

NORTH WEST DEPARTMENT OF  
EDUCATION & SPORT  
DEVELOPMENT - SUPPLY CHAIN  
MANAGEMENT POLICY



**2017**

NORTH WEST DEPARTMENT OF EDUCATION & SPORT DEVELOPMENT & SPORT DEVELOPMENT  
SUPPLY CHAIN MANAGEMENT POLICY

This policy was adopted by the DEPARTMENT OF EDUCATION & SPORT DEVELOPMENT & SPORT DEVELOPMENT on 1 march 2018 in terms of section 38(1) (a) (iii) and 76(4) (c) of the Public finance management Act, 1999 (Act No.1 of 1999as amended by Act of 1999)

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## DEFINITIONS AND ABBREVIATIONS

In this policy, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in any relevant Act and regulations has the same meaning and:

“Accountability”	The personal responsibility of a person to his/her senior or higher authority for any act or omission in the execution of his/her assigned duties (Accountability cannot be delegated)
“Accounting Authority”	Means the authority which is accountable in terms of section 38 of the PFMA in particular, read with section 38(2) of the PFMA.
“Acquisition Management”	Acquisition management is the process of procurement of goods and services and includes inter alia the following:  Identification of preferential policy objectives; Determination of market strategy; Application of depreciation rates; Application of total cost of ownership principle; Compilation of bid documentation, including conditions; Determination of evaluation criteria; Evaluation of bids and tabling of recommendations; Compilation and signing of contract documents; Contract administration
“All applicable taxes”	Includes value added tax, pay as you earn, income tax, unemployment, insurance fund contributions and skills development levies
“Asset”	This is a resource controlled by an entity as a result of past events and from which future economic benefits or service potential is expected to flow to the entity. It has the following characteristics:  It possesses service potential or future economic benefit that is expected to flow to the entity. It is controlled by the entity. It originates as a result of a past transaction or event.
Authority	Means the right or power attached to a rank or appointment permitting the holder thereof to make decisions, to take command or to demand action by others.
“B-BBEE”	Means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act
“B-BBEE Status Level Of Contributor”	The B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act.
“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.
“Chief Financial Officer”	The CFO has the general responsibility to assist the Accounting Authority in discharging the duties prescribed in Part 2 of Chapter 5 of the PFMA.
“Collusive Bidding/ Tendering”	Collusive bidding/tendering (or bid rigging) occurs when business, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and/ or services for purchasers who wish to acquire goods and /or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.
“Comparative price”	Means the price after the factors of non-firm price and all unconditional discounts that can be utilised have been taken into consideration.
“Concerted practice”	Means co-operative or co-ordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which DOE & SDs not amount to an agreement.
“Consortium or joint venture”	An association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract.
“Construction Industry Development Board (CIBD) Act”	Mean the Construction Industry Development Board Act, 38 of 2000 and includes the regulations pertaining thereto
“Consumable item”	Refers to items that are consumable or expendable and which are not depreciated.
“Damage”	Injury to an item impairing its usefulness.
“Demand Management”	Demand management is the planning process that ensures that the resources required to support the strategic objectives are delivered at the correct time, at the right price, location, quantity and quality that will satisfy the needs.
“Depreciation”	Depreciation refers to the reduction in the value of assets generally from wear and tear. The consumption of capital is recognised as a cost of production.
“Designated sector”	A sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content.
“Disposal management”	Disposal management is responsible to ensure that all unserviceable, redundant or obsolete assets are subjected to a formal process of doing away with movable assets in a cost-effective, but transparent and responsible manner. It also entails the maintenance of records and documents as prescribed.
“End-user”	The end-user is the person who utilises the items/services procured.
“Equipment”	Refers to non-consumable items that are issued for use or are in use and which are accounted for on an asset record or on personal accounts.
“Expendable”	Those items which lose its service value in use and cannot be repaired
“final award”	in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;
“Firm price”	Means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrable has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract.
“Functionality”	Means the measurement according to predetermined norms, as set out in the tender documents, of a service or commodity that is designed to be practical and useful, working or

	operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a tenderer.
“Imported content”	Means that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African port of entry.
“Integrated SCM”	The foundation of the integrated SCM concept is total cost analysis, which is defined, as minimising the total cost of SCM elements.
“in the services of the state means to be	<ol style="list-style-type: none"> <li>(1) 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)</li> <li>(2) a member of the accounting authority of any national or provincial public entity; or</li> <li>(3) an employee of Parliament or a provincial legislature</li> </ol>
“Inventories”	Including stock and stores (consumable stores, maintenance materials, spare parts, work in progress, education/training course materials, and client services). Properties/land held for sale. Strategic stocks (fuel supplies, precious stones and metals). Seized or forfeited property.
“Inventory management “(accountability of movable assets)	Ensures it shall be possible to determine accountability for all non-consumable items at all times. Records shall therefore be available to describe the full extent of the responsibility of officials for equipment belonging to the institution on personal account or on asset record for individual or general usage. Asset records and an asset register shall therefore be maintained for all non-consumable items.
“Irregular expenditure”	Irregular expenditure means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including <input type="checkbox"/> The PFMA. The State Tender Board Act, 1968 (Act No 86 of 1968), or any regulations made in terms of the Act
“Local content”	Means that portion of the bid price which is not included in the imported content, provided that local manufacture DOE & SDs take place.
“Logistics management”	Logistics management ensures that goods and services are available at the right place, time and quantities required to execute the functions of NW DOE & SD
“long term contract”	means a contract with a duration period exceeding one year
“Movable assets”	Movable assets are assets that can be moved (e.g. machinery, equipment, vehicles, etc). All inventories and valuables and most fixed assets belong to this category.
“Non-compliant contributor”	Means a person who DOE & SDs not meet the minimum score to qualify as a status level 8 B-BBEE Contributor, or a person who is not verified in terms of the required Sector Charter.
“Obsolete”	Stores no longer produced or used, out of date, to become obsolete by replacing it with something new.
“other applicable legislation”	Means any other legislation applicable to departmental supply chain management, including. <ol style="list-style-type: none"> <li>(a) the Preferential Procurement Policy Framework Act, 2000 (Act No.5 of 2000)</li> <li>(b) the Board-based Black Economic Empowerment Act, 2003 (Act No.53 of 2003) and</li> <li>(c) the Construction Industry Development Board Act, 2000 (Act No 38 of 2000);</li> </ol>
“Obsolete”	Stores no longer produced or used, out of date, to become

	obsolete by replacing it with something new.
“PFMA”	PFMA means the Public Finance Management Act, 1999 (Act No 1 of 1999) as amended. Treasury Regulations 6.1.2, 16, 16A, 24 to 28 and 30 to 33 issued in terms of the PFMA must be applied with the Act.
“Proponent”	Means any person, whether natural or juristic, that submits an unsolicited proposal to NW DOE & SD
“Public Private Partnership”	<p>A Public Private Partnership (PPP) means a commercial transaction between an institution and a private party in terms of which the private party:</p> <p>Performs an institutional function on behalf of the institution; and/or</p> <p>Acquires the use of state property for its own commercial purposes; and</p> <p>Assumes substantial financial, technical and operational risks in connection with the performance of the institutional function and/or use of state property; and</p> <p>Receives a benefit for performing the institutional function or from utilising the state property, either by way of:</p> <p>Consideration to be paid by the institution which derives from a revenue fund or, where the institution is a national government business enterprise or a provincial government business enterprise, from the revenues of such institution; or</p> <p>Charges or fees to be collected by the private party from users or customers of a service provided to them; or</p> <p>A combination of such consideration and such charges or fees.</p>
“Regulation”	means the National Treasury Supply Chain Management Regulations
“Sub-contract”	The primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.
“Supply Chain Management”	<p>SCM is an integral part of financial management. This function is the collaborative strategy that integrates the planning, procurement and provisioning processes in order to eliminate non-value adding cost infrastructure, time and activities, seeks to introduce international best practices, whilst at the same time addressing Government’s preferential procurement policy objectives and whilst serving the end-users and customers efficiently.</p> <p>Six phases are distinguished in the SCM processes, namely:</p> <p>Demand management.</p> <p>Acquisition management.</p> <p>Logistics management.</p> <p>Disposal management.</p> <p>Risk management.</p> <p>Performance management.</p>
“Tender” (bid)	Means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods through price quotations, advertised competitive tendering/ bidding processes or proposals
“Treasury guidelines”	means any guidelines on supply chain management issued by

	the Minister in terms of section 76 of the Act;
“the Act”	means the Public Finance Management Act, 1999 (Act No.1 of 1999 as amended by Act 29 of 1999);
“Tender”	A written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive tendering processes or proposals
“Total cost of ownership”	The sum of direct spend, related spend, process spend and opportunity cost associated within a specific commodity and service.
Transversal contract	A contract facilitated by National Treasury for goods/ services required by more than one client department, provided that the arrangement of such contract is both cost-effective and in national interest
“Trust”	The arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person
“Trustee”	Any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person
“Unserviceable”	The condition of an item that is no longer suitable for use and which cannot be economically repaired.
“Unsolicited proposal/concept”	Any proposal/concept received by DOE & SD NW outside the normal procurement process that is not an unsolicited bid (a submission that must be innovative, unique and provided by a sole supplier).
“Value for money”	Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered.

## ABBREVIATIONS:

AO	Accounting Officer
BAC	Bid Adjudication Committee
B-BBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
BEC	Bid Evaluation Committee
BSC	Bid Specification Committee
CFO	Chief Financial Officer
CIDB	Construction Industry Development Board
dti	Department of Trade and Industry
GCC	General Conditions of Contract
HDI	Historically Disadvantaged Individual
IPFA	Institute for Public Finance and Auditing
MTEF	Medium Term Expenditure Framework
NEPAD	New Partnership for Africa's development
NIPP	National Industrial Participation Programme
NSBC	National Small Business Council
PFMA	Public Finance Management Act
PPP	Public Private Partnership
PPPFA	Preferential Procurement Policy Framework Act
PSA	Public Service Act
RDP	Reconstruction and Development Programme
SAICA	South African Institute for Chartered Accounts
SAMDI	South African Management Development Institute
SANAS	South African National Accreditation System
SARS	South African Revenue Services
SBD	Standard Bidding Document

SCC	Special Conditions of Contract
SCM	Supply Chain Management
SCOPA	Standing Committee on Public Accounts
SITA	State Information Technology Agency

## CHAPTER 1: ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN MANAGEMENT POLICY

### 1 LEGISLATIVE ENVIRONMENT

- 1.1 The North West Province DEPARTMENT OF EDUCATION & SPORT DEVELOPMENT & SPORT DEVELOPMENT resolves in terms of section 76 (4) (c) of the PFMA in respect of the Framework for Supply Chain Management to have and implement a supply chain management policy that-
- 1.1.1 Gives effect to-
- 1.1.1.1 section 217 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)
- 1.1.1.2 sections 38 (1) (a) (iii) and 76 (4) (c) of the Public Finance Management Act, 1999 (Act No.1 of 1999 as amended by Act 29 of 1999);
- 1.1.1.3 Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and its accompanying Regulations;
- 1.1.2 is fair, equitable, transparent, competitive and cost effective;
- 1.1.3 complies with-
- 1.1.3.1 the regulatory framework prescribed in Chapter 2 of the Regulations; and
- 1.1.3.2 any minimum norms and standards that may be prescribed in terms of section 76 of the PFMA;
- 1.1.4 DOE & SDs not undermine the objectives for uniformity in supply chain management systems between organs of state in all spheres; and
- 1.1.5 is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- 1.2 The guiding legislation, regulations and directives
- 1.2.1 The following pieces of legislation, regulations and directives guide the SCM environment:
- 1.2.1.1 The Constitution of South Africa.
- 1.2.1.2 The Public Finance Management Act and the Treasury Regulations issued in terms thereof.
- 1.2.1.3 Policy to Guide Uniformity in Procurement Reform Processes in Government.
- 1.2.1.4 The various National Treasury Practice Notes, circulars and letters obtainable from National Treasury at [www.treasury.gov.za](http://www.treasury.gov.za) .
- 1.2.1.5 The Preferential Procurement Policy Framework Act and its Regulations issued in terms thereof.
- 1.2.1.6 The Broad-Based Black Economic Empowerment Act, the Strategy and the Codes of Good Practice obtainable at [www.dti.gov.za](http://www.dti.gov.za)
- 1.2.1.7 The King III Report on Corporate Governance for South Africa.
- 1.2.1.8 The Prevention and Combating of Corrupt Activities Act.
- 1.2.1.9 The National Small Enterprise Act.
- 1.2.1.10 The State Information Technology Agency Act.
- 1.2.1.11 Other relevant pieces of legislation that impacts on the supply chain environment are:
- 1.2.1.12 Promotion of Administrative Justice Act, Act No 3 of 2000.
- Promotion of Access to Information Act, Act No 2 of 2000.
  - Protected Disclosures Act, Act No 26 of 2000.
  - The Competition Act, Act No 89 of 1998.
  - The Reconstruction and Development Programme Fund Act, Act No 7 of 1994 and the Reconstruction and Development Programme Fund Amendment Act, Act No 79 of 1998.
- 1.2.1.13 Note: In all cases where reference is made throughout the document to specific legislation, regulations, letters or circulars, practice notes or others, it includes subsequent or replacement correspondence on the same subject.

## **2 OVERALL OBJECTIVE**

- 2.1 To ensure the efficient, effective and uniform planning for and procurement of all services and goods, required for the proper functioning of NW DOE & SD as well as the sale and letting of assets that conforms to constitutional and legislative principles whilst developing, supporting and promoting black economic empowerment, and local production and content for the applicable designated sectors.
- 2.2 To ensure the efficient, effective and uniform management and disposal of goods and assets.
- 2.3 NW DOE & SD must ensure good governance through its supply chain processes.
- 2.4 To ensure that NW DOE & SD strategic objectives are achieved.

## **3 ADOPTION AND AMENDMENT OF THE SUPPLY CHAIN MANAGEMENT POLICY**

- 3.1 This policy document shall give effect to the legislation and the overall objective stated.
- 3.2 The department may not act otherwise than in accordance with this supply chain management policy when-
  - 3.2.1 performing demand management;
  - 3.2.2 procuring goods or services;
  - 3.2.3 selecting and appointing consultants;
  - 3.2.4 performing logistics management;
- 3.3 The disposal of assets are dealt with by the Asset Management function;
- 3.4 The AO must at least annually review the implementation and applicability of the policy and when the AO considers it necessary, affect the required amendments to this policy.
- 3.5 The accounting officer of the Department must in terms of section 38(1) (a) (iii) of the PFMA, take all reasonable steps to ensure that the department has and implements this supply chain management policy.

## **4 AUTHORITY TO EXECUTE**

- 4.1 The accounting officer may in terms of section 44 and 56 of the PFMA delegate any supply chain management powers and duties to any eligible official within the department.
- 4.2 All SCM activities shall be executed in accordance with pre-established levels of authority through delegations to ensure control and division of responsibility.
- 4.3 Delegations shall be in writing to a specific individual or the holder of a post and shall be in line with the AO's delegated powers.
- 4.4 A delegation shall be subject to such limitations and conditions as the AO may impose in a specific case.
- 4.5 The AO is entitled to confirm, vary or revoke any decision taken in consequence of a delegation, provided that no such variation or revocation of a decision should detract from any rights that may have accrued as a result of the decision.
- 4.6 The accounting officer may not delegate or delegate any supply chain management powers or duties to a person who is not an official of the department or to a committee which is not exclusively composed of officials of the department;
- 4.7 An official or bid committee to which the power to make final awards has been delegated in accordance with subparagraph 3.2 of this policy must within 5 days of the end of each month submit to the official referred to in subparagraph 3.4 of this policy a written report containing particulars of each final award made by such official or committee during that month, including-
  - 4.7.1 The amount of the award (VAT included);
  - 4.7.2 The name of the bidders to whom the award was made; and
  - 4.7.3 The reason why the award was made to that bidder

- 4.8 A written report referred to in subparagraph 4.3 of this policy must be submitted to the-
- 4.8.1 accounting officer in case of an award by
- 4.8.1.1 the Chief Financial Officer;
- 4.8.1.2 a bid adjudication committee of which the Chief Financial Officer or Senior Manager/Director is a member; or
- 4.8.1.3 Chief Financial Officer or Senior Manager/Director responsible for the relevant bid, in the case of an award by-
  - a Manager directly accountable to the CFO or a Senior Manager/Director;
  - a bid adjudication committee of which the Chief Financial Officer or a Senior Manager is a member of
- 4.9 For the detailed supply chain management delegations by the accounting officer, refer to the delegation document.
- 4.10 Responsibilities of officials
- 4.10.1 Each official shall carry out their activities within their area of responsibility
- 4.10.2 Each official shall take appropriate steps to prevent any unauthorized, irregular, fruitless and wasteful expenditure in their area of responsibility.
- 4.11 Participation of advisors
- 4.11.1 Specialist advisors may assist in the execution of the SCM functions
- 4.11.2 The services must be obtained through a competitive process
- 4.11.3 No advisor may form part of the final decision making process regarding the award of a bid.

