

# THE NATIONAL TREASURY

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## **SUPPLY CHAIN MANAGEMENT: A GUIDE FOR ACCOUNTING OFFICERS OF MUNICIPALITIES AND MUNICIPAL ENTITIES**

## PREFACE

The “*Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities*”, gives guidance to the adoption of an integrated supply chain management (SCM) function and its related managerial responsibilities assigned to accounting officers in terms of sections 62 and 95 of the Municipal Finance Management Act (MFMA).

This guide explains how Chapter 11, Part 1 of the MFMA, the Municipal SCM Regulations, and the SCM policy of the council or board of directors can be adopted into an operational process for accounting officers at each step of the SCM cycle.

The previous procurement and provisioning arrangements in local government suffered from a number of limitations that needed to be addressed. For example, the following deficiencies in governance had been identified:

- the composition of tender (bid) committees gave rise to serious conflicts of interests;
- the procurement and provisioning procedures were rule driven, and value for money was almost always equated to the lowest price tendered - the emphasis were exclusively focussed on monitoring inputs;
- procurement and provisioning activities often operated in isolation from other management activities, with little or no linkage to budgetary / strategic planning and integrated development plan (IDP) objectives;
- asset management focused on inventory control rather than on ensuring a satisfactory return on the capital invested in inventories / assets;
- there was a lack of uniformity in documentation that caused uncertainty and inefficiencies, both on the part of bidders and also procurement practitioners;
- consultants were not selected in a systematic and competitive manner;
- the Preferential Procurement Policy Framework Act, No 5 of 2000 (PPPFA) and its associated Regulations are complex and difficult to implement correctly, and procurement practitioners were not adequately trained in its application;
- the costs and outcomes of the PPPFA were not fully quantified; hence it was impossible to evaluate the merits of the system.

In September 2003, Cabinet adopted a SCM policy document: “*Policy Strategy to Guide Uniformity in Procurement Reform Processes in Government*”, to replace the outdated procurement and provisioning practices as described above. The new supply chain management function aligns as an integral part of financial management that conforms to international best practices in public sector procurement. The new arrangements promote uniformity in processes and also in the interpretation of government’s preferential procurement legislation and policies, which should themselves be seen in the context of other related legislative and policy requirements. Above all, these arrangements mean that responsibility and accountability for SCM-related functions are devolved to accounting officers.

**DISCLAIMER**

This Guide is not a substitute for legislation and should not be used for legal interpretations.

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## GLOSSARY

|                                 |   |
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| Accounting Officers             | As defined in Sections 60 and 93 of the MFMA  |
| Municipality / Municipal Entity | In this document, the term is used to mean all municipalities and municipal entities to which the MFMA applies. |

## ABBREVIATIONS

|        |   |
|--------|---|
| BEE    | Black Economic Empowerment                        |
| BBBEE  | Broad-Based Black Economic Empowerment            |
| CFO    | Chief Financial Officer                           |
| CIDB   | Construction Industry Development Board           |
| DTI    | Department of Trade and Industry                  |
| GCC    | General Conditions of Contract                    |
| HDI    | Historically Disadvantaged Individual             |
| IDP    | Integrated Development Plan                       |
| IPFA   | Institute for Public Finance and Auditing         |
| MBD    | Municipal Bidding Document                        |
| MSCM   | Municipal Supply Chain Management                 |
| NEPAD  | New Partnership for Africa's Development          |
| NSBC   | National Small Business Council                   |
| MFMA   | Municipal Finance Management Act                  |
| PPPFA  | Preferential Procurement Policy Framework Act     |
| RDP    | Reconstruction and Development Programme          |
| SAICA  | South African Institute for Chartered Accountants |
| SALGA  | South African Local Government Association        |
| SAMDI  | South African Management Development Institute    |
| SANAS  | South African National Accreditation System       |
| SARS   | South African Revenue Services                    |
| SCC    | Special Conditions of Contract                    |
| SCM    | Supply Chain Management                           |
| SCOPA  | Standing Committee on Public Accounts             |
| SITA   | State Information Technology Agency               |
| SMME's | Small, Medium and Micro Enterprises               |



# INTRODUCTION

## 1.1 Background

- 1.1.1 Government is intent on modernising the management of the public sector, to make it more people-friendly and sensitive to meeting the needs of the communities it serves. Immediately on taking office in 1994, Government initiated a series of budgetary and financial reforms. Since then, significant progress has been made in implementing these reforms.
- 1.1.2 A basic principle is that managers should be given the flexibility to manage, within a framework that satisfies the constitutional requirements of transparency and accountability. There are many obstacles to overcome, most notably, a series of deeply ingrained practices. Another obstacle can be seen in the cumbersome procurement processes, where the legislation empowered Councils to determine the award of contracts. Whenever any other legal entity other than the Accounting Officer takes the final decision regarding any expenditure, the Accounting Officer cannot be held accountable.

## 1.2 Improving Accountability

- 1.2.1 The MFMA aims to improve accountability by placing responsibility for decisions in the hands of each accounting officer and by ensuring that there is a framework of support from National Treasury, for example, in the form of 'best practice' guidelines, to assist managers in delivering services to communities as efficiently and effectively as possible.
- 1.2.2 The accountability chain is the most critical driver for improving financial management in the public sector. The accounting officer's annual report and the report of the Auditor-General will indicate achievement against the intentions specified in each municipality / municipal entity's Integrated Development Plan (IDP) and may highlight areas that require improvement.
- 1.2.3 A particular requirement of the MFMA is that each accounting officer undertakes a 'risk assessment' for his/her municipality or municipal entity. Risk management acknowledges that all the activities of an organisation involve some element of risk. Management should decide what is an acceptable level of risk.

(given cost and other social factors) by objectively assessing the factors (risks) that may prevent a particular activity from meeting its objective. In the case of SCM, this will include ensuring – on a case-by-case basis – that risks such as price or currency fluctuations are allocated to the appropriate party in unambiguous contract documents, or that guarantees or insurance arrangements are in place (managers must manage!).

- 1.2.4 In addition, the award and management of contracts is an area where fraud and corruption has been found in the past, and the municipality / municipal entity's "Fraud Prevention Plan" should reflect this, through cost-effective use of control measures, procedures and an ethical culture.

### **1.3 Introduction of an integrated SCM function for Government**

- 1.3.1 Cabinet approved on 23 September 2003 the implementation of an integrated SCM function.

- 1.3.2 The Objectives of Supply Chain Management (SCM) are to:

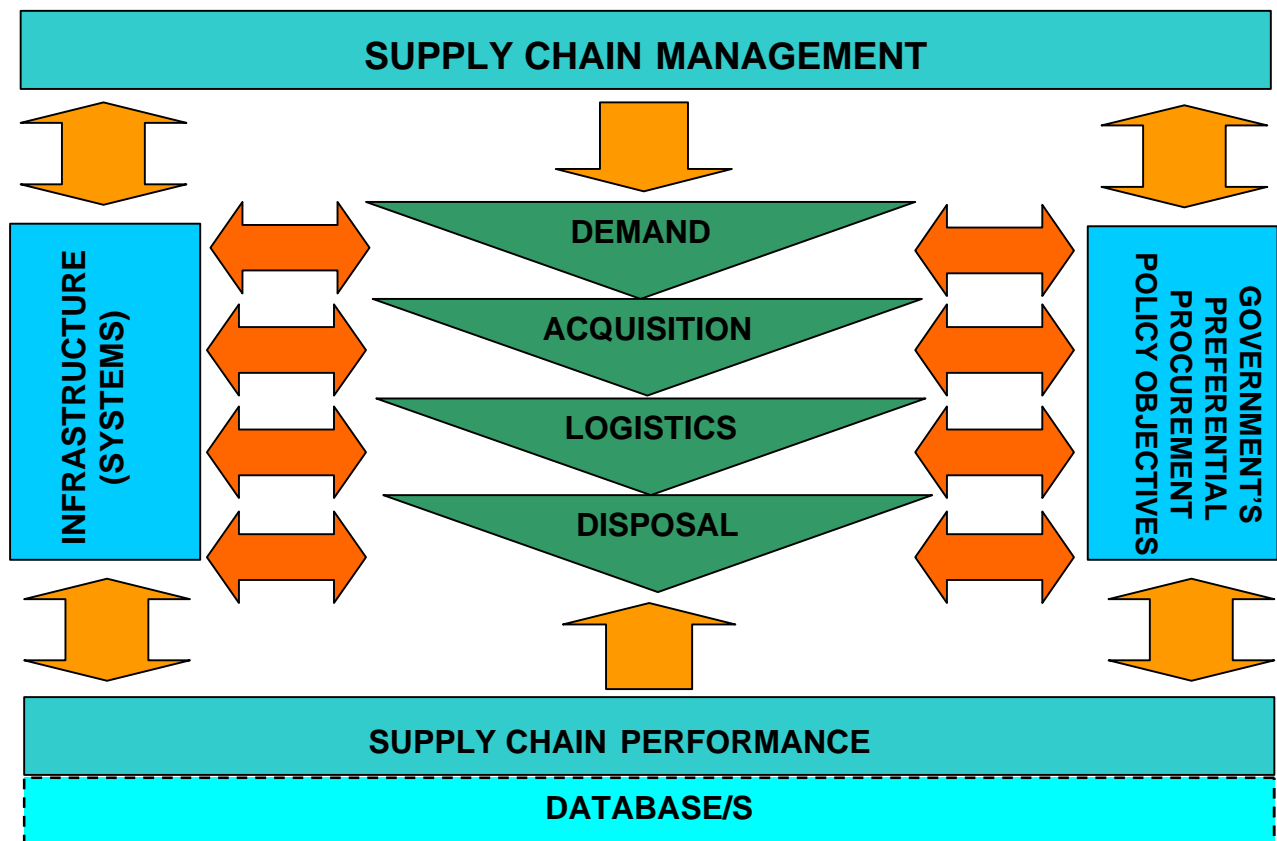
- give effect to the provisions of the Constitution, 1996;
- give effect to the provisions of the MFMA, 2003;
- transform outdated procurement and provisioning practises into an integrated SCM function;
- ensure that SCM forms an integral part of the financial management system of the municipality / municipal entity;
- make significant improvement to financial management in the broader public sector;
- introduce a system for the appointment of consultants;
- create a common understanding and interpretation of government's preferential procurement policy objectives;
- promote consistency in respect of supply chain management policy and other related policy initiatives in Government;
- align with global trends and ensure that South Africa adheres to international best practices.

- 1.3.3 Elements of Supply Chain Management

- 1.3.3.1 The elements of SCM, where value is added at every stage, are illustrated in the diagram below:

## SUPPLY CHAIN MANAGEMENT MODEL

Elements of Supply Chain Management:



1.3.3.2 The elements of SCM are summarised below and an explanation of the detailed application of each is contained in subsequent chapters of this Guide.

- *Demand Management.* This is the beginning of the supply chain where:
  - a proper needs assessment is undertaken of required goods, works and / or services;
  - specifications are determined;
  - the industry is analysed; and
  - requirements are linked to the budget.

This phase brings the supply chain practitioner closer to the end user, to ensure that value for money is achieved. The phase implies, among others, that during the strategic planning of the municipality / municipal entity's IDP, or any part thereof, the

functions to be executed are determined as well as the goods, works and / or services needed to execute the said functions. The demand requirement for goods, works and / or services are therefore specifically budgeted and programmed for within the municipality / municipal entity's IDP.

- *Acquisitioning Management.* This is the management of procurement by a municipality / municipal entity:
  - to decide on the manner in which the market will be approached;
  - to establish the total cost of ownership of a particular type of asset;
  - to ensure that bid documentation is complete, including evaluation criteria;
  - to evaluate bids in accordance with published criteria; and
  - to ensure that proper contract documents are signed.
  
- *Logistics Management:* This aspect addresses:
  - the setting of inventory levels;
  - receiving and distribution of material;
  - stores, warehouse and transport management; and
  - the review of vendor performance.

From these processes, the financial system should be activated to generate payments.

- *Disposal Management:* At this stage consideration should be given to:
  - obsolescence planning;
  - maintaining a data base of redundant material;
  - inspecting material for potential re-use;
  - determining a disposal strategy; and
  - executing the physical disposal process.
  
- *Supply Chain Performance:* This is the monitoring process, undertaking a retrospective analysis to determine whether the proper processes have been followed and whether the desired objectives were achieved. Some of the issues that may be reviewed are:
  - compliance to policy objectives;
  - cost efficiency of SCM process (i.e. the cost of the process itself); and
  - whether supply chain practices are consistent with Government's broader policy focus; and
  - whether there are means to improve the system

- 1.3.3.3 The National Treasury has published municipal supply chain management regulations in terms of section 168 of the MFMA to prescribe minimum norms and standards for SCM practices at municipalities / municipal entities. This will among others establish minimum reporting requirements for accounting officers.

## IMPLEMENTATION STRATEGY

### 2.1 Introduction

2.1.1 The introduction of the concept of an integrated SCM system for a municipality / municipal entity will contribute significantly towards the improvement of financial management in the broader public sector. At the same time, it will create a consistent framework for achieving Government's SCM objectives. To achieve this transformation, the phases listed below has been devised:

- firstly, councillors are prohibited from being involved in the acquisitioning or selling or letting processes of any goods and / or services in accordance with the prescripts of the MFMA;
- secondly, the implementation of the Municipal SCM Regulations, whereby accountability is vested with the accounting officer; and
- the monitoring process to ensure compliance.

2.1.2 The implementation of SCM at municipality / municipal entity is supported by the following documents:

- Chapter 11, Part 1 of the MFMA;
- Municipal SCM Regulations issued in terms of the MFMA;
- Municipal SCM 'Model' Policy issued by National Treasury to be adopted by the municipality / municipal entity;
- "Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities", to assist the accounting officer in compiling their internal processes and procedures (operating manual);
- National Treasury's standard and generic bid documentation to promote and enhance SCM uniformity;

### 2.2 Role Players in Supply Chain Management

#### 2.2.1 The National Treasury

2.2.1.1 The National Treasury, established in terms of Chapter 13 of the Constitution, must promote and enforce transparency and effective management in respect of revenue, expenditure, assets

**Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities**

and liabilities in each sphere of government. In terms of section 5 of the MFMA, the National Treasury inter alia:

- may promote good budget and fiscal management by municipalities, and for this purpose monitor the implementation of municipal budgets, including their expenditure, revenue collection and borrowing;
- investigate any system of financial management and internal control in any municipality or municipal entity and recommend improvements;
- take appropriate steps if a municipality or municipal entity commits a breach of the MFMA, including the stopping of funds.

2.2.1.2 A SCM Office has been established in the National Treasury to oversee the implementation of SCM, in conjunction with provincial treasuries. Its main functions are to:

- Formulate and advise on SCM implementation;
- Administer national supply chain management legislation and regulations;
- Promote communications and liaison between different SCM units across all spheres of government;
- Issue regulations to ensure uniform application of SCM in government, including: -
  - Addressing the requirement for consistency with other policy initiatives in government;
  - Ensuring that material construction standards become increasingly aligned with those standards that support international best practice;
  - Establishing selection standards for the appointment of consultants;
  - Observing the principles of co-operative governance as expounded in the Constitution; and
  - Promoting the policy objectives outlined in the PPPFA, BBBEE Act and their accompanying Regulations;
- Monitor for compliance with SCM Regulations and Guidelines;
- Establish minimum reporting requirements for accounting officers;
- Investigate complaints received from the public regarding bid procedures and irregularities;
- Maintain a Register for Tender Defaulters, containing the names of tender defaulters as instructed by a court of law and which will be made public; and

- Monitor the manner in which SCM is implemented in respect of government's procurement reform objectives, the manner in which targets are set and attained, and value for money is obtained.

2.2.1.3 The National Treasury compiled a reporting mechanism to enable provincial treasuries to monitor the implementation of SCM in a municipality / municipal entity.

2.2.1.4 The National Treasury's responsibility is therefore to foster coherent financial management and supply chain practice in all organs of the state, across all three spheres of government.

## **2.2.2 Provincial Treasuries**

2.2.2.1 Where applicable, Provincial Treasuries may issue complementary guidelines within the parameters as set by the National Treasury. These standards may not jeopardize national objectives.

2.2.2.2 A provincial treasury must also submit to the National Treasury such SCM information as the National Treasury may require.

## **2.2.3 Municipalities / Municipal Entities**

### **2.2.3.1 The Municipal Council**

2.2.3.1.1 The MFMA provides clear guidance on the administrative roles and responsibilities of accounting officers and the oversight role of council.

2.2.3.1.2 The MFMA recognizes the municipal council as the highest authority in the municipality and strengthens the power of the council by vesting it with significant powers of approval and oversight.

2.2.3.1.3 Given the importance of the approval and oversight role of councillors, the MFMA separates the policy-making responsibilities of these role-players from the implementation role of the municipal officials.

2.2.3.1.4 Councillors are therefore not allowed to be members of a municipal bid committee or any other committee evaluating or approving bids, quotations, contracts or other bids, nor attend any such meeting as an observer (section 117 of the MFMA)



### **2.2.3.2 The Accounting Officer**

2.2.3.2.1 In terms of sections 62 and 95 of the MFMA, accounting officers are fully responsible and should be held accountable for any expenditures relating to SCM within their line of responsibility. Any expenditure incurred should be subject to appropriate regulations and accounting officers' directives and procedures. However, to ensure uniformity within the SCM system, guidelines issued by the National Treasury will provide the necessary parameters.

2.2.3.2.2 It is the responsibility of each accounting officer to implement the SCM policy adopted by council. The accounting officer may develop an implementation plan to assist with managing the implementation of the SCM policy (see Annexure B for implementation template).

### **2.2.3.3 Municipal SCM Units**

2.2.3.3.1 In terms of the policy of the municipality / municipal entity, Council must establish the SCM unit. It is the responsibility of the Accounting Officer to ensure that the SCM unit is properly staffed. A parent municipality and a municipal entity under sole or shared control may establish a joint supply chain management unit to implement their respective supply chain management policies. SCM is an integral part of financial management and the supply chain management unit should preferably operate under the direct supervision of the Chief Financial Officer.

2.2.3.3.2 Municipalities / municipal entities should ensure clear lines of authority and accountability, as well as performance criteria that will contribute towards minimizing risk, improving sourcing procedures and processes and enhancing asset and inventory management.

