

MODIMOLLE MOOKGOPONG MUNICIPALITY



APPOINTMENT AND USE OF CONSULTANTS POLICY

2024/25 FINANCIAL YEAR

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1. BACKGROUND

- The Supply Chain Management Policy of Council and the Municipal Supply Chain Management Regulations, promulgated in the Government Gazette number 27636 on the 30th May 2005, regulate the appointment of Consultants. Consultants may be procured taking into consideration the Treasury guidelines when such appointments are made. (Section 35 of the Municipal Supply Chain Management Regulations)
- To align the South African public Sector procurement system with international best practices, the following procedures should be followed for selecting, contracting and monitoring consultants required for projects

2. INTRODUCTION

- 2.1 The purpose of this section is to explain the procedures for selecting, contracting, and monitoring consultants required for projects. Only the peculiarities of appointing and use of consultants are dealt with herein, as the services to which these procedures apply are of an intellectual and advisory nature.
- 2.2 These procedures do not apply to general services such as construction works, manufacture of goods, operation and maintenance of facilities or plants, surveys, catering, cleaning and security in which the physical aspects of activity predominate.
- 2.3 The appointment of Transaction Advisors as defined in Government Gazette number 27431 of 01 April 2005 – Municipal Public-Private Partnerships Regulations, who are to be appointed by institutions to render advice in relation to Public-Private Partnerships, should be performed in terms of the practise note issued by the National Treasury specifically for that purpose.
- 2.4 For the purpose of this policy, the term consultant includes, among others, consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organizations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations (NGOs) and individuals.
- 2.5 Accounting officers may use these organizations as consultants to assist in a wide range of activities such as policy advice, accounting officer's reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and identification, preparation and implementation of projects to complement the accounting officers' capabilities in these areas.
- 2.6 Consultants should only be engaged when the necessary skills and/or resources to perform a project/duty/study are not available and the accounting officer cannot be reasonably expected either to train or to recruit people in the time available.

3. DEFINITIONS

For the purposes of this policy the following definitions apply:

- **Accounting Officer:** The Municipal Manager or his delegate.
- **Budget:** The appropriated funds in terms of section 15 of the MFMA.
- **Chief Financial Officer:** A person designated in terms of section 80 (2)(a) of the MFMA.

- **Consultant:** An external person or organization that provides a service to the municipality in those areas, where the municipality either lacks the required specialized skills or capacity.
- **Lack of capacity:** Insufficient physical resources within the Municipality, Relevant knowledge, expertise and - experience that may not exist within the Municipality.
- **MFMA:** Municipal Finance Management Act no 56 of 2000
- **Municipality:** Modimolle Mookgophong Local Municipality-

4. OBJECTIVE

- 4.1 To give a framework on the appointment and use of consultants and
- 4.2 To ensure that consultants are paid/remunerated within a regulated environment that is fair and equitable, thereby maximizing the value added to the municipality.

5. SCOPE AND PURPOSE OF POLICY

- 5.1 This policy document seeks to direct municipal officials on the appointment and use of consultants to ensure a uniform procedure as prescribed by legislation.

6. LEGISLATIVE FRAMEWORK

- 6.1 The municipality's operations are governed by an array of different acts and this policy should be understood within that context.
- 6.2 The following Acts and prescripts are central in defining the municipality's boundaries and areas of influence:
 - Local Government: Municipal Structures Act, 1998 (Act of 117 of 1998)
 - Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)
 - Local Government: Municipal Finance Management Act, 2003 (Act 53 of 2003)
 - Supply Chain Management Regulations – GG 27636 – 30 May 2005
 - Preferential Procurement Policy Framework Act and Regulations
 - Treasury Regulations
 - National Treasury MFMA Circulars
 - MFMA Circular 96 : Implementation of SCM Regulation 32 (2019)
 - National Treasury guidelines and prescripts

7. TRAINING OR TRANSFER OF KNOWLEDGE AND SKILLS

- 7.1 If the assignment includes an important component for training or transfer of knowledge and skills, the terms of reference should indicate the objectives, nature, scope and goals of the training program, including details of trainers and trainees, skills to be transferred, time frames and monitoring and evaluation arrangements. The cost for training program should be included in the consultant's contract and the budget for the assignment.