## **5 SUPPLY CHAIN MANAGEMENT UNIT**

- 5.1 The AO must establish a supply chain management unit, where possible, to operate under the direct supervision of the Chief Financial Officer or an official to whom this duty has been delegated in terms of section 44 of the PFMA.
- 5.2 The AO shall develop and implement an effective and efficient SCM system for"
  - 5.2.1 The acquisition of goods and services
  - 5.2.2 The disposal of goods no longer required. The disposal of assets is dealt with by the Asset Management Function.
  - 5.2.3 The system shall be fair, equitable, transparent, competitive and cost-effective
  - 5.2.4 The system shall be consistent with the PPPFA and its Regulations
  - 5.2.5 The system shall provide for at least the following:
    - 5.2.5.1 Demand management
    - 5.2.5.2 Acquisition management
    - 5.2.5.3 Logistics management
    - 5.2.5.4 Disposal management
    - 5.2.5.5 Risk management
    - 5.2.5.6 Regular assessment of supply chain performance
  - 5.2.6 The SCM system must, in the case of procurement through a bidding process, provide for:
    - 5.2.6.1 Bidding procedures
    - 5.2.6.2 The establishment, composition and functioning of a bid specification, bid evaluation and bid adjudication committees
    - 5.2.6.3 Approval of bid evaluation and/or bid adjudication committee recommendations.

## **6 TRAINING OF SUPPLY CHAIN MANAGEMENT OFFICIALS**

- 6.1 The training of officials involved in implementing the supply chain management policy should be in accordance with the relevant Treasury guidelines on supply chain management training.

6.2 The AO shall ensure that officials implementing the SCM system are trained and deployed in line with the requirements of the Framework for Minimum Training and Deployment issued by National Treasury.

6.3 The AO may make use of SITA for training through the gcommerce in IT or information systems.

## 7 ROLES AND RESPONSIBILITIES

The roles and responsibilities of all the structures hereunder are defined only from the perspective of SCM

### 7.1 Bid Specification Committee

7.1.1 Functions of bid specification committees:

7.1.1.1 Compiling of quotations/bid specifications in an unbiased manner to allow all potential bidders to offer their goods and services

7.1.1.2 To identify and develop the relevant evaluation criteria to align with the specification as quotes/bids may only be evaluated according to the criteria stipulated in the bid documentation.

7.1.1.3 The relevant BSC shall sign off the specification and forward the final specification to the SCM Function to ensure SCM compliance and facilitate final approval of the specification, by the AO, prior to advertisement of bids.

7.1.2 Establishment of Bid Specification Committees

7.1.2.1 The AO or delegate shall establish one or more BSCs on an ad hoc basis, as necessary

7.1.2.2 The AO may utilise the services of any other institution's Committee if and when required

7.1.2.3 The member(s) of the Committee must be informed in writing of their appointment to the Committee and it should be stipulated for which requirement the Committee is constituted.

7.1.3 Composition of Bid Specification Committees

7.1.3.1 Must be composed of one or more officials of the department, preferably the manager responsible for the function involved

7.1.3.2 An external specialist advisor, when required

7.1.3.3 The SCM Practitioner must always be involved to ensure that the specification is compliant to the relevant legislation

7.1.3.4 No person, advisor or corporate entity involved with the BSC, or director of such a corporate entity, may bid for any resulting contracts.

### 7.2 Bid Evaluation Committee

7.2.1 Functions of the BEC:

7.2.1.1 Bid Evaluation Committees should familiarise themselves with and adhere to the prescribed legislation, directives and procedures in respect of SCM.

7.2.1.2 Evaluate bids in accordance with-

The specifications for a specific procurement, and

The points system as specified in the bid document according to the PPPFA and its regulations

Local production and content criteria as specified in the bid document

7.2.1.3 Evaluate each bidder's ability to execute the contract

7.2.1.4 Check in respect of the recommended bidder whether taxes are not in arrears

7.2.1.5 Submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter

7.2.1.6 Members of the BEC may present their reports to the BAC to clarify uncertainties. Such members shall not have any voting power on the BAC.

7.2.2 Establishment of the BEC

7.2.2.1 The AO or delegate must establish one or more BECs, as necessary per requirement

7.2.2.2 The AO may utilise the services of any other institution's BEC if and when required

7.2.2.3 BECs shall be appointed every financial year for bids that must be evaluated by the Committee. The AO may appoint an interim BEC when it's deemed necessary.

7.2.2.4 Should a member declare a conflict of interest at any stage, the member may not be part of the BEC and must be replaced by a member of suitable expertise should committee not quorate.

- 7.2.2.5 An official may not be a member of the BEC and the BAC for the same bid
- 7.2.2.6 No person other than a member of the BEC or the official rendering the Secretariat function is allowed to attend the meeting.
- 7.2.3 Composition of the BEC
- 7.2.3.1 Should be cross-functional and should comprise of at least four (4) members of which
- 7.2.3.2 One official must be from the department requiring the goods or services may form part of the committee on advisory basis and
- 7.2.3.3 At least one SCM practitioner of the department
- 7.2.3.4 If considered necessary, appoint additional experts in an advisory capacity only with no voting rights
- 7.2.3.5 The AO or delegate must appoint one of the members of the BEC as the chairperson of the BEC. The chairperson must be an official with the rank of at least a Deputy-Director.
- 7.3 Bid Adjudication Committee**
- 7.3.1 Functions of the BAC
- 7.3.1.1 The BAC must consider the report and recommendations of the BEC and either, depending on its delegations:
- Make a final award or a recommendation to the AO to make the final award
  - Make another recommendation to the AO how to proceed with the relevant procurement
- 7.3.1.2 The BAC assesses the process followed in making the recommendation to ensure that the SCM Policy has been complied with in full
- 7.3.1.3 The BAC must ensure that:
- All necessary quotation/ bid documents have been submitted
  - Disqualifications are justified and that valid and accountable reasons/ motivations were furnished for passing over quotes/ bids
  - Scoring, as applicable, has been fair, consistent and correctly calculated and applied
  - All bidders confirmed that they were not involved in any form of collusive bidding (or bid rigging).
- 7.3.1.4 The BAC must consider and rule on all recommendations regarding the amendment, variation, extension, cancellation or transfer of contracts awarded.
- 7.3.1.5 The BAC may also, if and when required to do so, consider for approval the recommendations of the BSC in order to ensure that:
- A proper and unbiased specification is compiled for the specific requirement
  - A proper ToR is drawn up for the service required clearly indicating the scope, the functionality the evaluation criteria as well as their weights and values
  - Strategic sourcing principles were applied and that the market was properly researched and analysed
  - The necessary funds are available
  - If and when applicable, in addition to the GCC, appropriate special requirements and conditions of contract are specified
  - The preference point system prescribed, is consistent with the requirements of the PPPFA Regulations.
- 7.3.1.6 The BAC must obtain clarity from members of the BEC, if required
- 7.3.1.7 The delegated official or the BAC shall approve the recommendation submitted and award the contract if delegated to do so.
- 7.3.1.8 Where the BAC, finds that the recommendations is not correct or not in NW DOE & SD's best interest after consultation with the BEC, the reasons for not supporting the review are submitted to the AO for the finalization of the adjudication and award.
- 7.3.1.9 Any decision regarding the adjudication is final
- 7.3.1.10 The BAC shall refer the recommendation back to the relevant BEC when they do not agree with the recommendation to endeavor to sort out the differences if they are process related.
- 7.3.2 Establishment of the BAC
- 7.3.2.1 The AO shall establish the necessary award structures to perform the award/ adjudication of quotations and bids through the following structures
- A delegated official for awards up to the quotation threshold
  - At least one standing BAC for awards above the quotation threshold and as delegated by the AO
  - The AO for awards not formally delegated to any other award structure.
- 7.3.2.2 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
- 7.3.2.3 The accounting officer may at any stage of a bidding process, refer any recommendations made by the evaluation committee or the adjudication committee back to that committee for consideration of the recommendation.

### 7.3.3 Composition of the BAC

#### 7.3.3.1 Must consist of at least four (4) senior managers of the department and must include:

- The CFO or, if the CFO is not available, another manager in the budget and treasury office reporting directly to the CFO and designated by the Chief Officer, and
- At least one senior SCM practitioner who is an official of the department in an advisory capacity
- A technical expert in the relevant field who is an official, if such expert exists

#### 7.3.3.2 The AO 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

#### 7.3.3.3 The BAC should only consider recommendations/ reports if at least sixty percent (60% of its members are present.

## 7.4 Duties and powers of the various committee members

### 7.4.1 The Chairman:

#### 7.4.1.1 Has a casting vote as well as a deliberate vote.

#### 7.4.1.2 Retains all his/her rights as a member.

#### 7.4.1.3 May adjourn a meeting.

#### 7.4.1.4 May rule on points of order which will be final.

#### 7.4.1.5 May withdraw any proposal or other matters under discussion before it is put to the vote.

#### 7.4.1.6 Convene extraordinary committee meetings on request.

### 7.4.2 The Chairman shall:

#### 7.4.2.1 Preside over and maintain order during a meeting and ensure that business is conducted in an orderly manner.

#### 7.4.2.2 Before opening a meeting, ensure that it is properly constituted.

#### 7.4.2.3 Protect the rights of every member.

#### 7.4.2.4 Vacate his/her seat to the Vice-Chairman (elected from members), should he/she wish to partake in a discussion in a partial manner or in case of a conflict of interest.

#### 7.4.2.5 Regulate participation in discussions.

#### 7.4.2.6 Deal with items in sequence of the agenda.

#### 7.4.2.7 Ensure that members know exactly what they are required to vote on.

#### 7.4.2.8 Ensure that only one member holds the floor at any one time.

#### 7.4.2.9 Provide guidance by directing the meeting, but shall not dominate.

#### 7.4.2.10 Conduct meetings in a formal manner.

#### 7.4.2.11 Formulate clearly the decisions to be minuted and sign and approve the minutes after they have been verified for correctness.

### 7.4.3 The Vice-Chairman for the BAC:

#### 7.4.3.1 Has the same powers and duties as members and in addition, where necessary, shall-

- In the absence of the chairman, preside as chairman.
- Take the seat of and act as chairman, should the chairman wish to partake in partial discussions or in case of a conflict of interest.

#### 7.4.3.2 Where both the chairman and the vice-chairman are absent from a meeting, the members may elect one of their members to preside at such meeting.

### 7.4.4 The Secretary shall:

#### 7.4.4.1 In conjunction with the chairman compile an agenda and determine dates of meetings. The agenda of the meeting serves as the program and unless the Committee decides otherwise, the items and sequence may not be changed during the meeting.

#### 7.4.4.2 Give notice of proposed meetings to committee members.

#### 7.4.4.3 Process and distribute all submissions/reports together with the agenda to committee members at least three working days before the actual meeting takes place.

#### 7.4.4.4 Minute all decisions taken at meetings.

#### 7.4.4.5 Adhere strictly to the stipulations of the National Archives of South Africa Act, Act No 43 of 1996 and accompanying directives.

#### 7.4.4.6 Ensure that the proceedings at meetings are recorded mechanically.

#### 7.4.4.7 Give written feedback of all decisions taken by the committee.

#### 7.4.4.8 Be responsible for all the administrative tasks of the committee.

#### 7.4.4.9 Record decisions taken on specific awards for noting to the Board.

- 7.4.5 The Members shall:
- 7.4.5.1 Be fully conversant with the powers and limitations of the Committee as well as all legislation, directives and the Accounting Authority's delegations pertaining to SCM and shall act in accordance with the legislation, directives and delegations.
  - 7.4.5.2 Apply their minds to matters at hand in order to take meaningful and accountable decisions and in the event of doubt or uncertainty, to propose that matters be referred back for clarification.
  - 7.4.5.3 In advance, but no later than at the time of the receipt of the declaration of interest form, furnish a written apology should he/she not be able to attend a meeting.
  - 7.4.5.4 Strive to be punctual for meetings and to stay for the duration of a meeting.
  - 7.4.5.5 Prepare properly for each meeting by studying the agenda, submissions, reports and recommendations.
  - 7.4.5.6 Be familiar with meeting procedures in order to make a contribution in the correct manner.
  - 7.4.5.7 Refrain from repetition and duplication of contributions by other members.
  - 7.4.5.8 Sign a declaration of confidentiality and impartiality.
  - 7.4.5.9 At all times observe ethical and professional conduct
  - 7.4.5.10 Must declare all gifts received and invitations accepted to social events received from prospective suppliers or contractors
  - 7.4.5.11 Members must sign an attendance register at each meeting.
- 7.4.6 Members have the right to:
- 7.4.6.1 Have advance knowledge of the agenda.
  - 7.4.6.2 Submit proposals and participate in proceedings.
  - 7.4.6.3 Vote and have a dissenting voice and have the reasons therefore recorded.
- 7.4.7 Co-opted members/advisors:
- 7.4.7.1 Have the same powers and duties as members, excluding the right to vote on any matter under discussion.
  - 7.4.7.2 Members of the BEC may present their reports/recommendations to the BAC and clarify any issues but shall not have any voting powers.
- 7.4.8 Observers:
- 7.4.8.1 On request, the chairman may allow officials to attend a meeting as observers. Observers have no participation in the proceedings, except to advise the representative (member) or the committee if permitted by the chairman. Observers should be cautioned to maintain the confidentiality of the discussions and should sign the declaration of confidentiality and impartiality as an observer.
- 7.5 A member of any Bid Committee, technical advisor or user representative who contravenes or fails to comply with the aforementioned must summarily be dismissed from his/her role and appropriate steps taken against the person.

## **8 RESOLUTION OF DISAGREEMENTS ON AWARD OF CONTRACTS**

- 8.1 Where the award structure disagrees with the recommendation of the relevant BEC on the adjudication of a contract, the request with the recommendation of the BEC, the commentary and reasons of the award structure is to be submitted to the AO for a final decision.
- 8.2 The AO may obtain advice as deemed necessary, including advice from outside NW DOE & SD.
- 8.3 Should the AO decide to award a bid to a bidder other than the one recommended by either the Bid Evaluation Committee or Bid Adjudication Committee the Auditor-General, the National Treasury and the Provincial Treasury must be informed in writing within 10 days of the reasons for such deviation

## CHAPTER 2: FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT

### 1 SUPPLY CHAIN MANAGEMENT CONSIDERATIONS

#### 1.1 Introduction

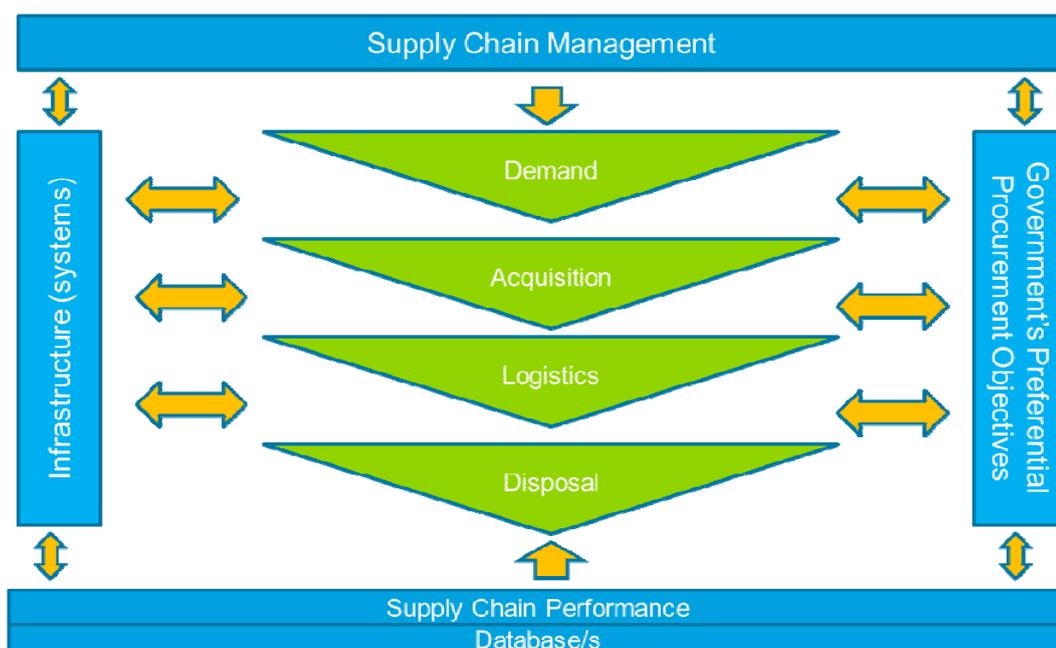
1.1.1 Supply chain management is an integral part of financial management, which intends to introduce international best practice. It seeks to breach the gap between traditional methods of procuring goods and services and the balance of the supply chain and at the same time addressing procurement related matters that are of strategic importance.

