



NORTH WEST PROVINCE
DEPARTMENT OF HUMAN SETTLEMENTS
SCM BLUEPRINT

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DEPARTMENT OF HUMAN SETTLEMENTS

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This policy will only be reviewed as and when changes in legislation and/ or Treasury Regulations require the amendments. The next formal review of the policy will be in 2023/2024 financial year.

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VOLUME 1: INSTITUTIONALISATION

VOLUME 1: INSTITUTIONALISATION

1. PURPOSE AND OBJECTIVES

Section 38(1) of the Public Finance Management Act, 1999 (Act 1 of 1999) – [PFMA] confers general responsibilities on Accounting Officers, in that:

“The accounting officer for a Department/trading entity or constitutional institution-must ensure that the Department, trading entity or constitutional institution has and maintains –

- (a) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; ... and*
- (b) is responsible for the management, including the safeguarding and maintenance of the assets , and for the management of liabilities, of the Department.....”*

This provision led to a complete mind-set shift from a history of tender boards to the Accounting Officer being the sole procurer and responsible for the entire supply chain of a Department.

To this end, this document, called the Supply Chain Management System is developed, hereafter referred to as the SCM System.

Its purpose is to:

- (a) Set out the day-to-day procedural and administrative arrangements within a Department;
- (b) Streamline processes in such a way that it addresses the peculiar circumstances within each Department, i.e. to tailor the procurement and provisioning processes to meet the needs of the Department;
- (c) Enable the Accounting Officer to use the initiative and creativity of his/her line functionaries optimally whilst also being able to establish best practices that in turn leads to excellence when it comes to service delivery;
- (d) Effectively communicate supply chain management to everyone in the Department and moreover to give a complete picture of the relevance of each core function and process within the AO SCM System, and
- (e) Create a culture of responsibility; particularly with regard to powerful tools such as procurement that can not only generate savings, but if used properly, can also enable the Department to meet its socio-economic responsibilities.

Whilst the SCM System speaks to and sets out the policy aspects of Supply Chain and Movable Asset Management in the Department, the Supply Chain Management Delegations sets out the decision making power that gives effect to the processes in the AO SCM System. The delegations also aim to create a culture of ownership and accountability among decision-makers that in turn breeds trust.

Together these documents speak to how this Department conducts its business relating to Supply Chain and Movable Asset Management as a process, its contractors and suppliers, and most importantly our clients.

It is the duty and responsibility of every official involved in the Supply Chain and movable asset Management together with the Accounting Officer of this Department to ensure optimum efficiency in service delivery that is based on fairness, transparency, competitiveness, equitability and cost-effectiveness.

2. DOCUMENT DEFINITION

2.1. APPROACH – 'HOW TO NAVIGATE SYSTEM'

This document sets out the functions of the Department and, in particular, the powers of the functions, explicitly and per implication, vested in Accounting Officers. It goes further by setting out all procedural, institutional and administrative actions involved in the day-to-day Supply Chain and Moveable Asset Management operations. The SCM System effectively constitutes the norm against which all the actions pertaining to Supply Chain and Movable Asset Management of Departments will be executed, measured, and justified.

The SCM System intends to achieve the following objectives:

Identify and address all issues related to the following phases of Supply Chain Management:

1. Institutionalisation;
2. Demand Management;
3. Acquisition Management;
4. Contract Management;
5. Logistics and Inventory Management;
6. Movable Asset Management;
7. Disposal Management;
8. Risk and Performance Management;
9. Infrastructure and Construction Procurement;
10. Public Private Partnerships; and
11. Miscellaneous and transitional matters.

This SCM System has been divided into Volumes and Chapters. Each Volume deals with a specific SCM discipline.

Volume 1 provides for the institutionalisation of SCM and additionally includes a narrative description of the SCM system governing the Department dealing specifically with the regulatory framework, legal interpretation and consequences of administrative actions, structures and systems.

While it is recommended to read the entire SCM System to gain a full understanding of the SCM governance framework in the Department, it is not necessary to read all the Volumes and Chapters in chronological order.

The reader is encouraged to begin with a topic in his or her area of responsibility and follow the links and references included in the text for guidance to relevant governance tools.

An example would be to e.g. determine what governance tools provide for Contract Administration. In this regard the official will refer to:

- STEP 1 - Volume 4 – Contract Management.
- STEP 2 - Chapter 33 – Contract Management after Conclusion.
- STEP 3 - Reference to Contract Administration SOP and templates.
- STEP 4 - Once the SCM System is available on the Departmental electronic content management system, officials will be provided with the relevant linkages to ease referencing and to guide access to the relevant forms, templates, SOP's and toolkits.

2.2. APPLICATION

All officials and other role players involved with the supply chain management (SCM) must implement this SCM System in a way that gives effect to:

- (a) Section 217 of the Constitution;
- (b) Section 38 (1) (a) (iii) of the PFMA and other applicable provisions of the Act;
- (c) Chapter 16 A of the National Treasury Regulations dated March 2005; and
- (d) Chapter 16A of the Provincial Treasury Instructions 1 April 2012;
- (e) Is consistent with other applicable legislation; and
- (f) Does not undermine the objective for uniformity in supply chain management.

This SCM System applies when the Department:

- (a) Procures goods and services; and
- (b) Disposes of moveable assets no longer needed.

The SCM System further provides for an enabling mechanism for SCM and for Departmental arrangements, administrative duties and delegated powers affecting SCM for every official involved in the process.

All activities and processes included in this document will be measured against the 5 pillars of procurement which are fairness; equitability; transparency, cost effectiveness and competitiveness.

2.3. MAINTENANCE

The SCM System will be maintained by the SCMU and will be regularly updated with newly issued Supplementary Circulars. For clarification of any matter contained in this SCM System, please address queries to the Head: SCM.

2.4. IMPLEMENTATION

The SCM System will be implemented in phases as contemplated in Volume 11.

3. SCM DICTIONARY

In this SCM System, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the PFMA, Treasury Regulations, PPPFA and CIDBA has the same meaning as in that prescript, and for **ACRONYMS**:

ACRONYM	DESCRIPTION
1. AC	Audit Committee
2. AGSA	Auditor General of South Africa
3. AO	Accounting Officer
4. BAC	Bid Adjudication Committee
5. BEC	Bid Evaluation Committee
6. BEE	Black Economic Empowerment
7. BSC	Bid Specification Committee Board
8. CFO	Chief Financial Officer
9. CIDB	Construction and Infrastructure
10. CIPRO	Companies and Intellectual Properties Registration Office
11. DTI	Department of Trade and Industry
12. EA	Executive Authority
13. FG	Financial Governance
14. FIU	Fraud Investigative Unit
15. FM	Financial Manager
16. GCC	General Conditions of Contract
17. HDI	Historically Disadvantaged Individual
18. IA	Internal Audit
19. IE	Irregular Expenditure
20. IFW&U	Irregular, Fruitless & Wasteful and Unauthorised expenditure
21. MFMA	Municipal Finance Management Act (Act 56 of 2003)
22. MTEF	Medium Term Expenditure Framework
23. DEPARTMENT	Department of Transport and Public Works
24. NT	National Treasury
25. NTR	National Treasury Regulations
26. PCPO	Provincial Chief Procurement Office
27. PFMA	Public Finance Management Act of 1999 (Act 1 of 1999)
28. PPP	Public Private Partnership
29. PPPFA	Preferential Procurement Policy Framework Act (Act 5 of 2000)
30. PT	Provincial Treasury
31. PTI	Provincial Treasury Instructions
32. RDP	Reconstruction and Development Programme
33. RFI	Request for Information
34. RFP	Request for Proposal
35. RFQ	Request for Quotation
36. S	Section
37. SAPS	South African Police Services
38. SARS	South African Revenue Services
39. SBD	Standard Bidding Documents
40. SCM	Supply Chain Management

ACRONYM	DESCRIPTION
41. SCMU	SCM Unit
42. SITA	State Information Technology Agency
43. SLA	Service Level Agreement
44. SMME	Small Medium and Micro Enterprise
45. SP	Service Provider
46. TCO	Total Cost of Ownership
47. TOR	Terms of Reference
48. UE	Unauthorised Expenditure
49. WE	Wasteful Expenditure

FOR DEFINITIONS:

“acceptance of a bid” means the award of a contract to a bidder in response to that bidder’s bid or price quotation;

“asset” means a resource that is controlled by a Department as a result of past events and from which future economic benefits or service potential are expected to flow to the Department;

“bid” means a written offer on the official bid documents or invitation of price quotations;

“bidder” means any natural or legal person submitting a bid;

“bulk store” means warehouse/storeroom where inventory is held excluding any stock keeping area created by the end-user after inventory has been issued to the end-user;

“competitive bid” means a bid in terms of a bidding process which provides for appropriate levels of competition to ensure cost-effective and best value outcomes;

“contract management” means maintaining control or influence over the contractual arrangement between the Department and the contractor or service provider including administering and regulating such agreement;

“contract” means the agreement which results from the acceptance of a bid;

“contractor” means any natural or legal person whose bid has been accepted by the State;

“delegatee” for purposes of this AOS means a person assigned by the accounting officer or accounting authority to perform specific powers or duties as contemplated in terms of section 44 and 56 of the Act;

“emergency” means a situation where immediate action is necessary in order to avoid a dangerous or perilous condition or risky situation or misery or defect. Provided that the situation was unforeseen;

“end-user” means the relevant unit requesting inventory items and to whom inventory items are issued by the warehouse/storeroom;

“final award” in relation to bids submitted for a contract, means the final decision on which a bid is accepted;



“financial reporting period” means the reporting period 1 April of the current year to 31 March of the following year;

“functionality” means the measurement according to pre-determined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, amongst other factors, the quality, reliability, viability and durability of a service or commodity and the technical capacity and ability of a bidder;

“goods or services:” “Goods” means “corporeal movable things, fixed property and any real right in any such thing or fixed property”. “Services” means “anything done or to be done, including the granting, assignment, cession or surrender of any right and the making available of any facility or advantage”;

“integrated procurement solution” (IPS) means a web-based system that houses the Western Cape supplier database and is utilized for the request of quotations (RFQ's), the receipt thereof and the adjudication of quotations, submitted by suppliers;

“Inventory Issue” means the inventory item has been expensed and removed from the inventory records of the warehouse/storeroom where after no further record of the item is kept;

“inventory movement” means all movement of inventory items that occur including, issue to end-user, receipt from supplier and transfers between warehouses/storerooms;

“physical count” or “verification” means the physical counting or stock take procedures performed on inventory held in a warehouse/storeroom;

“multiple source bidding” means a form of bidding where the market has been tested through a detailed market analysis, and there are only a few prospective service providers that are able to submit a proposal;

“proponent” any person, whether natural or juristic, that submits an unsolicited proposal to the Department.

“single source bidding” means a form of bidding where a pre-selection process, following a detailed market analysis, identified only one amongst a few prospective service providers to be requested to submit a final proposal;

“sole source bidding” means a form of bidding where there is no competition and only one service provider exist, following a detailed market analysis, to submit a proposal;

“supply chain management” means the design, planning, execution, control and monitoring of supply chain activities in the delivery of goods or services, with the objective of creating net value and providing oversight and co-ordination of information and finances within the supply chain;

“system” refers to manual and or computerised systems;

“**transfer**” means the movement of inventory between warehouse/storerooms within an Department e.g. from quality inspection into the bulk store; and

“**warehouse**” or “**storeroom**” means the physical location where inventory is kept before distribution to the end user.

4. REGULATORY FRAMEWORK

4.1. GOVERNANCE FRAMEWORK

Being a democracy **RULED BY LAW**, our country has a host of legislation governing the actions of all organs of state¹. This being the case, it is important that the Department has and maintains a consolidated system for supply chain management having cognisance of the legislative framework and environment within which such system operates.

There is quite a variety and diversity of legislation affecting supply chain management in the Public Sector.

In order to appropriately consider the relevant legislation it is grouped into the following areas, being the:

- i. **Supreme law:** Overarching law guiding our country, being the Constitution
- ii. **Primary legislation:** PFMA and SCM related legislation
- iii. **Sub-ordinate legislation:** SCM related regulations, instructions and delegations
- iv. **Complimentary legislation:** Departmental related functional legislation influencing SCM
- v. **Policies:** Public policy as government action is generally the principled guide to action taken by the administrative or executive branches of the state with regard to a class of issues in a manner consistent with law and institutional customs
- vi. **Strategies:** Strategy is the direction and scope of an organisation over the long-term: which achieves advantage for the organisation through its configuration of resources within a challenging environment, to meet the needs of markets and to fulfil stakeholder expectations.
- vii. **Norms:** Plans, Frameworks, Guidelines, Directives, Standards, Instructions, Practices, Codes of Conduct, standard operating procedures, directives, rules, measures, papers, statements & speeches, manuals, methodologies, checklists, programmes, reports, financial agreements and Cabinet Minutes.

The Public Sector Administration is governed by statute law, i.e. legislation governs the Public Sector organisation, powers, procedures and actions. Legislative mandates or powers are granted through the Legislature (Parliament), executed by the Executive (Cabinet) and Administrators (Public Sector officials – normally via delegations) and interpreted by the Judiciary (Courts and case law), customary law and rules and presumptions of interpretation).

Legislation is categorised with the most important and prevalent law always being the Supreme Law, the Constitution, followed by the Primary legislation regulating the specific administrative discipline, in this

¹**Organs of State** means all governmental institutions defined by the Constitution, and more specifically the relevant national, provincial and local spheres of government.

regard Public Sector financial management, supported by sub-ordinate legislation normally being regulations, instructions and delegations.

It is common cause that legislation prescribes the 'WHAT' aspect of administrative actions and that the 'HOW' is normally left to the administrators or officials to determine. In determining the 'HOW', the Public Sector embarked on various processes to augment the legislation by issuing inter alia frameworks, guidelines, directives, rules, practices, codes of conduct and operating procedures, which for the purpose of this manual will be referred to collectively as norms.

Norms, by virtue of its nature, are augmenting legislation and normally issued within a specific geographic area or for a specific period of time. Dependent on the law to which it applies and how it has been defined, these norms do not have the same power of law. However, it does have the power of persuasion and can therefore not be disregarded when executing an administrative action. The administrator disregarding issued norms must show good cause for such disregard.