## **2.3 Delegations**

2.3.1 Sections 79 and 106 of the MFMA empower the accounting officer of a municipality and municipal entity respectively to delegate decision-making powers to officials.

2.3.2 The following should apply to acquisition of goods and services and the disposal and letting of assets:

- All delegations must be in writing;
- No supply chain management duties or powers may be delegated or sub-delegated to a person who is not an official of the municipality / municipal entity or to a committee which is not exclusively composed of officials of the municipality / municipal entity;
- Should the accounting officer decide that the adjudication committee only awards bids up to a specified threshold value, bids above that threshold value should be referred to the accounting officer for finality;
- If a bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid, check whether that bidder's municipal rates and taxes and municipal charges are not in arrears and notify the accounting officer;
- The accounting officer may, after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee;
- If the deviation is rejected, the accounting officer may refer the decision of the adjudication committee back to that committee for reconsideration;
- The accounting officer may at any stage of the bidding process, refer any recommendation made by the evaluation or adjudication committee with reasons back to that committee for reconsideration of the recommendation;
- If a bid other than the one recommended in the normal course of implementing the supply chain management policy of a municipality or municipal entity is approved, the accounting officer of the municipality or municipal entity must, in writing, within 10 working days notify the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendations. This, however, does not apply if a different bid was approved in order to rectify an irregularity.
- The accounting officer may ratify any minor breaches of the procurement processes by an official or committee acting in terms of the delegated powers or duties that are purely of a technical nature.
- Reports containing information regarding the individual amounts of the awards, the contractor(s) and the reason why each contractor was the successful bidder, must be submitted within five working days of the end of each month to the accounting officer if these bids were awarded under delegated powers by the chief financial officer, a senior manager or a bid adjudication committee of which the chief financial officer or a senior manager is a member. Similar reports must be

submitted within five working days of the end of each month to the chief financial officer if bids were awarded under delegated powers by a senior manager who awarded bids up to a maximum value of R2,0 million or a bid adjudication committee of which the chief financial officer or senior manager is not a member.

## **2.4 Clearance of Members of the Adjudication Committee(s)**

- 2.4.1 All members of bid adjudication committee(s) should be cleared at the level of "CONFIDENTIAL" by the Accounting Officer and should be required to declare their financial interest annually.

## **2.5 Participation of Consultants / Advisors**

- 2.5.1 The accounting officer may procure the services of consultants / advisors to assist in the execution of the supply chain management function. These services should be obtained through a competitive bidding process. No consultant / advisor may, however, form part of the final decision-making process regarding the award of bids, as this will counter the principle of vesting accountability with the accounting officer. The accounting officer cannot delegate decision-making authority to a person other than an official.

## **2.6 Negotiations with Preferred Bidders**

- 2.6.1 Accounting officers or their delegates may negotiate the final terms of contracts with bidders identified as preferred bidders<sup>1</sup> through a competitive bidding process, provided that such a process does not allow the bidder concerned a second (unfair) opportunity and it is not to the detriment of any other bidder. Minutes of such negotiations must be kept for record purposes.

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<sup>1</sup> A preferred bidder is the bidder selected by means of the evaluation process with whom the municipality / municipal entity intend to conclude the contract

## 2.7 Municipal SCM Training

- 2.7.1 It is the responsibility of the accounting officer to ensure that supply chain practitioners within their municipality / municipal entity are properly trained. The South African Qualifications Authority (SAQA) registered a unit standard-based certificate in Municipal Financial Management Qualification as a level six qualification. Accredited courses that meet the National Treasury evaluation process will be published, as and when, on the National Treasury website. Municipalities should first check the website at [www.treasury.gov.za](http://www.treasury.gov.za) click on the MFMA icon on the webpage and utilize this information to send officials on appropriate training.

## 2.8 Monitoring and Promoting Uniformity in SCM Practise

- 2.8.1 The National Treasury, in conjunction with provincial treasuries, will oversee the implementation of municipal supply chain management. The provincial treasury will assist with the monitoring to ensure the municipality / municipal entity implements the SCM policy that was adopted by council or the board of directors. Furthermore, the provincial treasury will assist in the monitoring to ensure that municipality / municipal entity complies with the policy objectives as determined by the National Treasury.

## 2.9 Fraud and Corruption

- 2.9.1 Government's policy is to require that bidders and/or contractors, including consultants, observe the highest standard of ethics during the selection and execution of contracts. In pursuance of this policy, Government defines, for the purposes of this provision, the terms set forth below:
- "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution;
- and
- "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the accounting officer, and includes

collusive practices among bidders/contractors (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the accounting officer of the benefits of free and open competition.

#### 2.9.2 The accounting officer:

- must reject a proposal for award if he/she determines that the service supplier recommended for award, has engaged in corrupt or fraudulent activities in competing for the contract in question;
- may insist that a provision is included in the contract agreement with the contractor, requiring contractors to permit the accounting officer and/or relevant treasury to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the accounting officer/relevant treasury.
- where evidence in support of corrupt, fraudulent practices or criminal offences are reported and substantiated, the accounting officer is to initiate criminal proceedings against such business entity, official or other role player, and inform the relevant Treasury of such measures.
- must consult the National Treasury's Register for Tender Defaulters before awarding of contracts.

# 3

## DEMAND MANAGEMENT

### 3.1 Introduction

3.1.1 Demand management is the first phase of SCM. The objective is to ensure that the resources required to fulfil the needs identified in the Integrated Development Plan (IDP) of the municipality or municipal entity are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs. As part of this element of SCM, a total needs assessment should be undertaken.

### 3.2 Demand Considerations

3.2.1 Accounting officers should ensure that:

- Future as well as current needs are understood;
- Requirements are linked to the budget;
- Specifications are determined;
- The need forms part of the strategic plan and Integrated Development Plan (IDP) of the municipality / municipal entity;
- An analysis of the past expenditure and current usage of the commodity may assist in determining the manner in which the municipality / municipal entity will fulfil this need in the future;
- The optimum method to satisfy the need is considered;
- The frequency of the requirement is specified;
- The economic order quantity is calculated;
- When operating a store, minimum and maximum levels are determined for inventories and that lead and delivery dates are accurately identified; and
- An industry and commodity analysis is conducted.

#### 3.2.2 Appointment of a Bid Specification Committee

The accounting officer should appoint a bid specification committee that will compile the specification, determine goals as contemplated in the Preferential Procurement Regulations, the evaluation criteria and any special conditions of contract. The

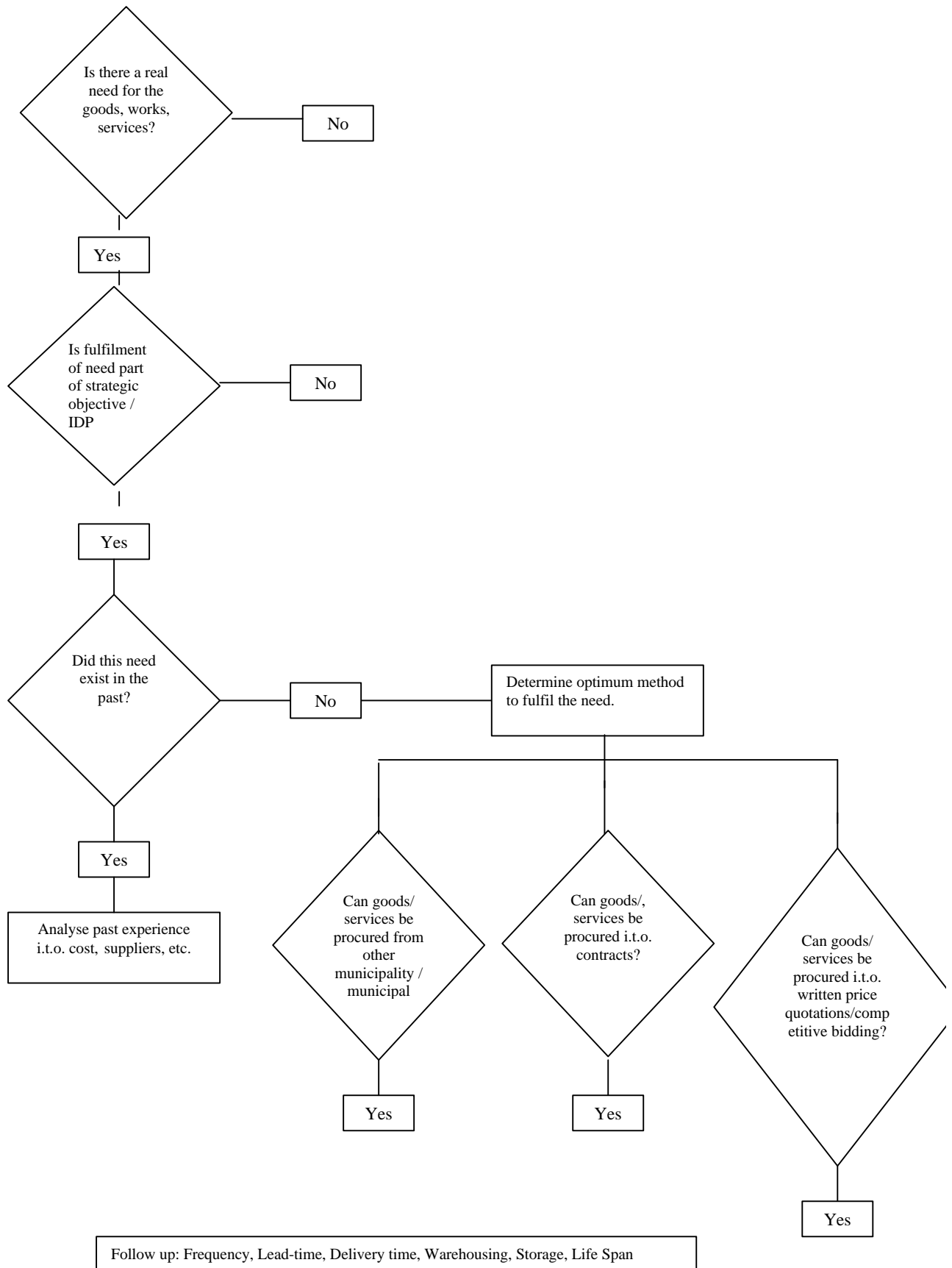
delegated official or the Bid Adjudication Committee prior to the advertisement of the bid must approve the specifications. Managing demand will be a cross-functional exercise that brings the supply chain practitioner closer to the end user and ensures that value for money is achieved. Where there is a lack of capacity (human resources) to establish the committee structure in a specific municipality / municipal entity, it may be agreed upon to share / utilize the committee structure of another municipality/ municipal entity if and when required. The accounting officer, who initiated the requirement, will be accountable for the decisions taken.

### **3.3 Flowchart of the Demand Management Process**

#### **3.3.1 Elements of the Demand Management Process**

3.3.1.1 The elements of the demand management process are illustrated in the diagram below:

### Flowchart of the Demand Management Process





# 4

## ACQUISITION MANAGEMENT

### 4.1 Introduction

In the past, most of the focus in the procurement process was devoted to “meeting the requirements of the Council”. The new policy is operational and councils and / or councillors are no more involved in the considering and award of bids and accounting officers became responsible for their procurement processes, within the framework published by the National Treasury.

### 4.2 Assessment of the Market

4.2.1 If a need has to be satisfied by means of an outside source, whether it is for goods, works or services, the availability of the source in the market should be investigated. The purpose of this investigation is to establish a balanced approach when considering, among others, keeping pace with modern technology and development, enabling newcomers/HDIs to supply the goods/services, making use of labour intensive methods and promoting BEE.

4.2.2 The following elements should, among others, be considered:

- Benchmarking;
- Total cost of ownership; (cost drivers)
- Industry analysis; and
- Market characteristics (entry barriers; is the market buyer or supplier driven; market players; market behaviour and expenditure analysis).

### 4.3 Sourcing Strategy

4.3.1 Obtaining goods and / or services do not imply that these requirements should be procured from outside sources only. As

part of acquisition management, all possible methods of obtaining the requirements should be investigated, such as:

- could other municipality / municipal entity satisfy the requirements at a better price; and
- are the requirements available on the list of redundant / obsolete material / goods from other municipality / municipal entity.

4.3.2 The optimum sourcing strategy and technique should be used, taking due cognisance of the nature of the commodity or service required, the conditions of delivery, among others, just-in-time-delivery, promoting BEE within the ambit of the BBBEE Act and the Preferential Procurement Policy Framework Act. Sourcing strategies might include, among others, the following:

- Local and / or international sourcing;
- Utilising a paper-based bidding system, which may include obtaining quotations, inviting competitive bids, pre-qualification of bidders and two-stage bidding;
- Strategic sourcing
- Utilising E-procurement; and
- Negotiations.

4.3.3 In order to facilitate the introduction of the new arrangements, this Guide offers a step-by-step run through the acquisition process municipality / municipal entity will need to apply.

## 4.4 Acquisition Process

### 4.4.1 What do you want to acquire? Is it:

|  |   |
|--|---|
| IT Goods or Services?                        | Consider the utilisation of SITA  |
| Building, Engineering or Construction works? | The Construction Industry Development Board (CIDB) has been established by government to promote the uniform application of policy to the construction industry. When calling for construction bids, accounting officers should utilise the standard bidding documents issued by the CIDB. The contact number in this regard is as follows: |

|                               |  |
|-------------------------------|--|
|                               | Procurement Manager<br>CIDB<br>Private Box 2107<br>Brooklyn Square<br>Pretoria<br>0075<br><br>Tel. No. (012) 481-9030<br>Fax No. (012) 481-9087<br>Website: <a href="http://www.cidb.org.za">www.cidb.org.za</a><br>e-mail: <a href="mailto:cibd@cidb.org.za">cibd@cidb.org.za</a> |
| A Public Private Partnership? | Ensure that the provisions of the Municipal Public-Private Partnerships Regulations of April 2005 and Section 120 of the MFMA are adhered to.  |
| Consultancy Services?         | Follow the procedure below and refer to Chapter 5 of this Guide  |
| Other goods or services       | Continue below   |

**4.4.2 You require a good, work or service not listed above: can you obtain it:**

|  |     |  |
|--|-----|--|
| From the list of redundant/obsolete Material / goods from other municipality / municipal entity? | YES | Contact the relevant municipality / municipal entity |
|  | NO  | Continue below                                       |

**4.4.3 You are acquiring goods, works or services not available from the list above: Can you only acquire it in SA?**

|     |   |                |   |
|-----|---|----------------|---|
| NO  | Is there a need for international sourcing? | YES            | Advertise international and utilise SA embassies. |
|     |   | NO             | Source from local supplier: continue below        |
| YES | Source from local supplier                  | Continue below |   |

#### 4.4.4 How are you going to acquire it?

4.4.4.1 Procurement of goods, works and services, either by way of verbal / price quotations or through a competitive bidding process must be within the following threshold values (VAT included):

|   |     |   |
|---|-----|---|
| Is the value below R2 000 (VAT included)  | YES | Obtain requirement by means of petty cash <sup>2</sup> procurement in accordance with internal prescribed procedures        |
| <i>Verbal Price Quotations:</i> Is the value more than R 2 000 but less than R 10 000 (VAT included)? | YES | Obtain at least three verbal quotations, preferably from the list of accredited prospective suppliers. The names and prices |

<sup>2</sup> "Petty Cash", means a small amount of cash kept on hand for incidental purchases of low value goods and services (i.e. postage, office suppliers, reimbursement out-of-pocket expenditures), which cannot be accommodated through other purchasing procedures. Petty cash may not be used for payroll payments, inventory, capital goods, entertainment expense, travel expenses and other personal obligations.

|  |     |   |
|--|-----|---|
|  |     | of the prospective suppliers must be recorded. The order must be placed against written confirmation of the selected supplier.  |
| <i>Written Price Quotations: Is the value up to R200 000 (VAT included)?</i> | YES | Obtain at least 3 written quotations, if possible from database established for this purpose. For all procurement above R30000 the prescripts of the PPPFA and its related regulations are applicable. All requirements above R30000 must be advertised for at least seven (7) days on the notice board and website. Forward a summarised report of all procurement by means of quotations to the CFO on a monthly basis. |
| Is the value above R 200 000?  | YES | Use competitive bidding process:  |

#### 4.4.4.2 Compilation of List of Accredited Prospective Providers

Accounting officers should compile a list of accredited prospective providers to be used to procure requirements through written or verbal quotations and formal written price quotations. This list should also be used effectively to promote the objectives of the Preferential Procurement Regulations as well as the Broad-Based Black Economic Empowerment Act, Act No. 53 of 2003. Accounting officers should, through newspapers commonly circulating locally, the municipality's / municipal entity's website and by any other appropriate ways, invite prospective providers,

including black empowerment entities, to apply for evaluation and listing as a prospective provider. Providers should be allowed to submit applications for listing at any time. The list must be updated at least quarterly. The listing criteria for accredited prospective providers may include:

- (a) promoting businesses located in a particular municipality;
- (b) promoting small, medium and micro enterprises;
- (c) promoting black economic empowerment.

Once the list has been compiled per commodity, price quotations should be invited from such a list. The invitation of price quotations from the compiled list of accredited prospective providers per commodity should be done on a rotation basis in such a manner that ongoing competition amongst providers is promoted.

Where no suitable providers are available from the list of accredited prospective providers, quotations may be obtained from other possible providers. If it is not possible to obtain at least three (3) quotations, the reasons should be recorded and approved by the accounting officer or his / her delegate.

Accounting officers must apply the prescripts of the Preferential Procurement Policy Framework Act, Act 5 of 2000 and its associated Regulations for all procurement equal to or above R30000. However, these prescripts may be applied for procurement with a value of less than R 30 000, if and when appropriate.

#### **4.4.5 Other Considerations in the Bidding Process**

##### **4.4.5.1 Accommodation and Conferences**

Accommodation and/or facilities for conferences, seminars, workshops, “lekgotlas” etc. should, whenever possible, be obtained by means of written price quotations or competitive bidding. Should it not be possible or practical to follow the normal competitive bidding process (*see section 4.4.5.5*), the accommodation and/or conference facilities should be obtained by means of written quotations.