1.1.2 The introduction of the principles of supply chain management will require of accounting officers and accounting authorities to exact accurate commercial and other relevant information, so as to effectively measure the achievement of government's procurement objectives. NW DOE & SD shall adhere to the procurement principles as noted below:

<b>Transparency</b>	The procurement process shall be open and predictable and shall afford each prospective bidder timely access to the same and accurate information.
<b>Equal treatment</b>	All bidders and providers shall be treated equally throughout the whole procurement process and shall be given access to the same information.
<b>Effectiveness</b>	DOE & SD, NW shall strive for SCM system effectiveness and shall carry out its procurement processes as cost-effectively as possible while meeting the commercial, regulatory and socio-economic goals of government in a balanced manner appropriate to the procurement requirement.
<b>Efficiency</b>	DOE & SD, NW shall strive to standardise and simplify procedures where appropriate to enhance SCM system effectiveness and shall carry out its SCM processes as cost-effectively and efficiently as possible. DOE & SD, NW shall strive to build relationships with providers, shall ensure good working practices and shall encourage innovative solutions for providers.
<b>Competitiveness</b>	DOE & SD, NW shall satisfy its requirements through competition unless there are justifiable reasons to the contrary.
<b>Fairness</b>	All bidders and contractors shall be dealt with fairly and without unfair discrimination. Unnecessary constraints shall not be imposed on bidders/contractors and commercial confidentiality shall be protected.
<b>Ethics</b>	All providers shall be treated equally whilst promoting certain empowerment objectives, all stakeholders shall conduct business and themselves professionally, fairly, reasonably and with integrity, all interests shall be disclosed and all breaches shall be reported.
<b>Proportionality</b>	The product/service requirements stipulated in the specification/terms of reference and the qualification requirements attached thereto must be appropriate, necessary and in reasonable proportion to the product/service being procured.
<b>Uniform application</b>	DOE & SD, NW shall ensure the application of a SCM policy and a streamlined SCM process and documentation that is uniformly applied by DOE & SD, NW, all things being equal. The procurement process shall be simple and adaptable to advances in modern technology to ensure efficiency and effectiveness.
<b>Responsibility</b>	Each practitioner shall be responsible for their decisions and actions

	<p>relative to their SCM responsibilities, the SCM process as well as in the implementation of concluded contracts. DOE &amp; SD, NW shall have a system, when warranted by circumstances, to investigate and hold liable both employees and relevant private parties dealing with DOE &amp; SD, NW, for their decisions and actions relative to their procurement responsibilities, the procurement process as well as in the implementation of concluded contracts.</p>
<b>Openness</b>	<p>DOE &amp; SD, NW shall ensure a procurement process and a subsequent contract award and implementation according to the predetermined specification in line with the best practice procurement principles.</p>
<b>Value for money</b>	<p>DOE &amp; SD, NW shall achieve value for money through the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer's requirements while maximising efficiency, effectiveness and flexibility.</p> <p>DOE &amp; SD, NW shall apply the following TCO philosophy to the procurement of goods and services in achieving value for money.</p> <p><input type="checkbox"/> TCO = Price + Administration (maintenance and process) + Quality/Usage + Supplier Value-add.</p>
<b>Commitment to safety, health and the environment</b>	<p>DOE &amp; SD, NW is committed to the health and safety of its personnel and its providers in the application of its SCM process.</p> <p>DOE &amp; SD, NW is committed to the preservation of the environment, minimising pollution and the improved use of natural resources in the application of its SCM processes and more specifically in the design of the specifications/terms of reference for each requirement.</p> <p>DOE &amp; SD, NW shall apply preventative measures in situations of scientific uncertainty where a course of action could harm the environment.</p>

1.1.3 The elements of government's supply chain management processes are depicted in the diagram below, where value is added at each phase of the process.



1.1.4 Current work in the National Treasury includes the development of a systems master plan for an integrated financial management system that conforms to the requirements of the PFMA. This master

plan will include the systems requirements, including the requirements of E-commerce, to fully support the adoption of the proposed integrated supply chain management function.

- 1.1.5 Accounting officer/authorities are therefore required not to acquire new information technology support for the implementation of the new supply chain management function without consulting the National Treasury.

## **2 ETHICS IN SUPPLY CHAIN MANAGEMENT**

- 2.1 NW DOE & SD commits itself to a policy of fair dealing and integrity in the conducting of its SCM activities.
- 2.2 All officials rendering SCM functions and role players in the SCM system are required to promote:
- 2.2.1 Mutual trust and respect.
- 2.2.2 An environment where business can be conducted in a fair and reasonable manner and with integrity.
- 2.3 All officials rendering SCM functions should ensure that they perform their duties efficiently, and effectively, in accordance with the relevant legislation and regulations.
- 2.4 NW DOE & SD will abide by the NW DOE & SD Code of Conduct<sup>1</sup> and the Code of Conduct for bid adjudication committees<sup>2</sup>. These Codes shall direct all SCM practitioners and role players in their conduct within and with NW DOE & SD. Non-compliance shall be subject to the appropriate action.
- 2.5 Highest ethical standards
- 2.5.1 An official rendering the SCM Function, who becomes aware of a breach of or failure to comply with any aspect of the SCM system, must immediately report the breach or failure to the AO in writing.
- 2.5.2 The AO shall take all reasonable steps to prevent abuse of the SCM system in terms of Treasury Regulation 16A9.2 (a). The AO has the power to disregard the bid of any bidder if that bidder, or any of its directors have:
- 2.5.2.1 Abused the NW DOE & SD's SCM system.
- 2.5.2.2 Committed fraud or any other improper conduct in relation to such system.
- 2.5.2.3 Failed to perform on any previous contract.
- 2.5.3 All allegations against a practitioner or any other role player, of corruption, improper conduct or compliance failure with the SCM system shall be investigated by the AO or the delegate who will, when justified:
- 2.5.4 Take steps against such official or other role player and inform the National Treasury of such steps.
- 2.5.5 Report any conduct that may constitute an offence to the SAPS.
- 2.6 Declaration of Interest
- 2.6.1 If a SCM practitioner or other role player, or close family member, partner or associated of such practitioner or other role player, has any private or business interest in any contract to be awarded, that practitioner or other role player must:
- 2.6.1.1 Disclose that interest
- 2.6.1.2 Withdraw from participating in any manner whatsoever in the process relating to the contract
- 2.6.1.3 An official rendering SCM functions must recognise and disclose any conflict of interest that may arise
- 2.6.1.4 All delegated officials of award structures and members as well as the secretary should be required to declare their financial interest annually.

## **3 COLLUSIVE PRACTICES (BID RIGGING)**

- 3.1 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits any agreement between, or concerted practice by firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding/ tendering (or bid rigging).
- 3.2 In order to deter any form of collusive bidding (bid rigging), bidders must confirm that they have not entered into any such practices by completing a certificate to that effect.
- 3.3 The standard document pertaining to the certification of the independent bid determination must accompany all price quotations, advertised competitive bids, limited bids and proposals.

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<sup>1</sup>National Treasury Practice Note Number SCM4 of 2003

<sup>2</sup>National Treasury letter dated 24 March 2006

- 3.4 NW DOE & SD is required to utilise the information contained in the Certificate of Independent Bid Determination to ensure that when bids are considered all reasonable steps are taken to prevent any form of bid rigging

#### **4 IRREGULAR EXPENDITURE**

- 4.1 In terms of Section 38 (1) (g) of the PFMA, and National Treasury Practice Note 4 of 2008/09, all cases of irregular expenditure involving the procurement of goods and services must immediately be reported to the National Treasury.
- 4.2 An irregular expenditure register must be maintained.
- 4.3 NW DOE & SD must take appropriate disciplinary steps in cases of irregular expenditure.
- 4.4 NW DOE & SD may forward submissions to the National Treasury or the relevant authority to request condonation for non-compliance with the PFMA or other legislation respectively where good reasons exist and where steps can be highlighted to avoid reoccurrence of this type of irregular expenditure.
- 4.5 In instances where irregular expenditure is not considered relevant for condonation or where National Treasury or the relevant authority DOE & SDs not condone the irregular expenditure, immediate steps must be taken to recover the irregular expenditure from the responsible employee, if he/she is liable in law.
- 4.6 All irregular expenditure incurred must be forwarded to the finance division to disclose as a note to the annual financial statements.

#### **5 INTERNAL ABUSE OF THE PREFERENTIAL PROCUREMENT SYSTEM**

- 5.1 The AO shall ensure that the preferential procurement system is not abused for any purpose, neither for the benefit of NW DOE & SD nor for the benefit of any potential provider/contractor or individual.
- 5.2 All conduct, dealings and actions are to be bona fide.
- 5.3 Any employee suspected of acting contrary to this policy, will be dealt with in terms of the disciplinary code of NW DOE & SD.

#### **6 EXTERNAL ABUSE OF THE PREFERENTIAL PROCUREMENT SYSTEM, INCLUSIVE OF FRONTING**

- 6.1 NW DOE & SD shall vigorously pursue all legal remedies available in the event that the preferential procurement points systems is abused, particularly through, ,for example, but limited to the following ways:
- 6.1.1 That the provider or contractor is suspected of contravening Regulation 13 of the PPPFA
- 6.1.2 Has promised, offered or given a bribe during the bidding process and/or after conclusion of the contract
- 6.1.3 Has acted in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of the contract
- 6.1.4 That an agreement was entered into with the contractor on the strength of information furnished by him/ her, and it became apparent after conclusion of such agreement that the information provided was incorrect
- 6.1.5 NW DOE & SD will endeavor, where possible, to identify fronting before a contract is awarded.
- 6.1.6 To protect both parties to an agreement, potential providers, contractors and government officials must be made aware of the implications of any contraventions.
- 6.1.7 Potential providers shall be informed via the special conditions of contract and the applicable paragraphs in the GCC of implications of contraventions
- 6.1.8 Where NW DOE & SD becomes aware of a possible fronting case, the process in accordance with the Constitution, the rules of Administrative Law and the Promotion of Administrative Justice Act, shall be followed as a starting point
- 6.1.9 Where, after award of a contract it becomes evident that the award made to the organization based on incorrect information constituting fronting, the appropriate action is to be taken in accordance with all legal remedies available.

## 7 PREFERENTIAL PROCUREMENT

- 7.1 Preferential procurement strategy  
The AO should determine a strategy for the institution to achieve policy goals through the SCM process, aspects such as enhancing BEE and promoting HDI's as acquired in the preferential Procurement Regulations, 2011, should be taken into account. Goals to be attained should be identified for each contract individually after the relevant industry and community have been consulted. It should also be borne in mind that adherence to these requirements might lead to a premium being paid by the institution. The maximum premium for the application of the 80/20 preference point system (for contracts equal to or less than R50 Million) amounts to 25% while the maximum for the 90/10 preference point system (for contracts exceeding 50 million) amounts to 11.11%.
- 7.2 The application of a preferential procurement and broad based black economic empowerment must be consistent with:
- 7.2.1 The Preferential Procurement Policy Framework Act and its Regulations
- 7.2.2 The Treasury Regulations
- 7.2.3 The Broad-Based Black Economic Empowerment Act and the strategy
- 7.3 NW DOE & SD shall stipulate the applicable preference point system (80/20 or 90/10) in bid documents to be applied in adjudication.
- 7.4 No system has to be applied in respect of acquisitioning with a Rand value of less than R30 000 per case.
- 7.5 The relevant preference point formula as per the PPPFA and its Regulations must be used to calculate the points for price in respect of acquisitioning with a Rand value equal to, or above R30 000.00
- 7.6 Set-asides are prohibited. ( in line with the SCM practice no SCM 02 of 2006)
- 7.7 The exclusion of certain categories of potential providers from quoting/ bidding is prohibited
- 7.8 Application of preferences
- 7.8.1 Preference calculations or decisions, made during evaluations, shall be clear and documented.
- 7.8.2 The preference point system must be applied as follows:
- 7.8.2.1 **80/20** Rand value from R 30 000.00 to R 50 Million with all applicable VAT
- 7.8.2.2 **90/10** Rand value above R 50 Million with all applicable VAT
- 7.8.3 If all bids received exceed the estimated Rand value linked to the preference points system applied, the bid invitation must be cancelled and re-invited stating the correct preference point system.

## CHAPTER 3: DEMAND MANAGEMENT

### 1 SYSTEM OF DEMAND MANAGEMENT

- 1.1 A system of demand management shall be informed via the translation of the annual performance plans of NW DOE & SD into current and future needs, to cost and budget for it.
- 1.2 This is a cross-functional exercise that brings the supply chain practitioner closer to the end user and ensuring that value for money is achieved.
- 1.3 Demand management should be coordinated and the cross-functional team should be appointed by NW DOE & SD SCM officials in consultation with end-users.
- 1.4 Demand management is the first phase of SCM. The objectives is to ensure that the resources required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs.
- 1.5 As part of the strategic planning exercise, the various functions to be executed must be identified and the different resources required to execute the identified functions must be determined. These resources must be budgeted for.
  - 1.5.1 As part of the strategic planning process, a consultancy reduction plan must be developed, if applicable by 31 March each year for implementation in the next financial year.
  - 1.5.2 The outcome of this activity should be a detailed planning document that outlines what goods, works or services should be procured, the manner in which they should be procured as well as the timelines to execute the procurement functions.
- 1.6 As part of this element, a total needs assessment should be undertaken. This analysis should be included as part of the strategic planning process of the institution and hence will incorporate the future needs.
- 1.7 It is vital for managers to understand and utilize sound techniques to assist them in their planning, implementation and control activities. As part of the strategic plan of the institution, resources required for the fulfilment of its obligations should be clearly analysed. This includes a detailed analysis of the goods, works and services required, such as how can be accomplished, how quickly and with what materials, equipment, etc.
- 1.8 Correct implementation must ensure that controls exist for management to detect variances early and rectify them in a planned and orderly manner and to foster a culture of compliance.

### 2 LIST OF FUNCTIONS TO BE EXECUTED BY NW DOE & SD:

- 2.1 Doing an expenditure analysis (based on past expenditures). An analysis of the expenditure may assist in determining the manner in which the institution fulfilled this need in the past.
- 2.2 Determine a needs assessment:
  - 2.2.1 Compile a detailed list of the goods, works or services required to execute the functions of NW DOE & SD
  - 2.2.2 Future as well as current needs are understood;
  - 2.2.3 Identify critical delivery dates
  - 2.2.4 Lead and delivery times are identified
  - 2.2.5 The frequency of the need
- 2.3 Assessment of available assets – determine the details of available assets, redundant and obsolete assets and assets to be renewed.
- 2.4 Conduct a market analysis of the goods, works or services to be obtained.
- 2.5 Analysis of the supplying industry:

- 2.5.1 Determining specifications
- 2.5.2 Doing commodity analysis (checking for alternatives) and
- 2.5.3 Doing industry analysis.
  
- 2.6 Linking the requirement to the budget.
  
- 2.7 The optimum method to satisfy the needs is considered, including the possibility of procuring goods, works or services from other institutions (e.g. stationery, printing and related supplies from the Government Printer or furniture from the Department of Correctional Services) or on transversal or ad-hoc contracts.
  
- 2.7.1.1 The economic order quantity is calculated;

### **3 THE PROCUREMENT PLAN:**

- 3.1 The SCM Function shall annually compile a procurement plan at the beginning of each financial year when the strategic plan and budget have been approved. The identified requirements in the procurement plan are drawn from operational plan.
  
- 3.2 A procurement plan in the prescribed format and approved by the AO or the delegate, containing all planned procurement for the financial year in respect of the procurement of goods, works and/or services which exceed R500 000 (all applicable taxes included) must be submitted to the Provincial Treasury before the cut-off date each year.
  
- 3.3 The procurement plan must be updated as changes occur. The Provincial Treasury must be informed of changes to the procurement plan as they are effected.
  
- 3.4 The SCM should compile a bid register for all bids in excess of R500 000 that will manage the procurement process for each requirement.
  
- 3.5 Scoping through a request for information

  - 3.5.1 If sufficient information is not readily available with which to draft terms of reference/specifications, a request for information (RFI) process may be followed in order to obtain more market information.
  - 3.5.2 The information collected in this fashion may not be used to lead to sourcing from one supplier only nor may it be used to write the ultimate specification/terms of reference around just one specific product.
  - 3.5.3 It must be clearly stated in the RFI that the result of this process will not lead to an award and DOE & SD's not constitute a commitment.