It must be understood that the Public Sector serves the public via the directives from its electives, being the politicians elected to represent the government of the day. After each election these electives may differ, whilst legislation is not always simultaneously amended. History has shown that it is not always necessary to amend legislation to achieve the objectives of the newly elected government of the day, but the latter adopt policies and strategies in order to ensure an environment within which the legislation must be applied. Of importance however, is that the elected government or politicians will make important speeches during their political term, such as the State of the National Address (SONA) or budget speeches, these speeches confirm their policy and strategic intent and for that reason, these speeches are also referred to when legislation is applied.

The nett result is thus that the Public Sector conducts its business through prescribed legislation augmented by norms within a specific strategic and policy environment.

Public Sector business affects the rights of citizens and they are therefore constitutionally entitled to fair and transparent dealings with the Public Sector. Public servants must thus be aware of the fact that together with the legislation governing their area of responsibility, all their actions executed in this regard must also comply with the provisions prescribed by the Promotion of Administrative Justice Act, 2000 (PAJA) and the Promotion of Access to Information Act, 2000 (PAIA) to ensure fair dealings with the public.

In conclusion, the South African system of law applies the common law rules of interpretation and the Rule of Precedent. The former means that public servants must apply the rules of interpretation when interpreting and applying legislation and the latter means that all Public Sector actions prescribed by legislation are open to review and interpretation through the Judiciary/courts and judgements made must be applied in the future application of the relevant legislation that was interpreted or reviewed. It is therefore important to ensure a proper repository of case law as the latter augments legislation governing administrative actions.

4.2. PRIMARY LEGISLATION

4.2.1. CONSTITUTION OF THE RSA

The Constitution is a Supreme Law and being a State Ruled by Law, all public sector powers flows primarily from the Constitution.

It regulates procurement in terms of Section 217, which determines that:

"When an organ of state in the national, provincial or local sphere of government, or any other Department 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."

4.2.2. PFMA/MFMA

The objective of the PFMA is to improve financial management in the public sector and to give accounting officers certain discretionary powers to ensure that the intention of the Act is achieved. This is a departure from the financial regime of pre-1994, which was very prescriptive and had a greater focus on administration as opposed to management.

Section 38(1)(a) (iii) of the PFMA imposes a responsibility on the Accounting Officer of each Department by determining that:

"The Accounting Officer for a Department, trading entity or constitutional Department must ensure that that Department, trading entity or constitutional Department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;..."

4.2.3. PPPFA

Section 217(2) of the Constitution determines that: ***Subsection (1) does not prevent the organs of state or Departments referred to in that subsection from implementing a procurement policy providing for-***

- a) categories of preferences in the allocation of a contract; or***
- b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination."***

In giving effect to subsection 2 of section 217 of the Constitution, National Treasury issued the Preferential Procurement Policy Framework Act.

4.2.4. BBBEE

This piece of legislation is linked to the Bill of Rights, Section 9 of the Constitution, 1996. The preamble of the BBEEA, 2003 reflects that: ***"... under apartheid race was used to control access to South Africa's productive resources and access to skills; ...the South African economy still excludes the vast majority of its people from ownership of productive assets and the possession of advanced skills;***

...South Africa's economy performs below its potential because of the low level of income earned and generated by the majority of its people; and ...unless further steps are taken to increase the effective participation of the majority of the South Africans in the economy, the stability and prosperity of the economy in the future may be undermined to the detriment of all South Africans".

In relation to SCM, broad-based black economic empowerment means the empowerment of all black people including women, workers, youth, people with disabilities and people living in the rural areas through diverse but integrated socio-economic strategies that include but are not limited to, inter alia, preferential procurement. According to the BBBEEA, 2003 (as amended in 2014) codes of good practice will be issued on qualification criteria for preferential purposes for procurement and other economic activity.

4.2.5. CIDBA AND NHBRC

Certain government Departments such as the Departments of Public Works and Roads, Health, Local Government and Human Settlements and Education are mandated to deliver economic and social infrastructure, such as roads, school buildings, hospital buildings and general office buildings and to maintain these immovable assets. In the execution of its mandate such a government Department contracts with services providers from the construction industry.

Although access to contract opportunities has been widely promoted by government, the sustainability of small contractors is perceived to be jeopardised by, inter alia: some public sector employees that are not committed to procurement reform; complicated tender documentation; lack of standardisation within the public sector and the awarding of contracts to the lowest bidder that affects the sustainability of real contractors.

The Construction Industry Development Board (CIDB), a national body established by the CIDBA, 2000 is, *inter alia*, responsible for developing the industry for the improved delivery of infrastructure to the South African public; working with all stakeholders for the sustainable growth of construction enterprises and the best practice of employers, contractors and the professions; identifying best practice and setting national standards; and promoting common and ethical standards for construction delivery and contracts. With regard to infrastructure development related to Human Settlements (housing) the rules will apply in line with NHBRC.

The powers, functions and duties of the CIDB include, inter alia, the following:

- (a) To provide strategic leadership, the CIDB must promote and implement policies, programmes and projects aimed at, amongst others, procurement reform, standardisation and uniformity in procurement documentation, practices and procedures.
- (b) To advance the uniform application of policy with regard to the construction industry, the CIDB must within the framework of the procurement policy of government promote the standardisation of the procurement process with regard to the construction industry.

- (c) To promote uniform and ethical standards within the construction industry, the CIDB must publish a code of conduct for all construction related procurement and all participants involved in the procurement process. Furthermore, the CIDB may in this context initiate, promote and implement national programmes and projects aimed at the standardisation of procurement documentation, practices and procedures.
- (d) To promote sustainable growth of the construction industry and the participation of the emerging sector therein, the CIDB may monitor national programmes aimed at amongst other procurement reform and standardisation and uniformity in procurement documentation, practices and procedures.

Furthermore, the CIDBA, 2000 requires that the National Minister responsible for Public Works must prescribe the manner in which public sector construction contracts may be invited, awarded and managed within the framework of the Register of Contractors and within the framework of the policy on procurement. It also requires that every government Department, must, subject to the policy on procurement, apply the Register of Contractors to its procurement process. Refer to Volume 9, below as such requirements.

4.2.6. Competition Act

The purpose of the CA, 1998 is to promote and maintain competition in the Republic of South Africa in order to:

- (a) Promote the efficiency, adaptability and development of the economy;
- (b) provide customers with competitive prices and product choices;
- (c) promote employment and advance the social and economic welfare of South Africa;
- (d) expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- (e) ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy and
- (f) To promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

Given the aforementioned goals and in relation to SCM, government Departments in their role as customers in the market are dependent on the enforcement of the provisions of this Act, for example to prevent restrictive practices such as collusive tendering.

4.2.7. Corrupt Activities Act

The Constitution, 1996 provides for high standards of ethics within the public sector. It enshrines the rights of people and affirms the democratic values of human dignity, equality and freedom and places a duty on the State to respect, protect, promote and fulfil all the rights as enshrined in the Bill of Rights. The PCCAA, 2004 aims to prevent and combat corrupt activities that, inter alia, undermine the said rights, democratic values, ethical values and rule of law.

4.2.8. NSBA

This Act aims to promote small business in the Republic of South Africa and defines "small business" in terms of sector, size, full-time equivalent of paid employees, total annual turnover and total gross asset value.

4.2.9. PAIA

PAIA, 2000 responds to section 32 of the Constitution, 1996. In terms of this provision everyone has the right of access to information held by the State. PAIA, 2000 fosters a culture of transparency and accountability in the public and private bodies by giving effect to the right of access to information and to actively promote a society in which people have effective access to information to enable them to more fully exercise and protect all their rights.

PAIA, 2000 is of particular importance to the administrative decision-maker, as the latter may at any stage, either during the deliberative process or after the decision has been taken, be faced with the request for access to files and or records, e.g. those relating to contracts concluded through SCM processes. It then becomes all the more important to distinguish between information that may be given and information that must be refused.

In terms of PAIA, 2000 there are certain categories of information that must be refused, and other categories, which may be refused, hence the importance that both public service officials and administrative decision-makers be familiar with the grounds of exclusion.

It is important that SCM managers involved in decision-making processes be able to express views and tender advice without being concerned that these views and advice will be subject to public debate and criticism. PAIA, 2000 does not authorise the withholding of all such information only the extent that disclosure might inhibit frankness. If there is no risk, views or advice of public sector officials, consultants or advisory bodies or any other individual or group may be divulged.

Within SCM processes, PAIA, 2000 becomes extremely relevant, e.g. in a situation where a bidder loses a bid through a deliberative and decision-making process and the government Department is challenged on that matter.

4.2.10. PAJA

PAJA, 2000 gives effect to section 33 of the Constitution, 1996 that stipulates that everyone has the right to administrative action that is lawful, reasonable, and procedurally fair. Furthermore, everyone whose rights have been adversely affected has the right to be given reasons. PAJA, 2000 deals with general administrative law and therefore binds the entire administration at all levels of government.

It further provides a set of general rules and principles for the proper performance of the administrative action in all areas and requires the giving of reasons for administrative action in certain circumstances. In addition, it sets out the remedies that are available if these rules are not complied with. It also indicates how administrative powers allocated to administrators in terms of other statutes and the common law must be exercised in the light of the Constitution.

4.2.11. Protected Disclosures Act

The PDA, 2000 better known as the Whistle-blowing Act originates from the Bill of Rights in the Constitution, 1996. The PDA, 2000 makes provision for procedures in terms of which employees in both the public and private sector who disclose information of unlawful or corrupt conduct by their employers or fellow employees are protected from occupational detriment.

The Republic of South Africa has been characterised by high levels of crime including wide spread corruption. The PDA, 2000 encourages honest employees to raise concerns and report wrongdoing within the workplace without fear. The PDA, 2000 can be regarded as a crucial corporate governance tool to promote safe, accountable and responsive work environments.

The PDA, 2000, with the PAIA, 2000, referred to above, are but some of the initiatives that have been undertaken to promote accountability and to fight corruption in the public sector. Whistle blowing is a key tool for promoting individual responsibility and organisational accountability. In a positive sense, it is about raising concerns about malpractice in organisations.

4.2.12. Public Audit Act

The Auditor-General is an independent and impartial body created by the Constitution, 1996 to provide independent and quality audits and related value adding services in the management of resources, thereby enhancing good governance in the public sector.

The PAA, 2004 gives effect to section 188 of the Constitution. In terms of this section, the Auditor-General must audit and report on the accounts, financial statements and financial management of state Departments. The intention of the audit in essence is to obtain reasonable assurance that in all material aspects, fair representation is achieved in the annual financial statements of Departments; Section 20(2) of the PAA requires that an audit report must reflect such opinions and statements as may be required by any legislation applicable to the auditee which is the subject of the audit, but must at least reflect an opinion or conclusion on: -

- i. Whether the financial statements fairly present the financial position of the Department.
- ii. Compliance with any applicable legislation relating to financial matter, financial management and other related matters.



- iii. Performance against predetermined objectives.
- iv. Whether resources were procured economically and utilised efficiently and effectively.

4.2.13. SITA

In terms of section 238 of the Constitution, 1996 an organ of state in any sphere of government may perform any function for any other executive organ of state on an agency basis. SITA establishes the State Information Technology Agency (hereafter referred to as the Agency). This Agency provides various information technology services. In relation to SCM, every government Department must, in terms section 7(3) of the SITA, 1998, procure all information technology goods and services through the Agency.

4.3. COMPLEMENTARY AND SUB-ORDINATE LEGISLATION

It must be noted that Supply Chain Management does not exist in a vacuum that is governed by only its own policy and prescripts but has crucial and critical linkages to other governing legislation and the Common Law. Apart from the legislation mentioned above, the pieces of legislation, Instructions and guidelines listed below also affects SCM:

- (a) Departmental instructions issued in terms of the PFMA;
- (b) National Treasury Practice Notes;
- (c) National Treasury Circulars;
- (d) National Treasury Framework for the minimum training and development;
- (e) Provincial Treasury Circulars;
- (f) CIDBA, 2000 Regulations;
- (g) Construction Industry Development Board Guide to best practice;
- (h) Construction Industry Development Board Code of Conduct for all parties engaged in construction procurement;
- (i) National Conventional Arms Control Committee Instructions;
- (j) Department of Trade and Industry clearance in respect of contracts subject to the National Industrial Participation Program of that Department;
- (k) SCM Guide to Accounting Officers;
- (l) National policy strategy to guide uniformity in procurement reform processes in government;
- (m) The Prevention and Combating of Corrupt Activities Act, 2004 (Act No.12 of 2004);
- (n) The Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000);
- (o) The Conventional Penalties Act, 1962 (Act No.15 of 1962);
- (p) The Arbitration Act, 1965 (Act No.42 of 1965);
- (q) The Public Protector Act 1994 (Act No.23 of 1994);
- (r) The Protected Disclosure Act, 2000 (Act No. 26 of 2000);
- (s) The Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

- (t) The Intellectual Property Rights From Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008);
- (u) The Consumer Protection Act, 2008 (Act No. 68 of 2008);
- (v) The State Liability Act, 2011 (Act No. 14 of 2011);
- (w) The Public Audit Act, 2004 (Act No. 25 of 2004);
- (x) The Companies Act, 2008 (Act No. 71 of 2008); and
- (y) The Interpretation Act, 1957 (Act No.33 of 1957).

4.4. HIERARCHY OF LEGISLATION

This phrase is used to signify that the laws between spheres of government on a subject-matter may be in opposition to each other; or that certain laws are contradictory.

Sections 146 to 150 of the Constitution provide for the management of legislation where there are conflicts between national and provincial legislation listed as concurrent national and provincial legislation.

When a conflict happens to be the case, it becomes necessary to decide which law is to be obeyed and a few general rules have been adopted on this subject, which will here be noticed:

- i. Every nation possesses an exclusive sovereignty and jurisdiction within its own territory. The Constitution is the Sovereign Law of South Africa and therefore, affects and binds directly all property, whether real or personal, within the South-African territory; and all persons who are resident within it, whether citizens or aliens, natives or foreigners; and also all contracts made, and acts done within it.
- ii. Possessing concurrent legislative authority, with the above qualification, the provincial sphere of government may regulate the manner and circumstances, under which property, whether real or personal, in possession or in action, within it shall be held, transmitted or transferred, by sale, barter, or bequest, or recovered or enforced; the condition, capacity, and state of all persons within it the validity of contracts and other acts done there; the resulting rights and duties growing out of these contracts and acts; and the remedies and modes of administering justice in all cases. For this purpose the Western Cape Constitution was adopted.
- iii. A Province cannot, however, by its laws, directly affect or bind property out of its own territory, or persons not resident therein, whether they are natural born or naturalized citizens or subjects, or others. This result flows from the principle that each sphere of government is perfectly independent.
- iv. To this general rule there appears to be an exception, which is this, that a Province has a right to bind its own citizens or subjects by its own laws in every place; but this exception is not to be adopted without some qualification, as provided for in sections 146 – 150 of the Constitution of the RSA which provide for the management of legislation where there are conflicts between national and provincial legislation listed as concurrent national and provincial legislation.