**4.4.5.2 Can I negotiate directly with a supplier?**

|               |  |
|---------------|--|
| YES, but only | <ul style="list-style-type: none"> <li>• Subject to the accounting officer's approval; and</li> <li>• There is an urgent need for the goods, works or services, and engaging in bidding proceedings would be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;</li> <li>• Owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods; or</li> <li>• Bidders have been identified as preferred bidders through a competitive bidding process.</li> </ul> |
|---------------|--|

**4.4.5.3 Can I use "limited bidding"?**

|     |                             |  |
|-----|-----------------------------|--|
| YES | Use 'Multiple source' if... | There is limited competition, hence only a few prospective bidders are allowed to make a proposal. This should be based on a thorough analysis of the market.                                  |
| YES | Use 'Single source'         | This should be based on a thorough analysis of the market and use a transparent and equitable pre-selection process, to request only one amongst a few prospective bidders to make a proposal. |
| YES | Use 'Sole source' if....    | There is no competition and only one bidder exists (for example, sole distribution rights)   |
| NO  | Use competitive bidding     | The objective of competitive bidding is to provide all prospective bidders with timely and adequate notification of a municipality /   |

|  |  |  |
|--|--|--|
|  |  | municipal entity's requirements and an equal opportunity to bid for the required goods, works or services. This allows for unfettered competition. |
|--|--|--|

#### 4.4.5.4 Can I use “two-stage bidding”?

|            |   |
|------------|---|
| YES, if... | <p>It is ‘turnkey’<sup>3</sup> or contracts for large complex plants or works of a special nature, when it may be undesirable or impractical to prepare complete detailed technical specifications in advance. Hence a two-stage bidding procedure may be used, under which first unpriced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments. The technical and commercial clarifications may include a prequalification that bidders have to provide proof of their ability to execute the project. In such a case it may be prescribed that only those bidders who prequalified, will be issued with the amended detailed bid documents and offered the opportunity to submit final technical proposals and price bids, as the second stage. These procedures are also appropriate in the procurement of equipment that is subject to rapid technological advances, such as major computer and communications systems. The following circumstances apply:</p> <ul style="list-style-type: none"> <li>• If it is not feasible to formulate detailed specifications for the goods, works or services, to identify their characteristics;</li> <li>• If it seeks bids, proposals or offers as to various possible means of satisfying needs; or</li> <li>• Because of the technical character of the goods or works, or because of the nature of the services, it is necessary for the procuring entity to negotiate with suppliers or contractors; and</li> <li>• When the procuring entity seeks to enter into a contract for the purpose of research, experiment,</li> </ul> |
|------------|---|

<sup>3</sup> “Turnkey”, means a procurement process where one service provider assumes total responsibility for all aspects of the project and delivers the full end product / service required by the contract.



|  |   |
|--|---|
|  | study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs. |
|--|---|

#### **4.4.5.5 Deviation from, and Ratification of Minor Breaches of Procurement Processes**

4.4.5.5.1 Should it be impractical to invite competitive bids for specific requirements, the accounting officer may dispense with official procurement processes and procure required goods or services by other means such as price quotations or negotiations.

4.4.5.5.2 Incidences where it will be impractical to invite competitive bids for specific requirements, include, among others:

- emergency cases: cases where immediate action is necessary in order to avoid a dangerous or risky situation or misery or disaster such as floods and fires;
- in case of a sole supplier;
- for the acquisition of special works of art or historical objects where specifications are difficult to compile; and
- acquisition of animals for zoos; or in any other exceptional cases.

4.4.5.5.3 The accounting officer may also ratify any breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties, which are purely of a technical nature.

4.4.5.5.4 The accounting officer must record the reasons for any deviations as mentioned above, and report it to the next meeting of the council, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.

4.4.5.5.5 The above does not apply to the procurement of goods and services that include:

- water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
- electricity from Eskom or another public entity, another municipality or a municipality.

#### 4.4.5.6 Unsolicited Bids

4.4.5.6.1 A municipality or municipal entity is in terms of section 113 of the Act not obliged to consider unsolicited bids received outside a normal bidding process.

4.4.5.6.2 If a municipality or municipal entity decides in terms of section 113(2) of the Act to consider an unsolicited bid, it may do so only if:

- the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
- the product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the municipality or entity;
- the person who made the bid is the sole supplier of the product or service; and
- the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

4.4.5.6.3 If a municipality or municipal entity decides to consider an unsolicited bid that complies with Municipal SCM regulation 37(2), the municipality /municipal entity must make its decision public in accordance with section 21A of the Municipal Systems Act, together with:

- its reasons as to why the bid should not be open to other competitors;
- an explanation of the potential benefits for the municipality or entity were it to accept the unsolicited bid; and
- an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

4.4.5.6.4 Once the municipality or municipal entity has received written comments pursuant to Municipal SCM regulation 37(3), it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.

4.4.5.6.5 The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.

4.4.5.6.6 A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.

- 4.4.5.6.7 When considering the matter, the adjudication committee must take into account:
- any comments submitted by the public; and
  - any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- 4.4.5.6.8 If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- 4.4.5.6.9 Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract committing the municipality / municipal entity to the bid may be entered into or signed within 30 days of the submission.
- 4.4.5.6.10 Note should be taken that inadequate attention given to unsolicited bidding may cause undue problems in the entire procurement process.

## **4.5 Bidding Procedures**

- 4.5.1 There are essentially five distinct stages in the bidding process and these are:
- Compiling bid documents;
  - Inviting bids;
  - Receiving bids;
  - Evaluating bids;
  - Clearing successful bidders and awarding contracts.

### **4.5.2 Compiling Bid Documents**

- 4.5.2.1 There is a dire need for generic documentation and contract options that can be adapted to cater for specific industry requirements. Bid documents define the rights, risks and obligations of the parties involved in a contract and define the nature, quantity and quality of the goods, services or works to be provided in the performance of the contract. Accordingly, such documentation should be legally and technically correct and should assign risk in an appropriate manner.

4.5.2.2 Bid documents should comprise at least the following: General Conditions of Contract, specifications, data sheets/drawings; and a specific contract agreement stipulating delivery standards and requirements. Uniformity in these documents will promote:

- Ease of entry by new emerging enterprises to public sector procurement;
- Cost effectiveness, both in financial and human resource terms;
- Improved understanding and easier interpretation by new emerging contractors; and
- Simplification of the documentation process.

4.5.2.3 Uniformity in contract documentation will result in:

- Bidders being able to more easily determine the scope and extent of risk;
- Easier management of contracts between potential contracting parties and the streamlining of administrative procedures;
- Savings in cost and improvement in quality; and
- Greater transparency in terms of cost premiums paid in pursuit of Government's preferential procurement objectives.

4.5.2.4 It is imperative that accounting officers take due care that standardised bid documents are used for all standard procurement of goods, works and services. It is the responsibility of the National Treasury to issue pro forma standardised bid documentation. In cases where special bid conditions make it necessary to deviate from the standardised bid documentation, it is advisable for accounting officers to provide written approval for such deviations and that the motivation for deviations be documented for auditing purposes.

4.5.2.5 The Accounting officer should ensure that:

- bid documentation are in accordance with:
  - the general conditions of contract and supply chain management guidelines of the National Treasury; and
  - the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;
- bid documentation include evaluation and adjudication criteria, including the criteria prescribed in terms of the

Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and its related regulations, as well as the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and its related regulations;

- bid documentation compel all bidders to declare any conflict of interest bidders may have in a specific bid;
- SARS has certified that the bidder's tax matters are in order or that arrangements have been made to the satisfaction of SARS that the outstanding tax obligations will be met;
- bid documentation prescribe that disputes be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law;
- bids must be advertised by means of public advertisement in newspaper(s) commonly circulating locally, the website of the municipality / municipal entity, and / or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin);
- the information contained in the public advertisement must include:
  - the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R 10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper; and
  - a statement that bids may only be submitted on the bid documentation provided by the municipality or municipal entity;
- The accounting officer may determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process (please note: a lack of or bad planning does not constitute an urgency or emergency);
- bids are opened in public as soon as possible after the closing time on the closing date of bids. When requested by any bidder or member of the public, the names of the bidders who submitted bids in time be read out and when possible / practical, also the respective total bidding prices. A register must be compiled of all bids received in time during the bid

opening process and must be available on request for public perusal; and

- 4.5.2.6 Accounting officers may request the State Information Technology Agency (SITA) to assist with the acquiring of IT related goods and services through a competitive bidding process. A separate service level agreement between the accounting officer and SITA should regulate the services rendered by and payment to SITA by the municipality or municipal entity.
- 4.5.2.7 Accounting officers must ensure that the applicable regulations dealing with public-private partnerships have been adhered to before entering into any public-private partnership or part of a public-private partnership.
- 4.5.2.8 The accounting officer may, on behalf of the municipality / municipal entity, 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 as well as the written approval of the relevant contractor(s).

#### 4.5.2.9 General Provisions for Bids

|   |   |
|---|---|
| <p><b>General and Special Contract Conditions</b></p> | <p>All bids and contracts should be subject to the General Conditions of Contract (Annexure A) and any special conditions of contract, if specified. To strive towards uniformity, all contracts must be based on the General Conditions of Contract (GCC), issued by the National Treasury. Any aspect not covered by the GCC should be dealt with in the special contract conditions (SCC), which will be a separate document. Matters such as attendance of compulsory site meetings, briefing sessions and special delivery conditions must be covered in the SCC. The standard wording of the GCC must not be amended. The GCC issued by the Construction Industry Development Board should be utilized in cases of bids related to the construction industry. Where the SCC are in conflict with the GCC, the SCC will prevail. These conditions should form an integral part of the bidding documents.</p> <p>Accounting officers should ensure that the prescripts of the PPPFA and the Regulations pertaining thereto are adhered to. The basis for bid evaluation and selection should be clearly outlined in the instructions to bidders and/or in the specifications.</p> |
|---|---|

|   |  |
|---|--|
| <p><b>Using Standard Bidding Documents</b></p>  | <p>Municipality / municipal entity should customise and use the appropriate Municipal Bidding Documents (MBDs) issued by the National Treasury with minimum changes acceptable to the accounting officer, as necessary to address contract- and project-specific issues. Where no relevant standard bidding documents have been issued, the municipality / municipal entity should use other internationally recognised standard contract forms acceptable to the accounting officer, in concurrence with the relevant Treasury. The standard bid documentation issued by the Construction Industry Development Board should be utilized in cases of bids related to the construction industry. Bid documents must include the preference points system to be used, goals as contemplated in Preferential Procurement Regulations and evaluation criteria.</p>   |
| <p><b>Type of Contract</b></p>                  | <p>The bidding documents should clearly state the type of contract to be entered into and contain the appropriate contract provisions. The most common types of contracts provide for payments on the basis of lump sum prices, unit prices, reimbursable cost plus fees, or combinations thereof. Reimbursable cost contracts should be acceptable only in exceptional circumstances, such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts should include appropriate incentives to limit costs and may only be concluded subject to the approval of the accounting officer. It is advisable that the reasons and formal approval for following the reimbursement route are recorded for auditing purposes.</p>  |
| <p><b>Language and Clarity of Documents</b></p> | <p>Bidding documents should be prepared in at least English. Bidding documents should be worded such that they permit and encourage competition.</p>   |
| <p><b>Bid Content</b></p>                       | <p>Documents should specify clearly and precisely the work to be carried out, the location, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements and the warranty and maintenance requirements, as well as any other terms and conditions. In addition, bidding documents should define the tests, standards and methods that would be employed to judge the conformity of equipment as delivered or works as performed, with the specifications. Drawings should be consistent with the text of the specifications and the order of precedence between the two should be specified.</p> <p>In addition to price, the bidding documents should specify any factors which will be taken into account in evaluating bids and how such factors would be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, payment terms, etc. are</p> |

|   |  |
|---|--|
|   | <p>permitted, conditions for their acceptability and the method of their evaluation should be expressly stated.</p> <p>Each prospective bidder should be provided the same information and should be assured of an equal opportunity to obtain additional information on a timely basis. Municipality / municipal entity should provide reasonable access to project sites for visits by prospective bidders. For works or complex supply contracts, particularly those requiring refurbishing of existing works or equipment, a pre-bid meeting may be arranged for potential bidders to meet with the municipality / municipal entity's representatives to seek clarifications. Minutes of the meeting should be provided to all prospective bidders. Any additional information, clarification, correction of errors, or modifications of bidding documents 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.</p> |
| <p><b>Inspections, Tests and Analyses</b></p> | <p>If it is a bid condition that goods to be produced or services to be rendered should at any stage during production or execution, or on completion be subject to inspection, the bid documentation should also specify that the premises of the bidder or contractor should be open at all reasonable hours for inspection by a representative of the municipality / municipal entity or organisation acting on behalf of the municipality / municipal entity.</p>  |
| <p><b>Tax Clearance</b></p>                   | <p>It is Government's 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. Clearance must be obtained from SARS for all contracts above the value of R 15 000 whether a preferred bidder's tax matters are in order. Presently, SARS will on request, issue tax clearance certificates (valid for 12 months) to potential suppliers. SARS has ruled that only original certificates should be accepted and that copies of acceptance of bids together with copies of the original tax clearance certificate supplied by the contractor be forwarded to them for control purposes at the following address:</p>  |



|   |  |
|---|--|
|   | <p>The Commissioner<br/>                 South African Revenue Services<br/>                 Private Bag X923<br/>                 PRETORIA<br/>                 0001</p> <p>For attention: Cecilia Makgeledisa<br/>                 Tel: (012) 422 4444<br/>                 Fax: (012) 422 6843<br/>                 E mail: <a href="mailto:cmakgeledisa@sars.gov.za">cmakgeledisa@sars.gov.za</a></p> <p>If a “request for information” (RFI) bid is advertised, it is not necessary for tax clearance certificates to be presented. However, should it not be included in the RFI bid, it must be included as a condition of bid in the documents distributed to the bidders who did qualify.</p> <p>Municipalities and municipal entities must include a condition of bid that a bidder may have no undisputed commitments for municipal rates and taxes and / or services towards the municipality or other service supplier in respect of which payment is overdue for more than 30 days. The inclusion of such a statement by the bidder is compulsory for any bid submitted of which the value is R 10 million or more (VAT included).</p> <ul style="list-style-type: none"> <li>• <i>This present tax clearance system is under review for speedier certification, but must be followed until further notice. Notice in form of a circular will be given regarding the issue.</i></li> </ul> |
| <p><b>Registration of Suppliers/Bidders</b></p> | <p>Suppliers / bidders who are compelled to register with controlling authorities regarding their goods / services to be delivered / rendered, should ensure that their relevant registration is in order prior to the closure of the bids. Municipality / municipal entity should ensure that registration facilities are in place prior to making such a requirement a condition of tender.</p>  |
| <p><b>Use of Brand Names</b></p>                | <p>Specifications should be based on relevant characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications should be avoided. If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” should be added after such reference. The specification should permit the acceptance of offers for goods which have similar characteristics and which provide performance at least equivalent to those specified.</p>   |

|   |  |
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| <p><b>Pricing</b></p>                             | <p>Bidders should be required to quote unit prices or lump sum prices and such prices should include all duties, taxes, percentage fees for cost reimbursable contracts and other levies. Bidders should be allowed to obtain all inputs from any eligible sources in order to offer their most competitive bids.</p> <p>In the case of turnkey contracts, the bidder should be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price should include all duties, taxes, and other levies.</p>   |
| <p><b>Preparation Time</b></p>                    | <p>The time allowed for the preparation and submission of bids should be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than 14 days from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, should be allowed for competitive bidding. For contracts above the value of R 10 million (VAT included), such period may not be less than 30 days. In such cases, the municipality / municipal entity is encouraged to convene pre-bid conferences and arrange site visits.</p> <p>In justifiable circumstances accounting officers may allow shortening of the closing date. Cognisance should also be taken of the fact that the shortening of the closing date should not disadvantage any potential suppliers from bidding for the requirements.</p> |
| <p><b>Bid Submission</b></p>                      | <p>Bidders should be permitted to submit bids by mail or by hand. The deadline and place for receipt of bids should be specified in the invitation to bid.</p>   |
| <p><b>Price adjustments due to escalation</b></p> | <p>In some instances it might be in the best interest of the municipality / municipal entity to allow price adjustments based on escalation. What the best option should be will require a careful analysis of all related aspects that will influence the adjusted price, including the cost for the additional administrative work. If the accounting officer resolves to allow price escalation as part of the contract, this should be specified in the bid documents, including the formula and the time frames at which intervals such price adjustments should be considered.</p> <p>The following formula is recommended if adjustments of prices are allowed:</p>   |

|  |   |
|--|---|
|  | $P_a = (1 - V)P_t \left( D_1 \frac{R_{1t}}{R_{1o}} + D_2 \frac{R_{2t}}{R_{2o}} + D_3 \frac{R_{3t}}{R_{3o}} + D_4 \frac{R_{4t}}{R_{4o}} \right) + VP_t$ <p>Where:</p> <p><math>P_a</math> = The new escalated price to be calculated.<br/> <math>(1-V) P_t</math> = 85% of the original bid price.<br/> <math>D_1, D_2</math>= Each factor of the bid price e.g. labour, transport, clothing, footwear, etc.<br/> The total of the various factors <math>D_1, D_2</math>...etc. must add up to 100%.<br/> <math>R_{1t}, R_{2t}</math> = index figure obtained from new index (depends on the number of factors used).<br/> <math>R_{1o}, R_{2o}</math>= index figure at time of bidding.<br/> <math>VP_t</math> = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.</p>   |
| <p><b>Price adjustments due to the fluctuation in the Rate of Exchange (ROE)</b></p> | <p>Rate of exchange claims relate to the fluctuation of other currencies in relation to the South African rand. When Municipality / municipal entity advertise bids which might involve imported contents, whether wholly or partially, the ROE and future fluctuations are of vital importance, especially for delivery over a specified period of say more than one year.</p> <p>The decision of who should take responsibility for any absorption of the fluctuation of a currency is similar to a decision of allocating risk. In this regard, there are two extreme possibilities:</p> <p>The supplier should bear all the risk and it is prescribed that the price will be fixed for the tenure of the contract, irrespective of the fluctuation of the currency. In such a case the supplier is free to arrange forward cover and / or to increase his / her price at bidding stage to cater for any fluctuation, thereby taking the risk of not being the successful bidder. Whatever route the supplier opts to follow, it will in all probability lead to an increase in price at the original bidding stage. This might lead to a situation that right at the commencement of the contract, the Municipality / municipal entity will be obliged to pay more for the product than the retail price to the general public.</p> <p>The municipality / municipal entity can absorb the risk and providers may bid firm prices, subject to ROE variation. In such cases the provider(s) may apply for price increases / decreases when the currency fluctuates in relation to the agreed currency. The problem in this regard is that the prices are not always adjusted when the rand appreciates. In such cases it is of vital importance that the accounting officer ensures that prices are adjusted to the benefit of the Municipality / municipal entity.</p> |