8. APPOINTMENT ARRANGEMENTS

- 8.1 The Municipality will undertake all engagements of consultants in accordance with the SCM Regulations and the municipality's SCM Policy.
- 8.2 All appointments of consultants in the municipality shall be in writing, recommended by the Municipal Bid Adjudication Committee and approved by the Accounting Officer.
- 8.3 Managers may recommend the appointment of consultants to render specific services, should they be of the opinion that the Municipality lacks the required skills or necessary capacity and those funds are available within their existing budgets.
- 8.4 The relevant Manager will be responsible to prepare the "Terms of Reference" for submission to the Municipal Specification Committee to recommend to the Accounting Officer for the advertisement to request proposals. The relevant Manager should also ensure that an exact "specification" of the work to be accomplished (proposed outcome) accompanies the tender and is used as a monitoring tool, is appropriately recorded and monitored.
- 8.5 The municipality will only contract with consultants after a gap analysis report has confirmed that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required. This Gap Analysis Report (Attached as Annexure A) is to be used when procuring Consultancy Services through the Supply Chain Management Process. The report should be submitted together with the "Formal Request for Purchases" form to the Supply Chain Management Unit, prior to commencement of the supply chain process.

9. PRIMARY REASONS FOR APPOINTMENT OF CONSULTANTS

- 9.1 Consultants are engaged principally for the following reasons:
 - 9.1.1 To provide specialized services for limited periods without any obligation of permanent employment;
 - 9.1.2 To benefit from superior knowledge, transfer of skills and upgrading of a knowledge base while executing an assignment;
 - 9.1.3 To provide independent advice on the most suitable approaches, methodologies and solutions of projects.

The procedures outlined herein apply to all contracts for consulting services in procuring consulting services; the accounting officer should satisfy himself/herself that:

- a) The procedures to be used will result in the selection of consultants who have the necessary professional qualifications;
- b) The selected consultants will carry out the assignment in accordance with the agreed schedule; and
- c) The scope of the services is consistent with the needs of the project.

10. MINIMUM REQUIREMENTS WHEN APPOINTING CONSULTANTS

- 10.1 When appointing consultants, it is necessary to strive to satisfy the following minimum requirements:
 - a) Meeting the highest standards of quality and efficiency;
 - b) Obtaining advice that is unbiased that is, being delivered by a consultant acting independently from an affiliation, economic or otherwise, which may cause conflict between the consultant's interests and those of government;

- c) Ensuring that the advice proposed or assignments executed, are meeting the ethical principles of the consultancy profession's.

10.2 The four major considerations guiding the Accounting Officer on the selection includes:

- a) The need for high-quality services;
- b) The need for economy efficiency;
- c) The need to give qualified consultants an opportunity to compete in providing the services; and
- d) The importance of transparency in the selection process.

11. CONFLICT OF INTEREST

11.1 Consultants are requested to provide professional, objective and impartial advice and that all times holds the client's interest paramount, without consideration for future work and strictly avoids conflicts with other assignments or their own corporate interests.

11.2 Consultants should not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the municipality. Without limitation on the generality of this rule,

11.3 Consultants should not be hired under the following circumstances

- a) A firm, which has been engaged by the accounting officer to provide goods or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project. Similar, a firm hired to provide consulting services for the preparation or implementation of a project and any Otis affiliates should be disqualified from subsequently providing goods or works or services related to the initial assignment.
- b) Consultant or any of their affiliates should not be hired for any assignment which, by its nature, my conflict with another assignment of the consultants. Example, consultants hired to prepare an engineering design for an infrastructure project should not be engaged to prepare an independent environmental assessment for the same projects. Neither assisting a client in the privatization of public assets should neither purchase nor advice purchasers of such assets.

12. SELECTION METHOD(S) FOR THE APPOINTMENT OF CONSULTANTS

12.1 The following are methods most generally used for the appointment of consultants:

- a) Quality and cost-based selection
- b) Quality based selection
- c) Selection under a fixed budget
- d) Least cost selection
- e) Single source selection

