the COJ;
- (c) the constitutional rights and legal interests of all affected parties;
- (d) whether the interest of the parties to the transfer should carry more weight than the interest of the local community and how the individual interest is weighed against the collective interest; and
- (e) whether the local community would be better served if the capital asset is transferred at less than its fair market value, as opposed to a transfer of the asset at fair market value.

(5) The aim of the deviation policy is, inter alia, to:

- (a) promote access to COJ land specifically to previously disadvantaged people;
- (b) promote Black Economic Empowerment;
- (c) uplift and promote private sector involvement;
- (d) strengthen relationships between the COJ and the community by being sensitive towards the community and expediting the disposal of COJ land;
- (e) align the COJ policies with the national and provincial development initiatives;

⁶³ Regulation 13(2)(a) to (e) of the Asset Transfer Regulations

- (f) support the land regularization program;
- (g) stimulate competition;
- (h) advance, in general, constitutional values and principles.

Valuation methods

34. (1) The valuation methods to be applied in this chapter are the same as the methods referred to in **paragraph 17(5)(b)** above.

(2) In addition, the Council shall consider the factors contained in **paragraph 17(7)(b)(i) – (xi)** above.

(3) The governing principles referred to in Part 6 of Chapter 3, as more clearly set out in **sub-paragraph 20(3)(a) to (d)**.

Compliance

35. (1) The deviations policy authorizes a deviation from the competitive bidding process and fair market value only, and for the sake of clarity and for the avoidance of doubt, it is clearly stated that despite the fact that a deviation is authorized, compliance with the legal requirements cannot be deviated from and there shall in all instances be compliance with the applicable legislation, including without limitation:

- (a) compliance with the requirement to obtain a council's resolution in terms of Section 14(2) of the Act;
- (b) compliance with the Act in general;
- (c) compliance with the Regulations and Asset Transfer Regulations;
- (d) compliance with the provisions of the Ordinance, including without limitation to Sections 63, 67, 68 and 79;

Land regularization program

36. (1) It is recorded that COJ has adopted a land regularization program with the object to audit and survey COJ land and to determine the best use for land and to provide a framework for the transfer or disposal of designated properties.

(2) The land regularization program may authorize a deviation from the fair market value principle and through other methods than the competitive bidding process.

(3) Procedures:

The procedures to be followed in transferring land identified in the land regularization program:

- (a) the identified land shall be advertised to:
 - (i) identify potential beneficiaries;
 - (ii) comply with the provisions of legislation; and
 - (iii) to consider objections;
- (c) if the property is vacant, a competitive bidding process, as contemplated in this Policy, shall apply and tenders received shall be considered by the committees;
- (d) the recommendation by the Bid Evaluation Committee to the Bid Adjudication Committee shall include a report and a recommendation that the property may be transferred or disposed of at a lower price than its fair market value, on condition that such lower price can be justified on the principles set out in **sub-paragraph 33(2)(a) and (b)** above;
- (e) if the property is occupied and there is no dispute or objection to the transfer or disposal of the property to the occupant, the property shall be sold to the occupant at a value to be determined as contemplated in this Policy and should the value be less than fair market value, the

principles set out in **sub-paragraph 33(2)(a) and (b)** above shall apply;

The above principles and procedures will apply to any land regularization programs implemented by COJ or JPC, on condition that if COJ has taken a principle decision in terms of which the land to be transferred or leased has been identified and the proposed beneficiary complies with the criteria of the program, the award can be made without necessity to obtain a council resolution for each and every portion of land to be transferred or leased out.

(4) For the sake of clarity, it is recorded that the principles recorded in paragraphs (1) and (2) above will also apply in respect of any extension of the land regularization program.

Housing programs

37. (1) It is recorded that COJ and JOSHCO have approved a number of housing programs, which may be included in the deviations policy, on condition that it meets the criteria of public interest and the plight of the poor, as contemplated in sub-paragraph 33(2)(a) and (b) above. These housing programs include, but are not limited to:

- (a) leasing of COJ and JOSHCO rental housing stock to beneficiaries in terms of approved National, Provincial and COJ policies
- (b) the granting of the right to use, as well as transfer, COJ property to social housing institutions (including JOSHCO) in terms of policies approved by COJ;
- (c) the transfer of COJ land in terms of mixed income housing projects in view of the cross subsidisation that may occur in respect of the project in line with the implementation of the

- national program on 'Breaking New Ground', on condition that the housing project as such is approved by COJ;
- (d) the transfer or granting of use rights of COJ land in approved housing projects to **non-qualifying** households in terms of National, Provincial or Council approved policies.

