CITY OF CAPE TOWN
ISIXEKO SASEKAPA
STAD KAAPSTAD

# CONTRACT GUARANTEES POLICY

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**<u>Contact Details of Line Department</u>**



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|---|---|
| Manager Treasury | : Hilton Robbins |
| Tel | : 021 400 5211/083 625 4337 |
| Email | : Hilton.robbins@capetown.gov.za |

## TABLE OF CONTENTS

**Definitions and Abbreviations**

In this Policy, unless the context indicates otherwise –

**"*advance payment obligation*"** means a contract which makes provision for a payment to be made to a supplier prior to work being completed;

***"City"*** means the City of Cape Town, a municipality established by the City of Cape Town Establishment Notice No. 479 of 22 September 2000, issued in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or any structure or employee of the City acting in terms of delegated authority;

***"CFO"*** means the Chief Financial Officer of the City;

***"contractor"*** means the Tenderer whose tender has been accepted by the City and shall include the Tenderer's legal representative, heirs, successors and assignees;

**"*Council*"** means the Municipal Council of the City;

***"credit rating"*** means an estimate of the ability of a person or organization to fulfil their financial commitments as assessed by credit ratings agencies;

***"guarantee"*** means an undertaking to answer for the payment or performance of another person's debt or obligation in the event of a default by the person primarily responsible for it;

***"Tenderer"*** means a person or company making an application to the City to supply all or any of the goods and/or render all or any of the services described in a Tender and its associated documents;

***"underwriter"*** means a company liable for insured losses in return for a fee (premium)

## 1. Problem Statement

1.1 The City must protect itself against losses arising from potential non-performance of certain obligations or certain advance payment obligations not being fulfilled by contractors. This is achieved by obtaining financial guarantees on behalf of these contractors (as decided by the City's Supply Chain Management Policy). These guarantees are from financial institutions with appropriate credit ratings in accordance with this policy.

## 2. Desired Outcomes

2.1 This policy sets out the requirements for ensuring appropriate financial guarantees are put in place for contractors, where they are required and permitted, by the City.

2.2 The objective of this policy is to provide an agreed framework within which financial guarantees can be obtained from the institutions that have strong financial characteristics particularly with regard to meeting their financial commitments.

## 3. Regulatory context

3.1 The legislative framework governing financial guarantees is informed by the following legislation and policies:

(a) Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (MFMA);

(b) Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (MSA); and

(c) The City's Supply Chain Management Policy.

## 4. Strategic intent

4.1 Consistent with the IDP objective of the "well-run" City, the intention of the policy is to:

(a) Ensure a transparent and corruption-free government;

(b) Establish an efficient and productive administration that prioritises delivery; and

(c) Ensure financial prudence and unqualified audits by the Auditor-General.

## 5. Role players and stakeholders

5.1 The following role players fulfil a critical role in the implementation of this policy:

(a) Directors/Managers within the City who have to identify the need for the financial guarantees relevant to contracts which they are responsible for and complete the process to obtain these guarantees;

(b) Supply Chain Management who facilitates the procurement process for these contracts;

(c) City Treasury Department who maintains the list of approved financial institutions from whom guarantees can be accepted; and

(d) The CFO who reviews and signs off the list of institutions recognised as compliant with the requirements of this policy.

**6. Policy parameters**

6.1 This policy applies to certain contractors, as stipulated by the City's Supply Chain Management Policy, on behalf of who, financial guarantees are required to secure performance and/or advance payment obligations.

6.2 Prior to the City proceeding with the execution of the contract, the contractor is required to provide a financial guarantee from an institution recognised by the City.

6.3 All institutions from whom such guarantees are obtained must be in accordance with this policy <u>and</u> with any regulations promulgated by national government.

6.4 Should an institution wish to be listed, in accordance with this policy, to provide guarantees to the City, all of the following documents should be submitted to the City's Treasury Department:

(a) A letter from the institution on their letterhead requesting to be added to the City's approved list;

(b) A copy of their latest, audited financial statements; and

(c) A copy of their most recent credit rating report from the credit rating agencies referred to in 7.1 below.

**7. Policy directive details**

7.1 Financial institutions considered under this policy are only those with credit ratings from Moody's Investors Service, S&P Global Ratings or Global Credit Rating.

7.2 Contract guarantees may only be accepted from registered banks and insurance companies with one of the following ratings from the credit rating agencies indicated:

(a) **Banks**: a short term credit rating of A1- or above (Global Credit Rating), Prime - 1 (Moody's) and A - 1 (Standard and Poor's)

(b) **Insurers:** a claims paying ability of A- or above (Global Credit Ratings), A3 or above (Moody's) or A or above (Standard and Poor's)

7.3 Where determined in terms of the conditions of the contract with the supplier, a cash deposit equivalent to the amount of the guarantee may be accepted by the City in lieu of a guarantee. The deposit will be returned to the supplier in terms of their contract with the City.

7.4 Where underwriters have been contracted by the approved institutions to provide guarantees on their behalf, the guarantee may be accepted from said underwriter provided that authentication of the guarantee has been provided in writing by an authorised official representing an approved institution as identified in the list maintained by the City in accordance with this Policy.

7.5 The list of institutions approved in accordance with this policy is to be maintained on the Treasury Department's page on the City's website.

## 8. Implementation programme

8.1 The CFO is authorised to add or delete, temporarily or permanently, the name of a financial institution on the list of approved institutions, notwithstanding the absence or presence of an acceptable credit rating, if he or she is unsatisfied as to its creditworthiness in a particular circumstance.

8.2 The Treasury Department is responsible for ensuring that the list of approved institutions referred to in this policy is kept up to date.

8.3 Appeals for the inclusion or exclusion on the above mentioned list are to be motivated to the municipal manager in terms of section 62 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

8.4 The relevant Director/Manager dealing with the contractor is responsible for obtaining financial guarantees based on the institutions approved under this policy.

## 9. Monitoring, evaluation and review

9.1 The list of approved institutions will be monitored by the City's Treasury officials monthly and may be amended due to changing circumstances as a result of recent rating actions by agencies.

9.2 Any deviation from this policy is to be notified to Council with proposed remedial action.

9.3 A formal review of the policy will take place every five years or sooner if required by changes in any of the associated policy and legal framework.