KOUGA local municipality
Good Governance through Service Excellence

Cape St Francis
Hankey
Humansdorp
Jeffreys Bay
Loerie
Oyster Bay
Patensie
St Francis Bay
Thornhill

Postal: PO Box 21, Jeffreys Bay, 6330
Tel: 042 200 2200 / 042 200 8300
Fax: 042 200 8606
Email: registry@kouga.gov.za
Website: www.kouga.gov.za

Council of the Kouga Municipality has in terms of section 156(2) of the Constitution of the Republic of South Africa read in conjunction with section 11 of the Local Government: Municipal Systems Act No. 32 of 2000, approved the following Policy.

POLICY NAME / DESCRIPTION

Policy Title:	**MUNICIPAL RESTRICTION (BLACKLISTING) OF SUPPLIERS POLICY**
File plan reference number:	SCM 25-26- Pol 2
Previous Council approval date	N/A- new
Directorate:	Finance and Economic Development
Section:	Supply Chain Management
Responsible Official:	Manager: Supply Chain Management
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DEFINITIONS

''Award'' shall mean the acceptance of a bid or proposal.

''**Blacklisting/restricting''** shall mean the act of disqualifying a person or an entity from participating in the procurement process of Kouga Local Municipality Municipality.

"Collusion" means any agreement, arrangement, understanding, or coordinated conduct, whether formal or informal, between two or more parties, including suppliers, officials, or third parties, which is intended to improperly influence procurement outcomes, pricing, competition, or decision-making processes, or to deceive or prejudice the Municipality.

''Contract period'' shall mean the duration of the contract as set out in the contract.

'' Council'' shall mean the Council of Kouga Local Municipality.

'' Day'' unless expressly otherwise provided for in this policy shall mean calendar day.

''Delisting'' shall mean removal of a person/entity, after the period of blacklisting expires.

"Fraud" means any unlawful, intentional act or omission, including a misrepresentation by words, conduct, or non-disclosure, made by a supplier, service provider, or any associated person, which causes or has the potential to cause prejudice, loss, or risk of loss to the Municipality, whether financial or otherwise.

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''**Fronting**' shall mean the deliberate circumvention or attempted circumvention of the Broad Based Black Economic Empowerment Act and the Codes of Good Practice.

'Irregular practice'' shall include, but not be limited to:
(i) fronting,
(ii) misrepresentation on eligibility documents or application forms or any other returnable document which contains information which will have a material bearing on the award,
(iii) attempt to bribe/bribing an official by monetary or non-monetary inducements or attempt to influence an official directly or indirectly involved with the procurement process, in order to:
- obtain a tender
- retain a tender
- withdraw from a tender
(iv) deliberately omitting information, or misrepresenting information which would have a bearing on the award of a tender,
(v) committing of fraud or extortion in relation to the bidding process,
(vi) obtaining information on the contents of other bids in the same tender which one would not ordinarily be entitled to in terms of the Promotion of Access to Information Act (PAIA) No. 2 of 2000 or as amended, which information is in the possession and under the control of the municipality,
(vii) collusive tendering,
(viii) restrictive horizontal and vertical practices as defined by the Competition Act,
(ix) committing an exclusionary act as defined by the Competition Act; and
(x) any other activity which is not specifically set out in this definition but constitutes an unlawful or unfair/improper business practice.

''**Municipality**'' shall mean Kouga Local Municipality

''**Municipal Restriction Authority''** shall mean the person/s or committee/s that have, delegated authority to blacklist or restrict a tenderer/supplier/contractor.

''Non-performance '' shall mean default on a contract in the public/ government sector by wilfully or negligently:

(i) failing to perform at all,
(ii) failing to complete work timeously without good reason,
(iii) delivering defective performance, i.e. poor workmanship, or substandard materials,
(iv) being in breach of a material term of the contract,
(v) failing to achieve a specified participation goal as set out in the tender documents; and
(vi) despite being given written notice to remedy non-performance.

"' Restriction/blacklisting period'' shall mean the period for which the tenderer is barred from participating in the procuring processes.

"Risk" means the reasonably foreseeable possibility that the conduct, omission, or continued engagement of a supplier may expose the Municipality to financial loss, legal liability, reputational harm, service delivery failure, or non-compliance with applicable legislation.

1. PURPOSE

The purpose of this Policy is to enhance the integrity, accountability, and effectiveness of the Municipality's Supply Chain Management system by providing a clear framework for the **restriction of suppliers from doing business with the Municipality**, including restriction **outside of the National Treasury restriction process**, while ensuring fairness, proportionality, and compliance with applicable legislation.

2. OBJECTIVES

2.1 To prevent the municipality from doing business with persons, business, organizations or entities who abuse the supply chain management system by committing a corrupt, fraudulent, unfair or irregular practice/s.

2.2 To prevent the municipality from doing business with individual persons, business, organizations or entities who default on any contract, performance wilfully or negligently.

2.3 To develop a uniform criteria and a fair process for barring such persons, tenderers and business entities who engaged in 2.1 and/or 2.2 above.

2.4 To prevent persons who are blacklisted from re-entering the procurement arena by setting up new business entities and by using existing business entities to tender for public sphere work, during the blacklisting period.