Sanitary lanes

38. (1) Sanitary lanes have become obsolete.

(2) It has become necessary to transfer or dispose of or grant use rights in respect of sanitary lanes, inter alia, for the following reasons:

- (a) COJ assumes an administrative and financial burden to maintain the sanitary lanes;
- (b) the sanitary lanes have no meaningful use to the COJ, except in instances where servitudes are registered in favour of COJ against the land comprising the sanitary lane;
- (c) by transferring or granting use rights in respect of the sanitary lanes, the following will be achieved:
- (i) potential illegal occupations will be avoided;
 - (ii) illegal dumping will be curbed;
 - (iii) COJ's maintenance and management burden will be alleviated;
 - (iv) it will prevent potential criminal activities;
 - (v) if transferred, it will create a new income source for the COJ through the collection of rates and taxes;

(3) Procedures:

Prior to the transfer or disposal of a sanitary lane, the land will have to be surveyed and in appropriate instances, be subdivided.

(4) On conclusion of the procedure set out in **sub-paragraph 38(3)** above, COJ may a written offer to the occupiers or owners of properties adjacent to the sanitary lanes to transfer or grant use rights in respect of the sanitary lanes, or portions thereof, to such occupiers or owners.

(5) On acceptance of the offer by an occupier or owner, an appropriate agreement will be concluded between the COJ and the occupier or owner.

(6) The costs associated with the transfer or the use of a sanitary lane, including VAT and other relevant taxes, shall be considered and negotiated on a case-to-case basis

(7) COJ will therefore be entitled to deviate on the basis that no competitive bidding process will be followed and the sanitary lanes will be transferred or leased at less than the fair market value.

(8) The same procedures and principles will apply when an occupier or owner approaches COJ to take transfer of or use a sanitary lane.

COJ land adjacent to privately owned properties

39. (1) COJ shall identify land not required for the provision of minimum basic municipal services (not limited to residential land only). In properly identified instances, these properties could be transferred or leased to owners or occupiers of adjacent properties to, inter alia:

- (a) prevent the illegal occupation thereof;
- (b) to be able to raise rates and taxes in respect of currently unused land;
- (c) to alleviate a financial and maintenance burden.

(2) Suitably identified land falling within this category shall be transferred or leased through other mechanisms than the competitive bidding process, subject to the following terms and conditions:

- (a) suitably properties shall be identified as being of such shape and size that they are incapable of being independently developed, and can in effect only be utilized for the benefit of the adjacent owner or occupier; or
- (b) the properties shall be transferred or leased at fair market value, unless the public interest or the plight of the poor demands otherwise, to the owner or occupier of the adjacent properties, on condition that if there is more than one owner or occupier, the COJ land shall be subdivided and transferred or leased to the adjacent owners or occupiers in proportion to the size of such owner's or occupier's property;

(3) Procedure:

- (a) The land complying with the requirements set out in **sub-paragraph (2) above**, will, in appropriate circumstances, be surveyed.
- (b) On conclusion of the procedure set out in **paragraphs 39(2)(a) and (b) and 39(3)(a)** above, COJ may make a written offer to sell or lease the identified property to the owners or occupiers of the properties adjacent to the identified property.
- (c) The costs associated with the transfer or lease of the identified property, including VAT and other relevant taxes, shall be considered and negotiated on a case-to-case basis.
- (d) COJ will therefore be entitled to deviate on the basis that no competitive bidding process will be followed and that the identified property may be transferred or leased at less than its the fair market value.

Transfer or granting the right to use, control or manage available vacant land to community organizations

40. (1) Identified vacant land not required for any other purpose may be of use and benefit to community organizations.

(2) Community organizations often find the need to develop and maintain available vacant land to, inter alia:

- (a) improve the aesthetic value of adjacent properties;
- (b) to regulate and contain environmental hazards in respect of public open spaces;
- (c) to generally make public open spaces environmentally friendly.

(3) Community organizations often request COJ for rights to use, control or manage available vacant land, or to purchase such land.