- v. The test to be applied is whether the national legislation deals with matters requiring national uniformity and is necessary for national security, national economic unity and protection of common markets, promotion of economic activities, protection of the environment and promotion of equal opportunities.
- vi. In the conflict of laws, it is often a matter of doubt which should prevail; and, whenever a doubt does exist, the court which decides will prefer the law of the National sphere of government to that of the Provincial sphere of government.

4.5. ADMINISTRATIVE ACTIONS

The principles of Administrative Law dictate that when an official executes an administrative action mostly based on a delegation, such administrative action has the force of law. The result of the latter is that when an official conducts a legal, illegal or ultra vires administrative action, such action may retain its force of law until it is declared by a court of law as being invalid in total and void or voidable, subject to rights already being vested.

It is therefore of the utmost importance that when an official executes a delegation/administrative action, he or she must ensure that he or she executes a good delegation/administrative action. The common law principles of administrative actions as well as PAJA provides various guidelines of what constitutes a good administrative action and principally entails a positive response to each of the following criteria:

JUST ADMINISTRATIVE ACTION TEST: tick off	
	All relevant and permissible facts and circumstances were taken into consideration (<i>mindful of previous precedence created</i>)
	All prescripts, limitations and conditions are adhered to
	Action is within the ambit of the delegation or legislative power
	The result of the action/decision will serve a legal permissible purpose
	The result of the action falls within ambit of the budget, budget description and objectives of the strategic plan

Table ...: PAJA tick list:

Once a delegation has been executed it is regarded as a completed administrative action. A completed administrative action is regarded as a *functus officio* action. *Functus officio* is the legal term for an administrative action that has been executed resulting in legal rights being vested. Administrative actions executed by an appropriate delegated authority therefore result in such actions being regarded as *functus officio*.

FUNCTUS OFFICIO

More often than not, complaints are raised after a decision relating to SCM (i.e. an award etc.) has been taken by the Accounting Officer or delegatee. At the time when the decision is taken by the required authority and communicated to the public, the decision is said to be *functus officio* (i.e. the decision taken cannot be revoked, only in certain exceptions).

Functus officio, "having performed his office," is a legal term used to describe a public official, court, governing body, statute, or other legal instrument that retains no legal authority because his or its duties and functions have been completed.

Functus officio only applies to final decisions taken so a decision may become revocable before it is made final. Hence finality is arrived at when the decision is published, announced or otherwise conveyed to those affected by it. This would similarly be the case when a decision is taken to award a bid to a supplier.

Based on the fact that the decision is *functus officio*, other members of the public (i.e. suppliers, competitors etc.) could raise complaints, grievances or serious allegations relating to the SCM system which requires that the decision be relooked at. Hence the requirements articulated above in respect of complaint's handling aims to ensure that the decision of an Accounting Officer or his delegatee stands unless revoked by a competent court of law and that the complaint, grievance or allegation be dealt with in the same manner by all Departments. It also ensures that up until award, a complaint may be dealt with before a decision is made and becomes *functus officio*.

The abovementioned requirements have been developed to build a complaints handling mechanism and on how to deal with members of the public when complaints arise before it becomes litigious.

Therefore in order to instil competent complaints management behaviour and skills within Departments, the requirements articulated above must be used to ensure that Department's adhere to the legislative requirements and in turn assist in ensuring that its procurement system is aligned to section 217 of the Constitution Act 108 of 1996.

What remedies are available if the delegated authority or AO wishes to revoke or amend a *functus officio* administrative action?

A ***functus officio*** administrative action that is irregular does not immediately invalidate the action but such action may be declared invalid through a competent authority determined by law or a competent court if the law does not allow differently. Such irregular administrative action renders the action ultra vires and is thus regarded as voidable but not invalid. The administrator will have to void his action and the party whose rights are negatively affected may have a legal claim in this regard. This situation is mostly prevalent in cases where officials accepted more responsibility than was delegated to them or did not comply with the limitations and conditions stated in the relevant delegatory power.

If it was found that an administrative action was not properly executed and/or ultra vires, the delegated authority or AO will have to inform the affected parties accordingly and advise them of the actions that will be taken to rectify the matter and also advise them of their rights in this regard.

If it is found that the *functus officio* administrative action was regular and 'good', it may also be revoked or amended if a law explicitly allows for such revocation or amendment. An example is the provisions of the PPPFA Regulations 15 and the Treasury Regulations 16A.9.1 which allow the revocation of an administrative action if it was found that the bidders submitted incorrect, false or fraudulent information on which a decision was based.

The principles of PAJA:

- PAJA stipulates that everyone has the right to administrative action that is lawful, reasonable, and procedurally fair and everyone whose rights have been adversely affected has the right to be given reasons.
- This principle is also endorsed by the common law principles of natural justice.
- The most common remedy to persons whose rights are affected through administrative actions, is to request compliance with the *audi alteram partem* rule. This rule can be applied in four ways:
 - Affected persons are allowed the opportunity to make presentations.
 - Affected persons are given the reasons why their applications were not successful and be allowed to make representations.
 - Affected persons are given the reasons why their applications were not successful, confirming that it was a discretionary power that was executed.
 - The delegated authority or AO shows cause that the decision was made or the action executed without prejudice.
- PAJA, sections 3 and 5, endeavour to give more clarity to the above and provide that where an administrative action is executed, two considerations must be adhered to:
 - The administrative action must be procedurally fair and provide adequate opportunity to those affected to make representations, adequate notice for internal appeal or review and adequate notice of the right to request reasons; and
 - The person whose rights are affected may request reasons for such decision, which reasons must be given within 90 days after receipt of the request.
- It is important to know that a delegated authority may not:
 - Sub-delegate powers delegated to them, if there is no legal provision made for such sub-delegation.
 - Execute the delegated authority beyond the geographical or location parameters described in the delegation power.
 - Execute the delegated authority resulting in an illegal activity.
 - Execute the delegated authority contrary to relevant court judgements/case law.
 - Prescribe additional conditions to a delegated power, if not expressly allowed.
 - Execute a delegated power beyond timeframes prescribed.

Illegal (ultra vires) administrative actions

Ultra vires administrative actions are a generic term inclusive of administrative actions executed beyond the framework of authorised administrative powers provided by legislation as well as the common law.



Consequences of illegal administrative actions

The consequences of an illegal administrative action will depend on the provisions of the legislation itself in that it may provide for:

Statutory appeals to a higher administrative organ or a court

Consequences of non-compliance, e.g. financial misconduct for irregular expenditure or revocation of a delegation subject to rights already being vested as per the PFMA.

All persons affected by administrative actions however have the right to request a judicial review of such administrative actions. In this regard, if the court found *ultra vires* administrative actions, in most instances it will not replace the decision or administrative action, but direct that the administration make a decision or execute the administrative action following due administrative processes.

Other actions persons may request the courts to consider due to *ultra vires* administrative actions may include:

- An **interdict** (short term solution)
- A **mandamus** instructing the administration to comply with a provision of an Act
- A **declaratory order** where there is uncertainty in the interpretation of an Act

Prior to a court considering a request for judicial review or any other action, the applicant must show that all internal remedies have been exhausted and that he or she has a standing (*locus standi*) in the matter.

4.6. CASE LAW AND LEGAL OPINIONS

Judicature (*regspraak*) is a very important source of reference in administrative law as it interprets how administrative powers must be exercised, the boundaries related thereto and what remedies are available if the administration abuses such administrative powers. There are two instances where the judicature influences administrative actions, firstly by defining and interpreting legislation and secondly by reviewing administrative actions (power of appeal). When the courts interpret legislation, it was found that the courts also create additional legal rules or norms that must be complied with by the administration.

Legal opinions do not have the same power as a court judgement, but it has persuasive powers and if the administration wishes to accept legal rules or norms proposed by legal opinions, it may ask the court for a declaratory order in this regard. It may however be that although a legal opinion assists the administration in the execution of its functions, the administration does not wish to obtain a declaratory order from an appropriate court for reasons of cost and/or time. In this regard the administration may accept the legal opinion and issue it as an instruction or guideline.

What we know today as 'South African law' may well be described as a 'mixture' of Roman-Dutch and English law adapted to peculiar South African circumstances and needs. The hybrid character of our legal system gives rise to some fascinating problems, especially in the field of statutory interpretation.

According to M Wiechers, *Administratiefreg*, 2nd edition, Butterworth, 1984 there is no recording of administrative law that historically originates from practice and had general application. What is available though is a compendium of Roman-Dutch law rules and presumptions related to the interpretation of legislation which applies when administrative related legislation is applied.

The English law influenced South African administrative law by including principles such as government-liability (*staats-aanspreeklikheid*), classification between pure administrative actions versus quasi-judicial administrative actions and the *ultra vires* doctrine.

South Africa did promulgate an Interpretation Act, 1957 (Act 33 of 1957), which mostly address the basic framework information regarding an enactment and, according to Lourens M du Plessis, *The Interpretation of Statutes*, Butterworths, 1986, can only effectively be applied as part and parcel of the aforementioned rules and presumptions established by common law.

These rules are:

- a. The 'intention' of the Legislature
- b. The 'ordinary' and 'popular' meaning must be attached to words and phrases
- c. The golden rule: 'The Legislature did not intend absurdities'
- d. Each word has a meaning
- e. The structural wholeness of the Act must be maintained
- f. The interpreter must interpret and not re-enact

The presumptions are:

- a. No enactment contains invalid or purposeless provisions
- b. An enactment applies in general and not to particular instances
- c. An enactment promotes public interest
- d. References to modes of conduct are presumably references to legally valid and/or permissible modes of conduct
- e. An enactment does not alter the existing law more than is necessary
- f. An enactment is not aimed at interfering with or ousting the jurisdiction of the courts
- g. An enactment does not bind the state
- h. Enactments do not obtain extra-territorially
- i. An enactment is not aimed at violating international law
- j. Enactments are not aimed at achieving unjust and inequitable results
- k. Enactments do not obtain retroactively
- l. Same words in the same enactment bear the same meaning

When a public servant executes powers authorised by legislation and it is impractical to follow the letter of the Act or unclear what the power entails, the public servant has to follow the following steps:

- a. **Step 1:** Confirm the intention of Legislature having regard the language used, the object of the Act, the policy guiding the Act, the history of the Act and the circumstances relevant to the subject matter².
- b. **Step 2:** Apply restrictive interpretation (*eiusdem generis* rule) which holds that where words which have a limited or particular meaning are followed by a phrase of general application, the meaning of the said phrase is restricted to the generic meaning of the preceding words³.
- c. **Step 3:** Apply wide or extensive interpretation and normally refers to matters included, by virtue of implication or interpretation by implication and refers to the following:
 - i. Inclusion of other provisions of the Act
 - ii. Where an Act makes express provision for certain circumstances, it is inferred that for opposite circumstances the contrary will obtain (*ex contrariis*)
 - iii. Where an Act expressly prohibits a certain result, it also prohibits everything which may lead to that result by implication (*ex consequentibus*)
 - iv. Where an inherent relationship is created by the Act, e.g. the power to make regulations imply the power to withdraw regulations (*a natura ipsius rei*)
 - v. Where a mutual or reciprocal relationship is created by the Act, e.g. the prohibition to purchase something includes the prohibition to sell the same thing (*ex correlativis*)
- d. **Step 4:** Application of the presumptions established by common law and referred to above⁴.

A summary of relevant case law is obtainable from the PCPO.

4.7. LITIGATION PROCESSES

- (a) If any bidder is not satisfied with the conduct of a department with respect to the issuing, evaluation, adjudication or any other aspect of the bidding process, he or she may seek recourse from the courts.
- (b) Prior to taking the matter to a court, a bidder would normally request bid documents information from a department. It is therefore important that the department ensures such requests are in writing, and in terms of the relevant legislation, and that legal advice is sought to respond to such requests, failing which the state's case may be compromised.
- (c) Whether or not a department will be successful in its defence depends mainly on whether it complied with the Constitution, legislation, policies, practice notes and prescripts, and whether there is documentary proof to this effect.
- (d) It is therefore important that officials must ensure that any decision or action they take during the bidding process can stand in a court of law, and that the State Attorney's office and legal representatives are well briefed and furnished with supporting documentation.
- (e) No out of court settlement must be entered into without due authorization of the Accounting Officer/ Accounting Authority in consultation with the provincial treasury who upon doing so, shall have first sought legal opinion on the prospects of the case with advanced reasons outlining the risk of non-settlement.

²Dadoo Ltd v Krugersdorp Departmental Council 1920 AD 554

³S v Marais 1983 1 SA 1028 T 1031

⁴LC Steyn, Uitleg van Wette (5de uitgawe), Juta&Kie, 1981, page 55

- (f) All legal opinions relied on for settlement must come and be facilitated by the State Attorney to the Accounting Officer.
- (g) Where an out of court settlement have serious financial implications to the detriment of the state, a Provincial Treasury advice/approval must be sought.
- (h) State Attorney is by Law, the custodian of all state civil or criminal litigation and any deviation to instruct a private firm of attorneys must have followed proper SCM procedures.
- (i) Such a deviation from utilizing the State Attorney must be supported by appropriate reasons why the State Attorney is not instructed, and must also provide the level of complexity of the matter in which such a matter may not competently be handled by the State Attorney.
- (j) In the event of any deviation necessary, departments must apply to treasury for approval of their wish to engage Private Attorneys in the event they do not wish to be represented by the State Attorney in any complex matter, otherwise normal supply chain processes must be applied.
- (k) Where the Premier as head of the Provincial Government is cited in matters involving departments, and same is set to be settled, departments must also provide proof of consultation and or letter of authorization/consent or approval to settle from the Chief State law Advisor who represents the Premiers Office in this regard.
- (l) In the event of any judgments being enforced by the sheriff of the high court or any other court, where state property is attached, department must provide a written submission to treasury for assistance with regard to payment of the said judgment debt, with immediate effect to avoid the implications of the **Nyathi Judgment** which requires judgments to be satisfied within (30) thirty days.
- (m) No general or individual outsourcing will be allowed unless otherwise normal supply chain processes are followed.