3. LEGAL FRAMEWORK

This policy is adopted in accordance with:

- Section 217 of the Constitution of the Republic of South Africa, 1996;
- Sections 112 and 116 of the Municipal Finance Management Act, 56 of 2003;
- The Municipal Supply Chain Management Regulations;
- Applicable National Treasury Instructions, and
- The Promotion of Administrative Justice Act, 3 of 2000.

4. RESTRICTION OF SUPPLIERS

4.1 Authority to Restrict Suppliers

4.1.1 The Municipality may, **independently of the National Treasury restriction process**, restrict a supplier, contractor, service provider or any associated person from doing business with the Municipality where such conduct undermines the integrity, fairness, transparency or effectiveness of the supply chain management system.

4.1.2 This municipal restriction process shall function as an **internal control and risk-management mechanism** and shall not replace or contradict the National Treasury restriction process.

4.1.3 The Accounting Officer shall be the final authority for approving any restriction imposed in terms of this policy.

4.2 Grounds for Restriction

A supplier must be restricted from doing business with the Municipality if the supplier has:

a) Failed to perform satisfactorily in terms of a municipal contract, including persistent poor performance after written warnings;

b) Breached any material term or condition of a contract with the Municipality;

c) Submitted **fraudulent, false or misleading information**, including but not limited to:

- Fraudulent or falsified B-BBEE certificates or affidavits;
- Misrepresentation of experience, capacity, qualification, financial standing or subcontracting arrangements;

d) Engaged in fraud, corruption, collusion, bribery or unethical conduct;

e) Attempted to improperly influence municipal officials, councillors or SCM role-players;

f) Failed to comply with applicable legislation where such non-compliance materially affects performance;

g) Been convicted of an offence involving dishonesty, fraud, corruption or financial misconduct.

h) If found that the appointment of the bidder/vendor/service provider caused or poses a reputational risk to the Municipality in line with the provisions of the Kouga Municipality Supply Chain Management Policy.

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i) is listed on the National Treasury or any other Governmental Restriction or blacklisting list.

4.3 Restriction Periods and Sanctions

4.3.1 Restriction periods shall be **proportionate to the severity, intent and impact** of the offence.

4.3.2 Without limiting the Municipality's discretion, the following guideline sanctions apply:

a) **Fraudulent B-BBEE Submissions or other Documentation**

- Restriction for **up to five (5) years** from doing business with the Municipality;
- Mandatory reporting to National Treasury for possible national restriction;
- Possible termination of existing contracts, subject to legal advice.

b) **Fraud, Corruption, Collusion or Bribery**

- Restriction for **up to five (5) years**;
- Reporting to National Treasury and law-enforcement agencies.

c) **Poor Performance or Contractual Breach**

- Restriction for **one (1) year to five (5) years**, depending on severity and recurrence.

d) **Misrepresentation (excluding B-BBEE fraud) and Reputational Damage**

- Restriction for **one (1) to five (5) years**.

4.4 Establishment of a Municipal Supplier Restriction Committee

4.4.1 The Accounting Officer shall establish a **Municipal Supplier Restriction Committee**.

4.4.2 The Committee shall comprise of:

- A senior official appointed as Chairperson i.e. Deputy Municipal Manager or Director;
- Legal Services Manager;
- Risk or Internal Audit Manager;
- Any co-opted expert where necessary (non-voting).

4.5 Procedural Fairness

4.5.1 No supplier shall be restricted without being afforded procedural fairness, including:

- Written notice of allegations;
- Access to relevant information;
- A reasonable opportunity to make representations.

4.5.2 The Committee shall consider all evidence and representations before making a recommendation.

4.5.3 The decision, reasons and duration of restriction shall be communicated to the supplier in writing.

4.6 Consideration of Corrective Measures

4.6.1 A supplier may submit **corrective measures** for consideration prior to a final restriction decision.

4.6.2 Corrective measures may include, but are not limited to:

- Remedial action plans addressing poor performance;
- Replacement of responsible personnel;
- Strengthening of governance, ethics or compliance controls;
- Proof of statutory or tax compliance;
- Training on public sector procurement compliance.

4.6.3 Corrective measures **shall not negate restriction** where the offence involves:

- Fraudulent B-BBEE documentation;
- Fraud, corruption, collusion or bribery;
- Deliberate misrepresentation.

4.6.4 In such cases, corrective measures may only be considered in determining the **duration or conditions** of restriction.

4.7 Effect of Restriction

4.7.1 A restricted supplier:

- Shall be barred from quoting or tendering;
- Shall not be awarded any contract;
- Shall not participate as a subcontractor or joint venture partner during the restriction period.

4.7.2 The Municipality shall maintain an **internal register of restricted suppliers**.

4.7.3 The register of restricted suppliers shall be published on the municipal website.

4.8 Review of Restriction

4.8.1 A restricted supplier may apply in writing for review after **half of the restriction period** has elapsed.

4.8.2 The Accounting Officer's decision on review shall be final.

5. IMPLEMENTATION

5.1 This Policy shall take effect on the date of approval by Council.

5.2 All officials involved in supply chain management shall ensure strict implementation of this Policy.

6. POLICY REVIEW

The Policy must be reviewed every three (3) years or sooner if amended legislation requires a review of the Policy.