Procedures:

(4) COJ shall be entitled to consider applications to purchase or to use, control or manage public open spaces without complying with the competitive bidding process, and the following procedures shall apply:

- (a) the applications (which should be properly motivated) shall be posted on the COJ and JPC notice boards for a period of 14 (fourteen) days;
- (b) objectors shall be required to raise objections within 21 (twenty one) days from the date of posting of the notice;
- (c) the Bid Evaluation Committee shall consider the applications and make recommendations to the Council, who shall also determine the minimum compensation (i.e. rental) to be paid for the right, on condition that if the proposed transfer complies with the general principles of public interest and

plight of the poor, there may be a deviation as far as market value is concerned;⁶⁴

Short term use agreements

41. (1) COJ is from time to time approached with requests to grant rights to use, manage or control land for a short term period, which for the purpose of this deviation will mean a period of less than 3 (three) calendar months, to commercial entities or private sector persons for commercial purposes, such as the making of movies or advertisements, or such other purposes as COJ may allow from time to time in its sole discretion.

(2) On condition that the commercial purpose would directly or indirectly promote the image of COJ, COJ shall be entitled to grant the right to use the COJ facility or land outside the competitive bidding process and without the obligation to charge the payment of any fee or rental or may charge a fee or rental at less than fair market value, on condition that the provisions of subparagraphs 33(2)(a) and (b) apply.

Transfer or lease of specific use facilities

42. (1) COJ is the owner of a number of specific use facilities and it is not always practical to transfer or dispose or develop specific use facilities within the confines of the competitive bidding system, and in such instances, COJ shall be entitled to embark on a proposal call bidding process, or a selective bidding process.

(2) COJ shall embark on a proposal call bidding process in circumstances where it wants to engage the private sector in obtaining proposals for the use and/or development of specific use facilities.

⁶⁴ Regulation 40(b) of the Asset Transfer Regulations

(3) In circumstances where the land has a specific economic use and purpose, as identified in COJ's integrated development plan, and there are a number of limited interested parties, COJ shall be entitled to embark on a selective bidding process by approaching specific parties to submit development proposals.

- (4) In both instances, namely:
- (i) the proposal call bidding process; and
 - (ii) the selective bidding process;

COJ shall be entitled to deviate from the competitive bidding process, on condition that the land shall ultimately be transferred or leased at its fair market value, unless the public interest demands otherwise.

- (5) Procedure:

- (a) The identified private sector parties will be approached to submit proposals for the development of the land.

Transfer or lease of land to investors or developers in accordance with unsolicited development proposals

43. (1) COJ, in order to stimulate international investment, employment opportunities and economic activity within its area of jurisdiction, shall be entitled to consider to deviate from the competitive bidding process by considering properly motivated unsolicited development proposals, provided that:

- (a) the principles contained in Chapter 2 of this Policy are properly considered and applied; and
- (b) the proposed development would be in the public interest and of an exceptional high value, on condition that "high value" (for the purpose of unsolicited development proposals) will be determined by COJ in its sole discretion; and

- (c) the proposal would result in the generation of new sustainable employment opportunities that are better or improve on the existing national and regional norms; and
- (d) it provides skills to a wider base of COJ residents; and
- (e) it ensures that a significant portion of the employment opportunities created, will promote Black Economic Empowerment and/or employment opportunities for black people; and
- (f) it translates into economic emancipation and empowerment of a significant number of people to be employed as part of the proposal; and
- (g) it contributes positively to the fixed investment figures of the COJ; and
- (h) it promotes the supply of capital goods to expand the economy within the area of jurisdiction of the COJ; and
- (i) it would result in increased economic impact on and spending in Johannesburg, including the projected expenditures such as purchase price, construction costs and annual operating costs, (temporary) construction and permanent on-site employment and increased COJ rates and taxes; and
- (j) the development team has the necessary qualifications, experience and development skills to complete the proposed project on time and within budget; and
- (k) the investor or developer has the financial means to complete the proposed project;
- (l) it promote integration into surrounding communities, such as pedestrian access, vehicular access and circulation, building mass, parking availability, land scaping and overall integration into the surrounding community; and

(m) the architectural design, urban design, environmental development techniques comply with applicable zoning, environmental and other and regulatory controls.

(2) Procedure:

(a) A proper deviations report shall be prepared and submitted to Council and if it is considered to transfer the capital asset at less than its fair market value, compensation shall be determined, taking into consideration the right to deviate as set out in paragraphs 33(2)(a) and (b) above.

(3) COJ is not obliged to consider unsolicited development proposals outside a normal bidding process and will do so only in exceptional circumstances. There will be no obligation to consider each and every unsolicited development proposal received and COJ shall only be entitled to deviate from the competitive bidding process in its sole discretion when it is in the public interest, or in consideration of the plight of the poor.

Outdoor advertising policy

44. (1) COJ shall be entitled to consider proposals regarding outdoor advertising (which includes cellular mast and antennas) without complying with the requirements of the competitive bidding process.