### **4 DETERMINING SPECIFICATION OF GOODS/WORKS OR SERVICES**

- 4.1 The BSC shall draw up clear, unbiased specifications that will promote the broadest possible competition while assuring the critical elements of performance or other requirement for the goods, services and/ or works being procured are achieved.
  
- 4.2 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;

  - 4.2.1 May not make reference to any particular trade mark, name, patent, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words equivalent.

  
- 4.3 May not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labelling of conformity certification.
  
- 4.4 Where possible, be described in terms of performance required than in terms of descriptive characteristics for design.
  
- 4.5 Include clear evaluation criteria prior to the invitation of the quotation/bid as offers may only be evaluated according to the criteria stipulated in the quotation/ bid document.

4.6 Must indicate each specific goal for which points may be awarded in terms of the points system set out in the Preferential Procurement Regulations 2017.

4.7 Must be approved by the accounting officer prior to publication of the invitation of the bid.

## **5 PLANNING FOR PUBLICATION**

5.1 NW DOE & SD shall ensure that proper planning takes place at the beginning of the year by establishing as far as possible the Government Tender Bulletin publishing dates for that year and the date of the first bulletin for the following year.

## **6 CENTRAL SUPPLIER DATABASE**

It is currently a mandatory requirement for suppliers to register on the Central Supplier Database (CSD). The supplier database is to be used as a management tool and central repository of all supplier information as indicated in the SCM TR's and to comply with legislative requirements (e.g. valid tax clearance certificate, declaration of interest, etc.).

It is a Governmental requirement for all existing and future active suppliers to register on their database with complete profile information with minimum mandatory requirements, including valid tax clearance certificates and declarations in terms of SBD 4. Such registration is free with no cost to the supplier.

The required data and supporting documentation, housed as attachments, will be verified by the service provider responsible for the management of the supplier database and if the minimum mandatory requirements are met, their profile will be approved. The NT requires that the supplier profiles are maintained and that suppliers are notified when their Tax Clearance and SBD 4 and / or BEE Score Card are about to expire, within an agreed timeframe prior to expiry. Before a supplier starts the registration process, the supplier needs to accept the Terms & Conditions as stipulated by CSD.

Suspended suppliers against compulsory registration (those whose profiles have not been maintained), will be applicable to suppliers' profiles on the CSD:

- (a) Registered, verified supplier profiles to be suspended on Central Supplier Database (CSD) due to non-maintenance / expired Tax Clearance and/or Declaration of Interest.
- (b) Suspended Supplier responses will be made non-compliant to quotation requests by Departments.

The Accounting Officer may where it is deemed impractical to a supplier that is duly registered on the supplier database; approve the utilisation of a supplier not actively registered on the database. This power may not be delegated to a level lower than the AO and must demonstrate that:

- (a) the utilisation of the supplier is the only viable option, financially strategically, practically, operationally, in terms of availability in the market and uniqueness of product or services; or
- (b) If the situation could not be foreseen, the Department must demonstrate that doing business with a supplier not duly registered on the supplier database is the only viable option, financially strategically, practically, operationally, in terms of availability in the market and uniqueness of product or services) on a case by case basis; and

- (c) The Department must be in possession of all mandatory documents at the time of award (Tax clearance certificate, original SBD4, BBBEE certificate where applicable) and the Department must inform the PT of awards made to a supplier in this manner via the monthly reporting process to the PT.

## CHAPTER 4: ACQUISITION MANAGEMENT: SYSTEM AND PROCESS HIERARCHY

### 1 SYSTEM OF ACQUISITION MANAGEMENT

- 1.1 The accounting officer must establish, through operational procedures, an effective system of acquisition management in order to ensure:
- 1.1.1 That goods and services are procured by the department or state entity in accordance with authorised processes only.
- 1.1.2 Procurement of goods, works and services, either through quotations or through a bidding process, must be within the threshold values as determined by National Treasury.
- 1.1.3 That bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation;
- 1.1.4 That expenditure on goods and services is incurred in terms of an approved budget in terms of section 39 of the Act.
- 1.1.5 That any Treasury guidelines on acquisition management are properly taken into account.
- 1.2 The AO must not exceed the different threshold values as determined by National Treasury.

### 2 HIERARCHY FOR SATISFYING REQUIREMENTS

- 2.1.1 When a requirement becomes known, the noted hierarchy for satisfying requirements shall apply starting first with the hierarchy of processes of obtaining stock from internal resources and then only applying the hierarchy of processes of satisfying requirements from external sources.
- 2.1.2 As part of acquisition management all possible methods of obtaining the requirements should be investigated, such as:
- 2.1.2.1 Items in stock
- 2.1.2.2 Items on pre-established NW DOE & SD contracts
- 2.1.2.3 List of redundant, obsolete materials and supplies, if established
- 2.1.2.4 Sourcing from other government institutions
- 2.1.2.5 Contracts arranged by other organs of state
- 2.1.2.6 Utilising transversal term contracts as arranged by National Treasury;
- 2.1.2.7 Local versus international sourcing

### 3 DIRECTIVES FOR SPECIFIC TYPES OF REQUIREMENTS

The specific rules guiding specific circumstances and product shall also be taken into account together with the hierarchies in the choice of process.

#### 3.1 Cost containment restrictions for various commodities

- 3.1.1 NW DOE & SD may not procure the following services from its available budget or through supplier contributions or sponsorships without prior approval from National Treasury<sup>3</sup>:
- 3.1.1.1 team building requirements; or
- 3.1.1.2 Social functions, including year-end functions.
- 3.1.2 NW DOE & SD may not incur catering expenses for internal meetings attended only by persons in its employ unless approved by the AO or delegated official<sup>4</sup>.

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<sup>3</sup>National Treasury Instruction 1 of 2014/2015 re Cost containment measures

<sup>4</sup>

### 3.2 **E-Commerce**

- 3.2.1 The AO must, prior to the request for information or any bids regarding the introduction of an e-procurement system, liaise and obtain permission from the relevant treasury to commence with the establishment and maintaining of such a system. This prerequisite is prescribed to ensure compatibility with other electronic systems utilized by Government.

### 3.3 **Public Private Partnerships**

- 3.3.1 NW DOE & SD shall ensure that Treasury Regulation 16 is complied with when goods, works or services are procured through public private partnerships or as part of a public private partnership.
- 3.3.2 The appointment of transaction advisors to assist with the preparation concluding and/or implementation should be done in accordance with the prescripts of the PPP Practice Note number 4 of 2004.

### 3.4 **Building, engineering or construction works**

- 3.4.1 The Construction Industry Development Board (CIDB) has been established by the government to promote the uniform application of policy to the construction industry. When calling for construction bids, NW DOE & SD should utilise the standard bidding documents issued by the CIDB.

### 3.5 **Disposals and rentals**

- 3.5.1 Bids in these categories are dealt with the same manner as other bids with the exception that since revenue is applicable, the objective is to receive the highest bidding price. The preferential procurement point system DOE & SD's not apply.

### 3.6 **Procurement of ICT related goods and/or services**

- 3.6.1 NW DOE & SD must acquire the mentioned mandatory services and may acquire the mentioned non-mandatory services from SITA as listed in the National Treasury Practice Note Number 5 of 2009/2010.
- 3.6.2 SITA will act as the procurement agent to acquire the mandatory services on behalf of NW DOE & SD if SITA indicate, in writing, that it is unable to provide the service itself.
- 3.6.3 If SITA acts as the procurement agent, SITA must facilitate the procurement process strictly in terms of the prescribed legislation. SITA will make a recommendation to the AO on a preferred bidder(s). The AO retains the right to accept or reject SITA's recommendation.
- 3.6.4 If the AO reject the recommendation, the reasons for such rejection must within 10 working days be submitted in writing to the relevant treasury and the Auditor –General.
- 3.6.5 For quotation procurement NW DOE & SD must obtain at least three quotations, from the SITA database of suppliers, per purchase on a rotational basis, depending on the number of listed suppliers and the frequency of the purchase.
- 3.6.6 In the event that it is not practical to obtain three quotations or to select suppliers on a rotational basis, the reasons for deviation must be approved by the AO and recorded for auditing purposes.
- 3.6.7 If none of the suppliers on the list are able to provide the goods and/or services, NW DOE & SD may obtain quotations from other suppliers and must according inform SITA in writing.
- 3.6.8 For procurement requirements through SITA, SITA will facilitate the arrangement of a contract as a procurement agent.
- 3.6.9 The AO must appoint a specific official within NW DOE & SD to administer the contract and this official shall be known as the designated official. This designated official is responsible for:
- 3.6.9.1 Preparing the business case
- 3.6.9.2 Obtaining approval from the AO for the business case
- 3.6.9.3 Compilation of specifications
- 3.6.9.4 Obtaining approval for the bid documents and appointing officials for the bid evaluation process.
- 3.6.9.5 SITA will manage the procurement process and will make a recommendation to the AO on the award of the bid.
- 3.6.10 Transversal term contracts: There are two types of transversal term contracts that are available for ITC-related procurement, namely:
- 3.6.10.1 transversal framing term contracts where the ICT related goods and/or services may be procured by means of quotations from pre-identified potential suppliers whose products meet the standard certification, and

3.6.10.2 Transversal term contracts which provide for the supply of ICT related goods and/or services at contracted prices.

### 3.7 Term contracts

3.7.1 A term contract is a contract entered into for the supply of goods, the rendering of services or the disposal of moveable assets over a specified period of time, but not less than one year. This is regarded as a good sourcing strategy in relevant circumstance to improve efficiencies.

### 3.8 Requirements not available from a local supplier (procurement form abroad)

3.8.1 Should a requirement not be available from a local supplier within South Africa, international sourcing may be considered.

### 3.9 Contracts arranged by other organs of state

3.9.1 Treasury Regulation 16A6.6 states that an institution can participate in any contract arranged by means of a competitive bidding process by any other organ of state, subject to the written approval of such organ of state and the relevant contractors.

3.9.2 NW DOE & SD can therefore procure goods or services under a contract secured by another organ of state, but only if:

3.9.2.1 Confirmation is obtained that the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state

3.9.2.2 There is no reason to believe that such contract was not validly procured

3.9.2.3 There are demonstrable discounts or benefits to do so

3.9.2.4 That other organ of state and the provider have consented to such procurement in writing.

3.9.2.5 Contract duration must be the same as the original tender. This means that if the original tender was invited for a three year period, the newly procured contract must also be for a three year period. In the event that the original tender was invited two years' prior and this process only commence in year 3 of the contract – the duration of the contract will be the same as the original tender, i.e. 3 years and NOT the remaining one year. If the latter is pursued, it will result in a material change to the initial tender scope and duration and may result in the process being regarded as flawed and will result in an invalid contract.

3.9.2.6 the Department applies this procurement activity, it does not become an additional party to the existing contract between the initial entity and service provider. A new contract comes into effect between the Department and the service provider, substantially in the same format of the initial tender, i.e. the same terms, conditions, cost and deliverables, unless more beneficial arrangements for the participating institution can be negotiated.

### 3.10 Transversal contracts

3.10.1 The National Treasury will facilitate the arrangement of transversal term contracts for the procurement of goods/ services required by more than one client department, provided that the arrangement of such contracts is both cost-effective and in national interest.

3.10.2 National and provincial departments through the relevant treasury may opt to participate in the transversal contracts facilitated by the National Treasury.

3.10.3 NW DOE & SD should obtain the list of such contracts, available on the National Treasury website, <http://www.treasury.gov.za/tenderinfo/> - contract list to determine in which contracts they would like to participate.

3.10.4 Should a NW DOE & SD opt to participate in any such contract, no similar contracts may be arranged by NW DOE & SD during the tenure of such contract.

## CHAPTER 5: ACQUISITION MANAGEMENT: PROCUREMENT

### 1 GENERAL

- 1.1 The AO must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused.
- 1.2 The AO or CFO must within three days of each month be notified in writing of all written or verbal .quotations and formal written price quotations accepted by an official acting in terms of a delegation.
- 1.3 Proper record keeping is essential.

### 2 RANGE OF PROCUREMENT PROCESSES

- 2.1 The thresholds set (inclusive of VAT), are as follows:

Verbal quotation and/ or out of pocket	Up to R2,000 (one quotation)
At least three quotations	Up to R10,000 and less R 30 000.00
<b>At least five and /more formal written quotations</b>	Equal to and above R30 000.00 – Rand value of R 499 999.99
Tenders (Competitive bidding):	Equal to Above R500,000 Long term contracts, goods/services irrespective of the value

- 2.1.1 Bids above R500 000 which has a range of options attached to it such as:
- 2.1.1.1 Advertised bids.
- 2.1.1.2 Limited bidding.
- 2.1.1.3 Other procurement arrangements and procedures such as term contracts.
- 2.2 Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy. When determining transaction values, a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.
- 2.3 Requirements may be procured by inviting written quotations per Departmental thresholds on the prospective service provider list./ ( CSD)
- 2.4 Bidders on the list of prospective Bidders must be invited; the AO must promote ongoing competition amongst Bidders; by inviting Bidders to submit quotations on a rotation basis.
- 2.5 SBD documents must be completed and submitted for all goods and services procurements

### 3 VERBAL QUOTES UP TO R2000

- 3.1 The accounting officer must establish the conditions for the procurement of goods and services up to R 2000.00
- 3.1.1 Requiring monthly reconciliation reports from each manager to the chief financial officer, including
- 3.1.1.1 The total amount of purchases for that month; and Receipts and appropriate document for each purchase.

#### **4 WRITTEN PRICE QUOTATIONS FROM R 30 000 UP TO R500 000 (INCL. VAT)**

- 4.1 All requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations from Bidders whose names appear on the list of prospective Bidders (**CSD**)
- 4.2 The requirement must, be advertised for at least seven days on the Departmental website.
- 4.3 The prescripts of the PPPFA and its Regulations must be applied, i.e. that preferential procurement be applied from R30 000 (VAT incl.)

#### **5 PROCUREMENT ABOVE R500 000 (INCL VAT) (BIDS)**

- 5.1 Goods and services above a transaction value of R500 000 (VAT included) and long term contracts may only be procured through a competitive bidding.
- 5.2 Before inviting bids, Department must:
  - 5.2.1 Properly ensure demand planning for, and, as far as possible, accurately estimate the costs of the provision of the services, works or goods for which an invitation for bid is to be made.
  - 5.2.2 If, in a specific case it is impractical to invite competitive bids, Department may procure the required goods, works or services by other means such as through limited bidding provided that the reasons for deviating from inviting competitive bids is recorded and approved by the AO or delegate.
  - 5.2.3 Department may include an open and transparent, competitive pre-qualification bidding process in which only pre-qualified organisations may participate.
- 5.3 Bids shall be advertised in at least the Government Tender Bulletin, E-portal, I-tender (where applicable), Departmental website and in any other appropriate media to reach the target market.

#### **6 ESTABLISHMENT OF A LIST OF APPROVED BIDDERS**

- 6.1 Where goods, services or works of a technical /specialized nature are required on a recurring basis, a list of approved suppliers for the supply of the goods, services or works may be established. These lists should be established through the competitive bidding process.
- 6.2 The intention to establish a list of approved suppliers should be published and the closing time and date for inclusion in the list of approved suppliers should be indicated.
- 6.3 For this purpose, a questionnaire should be made available by the Provincial Treasury and should make provision for the following:
  - 6.3.1 Among others, full details of the supplier's:
    - 6.3.1.1 Composition in terms of shareholding;
    - 6.3.1.2 Personnel complement;
    - 6.3.1.3 Financial position; and
    - 6.3.1.4 Ability to provide the goods, service or works required.
- 6.4 Requirements for admission to the list and criteria should be linked to the numeric value in terms of which applicants will be measured, for example acceptability, capability, facilities, resources etc. A predetermined standard method of awarding points should be followed.
- 6.5 The applications received should be evaluated and any rejection of applicants should be motivated and recorded.
- 6.6 Once the list of suppliers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotations on a rotation basis or according to the bid procedure when the goods, services or works are required.
- 6.7 This should be updated regularly, a least once a year by the Provincial Treasury.

## **7 LIMITED BIDDING**

- 7.1 Limited bidding is only to be used if justification exists and the necessary approval has been obtained within the framework of the Delegation of powers document.
- 7.2 Department will use limited bidding only in the following exceptional circumstances:
- 7.2.1 Where Department applied the competitive (open) bidding process, but the bids received were all non-responsive, thus the time required to go out on the same process has elapsed.
- 7.2.2 Where Department can buy under exceptionally advantageous conditions that only arise in the very short term.
- 7.2.3 In the event that a change of provider would compel Department to obtain spare parts or additional equipment or services that are not compatible or interchangeable with existing equipment or services that were obtained from an original provider.
- 7.2.4 The goods, services or works to be bought have to be designed by the provider.
- 7.2.5 When goods, services or works can only be supplied or rendered by a particular provider and no reasonable alternative or substitute exists.
- 7.2.6 There are legislative, technological or safety reasons to restrict purchases to Bidders who have proven their capability.
- 7.2.7 In cases of urgency due to unforeseen circumstances where lack of planning or negligence did not play a role.
- 7.2.8 In cases of emergency.
- 7.3 The 3 categories of limited bidding which may be used are multiple source, single sourcing and sole source.
- 7.4 Exception reporting in terms of Treasury Regulation 16A6.4 must be done.