5. DEPARTMENTAL FUNCTIONAL ARRANGEMENTS

5.1. STRATEGIC VISION OF DEPARTMENT

Vision: A united, non-racial, non-sexist, democratic, prosperous society and a developmental state as expressed in the Freedom Charter and the Constitution of the Republic.

Mission: To plan and promote integrated and sustainable human settlements and ensure quality service delivery through cooperation and good governance with municipalities.

Core Functions of the Department:

Administration: Support to the entire Department relating to Corporate Services and Financial Management.

Housing, needs, planning and research: HSDG finances – policy and research, planning and technical services, statutory bodies and municipal support.



Housing development: Subsidy administration as well as quality assurance, project implementation and management.

The Department will pursue the following objectives in this regard:

- (a) Ensure adequate planning has taken place before procurement of goods and services;
- (b) Ensure that procurement processes / projects are adequately funded or budgeted for;
- (c) Define and develop simple standardised SCM processes to ensure the satisfactory delivery of goods and services and the control and management thereof;
- (d) Build a purchasing culture within the Department that is performance orientated, flexible, yet aligned to prescribed procurement policy and procedure, socio-economically responsive but driven by customer satisfaction;
- (e) Value for money procurement, and inventory and moveable asset management;
- (f) Employment of strategies to minimize procurement costs;
- (g) The use of service level agreements to elevate contract management and mitigate risks for the Department;
- (h) Introduce mechanisms to adequately address concerns from the public with regards to the awarding of bids

5.2. SCM PRINCIPLES

The AO must ensure that the supply chain management system gives effect to the core principles of behaviour as envisaged by the Five Pillars of Procurement which are:

Fairness (ethics and fair dealing)

- Comply with ethical standards;
- Recognise and deal with conflicts of interest or the potential thereof;
- Deal with suppliers even – handed;
- Do not compromise the standing of the state through acceptance of gifts or hospitality;
- Be scrupulous in the use of public property; and
- Provide assistance in the elimination of fraud and corruption.

Equity

- Advance the development of small, medium and micro enterprises;
- Empower black people including women, workers, youth, people with disabilities and people living in rural areas;
- Support the creation of work opportunities;
- Promote local enterprises; and
- Support local products.

Transparency (accountability and reporting)

Individuals and institutions are answerable for their actions and outcomes; and

Openness and transparency in administration by external scrutiny through public reporting.

Competiveness (open and effective competition)

A framework of procurement legislation, policies, practices and procedures that is transparent;

Openness in procurement processes;

Encouragement of effective competition through procurement methods suited to market circumstances;

Observance of the provisions of the Preferential Procurement Policy Framework Act;

Potential suppliers have reasonable access to procurement opportunities;

Where market circumstances limit competition – institutions recognise it and use procurement methods that take account of it;

Adequate and timely information is provided to suppliers to enable them to bid;

Bias and favouritism are eliminated;

The cost of bidding for opportunities do not deter competent suppliers; and

Costs incurred in promoting competition are at least commensurate with the benefits received.

Cost effectiveness (value for money)

Avoid any unnecessary costs and delays for the institution or suppliers;

Monitor supply arrangements on an on-going basis and reconsider if existing arrangements cease to provide the expected benefits; and

Ensure continuous improvement in the effectiveness and efficiency of internal processes and systems.

5.3. SCM UNIT

A separate SCM unit must be established and maintained within the office of the CFO, unless determined otherwise by the Provincial Treasury.

Primary responsibilities of the SCMU:

- a. Implementation of the approved SCM System;
- b. On-going maintenance of the SCM system to improve the effectiveness and efficiency of the system;
- c. Regular reporting to the accounting officer on the performance of the SCM system;
- d. Enforcement of the regulatory framework for SCM within the institution;
- e. Render assistance and administrative support to the line function managers and other employees in the performance of their SCM responsibilities;
- f. The SCM Unit are also responsible to:
 - Collate and compile reports to the Accounting Officer and the Provincial Treasury
 - Ensure that management, control and accountability is maintained through comprehensive objective assessments

- Enforce the regulatory framework for SCM within the Department.
 - Perform internal controls functions for the Supply Chain; and
 - Identify, treat and report occurrences of fraud, corruption, collusion and abuse of the SCM System; and
- g. Capacity building and training of employees involved in SCM processes.

In relation to infrastructure and construction The SCM Unit must execute activities relating to the construction procurement process in accordance with the provisions of Provincial Treasury Standard for Infrastructure and Construction Procurement System [SIDMS].

- a. The SCM Unit must assist the line function managers and other officials in the performance of their SCM responsibilities.
- b. The SCM Unit are responsible for the measurement of performance of SCM in terms of areas such as effectiveness, potential efficiency gains, weaknesses in performance, quality and value for money and identifying corrective actions or interventions to improve performance.

General functions of the SCM unit

The SCM Unit of the Department will be responsible for the following functions:

- (a) Implementation of the approved SCM system;
- (b) On-going maintenance of the SCM system to improve effectiveness and efficiencies of the system;
- (c) Regular reporting to the accounting officer on performance of the SCM system and comply to reporting requirements for SCM as prescribed by regulations and policy;
- (d) Enforcement of the regulatory framework for SCM within the Department (i.e. prescribed National; provincial and Departmental SCM requirements aligned to legislation and policy and delegation frameworks within the Department);
- (e) Render assistance and administrative support to the line function managers and their delegates; other employees and the Departmental bid committees in the performance of their SCM responsibilities;
- (f) Capacity building and training of employees involve in SCM processes;
- (g) Procure goods and services for the Department;
- (h) Manage bid administration processes which include but are not limited to:
 - (i) Check and arrange for the signing and approval of bid specifications;
 - (ii) Compile bid documents;
 - (iii) Advertise bids in the government Tender Bulletin, media and other prescribed sites;
 - (iv) Advertise quotations for the prescribed threshold via the designated procurement system;
 - (v) Receiving and opening of bids;
 - (vi) Check for compliance and signature of bid documents;
 - (vii) Maintaining a bid register;
 - (viii) Preparation of procedures and bid documents for evaluation at the evaluation committee;
 - (ix) Monitoring the award of bids;

- (i) Adjudication of quotations, capturing of the award on the designated procurement system in terms of delegation levels;
- (j) Administer and manage contracts within their delegated authority;
- (k) Communicate and liaise with contractors;
- (l) Execute allocated delegations in terms of financial and SCM delegations;
- (m) Maintain and provide an efficient and effective logistical and asset management system for the Department;
- (n) Maintain and keep a proper audit trail in respect of all transactions processed by the unit and on behalf of line function managers;
- (o) Development of Departmental instructions and SOP's for implementation within the Department to ensure sound governance practices within SCM; and
- (p) Adhere to control measures and risk mitigation procedures defined by this SCM System.

Powers of the SCM Unit

To procure on behalf of the Department within the parameters of the Department's delegation framework;

Exercise its powers as conferred through delegations;

Enforce a Departmental monitoring and evaluation process in respect of the Department's compliance to SCM legislation, policy and this SCM System; and

Issue Departmental best practice guidelines for implementation within the Department to ensure sound governance practices within SCM.

5.4. RESPONSIBILITIES OF LINE FUNCTION (USERS)

It is the responsibility of line managers to ensure that the Department delivers in accordance with its strategic objectives which will include acquisition of goods and services. It will therefore be the responsibility of line managers to:

- (a) Understand and Plan for future needs;
- (b) Identify critical delivery dates;
- (c) Ensure that the necessary funds are available for goods and services to be procured;
- (d) Acquaint themselves with SCM procurement prescripts and policy and the requirements encapsulated within this SCM System so that the requirements enshrined within Section 217 of the Constitution are met, when they are involved in the procurement processes of the Department;
- (e) Develop draft specifications for areas that require technical skill and needs associated with their programme / sub-programme deliverables;
- (f) Timeously provide the SCM unit with all the necessary information to arrange for the acquisition of goods and services;
- (g) Maintain a close and co-operative relationship with the SCM unit so that the goals and objectives of the Department are efficiently and effectively met when involved in SCM activity;
- (h) Abide by the required Codes of Conduct;



- (i) Provide technical advice and make presentations to the Departmental or other Bid Committees when required to do so;
- (j) Custodian of assets under their control; and
- (k) Manage contracts and report to SCM where required.

5.5. SCM DELEGATIONS

Delegations are issued to functionaries in terms of section 44(1) of the PFMA, the Framework for SCM Regulations and the Provincial Treasury Instructions. The delegations will be reviewed on an annual basis and it does not divest the Accounting Officer from his power to retract all or any of the delegations if circumstances necessitate such a decision. The minimum standards for SCM delegations are attached hereto marked [Annexure 1](#).

An AO may, in terms of section 44 of the PFMA, in writing delegate any of the powers entrusted or delegated to the AO in terms of the PFMA to an employee in his or her institution or instruct any employee in his or her institution to perform any of the duties assigned to the AO in terms of the PFMA.

When the AO consider the delegation of powers or instructions to perform duties the following principles must apply to minimise the risks associated with such delegations or instructions:

- Delegations and instructions are within the scope permitted by the legislative framework;
- Employees are familiar with their roles and responsibilities;
- Employees possess the necessary skills and competencies to exercise the delegation or instruction;
- Effective performance management, feedback and reporting mechanisms are in place;
- Appropriate controls are in place;
- Clear directions or instructions are given and conditions set that restrict, where applicable, the exercise of delegations; and
- Delegations and instructions are reviewed regularly, as prescribed by the accounting officer for appropriateness and accuracy, particularly following policy changes.

To promote consistency and uniform application, the supply chain management system delegations and instructions must be structured in accordance with minimum standards set by the Provincial Treasury.

Any activity to be executed must be done in accordance with a delegation according to the Delegation System as approved by the AO. These delegations must indicate a person and/or a rank/designation, in writing together with relevant limitations and conditions.

No individual official should be in a position to take a decision in isolation regarding the award of a bid.

The word 'delegation' is derived from Latin; delegate meaning 'to send from', which in turn means that when delegating, work is being sent 'from' one person 'to' someone else.

Delegation is the process through which a portion of authority assigned to an official is passed on to a lower level official who in turn has the authority to deploy resources in his or her area of responsibility to execute a specific task.

In this context:

- 'Accountability' and 'Responsibility' means that the official who delegates authority remains accountable and the lower level official must be held responsible for the execution of the delegated power or authority.
- 'Centralisation' considers where the responsibility for decision-making authority is vested, i.e. the degree to which decision-making is concentrated at a single point in the organisation.
- 'Decentralisation' is when authority is widely dispersed within the organisation.
- Centralisation and decentralisation does not refer to geographical dispersion.

The delegation process is essential to every Department as this is a mechanism through which it can ensure the achievement of effective, efficient and economical service delivery by officials.

Management processes are dependent on the concept of delegation. It is therefore important that this concept and its advantages during implementation is understood by all parties involved. Some of the key advantages are the following:

- (i) Managers who allow their staff to accept more responsibilities are in a better position themselves to accept more responsibilities and higher levels of authority.
- (ii) Delegations encourage officials to exercise judgment and to accept accountability.
- (iii) Better decisions are often taken by officials who operate closer to implementation.
- (iv) Decision-making processes are quicker and enhances officials' confidence to make future decisions.
- (v) The Financial and SCM delegations must be designed to distinguish between:
 - Strategic, tactical and operational level delegations.
 - Different activity requirements in exercising a delegated power, being to initiate, process, recommend, approve, execute and monitor the execution of a delegated power.
 - Different principles guiding the appropriate delegation level, being the management impact level, post level and frequency level.
 - Whether the provision is mandatory or allows for discretion in terms of implementation.

Different risk impact levels when executing a delegated power, being, extensive, moderate or limited, including the area of impact.

SCM Delegation must be developed and maintained by the SCMU in the Office of the CFO. These delegations must be aligned to the financial delegations.

The following table is intended to assist officials with the explanation, interpretation and application of structuring SCM delegations:

Table ...: defines the content of each column of the Delegation Framework for SCM Delegations:

TERMS	DEFINITION
Item number	Each delegation has been numbered to reference the appropriate delegation.

TERMS	DEFINITION
Reference to power	This column contains the source and cryptic description of the power or authority. This column is divided into a 'mandate' and 'cryptic description of authority' column respectively.
Cryptic description of power	This column contains an extract of the power or authority as encapsulated in the PFMA, TR's, TI's and PTI's. It is organised in categories of functionality as per the Treasury Regulation sequence.
Lowest Rank/Level delegated to	An activity delegated to a specific post holder in a specific component. Note that the level of the post holder indicated is regarded as the 'lowest level' delegated to, which implies that officials holding a higher level may also exercise the power or authority, subject to the principles of <i>functus officio and rights being vested</i> (refer to discussion at Part 10)
Limitations or conditions	The execution of delegations is subject to compliance with the corresponding limitations and/or conditions. This forms part of the system of checks and balances (controls) that ensures that delegations are exercised in a responsible and accountable manner and is enforceable by law.
Remarks	Guiding information, not enforceable by law.

Failure to Comply

Should it be brought to the Accounting Officer's attention that a delegatee has failed to comply with the requirements through exercising the delegations and this resulted in an irregular, unauthorised and / or fruitless and wasteful expenditure, the following punitive action can be instituted against the delegatee/body (refer to Section 86 of PFMA):

- (a) Recover from the delegatee all expenses the Department has suffered/lost through the exercise of the delegations.
- (b) Institute the necessary steps in terms of misconduct.

5.6. SCM COMPETENCIES AND CAPACITY DEVELOPMENT MODEL

Competency Dictionaries

In consultation with the PCPO, the CFO will ensure that the following competencies exist within the SCMU namely:

- (i) Financial acumen;
- (ii) Accounting;
- (iii) Cost and economic analysis;
- (iv) Legal interpretation;
- (v) Strategic sourcing;
- (vi) Contract Management;
- (vii) Document writing and Research;
- (viii) Warehouse management where applicable; and
- (ix) Logistical and Disposal Management.

The Competency Dictionaries of the National Treasury provides guidance on the required competencies.

Training of SCM Practitioners and members of committees.