12.2 The diagram below assist users of consultants to choose the appropriate method of selection:

Characteristics of Assignment	Method to be selected
An assignment that is not complex or specialised.	Use Quality and Cost Based Selection
A complex or high specialised assignment for which consultants are expected to demonstrate innovation in their proposals (e.g. financial sector reforms).	Use Quality Based Selection
An assignment that has a high downstream impact and requires the best available experts (e.g. management studies of large government agencies).	Use Quality Based Selection
An assignment that could be carried out in substantially different ways, hence proposals will not be comparable (e.g. sector and policy studies in which the value of the services depends on the quality of the analysis).	Use Quality Based Selection
A simple assignment, which is precisely defined and the budget fixed.	Use selection under a fixed budget, but evaluate technical proposals first as in Quality Based Selection
A standard or routine assignment (e.g. an audit, engineering design of non-complex works)	Use Least-Cost Selection
A very small assignment which does not justify the preparation and evaluation of competitive proposals	Selection based on consultants' qualifications, can be obtained from the list of panel.
An assignment where only one firm is qualified or has experience of exceptional worth for the assignment	Use Single Source Selection
A task that represents a natural continuation of previous work carried out by the firm.	Use Single Source Selection
Any other situation	Use Quality and Cost Based Selection, either by requesting a BID or PROPOSAL.

13. EMPLOYMENT CONTRACT OR AGREEMENT

13.1 All appointments shall be by means of a written contract or agreement, between the Municipality and the consultant concerned;

13.2 The Accounting Officer shall sign as the duly appointed representative of the Municipality;

13.3 The Accounting Officer may approve the extension of employment contracts or agreements provided that:

- a) Sufficient funds are available;
- b) The extension is required as a result of additional operational requirements;
- c) The original terms of reference have not been deviated from;
- d) Delivery has been satisfactory and in accordance with the terms of reference; and
- e) There must be skills transfer.

13.4 The Accounting Officer should ensure that contracts for consultants include retention and penalty clauses for poor performance and in this regard against the above specification, the accounting officer must invoke such clauses, where deemed necessary.

13.5 The Accounting officer must appoint consultants on a time and cost basis with specific start and end dates. These dates must be clearly stated in the contract or agreement.

14. TERMS AND CONDITIONS

14.1 Written contracts or agreements shall, as a minimum, contain the following:

- a) Defined deliverables and quantifiable minimum service levels;
- b) The mechanisms allowing for the frequent monitoring of progress in terms of the agreed objectives;
- c) The period of employment;
- d) The terms and conditions in terms of a specific regulation, code or collective agreement or tender;
- e) The notice period required by either side to terminate the contract;
- f) The rates agreed upon;
- g) The frequency of payment;
- h) The method of payment; and
- i) Dispute resolution mechanisms, inclusive of steps to be taken if service delivery is not satisfactory

14.2 Preparation of the Terms of Reference (TOR)

- a) The scope of the services described should be compatible with the available budget.
- b) The TOR should define clearly the task directive (methodology), objectives, goals and scope of the assignment and provide background information, including a list of existing relevant studies and basic data, to facilitate the consultants' preparation of their bids.
- c) Time frames linked to various tasks should be specified, as well as the frequency of monitoring actions.
- d) The respective responsibilities of the accounting officer and the consultant should be clearly defined.
- e) The evaluation criteria, their respective weights, the minimum qualifying score for functionality and the values that will be applied for evaluation should be clearly indicated.
- f) The evaluation criteria should include at least the following:
 - Consultant's experience relevant to assignment;
 - The quality of the methodology;
 - The qualifications of key personnel; and
 - The transfer of knowledge (where applicable).
- g) In more complicated projects, provision may also be made for pre-bid briefing sessions or presentations by bidders as part of the evaluation process.
- h) Preference point system in terms of the PPPFA and its associated Regulations will be applicable.
- i) If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, etc. To enable consultants to estimate the required resources. The TOR should list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, maps, surveys, etc.), where applicable.
- j) Evaluation criteria could be divided into sub criteria. Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked.
- k) The TOR should specify the validity period (Normally 60 – 90 days and in some cases 120 days).
- l) The TOR should form part of the standard bid documentation to be approved by the Bid Specification committee.

14.3 Quality-Based Selection (QBS)

14.3.1 QBS is appropriate for the following types of assignments:

- a) Complex or highly specialized assignments for which it is difficult to define precise TOR's and the required input from the consultants and for which the client expects the consultants to demonstrate innovation in their proposals,
- b) Assignments that have a high downstream impact and in which the objective is to have the best experts, and
- c) Assignments that can be carried out in substantially different ways, such that proposals will not be comparable.

14.3.2 In QBS, it may be necessary to request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate Envelopes (two-envelope system).

14.3.3 The RFP should not disclose the estimated budget, but it may provide the estimated number of key staff time, specifying that this information is given as an indication only and that consultants are free to propose their own Estimates. If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, and request the consultant with the highest ranked technical proposal to submit a detailed financial proposal.