## **8 DIRECT NEGOTIATION (refer to Guide for Accounting Officers/Authorities pg. 32 par 4.7.7)**

- 8.1 Direct negotiations shall only be permitted after approval by the Accounting Authority or the delegate and shall be conducted in such a manner that none of the stakeholders is advantaged or prejudiced. Thus care should be taken to ensure that such a process does not allow the Bidders concerned a second (unfair) opportunity and is not to the detriment of any other Bidders.
- 8.2 Direct negotiations may only take place under the following circumstances:
- 8.2.1 In cases of urgency due to unforeseen circumstances where lack of planning or negligence did not play a role, and where following the standard competitive bidding process or the process prescribed for urgency would not be in Department's best interest.
- 8.2.2 Owing to a catastrophic event, there is an urgent need for the goods or services (an emergency / urgency), making it impractical to use other methods of procurement because of the time involved in using those methods.
- 8.2.3 In cases where preferred Bidders were identified as preferred Bidders through a competitive bidding process. ( PPPFA)
- 8.2.4 In the case of competitive negotiation because of the technical character of the goods or construction, or because of the nature of the services, it is necessary for the procuring entity to negotiate with suppliers or service Bidders. Thus in the aforementioned case the first round of a two-stage bidding process has taken place where inter alia capacity and acceptability was established.
- 8.2.5 The official that can contractually commit Department in this regard must lead the negotiation and must be supported by the user department and the SCM Function.

## **9 URGENT PROCUREMENT**

- 9.1 Urgent cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. (However, a lack of proper planning should not be constituted as an urgent case).
- 9.2 In urgent cases, Department may dispense with the invitation of bids and may obtain the required goods, works or services by means of quotations by preferably making use of the database of prospective suppliers, or otherwise in any manner to the best interest of Department.
- 9.3 The nature of the urgency and the details of the justifiable procurement process followed in the circumstances will be recorded and reported.

## **10 EMERGENCY PROCUREMENT**

- 10.1 Emergency cases are cases where immediate action is necessary in order to avoid a dangerous or risky situation or misery. It will only apply in serious, unexpected and potentially dangerous circumstances which require immediate rectification:
- 10.1.1 In the event of a threat or interruption in Department ability to execute its mandate
- 10.1.2 In the event of an immediate threat to the environment or human safety.
- 10.2 The reasons for the urgency/emergency and for dispensing of competitive bids should be clearly recorded and approved by the accounting officer or his/her delegate.
- 10.3 In adopting a more flexible procurement process, officials should still, as far as feasible, adhere to the procurement principles of being fair, equitable, transparent, competitive and cost-effective. Officials are to balance the need to act without delay against meeting the overarching public sector obligations of being accountable and to act lawfully and with integrity.

## **11 PROCUREMENT FROM ABROAD**

- 11.1 Department may procure from abroad if it can be certified in writing that:
- 11.1.1 The product/service cannot be sourced locally or through local representatives and that no other similar product will serve the purpose.
- 11.1.2 That a local sourcing process has been run without any success, by obtaining approval from the AO or delegate.
- 11.1.3 The prices of the locally available supply/service are exorbitant.
- 11.2 For procurement outside the boundaries of South Africa, the same process is followed as for the procurement within South Africa, except for the following:
- 11.2.1 Determining international advertising mechanisms.
- 11.2.2 Determining the utilisation of conditions applicable to foreign countries, such as Incoterms, if required.
- 11.2.3 Determining if the price should be indicated in foreign currency, and if so, which currency.
- 11.2.4 The estimated cost Free On Board (FOB) in foreign currency plus conversion factors.

## **12 TERM CONTRACTS FOR REQUIREMENTS OF A RECURRING NATURE**

- 12.1 Department may enter into specific term contracts, which are arranged for the specific repetitive requirements of Department.

## CHAPTER 6: ACQUISITION MANAGEMENT: APPOINTMENT OF CONSULTANTS

### 1 GENERAL

- 1.1 The normal policy and procedures apply to the appointment of consultants.
- 1.2 The AO must, comply with the National Treasury's instructions issued in respect of the appointment of consultants.
- 1.3 It must be pointed out that the appointment of Transaction Advisors as defined in Treasury Regulation 16 to the PFMA, who are to be appointed by institutions to render advice in relation to Public -Private Partnerships, should be done in terms of the practice note issued by the National Treasury specifically for that purpose.
- 1.4 For the purpose of this Policy, the term consultant includes, among others, consulting firms, engineering firms, construction managers, management firms engineering multinational organizations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organizations (NGOs) and individuals.
- 1.5 The relationship between the accounting officer and the consultant should be one of purchaser/provider and not employer/employee. The work undertaken by a consultant should be regulated by a contract. The accounting officer is, however, responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets and should take remedial action if performance is below standard.
- 1.6 In procuring consulting services, the accounting officer should satisfy that:
  - 1.6.1 the procedures to be used will result in the selection of consultants who have the necessary professional qualifications:
  - 1.6.2 the selected consultant will carry out the assignment in accordance with the agreed schedule, and
  - 1.6.3 the scope of the services is consistent with the needs of the project.
  - 1.6.4 In a instance where the department use consultancy services, rates should not exceed applicable published DPSA rates.
  - 1.6.5 In an instance where a panel of consultants is approved, the department must ensure that a rotation system is adopted.

### 2 COST CONTAINMENT MEASURES

- 2.1 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.
- 2.2 Before contracting consultants, Department must conduct a gap analysis to confirm that Department does not have the requisite skills or resources in its full time employ to perform the assignment in question.<sup>5</sup>
- 2.3 The appointment of consultants may only be approved by the AO on presentation of the noted business case. Other deviations must be approved by National Treasury before the commencement of the procurement process.

### 3 MINIMUM REQUIREMENTS WHEN APPOINTING CONSULTANTS

- 3.1 When appointing consultants, strive to satisfy the following minimum requirements:
  - 3.1.1 Meeting the highest standards of quality and efficiency.

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<sup>5</sup> National Treasury Instruction Note 1 of 2013/2014 re cost containment measures

3.1.2 Obtaining advice that is unbiased, that is, being delivered by a consultant acting independently from any affiliation, economic or otherwise, which may cause conflicts between the consultant's interests and those of government.

3.1.3 Ensuring the advice proposed, or assignment executed, meets the ethical principles of the consultancy professions.

#### **4 PROMOTING GOVERNMENT'S PREFERENTIAL POLICIES**

4.1 When consultants are appointed, the applicable prescripts of the Preferential Procurement Regulations, must be adhered to.

#### **5 APPROACHES FOR THE APPOINTMENT OF CONSULTANTS**

5.1 The particular method to be followed for the selection of consultants for any given project should be selected by the AO in accordance with the criteria outlined in this policy.

5.2 When appropriate, the AO may include under the special conditions of contract, the following or similar condition:

5.2.1 Services may not recruit or shall not attempt to recruit an employee of the principal for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof".

5.2.2 The different approaches that may be followed are:

#### **6 ESTABLISHMENT OF A LIST OF APPROVED SERVICE BIDDERS**

6.1.1 Where consultancy services are required on a recurring basis, a panel of consultants/list of approved service Bidders for the rendering of these services may be established. These panels/lists should be established through the competitive bidding process, usually for services that are of a routine or simple nature where the scope and content of the work to be done can be described in detail.

## CHAPTER 7: ACQUISITION MANAGEMENT: DEALING WITH UNSOLICITED BIDS/PROPOSALS/CONCEPTS

### 1 GENERAL

- 1.1 The department has no obligation to consider unsolicited bids received outside a normal bidding process.

### 2 UNSOLICITED BIDS/ PROPOSALS/CONCEPTS

#### 2.1 Consideration of an unsolicited bid/proposal/concept:

- 2.1.1 The AO may decide to consider an unsolicited bid, only if-
- 2.1.1.1 The product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - 2.1.1.2 The product or service will be exceptionally beneficial to, or have exceptional cost advantages;
  - 2.1.1.3 The person who made the bids is the sole provider of the product or service; and
  - 2.1.1.4 The reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
  - 2.1.1.5 The need for the product or service by Department has been established during its strategic planning and budgeting processes.

Upon receipt of an unsolicited proposal, Department must (in writing) notify the National Treasury contact person within ten working days of such receipt

#### 2.2 Rejection of an unsolicited bid/proposal/concept:

- 2.2.1 The AO must reject the unsolicited proposal if the proposal:
- 2.2.1.1 Relates to known institutional requirements that can, within reasonable and practicable limits, be acquired by conventional competitive bidding methods
  - 2.2.1.2 Relates to products or services which are generally available
  - 2.2.1.3 Does not fall within the powers and functions of Department
  - 2.2.1.4 Does not comply substantially with the criteria that should be met
  - 2.2.1.5 Has not been submitted by a duly authorised representative of the proponent
  - 2.2.1.6 Contravenes the provisions of any law.
- 2.2.2 If the AO decides to reject the unsolicited proposal, her or she must:
- 2.2.2.1 Notify the authorized representative of the proponent
  - 2.2.2.2 Ensure that Department does not make use of any of the intellectual property or proprietary data in the unsolicited proposal
  - 2.2.2.3 Return to the proponent, all the documents received in the unsolicited proposal including any copies of these documents.
- 2.2.3 If the accounting officer decides to consider an unsolicited bid that complies with the criteria as stipulated in the National Treasury Practice Note No 11 of 2008/2009, the proponent must be informed accordingly.
- 2.2.4 If the unsolicited proposal is a PPP, Department must comply with the requirements of Treasury Regulation 16 and the practice notes relevant hereto.

- 2.2.5 If the unsolicited proposal is not a PPP, Department must undertake a comprehensive evaluation of the unsolicited proposal.
- 2.2.6 If Department decides to proceed with the unsolicited proposal, the department must negotiate an unsolicited proposal agreement with the proponent.
- 2.2.7 The allocation of responsibility for developing bid documents in accordance with Department Supply Chain Management system, provided that development of the document must always be under the supervision of Department.
- 2.3 **Use of external consultants during the process**
  - 2.3.1 After receiving an unsolicited proposal and before either accepting or rejecting the proposal, the AO may seek advice from an independent consultant or expert provided that:
    - 2.3.1.1 An appropriate undertaking be obtained from any such person that any confidential material or information provided by the proponent will not be disclosed to anyone other than an employee or agent of such a third party who will. In turn, treat the information or material as confidential and give an undertaking to do so and
    - 2.3.1.2 The cost of obtaining independent advice will be incurred by the institution, unless the proponent withdraws the proposal prior to entering into an unsolicited proposal agreement, in which event the proponent will be liable to the institution for these costs.

## CHAPTER 8: QUOTATION/ BID COMPILATION

### 1 LANGUAGE OF QUOTATION/BID DOCUMENTS

- 1.1 Bidding documents should be prepared in at least English. Bidding documents should be worded such that they permit and encourage competition.

### 2 CALLING FOR BIDS/ QUOTES

- 2.1 Bids/ quotes must be invited by the official rendering the SCM Function unless other departments have been delegated to do so.

### 3 ADVERTISING

- 3.1 Bids should be advertised for at least 21 calendar days before closure in at least the Government Tender Bulletin, on the Department website, e-portal and in other appropriate media, should an AO deem it necessary to ensure greater exposure to potential Bidders. The responsibility for such advertisement costs will be that of the relevant accounting officer.

- 3.2 For bids relating to the construction industry, the prescripts of the Construction Industry Development Board (CIDB) require that the bid be advertised on the CIDB iTender System.

- 3.3 The Department must, where in the award of tenders, local production and content is of critical importance, advertise such tenders with such a specific tendering condition (**special conditions**).

- 3.4 No bids may be advertised or close between 15 and 31 December as most firms are closed during this period and advantageous bids can therefore not be ensured. **(However, if circumstances requires otherwise, a submission for approval must be made to the Accounting Authority or the delegate in this regard) not allowed as this may pose a risk whereby Bidders may object against such an advertisement).**

- 3.5 An institution should maintain a list of responses to the advertisement.

### 4 CLOSING TIME OF BIDS

- 4.1 To standardize on the closing time of bids, it is recommended that bids should close at 11:00 were feasible on the day and place indicated in the bid documents.

- 4.2 The closing time of bids must be strictly observed.

### 5 DETERMINE CLOSING PERIOD

- 5.1 Normal closing period is not less than 21 calendar days from the date of publication of the invitation to bid.

- 5.2 The principle of allowing Bidders enough time to prepare comprehensive bids must be observed.

- 5.3 In urgent cases when bids may be advertised for shorter periods as the AO or delegate may determine. Reasons for the deviation must be documented and fully motivated. The lengthening of the closing period must also be motivated and duly approved.

- 5.4 Where a shorter period is involved, care must be taken that reasonable time, normally not less than 14 calendar days in the case of a bid and 7 calendar days in the case of a quote, is allowed for the preparation of the Bidders's offer.

## 6 DETERMINING THE VALIDITY PERIOD

- 6.1 Bidders should be required to submit bids valid for a period specified in the bidding documents. This period should be sufficient to enable Department to complete the comparison and evaluation of bids, review the recommendation and award the contract.
- 6.2 The TOR should specify the validity period (normally 90 calendar days). Bids must be valid for 90 Calendar days from the closing date of the bid. A longer period may be set if problems with the evaluation is envisioned, but preferably not longer than 120 days.
- 6.3 An extension of bid validity, if justified in exceptional circumstances, should be requested in writing from all Bidders before the expiry date.

## 7 ELEMENTS FOR INCLUSION IN BID DOCUMENTS

- 7.1 Department's bid documents shall promote uniformity by at least standardizing bid documents where possible. Department should customise and use the appropriate Standard Documents (SBDs) issued by the National Treasury with minimum changes acceptable to the accounting officer, as necessary to address contract- and project-specific issues.
- 7.2 All bids and contract should be subject to the General Conditions as issued by National Treasury **The standard wording of the General Conditions of Contract must not be amended.** The standard bid documentation and General Conditions of Contract issued by the Construction Industry Development Board should be utilized in cases of bids related to construction works.
- 7.3 All Bidders shall receive the same information in documentation and should be assured of an equal opportunity to obtain additional information on a timely basis to ensure fairness.
- 7.4 Where feasible, promote subcontracting and joint ventures with EMS's.
- 7.5 Bid documentation shall include evaluation and adjudication criteria, including the criteria prescribed in the PPPFA and its Regulations
- 7.6 The basis for bid evaluations and selection should be clearly outlined in the instruction to Bidders and/or in the specifications.
- 7.7 The following may be included in the bid documents as conditions:
- 7.7.1 Consultants may only be remunerated (as a maximum) at the following rates:
- 7.7.1.1 "Guideline for fees" , issued by the SAICA; or
- 7.7.1.2 "Guide on Hourly Fee Rates for Consultants, issued by the DPSA; or
- 7.7.1.3 Those prescribed by the body regulating the profession of the consultant.
- 7.7.1.4 Domestic hotel accommodation may not exceed R1300 per night per person (incl. dinner, breakfast and parking) subject to cost containment policy review.
- 7.7.1.5 Air travel is restricted to economy class (subject to cost containment policy review)
- 7.7.1.6 Claims for kilometers may not exceed the rates approved by the Automobile Association of South Africa.

## 8 LOCAL PRODUCTION AND CONTENT

- 8.1 Department must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, services or works or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered.
- 8.2 Where there is not a designated sector, Department may include, a specific tendering condition, that only locally produced services, works or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered, on condition that such

prescripts and threshold(s) are in accordance with the specific directives issued for this purpose by the National Treasury.

- 8.3 All tenders issued where local production and content is a criterion, must be measurable and audited.

## **9 QUOTATION/BID DOCUMENTATION PACK**

9.1 An official(s) responsible for the SCM Function is responsible for compiling the bid documents on receipt of a request by the user department accompanied by specification/terms of reference as compiled by the Bid Specification Committee and the approval received from the AO or delegate.

9.2 The quotation/bid documentation pack will consist of the following:

9.2.1 Bid number, description of the requirement, name of the organization by which it is required and the closing date and time.

9.2.2 Standard bid documents that should be included, as a minimum, but are not limited to the following:

9.2.2.1 Invitation to Bid that is the Bidders' consent if signed to enter into a contract under the conditions specified in the bid documents, should the offer be accepted.