(2) This deviation is in the public interest and will stimulate the economy, promote Black Economic Empowerment and enhance competition by allowing new entrants into the market.

(3) The deviations policy in this regard will only apply if an applicant identifies a site which does not appear on the COJ lease register for public outdoor advertising, in which event the competitive bidding process will apply.

(4) COJ is not obliged to consider each and every proposal outside the normal bidding process and will do so only in exceptional circumstances.

(5) Procedure:

- (a) Proposals for land not previously identified for the purpose of outdoor advertising, which should be properly motivated, may be accepted and posted on the COJ and JPC notice boards for a period of 14 (fourteen) days.
- (b) Objectors shall be required to raise objections within 21 (twenty one) days from the date of the posting of the notice.
- (c) The rental shall be market related rates, except when the public interest or the plight of the poor demands otherwise.⁶⁵
- (d) The Bid Evaluation Committee shall consider the proposals and shall make recommendations to the Council, and should the principle of fair market value not be adhered to, the value shall be considered against the criteria of the public interest and the plight of the poor.

General

45. (1) For the sake of clarity, it is recorded that COJ's right to deviate shall not be limited to the matters referred to above, but that COJ shall be entitled to deviate on strength of other programs, policies and applicable legislation, on condition that such further deviation shall be tested against the principles recorded under **paragraph 33(2)(a) and (b)** above, namely the public interest and in consideration to the plight of the poor.

⁶⁵ See Regulation 40(c)(i)

CHAPTER 6

LOGISTICS, DISPOSAL, RISK AND PERFORMANCE MANAGEMENT

Logistics management

46. The accounting officer must establish and implement an effective system of logistics management to ensure compliance with the Policy.

Asset management of land

47. (1) The process of the transfer or disposal or lease of land and/or real rights should be fair, equitable, transparent and competitive, and should comply with the Act, the Regulations, the Asset Transfer Regulations, this Policy and other applicable legislation.

Risk management

48. (1) The City and JPC 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 minimize the risk of litigation by unsatisfied bidders. Bidders must clearly indicate that intellectual property paid for by the City and/or JPC and will remain the City or JPC's property and consent must be sought by the bidder prior to usage.

(4) A register of all intellectual property paid for by the City and/or JPC must be created by each internal department (to the City and JPC respectively) and provided to the City and/or JPC's respective legal services department quarterly to compile a consolidate register.

Performance management

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

CHAPTER 7 GENERAL MATTERS

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

50. (1) No award above R15 000 may be made in terms of this Policy to a person whose tax matters have not been declared by the South African Revenue Service to be in order.

(2) Before making a final award to any person or entity, the accounting officer must be in possession of a valid SARS certificate to the effect that the person or entity's tax affairs are in order.

Prohibition on awards to persons in the service of the state

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

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

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

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

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

Ethical standards

53. As far as ethical standards are concerned, the Code of Conduct will apply.

Inducements, rewards, gifts and favours to COJ and JPC officials and other role players

54. (1) No person who is a provider or prospective provider of goods or services, or a recipient or prospective recipient of goods disposed or to be disposed of may either directly or through a representative or intermediary promise, offer or grant –

- (a) any inducement or reward to the COJ and/or JPC for or in connection with the award of a contract; or
- (b) any reward, gift, favour or hospitality to –
 - (i) any official; or
 - (ii) any other role player involved in the implementation of this Policy.

(2) The accounting officer must promptly report any alleged contravention of **sub-paragraph (1)** to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

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

Sponsorships

55. (1) COJ and/or JPC may approve sponsorship promised, offered or granted by the bidder that has been awarded a contract by the COJ.

(2) Approval of such sponsorships may only be done through the relevant Adjudication Committee.

(3) Sponsorship must not be used by bidders to influence award of a bid. COJ and/or JPC will not consider any sponsorship offering from bidders whilst their bid is under evaluation or awardal. By the same token acceptance by COJ and/or JPC of a bidders sponsorship is no guarantee of future award.

Proudly SA Campaign

56. COJ and JPC support the Proudly SA Campaign to the extent that, all things being equal, preference is given to procuring local goods and services from:

- Firstly – suppliers and businesses within the municipality or district;
- Secondly – suppliers and businesses within the relevant province;
- Thirdly – suppliers and businesses within the Republic.

Handling proprietary information

57. (1) All information designed and prepared for COJ and/or JPC is deemed as proprietary. No such information may be disturbed, modified or customized for third parties without written permission.