14.3.4 The accounting officer and the consultant should then negotiate the financial proposal and the Contract. All other aspects of the selection process should be identical to those of QCBS. If, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards should be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

14.4 Selection under a fixed budget

14.4.1 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFB should indicate the available budget and request the consultants to provide their best Technical and financial proposals in separate envelopes, within the Budget.

14.4.2 The TOR should be particularly well prepared to ensure that the budget is sufficient for the expected tasks. Evaluation of all technical proposals should be carried out first as in the QCBS method, where after the price envelopes should be opened in Public. Proposals that exceed the Indicated budget should be rejected. The consultant who has submitted the highest ranked technical proposal should be selected and invited to negotiate a contract.

14.5 Least-cost selection

14.5.1 This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of non-complex works, and so forth) where well-established practices and standards exist and in which the contract amount is small.

14.5.2 Under this method, a minimum qualifying mark for the functionality is established. Proposals to be submitted in two envelopes are invited. Technical envelopes are opened first and evaluated.

- 14.5.3 Those securing less than the minimum mark should be rejected and the financial envelopes of the rest are opened in public. The firm with the highest points should then be selected.
- 14.5.4 Under this method, the qualifying minimum mark should be established, keeping in view that all proposals above the minimum compete only on price and profile as set out in the PPPFA.
- 14.5.5 The minimum mark to qualify should be stated in the RFB.

14.6 Selection based on consultant's qualifications

- 14.6.1 This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified. In such cases, the accounting officer should prepare the TOR, request expressions of interest and information on the consultants' experience and competence relevant to the assignment and select the firm with the most appropriate qualifications and references.
- 14.6.2 The selected firm should be requested to submit a combined technical-financial proposal and then be invited to negotiate the contract.

14.7 Single-source selection

- 14.7.1 Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection and could encourage unacceptable practices. Therefore, single-source selection should be used only in exceptional cases. The justification for single-source selection should be examined in the context of the overall interests of the client and the project.
- 14.7.2 Single-source selection may be appropriate only if it presents a clear advantage over competition:
 - a) For tasks that represent a natural continuation of previous work carried out by the firm;
 - b) Where a rapid selection is essential (for example, in an emergency operation);
 - c) For very small assignments; or
 - d) When only one firm is qualified or has experience of exceptional worth for the assignment.
- 14.7.3 The reasons for a single-source selection should be recorded and approved by the accounting officer prior to the conclusion of a contract.
- 14.7.4 When continuity for downstream work is essential, the initial RFP should outline this prospect and if practical, the factors used for the selection of the consultant should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, the initially selected consultant should be asked to prepare technical and financial proposals on the basis of TOR which should then be negotiated.
- 14.7.5 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or if the downstream assignment is substantially larger in value, a competitive process acceptable to the accounting officer should normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest.

14.7.6 Where, in exceptional instances, it is impractical to appoint the required consultants through a competitive bidding process and a South African based consultant is used, the Guidelines on Hourly Fee Rates for Consultants issued by the Department of Public Service and Administration should be used as a benchmark to establish the appropriate tariffs, or to determine the reasonableness of the tariffs.

14.8 Selection of individual consultants

14.8.1 Individual consultants may normally be employed on assignments for which:

- a) Teams of personnel are not required;
- b) No additional outside (home office) professional support is required; and
- c) The experience and qualifications of the individual is the paramount requirement.
- d) When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

14.8.2 Individual consultants should be selected on the basis of their qualifications for the assignment. They may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the accounting officer / authority.

14.8.3 Individuals employed by the accounting officer / authority should meet all relevant qualifications and should be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience and as appropriate, knowledge of the local conditions, such as local language, culture, administrative system and government organization.

14.8.4 From time to time, permanent staff or associates of a consulting firm may be available as individual consultants. In such cases, the conflict of interest provisions described in these guidelines should apply to the parent firm.

14.9 Selection of particular types of consultants

14.9.1 USE OF NON-GOVERNMENTAL ORGANIZATIONS CONSULTANTS (NGOS)

- NGOs are voluntary non-profit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches.
- NGO's may be included in the short list if they express interest and provided that the accounting officer is satisfied with their qualifications. For assignments that emphasize participation and considerable local knowledge, the short list may be entirely NGO's. If so, the procedure should be followed and the evaluation criteria should reflect the unique qualifications of NGOs, such as voluntarism, non-profit status, local knowledge, scale of operation, and reputation. An accounting officer may select the NGO on a singlesource basis, provided the criteria outlined for single source selection are fulfilled.