9.2.2.2 Tax Clearance requirements (from above R30 000).

9.2.2.3 Relevant pricing schedule.

9.2.2.4 Declaration of interest (from above R10 000).

9.2.2.5 Declaration of Bidders's past SCM practices (from above R10 000).

9.2.2.6 Certificate of Independent Bid Determination (from above R10 000).

9.2.2.7 Preference Point Claim Form in terms of the Preferential Procurement Regulation, 20116 (from R30 000)

9.2.2.8 Declaration Certificate for Local Production and Content for Designated Sectors (from above R10 000)

9.2.2.9 Specification/TOR.

9.2.2.10 General conditions of contract.

9.2.2.11 Special contract conditions.

9.2.3 When functionality will be evaluated the following must be clearly specified in the invitation to quote/bid:

9.2.3.1 Evaluation criteria for measuring functionality

9.2.3.2 Weight of each criterion

9.2.3.3 Applicable values

9.2.3.4 Minimum qualifying score for functionality.

## **10 AVAILABILITY OF BID/QUOTE DOCUMENTS**

10.1 The related pre-qualification or bidding/ quote document, as the case may be, should be available on the publication date of the advertisement or otherwise as specified.

10.2 Bid /quote documents **may be** collected by or may be e-mailed or posted to prospective Bidders.

## **11 SALE OF BID DOCUMENTS**

11.1 Department charges a nonrefundable fee for bidding documents when necessary (minimum R100.00), provided that:

11.1.1 The fee should be reasonable and reflect only the cost of their printing and delivery to prospective Bidders;

11.1.2 The fee should not be so high as to discourage prospective Bidders; and

11.1.3 That all monies received for the sale of bidding documents must be paid into the National Revenue Fund or Provincial Revenue Fund in terms of sections 11(3), 13(1), 21(2) and 22(1) of the Public Finance Management Act 1 of 1999 (as amended by Act 29 of 1999).

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<sup>6</sup> Implementation Guide: PPR, 2011 date1 Dec 2011

**11.1.4** *Downloaded bids are not sold, as the sale of bid documents is intended to cover the cost of the paper and printing*

**12 PRE-BID INFORMATION SESSIONS**

- 12.1 A pre-bid meeting may be arranged for potential Bidders to meet with the institution's representatives to seek clarifications. Minutes of the meeting must and should be provided to all prospective Bidders when requested. Any additional information, clarification, correction of errors, or modifications of bidding documents must and should be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable Bidders to take appropriate actions. If necessary, the deadline should be extended.
- 12.2 Please refer to the Guide for Accounting Officers/authorities par. 4.8.1 page 35 with regard to the bid content.

**13 CHANGING OF INFORMATION BEFORE THE CLOSING TIME**

- 13.1 It is preferable to cancel a bidding invitation and to invite fresh bids if conditions or the specification or any other information have to be materially changed before the closing time or if mistakes are discovered in the documents before the closing time.

**14 POSTPONEMENT OF THE CLOSING DATE**

- 14.1 The closing date may be postponed only if all prospective Bidders can be advised of the postponed date in writing before the original closing date.
- 14.2 In the case of an advertised bid invitation, the closing date may be postponed only if the postponed date can be advertised in the Government Tender Bulletin and other media where applicable, before the original closing date.

**15 RESPONSES TO ADVERT/ INVITATION**

- 15.1 Department shall maintain a register/ list of responses to the advertisement or the individuals/ organisations targeted in the case of quotations.
- 15.2 The response list must contain the following information:
- 15.2.1 Bid number
- 15.2.2 Name of the Bidders who documents were issued to
- 15.2.3 Name of the person/ organization on whose behalf the document is collected, the phone number, contact person and e-mail address, if possible) of the prospective Bidders.
- 15.2.4 The date and time the document was collected or the date the document was e-mailed.
- 15.3 The time for the bid opening should be the same as for the deadline for receipt of bids or promptly thereafter and should be announced, together with the place for bid opening, in the invitation to bid. The institution should open all bids at the stipulated time and place. Bids should be opened in public, that is, Bidders or their representatives should be allowed to be present. If requested by any Bidders, the name of the Bidders and if practical the total amount of each bid and of any alternative bids, should be read aloud. The names of the Bidders and their individual total prices should be recorded when bids are opened.

## CHAPTER 9: RECEIVING AND OPENING OF RESPONSES

### 1 RECEIVING AND OPENING PROCEDURES FOR QUOTATIONS UP TO R500 000

- 1.1 A fair and transparent process shall be followed for the closing, receiving, opening and processing of quotations. The following shall apply:

written quotes up to R10 000	Written quotes above 10 000 and below R30 000	Written quotes from R30 000 and up to R500 000
<ul style="list-style-type: none"> <li>Delegated official to obtain and receive the quotes</li> <li>Award to be approved by a different delegated official.</li> </ul>	<ul style="list-style-type: none"> <li>Quotations to be submitted in writing by hand, or per email</li> <li>Bid box procedures may be used where the circumstances to require.</li> </ul>	<ul style="list-style-type: none"> <li>Quotations to be submitted in writing by hand, by post or per email</li> <li>Bid box procedures may be used where the circumstances require.</li> </ul>

### 2 RECEIVING AND OPENING PROCEDURES FOR BIDS ABOVE R500 000

- 2.1 A fair and transparent process shall be followed for the closing, receiving, opening and processing of bids.
- 2.2 A bid box shall be visible on the premises of Department and shall be accessible **24hours and 7 days** a week.
- 2.3 A bid box shall always be locked, unless bids are collected in order to prevent unauthorised removal of bids.
- 2.4 At least two officials must be present during opening of bids on the date and precise time of closing as specified.
- 2.5 At the precise closing time of the bid, the bid box is locked to prevent late submission of bids into the box where after all bids in the box are removed for processing.
- 2.6 Bids shall be date stamped to indicate the date of receipt of bids. On the closing date, the time of receipt should also be recorded.
- 2.7 A lockable facility for the storing of bids must be available.
- 2.8 Within ten (10) working days after the closure of any competitive bid, the names of all Bidders that submitted bids in relation to that particular advertisement must be published on the Department website. Where practical (as determined by the Accounting Authority), the total price and the preferences claimed by the respective Bidders must also be published. The information should remain on the website for at least thirty (30) days.

### 3 ADMISSION OF QUOTATIONS

- 3.1 Unless otherwise stated, written quotations below R30 000 (VAT incl.), received electronically from the e-sourcing system may be accepted as valid if received before the closing time.
- 3.2 For quotations from R30 000 up to R500 000 -sourced electronically from the e-sourcing system, Department may request the recommended Bidders to deliver its proposal in original hard copy according to the specified closing date of the request from Department. This shall be a condition of the request for quote.

### 4 ADMISSION OF BIDS

- 4.1 Bids received by facsimile transmitter, telegram, telex or similar media do not meet the requirements and must be summarily rejected.
- 4.2 Only original bid documents or photocopies of facsimiles, which are submitted in the prescribed manner and where all essential forms are originally **signed in ink** before submission, may be accepted as valid.
- 4.3 Bidders shall be allowed to submit bids by mail, by courier or by hand into the bid box or at the physical address of Department (reception, over the counter at the SCM Function as applicable) before the closing time of the bids.
- 4.4 All bids will then be kept unopened in safe custody until the closing date and time of the bids.

## **5 BIDS RECEIVED LATE**

- 5.1 Bids received after the time stipulated should not be considered and shall be recorded as late.
- 5.2 Where no bid or no acceptable bid has been received, the bid has to be re-advertised if the need still exists.

## **6 CONFIDENTIALITY**

- 6.1 After public opening of bids, information's relating to the examination, clarification and evaluation of bids and recommendations concerning awards should not be disclosed to Bidders or other persons not officially concerned with the process, until the successful Bidders is notified of the award.

## CHAPTER 10: EVALUATION PROCESS

### 1 GENERAL

- 1.1 All bids duly lodged shall be taken into consideration and evaluated.
- 1.2 Department shall base evaluation solely on an examination of the relevant statutory and/or predetermined evaluation criteria.
- 1.3 Evaluation criteria shall promote the areas of technical compliance/ ability, finance (commerce) and preferential procurement as per specification document.
- 1.4 Members involved in the evaluation process shall be honest, fair, impartial and transparent.
- 1.5 All evaluators/members of bid evaluation committees should be cleared at the level of "CONFIDENTIAL" and should be required to declare their financial interest upon appointment and thereafter annually.
- 1.6 No person should interfere with the SCM system of Department, or amend or tamper with any quotation/bid after its receipt.
- 1.7 Using cost estimates as a benchmark to regard bids as unacceptable or non-responsive is not allowed.

### 2 EVALUATION

- 2.1 For evaluation of proposals within the quotation threshold, where the requirement is not technically complex and where there are no major risks involved, formalized evaluation committees are not compulsory and the relevant delegate may perform the evaluation and submit the recommendation to the relevant award structure.
- 2.2 The evaluation will still be based on an examination of the relevant statutory and/or predetermined evaluation criteria.
- 2.3 For evaluation of proposals within the quotation and bid threshold, where the requirement is technically complex and major risks can be involved, BEC shall evaluate the proposals received and submit a recommendation regarding the award of the quote/ bid to the relevant adjudication structure.
- 2.4 Quotes/ bids must be evaluated against the predetermined criteria as stipulated in the quote/ bid document. The criteria to be taken into account, are inter alia:
  - 2.4.1 Compliance with the bid submission instructions
  - 2.4.2 Local production and content, if applicable.
  - 2.4.3 Functionality, which includes presentations, if applicable
  - 2.4.4 Price
  - 2.4.5 Preferential procurement
- 2.4.6 Only Bidders, who have achieved the minimum qualification score for functionality, where applicable, must be evaluated further. Bidders who did not achieve the minimum qualification score for functionality must be eliminated from further evaluation.
- 2.5 Only the short-listed Bidders that met the minimum criteria for functionality, may be invited for presentations to the BEC after the evaluation of functionality based on the content of the proposal, if the quote/ bid document provide for this option. The score obtained during the presentation may only influence the functional score.

### **3 REASONS FOR REJECTION**

- 3.1 Department must reject a proposal for the award of a contract if the recommended Bidders has committed a proven corrupt or fraudulent act in competing for the particular contract.
- 3.2 Department may disregard the bid of any Bidders if that Bidders, or any of its directors:
  - 3.2.1 Have abused the SCM system of Department
  - 3.2.2 Have committed proven fraud or any other improper conduct in relation to such system.
  - 3.2.3 Have failed to perform on any previous contract and the proof exists.
  - 3.2.4 Have been found guilty by the Competition Commission of restrictive practices or collusive bidding/tendering.<sup>7</sup>
- 3.3 Such actions must be communicated to the National Treasury.

### **4 CANCELLATION AND RE-INVITATION OF BIDS**

- 4.1 If rejection is due to lack of competition, wider advertising should be considered. If the rejection was due to most of all of the bids being non responsive, new bid may be invited from the initially pre-qualified firms, or with the agreement of the AO, from only those that submitted bids in the first instance. All bids should not be rejected solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the institution's pre-bid cost estimates by a substantial margin, the institution should investigate causes for the excessive cost and consider requesting new bids as described above.
- 4.2 In the event that, in the application of the 80/20 or 90/10 preference point system as stipulated in the tender documents, all tenders received exceed the estimated Rand value for the stipulated preference point, the tender invitation must be cancelled.
- 4.3 If one or more of the acceptable tenders received are within the prescribed threshold for the stipulated preference point, all tenders must be evaluated according to the preference point stipulated in the tender document.

### **5 COMPLIANCE CHECK PROCEDURES (ADMINISTRATIVE COMPLIANCE)**

- 5.1 Before actual evaluation, the official(s) responsible for the SCM Function shall do a compliance check that the quotation/bid documentation complies with the predetermined conditions and that all required forms and information are submitted, completed in full and legible.
- 5.2 Compulsory disqualifying criteria are at least:
  - 5.2.1 if the declaration part of the tender document was not completed and signed.
  - 5.2.2 if a valid tax clearance certificate is not provided with the documents on the closing date and time.
- 5.3 If no price was indicated, it will be regarded as, no price no quote/bid.
- 5.4 **Signing of bids**
  - 5.4.1 In order to avoid confusion regarding precisely what must be signed for a valid bid, the Invitation to Bid or photocopy thereof must be signed in ink.
- 5.5 All declarations must also be signed to qualify as valid claims.
- 5.6 **Local Production And Content (SBD 6.2)**

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<sup>7</sup> National Treasury Practice Note dated 21 July 2010

5.6.1 With regard to local production and content, Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in terms of the local production and content. (Stipulation of the SBD 6.2)

5.6.2 If the Bidders did not comply with the minimum requirement for local production and content as stipulated in the quote/ bid document, the proposal must be eliminated from further evaluation.

#### 5.7 **Tax Clearance Certificates**

5.7.1 It is Government policy not to enter into business arrangements with any supplier whose tax affairs are not in order, or who has not made satisfactory arrangements with SARS to meet any outstanding obligations.

5.7.2 As proof that there are no outstanding tax obligations, a valid Tax Clearance Certificate must be submitted together with the bid. . (SBD 2 Stipulation)

5.7.3 If the Department is in possession of a Bidders's valid Tax Clearance Certificate, it is not necessary to obtain a new Tax Clearance Certificate each time a price quotation or bid is submitted from that specific provider. This provision may be applied only if the closing date of the price quotation or bid falls within the expiry date of the Tax Clearance Certificate that is in the Department's possession. Whenever this ruling is applied, cross-reference must be made to the valid Tax Clearance Certificate for audit purposes.

#### 5.8 **Submission and signing of declarations or certificates**

5.8.1 In all cases where the relevant preference claim form has to be submitted and a Bidder had the intention to claim as evidenced by the fact that he did fill in the preference form or gave other indications of wishing to claim preference, the Bidders must be allowed to complete and/or sign the declaration.

5.8.2 Recommendations with regard to such matters must be submitted to the relevant delegate.

#### 5.9 **Declaration of Interest**

5.9.1 An official who is involved in the evaluation and recommendation process, or who is in any way involved with the procurement process, shall also certify, as part of the recommendation that he/she complies with The Prevention and Combating of Corrupt Activities Act.

5.9.2 All officials who can influence the award of a quotation/bid are seen as officials who are involved in the recommendation process.

5.9.3 The register of attendance of disclaimer for the members of the Bid Evaluation Committee and the Bid Adjudication Committee must contain the following:

5.9.4 "I, the undersigned, accept that all information, documentation and decisions regarding any matter serving before the Committee are confidential. I, therefore, undertake not to make known anything in this regard. I also declare that I did not purposefully unlawfully favour or prejudice anyone in the decision making process in the recommendation and award of the quotation/bid."

5.9.5 All officials who are involved in the decision making process must sign a similar affidavit.

#### 5.10 **Certificate of Independent Bid Determination**

5.10.1 If a Bidder has failed to submit this certificate together with the bid documentation, the Bidders may be requested, in writing, to submit the signed form within specified period determined by delegate.

5.10.2 Failure to submit the signed form within specified period of notification may result in the invalidation of the bid.

5.10.3 Department must refer a Bidders or contractor who, based on reasonable grounds or evidence obtained by Department, has engaged in the restrictive practice (horizontal relationship and involves collusive bidding) referred to Section 4(1)(b)(iii) of the Competition Act, to the Competition Commission for investigation and possible imposition of administrative penalties.

### 6 **BIDDERS' OWN CONDITIONS**

6.1 The conditions as contained in the quotation/bid documents enjoy precedence. All Bidders must

accept these conditions. However, it sometimes happens that Bidders set their own conditions, which might be in conflict with the quotation/bid conditions. Such own conditions set by Bidders can be recommended for acceptance where it is in the interest of Department to do so and where the interests of other Bidders are not prejudiced.

6.2 Where the Bidders' own conditions are not in the best interest of the Department, the provider must be requested to withdraw the conditions.

6.3 If Bidders are not prepared to withdraw unacceptable or conflicting conditions, reasons why such conditions must be accepted must be submitted to the relevant award structure for approval or alternatively the quotation/bid may be passed over.

## **7 CONSIDERATION OF ADDITIONAL INFORMATION**

7.1 Information received after the closing date, may only be taken into consideration if it would not influence the original recommendation made, which must be based on the original information received from Bidders.

7.2 During the consideration of quotations/bids, communication by Department with Bidders may take place only with the express prior approval of the relevant award structure.

## **8 CANCELLATION OF QUOTATIONS/BIDS**

8.1 Should it be determined through the evaluation process that no acceptable quotations/bids were received; a recommendation to cancel the quotation/bid must be submitted for approval as part of the evaluation report.

8.1.1 The reasons why no acceptable quotations/bids were received by the closing date and time must be investigated before a decision is made as to what alternative process must be followed to satisfy the requirements.

8.1.2 The requirement may now be re-advertised / re-invited or a specific number of pre-identified service Bidders may be targeted.

8.1.3 The evaluation report must contain the request for cancellation accompanied by the perceived reasons determined through the investigation as well as a recommendation on the alternative process to be followed to satisfy the requirements.