(2) All bid information received shall be treated confidential.

(3) In appropriate instance, COJ and JPC may require security clearance and confidentiality agreements to be entered into with successful bidders.

Combating of abuse of supply chain management system

58. (1) The accounting officer must–

- (a) take all reasonable steps to prevent abuse of the supply chain management system;

- (b) investigate any allegations against an official or other role player of fraud, corruption, favoritism, unfair or irregular practices or failure to comply with this Policy, and when justified –
 - (i) take appropriate steps against such official or other role player; or
 - (ii) report any alleged criminal conduct to the South African Police Service;
- (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
- (d) reject any bid from a bidder–
 - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to COJ, or to any other municipality or municipal entity, are in arrears for more than three months; or
 - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with COJ and/or JPC or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
- (e) reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) cancel a contract awarded to a person if –
 - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
 - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) reject the bid of any bidder if that bidder or any of its directors –
 - (i) has abused the supply chain management system of COJ or has committed any improper conduct in relation to such system;

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

(2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of **sub-paragraphs (1)(b)(ii), (e) or (f) above**.

Objections and complaints

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

Resolution of disputes, objections, complaints and queries

60. (1) The accounting officer must appoint an independent and impartial person, not directly involved in the supply chain management processes –

- (a) to assist in the resolution of disputes between the COJ and other persons regarding –
 - (i) any decisions or actions taken in the implementation of the supply chain management system;
 - (ii) any matter arising from a contract awarded in the course of the supply chain management system; or
- (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

(2) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.

(3) The person appointed must –

- (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
- (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.

(4) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –

- (a) the dispute, objection, complaint or query is not resolved within 60 days; or
- (b) no response is forthcoming within 60 days.

(5) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.

(6) This paragraph must not be read as affecting a person's right to approach a court at any time.

Commencement

61. This Policy takes effect on the date on which it is approved by the Council.

SCHEDULE: COMMITTEES

COMMITTEE	FUNCTIONS	COMPOSITION*
<p>Bid specification Committee</p>	<p>Compiling specifications for:</p> <ul style="list-style-type: none"> - transfer and permanent disposal of non-exempted capital assets to organs of state and private sector parties; - transfer of exempted capital assets to organs of state - granting of rights to use, control or manage municipal capital assets through leasing, letting or hiring out arrangements; - bids dealing with real rights in land 	<p>A COJ official, duly authorized by the accounting officer in accordance with the provisions of Section 79 of the Act. JPC officials from the following departments to act as advisors:</p> <ul style="list-style-type: none"> - Legal Department - Finance Department - Procurement Department; and - a Manager of the Department concerned
<p>Bid Evaluation Committee</p>	<p>Evaluation of bids, compilation of reports & the making of recommendations for any of the aspects set out in the Policy</p>	<p>Two officials from COJ, duly authorized by the accounting officer in accordance with the provisions of Section 79 of the Act, on condition that one official shall be from the Department concerned and one official shall be a Supply Chain Practitioner. JPC officials from the following departments to act as advisors:</p> <ul style="list-style-type: none"> - Legal Department - Finance Department - Procurement Department; and - a Manager of the Department concerned.

Adjudication Committee	<ul style="list-style-type: none"> i. Transfer of land not exceeding R2 million (VAT included) ii. For the right to use, control or manage land for a period of 3 years or less and a value of less than R2 million (VAT included) 	Four members of senior management of COJ, duly authorized by the account officer in accordance with the provisions of Section 79 of the Act.
Central Adjudication Committee	<ul style="list-style-type: none"> i. Transfer of land not exceeding R2 million (VAT included), but not exceeding R10 million (VAT included). ii. For the right to use, control and manage land for a period under 3 years and a value of less than R2 million (VAT included), but not exceeding R10 million (VAT included) 	Four members of senior management of COJ, duly authorized by the account officer in accordance with the provisions of Section 79 of the Act.
Executive Adjudication Committee (EAC)	<ul style="list-style-type: none"> i. To make recommendations to the accounting officer to transfer land exceeding R10 million (VAT included).** ii. To make recommendations to the accounting officer for the right to use, control or manage land for a period of more than 3 years and a value in excess of R10 million (VAT included).** 	Four members of senior management of COJ, duly authorized by the account officer in accordance with the provisions of Section 79 of the Act, to make <u>recommendations</u> to the accounting officer.

* All committee members must be present to form a quorum.

** In accordance with Regulation 5(2)(a), the power to make a final award above R10 million (VAT included) may not be sub-delegated by the accounting officer.