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|                        | <p>The ideal would be to find a balanced approach between the above extremes, taking into account other contributing factors that will influence the final price. According to proposals by the World Bank, price increases based on ROE should not be allowed if the tenure of a contract is less than 18 months. Due to the recent fluctuations of the Rand, this might be a very long period when seen in the South African context and a period of twelve months may be more appropriate. The local and imported contents of the products under consideration will also have a vital impact on the determining of prices. Another aspect that will also impact on the determination of prices, will be the frequency of price adjustments. If the contract allows for a monthly adjustment of prices, the provider hardly bears any risk in this regard. Prescribing that price adjustments will only be considered at prescribed intervals (say three monthly) will in a sense split the risk between the State and the provider.</p> <p>It is therefore suggested that the accounting officer, after thorough analysis of relevant information, determine on a case-by-case basis the optimum route to be followed for each commodity. It should, however, be emphasised that price adjustments based on ROE fluctuations, should be allowed only on the imported contents of the commodity and to meet only the providers' additional costs of the imported content.</p> <p>It must be noted that price adjustments due to the fluctuation in the rate of exchange (ROE) should indicate the dates and period of affect issued by the Reserve Bank of South Africa at 12:00 of the specified date.</p> <p>Contact Details: (012) 313 3911 / 313 3194 / 3929<br/> <a href="http://www.resbank.co.za">http://www.resbank.co.za</a></p> |
| <p><b>Sureties</b></p> | <p>Bid securities are normally required from bidders in the construction and engineering disciplines, as well as from auctioneers. The accounting officer may decide whether bidders should supply securities at the bidding phase. Bid security should not be set so high as to discourage bidders. Bid security should remain valid for a period of four weeks beyond the validity period for the bids, in order to provide reasonable time for the municipality / municipal entity to act if the security is to be called. Should the recommended bidder or the contractor withdraw his/her bid prior to the award of the bid or commencement of the contract, the bidder/supplier may forfeit his security to the municipality / municipal entity. Bid securities should be released to unsuccessful bidders once it is determined that they will not be awarded the contract.</p> <p>Risk management procedures should determine the need for and form of bid sureties. Risk should be allocated in the best interest of the state by means of proper risk analyses and management. Each accounting officer should decide whether the municipality / municipal entity or the supplier should bear the risk.</p>  |

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|  | <p>Whenever sureties are required, accounting officers should ensure that the contents meet with legal requirements. For these inquiries the Financial Services Board may be contacted on: Toll Free: 0800110 443 / 0800202087 &amp; Call Centre: <a href="mailto:Info@fsb.co.za">Info@fsb.co.za</a> to establish whether or not a company is a registered insurer.</p> <p>Accounting officers should ensure that the correct contract amount (both in amounts and in words) is quoted in any guarantee, together with the description of the goods/service to be delivered and details of the supplier/contractor. It is advisable to have guarantees perused by Legal Advisors <b>prior</b> to acceptance to ensure that the contents are acceptable and not qualified.</p> |
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### 4.5.3 Inviting Bids

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| <p><b>Prequalifying Bidders (only when necessary)</b></p> | <p>Pre-qualification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom designed equipment, industrial plant, specialized services and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Pre-qualification may also be useful to determine eligibility for preference for domestic contractors, when</p> <p>appropriate. Pre-qualification should be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their:</p> <ul style="list-style-type: none"> <li>▪ Capabilities with respect to personnel, equipment and construction or manufacturing facilities; and</li> <li>▪ Financial position.</li> </ul> <p>The invitation to pre-qualify should contain, at a minimum, the information listed in 'Bid content', above.</p> <p>The scope of the contract and a clear statement of the criteria for qualification should be sent to those who responded to the invitation. All applicants that meet the specified criteria should be allowed to bid. The municipality / municipal entity should inform all applicants of the results of pre-qualification. As soon as pre-qualification is completed, the bidding documents should be made available to the qualified prospective bidders. For pre-qualification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder</p> |
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|                                 | <p>may be made on the basis of the bidder's resources. The list of pre-qualified firms in such instances should be updated periodically.</p> <p>Verification of the information provided in the submission for pre-qualification should be confirmed at the time of award of contract and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully execute the contract.</p>  |
| <p><b>Advertising Bids</b></p>  | <p>Timely notification of bidding opportunities is essential in competitive bidding.</p> <p>Bids should be advertised for at least 14 days before closure in at least the local media and the municipality / municipal entity's website, and in other appropriate media should an accounting officer deem it necessary to ensure greater exposure to potential bidders except in urgent cases when bids may be advertised for such shorter periods as the accounting officer may determine.</p> <p>For contracts above the value of R 10 million (VAT included), such period may not be less than 30 days. The responsibility for such advertisement costs will be that of the relevant accounting officer.</p> <p>Also to be considered are the date, time and venue of any proposed site meetings or briefing sessions.</p> <p>The municipality / municipal entity should maintain a list of responses to the advertisement. The related pre-qualification or bidding document, as the case may be, should be available on the publication date of the advertisement.</p> |
| <p><b>Sale of Documents</b></p> | <p>Accounting officers may decide to charge a refundable or non-refundable fee for bidding documents if and when necessary, provided that:</p> <ul style="list-style-type: none"> <li>• The fee should be reasonable and reflect only the cost of their printing and delivery to prospective bidders;</li> <li>• The fee should not be so high as to discourage prospective bidders; and</li> <li>• All monies received for the sale of bidding documents must be dealt with in accordance with section 8(2) of the MFMA.</li> </ul>  |

#### 4.5.4 Receiving Bid Responses

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| <b>Opening of Bids</b>                       | <p>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 municipality / municipal entity 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 bidder, 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.</p> |
| <b>Late Bids</b>                             | <p>Bids received after the time stipulated should not be considered and be returned unopened immediately.</p> <p>Note: If the electronic bid was in time, but the hard copy was late, it is considered that the bid was in time.</p>  |
| <b>Clarification<br/>Alterations of Bids</b> | <p>or Bidders should not be requested or permitted to alter their bids after the deadline for receipt of bids. The accounting officer should only allow questions be asked to bidders for clarification needed to evaluate their bids but should not ask or permit bidders to change the substance or price of their bids after bid opening. Requests for clarification and the bidder's responses should be made in writing.</p>   |
| <b>Confidentiality</b>                       | <p>After public opening of bids, information 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 bidder is notified of the award.</p>   |
| <b>Completeness<br/>Documentation</b>        | <p>of Normally it should be ascertained whether bids:</p> <ul style="list-style-type: none"> <li>• include original tax clearance certificates;</li> <li>• have been properly signed;</li> <li>• are accompanied by the required securities;</li> <li>• are substantially responsive to the bidding documents; and</li> <li>• are otherwise generally in order.</li> </ul> <p>If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions and specifications in the bidding documents, it should not be considered further. The bidder</p>   |

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|  | should not be permitted to correct or withdraw material deviations or reservations once bids have been opened. |
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## **4.5.5 Evaluating Bid Responses**

### **4.5.5.1 Appointment of Bid Evaluation Committees**

4.5.5.1.1 The accounting officer should appoint a bid evaluation committee for the evaluation of bids received for goods / works or services. Where there is a lack of capacity (human resources) to establish the committee structure in a specific municipality / municipal entity, it may be agreed upon to share / utilize the committee structure of another municipality/ municipal entity if and when required. The accounting officer, who initiated the requirement, will be accountable for the decisions taken.

### **4.5.5.2 Bid Evaluation Committee**

4.5.5.2.1 The bid evaluation committee should be cross functional and should be composed of at least one supply chain management practitioner and officials from the user departments requiring the goods and / or services. The composition of the bid evaluation committee can change to accommodate different scenarios. It is recommended that the bid evaluation committee be constituted with different members as that of the specification committee, and only where not possible, the bid specification committee and the bid evaluation committee have the same membership.

4.5.5.2.2 According to the prescripts of section 2 of the Preferential Procurement Policy Framework Act, No. 5 of 2000 bids must be evaluated in accordance with a preference point system. Any specific goal for which a point may be awarded must be clearly specified in the bid documentation.

4.5.5.2.3 This committee should evaluate all bids received and submit a report and recommendation(s) regarding the final award of the bid(s) to the adjudication committee.

4.5.5.2.4 No Councillor or official should be allowed to do any business with the state. When a bidder declares in the bid documents that he / she is in the employ of the State, the bid should not be considered.

**Supply Chain Management: A Guide for Accounting Officers of Municipalities and Municipal Entities**



4.5.5.2.5 Other important issues to be considered by the evaluation committee:

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| <p><b>Evaluation and Comparison of Bids</b></p> | <p>Bids should only be evaluated in terms of the criteria stipulated in the bidding documents. Amending the evaluation criteria after closure of the bids should not be allowed, as this would jeopardise the fairness of the system. Points scored for price must be added to points scored for goals and the contract is usually awarded to the bidder who scores the highest points.</p>  |
| <p><b>Rejection of all Bids</b></p>             | <p>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 municipality / municipal entity 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.</p> <p>If rejection is due to lack of competition, wider advertising should be considered. If the rejection was due to most or all of the bids being non responsive, new bids may be invited from the initially pre-qualified firms, or with the agreement of the accounting officer, from only those that submitted bids in the first instance.</p> <p>All bids should not be rejected solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the municipality / municipal entity's pre-bid cost estimates by a substantial margin, the municipality / municipal entity should investigate causes for the excessive cost and consider requesting new bids as described above.</p> <p>Alternatively, the municipality / municipal entity may negotiate with the identified preferred bidder 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.</p> <p>The accounting officers' prior agreement should be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the identified preferred bidder. This approval should be recorded for auditing purposes.</p> |

## **4.5.6 Clearing Successful Bidders and Awarding Contracts**

### **4.5.6.1 The Bid Adjudication Committee**

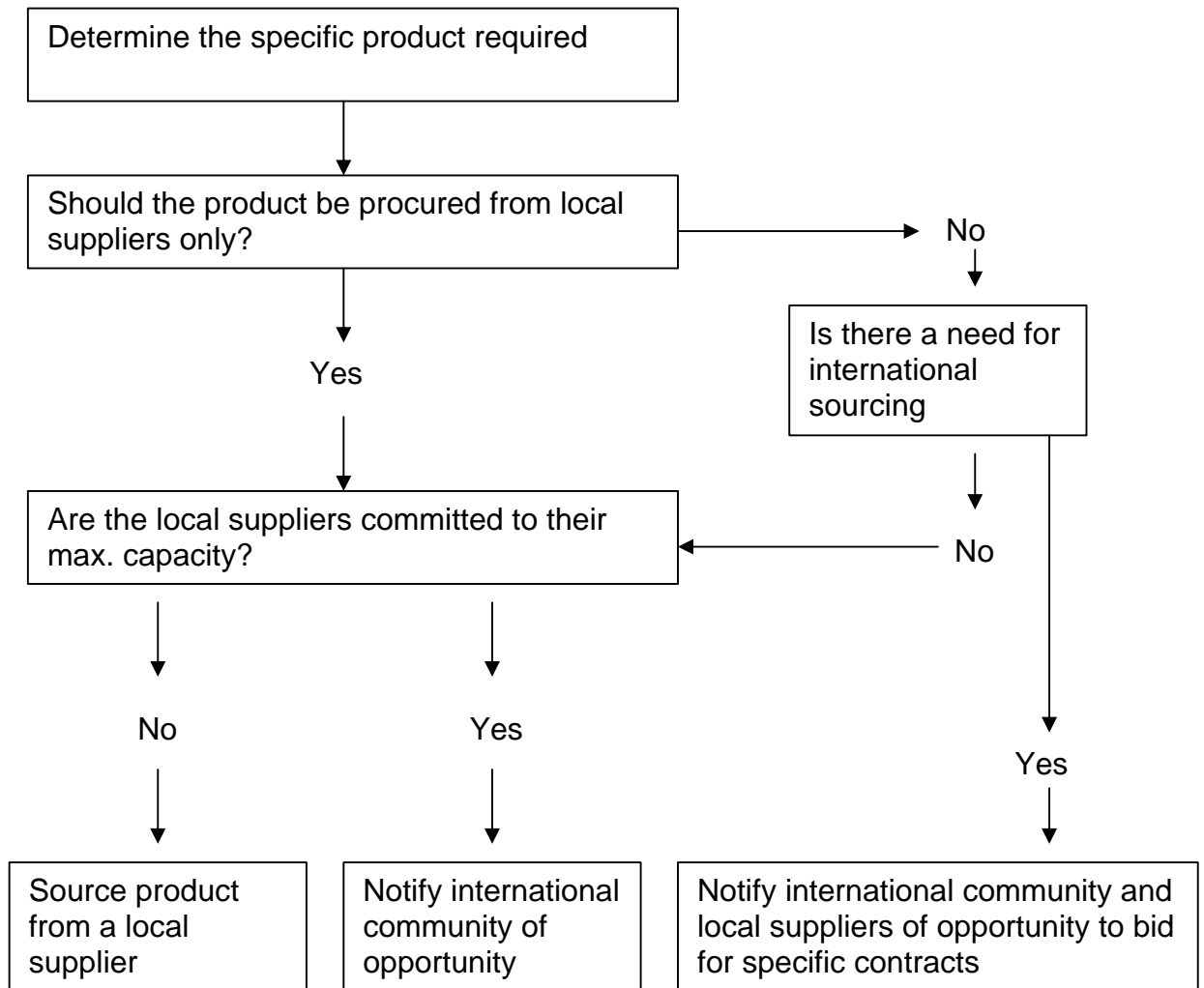
- 4.5.6.1.1 The appointment of an adjudication committee should be cross-functional of whom at least one member should be a supply chain practitioner. The committee should be compiled of at least four senior managers of the municipality or municipal entity and should consider the report(s) and recommendation(s) made by the evaluation committee. Depending on the delegations granted by the accounting officer, the adjudication committee could make the final award of the bid, or make a recommendation to the accounting officer to make the final award. The accounting officer must appoint the chairperson of the committee. In the absence of the chairperson from a meeting, the members of the committee who are present must elect one of them to preside at the meeting. Where there is a lack of capacity (human resources) to establish the committee structure in a specific municipality / municipal entity, it may be agreed upon to share / utilize the committee structure of another municipality/ municipal entity if and when required. The accounting officer, who initiated the requirement, will be accountable for the decisions taken.
- 4.5.6.1.2 The evaluation committee and adjudication committee should comprise of different members to ensure that a transparent review of the evaluation and award is undertaken. Members of evaluation committees may present their reports to the bid adjudication committee and clarify any uncertainties. Such members should, however, not have any voting power on the adjudication committee.
- 4.5.6.1.3 The bid specification, evaluation and adjudication process must be within the ambit of section 217 of the Constitution as well as the prescripts contained in the PPPFA and its associated regulations, and the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, and its associated regulations.
- 4.5.6.1.4 Other issues to be considered by the bid adjudication committee include:

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| <b>Vendor assessment</b>   | Suppliers should be assessed by SCM practitioners, for possible risks such as the availability of adequate facilities, financial standing, capacity and capability to deliver, previous performance in terms of quality and service delivery, as well as attainment of goals.   |
| <b>Clearance of bidders prior to the award of a contract: Restricted persons</b> | <p>Prior to the award of any contract, accounting officers should ensure that neither the recommended bidder nor any of the directors are listed as companies/directors/persons restricted to do business with the public sector.</p> <p>To confirm whether a bidder is listed on National Treasury's database, in terms of MSCM Regulations 38(1) (c), forward an e-mail to <a href="mailto:Restrictions@treasury.gov.za">Restrictions@treasury.gov.za</a>.</p> <p>In terms of MSCM Regulation 38 (1) (g) (iv), access to the 'Register for Tender Defaulters' will be active as from 01 November 2005. Enter the National Treasury's website, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>, click on the icon "Register for Tender Defaulters".</p> |
| <b>Negotiations</b>  | Accounting officers or their delegates may negotiate the final terms of contracts with bidders identified as preferred bidders through a competitive bidding process, provided that such a process does not allow the bidder concerned a second (unfair) opportunity and it is not to the detriment of any other bidder. Minutes of such negotiations must be kept for record purposes.   |
| <b>Contract Award</b>  | After approval of a bid, both parties should sign a written contract or, if necessary, a service level agreement. Original/legal copies of contracts should be kept in a secure place for judicial reference.   |
| <b>Contract Administration</b>   | Contract administration, including monitoring of socio-economic objectives as undertaken by the supplier during the bidding stage, is the responsibility of the accounting officer.   |