8.2 The AO will be justified in rejecting all proposals only if all proposals are nonresponsive and unsuitable, either because they present major deficiencies in complying with the Tor, or because they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated. The new process may include revising the RFP and the budget.

8.3 Bidding documents should provide for the rejection of all bids if and when deemed necessary. This is justified when there is lack of effective competition, or bids are not substantially responsive. However, lack of competition should not be determined solely on the basis of the number of Bidders. If all bids were rejected, the institution should review the causes justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids.

8.4 Alternatively, the institution may negotiate with the identified preferred Bidders to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility that can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents may require re-bidding.

8.5 The relevant award structure shall approve all cases where quotations/bids:

8.5.1 Are to be cancelled.

8.5.2 New quotations/bids are to be solicited because of the cancellation.

8.5.3 Negotiations with the preferred Bidders are to take place to determine a reduction in the scope and/or a reallocation of risk and responsibility. A substantial reduction in the scope or modification to the bidding documents may require re-bidding.

8.6 Where quotations/bids are to be cancelled all Bidders must be informed in writing of the cancellation or the cancellation must be advertised on all the publications used for invitations.

- 8.7 Department may cancel a tender, prior to the award if:
- 8.7.1 Due to changed circumstances, there is no longer a need for the service, works or goods requested.
  - 8.7.2 Funds are no longer available to cover the total envisaged expenditure.
  - 8.7.3 No or no acceptable quotations/bids were received.

## 9 PRICE DETERMINATION

9.1 A legal contract cannot be concluded by the acceptance of an offer where it is obvious to any reasonable person that a price is out of line with other market prices and/or previous quoted prices. Confirmation of whether the price is correct or not, must be obtained from the provider in such cases.

9.2 Only confirmation of the correctness of the price must be undertaken not negotiation for a better price.

### 9.3 Amendment of prices prior to lapse of validity

9.3.1 An amendment of a quoted price during the original validity period is not allowed.

### 9.4 Comparison of quoted prices

9.4.1 The quoted prices of all items must be brought to a comparative basis, where applicable, by deducting preferences and other benefits, and adding implied contract price adjustments in the case of non-firm prices and delivery and other costs where applicable.

9.4.2 Where purchases are accompanied by a maintenance contract and the future costs of the maintenance are known, the discounted present value of all the future costs must be added to the purchase cost in order to calculate a comparative price. Where these costs are not known, a typical scenario must be set in the quotation/bid document and priced by each provider in order to obtain comparative prices.

9.4.3 The quoted prices of Bidders who are not registered in terms of the VAT Act, must for purposes of comparison be accepted as being inclusive of VAT. Department must do price comparisons on these quoted prices and any transaction as a result of acceptance of such quoted prices will under no circumstances be subject to the levying of an additional tax.

## 10 DETERMINING THE POINT FOR PRICE

10.1 The PPPFA prescribes that the lowest acceptable bid must receive 80 or 90 points for price.

10.2 The point for price must be determined by the following formula:

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{OR} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for comparative price of tender or offer under consideration

$P_t$  = Comparative price of tender or offer under consideration

$P_{\min}$  = Comparative price of lowest acceptable tender or offer.

10.3 Points must be rounded off to the nearest 2 decimal places.

## 11 ALLOCATION OF PREFERENCES

11.1 Bidders who qualify as Exempted Micro Enterprises (EME's) in terms of the Broad Based Black Economic Empowerment Act, must either submit a certificate issued by a registered auditor, accounting officer as contemplated in the Close Corporation Act<sup>8</sup> or an accredited verification agency.

11.2 Bidders other than EME's must submit valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating.

11.3 The submission of such certificates must comply with the requirements of instructions and guidelines issued by the National Treasury and must be in accordance with notices published by the Department of Trade and Industry in the *Government Gazette*.

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<sup>8</sup> Close Corporation Act, 1984 (Act No. 69 of 1984) (section 60(4))

- 11.4 The B-BBEE status level attained by the tenderer must be used to determine the number of points out of the 20/10 points for preferential procurement. The points must be awarded as follows:

B-BBEE Status Level of Contributor	Procurement up to R50 000 000 (all taxes incl.) Number of points	Procurement above R50 000 000 (all taxes incl.) Number of points
1	20	10
2	18	9
3	14	6
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
Non-compliant contributor	0	0

- 11.5 The point obtained above must be added to the point for price to determine the total score per Bidders.

- 11.6 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

- 11.7 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every tender.

- 11.8 A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended subcontractor is an exempted micro enterprise that has the capability and ability to execute the contract.

- 11.9 Department must act against any tenderer or person, when it was detected that the B-BBEE status level of contribution was claimed or obtained on a fraudulent basis.

## 12 COMBINING PRICE AND PREFERENCE POINTS

- 12.1 The points scored by a tenderer in respect of the level of B-BBEE contribution must be added to the points scored for price as calculated.

- 12.2 The contract must be awarded to the tenderer who scores the highest total number of points unless objective criteria justify the award to another tenderer.

## 13 NEGOTIATIONS

- 13.1 Negotiations with Bidders identified as preferred Bidders through a competitive bidding process may take place provided that approval has been obtained from the accounting officer and such a process does not allow the Bidders concerned a second (unfair) opportunity and is not to the detriment of any other Bidder.

- 13.2 Where such negotiations are authorised, the relevant award structure must ensure that the negotiations take place at least at the middle management level and that the agreement, which is reached, is placed on record in writing.

## 14 EXTENSION OF THE VALIDITY PERIOD

- 14.1 Extension of validity must be finalised while the quotations/bids are still valid.

- 14.2 If a Bidder should reduce his/her quoted price as a result thereof, the reduction may be considered only if the provider would have been the successful contractor irrespective of the reduction. In other words the case is evaluated at the original quoted price and if successful, it is accepted at the reduced price.

14.3 In cases where the quoted price is increased when the validity period expires and the quotation/bid concerned is either no longer recommended for acceptance or is recommended for acceptance at the higher price, the disadvantageous or incremental costs must be reported to the relevant authorities.

## **15 NEW AND UNPROVEN PRODUCTS**

15.1 A bid may not be rejected summarily simply because the Bidders or the product which he offers is unknown.

## **16 COUNTRY OF ORIGIN**

16.1 There is currently no embargo on the purchase of products from any foreign market.

## **17 ALTERNATIVE OFFERS**

17.1 Regardless of whether the provider also submits offers conforming strictly to specification, alternative offers may be considered and accepted provided that the other Bidders are not prejudiced. If the alternative offer does not meet the specification requirements, in that it is lower than the specified requirements and the deviations are acceptable, the other Bidders must be approached in cases where they might possibly be prejudiced, with a view to obtaining offers for the delivery of a product or service with the same or similar acceptable deviations. Such cases must be submitted to the relevant Bid Evaluation Committee for consideration and the relevant award structure for approval.

## **18 IMPROVEMENT ON SPECIFICATION**

18.1 A quotation/bid received which offers an improvement on the specification may be accepted provided that the other Bidders are not prejudiced

## **19 ADDITIONAL QUANTITIES**

19.1 Before an award has been made, additional quantities may be accepted up to the maximum percentage provided for in the delegated powers.

19.2 All Bidders concerned must be approached for offers for the larger quantities.

19.3 Where the additional quantities are more than the percentage provided for in the delegated powers, a fresh or a supplementary bid must be invited.

## **20 SAMPLES**

20.1 Notwithstanding the requirement that samples must be submitted not later than the date and time specified in the bidding documents, samples may be received up to the time that it is required for evaluation. The recommendation of a bid must, however, not be delayed because a sample, which was received late, still has to be evaluated.

## **21 SUB-CONTRACTING AND JOINT VENTURES**

21.1 It is incumbent upon Department to take care that:

21.2 Sub-contractors and partners in joint ventures are engaged in fair and reasonable conditions of contract.

21.3 Contractors who contravene the contract conditions potentially be designated as restricted persons.

21.4 Secured payment options may only be considered where it can be justified.

## **22 EQUAL OFFERS**

22.1 When offers are equal in all respects on a comparative basis, thus scoring equal total points, the

successful provider must be the one scoring the highest number of preference points for B-BBEE.<sup>9</sup>

- 6.2 However, when functionality is part of the evaluation process and two or more tenders have scored equal points including equal preference points for B-BBEE, the successful tender must be the one scoring the highest score for functionality.<sup>10</sup>
- 22.2 Should two or more offers still be equal in all respects, the award shall be decided by the drawing of lots or toss of a coin in accordance with the delegated powers.
- 22.3 Where bid prices for a portion of a series of sub-items within a bid are equal and it is necessary for these items to be obtained from the same Bidders, then the lowest overall bid for that portion of the bid may be recommended for acceptance.

## **23 CLEARANCE OF BIDDERS PRIOR TO THE AWARD OF A CONTRACT**

### **23.1 Tax Clearance**

- 23.1.1 Prior to the award of a bid, Department should verify the Tax Compliance of the shortlisted Bidder/s on the Central Supplier Database. Records of all verifications should be kept for audit purposes.

### **23.2 Restricted persons**

- 23.2.1 Prior to the award of any contract, Management should ensure that neither the recommended Bidders nor any of the directors are listed as companies/directors/persons restricted to do business with the public sector. This list of restricted suppliers is managed and maintained by the office of SCM within the National Treasury.

### **23.3 Tender defaulters**

- 23.3.1 Verify that the names of the preferred Bidders and their directors/ trustees/ shareholders are not listed in the register for Tender Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities act (No 12 of 2004)

### **23.4 National Industrial Participation Programme**

- 23.4.1 Before a contract over R10 million is awarded, clearance should be obtained from the DTI regarding the National Industrial Participation Programme, Contact details are: Chief Director: Industrial Participation Secretariat, Department of Trade and Industry, Private Bag X 84,Pretoria, 0001. Tel no 086 843384 or (012) 310 9667.

## **24 RECOMMENDATION, EVALUATION AND ADJUDICATION REPORT**

- 24.1 For each procurement process, the recommendation must be documented in the relevant format for approval by the relevant delegate.

## **25 ADJUDICATION OF AWARDS**

- 25.1 The Bid Adjudication Committee must carry out the adjudication and recommend the award of bids to the AO or his/her delegated authority. The recommendation could be referred back to the Bid Evaluation Committee for justifiable reasons for reconsideration and resubmission to the BAC.
- 25.2 The SCM Unit's representative or a designated member from the BEC, if so requested, must present the Bid Evaluation Committee's recommendation report to the Bid Adjudication Committee for consideration.
- 25.3 The Bid Adjudication Committee will resolve on the matter as per the Resolution template, attached to the BEC Report.
- 25.4 Any queries and answers as well as the decision of the Bid Adjudication Committee must be recorded in writing and signed by the Chairperson.
- 25.5 Where consensus cannot be reached between the members of the Bid Adjudication Committee, the matter must be referred to the Accounting Officer for finalisation.
- 25.6 Once approval has been granted, the SCM Unit may commence preparing the contract or other contractual documentation

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<sup>9</sup> Implementation Guide PPPFA Regulation, 2011 par. 14.1

<sup>10</sup> Implementation Guide PPPFA Regulation, 2011 par. 14.2

**26 AWARD STRUCTURES**

26.1 The award structures must ensure that a transparent review of the evaluation is undertaken.

**26.2.1 AWARD ABOVE R500 000 (VAT INCL.)**

26.2.1.1 The AO shall be the Award Structure who will finally award bids above the monetary value of R500 000 and up to its delegated authority.

## CHAPTER 11: CONTRACTUAL COMMITMENTS

### 1 CONCLUSION OF CONTRACTS

- 1.1 The official(s) responsible for the SCM Function must finalise the adjudication by issuing the letter of acceptance, the contract form, including the service level agreement and formal contract, where applicable.
- 1.2 The acceptance of a successful bid must be in writing; the principle being that there must be a mechanism of proof of delivery.
- 1.3 Up to a predetermined monetary value for quotations, the official with the necessary delegated authority shall sign orders or other necessary documentation to commit NW DOE & SD.
- 1.4 Up to a predetermined monetary value for quotations, the official with the authority to award may be the official who contractually commits NW DOE & SD.
- 1.5 Above the predetermined monetary value, an official with the necessary delegated authority to contractually commit NW DOE & SD shall sign the letters of acceptance and contract form or other necessary documentation to commit NW DOE & SD.
- 1.6 The official with the necessary delegated authority to commit NW DOE & SD, must be satisfied that all the necessary contractual conditions have been included prior to signing.
- 1.7 NW DOE & SD's contract documents shall promote uniformity across the entity.
- 1.8 Prior to signing a formal contract with a contractor, NW DOE & SD must ensure that such contract is legally sound to avoid potential litigation and to minimize possible fraud and corruption. This must include legal vetting. If a contract template is used that has already been legally vetted, the subsequent contract/s need not be legally vetted.<sup>11</sup>
- 1.9 Both parties to the contract shall sign the contract form or formal contract in triplicate.
- 1.10 Legal copies shall be kept in a safe place for judicial reference.

### 2 FORMAL CONTRACTS AND SERVICE LEVEL AGREEMENTS

- 1.1 The formal contract/ service level agreement must form part of the quotation/bid documents, if required to be signed.
- 1.2 Formal contracts/ service level agreements are concluded only where this is stated as a requirement in the quotation/bid document.
- 1.3 If a formal contract/ service level agreement is concluded, an order must still be placed with the successful provider.
- 1.4 Prior to signing a formal contract or service level agreement with a contractor, NW DOE & SD must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimize possible fraud and corruption. This must include legal vetting by at least the Legal Services of NW DOE & SD.

### 3 TIME OF CONCLUSION

- 3.1 The contract is concluded at the time that the letter of acceptance is posted even if the contract form and formal contract is only signed at a later date, unless stated otherwise in the quotation/bid documents<sup>12</sup>.

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<sup>11</sup>National Treasury Instruction Note on Enhancing compliance dated 31 May 2011

<sup>12</sup>GCC paragraph 31.2

## CHAPTER 12: ACCESS TO BIDDING INFORMATION

### 1 INFORMATION ACCESS

- 1.1 All bidding information remains strictly confidential.
- 1.2 Every Bidder shall be informed of final bid results through the medium used to invite.
- 1.3 Disclosure of information of any bidder to other bidders/ persons is prohibited.

### 2 INFORMING THE SUCCESSFUL BIDDERS

- 2.1 The successful Bidders must be notified in writing or other mechanism for which proof of delivery can be established, of the acceptance of their bid within the original validity period of the bid.
- 2.2 The information of other Bidders will not be disclosed to the successful Bidders.

### 3 INFORMING THE UNSUCCESSFUL BIDDERS

- 3.1 On written request, any Bidders should be provided with the reasons why his / her own bid was unsuccessful.
- 3.2 Where performance guarantees have been provided with the bids the guarantees must be returned to the unsuccessful Bidders within a period of 14 days.

### 4 DISCLOSURE OF INFORMATION

- 4.1 Bids are not available for perusal by the public.
- 4.2 When divulging information, a balance must be struck between one party's right to access of information and the right to confidentiality of the other party.
- 4.3 Where no bid has been accepted, particulars of the bids received are not made public.
- 4.4 Department can withhold information if the release or publication of the information:
  - 4.4.1 Will impede law enforcement; or
  - 4.4.2 Will be contrary to the public interest; or
  - 4.4.3 Will harm the legitimate interests of Department; or
  - 4.4.4 Will hinder fair competition between Bidders by revealing any proprietary information of any Bidders.

### 5 DEALING WITH COMPLAINTS

- 5.1 A complaint received before an award is made, must be dealt with to the satisfaction of the AO. The process followed is to be beyond reproach and responded to in writing before a final award is made to minimise the risk for Department.
- 5.2 A complaint received after an award has been made, must be responded to swiftly in writing and to the satisfaction of the AO.
- 5.3 A supplier not satisfied with the ultimate written response by Department to a complaint, has the right to escalate such complaint to the National Treasury, to the Public Protector and ultimately to a court of law.

## **6 PUBLISHING OF AWARD**

- 6.1 Awards shall be published in the Government Tender Bulletin and other media by means of which the bids were originally advertised.
- 6.2 The following information must be made available in the Government Tender Bulletin, on the Department's website and other media by means of which the bids were originally advertised:
  - 6.2.1 Contract number and description
  - 6.2.2 Names of the successful Bidders(s) and preferences claimed
  - 6.2.3 The contract price(s)
  - 6.2.4 If possible, brand names
  - 6.2.5 If possible, dates for completion of contracts.
- 6.2.6 Records of such publications must be retained for audit purposes.

## **7 BIDS RELATING TO THE CONSTRUCTION INDUSTRY**

- 7.1 Bids must be registered on the CIDB Register of Projects on award and progressively be updated until project completion for the promotion, assessment and evaluation of best practices on construction projects.