- (a) All officials involved in the Department's SCM system must be trained and deployed in accordance with the National and Provincial Treasury requirements.
- (b) In line with the PCPO SCM Capacity Development Model, it will be the responsibility of the CFO to:
 - (i) Provide guidance, training and deployment of SCM Practitioners within a Department;
 - (ii) Develop officials for a career in SCM;
 - (iii) Provide immediate training with the focus on intensive training on all elements of SCM; and
 - (iv) Provide advance training that includes specialist skills within each element of SCM.
- (c) SCM related training must be provided for:
 - (i) Senior Managers.
 - (ii) Bid Committee Members.
 - (iii) Contract Managers.
 - (iv) Practitioners who are involved in the day to day operation of SCM.
 - (v) New entrants/new appointees irrespective of the level at which they are appointed.
- (d) The CFO must ensure that service providers training materials are relevant and where applicable accredited by the relevant authority/Provincial Treasury.
- (e) As per the PCPO Capacity Development Model, SCM practitioners must have a phased-in training strategy which covers short term (basic SCM), medium term (training on all elements of SCM and training on specialist skills) and long term (formal diploma and degree courses at tertiary Departments) requirements.

Training needs assessment

- (a) A training needs assessment of all those officials involved in SCM activities will be done on an annual basis by the SCM Unit of the Department. Such assessment must cover all the disciplines within SCM but specifically focusing on procurement planning and procurement processes. The PCPO will guide the process.
- (b) Based on the training needs assessment the CFO must identify the appropriate training interventions to address the identified needs. The interventions may amongst others include:
 - (i) person to person training;
 - (ii) training via short courses through bodies like the Provincial Treasury, and/or outside service providers;
 - (iii) formal training via tertiary institutions.

6. SCM COMMITTEE SYSTEM

6.1. PCPO BID COMMITTEES

The Provincial Government adopted a hybrid SCM Delivery Model, *inter alia* providing for the following in relation to Infrastructure and Construction Procurement and Transversal Contracts:

Infrastructure Procurement - Departments

- Centralised Treasury norms, standards, capacity development, enforcement and bid committee process
- Decentralised Departmental planning, budgeting, execution, management and maintenance via DPWR.

Infrastructure Procurement – Municipal and Entity

- Centralised Treasury norms, standards, capacity development and enforcement
- Decentralised Municipal and Entity planning, budgeting, execution, procurement and bid committee process, management and maintenance

Transversal Contracts

- Centralised Treasury norms, standards, capacity development, enforcement, procurement, bid committee process, management and maintenance
- Decentralised Departmental/Municipal and Entity utilisation

Giving effect to the above, the Bid Committee process for Transversal Contract Procurement will be facilitated by the Provincial Treasury and for infrastructure procurement, if so requested by the relevant User Department.

The relevant Bid Committees will be structured as follows:

6.1.1. TRANSVERSAL CONTRACTS

6.1.1.1. PRINCIPLES

The National Treasury must facilitate the arrangement of all transversal term contracts for goods or services that have been designated by the National Treasury as being transversal in nature.

A provincial treasury may, after consultation with the National Treasury, facilitate the procurement of a transversal term contract for goods or services for provincial institutions in the province other than for goods or services for which a transversal term contract has been concluded by the National Treasury.

Procurement in terms of transversal term contracts must -

- (a) be in accordance with a system as approved by the National Treasury which must, as far as practically possible, be similar to the system prescribed in this Chapter for competitive bids; and
- (b) follow a strategic sourcing methodology and leverage buying power to achieve economies of scale.

When required by the relevant treasury for purposes of facilitating a transversal term contract, the accounting officer or accounting authority participating in a transversal term contract must, in writing, appoint the required

number of employees from the institution who have the required expertise to serve on the relevant bid committees.

The accounting officers and accounting authorities of all Departments, constitutional institutions and 3A and 3C public entities must participate in transversal contracts applicable to the institution, unless the relevant treasury has exempted the institution from such participation.

The relevant treasury must provide institutions with a list of goods or services, no later than six months before the commencement of the next financial year, that are proposed to be procured in the next financial year through transversal term contracts in order to determine the extent of the need for such goods or services that may be provided for in such contracts.

- (a) After goods or services have been procured through a transversal term contract, the accounting officer or accounting authority of a participating institution must ensure that, where appropriate, a service level agreement is entered into between the supplier and the institution before any goods or services are ordered in terms of the contract.
- (b) The provisions of the service level agreement must be consistent with the terms and conditions of the relevant transversal term contract.

The bidding process will be managed through cross functional teams and bid committees that will be responsible for the development and compilation of specifications, and the evaluation and adjudication of bids.

The cross-functional team will be constituted with officials from the various participating government institutions and will be responsible for amount others, the drafting of the terms and conditions of contracts, industry and end user analyses through strategic sourcing and the compilation of bid documentation.

6.1.1.2. BSC

A Bid Specification Committee (BSC) will be constituted with officials from the various participating government institutions. The accounting officer may appoint officials with the necessary technical expertise and external advisors to serve on the BSC. The role of the committee will be to compile bid specifications.

6.1.1.3. BEC

The Bid Evaluation Committee (BEC) will be constituted with officials from the various participating government institutions, duly appointed by their respective accounting officers/authorities. External advisors may be appointed to offer expert advice but are prohibited from participating in the final decision making. This committee will be responsible for the evaluation of all bids received.

6.1.1.4. BAC

The Bid Adjudication Committee (BAC) will be constituted with officials from the various participating government institutions, duly appointed by their respective accounting officers/authorities. It will have a status of a standing

committee with appointed members serving as permanent members. The BAC will be responsible to adjudicate bids.

6.1.1.5. SECRETARIAT

The secretariat will be constituted by the PT: PCPO and will have the same role and functions as stipulated for the TC Secretariat below.

6.1.1.6. ROLE OF INSTITUTIONS

For purposes of a transversal term contract, accounting officers/authorities will be responsible for the following:

- Needs identification and committing expenditure through demand and procurement planning over the medium term.
- Submission of accurate procurement plans,
- Determination and designing of technical specifications and estimated quantities,
- Where necessary determination of special conditions of contract,
- Other relevant requirements for the compilation of bidding documentation,
- Appointment of Department representatives to various committees,
- Where applicable, managing service level agreements,
- Managing supplier relationships, monitoring supplier performance and report any non-compliance to the Provincial Treasury for corrective action, and
- Order placement, goods of service receipt and on-time supplier payment.

The role and responsibility of the Provincial Treasury will be to facilitate the processes of putting together a transversal contract as summarised below:

- Setting the policy, norms and standards for facilitation of transversal contracts,
- Coordination of the establishment/constitution of bidding committees, their conduct, their powers and functions, meeting procedures, tenure and delegations,
- Regulating the entire public procurement system to ensure uniformity in policy application,
- Coordinate the composition of cross-functional teams for transversal contracts,
- Facilitates the acquisition and bidding processes through invitation and receiving of bids at closing dates and time and ensuring that due process is observed,
- Coordinate and provide secretarial service to the bidding committees during specification, evaluation and adjudication meetings,
- Award contracts and publish results on the website,
- Administer transversal contracts post award by managing contract amendments and attending to complaints,
- Supplier development and monitoring supplier performance in conjunction with accounting officers/authorities,
- Facilitate the processing of cases of non-compliance and corrective action, and

- Coordinates and takes lead in litigation processes.

Provincial Treasury will coordinate the composition of cross-functional teams for transversal contracts. The cross-functional team will be responsible for the following:

- Drafting of terms and conditions,
- Industry and end user analysis through strategic sourcing, and
- Compilation of the bid documentation.

6.1.2. PCPO INFRASTRUCTURE PROCUREMENT

Infrastructure and construction procurement will be executed as per SCM TR chapter 9 read with the IDMS (NTI 4 of 2015/2016) as well as the Departmental SCM System, Volume 9. In the event that the User Department wishes to use the services of the PT: PCPO to facilitate the Bid Committee process for infrastructure or construction procurement, the AO must submit a request to the Head Official of the Provincial Treasury. The Department of Local Government and Human Settlements are utilizing transfer funding from National Department of Human Settlements to construct low cost housing which in turn is transfer to the beneficiary or the relevant municipality after completion, therefore are not the custodian of any immovable assets.

6.1.2.1. DOCUMENTATION REVIEW TEAM [DRT]

The Accounting Officer of the Department of Human Settlements shall utilise the Specification Committee who comprises of technical experts on all infrastructure procurement elements of the Department and if necessary include from time to time officials with appropriate technical knowledge in the relevant commodities being procured as well as seniority in the organisation. All Bid Committees appointed by the Accounting officer will be appointed for a period of one-year or an Ad-hoc committee for specific tenders to be invited.

The Specification Committee shall, as necessary, review the procurement documents with a view to confirming that:

- a) the procurement documents have been formatted and compiled in accordance with the requirements of ISO 10845-2 and the CIDB Standard for Uniformity in Construction Procurement and NHBRC (which are applicable for the specific bid) are aligned with the approved procurement strategy and the relevant preferential procurement policy;
- b) appropriate prompts for the judgement are included in procurement documents in accordance with the requirements of ISO 10845-1 whenever quality is evaluated and scored in the evaluation of calls for expressions of interest or tender offers;
- c) the selected form of contract in the case of a tender that is solicited is in accordance with the IDMS requirements and the standard templates have been correctly applied;
- d) the AO's approval has been obtained for additional clauses or variations to the standard clauses in the conditions of contract, conditions of tender or conditions for the calling for expressions of interest, as relevant, not provided for in the institution's approved templates;

- e) the selected submission data in the case of a call for an expression of interest or tender data and contract data options in the case of a tender are likely to yield best value outcomes;
- f) the scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided;
- g) the submission or returnable documents are necessary and will enable submissions to be evaluated fairly and efficiently; and
- h) the risk allocations in the contract and pricing data are appropriate.

The Documentation Review Team, in the case of a task, batch or package order, shall confirm that:

- a) the standard templates have been correctly applied;
- b) approval from the designated person has been obtained for additional clauses or variations to the standard clauses in the conditions of contract not provided in the institution's approved templates or the contract;
- c) the scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided;
- d) the provisions for competition amongst framework contractors, if relevant, and the selected options are likely to yield best value outcomes; and
- e) the risk allocations are appropriate.

The Documentation Review Team shall identify sections, if any, which require amendments or improvements, and refer back to the originators of the document or recommend to proceed. The originators of the documents shall resubmit revised documents for the approval of the Documentation Review Team.

The Documentation Review Team shall after recommending the necessary approvals prepare a brief report which

- a) lists the names and qualifications of the team members;
- b) confirms that the documents are in accordance with the requirements of this standard; and
- c) captures any comments or opinions which the team may wish to express.

The Tender Secretariat shall retain a copy of the Documentation Review Team report and recommendation to proceed for record keeping and audit purposes.

6.1.2.2. IBEC (Not applicable to the Department of Human Settlements)

The Accounting Officer of the User Department or PT: PCPO (if applicable) shall constitute an Infrastructure Evaluation Committee comprising the persons identified officials with appropriate technical knowledge in the relevant commodities being procured as well as seniority in the organisation. A standing IBEC may be appointed for a period of one-year or a Committee per batch of tenders to be evaluated.

The relevant BEC shall:

- a) negotiate contracts where the negotiation procedure is applied and the value of the contract inclusive of VAT is above the threshold for quotations;

- b) evaluate submissions for calls for expressions of interest;
- c) evaluate tenders received where the competitive selection or competitive negotiation procedure is applied and the value of the contract inclusive of VAT is above the threshold for quotations; and
- d) evaluate quotations from contractors who compete for the award of a task, batch or package order.

Any official who is not an official of the User Department shall confirm in writing that they will conduct themselves during the evaluation in accordance with the requirements for Bid Committee members and sign a confidentiality agreement before commencing with any evaluation of submissions.

All communications with respondents and tenderers during the procurement process to obtain information and clarifications shall be made in writing through the Tender Committee Secretariat after instruction from the relevant IBEC. Records of all communications in this regard shall be made and retained by such persons for auditing purposes.

Quality/Functionality shall be scored in terms of the prompts for judgement (see ISO 10845-1), either individually and averaged or collectively as appropriate.

The IBEC shall:

- a) require each of its members to declare their interest or confirm that they have no interest, prior to commencing with the evaluation;
- b) evaluate submissions following a call for expressions of interest or tender offers in accordance with the provisions of the procurement documents (see Annex C of ISO 10845-3 and Annex C of ISO 10845-4, as relevant).
- c) confirm, where relevant, that respondents / tenderers are in possession of the required CIDB contractor grading designations by confirming their active status on the CIDB website and that they are in possession of the required contractor grading designation;
- d) confirm that respondents / tenderers tax matters are in order;
- e) confirm that tenderers or their principals are not prohibited from participation in the public procurement system by confirming that their names do not appear on National Treasury's List of Restricted Suppliers or the Register of Tender Defaulters; and
- f) confirm that tenderers are registered on the Central Supplier Database.

Evaluation ratings and selections shall be made on the basis of the material requested and included in the submission and not on speculation, suspicion or personal knowledge of a panel member.

The IBEC shall record their scores for quality/functionality against each of the criteria during the process of evaluation, preferably with notes to substantiate the scores. Individuals shall record their own markings on a separate sheet. These documents shall be placed on file as an audit trail leading up to the decision and may form the basis of any debriefing that takes place.

The IBEC shall prepare evaluation reports in accordance with guidelines provided in Tables 5 or 6 of the IDMS (Volume 9) with modifications as necessary where a two envelope, two stage process or competitive negotiation procedure is followed.

DBAC

The Accounting Officer of the User Department or PT: PCPO (if applicable) shall constitute an Departmental Bid Adjudication Committee [DBAC] comprising identified senior management officials with appropriate technical knowledge in the relevant commodities being procured as well as seniority in the organisation. A standing DBAC will be appointed for a period of one-year.

Minutes of all the formal meetings of this committee shall be kept.

The DBAC shall meet whenever the chairperson deems necessary. A quorum for a meeting shall be fifty percent plus one of the members.

All DBAC decisions shall be made on the basis of consensus.

The DBAC shall approve or refer back the items submitted for recommendation for approval to the originator and, where required, convey their decisions to the relevant Accounting Officer/Programme Manager. A copy of the decisions shall promptly be forwarded to designated persons.

The DBAC review the reasons submitted for the use of the negotiated procedure in an emergency and either recommend acceptance of rejection and communicate their decision to the designated persons.