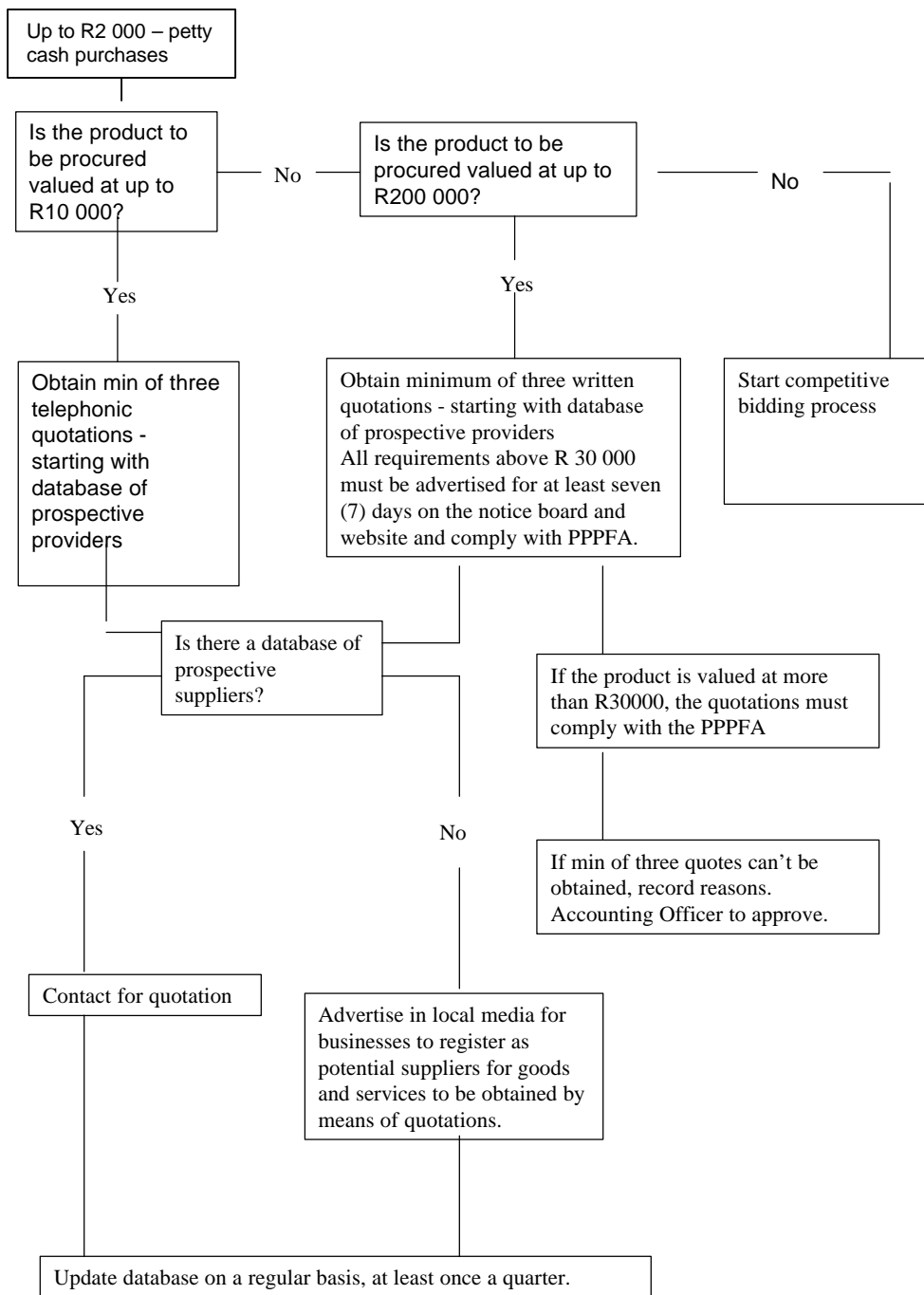
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| <p><b>Notification release information and of</b></p> | <p>The following information on the successful bids should be made available on the municipality / municipal entity website and, if so decided by the Accounting Officer, also in the media where the bid was originally advertised:</p> <ul style="list-style-type: none"> <li>(i) Contract number and description;</li> <li>(ii) Name(s) of the successful bidder(s), the contract price(s), brands, delivery basis and where applicable, preferences claimed.</li> </ul> <p>Bids are not available for perusal by the public. Any bidder should, when requesting it in writing, be provided with the reasons why his / her own bid was not successful. The reasons why another bidder's bid was unsuccessful should not be supplied, as this may contain privileged information (e.g. a negative banking report). No itemised prices other than the formal contract prices of the successful bidder(s) should be supplied to competitors. According to the prescripts of section 36 of the Promotion of Access to Information Act, No. 2 of 2000, no information may be revealed that will prejudice a third party in commercial competition. Revealing itemised prices of unsuccessful bidders may reveal their trade secrets / strategies and no such information should be revealed without the written consent of the relevant bidder(s).</p> |
| <p><b>Cancellation of Bids</b></p>                    | <p>Regulation 10(4) of the Preferential Procurement Regulations, 2001, prescribes that an organ of state may, prior to the award of a bid, cancel the bid if:</p> <ul style="list-style-type: none"> <li>(a) due to changed circumstances there is no longer a need for the goods or services for which bids were solicited;</li> <li>(b) funds are no longer available to cover the total envisaged expenditure; or</li> <li>(c) no acceptable bids were received.</li> </ul> <p>Accounting officers are not authorised to deviate from these prescripts.</p>   |
| <p><b>E –procurement</b></p>                          | <p>The accounting officer must, prior to the request for information or any bids regarding the introduction of an e-procurement system, obtain approval from Council or Board of Directors to commence with the establishment and maintaining of such a system.</p>  |

4.6 Flowcharts for Acquisition Management

LOCAL VERSUS INTERNATIONAL SOURCING

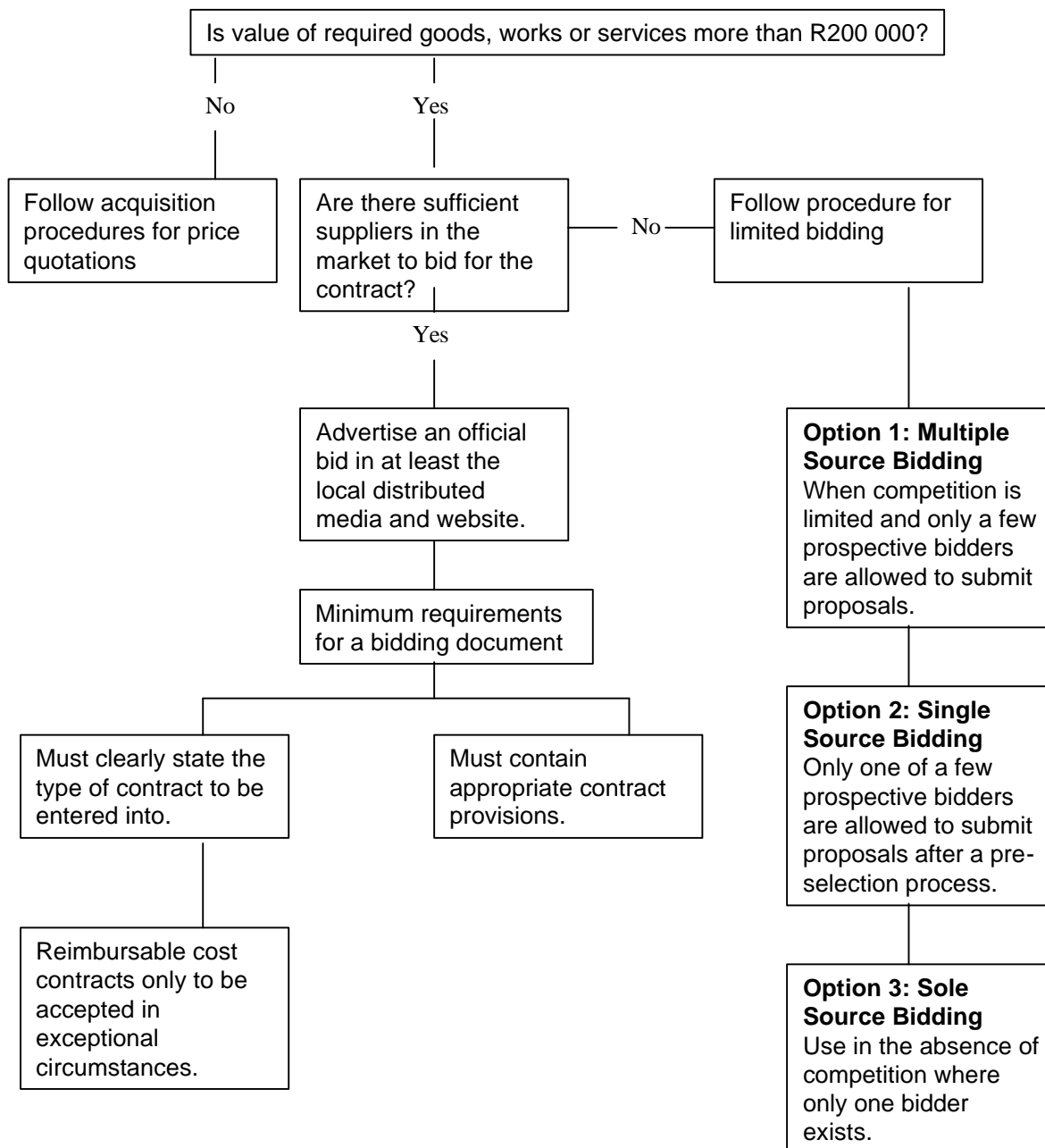


ACQUISITION PROCEDURES FOR PRICE QUOTATIONS

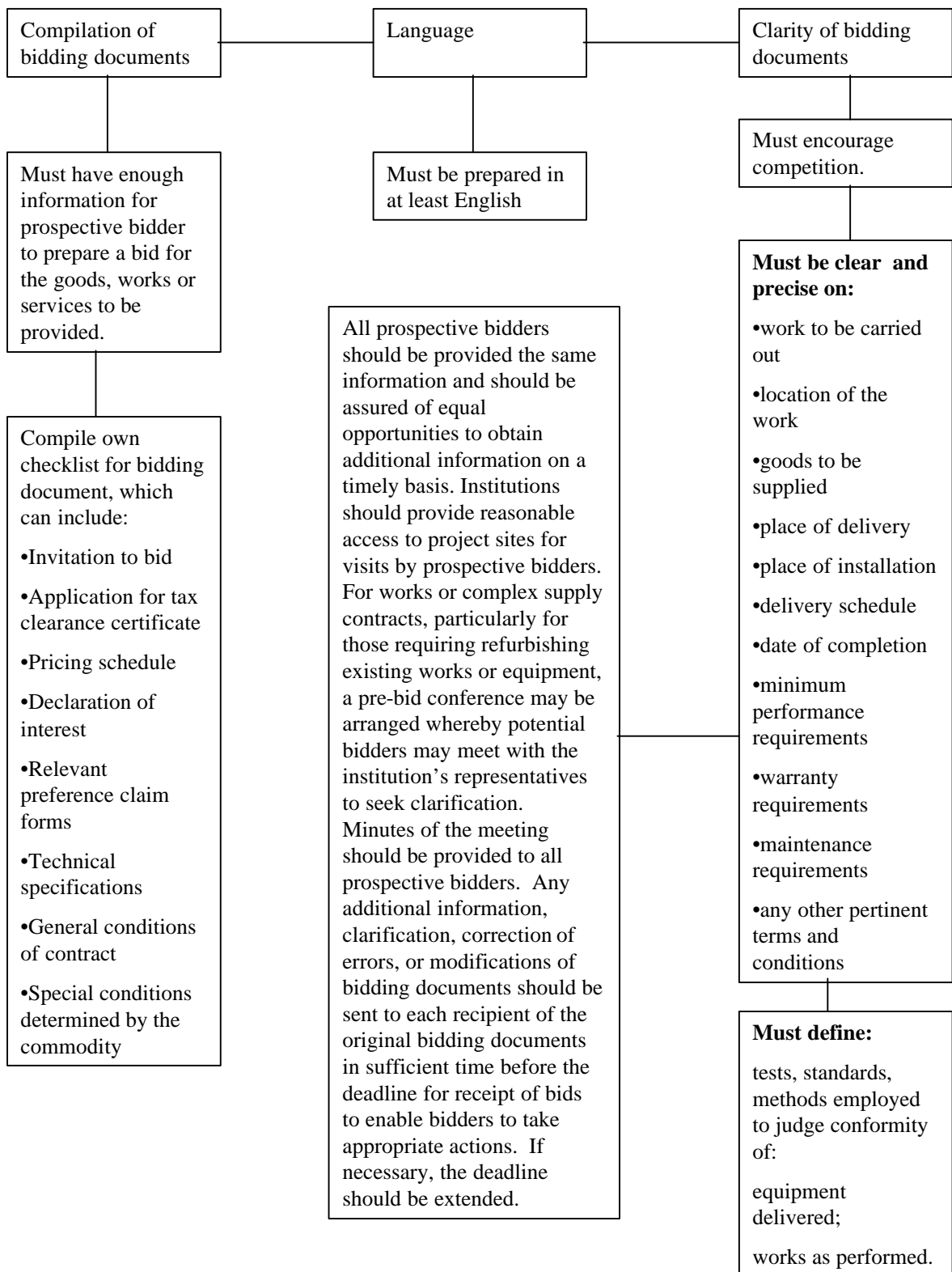


**ACQUISITION PROCEDURES FOR COMPETITIVE BIDDING**

**Objective:** To provide all prospective bidders with timely and adequate notification of an institution’s requirements and an equal opportunity to bid for the required goods, works or services.



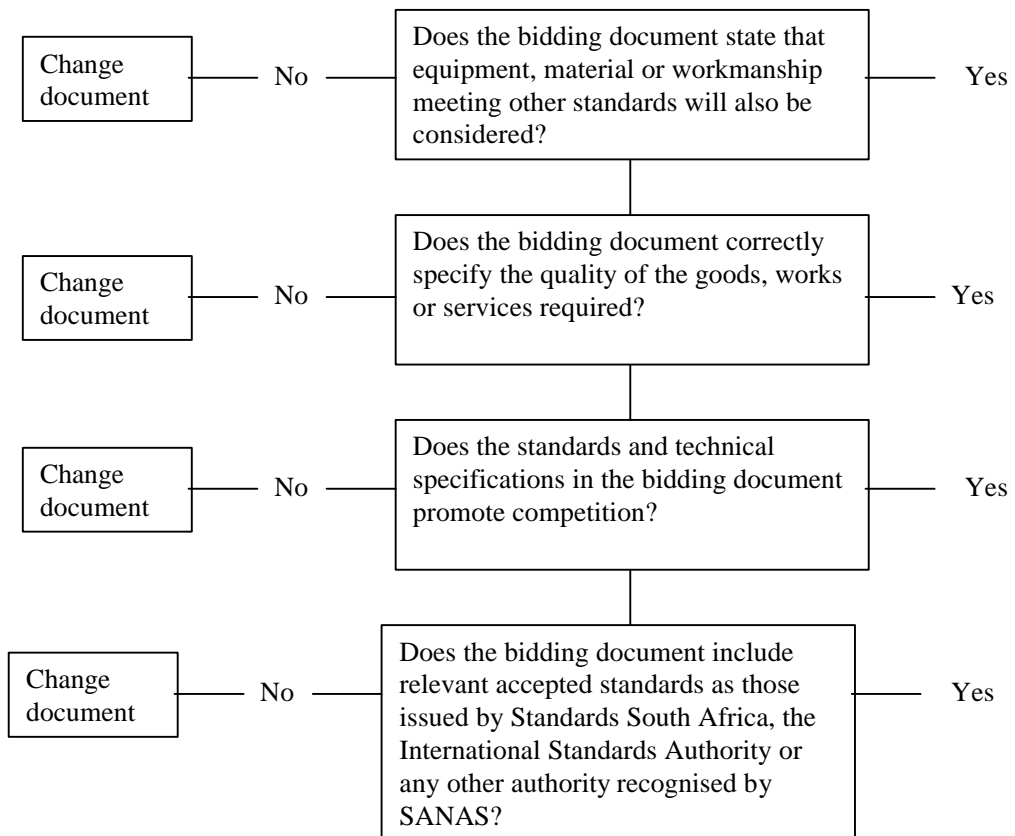
**INVITATION OF BIDS**





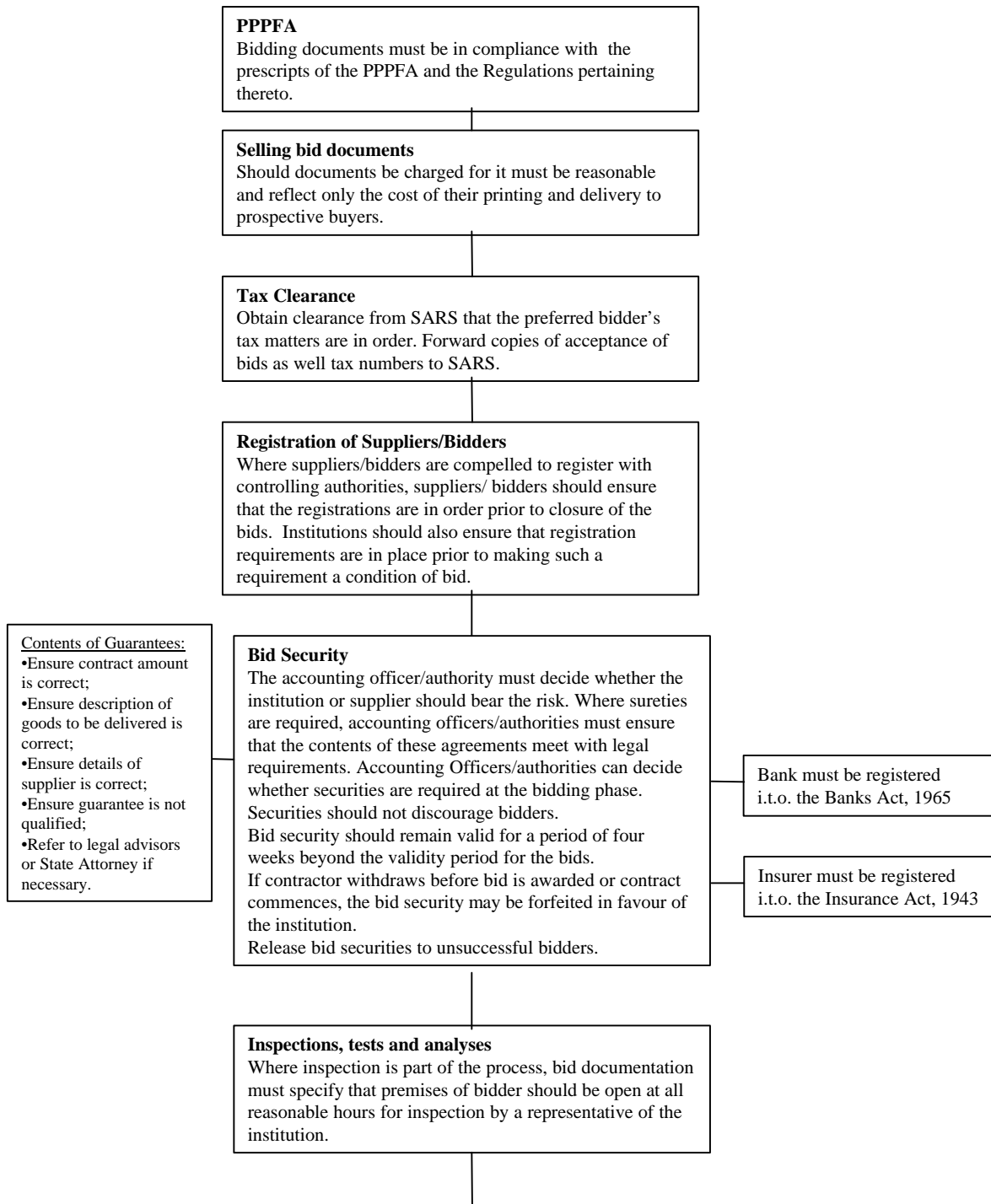
**STANDARD BID DOCUMENT SETTING**

Bidding documents should ensure that all prospective bidders have an equal opportunity in being awarded the contract. As such, it should ensure that the bidding document is very specific and clear and that little is left to the interpretation of the applicant. The following check list could be used to assist in this regard.