14.9.2 INSPECTION AGENTS

- Accounting officers / authorities may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the country. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price.

Inspection agencies should be registered with the South African National Accreditation System (SANAS) and the services of these inspection agents should be obtained by means of competitive bidding.

14.9.3 BANKS

- Investment and commercial banks, financial firms, and fund managers hired by accounting officer ties for the sale of assets, issuance of financial instruments and other corporate financial transactions, notably in the context of privatization operations, should be selected under QCBS.
- The RFP should specify selection criteria relevant to the activity — for example, experience in similar assignments or network of potential purchasers and the cost of the services. In addition to the conventional remuneration (called a retainer fee), the compensation includes a success fee.
- This fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP should indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee should be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores should be based on the success fee as a percentage of a pre-disclosed notional value of the assets.
- For the combined evaluation (notably for large contracts), cost may be accorded a weight higher or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP should specify clearly how proposals will be presented and how they will be compared.

14.9.4 AUDITORS

- Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They should be selected according to QCBS. When consultants are appointed to execute an audit function on behalf of the accounting officer / authority, the tariffs agreed by the Auditor-General and the South African Institute for Chartered Accountants (SAICA) may be used as a guideline to determine the appropriate tariff or to determine the reasonableness of the tariffs. These tariffs can be obtained from SAICA's website under www.saica.co.za. The tariffs are captured in a circular issued by SAICA.

15. PERFORMANCE MANAGEMENT

- 15.1 The performance of the consultant under the agreement must be monitored by the end user department on monthly basis.
- 15.2 The end user must complete the performance evaluation of the consultant in the prescribed format and submit the completed form to the Supply Chain Management (SCM) Unit for monitoring and recordkeeping purposes.
- 15.3 Any instances of non-performance must be duly reported, and a record of non-performing consultants should be kept by the SCM Unit.
- 15.4 If possible, quarterly meetings (but at least twice a year) on the Performance of all consultants should be held where the monthly reporting are discussed and progress evaluated. This Performance of the Consultants Committee should be appointed by the Accounting Officer/Municipal Manager and must have at least one SCM person and one person from the Department to which the Consultant are delivering the service to.

15.5 The performance measuring of Consultants have been brought into the Performance Management Framework and described how it will be done on a more uniform way. The evaluation must be done by the project manager and send to the Administration Unit to consolidate quarterly reports and send to the CFO with recommendations.

15.6 If necessary the Performance Measuring Committee for the Consultants will meet twice a year.

16. REMUNERATION OF CONSULTANTS

16.1 Consultants, including construction and infrastructure related services, must only be remunerated at the rates equal to or below those:

- a) Determined in the “Guidelines on fees for audits done on behalf of the Auditor-General South Africa”, issued by the South African Institute of Chartered Accountants (SAICA);
- b) Set out in the “Guide on Hourly Fee Rates for Consultants”, by the Department of Public Service and Administration (DPSA); or
- c) As per ECSA Guideline for professional Engineers
- d) Prescribed by the professional body regulating the profession of the consultant, which that consultant belongs to;
- e) At a rate determined fair or equitable by the Accounting Officer and agreed upon by both parties.
- f) Travelling and subsistence costs for the appointment of consultants must be in accordance with the travelling and subsistence policy of the municipality (If no policy in place – it should be in accordance with the Regulations and Circulars for Cost Containment) and the contract price should specify all travelling and subsistence costs.

17. MANAGEMENT REPORTING

Annual Reporting:

17.1 Payments paid to consultants during the financial year shall be disclosed as per note in the Annual Financial Statements and the Annual report.

18. CONSULTANCY REDUCTION PLAN

18.1 The directorate shall consider the appointment of consultants only when the necessary skills and/or resources to perform a project/duty/study are not available and the department cannot be reasonably expected either to train or recruit people in the time available.

18.2 If the assignment includes an important component for training or transfer of knowledge and skills, that must form part of the Terms of Reference and should indicate the objectives, nature, scope and goals of the training programme, including details of trainers and trainees, skills to be transferred, time frames and monitoring and evaluation arrangements. The cost for the training programme shall be included in the consultant’s contract and in the budget for the assignment.