Table ...: Mandates of DBAC:

Item for recommendation	Actions
Names of pre-qualified or short listed respondents or approved list of respondents.	Review evaluation report, verify compliance of the procurement process with the requirements of the CIDB Standard for Uniformity in Construction Procurement and NHBRC and the institution's policies, and confirm the integrity of the process and the reasonableness and correctness of reasons provided for the elimination of respondents. Approve or refer back.
Recommendation to award a contract	<p>Consider the report and recommendations (tender evaluation report) of the BEC for all tenders and:</p> <ul style="list-style-type: none"> • verify compliance of the procurement process with the requirements of this document; • confirm the integrity of the process; and • confirm the reasonableness and correctness of reasons provided for the elimination of tenderers <p>Consider commercial risks and identify any risks that have been overlooked and warrant investigation prior to taking a final decision.</p> <p>Consider the approval amount submitted in the Tender Evaluation Report</p> <p>Refer back to evaluation panel or make a recommendation to award the contract (or not), with or without conditions, to the delegated authority.</p>
Recommendation to amend the provisions of a contract	Consider a report recommending the amendment of a contract and make a recommendation to the designated person if the proposal is supported.
Removal of a name from a pre-approved list or electronic data base	Review motivation for removing a name and approve / not approve the removal of the name from the list or electronic data base.

Item for recommendation	Actions
Unsolicited proposal	Review unsolicited proposals and make a recommendation to the designated person on how to proceed with the proposal.
Use of a negotiation procedure in an emergency	Recommend ratification of the use or not of the procedure in an emergency.
Use of proposal procedure or the approaching of a confined market	Recommend approval of a proposal procedure using the two-envelope system or the two-stage system or the approaching of a confined market if not already provided for in the construction procurement strategy developed in accordance with the CIDB Practice Guide 2.
Waiving of penalties	Consider the motivation for and the circumstances surrounding the waiver of penalties and low performance damages and recommend to approve / not approve waiver.

The Chairperson of the DBAC may, where urgent decisions are motivated and required by a designated person which cannot be held over to the next meeting, circulate the papers to members and request that written votes be submitted by a deadline. A unanimous approval by a quorum of members made by the stipulated deadline shall be deemed to be a resolution of the DBAC. Decisions so taken shall be ratified at the next meeting of the DBAC.

6.1.2.3. SECRETARIAT

The Secretariat will be appointed by the relevant AO, as the case may be, and will have the same functions as the TC Secretariat stipulated below.

6.2. DEPARTMENTAL BID COMMITTEES FOR GENERAL GOODS AND SERVICES

National Treasury Regulations stipulates that a Department's SCM system must, *inter alia*, provide for the adjudication of bids through a bid adjudication committee, the establishment, composition and functioning of bid specification, evaluation and adjudication committees and the selection of bid adjudication members:

The effective functioning and performance of these committees is critical to the Accounting Officer's mandate which is to ensure a fair, equitable, open, cost-effective and competitive system.

The SCM Committees, specifically the Bid Specification, Bid Evaluation and Bid Adjudication Committees are involved in the decision making processes which lead to the award of Departmental bids above **R500 000**.

It is therefore crucial that the Accounting Officer ensures that good governance principles is adhered to, prevent potential bias in the selection of committee members, as well as ensure that sound institutional memory is applied in the award of high value purchases.

Accounting Officers are encouraged to appoint standing bid committee members, as the continuous appointment of members to the different committees per bid or per programme manager, compromise compliancy issues and extend the turnaround time of awarding contracts/ bids.

It would be more effective to identify standing committee members who will attend ALL meetings and identify technical members, i.e. officials who are sufficiently conversant in the technicalities of certain commodities, to attend as members when such commodities are present.

At least 50% + 1 of members, of which at least one has appropriate technical knowledge of the commodity to be procured, must be present when committees execute their functions.

6.2.1. BID SPECIFICATION COMMITTEE [BSC] FOR GENERAL GOODS AND SERVICES

Definition: The term specification is defined as: "A document that states the requirements to which a given product or service must conform."

Purpose of the BSC: To determine Bid Specifications or Terms of Reference, the bid evaluation/adjudication criteria and matters related thereto.

Tasks of the BSC:

- Recommend approval of compiled Bid Documentation Pack.
- Determine Tender Strategy.
- Compile Specifications/Terms of Reference.
- Consider 'special conditions'.
- Compile functionality evaluation criteria and weights.
- Consider risks.
- Consider contract requirements.

Roles and responsibilities of BSC members:

- To compile specifications/Terms of Reference for bids at the Department in an unbiased manner to allow all potential bidders to offer their goods, and services.
- To determine the relevant tender strategy per tender or commodity, to ensure a strategic approach to tendering in respect of the procurement method to apply as well as the application of the relevant preferential procurement targets.
- To identify and include the relevant functionality evaluation criteria and weights.
- To consider and mitigate risks emanating from bids.
- To consider the contractual arrangements relevant to each bid.
- To recommend the compiled bid documentation pack for approval by the relevant delegated authority.

Establishment of BSC:

The SCM Unit shall be responsible to facilitate the establishment of the Bid Specification Committee[s] in a timely fashion through the relevant management structures.

The member(s) of the Committee must be appointed in writing and the Bid Committee Secretariat must retain a copy of such appointment letters. *An appointment letter template may be developed for this purpose.*

Composition of BSC:

The BSC should comprise of suitably qualified persons who are conversant with all aspects of the work

Knowledgeable representatives from other Departments or government institutions may be included in these committees, where relevant. If such officials are identified, they must be appointed by that Department's AO in consultation with the Manager: SCM.

Minimum Specifications/Terms of Reference must include the following, where applicable:

Table: Checklist to confirm completeness of specifications/terms of reference:

ISSUE	TENDER INPUT
(i) Description of the requirement	
(ii) Background.	
(iii) Objective of the project, where applicable.	
(iv) Quantity/volume applicable.	
(v) Plans and drawings that reflect the text of the specification. <i>(Please note, that the order of precedence between the drawings and the specifications should be specified.)</i>	
(vi) Minimum performance requirements.	
(vii) Expected outcomes/deliverables.	
(viii) Evaluation criteria including the ratio of points as applicable and the quantification thereof.	
(ix) The particulars pertaining to the goal to be met, where applicable.	
(x) The delivery date(s), place(s) of delivery and/or the contract period applicable. In the case of period contracts a period of time for completion of the contract must always be prescribed in the relevant bid documents. This period of time must also be precisely stated, e.g. "contract period: 24 months". Statements such as "within x months" or "before x months" must not be used.	
(xi) Schedule for service delivery or completion date.	
(xii) Shelf life, where applicable.	
(xiii) Packaging, where applicable.	
(xiv) Whether installation/erection is required and if affirmative, an indication of the place/address where the installation/erection is to take place.	
(xv) Whether demonstration/training is required and if affirmative, an indication of the place/address where the demonstration/training is to take place.	
(xvi) Whether a performance guarantee is required. Full particulars, amount and reasons must be given. Performance guarantees should be commensurate with the degree of contractual risk to which the Department is exposed and are normally applicable to large and complex contracts. Performance guarantees should spread the cost of the risk of failure between the contracting parties and should be set at such a level that all municipal costs relating to such failure are likely to be recovered.	
(xvii) The warrantee requirement and period applicable (time period, parts and labour, onsite service and repair, extended warranty)	
(xviii) Whether samples must be submitted and whether the samples must be tested before the	

ISSUE	TENDER INPUT
award of the contract. Reasons for testing should be given.	
(xix) Where samples are to be submitted, the special conditions should state that samples must be submitted not later than the closing time or the date and time specified in the bidding documents.	
(xx) Indicate inspection, testing, analysis, standards or method requirements, where applicable. Where tests, inspections and analyses are a bid condition, the bid documents should specify that the premises of the bidder should be open at all reasonable hours for inspection by a representative of the Department acting on behalf of the Department.	
(xxi) Price particulars applicable.	
(xxii) 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.	
xxiii) 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 reimbursable route are recorded for auditing purposes.	
xxiv) Indicate in the case of capital goods, whether foreign export credit facilities should be utilized.	
(xxv) Competency and expertise requirements.	
(xxvi) Reporting requirements, where applicable.	
xxvii) Available documentation pertaining to the specific project, where applicable.	
xxviii) Detailed product requirements (materials used, colour, horsepower, minimum and maximum parameters)	
xxix) Detailed service requirements (what must be provided, what service performed)	
(xxx) Performance requirements (what must it do, how is the work performed)	
xxxi) Product certifications, professional licenses or required training	
xxxii) "Build inspection" at manufacture's facility during production	
xxiii) Any space or weight restrictions	
xxiv) Who handles the installation	
xxxv) What utilities are available	
xxvi) Training requirements, instructional and maintenance materials such as manuals or DVD's	
xxvii) Delivery instructions	
xxviii) When and where is it needed	
xxix) Responsibilities (who hooks up the utilities, removes debris, disposes of the old equipment)	

IMPORTANT NOTE: Do not specify make and model number except where it relates to Original Equipment Manufacturers and can have an impact on warranties and legal requirements OR where the Department, via policy mandates standardised on certain goods.

Contract considerations which the BSC must consider are as follows:

CONTRACT MANAGEMENT AND ADMINISTRATION COMPLIANCE CHECKLIST		REMARK
1.	Acceptance criteria	
2.	Communication and relationship management	
3.	Completion and renewal arrangements	
4.	Continuous improvement	
5.	Contract changes and variations	
6.	Contract deliverables	
7.	Contract management meetings	
8.	Data and information management	
9.	Dispute resolution processes	
10.	Ethical conduct	
11.	Financial management	
12.	Governance structures	
13.	Inspection and testing procedures	
14.	Insurances	
15.	Key success factors or performance indicators	
16.	Payment milestones	
17.	Performance monitoring and reporting, including PPPFA conditions	
18.	Quality assurance practices	
19.	Risk management	
20.	Schedule management	
21.	Statutory and regulatory requirements	
22.	Training	
23.	Warrantees	

In order to determine the relevant tender strategy as per the Provincial Preferential Procurement Policy targets, the BSC needs to consider the following, depending on the supply industry, past trends and value of tender:

- (i) Application
- (ii) Utilisation of databases and rosters
- (iii) Unbundling
- (iv) Targeting
- (v) Payment cycles
- (vi) Performance guarantees/Securities
- (vii) Contract management (self-policing contracts)
- (viii) Skills development
- (ix) CSD
- (x) BBBEE: All contracts up to R 50 000 000 must be evaluated in line with the 80/20 system and all contracts above R 50 000 000 must be evaluated on the 90/10 system.

BID SELECTION COMMITTEE

Role of the Bid Selection Committee

- To acquaint itself with the terms of reference as set out by the Bid Specification Committee and
- To select service providers/contractors from the existing pre-qualified contractor's data base in line with the sourcing strategy or the criteria agreed upon by the committee.

- The committee will be comprised of officials duly delegated by the Accounting Officer.
- The Selection committee is not mandatory but a means of mitigating potential conflict of interest and/or segregation of duties on the part of Specification committee which otherwise would be responsible this function.

6.2.2. BID EVALUATION COMMITTEE [BEC] FOR GENERAL GOODS AND SERVICES

Definition: The term **evaluation** is defined as: *"The critical assessment, in as objective a manner as possible, of the degree to which a service or product or its component parts fulfils stated goals. The focus of this definition is on attaining objective knowledge, and scientifically or quantitatively measuring predetermined and external concepts."*

Purpose of the BEC: To evaluate bids received and matters related thereto according to the evaluation criteria specified for the specific bid.

Roles and responsibilities of BEC members:

- To evaluate all formal bids received as per PPPFA Regulations 2011 and relevant case law, on (i) acceptability; (ii) functionality; (iii) price and preference and (iv) additional objective criteria.
- To evaluate offers received within the delegated threshold.
- To ensure that evaluation is done in accordance with the criteria specified in the bid documentation.
- Consider additional objective criteria.
- Consider own conditions set by bidders.
- Consider materiality of non-compliance to requirements.
- Verify validity of claims/declarations.
- Consider potential risks and make recommendations for mitigation.
- Consider additional contractual issues.
- Consider presentations (if part of procurement process).
- To submit a report and recommendations regarding the award to the Bid Adjudication Committee for consideration and recommendation.
- As and when required, present their reports to the Bid Adjudication Committee to clarify uncertainties. **NOTE:** Such members shall not have any voting power on the Bid Adjudication Committee and the attendance register must clearly identify their role at the meeting.

Establishment of BEC:

The delegated authority in conjunction with the SCM Unit shall be responsible to facilitate the establishment the Bid Evaluation Committee in a timely fashion.

The BEC must be established before the closing date of the bid(s).

As part of the bid evaluation pack, each member should declare its interest and confirmation of confidentiality,

Section 1
in writing, pertaining to the specific bid in question.

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Should an interest be declared which constitutes a conflict and is regarded as material by the BEC Chairperson, the member must recuse him/herself as a member of the Committee.

The SCM Unit in conjunction with the delegated authority must then appoint a replacement member to the Committee if the remaining size of the Committee is not regarded as representative enough to proceed.

The SCM Unit is responsible to ensure that the secretariat service is rendered to the Committee.

Composition of BEC:

The delegated authority must, in conjunction with the SCM Unit and other relevant stakeholders, identify the appropriate persons to serve on the Bid Evaluation Committee. The rank of the officials must be appropriate in order to ensure that at least one Senior Manager can be chosen as chairperson.

Always ensure that sufficient technical expertise (financial, legal and commodity specific) as well as supply chain expertise is represented on the Bid Evaluation Committee.

The Bid Evaluation Committee should be cross-functional and should comprise of supply chain practitioners and officials from the user division requiring the goods or services.

If considered necessary, additional officials may be appointed with suitable expertise from other divisions/institutions with voting rights. If external experts/consultants are involved, they can only act in an advisory capacity with no voting rights. Such experts must provide a final written report within 5-days after the relevant committee meeting.

The member(s) of the Committee must be appointed in writing and the Bid Committee Secretariat must retain a copy of such appointment letters. *An appointment letter template may be developed for this purpose.*

BEC Competencies:

The BEC members must over and above the relevant SCM expertise and the representative of the user Department, also represent the following skills:

- Procurement expertise for the relevant commodity.
- Sufficient technical expertise.
- Additional technical expertise, such as legal, financial, etc. as required may be co-opted.
- Specialist expertise on the subject matter where relevant may be co-opted.

Evaluation steps:

As per the latest case law being ***Rainbow Civils CC v Minister of Transport and Public Works, Western Cape 2013 ZAWCHC 3 (6 February 2013)*** each tender must be evaluated in the following 4 phases:

BEC Evaluation	Phase A	Acceptable tender as per PPPFA section 1 - Compliance with conditions and special conditions, legislative and legal requirements and minimum
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process following a phased approach		specifications.
	<i>If responsive move to</i>	
	Phase B	Functionality scoring – must meet threshold requirements as per PPPFA Regulations 4
	<i>If responsive, move to</i>	
	Phase C	Price and Preference scoring, as per PPPFA Regulations 5 or 6
	<i>Once scored and listed in order of points, move to</i>	
	Phase D	Phase D – Consideration of additional objective criteria as per PPPFA section 2(1)(f)
<i>Highest points = successful bidder, unless additional objective criteria exists</i>		

Each evaluator should check whether the information received from the Secretariat is correct and ascertain for him/herself that all the information and facts contained in each bidding document, this includes the preference points score sheet is correct.