**CONDITIONS OF THE BID**

All contracts must be based on the General Conditions of Contract (GCC), issued by the National Treasury.



**CONDITIONS OF THE BID, continued****Use of brand names**

Avoid reference to brand names, catalogue number or similar classifications.  
If unavoidable add 'or equivalent' after such reference.

**Pricing - General**

Bidders must quote unit prices or lump sum prices.  
Price must include all duties, taxes, percentage fees for cost re-imbursable contracts and other levies.

**Pricing - Turnkey contracts**

Bidders must quote price of installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation and commissioning as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Should include all duties, taxes and other levies.

**Price adjustment due to escalation and fluctuation in the ROE**

The accounting officer must decide whether to allow for price adjustment as part of the contract.  
Price adjustment should be specified in the bid documents, including formula and time frames at which intervals such price adjustments should be considered.

# 5

## Appointment of Consultants

### 5.1 Introduction

- 5.1.1 The purpose of this Chapter is to explain the procedures for selecting, contracting, and monitoring consultants required for projects. In general, the procedures described in the previous chapter apply. Only the peculiarities of appointing consultants are dealt with herein, as the services to which these procedures apply are of an intellectual and advisory nature. These procedures do not apply to general services such as construction works, manufacture of goods, operation and maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, catering, cleaning and security in which the physical aspects of the activity predominate. Appointment of consultants for projects related to the construction industry must be in accordance with the prescripts of the Construction Industry Development Board.
- 5.1.2 It must be clearly pointed out that the appointment of Transaction Advisors in respect of public-private partnerships or part thereof, should be done in terms of the provisions of section 120 of the MFMA and the municipal PPP Regulations.
- 5.1.3 For the purpose of this Guide, the term *consultant* includes, among others, consulting firms, management firms, procurement agents, inspection agents, auditors, other multinational organisations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organisations (NGOs) and individuals.
- 5.1.4 Accounting officers may use these organisations as *consultants* to assist in a wide range of activities such as policy advice, accounting officer's reform management, financial services, procurement services, social and environmental studies and identification, preparation and implementation of projects to complement accounting officers' capabilities in these areas.
- 5.1.5 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.

- 5.1.6 The relationship between the accounting officer and the consultant should be one of purchaser/supplier 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.

## **5.2 Applicability of Procedures**

- 5.2.1 The procedures outlined herein apply to all contracts for consulting services. In procuring consulting services, the accounting officer should satisfy himself/herself that:

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

## **5.3 General Approach**

- 5.3.1 The accounting officer should be responsible for preparing and implementing the project, for selecting the consultant, awarding and subsequently administering the contract. While the specific rules and procedures to be followed for selecting consultants depend on the circumstances of the particular case, at least the following four major considerations should guide the accounting officer's policy on the selection process:

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

- 5.3.2 In the majority of cases, these considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided (Quality- and Cost-Based Selection [QCBS]) as described in section 5.8.3. However, there are cases when QCBS is not the most appropriate method of

selection. For complex or highly specialized assignments or those that invite innovations, selection based on the quality of the proposal alone (Quality-Based Selection [QBS]), would be more appropriate. Other methods of selection and the circumstances in which they are appropriate are outlined in section 5.9.

5.3.3 The particular method to be followed for the selection of consultants for any given project should be selected by the accounting officer in accordance with the criteria outlined in this guide.

5.3.4 When appropriate, the accounting officer may include under the special conditions of contract, the following or similar condition:

“A service supplier 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”.

## **5.4 Conflict of Interest**

5.4.1 Consultants are required to provide professional, objective and impartial advice and at all times hold the client's interests paramount, without any consideration for future work and strictly avoid conflicts with other assignments or their own corporate interests. Consultants should not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the State. Without limitation on the generality of this rule, consultants should not be hired under the following circumstances:

- A firm, which has been engaged by the accounting officer to provide goods or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project. Similarly, a firm hired to provide consulting services for the preparation or implementation of a project and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier consulting services as described below) for the same project, unless the various firms (consultants, contractors, or suppliers) are performing the contractor's obligations under a turnkey or design-and-build contract;

- Consultants or any of their affiliates should not be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare an engineering design for an infrastructure project should not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets should not purchase, nor advise purchasers of such assets.

## **5.5 Associations between Consultants**

- 5.5.1 Consultants may associate with each other to complement their respective areas of expertise, or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The “association” may take the form of a joint venture or a sub-consultancy. In case of a joint venture, all members of the joint venture should sign the contract and are jointly and severally liable for the entire assignment. Once the bids or Requests for Proposals (RFPs) from service suppliers are issued, any association in the form of joint venture or sub-consultancy among firms should be permissible only with the approval of the accounting officer or his/her delegate. Accounting officers should not compel consultants to form associations with any specific firm or group of firms, but may encourage associations with the aim to enhance transfer of skills.

## **5.6 Promoting Government’s Preferential Policies**

- 5.6.1 When consultants are appointed, the prescripts of the Preferential Procurement Regulations, 2001, must be adhered to.

## **5.7 Training or Transfer of Knowledge and Skills**

- 5.7.1 If the assignment includes an important component for training or transfer of knowledge and skills, the Terms of Reference (TOR) should indicate the objectives, nature, scope and goals of the training programme, including details of trainers and trainees, skills to be transferred, time frames and monitoring and evaluation arrangements. The cost for the training programme should be

included in the consultant's contract and in the budget for the assignment.

## 5.8 Steps to follow when selecting consultants

### 5.8.1 The four stages of selection

5.8.1.1 There are essentially four distinct stages in the recommended selection process:

- Identify the approach;
- Invite bids/proposals;
- Receive responses; and
- Evaluate responses.

5.8.1.2 Other aspects of appointment (such as advertising, opening of proposals) are no different from those set out in Chapter 4 of this guide.

5.8.1.3 Each of the four stages above is described in the sections below.

### 5.8.2 Identify the Approach

5.8.2.1 Various approaches may be followed in selecting consultants. As stated earlier, in most instances, 'Quality and cost based selection' (QCBS) is recommended. However, other possibilities are:

- Quality based selection;
- Selection under a fixed budget;
- Least cost selection; and
- Single source selection.

5.8.2.2 In determining the most appropriate approach, it may be useful to ask: What sort of Consultancy do I require? Is it for: -

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| An assignment that is not complex or | Use 'Quality and Cost |
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| specialised  | Based Selection' (QCBS)  |
| A complex or highly specialized assignment, for which consultants are expected to demonstrate innovation in their proposals (for example, financial sector reforms)  | Use 'Quality-Based Selection' (QBS)  |
| An assignment that has a high downstream impact and requires the best available experts (for example, management studies of large government agencies)   | Use QBS  |
| An assignment that could be carried out in substantially different ways, hence proposals will not be comparable (for example, sector and policy studies in which the value of the services depends on the quality of the analysis) | Use QBS  |
| A simple assignment, which is precisely defined and the budget fixed   | Use 'Selection under a fixed budget', but evaluate technical proposals first as in QCBS  |
| A standard or routine assignment (e.g. an audit, engineering design of noncomplex works)   | Use 'Least-cost selection'<br>Potential suppliers may be obtained from the list of approved service suppliers.   |
| A very small assignment, which does not justify the preparation and evaluation of competitive proposals.   | Selection based on consultant's qualifications as detailed in paragraph 5.9.4. Potential suppliers may be obtained from the list of pre-qualified firms. |
| A task that represents a natural continuation of previous work carried out by the firm   | Use 'Single-source selection   |
| An emergency operation   | You MAY use 'Single  |

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|  | source selection.'   |
| An assignment where only one firm is qualified or has experience of exceptional worth for the assignment | Use 'Single-source selection'  |
| Any other situation: Quality and Cost Based Selection (QCBS)   | Use 'Quality and Cost Based Selection', either by requesting a "BID" or a "PROPOSAL" |

### 5.8.3 Invite bids/proposals, using QCBS

#### 5.8.3.1 Request for bids

- 5.8.3.1.1 The following steps would generally be followed in appointing consultants where a clear Terms of Reference (TOR), including a detailed task directive has been compiled and the objectives, goals and scope of the assignment are clearly defined:

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| Preparation of the "Terms of Reference" (TOR) | <p>The accounting officer should prepare the TOR. The scope of the services described should be compatible with the available budget. The TOR should define clearly the task directive (methodology), objectives, goals and scope of the assignment and provide background information, including a list of existing relevant studies and basic data, to facilitate the consultants' preparation of their bids.</p> <p>Time frames linked to various tasks should be specified, as well as the frequency of monitoring actions. The respective responsibilities of the accounting officer and the consultant should be clearly defined.</p> <p>The evaluation criteria, their respective weights,</p> |
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|  | <p>the minimum qualifying score for functionality and the values that will be applied for evaluation should be clearly indicated. The evaluation criteria should include at least the following:</p> <ul style="list-style-type: none"> <li>• Consultant's experience relevant to assignment;</li> <li>• The quality of the methodology;</li> <li>• The qualifications of key personnel; and</li> <li>• The transfer of knowledge (where applicable).</li> </ul> <p>In more complicated projects, provision may also be made for pre-bid briefing sessions or presentations by bidders as part of the evaluation process.</p> <p>A clear indication should be given of which preference point system in terms of the PPPFA and its associated Regulations will be applicable.</p> <p>Detailed information on the evaluation process should be provided by firstly indicating the ratio of percentage between functionality and price. The percentage for price should be determined taking into account the complexity of the assignment and the relative importance of functionality. The percentage for price should normally be determined and approved by the accounting officer or his/her delegate prior to finalising the TOR.</p> <p>If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, etc., to enable consultants to estimate the required resources. The TOR should list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, maps, surveys, etc), where applicable.</p> <p>Evaluation criteria could be divided into sub-criteria.</p> <p>Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate should be based on the accounting</p> |
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|  | <p>officer's assessment of the resources needed to carry out the assignment such as staff time, logistical support and physical inputs (i.e. vehicles, laboratory equipment, etc). The cost of staff time should be estimated on a realistic basis for foreign and local personnel.</p> <p>The TOR should specify the validity period (normally 60 – 90 days).</p> <p>The TOR should form part of the standard bid documentation. At this stage the evaluation panel, consisting of at least three members who are demographically representative in terms of race, gender and expertise, should also be selected and finalised.</p> |
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### 5.8.3.2 Request for Proposals

5.8.3.2.1 This method should be followed where selection is based both on the quality of a proposal and on the cost of the service through competition among firms. This method will be applicable on more complex projects where consultants are requested and encouraged to propose their own methodology and to comment on the TOR in their proposals.

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| Preparation and issuance of 'Request for Proposals' (RFP) | <p>Whenever possible, accounting officers should include at least the following documents in the RFP:</p> <ul style="list-style-type: none"> <li>• Letter of Invitation;</li> <li>• Information to Consultants;</li> <li>• the TOR; and</li> <li>• the Proposed Contract.</li> </ul> |
| Letter of invitation (LOI)                                | <p>The LOI should state the intention to enter into a contract for the provision of consulting services, the details of the client and the date, time and address for submission of proposals.</p>   |

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| Information to Consultants (ITC) | <p>The ITC should contain all necessary information that would assist consultants to prepare responsive proposals. It should be transparent and provide information on the evaluation process by indicating the evaluation criteria and factors and their respective weights and the minimum qualifying score for functionality. A clear indication should be given of which preference points system will be applicable in terms of the PPPFA and its Regulations. The budget is not specified (since cost is a selection criterion), but should indicate the expected input of key professionals (staff time). Consultants, however, should be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC should specify the proposal validity period (normally 60–90 days). A detailed list of the information that should be included in the ITC is given in section 5.14.</p>   |
| Terms of Reference               | <p>A specialist in the area of the assignment should compile the TOR and the scope of services described should be compatible with the available budget. The TOR should define as clearly as possible the objectives, goals and scope of the assignment including background information to facilitate the consultant in the preparation of its proposal. The TOR should be compiled in such a manner that consultants are able to propose their own methodology and staffing and be encouraged to comment on the TOR in their proposals.</p> <p>Depending on the circumstances, it may be indicated that proposals should be submitted in two separate clearly marked envelopes, one containing the technical proposal and the other the cost for the assignment.</p> <p>In cases where pre-qualification / shortlisting is required, the TOR should indicate the basis of pre-qualification / shortlisting, for instance the number of minimum points to be scored to pre-qualify.</p> |

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| Contract | Accounting officers should use the appropriate Standard Form of Contract (MBD 7.2) issued by the National Treasury. Any changes necessary to address specific project issues should be introduced through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in the Standard Form. When these forms are not appropriate (for example, for pre-shipment inspection, training of students in universities,), accounting officers should use other acceptable contract forms. |
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#### 5.8.4 Receipt of Proposals

- 5.8.4.1 The accounting officer should allow enough time for consultants to prepare their proposals. The time allowed should depend on the assignment, but normally should not be less than four weeks or more than three months (for example, for assignments requiring establishment of a sophisticated methodology, preparation of a multidisciplinary master plan). During this interval, the firms may request clarification about the information provided in the RFP. The accounting officer should provide clarification in writing and copy them to all firms who intend to submit proposals. If necessary, the accounting officer should extend the deadline for submission of proposals. The technical and financial proposals should be submitted at the same time. No amendments to the technical or financial proposal should be accepted after the deadline. To safeguard the integrity of the process, the technical and financial proposals should be submitted in separate sealed envelopes. The technical envelopes should be opened immediately after the closing time for submission of proposals. The financial proposals should remain sealed until they are opened publicly. Any proposal received after the closing time for submission of proposals should be returned unopened.

### 5.8.5 Evaluation of bids/proposals

- 5.8.5.1 Within the ambit of the Preferential Procurement Regulations, 2001, bids/ proposals for the appointment of consultants should be evaluated on the basis of functionality and price as well as the achievement of specified RDP goals. The evaluation should be carried out in two phases – first the functionality and then the price. The combined percentages allocated for functionality and price should total to 100%. The ratio to be used for the division between functionality and price should be determined and approved by the accounting officer and should be made known up-front in the bid documents. Score sheets should be prepared and provided to panel members to evaluate the bids on functionality. In view of impartiality, members of bid committees should not also act as panel members.
- 5.8.5.2 The score sheet should contain all the criteria and the weight for each criterion as indicated in the TOR as well as the values to be applied for evaluation. Each panel member should after thorough evaluation award his/her own value to every criterion without discussing any aspect of any bid with any of the other members. Under no circumstances may additional evaluation criteria be added to those originally indicated in the bid documentation nor may the evaluation criteria be amended or omitted after closing of the bid. Score sheets should be signed by panel members and if required, written motivation could be requested from panel members in the event of vast discrepancies in the values awarded for each criterion.

### 5.8.6 Calculation of Percentage for Functionality

- 5.8.6.1 The percentage scored for functionality should be calculated as follows:

Each panel member should award values for each individual criterion on a score sheet. The value scored for each criterion should be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for the various criteria. These marks should be added to obtain the total score. The following formula should then be used to convert the total score to a percentage for functionality:

$$P_s = \frac{S_o}{M_s} \times A_p$$

where

$P_s$  = percentage scored for functionality by bid/proposal under consideration

$S_o$  = total score of bid/proposal under consideration

$M_s$  = maximum possible score

$A_p$  = percentage allocated for functionality

The percentages of each panel member should be added together and divided by the number of panel members to establish the average percentage obtained by each individual bidder for functionality.

After calculation of the percentage for functionality, the prices of all bids that obtained the minimum score for functionality should be taken into consideration.

Bids/proposals that do not score a certain specified minimum percentage for functionality should be disqualified and not be considered further.

### 5.8.7 Calculation of Percentage for Price

The percentage scored for price should be calculated as follows:

The lowest acceptable bid/proposal will obtain the maximum percentage allocated for price. The other bids/proposals with higher prices will proportionately obtain lower percentages based on the following formula:

$$P_s = \frac{P_{\min}}{P_t} \times A_p$$

where

$P_s$  = percentage scored for price by bid/proposal under consideration

$P_{\min}$  = lowest acceptable bid/proposal

$P_t$  = price of bid/proposal under consideration

$A_p$  = percentage allocated for price

### 5.8.8 Calculation of Points for Functionality and Price

The percentages obtained for functionality should be added to the percentage obtained for price to obtain a percentage out of 100



that in turn should be converted to points out of 80 or 90 in terms of Regulation 8 of the Preferential Procurement Regulations.

The points scored out of 80 or 90 should be calculated according to the following formula:

(i) The 80/20 preference point system

$$P_s = 80\left(1 - \frac{H_s - R_s}{R_s}\right)$$

(ii) The 90/10 preference point system

$$P_s = 90\left(1 - \frac{H_s - R_s}{R_s}\right)$$

where

$P_s$  = points scored for functionality and price of the bid/proposal under consideration

$H_s$  = highest percentage scored by any acceptable bidder for functionality and price

$R_s$  = percentage scored for functionality and price by bid/proposal under consideration

Points scored for achieving Government's Broad-Based Black Economic Empowerment objectives as contemplated by the PPPFA and its Regulations are then calculated separately and added to the points scored for price and functionality in order to obtain a final point. The contract should be awarded to the bidder scoring the highest points.

Information relating to evaluation of bids and recommendations concerning awards should not be disclosed to the consultants who submitted bids or to other persons not officially concerned with the process until the successful consultant is notified.