## CHAPTER 13: CONTRACT AND PROJECT MANAGEMENT

### 1 GENERAL

- 1.1 NW DOE & SD has a separate Contract Management Policy that must be adhered to.
- 1.2 The relevant user department takes responsibility for day-to-day management and monitoring of a contract/ project in line with the contractual conditions.
- 1.3 The SCM Function takes responsibility for maintaining original contract documentation and monitoring contracts in terms of renewals, transfers, terminations, amendments and price adjustments.

### 2 TYPES OF CONTRACTS

- 2.1 **LUMP SUM (Firm Fixed Price) Contract:** Lump sum contracts are used mainly for assignments in which the content and the duration of the service and the required output of the consultant are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and forth. Payments are linked to outputs (deliveries), such as reports, drawings, bills of quantities, bidding documents and software programs. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.
- 2.2 **Time-Based Contract:** This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the services by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overheads, fees (or profit), and where appropriate, special allowances. This type of contract should include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and payments claimed by the consultants are appropriate. Again the Guidelines on fees for Consultants issued by the Department of Public Services and Administration should be used as a benchmark establish the appropriate tariffs, or to determine the reasonableness of the tariffs.
- 2.3 **Retainer and/or Contingency (Success) Fee Contract:** Retainer and contingency fee contracts are widely used. When consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. The remuneration of the consultant includes a retainer and such a success fee, the latter being normally expressed as a percentage of the sale price of assets.
- 2.4 **Percentage Contract:** these contracts are commonly used for architectural services. They may be also used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitive bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on affixed target cost and covers precisely defined services (for example, not works supervision).

- 2.5 Indefinite Delivery Contract (Price Agreement): These contract are used when accounting officers/ authorities need to have “on call” specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain “advisers” for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, accounting officer/authority reforms, procurement advice, technical troubleshooting on the unit rates to be paid for the experts and payments are made on the basis of the time actually used.

### **3 MANAGING THE CONTRACT**

- 3.1 The expenditure on the contract must be managed according to the available budget and any requirement for a variation on the contract must be addressed timeously.

### **4 CORRECTION OF AN INCORRECT ACCEPTANCE**

- 4.1 Mistakes in the letter of acceptance, contract form and/or formal contract must be reported immediately to the official in charge of the SCM Function.
- 4.2 Every effort must be made without delay to recover the original letter of acceptance, contract form and/or formal contract from the contractor.
- 4.3 Where it is not possible to recover the original, all particulars of the incorrect acceptance must be reported to the relevant award structure together with a recommendation regarding the corrective steps that are envisaged.

### **5 CONTRACT MONITORING**

- 5.1 The SCM Function must notify the user department timely of term contract expiry that will allow the user department sufficient time to decide whether to renew the contract.
- 5.2 Regular meetings with contractors to discuss progress, deliverables, foreseeable problems and/or amendments must be held during the contract period.
- 5.3 **Trademark/ Brand name**
- 5.3.1 If a bid is accepted for a particular trademark/brand name, that trademark/brand name must appear on the product and substitute products must not be accepted.
- 5.4 **Contract samples**
- 5.4.1 Where a contract is awarded on the grounds of evaluation of a representative sample, such sample is kept for the contract period and is regarded as the contract sample. Deliveries are then compared with it in order to ensure that the quality DOE & SD’s not deteriorate. However, if it DOE & SD’s not correspond exactly with the contract sample, the consignment must be rejected and the contractor requested to remove and replace it immediately.
- 5.4.2 Samples kept by NW DOE & SD for control purposes may be accepted as partial execution of the contract, in which case the contractor must be requested to deliver only the balance. If a sample is not accepted as partial delivery, the contractor must be requested to collect it after termination of the contract.

### **6 BIDS RELATING TO THE CONSTRUCTION INDUSTRY**

- 6.1 Bids registered on the CIDB Register of Projects must be updated progressively until project completion for the promotion, assessment and evaluation of best practices on construction projects

### **7 NON-CONTRACTUAL PURCHASES**

- 7.1 Small quantities of supplies or minor services may be procured outside of the contract in the following circumstances:

- 7.1.1 In cases of emergency; or
- 7.1.2 When the contractor's point of supply is not situated at or near the place where the supply or service is required; or
- 7.1.3 If the contractor's supplies or services are not readily available.
- 7.2 Purchases outside the contract must be restricted to requirements that are absolutely necessary to satisfy the immediate requirement and the action must always be justifiable against the contract conditions.
- 7.3 Procurement procedures must in all instances be followed when procuring outside of existing contracts.

## **8 INSOLVENCY, LIQUIDATION, DEATH, SEQUESTRATION OR JUDICIAL MANAGEMENT OF CONTRACTORS**

- 8.1 In terms of paragraph 26 of the GCC, NW DOE & SD has certain options, which it may exercise in the case of insolvency.
- 8.2 The risk to NW DOE & SD is the determining factor and the choice with the smallest degree of risk is preferred.

## **9 TRANSFER AND CESSION OF CONTRACTS**

- 9.1 The contractual conditions should stipulate the conditions under which transfers/cessions shall be considered and the process to be followed in such circumstance.
- 9.2 Applications for the transfer/cession of contracts must be completed and signed by both the transferor and the transferee and countersigned by two witnesses. Full reasons for the transferring of the contract must be provided and the transferee's ability to carry out the contract must be established and reported to the Accounting Authority or the delegate.

## **10 CONTRACT VARIATIONS/ AMENDMENTS**

### **10.1 General**

- 10.1.1 Contracts may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services and 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount.
  - 10.1.1.1 This is not applicable to specific term contracts for which orders are placed as and when commodities are required, when at the time of awarding the contract, required quantities are not known.
- 10.1.2 Contracts may be amended/varied/modified according to the AO's delegated powers to achieve the original objective of the contract.
- 10.1.3 Amendments may not materially alter the original objective; as such amendments should form part of a new bid invitation.
- 10.1.4 All contractual parties must agree to the amendment in writing.
- 10.1.5 No contract can be amended after the original contract has ceased to exist.

### **10.2 Extension of contract periods**

- 10.2.1 The extension of a contract shall be finalised before the current expiry date of the contract.

- 10.2.2 Where prices are amended for the extended period, the reasonableness of the prices must be established.
- 10.3 **Extension of delivery periods**
- 10.3.1 Delivery periods may be extended according to the Accounting Authority's delegated powers.
- 10.4 **Amendment of contract conditions**
- 10.4.1 Amendments may be considered on their merits bearing in mind the best interest of NW DOE & SD. Amendments, which prejudice NW DOE & SD, can be agreed to only with the approval of the relevant award structure.
- 10.5 **Amendment of specifications**
- 10.5.1 Where a binding contract has been concluded, an amendment of the specification whether initiated by the contractor or by NW DOE & SD, can be made only after negotiation between the contractor and NW DOE & SD and through the facilitation of the relevant award structure.
- 10.6 **Contractual price adjustments**
- 10.6.1 The contractual conditions shall stipulate the circumstances under which price adjustments shall be considered, the intervals for adjustment, the base date for adjustments as well as the price adjustment formula and the process to be followed in such circumstances.
- 10.6.2 In cases of term contracts, price adjustments shall be considered on a quarterly basis and this condition shall be indicated in the bid document.
- 10.6.3 No price adjustments should preferably be considered for a contract period less than twelve (12) months.
- 10.6.4 The prescribed formula will be used for adjustment of prices due to the fluctuation of the indices.
- 10.6.5 Indices compiled by Statistics South Africa will be used for price adjustments.
- 10.6.6 Rate of Exchange (ROE) fluctuations are only allowed on the imported content of the commodity.
- 10.7 **Non-contractual price adjustment**
- 10.7.1 Non-contractual adjustment of prices is normally not allowed.
- 10.7.2 When contractors suffer a loss as a result of their own negligence, price adjustments not covered by the contract are not favorably considered. However, where a contractor suffers loss as a result of circumstances beyond his control, or as a result of incorrect action by NW DOE & SD and particularly when such loss might cause his/her downfall, non-contractual price adjustments may be considered by NW DOE & SD. Such adjustments are to the disadvantage of NW DOE & SD and the necessary AO or the delegate approval must be obtained.
- 10.8 **Reduction of prices**
- 10.8.1 NW DOE & SD must accept price reductions after award of a contract where this is advantageous to NW DOE & SD unless the acceptance of the price reduction amounts to breach of contract.
- 11 **UNSATISFACTORY PERFORMANCE**
- 11.1 Apply the GCC rules where applicable.
- 11.2 Before action is taken in terms of the GCC or any other special contract condition applicable, NW DOE & SD must warn the contractor in writing that action will be taken in accordance with the contract conditions unless the contractor complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time.
- 11.3 **Restriction**
- 11.4 NW DOE & SD may in terms of Treasury Regulations 16A9.2:

- 11.4.1 Disregard the bid of any bidder if that bidder, or any of its directors:
  - 11.4.1.1 Have abused NW DOE & SD's SCM System
  - 11.4.1.2 Have committed fraud or any other improper conduct in relation to such system, or
  - 11.4.1.3 Have failed to perform on any previous contract
- 11.4.2 The AO may restrict any supplier in line with par. 12 of the PPPFA and in line with Treasury Regulation 16A9.1(c) from doing business with the public sector for a period not exceeding 10 years if such a supplier obtained preferences fraudulently or if such a supplier failed to perform on a contract based on specified goals. Due process must be followed and National Treasury must be informed.
- 11.4.3 The AO may also amend/ uplift any restriction imposed by it.
- 11.4.4 NW DOE & SD must inform National Treasury of any action taken in terms of the aforementioned paragraphs under the restriction heading.

## **12 CONTRACT TERMINATION**

- 12.1 NW DOE & SD must cancel a contract awarded to a supplier of goods of services:
  - 12.1.1 If the supplier committed any proven corrupt or fraudulent act during the bidding process or the execution of that contract.
  - 12.1.2 If any official or other role player committed any proven corrupt or fraudulent act during the bidding process or the execution of that contract that benefited the supplier.
- 6.2.1 Termination of a contract may be considered for a variety of reasons, as stipulated in paragraphs 21.6, 23, 26 and 34.3 of the GCC, such as delayed deliveries, failing to perform any other contractual obligation or if the supplier has engaged in corrupt, fraudulent practices, restrictive practices or collusive bidding and insolvency.

## CHAPTER 14: LOGISTICS MANAGEMENT

### 1 GENERAL

- 1.1 This aspect pertains, among others, to coding of items, setting of inventory levels, placing of orders, receiving and distribution, stores/warehouse management, expediting orders, transport management and vendor performance. This process should also activate the financial system to generate payments

### 2 REQUISITION

- 2.1 No issuing of store items or the commencement of the procurement process may take place without a properly completed requisition form.

### 3 ORDER ADMINISTRATION

- 3.1 Placing orders is the sole responsibility of NW DOE & SD.
- 3.2 An order shall be placed based on the existence of a valid contract, bid or quotation (whichever is applicable) after the procurement process.
- 3.3 Orders are to be placed in accordance with the contract and in accordance with the instructions of the applicable policy.
- 3.4 Each order shall be appropriately authorised by the delegated person.
- 3.5 Placing orders near the end of the contract period
- 3.5.1 Placing orders near the end of the financial year in order to only spend unused funds in the budgets is not allowed.
- 3.5.2 Except in the case of multi-year contracts, NW DOE & SD is prohibited from placing orders and receiving such goods/services in one financial year and arranging with suppliers to be invoiced and paid for in another financial year.
- 3.5.3 Where, for a given period of time, no valid contract exists, goods, services or works must be obtained in accordance with the delegated powers.
- 3.5.4 The obtaining of requirements must be restricted to what is absolutely necessary.

### 4 OVER-/ UNDER-DELIVERIES

- 4.1 Over- or under-deliveries may be accepted in accordance with the AO's delegated powers.

### 5 PAYMENTS

- 5.1 Under normal circumstances payment is made for supplies in accordance with the contract conditions only after they have been delivered and, where applicable, installed, in good working order.

### 6 DISCOUNTS ON INVOICES

- 6.1 In cases where a discount is not a contract condition and a contractor indicates a discount on his/her invoice, this discount must be utilised if possible, for instance by making payment within the time limit specified on the invoice. However, orders must at all times be placed in accordance with the contract conditions, i.e. non-contractual discounts must not be taken into consideration when placing orders.



## CHAPTER 15: RECORDING, REPORTING AND SUPPLY CHAIN PERFORMANCE MEASUREMENT

### 1 GENERAL

- 1.1 NW DOE & SD must submit to the National and Provincial Treasury such SCM information as that Treasury may require and in such format and at such intervals as specified.
- 1.2 NW DOE & SD will implement an information gathering, recording, reporting and performance measurement system to facilitate the above and to promote good governance.

### 2 RECORD KEEPING

#### 2.1 Recordkeeping structure

- 2.1.1 Records can be maintained either manually or electronically in accordance with the NWDOE & SD Document Management Policy.

#### 6.3 Records to be kept

- 2.1.2 The following records must be maintained:

- 2.1.2.1 Record of gifts received
- 2.1.2.2 Record of verbal and written quotations
- 2.1.2.3 List of bid documents issued
- 2.1.2.4 Record of ad hoc bids
- 2.1.2.5 Record of Specific Term Contracts
- 2.1.2.6 Record of urgency and emergency procurement
- 2.1.2.7 Record of complaints received from bidders or contractors
- 2.1.2.8 Record of instances of fraud or corruption
- 2.1.2.9 Record of fruitless and wasteful expenditure
- 2.1.2.10 Record of circulars distributed within NW DOE & SD

#### 6.4 Registers to be kept

- 6.4.1 Irregular expenditure register
- 6.4.2 Competitive bid register.

### 3 REPORTING

#### 3.1 Reporting to National Treasury

- 3.1.1 SCM implementation
  - 3.1.1.1 NW DOE & SD shall continue to report to National Treasury on their progress in the implementation of SCM if there are any changes from year to year.
- 3.1.2 Contracts reporting questionnaire
- 3.1.3 Irregular expenditure reporting
  - 3.1.3.1 Report all restrictions imposed by NW DOE & SD immediately to the National Treasury.
- 3.1.4 Unsolicited proposals

3.1.4.1 Upon receipt of an unsolicited proposal, NW DOE & SD must (in writing) notify the National Treasury contact person within ten (10) working days of such receipt.

3.1.4.2 All concluded unsolicited proposal agreements must be reported in the annual report.

**3.1.5** Exception reporting

3.1.5.1 NW DOE & SD shall, within 10 working days after the incident, report to National Treasury and the Auditor-General in respect of all procurement above the value of R1 million (VAT included) done in terms of Treasury Regulation 16A6.4 (dispensing with prescribed competitive bidding process).

**3.2 Reporting to the dti**

26.2.2 NW DOE & SD must, within 5 working days prior to any bid that has an imported content in excess of R10 million the award of a contract that is in excess of R10 million (ten million rands), submit details of such a contract to *the dti*.

3.2.1 Local production and content

3.2.1.1 Once bids containing local production and content requirements are awarded, NW DOE & SD must inform dti of all the successful bidders and the value of the contract; and provide copies of contracts, the SBD6.2 certificates together with declaration C as submitted by the successful bidders.

#### **4 ASSESSMENT/MEASUREMENT OF SUPPLY CHAIN PERFORMANCE**

4.1 NW DOE & SD shall measure and monitor the SCM policy and process through a performance measurement system to ascertain whether government's objectives and targets set have been achieved. In this regard complete records pertaining to SCM will be kept. Some of the issues that may be reviewed are:

4.1.1 Achievement of goals;

4.1.2 Compliance to norms and standards;

4.1.3 Saving generated;

4.1.4 Stores efficiency;

4.1.5 Cost variance per item;

4.1.6 Contract breach etc;

4.1.7 Cost efficiency of procurement process (i.e. the cost of the process itself);

4.1.8 That the material construction standards become increasingly aligned with those standards that support international best practice;

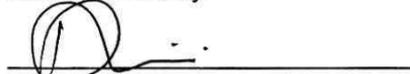
4.1.9 That principles of co-operative governance as expounded in the Constitution are observed; and

4.1.10 That the reduction of regional economic disparities are promoted

4.2 NW DOE & SD shall monitor and assess the performance of all contractors during the contract period.

4.3 NW DOE & SD shall establish a procurement file detailing the contract, bid, quotations, the conditions and a history of execution shall supplement each contract.

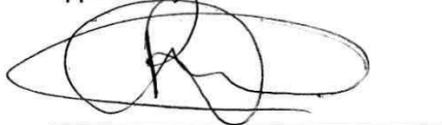
Recommended by:



**Ms. H.M PHIRI**

Acting Director Supply Chain Management: NWDE & SD

Approved by:



**Mr. R.G Molema**

Chief Financial Officer: NWDE & SD