Bid Evaluation Committee members shall:

Discuss the strengths, weaknesses and peculiarities of each offer.

Agree as committee on the scoring mechanism – either individual scoring and then average score or group discussion and joint agreement on score. *Important to note that scoring mechanism must agree with process described in tender documents.*

Score the bids received according to pre-determined evaluation/adjudication criteria, and demonstrate application of mind and the justification for passing over offers. The reasoning must be clearly documented and justifiable to the action/decision taken.

All discussions of each bid as well as the recommendation must be recorded in a recommendation report that must be signed off by the Chairperson of the Bid Evaluation Committee.

Evaluations are primarily based on consensus decisions.

The final recommendation report must be submitted to the Bid Adjudication Committee for consideration.

Bidders may be requested to clarify any ambiguities and/or information that are unclear or illegible. Where this happened it must be facilitated by the SCM Unit, reduced to writing and kept for record purposes.

Format of the recommendation report

Recommendation/submissions to the Bid Adjudication Committee must be clear regarding the content and purpose of the matter for which consideration and approval is desired. Facts must be set out fully and clearly in the submission and reference must be made only to those portions of the attached documents, which are directly related to the approval being requested.

The following minimum information per bid is required:

Table ...: Typical BEC report:

Section		Typical content
1	Summary	<p>Provide an overview of the parameters associated with the expression of interest, preferably in tabular form, including the following:</p> <ul style="list-style-type: none"> • Contract / project no. • Contract / project description • Purpose bid • Media in which advertisement was placed • Advertisement date • Estimated value of bid • Date from which documents were available • Number and title of addenda issued • Closing date • Details of clarification meeting including date and place, if any • Number of submissions made
2	An overview of the evaluation process	<p>Provide an overview of the procurement process indicating the eligibility criteria that was applied. State points relating to evaluation criteria and weightings relating thereto.</p> <p>Reproduce the list of returnable documents.</p> <p>Provide an overview as to how the functionality aspects of the submissions were scored.</p> <p>Record that those involved in the evaluation of tenders have no conflicts of interest or have declared any conflict of interest that they may have and the nature of such conflict.</p>
3	Evaluation process	<p>3.1 Submissions received</p> <p>List the submissions that were received.</p> <p>Describe any noteworthy events regarding the opening of tender submissions e.g. the returning of late tenders, the manner in which a single tender received was handled, the withdrawal of tenders and the declaring of tenders non-responsive on the grounds that they were not received in the prescribed manner.</p> <p>3.2 Completeness of submissions received</p> <p>Compare submissions received against list of returnable documents. State if any submissions were incomplete and outline how clarifications were obtained.</p> <p>Confirm if respondents took into account addenda, if any, in their submission</p> <p>3.3 Responsiveness of respondents</p> <p>Identify which of the submissions received may be regarded as non-responsive and provide clear reasons for declaring respondents to be non-responsive.</p> <p>3.4 Evaluation of submissions</p> <p>Record the manner in which submissions were evaluated, reflecting on each stage as follows:</p> <ul style="list-style-type: none"> ➤ Acceptable bid (PPPFA Definition section 1) ➤ Functionality score (PPPFA Regulation 4)/Local Content score (PPPFA Regulation 9) – <i>if applicable</i> ➤ Price and preference score (PPPFA Regulation 5 or 6) ➤ Additional objective criteria (PPPFA section 2(1)(f)) <p>Record, where relevant, and preferably in a tabular form the scores for each of the evaluation criteria and the total score (highlighting those who failed to score above a functional threshold, if any).</p> <p>3.5 Reasons for disqualification on the grounds of corrupt or fraudulent practice</p> <p>State reasons if applicable.</p> <p>3.6 Additional recommendations for conditions to award</p> <p>Make recommendations for 'conditional awards' where a preferred bidder may pose any risk, refer to discussion below this table.</p>
4	Tender recommendation	<p>Make a recommendation for the outcome of the process e.g. admit to a data base or prequalify / shortlist respondent to be invited to submit tender offers</p>
5	Confirmation of recommendations	<p>Make provision for the confirmation or amendment of the recommended action – i.e. Draft BAC Resolution</p>

Information that must be supplied with recommendations for the award of bids:

The Bid Evaluation Committee must ensure that they are in possession of all relevant information so that accountable decisions can be taken. Since each case is unique, it is not possible to specify all the information, which must be supplied. However, the following points must be addressed when they arise:

- (i) Qualification of Departmental conditions by the Bidder.
- (ii) Substitution of a tender condition with a Bidder's own conditions.
- (iii) When bidders do not withdraw conditions upon request to do so, which are unacceptable or conflicting, reasons must be provided for those conditions to be considered; alternatively the Bidder must be passed over. When such conditions have financial implications or their withdrawal implies a second chance to bid, the facts must be pointed out to the Bid Adjudication Committee.
- (iv) Small acceptable deviations - The Bid Evaluation Committee must be convinced that other bidders' competitiveness is not adversely affected by the acceptance of a bid, which is not strictly to specification.
- (v) Increase of prices before validity lapses - Such cases must be pointed out to the Bid Adjudication Committee so that it may decide what action to take against the bidder concerned.
- (vi) Reduction of prices before validity lapses - A reduction of prices and the effect thereof on the award of bids must be brought to the attention of the Bid Adjudication Committee.
- (vii) Passing over higher scoring bids - Reasons for passing over higher scoring bids must be accountable and justifiable. For instance, it is not enough to indicate that the offer deviates from specification. It must be indicated what was specified, a description of the deviation must be given and the effect of the deviation on the use/operation of the item must also be pointed out.
- (viii) Reasonableness of prices - Where the reasonableness of prices cannot be substantiated or where the weighting of non-firm prices has an effect on the priority order of recommendations, all relevant information must be gathered and made available to the Bid Adjudication Committee.
- (ix) Multiple awards - If a contract has to be awarded to multiple bidders, full reasons for such award must be supplied and the basis of the split must be provided as well as the conditions which will apply.
- (x) Evaluation of samples - When an item is rejected because samples have been evaluated and do not measure up to the required standards, it must be pertinently stated in the recommendation that the product has been tested, which Department tested it and the details of the deviations and their effect on the use/operation of the product must be indicated.

Consideration of additional information:

Should a conditional discount be offered, it could be taken into account when the contract has been awarded, but not beforehand.

Communication with bidders after the closing period but before the bid is awarded, must be done in an open and transparent manner.

During the period of time between the closing time of a bid and the date of notice of acceptance to the successful bidder, communication regarding matters in connection with the quotation/bid, between any official



or a representative of a Department or a person acting in an advisory capacity for the Department and a member of the public, should take place only with the express prior approval of the relevant delegated authority and via the SCM Unit (*one point of entry and exit*).

6.2.4. BID ADJUDICATION COMMITTEE [BAC]

Definition: The term **adjudication** is defined as: "*The legal process... to make recommendations enabling the delegated authority to come to a decision which determines rights and obligations between the parties involved.*"

Purpose of the BAC: To make a final bid recommendation and matters related thereto.

Roles and responsibilities of BAC members:

- To consider the report and recommendations made by the Bid Evaluation Committee.
- To assess the process followed in making the recommendation to ensure that the SCM policy and all relevant legislation and prescripts have been complied with in full.
- Consider additional objective criteria.
- Consider potential risks and make recommendations for mitigation.
- Consider contractual issues.
- To obtain clarity from members of the Bid Evaluation Committee if required.
- To comment on the recommendations made and forward it together with the report to the Accounting Officer or delegated authority, who shall finally award the contract.
- To refer the recommendation back to the Bid Evaluation Committee if they do not agree with the recommendation in order to endeavour to sort out the differences if they are process related.

Establishment of BAC:

The Department shall have a standing BAC for both general goods and services as well as for infrastructure tenders.

The SCM Unit shall be responsible to facilitate the establishment of the Bid Adjudication Committee in line with the delegations.

The delegated officials shall be identified by rank in the delegation framework.

The member(s) of the Committee must be appointed in writing and the Bid Committee Secretariat must retain a copy of such appointment letters. *An appointment letter template may be developed for this purpose.*

Alternative members shall be identified and appointed in writing and alternative members, when attending a meeting, shall have the same powers as full time members.

Predetermined meetings at regular intervals shall be held.

Before the start of each meeting, each member must declare their interest in writing pertaining to the specific

Should an interest be declared which constitutes a conflict or is regarded as material, the member must recuse him/herself as a member of the Committee. The SCM Unit must then identify a replacement member (alternative) for the Committee if the Committee does not have a quorum to proceed.

The SCM Unit shall timely route the recommendations to the Committee for consideration.

The SCM Unit shall perform secretariat functions for the Committee meetings.

Composition of BAC:

The SCM Unit must, in conjunction with Accounting Officer and other relevant stakeholders shall:

- Identify the appropriate members to serve on the Bid Adjudication Committee. The identified members must be senior officials (in majority) ranked at Senior Manager Level or higher.
- Ensure that sufficient financial expertise as well as supply chain expertise as well as technical expertise is available to advise or support the Bid Adjudication Committee.

The member(s) of the Committee must be appointed in writing and the Bid Committee Secretariat must retain a copy of such appointment letters. *An appointment letter template may be developed for this purpose.*

The BAC should comprise of suitably qualified persons who are conversant with all aspects of the work conducted by the Department.

If considered necessary, additional officials may be appointed with suitable expertise from other divisions/institutions with voting rights. If external experts/consultants are involved, they can only act in an advisory capacity with no voting rights. Such experts must provide a final written report within 5-days after the relevant committee meeting.

No member of the BEC may be a member of the BAC.

BAC process:

The Bid Adjudication Committee must carry out the adjudication and recommend the award of bids to the AO or his/her delegated authority. The recommendation could be referred back to the Bid Evaluation Committee for justifiable reasons for reconsideration and resubmission to the BAC.

The SCM Unit's representative or a designated member from the BEC, if so requested, must present the Bid Evaluation Committee's recommendation report to the Bid Adjudication Committee for consideration.

The Bid Adjudication Committee will resolve on the matter as per the Resolution template, attached to the BEC Report.

Any queries and answers as well as the decision of the Bid Adjudication Committee must be recorded in writing and signed by the Chairperson.

Where consensus cannot be reached between the members of the Bid Adjudication Committee, the matter must be referred to the Accounting Officer for finalisation.

Once approval has been granted, the SCM Unit may commence preparing the contract or other contractual documentation.

6.3. OTHER DEPARTMENTAL COMMITTEES

6.3.1. Loss Control Committee

- (a) The Loss Control Committee is responsible for the following functions related to the Departmental expenditure and assets:
- Receive reports from user directorates on all losses, fruitless and wasteful expenditure.
 - Update the reports as and when received.
 - Report all cases to Provincial Treasury during the monthly report.
 - Refer all cases to the relevant investigating officers, for example all losses of assets will be investigated by MISS, all alleged non-existing milestones will be investigated by Monitoring and Evaluation.
 - Consider the investigation reports on losses. The representative from the Directorate: MISS will take the lead on this function
 - Consider all reports on fruitless and wasteful expenditure for example interest on overdue accounts.
 - Consider all reports relating to expenditure made in vain for milestones not completed in line with the requirements.
 - Submit reports for condonation and/or consequence management to the Accounting Officer based on the committee recommendations.
 - This committee will meet as and when required.

6.3.2. DISPOSAL COMMITTEE

A disposal committee must be established for disposal of assets and be constituted as follows:

- (a) Chairperson who will then appoint a further two members in writing;
- (b) If the Chairperson is not already a SCM Practitioner one of the members of the committee must be employed within the SCM Unit;
- (c) In addition to the above-mentioned appointed members, the Chairperson can at any time adjudicate an additional member to the committee who has sound knowledge of the assets or livestock. This member must also be appointed in writing; and
- (d) The Chairperson should be a senior official who has the required skill and competencies for asset management and disposal procedures.

An official who is physically and directly in control of the asset or livestock may not serve on the committee as a member.

The committee must at all time, when disposing of office furniture in which documents are normally kept, inspect the furniture with care in order to ascertain that they do not contain any official documents. A certificate to this effect must in all cases be noted on the disposal schedule.

Functions of the committee will be as follows:

- (a) Chairperson determines the date of inspection locally and notifies members of the committee and the supply chain unit of the time and date of inspection, of the items for disposal, in writing;
- (b) Collects evidence if the asset is redundant, obsolete, damaged or unserviceable;
- (c) Note down recommendations for disposal on the disposal schedule;
- (d) Decide on the disposal mechanism for obsolete and unserviceable item(s);
- (e) Decide on the disposal mechanism for redundant item(s);
- (f) Make financial considerations such as depreciation and quantify expected returns on sale;
- (g) Forward the disposal schedule to the delegated official;
- (h) The AO or his/her delegate receives and evaluates the recommendation on the disposal schedule. If the recommendations are not agreed with, the disposal schedule is referred back to the chairperson of the disposal committee for reconsideration of the recommendations;
- (i) Cancel the government mark on inventories/assets with a cross ("X") to indicate that it is no longer government property; and
- (j) Keep detailed records of all the activities of the disposal committee, for financial statements for reporting.

6.3.3 DEPARTMENTAL TRANSPORT COMMITTEE

The establishment of the committee will assist in assessing applications before submitting to the Accounting officer for approval. The following will be the functions that will assist the committee:

- To assist with validity of applications in terms of the Subsidized Motor Transport Handbook and prescripts, including vehicle utilization period and minimum kilometres.
- To review all applications based on previous subsidized vehicle, history and utilization reports related to the specific applications.
- To advice and make recommendations to The Head of the Department in terms of applications.
- To verify applications in terms of the job description and/ or of work plan and/or performance contract of the individual and the application of the vehicle.
- To advise on the suitability of type of the type of vehicle required by the official such as Light Delivery Vehicle (LDV)/ Multi-Purpose Vehicle (MPV)/ Sport Utility Vehicle (SUV) or sedan vehicle and the required engine size.
- To advice on the economic implications and practicality of the subsidized vehicle.