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| <p>Evaluation of technical proposals (Functionality)</p> | <p>The evaluation of the proposals should be carried out in two stages: first the functionality (quality) and then the price.</p> <p>The evaluation should be carried out in full conformity with the provisions of the RFP.</p> <p>When the two-envelope system is used:</p> <p>Evaluators of technical proposals should not have</p> |
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|  | <p>access to the financial proposals until the technical evaluation is concluded. Financial proposals should be opened only after the technical evaluation and only in respect of those proposals that achieved the minimum qualifying score for functionality. In respect of functionality, the accounting officer should evaluate each technical proposal (using an evaluation panel of three or more specialists in that field of expertise) in terms of the specified evaluation criteria that may include the following:</p> <ul style="list-style-type: none"><li>• The consultant's relevant experience for the assignment;</li><li>• The quality of the methodology proposed;</li><li>• The qualifications of the key staff proposed; and</li><li>• Transfer of knowledge.</li></ul> <p>The accounting officer should normally divide these criteria into sub-criteria; for example, the sub-criteria under methodology might be innovation and level of detail.</p> <p>More weight should be given to the methodology in the case of more complex assignments for example multidisciplinary feasibility or management studies.</p> <p>Evaluation of only "key" personnel is recommended as they ultimately determine the quality of performance. More weight should be assigned to this criterion if the proposed assignment is complex. The accounting officer should review the qualifications and experience of proposed key personnel in their curricula vitae which should be accurate, complete and signed by an authorised official of the consultant and the individual proposed. When the assignment depends critically on the performance of key staff, such as a Project Manager in a large team of specified individuals, it may be desirable to conduct interviews. The individuals can be rated, among others, in the following sub-criteria as relevant to the assignment:</p> <p>General qualifications: general education and training, length of experience, positions held, time with the consulting firm staff, and experience in developing countries;</p> |
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|                                    | <p>Adequacy for the assignment: education, training and experience in that specific sector, field or subject relevant to the particular assignment; and</p> <p>Experience in the region: knowledge of the local language, culture, administrative system, government organization, etc.</p> <p>Accounting officers should evaluate each proposal on the basis of its response to the TOR. A proposal should be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve the minimum qualifying score for functionality as specified in the RFP.</p> <p>At the end of the process, the accounting officer should prepare an evaluation report on the quality of the proposals. The report should substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation such as individual score sheets should be retained until completion of the project and its audit.</p> |
| Evaluation of financial proposal   | <p>For the purpose of evaluation, the price shall include all local taxes and other reimbursable expenses such as travel, translation, report printing or secretarial expenses. The proposal with the lowest price will obtain the maximum percentage for price as prescribed in the RFP. Proposals with higher prices will proportionately obtain lower percentages according to the method as prescribed in the RFP.</p>   |
| Negotiations and award of contract | <p>The Accounting Officer may negotiate the contract only with the preferred bidder identified by means of the competitive bidding process.</p> <p>Negotiations should include discussions of the TOR, the methodology, staffing, accounting officer's inputs, and special conditions of the contract. These discussions should not substantially alter the original TOR or the terms of the contract, compromise the quality of the final product, its cost, and the relevance of the initial evaluation. Major reductions in work inputs should not be made</p>  |

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|                | <p>solely to meet the budget. The final TOR and the agreed methodology should be incorporated in "Description of Services," which should form part of the contract.</p> <p>The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key staff proposed for substitution should have qualifications equal to or better than the key staff initially proposed.</p> <p>Proposed unit rates for staff-months and reimbursables should not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.</p> <p>If the negotiations fail to result in an acceptable contract, the accounting officer should terminate the negotiations and invite the next ranked firm for negotiations. The original preferred consultant should be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the accounting officer should not reopen the earlier negotiations. After negotiations are successfully completed, the accounting officer should promptly notify other firms that they were unsuccessful.</p> |
| Contract award | <p>According to the prescripts of the PPPFA and its Regulations, a contract may only be awarded to the bidder who scored the highest number of points, unless objective criteria justify the award to another bidder. Should this be the case, the accounting officer should be able to defend the decision not to award the bid to the bidder who scored the highest number of points in any court of law. It should be emphasized that not offering any contributions to prescribed goals as contemplated in the Preferential Procurement Regulations, 2001, does not disqualify</p>   |

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|  | <p>a bidder. Under these circumstances a bidder will score no points for the specified goals.</p> <p>The accounting officer should award the contract, within the period of the validity of bids, to the bidder who meets the appropriate standards of capability and resources and whose bid has been determined:</p> <ul style="list-style-type: none"> <li>• to be substantially responsive to the bidding documents; and</li> <li>• to be the highest on points.</li> </ul> <p>A bidder should not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.</p> |
| Rejection of all proposals and re-invitation | <p>The accounting officer will be justified in rejecting all proposals only if all proposals are non-responsive 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.</p>   |

## 5.9 Other Methods of Selection

### 5.9.1 Quality-Based Selection (QBS)

5.9.1.1 QBS is appropriate for the following types of assignments:

- complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);

- assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
- assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice and sector and policy studies in which the value of the services depends on the quality of the analysis).

5.9.1.2 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP should not disclose the estimated budget, but it may provide the estimated number of key staff time, specifying that this information is given as an indication only and that consultants are free to propose their own estimates.

5.9.1.3 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the accounting officer should request the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The accounting officer and the consultant should then negotiate the financial proposal and the contract. All other aspects of the selection process should be identical to those of QCBS. If, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards should be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

## **5.9.2 Selection under a fixed budget**

5.9.2.1 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP should indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. The TOR should be particularly well prepared to ensure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals should be carried out first as in the QCBS method, where after the price envelopes should be opened in public. Proposals that exceed the indicated budget should be

rejected. The consultant who has submitted the highest ranked technical proposal should be selected and invited to negotiate a contract.

### **5.9.3 Least-cost selection**

5.9.3.1 This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, noncomplex projects, and so forth) where well-established practices and standards exist and in which the contract amount is small. Under this method, a “minimum” qualifying mark for the “functionality” is established. Proposals to be submitted in two envelopes are invited. Technical envelopes are opened first and evaluated. Those securing less than the minimum mark should be rejected and the financial envelopes of the rest are opened in public. The firm with the highest points should then be selected. Under this method, the qualifying minimum mark should be established, keeping in view that all proposals above the minimum compete only on “cost” and promotion of HDIs and RDP objectives. The minimum mark to qualify should be stated in the RFP.

### **5.9.4 Selection based on consultants’ qualifications**

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

### **5.9.5 Single-source selection**

5.9.5.1 Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection and could encourage unacceptable practices. Therefore, single-source selection should be used only in exceptional cases. The justification for single-source selection should be examined in the context of the overall interests of the client and the project.

- 5.9.5.2 Single-source selection may be appropriate only if it presents a clear advantage over competition:
- for tasks that represent a natural continuation of previous work carried out by the firm;
  - where a rapid selection is essential (for example, in an emergency operation);
  - for very small assignments; or
  - when only one firm is qualified or has experience of exceptional worth for the assignment.
- 5.9.5.3 The reasons for a single-source selection should be recorded and approved by the accounting officer or his / her delegate prior to the conclusion of a contract.
- 5.9.5.4 When continuity for downstream work is essential, the initial RFP should outline this prospect and if practical, the factors used for the selection of the consultant should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired and continued professional liability of the same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, the accounting officer should ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the accounting officer, which should then be negotiated.
- 5.9.5.5 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the downstream assignment is substantially larger in value, a competitive process acceptable to the accounting officer should normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest.
- 5.9.5.6 Where, in exceptional instances, it is impractical to appoint the required consultants through a competitive bidding process and a South African based consultant is used, the *Guidelines on Hourly Fee Rates for Consultants* issued by the Department of Public Service and Administration may be used as a benchmark to establish the appropriate tariffs, or to determine the reasonableness of the tariffs.



### 5.9.6 Selection of individual consultants

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

- teams of personnel are not required;
- no additional outside (home office) professional support is required; and
- the experience and qualifications of the individual are the paramount requirement.

5.9.6.2 When co-ordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.

5.9.6.3 Individual consultants should be selected on the basis of their qualifications for the assignment. They may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the accounting officer. Individuals employed by the accounting officer should meet all relevant qualifications and should be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience and as appropriate, knowledge of the local conditions, such as local language, culture, administrative system and government organization.

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

### 5.9.7 Selection of particular types of consultants

5.9.7.1 *Use of Nongovernmental Organizations (NGOs).* NGOs are voluntary non-profit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the accounting officer is satisfied with their qualifications. For assignments that emphasize participation and considerable local knowledge, the short-list entirely NGOs. If so, the QCBS procedure should be followed and the evaluation criteria should reflect the unique qualifications of NGOs, such as voluntarism, non-profit status, local knowledge,

scale of operation, and reputation. An accounting officer may select the NGO on a single-source basis, provided the criteria outlined for single source selection are fulfilled.

- 5.9.7.2 *Inspection Agents.* Accounting officers may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the country. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies should be registered with the South African National Accreditation System (SANAS) and the services of these inspection agents should be obtained by means of competitive bidding.
- 5.9.7.3 *Banks.* Investment and commercial banks, financial firms, and fund managers hired by accounting officers for the sale of assets, issuance of financial instruments and other corporate financial transactions, notably in the context of privatization operations, should be selected under QCBS. The RFP should specify selection criteria relevant to the activity — for example, experience in similar assignments or network of potential purchasers — and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee.” This fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP should indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee should be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores should be based on the success fee as a percentage of a pre-disclosed notional value of the assets. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP should specify clearly how proposals will be presented and how they will be compared.
- 5.9.7.4 *Auditors.* Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They should be selected according to QCBS, with cost as a substantial selection factor (40–50 points), or by the “Least-Cost Selection.” When consultants are appointed to execute an audit function on behalf of the accounting officer, the tariffs agreed by the Auditor-General and the South African Institute for Chartered Accountants (SAICA) may be used as a guideline to determine the appropriate tariff or to determine the reasonableness of the tariffs. These tariffs can be obtained from SAICA’s website under [www.saica.co.za](http://www.saica.co.za). These tariffs are captured in a circular, which can be accessed on SAICA’s webpage under publications in the media centre icon.

- 5.9.7.5 “*Service Delivery Contractors.*” Projects in the social sectors in particular may involve hiring of large numbers of individuals who deliver services on a contract basis (for example, social workers, nurses and paramedics). The job descriptions, minimum qualifications, terms of employment and selection procedures should be described in the project documentation.

## **5.10 Establishment of a List of Approved Service Suppliers**

- 5.10.1 Where consultancy services are required on a recurring basis, a panel of consultants/list of approved service suppliers 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.

- 5.10.2 The intention to establish a panel/list of approved service suppliers is published in locally distributed news media and the municipality / municipal entity's website. The closing time and date for inclusion in the panel/list of approved service suppliers should be indicated. For this purpose, a questionnaire should be made available and should make provision for the following:

Full details of the service supplier, among others:

- composition of the firm in terms of shareholding;
- personnel complement;
- representation of expertise in respect of the disciplines required, e.g. accounting, legal, educational, engineering, computer, etc.;
- national / international acceptability of experts in the various professions;
- experience as reflected in projects already dealt with; and
- financial position.

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 qualifications, experience, acceptability, facilities and resources, etc. A pre-determined standard method of awarding points should be followed.

- 5.10.3 The applications received should be evaluated and any rejection of applicants should be motivated and recorded.

5.10.4 Once the panel/list of service suppliers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotes on a rotation basis, or according to the bid procedure when services are required, with the exception that the requirement is not advertised again.

5.10.5 This list should be updated continuously, at least quarterly.

## **5.11 Evaluation of the Performance of Consultants**

5.11.1 Consultants should observe due diligence and prevailing standards in the performance of the assignment. The accounting officer should evaluate the performance of consultants appointed in a fair and confidential process. In the case of repeated poor performance, the firm should be notified and provided an opportunity to explain the reasons for it and the remedial action proposed.

5.11.2 Consultants should be responsible for the accuracy and suitability of their work. Although accounting officers supervise and review the consultants' work, no modifications should be made in the final documents prepared by the consultants without mutual agreement. In the case of supervision of works, consultants may have more or less authority to supervise, from full responsibility as an independent engineer, to that of advisor to the client with little authority to make decisions, as determined by the accounting officer and captured in the contract agreement between the accounting officer and the consultant.

## **5.12 Types of Contracts for Consultants**

5.12.1 *Lump Sum (Firm Fixed Price) Contract:* Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants 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 so forth. Payments are linked to outputs (deliverables), 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.

- 5.12.2 *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 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 Service and Administration should be used as a benchmark to establish the appropriate tariffs, or to determine the reasonableness of the tariffs.
- 5.12.3 *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 a success fee, the latter being normally expressed as a percentage of the sale price of the assets.
- 5.12.4 *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 a fixed target cost and covers precisely defined services (for example, not works supervision).
- 5.12.5 *Indefinite Delivery Contract (Price Agreement):* These contracts are used when accounting officers 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 officers’ reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The accounting officer and the firm agree on the unit rates to be paid for the experts and payments are made on the basis of the time actually used.

## 5.13 Important Provisions for Contracts with Consultants

5.13.1 *Currency.* RFPs should clearly state that firms must express the price for their services, in Rand. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided that the accounting officer concurs with this practice and that the proposal includes no more than three foreign currencies outside the borders of South Africa. The accounting officer should require consultants to state the portion of the price representing local costs in Rand. Payment under the contract should be made in the currency or currencies expressed in the formal contract.

5.13.2 *Price Adjustment.* To adjust the remuneration for foreign and/or local inflation, a price adjustment provision should be included in the contract if its duration is expected to exceed 12 months. Exceptionally, contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.

5.13.3 *Payment Provisions.* Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, should be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances (for example, for mobilization costs) exceeding 10 percent of the contract amount should normally be backed by advance payment securities. Payments should be made promptly in accordance with the contract provisions. To that end,

- consultants can be paid directly by the accounting officer;
- only disputed amounts should be withheld, with the remainder of the invoice paid in accordance with the contract; and
- the contract should provide for the payment of financing charges if payment is delayed due to the client’s fault beyond

the time allowed in the contract. The rate of charges should be specified in the contract.

- 5.13.4 *Bid and Performance Securities.* Bid and performance securities are not recommended for consultants' services. Their enforcement is often subject to judgement calls, they can be easily abused and they tend to increase the costs to the consulting industry without evident benefits, which are eventually passed on to the accounting officer.
- 5.13.5 *Accounting officer's contribution.* The accounting officer normally assigns members of his/her professional staff to the assignment in different capacities. The contract between the accounting officer and the consultant should give the details governing such staff, known as counterpart staff, as well as facilities that should be provided by the accounting officer, such as housing, office space, secretarial support, utilities, materials and vehicles. The contract should indicate measures the consultant can take if some of the items cannot be provided or have to be withdrawn during the assignment and the compensation the consultant will receive in such a case.
- 5.13.6 *Conflict of Interest.* The consultant should not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates should not engage in consulting activities that conflict with the interests of the client under the contract, and should be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the assignment other than a continuation of the "Services" under the ongoing contract.
- 5.13.7 *Professional Liability.* The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the accounting officer will be governed by the applicable law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that:
- there should be no such limitation in case of the consultant's gross negligence or wilful misconduct;
  - the consultant's liability to the accounting officer in no case be limited to less than the total payments expected to be made under the consultant's contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher; and

- any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.

5.13.8 *Staff Substitution.* During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the consultant should propose other staff of at least the same level of qualifications for approval by the accounting officer.

5.13.9 *Applicable Law and Settlement of Disputes.* The contract should include provisions dealing with the applicable law and the forum for the settlement of disputes. Should it not be possible to settle a dispute by means of mediation, the dispute may be settled in a South African court of law.

## **5.14 Information to Consultants (ITC)**

### **5.14.1 Scheduling the Selection Process**

#### **5.14.1.1 Modifications of Contract**

5.14.1.1.1 Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, will be subject to the approval of the accounting officer or his / her delegate.

5.14.1.1.2 Whenever possible, the accounting officer should use RFPs, which include the ITC, covering the majority of assignments. If under exceptional circumstances, the accounting officer needs to amend the standard ITC, it should do so through the technical data sheet and not by amending the main text. The ITC should include adequate information on the following aspects of the assignment:

- a very brief description of the assignment;
- standard formats for the technical and financial proposals;
- the names and contact information of officials to whom clarifications should be addressed and with whom the consultants' representative should meet, if necessary;
- details of the selection procedure to be followed, including:

- a description of the two-stage process, if appropriate;



- a listing of the technical evaluation criteria and weights given to each criterion;
  - the details of the financial evaluation;
  - the relative weights for quality and cost in the case of QCBS;
  - the minimum pass score for quality; and
  - the details on the public opening of financial proposals;
- an estimate of the level of key staff inputs (in staff-months) required of the consultants; and indication of minimum experience, academic achievement, and so forth, expected of key staff or the total budget, if a given figure cannot be exceeded;
  - information on negotiations; and financial and other information that should be required of the selected firm during negotiation of the contract;
  - the deadline for submission of proposals;
  - a statement that the firm and any of its affiliates should be disqualified from providing downstream goods, works, or services under the project if, in the accounting officer's judgement, such activities constitute a conflict of interest with the services provided under the assignment;
  - the method in which the proposal should be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that should ensure that the technical evaluation is not influenced by price;
  - request that the invited firm acknowledges receipt of the RFP and informs the accounting officer whether or not it will be submitting a proposal;
  - the short list of consultants being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
  - the period for which the consultants' proposals should be held valid (normally 60–90 days) and during which the consultants should undertake to maintain, without change, the proposed key staff, and should hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
  - the anticipated date on which the selected consultant should be expected to commence the assignment;
  - a statement indicating all prices should be VAT inclusive;
  - if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the accounting officer;
  - phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
  - the procedure to handle clarifications about the information given in the RFP; and

- any conditions for subcontracting part of the assignment.

#### **5.14.2 Disbursements**

- 5.15.2.1 The responsibility for the implementation of the project, and therefore for the payment of consulting services under the project, rests solely with the accounting officer.

#### **5.14.3 Consultants' Role**

- 5.14.3.1 When consultants receive the RFP, and if they can meet the requirements of the TOR, and the commercial and contractual conditions, they should make the arrangements necessary to prepare a responsive proposal (for example, visiting the principal of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the consultants find in the RFP documents — especially in the selection procedure and evaluation criteria — any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek clarification from the accounting officer, in writing, within the period specified in the RFP for seeking clarifications.

- 5.14.3.2 In this connection, it should be emphasized that the specific RFP issued by the accounting officer governs each selection. If consultants feel that any of the provisions in the RFP are inconsistent with the prescripts of the Framework for Supply Chain Management and / or the PPPFA and its Regulations, they should raise this issue with the accounting officer in writing.

- 5.14.3.3 Consultants should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. It is essential to ensure accuracy in the *curricula vitae* of key staff submitted with the proposals. The *curricula vitae* should be signed by the consultants and the individuals and dated. Non-compliance with important requirements should result in rejection of the proposal. Once technical proposals are received and opened, consultants should not be required nor permitted to change the substance, the key staff, and so forth. Similarly, once financial proposals are received, consultants should not be required or permitted to change the quoted fee and so forth, except at the time of negotiations carried out in accordance with the provisions of the RFP.

#### **5.14.4 Confidentiality**

5.14.4.1 The process of proposal evaluation is confidential until the contract award is notified to the successful firm. Confidentiality enables the accounting officer to avoid either the reality or perception of improper interference. If, during the evaluation process, consultants wish to bring additional information to the notice of the accounting officer, they should do so in writing.

5.14.4.2 If consultants wish to raise issues or questions about the selection process, they should communicate directly in writing with the accounting officer in this regard. All such communications should be addressed to the head of the department / division for the relevant sector for the accounting officer.

5.14.4.3 Communications that the accounting officer receives from consultants after the opening of the technical proposals should be handled as follows:

- In the case of contracts any communication should be sent to the accounting officer for due consideration and appropriate action. If additional information or clarification is required from the consultant, the accounting officer should obtain it and comment on or incorporate it, as appropriate, in the evaluation report.

#### **5.14.5 Debriefing**

5.14.5.1 If after notification of award, a consultant wishes to ascertain the grounds on which its proposal was not selected, it should address its request in writing to the accounting officer. If the consultant is not satisfied with the explanation given by the accounting officer, the consultant may refer this matter to the relevant treasury, Public Protector or court of law.

# 6

## Logistics Management

### 6.1 Introduction

- 6.1.1 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.
- 6.1.2 The aspect of coding, levels of required stocks, etc. should not be dealt with in isolation by the accounting officer. It is the objective that throughout government the same coding and other support systems should be used.

### 6.2 Stock Levels

- 6.2.1 Due to protracted lead times, or because of a need to keep specific items in stock, the following should be determined in order to automate the ordering process:
- which items and quantities thereof to be kept in stock;
  - minimum/maximum levels to be kept in stock based on consumption figures or inputs from users; and
  - allowing for a safety margin ( $\pm 20\%$ ) to be added to the minimum level to cover unforeseen circumstances.

*Note:* The concept of just-in-time delivery should be considered, as such arrangements may lower the cost of storage and result in the sharing of risks with the relevant suppliers.

### 6.3 Placing of Orders

An order should be placed either when a pre-determined stock level for inventory items is reached or when a request is received from an end user for an item, which is not held in stock.

## **6.4 Order Processing**

### **6.4.1 Contract Purchase**

Where a contract exists, orders should be placed for the item from the contract.

### **6.4.2 Price Quotation / Competitive Bidding Method**

Where there is no contract, the price quotation or competitive bidding method of ordering should be applied within delegated authority.

## **6.5 Vendor Management**

The reliability of the supplier should be monitored in terms of, among others:

- delivery periods;
- quality; and
- quantity.

Should problems be encountered, they should be followed up with the vendor and, if it is a contract item, it should also be reported to the body that arranged the contract.

## **6.6 Stores / Warehouse Management**

6.6.1 *Expediting of orders:* If the delivery conditions reflected on the order form are not complied with, it should be followed up with the supplier immediately.

6.6.2 *Receiving of items:* All goods received should be verified for quality and quantity against the ordering documentation. It is recommended that a receipt voucher be generated for payment purposes.

6.6.3 *Storage:* Municipal, legal stipulations and safety regulations should be complied with when items are being stored, e.g. flammables, poison, explosives, ammunition, weapons, etc. An

effective item location system should be utilized. Shelf-life of stock should be taken into consideration.

6.6.4 Stock and equipment should be stored properly and arranged in such a manner that the checking and handling thereof are being facilitated and the possibility of damage, exposure, deterioration and perishing thereof be limited or eliminated.

6.6.5 A proper record of all the applicable assets, or groups of assets of the municipality / municipal entity should be maintained by the accounting officer.

## **6.7 Issuing/Distribution of Items**

- An issue voucher should be generated for all goods issued.
- Consumable items should not be recorded after issue.
- Non-consumable items should be recorded from receipt to disposal.
- SCM Practitioners should ensure that goods are delivered promptly to the end-user.

## **6.8 Stocktaking**

Stocktaking of all inventory and capital assets shall be conducted at least once a year. This procedure entails the comparison of assets counted with official records. Any deficiencies should then be accounted for.

## **6.9 Transport Management**

- Trip authority should be properly authorised and correctly utilised.
- Proper records should be maintained.

## **6.10 Accounts Payable**

The relevant documentation should be submitted promptly for payment to avoid interest charges.

## **6.11. Losses/Surpluses**

The accounting officer should ensure that, among others, the following preventative mechanisms are in place to eliminate theft, losses, wastage and misuse of assets:

- all damages to and losses of assets be accounted for;
- damages and losses be investigated with a view to possible recovery; and
- surpluses are taken on record as assets immediately.

# 7

## Disposal Management

- 7.1 Disposal is the final process when a municipality / municipal entity needs to do away with unserviceable, redundant or obsolete movable assets. It is recommended that the accounting officer appoint a specific committee to deal with disposals, to make recommendations with regard to the disposal of any asset. It is the responsibility of the accounting officer or his/her delegate to consider the recommendation of the appointed committee.
- 7.2 Disposal of any capital assets must be done in accordance with sections 14 and 90 of the MFMA.
- 7.3 If disposal of any asset is approved, any of the methods indicated below may, among others, be followed:
- Transfer to another municipality / municipal entity at market related value or when appropriate free of charge;
  - Selling per price quotation, competitive bid or auction, whichever is most advantageous to the municipality / municipal entity; or
  - Destroying such assets.
- 7.4 Should the sale of the movable assets not be at market related value, by price quotation, competitive bid or auction, the reasons for the disposal in such a manner should be motivated, certified and recorded for auditing purposes by the accounting officer or his/her delegate.
- 7.5 All assets transferred to another municipality / municipal entity should be by means of an issue voucher.
- 7.6 Firearms may not be sold or donated to any person or municipality / municipal entity within or outside the RSA without the approval of the National Conventional Arms Control Committee. The contact address is:

Directorate:  
Conventional Arms Control  
Defence Secretariat  
Department of Defence  
Private Bag X910  
Pretoria  
0001



Tel. No. (012) 3556223 Fax. No. (012) 3556274

- 7.7 In cases where stores (inventory) items or capital assets are traded in for other assets, the highest possible trade-in price is to be negotiated. The order placed should be for the net amount, as charged against the vote. The actual value of the new item should, however, be reflected on a relevant register.

# 8

## Supply Chain Performance Measurements

- 8.1 Here a monitoring process takes place, undertaking a retrospective analysis to determine whether the proper process is being followed and whether the desired objectives are achieved.
- 8.2 The National Treasury has developed a reporting template that will be used by the provincial treasuries to monitor the SCM implementation process at the relevant municipalities.
- 8.3 To continuously improve the supply chain performance, municipalities / municipal entities should develop their own monitoring processes that would enhance their supply chain performance. Issues to be reported, amongst others, include:
- Achievement of preferential procurement goals and objectives;
  - Implementation of supply chain management policy of the municipality / municipal entity;
  - Compliance to SCM norms and standards such as municipal supply chain management regulations, National Treasury's model policy, standard bid documents and the general conditions of contract;
  - Savings generated, amongst others, by arranging contracts for the purpose of developing economies of scale;
  - Stores efficiency, e.g. proper layout of stores through clear bin locations and bin numbering, promptly satisfying the users requirements, etc,
  - Contract breach either by the municipality / municipal entity or the contractor;
  - Cost efficiency of the procurement process. In the case of a sole supplier for a particular good, work or service where the market has already been tested, why must the municipality / municipal entity embark on a competitive bidding process for the same good, work or service?
  - Whether supply chain objectives are consistent with Government's broader policy focus on trade, small business development, anti-corruption measures, proudly South African etc.
- 8.4 It is recommended that at the completion stage of each project, an assessment of the service supplier (including consultants where applicable) be undertaken and that this assessment should be

available for future reference. Accounting officers should take cognisance of the fact that when suppliers do not perform according to their contractual obligations and the accounting officer does not address him/her in this regard during the execution of the contract, such non-performance cannot be deemed as sound reason for passing over the bid of such supplier when adjudicating future bids.

## **Annexure A**

### **Supply Chain Management Legislation and Directives**

## 1 Constitutional Provisions

- Section 217 (1) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) provides the basis for procurement and determines that:  
  
“When an organ of state in the national, provincial or local sphere of government, or any other municipality / municipal entity identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective”.
- Section (2) & (3) further confers an obligation for national legislation to prescribe a framework providing for preferential procurement to address the social and economic imbalances of the past.
- Sections 215-219 of the Constitution further require the National Treasury to introduce uniform norms and standards within government, ensuring transparency and expenditure control measures, which should include best practices related to supply chain management.

## 2. The Local Government: Municipal Finance Management Act, 2003

- The Local Government: Municipal Finance Management Act, 2003 (MFMA) aims to modernise budget and financial management practices in order to maximize the capacity of municipalities and municipal entities to deliver services to all its residents, customers, users and investors.
- Section 62(1)(f)(iv) requires that the municipal manager as the accounting officer of a municipality or the CEO of the municipal entity, must ensure that the municipality / municipal entity has and implements a supply chain management policy in accordance with Chapter 11 of the Act, which allows managers to manage, and make them more accountable.
- Chapter 11 of the Act applies to supply chain management of municipal goods and services.
- All long-term contracts (i.e. longer than three years) have to comply with sections 33 and 116 of the MFMA, and in addition, the following sections will also apply:

- Section 120, for Public Private Partnerships;
- Section 19, for Capital Projects.

### **3. The MFMA and other related legislation**

Apart from the Constitution and other national and local government legislation as mentioned, the following will have a direct or indirect impact on supply chain administration:

- Intergovernmental Fiscal Relations Act establishes the process of consultation for budget allocations, including the role of the budget Forum. During this process the objectives of supply chain planning should be formulated.
- Division of Revenue Act provides national allocations for the local government sphere by municipality, for its three-year financial period. The allocation of funds indicates the implementation feasibility of the municipality / municipal entity's supply chain strategies.
- Municipal Systems Act (Act 32 of 2000)(MSA): Section 80 & 81 of the MSA applies when supply chain planning involves outsourcing of a municipal service to an external service supplier.

### **4. Preferential Procurement Policy Framework Act No.5 of 2000**

- In order to adhere to the requirements of the constitution, Parliament approved the Preferential Procurement Policy Framework Act (PPPFA). This Act is applicable to all organs of state in the national, provincial and local spheres of Government;
- The Act incorporates a 80/20 (for the procurement, sale and letting up to a Rand value of R500 000) and 90/10 (for the procurement, sale and letting with a Rand value of above R500 000) preference systems;
- All organs of the state should apply the prescribed preference points system and refrain from using set-aside practices.

## 5. Preferential Procurement Regulations of August 2001

The Preferential Procurement regulations were issued in terms of the PPPFA and published in the Government Gazette on 10 August 2001.

Some of the important aspects mentioned in the Regulations are as follows:

- Organs of state must ensure that proper planning and calculations of the estimated costs are done prior to prescribing the appropriate preference system in the bid invitation;
- Penalties or other remedial actions may be applied for furnishing false information or not achieving the goals for which an undertaking was given;
- No contracts will be awarded to bidders who do not have their tax matters in order;
- The preference points system which will be applied as well as the goals to be achieved, must be clearly spelt out in the bidding documents;
- Bids must be awarded to the bidder scoring the highest number of points. In the event that two or more bidders have scored equal total points, the successful bidder must be the one scoring the highest number of points for specified goals. Should there be equal bidders in all respects, the award shall be decided by the drawing of lots;
- A contract may on reasonable and justifiable grounds be awarded to a bidder that does not score the highest number of points. The reasons must, however, be defensible in a court of law.
- Preference points stipulated in respect of a bid must at all times include points for equity ownership by a HDI as contemplated in paragraph 1(h)(1) of the Preferential Procurement Regulations

## 6. Reviewing the PPPFA and its Regulations

The current PPPFA and its associated regulations promote HDI's and a broad-ranging set of developmental objectives by means of allotting preference points to these various policy objectives. The unlimited discretion currently afforded to practitioners to allot points to these objectives has watered down the impact of promoting HDI's very significantly. The narrow based black ownership structure in the South African economy also limits the scope for an immediate meaningful acceleration of direct participation by HDI's in Government contracts. This gives rise to a great number of artificially created partnership and joint venture arrangements (fronting practices), where the premiums under the preferential system are 'earned' without any real contribution to achieving Government's preferential policy objectives.

To overcome the flaws associated with the PPPFA and its regulations, National Treasury is in a process of reviewing its preferential procurement regulations and aligning it to the Broad-Based Black Economic Empowerment Act (BBBEEA), Act 53 of 2003.

Until this reviewing process has been completed and revisions to the PPPFA and its regulations are promulgated, it is necessary for accounting officers to apply the current PPPFA and its Regulations. Adherence to the prescripts of the Preferential Procurement Regulations is compulsory and municipality / municipal entity will be informed of any amendments of these regulations.

## **7. Broad-Based Black Economic Empowerment Act (BBBEEA), Act 53 of 2003**

The President signed the Broad-Based Black Economic Empowerment Act (BBBEEA) on 9 January 2004. This will, amongst other, provide that the Minister of Trade and Industry may develop broad-based charters to promote BEE, and issue codes of practice that could include qualification criteria for preferential procurement and other economic activities.

## **8 The Broader SCM Related Policy Context**

Government's supply chain policies and practices impact on a broad range of other policies and regulations and also influence



the economic behaviour of people, both within and outside the borders of the country. It is therefore imperative that supply chain implementation initiatives remain fully aligned with Government's broader policy focus and accounting officers should be aware of:

- *Competition Law:* Restrictive business practices are regulated by the Competition Act (89 of 1998), which aims to outlaw anti-competitive practices between businesses, their supplier(s) and customers. This includes price-fixing and collusive bidding;
- *The National Small Business Act, Act No. 102 of 1996:* This Act establishes the National Small Business Council (NSBC) and also the Ntsika Enterprise Promotion Agency (Ntsika). The main function of Ntsika is to enable small businesses to compete successfully in the economy;
- *Anticorruption Measures and Practices:* The Constitution provides for rights such as just administration and access to information and requires high standards of ethics within public administration. Recent legislation dealing with transparency and anti-corruption measures strengthen Government's ability to combat corruption and also protects employees making disclosures against their employers in both the public and private sectors;
- *State Information Technology Agency (SITA) Act, (Act No. 88 of 1998, as amended by Act No. 38 of 2002):* This Act prescribes that SITA may assist municipalities and municipal entities with the acquisition of all IT related goods and services. A separate Service Level Agreement between SITA and the municipality / municipal entity should cover the payment to SITA for services rendered to the municipality / municipal entity. The accountability remains with the accounting officer;
- *Trade Policy:* Government's commitment to trade liberalisation should be reflected in its supply chain practices, by not precluding foreign companies from bidding for government contracts;
- *Labour Issues:* As Government subscribes to international best practice principles of equitable and fair labour practices, accounting officers should ensure that suppliers/contractors comply with all provisions of Labour Law. Hence any supplier, service supplier or contractor who abuses labour standards, should be designated as 'non-preferred'.

- *Safety, Health and Environment:* Government is committed to the highest standards of safety, health and environmental protection and promotes a culture of “non tolerance”. Hence occupational health and safety issues should be considered not only for employees but also for contractors’ employees performing work on site at any municipality / municipal entity.
- *Public-Private Partnerships:* Whenever goods, works and/or services are procured by means of public private partnerships, the relevant Treasury Regulations must be adhered to;
- *New Partnership for Africa’s Development (NEPAD):* NEPAD is an initiative to accelerate a new relationship with the highly industrialised countries to overcome the widening development chasm between them and the African continent. A commitment is fostered on the part of governments, the private sector and other municipality / municipal entity of civil society towards the meaningful integration of all nations into the global economy and body politic. This requires the recognition of global interdependence in respect of production and demand, the protection of the environmental base that sustains the planet, reversal of the skills-loss from the continent and a global financial architecture that rewards good socio-economic management and global governance. All SCM practices should aim to support these objectives.
- *Proudly South African:* The Department of Trade and Industry has become a key sponsor and strategic partner of the ‘Proudly South African’ campaign, which encourages South African companies to submit interesting and innovative achievements in the manufacturing field – new products, export achievements, new partnerships and successes and milestones. The objectives of this campaign should be supported through government’s SCM processes, if and when opportunities arise.

**ANNEXURE B**

**MUNICIPAL SCM IMPLEMENTATION TEMPLATE**



**MUNICIPAL SUPPLY CHAIN MANAGEMENT (SCM) IMPLEMENTATION TEMPLATE**

| REF | ACTION  | RESPONSIBILITY | TARGET DATE |
|-----|---|----------------|-------------|
| 1.  | Council / Board of Directors adopt SCM policy, preferably the SCM model policy compiled by National Treasury. Deviations must be reported to the National Treasury and the relevant Provincial Treasury |                |             |
| 2.  | Compile SCM delegations.  |                |             |
| 3.  | Establish SCM unit preferably under the supervision of the CFO.   |                |             |
| 4.  | Align with new SCM threshold values, where applicable.  |                |             |
| 5.  | Apply new SCM bid documents, including General Conditions of Contract.  |                |             |
| 6.  | Establish SCM bid committee structures.   |                |             |
| 7.  | Compile internal SCM procedures and processes.  |                |             |
| 8.  | Compile list of accredited prospective providers.   |                |             |
| 9.  | Training of SCM practitioners.  |                |             |
| 10. | Report to Mayor / Board of Directors regarding implementation of SCM policy   |                |             |