- To advise The Head of the Department in line with Schedule 1 of the Subsidized Motor Transport Handbook.
- Once The Head of the Department has approved an application for a certain number of kilometres and a specific benchmark, these approvals can only be amended by The Head of the Department or his/her delegate, due to the financial impact on the end user Department.
- Should the benchmark of the official be increased after the initial approval by The Head of the Department, a letter signed by The Head of the Department or his/her delegate needs to be supplied to all service providers.

Enabling Legislation, policies and prescripts

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6.4. GENERAL COMMITTEE MATTERS

Chairperson

- (a) The Chairperson:
- (i) has a casting vote as well as a deliberate vote;
 - (ii) retains all his/her rights as a member;
 - (iii) may adjourn a meeting;
 - (iv) may rule on points of order which will be final;
 - (v) may withdraw any proposal or other matters under discussion before it is put to the vote; and
 - (vi) convene extraordinary committee meetings on request.
- (b) The chairperson must:
- (i) maintain order during a meeting and ensure that business is conducted in an orderly manner;
 - (ii) before opening a meeting, ensure that it is properly constituted;
 - (iii) protect the rights of every member;
 - (iv) vacate his / her seat to the vice chairperson, should he/she wish to partake in a discussion in a partial manner;
 - (v) regulate participation in discussions;
 - (vi) deal with items in sequence of the agenda;
 - (vii) ensure that members know exactly what they are required to vote on;
 - (viii) ensure that only one member holds the floor at any one time;
 - (ix) provide guidance by directing the meeting, but shall not dominate;
 - (x) conduct meetings in a formal manner; and
 - (xi) formulate clearly the decisions to be minuted and sign and approve the minutes after they have been verified for correctness.

Vice-chairperson

- (a) The vice-chairperson has the same powers and duties as those of members and in addition, where necessary, shall-in the absence of the chairperson preside as chairperson.
- (b) The vice chairperson shall take the seat of and act as chairperson, should the chairperson wish to partake in partial discussions.
- (c) In the event that both the chairperson and vice-chairperson are absent from a meeting, the members present may elect one of their members to preside at such meeting.

Members

Members of the Committee shall:

- (i) be fully conversant with the powers and limitations of the Committee as well as all directives pertaining to Supply Chain Management, including the relevant sections of the Constitution, Public Finance Management Act and accompanying Treasury Regulations, Preferential Procurement Policy Framework Act, Broad 5 Based Black Economic Empowerment Act and accompanying regulations, all directives issued by National Treasury / relevant provincial treasury as well as the delegated powers issued by the AO and at all times act in accordance with above-mentioned legislation, regulations and procedures;
- (ii) apply their minds to matters at hand in order to take meaningful and accountable decisions and in the event of doubt or uncertainty, to propose that matters be referred back for clarification;
- (iii) in advance, furnish a written apology should he/she not be able to attend a meeting;
- (iv) strive to be punctual for meetings and to stay for the duration of a meeting;
- (v) prepare properly for each meeting by studying the agenda and submissions/reports;
- (vi) be familiar with meeting procedures in order to make a contribution in the correct manner; and
- (vii) Members have the right to:
 - have advance knowledge of the agenda;
 - submit proposals and participate in proceedings;
 - vote; and
 - have a dissenting voice and have the reasons therefor recorded.

Co-opted members/advisors

Co-opted members/advisors have the same powers and duties as members but excluding the right to vote on any matter under discussion.

Members of the Bid Evaluation Committee may present their recommendations / reports to the Bid Adjudication Committee and clarify any issues but shall not have any voting powers.

Observers

The Chairperson may, on request, allow officials to attend a meeting as observers. Observers have no participation in the proceedings, except to advise the representative (member) or the committee if permitted by the chairperson. Observers should be cautioned to maintain the confidentiality of the discussions.

Meeting Procedures

The Committee must meet as directed at a time when required to conduct its business and achieve its objectives and at a time and venue determined by the Chairperson of the Committee

The Chairperson or Deputy Chairperson must preside at a meeting of the Committee, but if both the Chairperson and the Deputy Chairperson are not available, the members present must elect another member to act as Chairperson.

Fifty percent (50%) +1 constitute a quorum, of whom at least one must be an industry expert and one from the Department.

Any matter considered by the Committee or sub-committee must be decided with a supporting vote of at least two thirds of the members present.

A person may only attend or be present at a meeting of the Committee-

With the permission of the Committee.

If such person is a designated official of the Department or Provincial Treasury.

When authorised to attend by legislation or an order of court.

When instructed to attend by the Chairperson to assist it in its business.

The Committee must determine rules for the conduct of its business and procedures for its meetings

Minutes of meetings and hearings held by the Committee and any sub-committee must be recorded and kept in the support office of the SCM Unit in such a manner as prescribed.

Meetings

Items for the agenda together with the written submissions must be lodged with the SCM Unit five days before the scheduled date of the meeting. Late submissions shall be carried over to the next meeting or be made addition to the agenda as per the Committees' discretion.

Exceptional meetings will be held as and when considered necessary due to exceptional circumstances, as determined by the chairperson. Any member of the Committee may request the chairperson for convening of exceptional meetings. The Committee member requesting the exceptional meeting must furnish the reason/purpose of such a meeting in writing.

Every member attending the meeting owes deference to the chairperson and may be removed if that person does not respect the authority of the chair.

Notice of meetings

Notice to ordinary meetings is to reach members 3 (three) days before the scheduled date of the meeting.

Notice should include agenda, minutes and submissions.

The agenda of a meeting serves as the program of the meeting and unless the Committee decides otherwise, the items and sequence may not be changed during the meeting.

Notice to exceptional meetings is to reach members at least three hours before the meeting. Telephonic or other electronic messages conveying date, time and purpose of the meeting are acceptable.

The meeting shall generally be convened for urgent matters that cannot be held over until the next ordinary meeting.

The agenda must be supplied before or at the start of the meeting. Minutes of the previous meeting will not be handled at such a meeting unless they form part of the purpose of the meeting.

Generally this meeting will attend to urgent queries arising from previous decisions of the committee which may have legal or financial implications or any other matter that the committee sees it fit to attend, which if not attended to might have a detrimental effect to the DEPARTMENT, be it financially or legally.

Non-attendance

Non-attendance of meeting will be noted "with" or "without" apology. Repeated failure to attend meetings without valid reasons for three consecutive meetings shall result in the matter being reported to the AO for action.

Minutes and record keeping

The SCMU shall be responsible for the secretariat work, including minute taking for the BAC. All deliberations in Committee meetings shall be recorded on tape. The SCMU shall further be responsible for safe keeping of all correspondence generated by or received on behalf of the Committee.

The secretary to the Committee shall be responsible for the safe keeping of the tapes on which the deliberations of the Bid Adjudication Committee have been recorded, as well as copies of minutes signed by the relevant chairperson as accuracy and validity of proceedings.

Decision making

Where the Bid Adjudication Committee disagrees with the recommendation of the relevant Bid Evaluation Committee on the adjudication of a bid, the request should be referred back to the Bid Evaluation Committee, if the Bid Evaluation Committee does not agree with the recommendations of the Bid Adjudication Committee, the bid documents is to be submitted to the AO as delegated authority for a final decision.

The AO may obtain advice as deemed necessary, including advice from outside the Department.

The AO may at any stage refer any recommendation made by the Bid Evaluation Committee or the Bid Adjudication Committee back to that committee for reconsideration.

Point of order

A member may speak on a point of order only if he/she is of the opinion that there has been a departure from the rules of order, e.g. an objection against improper language used, that a speaker has transgressed, etc.

Confidentiality

All bids plus any related correspondence and deliberations thereon must be treated as confidential information.

No member of the Bid Committees' or any other official may divulge information relating to bids unless/he is authorised to do so. Any person liable for such conduct may be charged with misconduct.

Matters of a confidential nature in the possession of supply chain or other officials should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions should also apply after leaving the service of the Department.

Any information that is the property of the Department or its suppliers/service providers should be protected at all times.

6.5. BID COMMITTEE SECRETARIAT

The Secretariat must:

- (i) In conjunction with the chairperson/ vice chairperson compile an agenda and determine dates of meetings;
- (ii) Give notice of proposed meetings to committee members;
- (iii) Process and distribute all submissions/reports together with the agenda to committee members at least three working days before the actual meeting takes place;
- (iv) Minute all decisions taken at meetings;
- (v) Adhere strictly to the stipulations of the National Archives of South Africa Act, No.43 of 1996 and accompanying directives;
- (vi) Ensure that the proceedings at meetings are recorded mechanically;
- (vii) Give written feedback of all decisions taken by the committee; and
- (viii) Be responsible for all the administrative tasks of the Committee.

Secretariat functions are inclusive of, but not limited to:

- a. Compile agenda.
- b. Issue notice of meeting.
- c. Prepare meeting documentation.
- d. Execute administrative and logistic functions for committee.
- e. Maintain expenditure register for committee.
- f. Maintain attendance register.
- g. Maintain declaration register.
- h. Maintain record of meeting (minutes and voice recording – if required).
- i. Prepare and maintain 'briefing sessions' and/or 'presentation sessions' documentation - if part of procurement process.
- j. Maintain register of access to information.
- k. Secure all bid documents.
- l. Facilitate documentation flow between committees and relevant delegated authorities.
- m. Maintain Bid File Portfolio of Evidence.

6.6. RESOLUTION OF DISAGREEMENTS

Where the Bid Adjudication Committee disagrees with the recommendation of the relevant Bid Evaluation Committee on the adjudication of a bid, it must refer the request together with its recommendations to the Bid Evaluation Committee for consideration.

Where the Bid Adjudication Committee still disagrees with the recommendation of the relevant Bid Evaluation Committee the commentary and reasons of the Bid Adjudication Committee is to be submitted to the AO for a final decision.

The AO may obtain advice as deemed necessary, including advice from outside the Department.

Should the AO decide to award a bid to a bidder other than the one recommended by either the Bid Evaluation Committee or Bid Adjudication Committee the Auditor-General, the National Treasury and the Provincial Treasury must be informed in writing within 10 days of the reasons for such deviation

7. SCM GOVERNANCE

7.1. ETHICS

The Department expects that all members of staff involved in the procurement processes possess a high level of professionalism and standards of personal integrity. It must be borne in mind that everyone is responsible for the successful implementation of the initiative pertaining to Preferential Procurement, everyone is a guardian of the process and it is therefore every one's duty to ensure that the system is not abused for any purpose, neither for the sake of the Department nor for any potential contractor/service provider.

Any employee suspected of acting contrary to this call, will be dealt with in terms of the relevant disciplinary procedures.

The behaviour of all personnel will be based on the following:

- (a) open, honest and co-operative business relations with colleagues and vendors;
- (b) confidentiality of both government and commercial information;
- (c) avoidance of conflict of interest or a perception of bias and disclosure of such to the Head of the SCM unit;
- (d) fair dealings and impartial conduct in the evaluation of bids;
- (e) high standard of professionalism and competence as well as the encouragement of similar standards amongst colleagues;
- (f) Mutual trust and respect;
- (g) environment where business can be conducted with integrity and in a fair and reasonable manner;
- (h) recognizing and dealing with conflicts or the potential thereof;
- (i) dealing with suppliers even-handedly;



- (j) ensuring that they do not compromise the good standing of the state through acts of impropriety, which may arise from the acceptance of gifts and hospitality
- (k) the scrupulous use of public property; and
- (l) providing assistance in the elimination of fraud and corruption.

The Accounting Officer has the right to request security clearance for any serving or newly appointed official involved in Supply Chain Management.

7.1.1. CONFIDENTIALITY

Prices, terms and conditions under which many of the suppliers to the Department trade may contain commercially sensitive information. Officials are issued with, and given access to these and other official contracts on the understanding that confidentiality is strictly observed.

Under no circumstances should any contractual or pricing information be divulged to external sources or used as a "benchmark" for independent negotiation. This behaviour undermines the Department's reputation as an honest and responsible organisation and can affect the stability of professionally negotiated contracts. There may also be issues associated with breach of contract.

7.1.2. CODE OF CONDUCT FOR SCM PRACTITIONERS

SCM practitioners should ensure that they perform their duties effectively and with integrity, in accordance with the relevant legislation and regulations including the Public Service Regulations issued by the Department of Public Service and Administration, National Treasury Regulations, PTI's and directives issued by accounting officers. They should ensure that public resources are administered responsibly.

Practitioners should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual. They should not abuse the power and authority vested in them.

Practitioners should comply with the Code of Conduct for the Public Service as contained in Chapter 2 of the Public Service Regulations, 2001 especially items C 4.12 and C5.3 to C5.4 thereof.

Practitioners should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties. Practitioners should declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest.

Practitioners should not take improper advantage of their previous office after leaving their official position.

Practitioners are accountable for their decisions and actions to the public and should use public property scrupulously.

Only Accounting Officers/Authorities or their delegates have the authority to commit the government to any transaction for the procurement of goods and /services. All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make false or misleading entries into such a system for any reason whatsoever.

Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.

Any information that is the property of the government or its supplier should be protected at all times. No information regarding any bid/contract/bidder/contractor may be revealed if such an action will infringe on the relevant bidder's/contractors personal rights.

Matters of confidential nature in the possession of supply chain practitioners should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions should also apply after separation from service.

7.1.3. CONFLICTS OF INTEREST

It will be expected that every official involved in the supply chain management, being it development of specifications or management of a contract to sign the code of conduct document as issued by the National Treasury. In addition to this it will be expected that every official will declare his/her interest each and every time he/she is involve with a procurement related matter, declare any business , commercial interest and financial interest or activities undertaken for financial gain that may raise a possible conflict of interest as prescribed by the Accounting Officer.

7.1.4. RESTRICTION ON APPOINTMENT OF GOVERNMENT OFFICIALS AS SERVICE PROVIDERS

Government frown upon awarding tenders to a person:

- i. Who is in the service of the Government; or
- ii. Principal shareholder or stakeholder, is a person in the service of the Government; unless that official has appropriate authority to undertake remunerative work outside his or her employment in the Department

Before an Accounting Officer enters into any contract with an entity for the sale, lease or supply of goods or services, the entity must, in the prescribed manner, disclose any business interest that an employee or a family member of an employee who is in the service of the NWPG has in that entity. The Department will verify from CSD if any director of a company is a government official.

An employee of the Department must disclose in the prescribed manner to the accounting officer any business interest that the employee or any family member of the employee has in an entity conducting business with the NWPG.

The SBD 4 bidding document makes provision for the abovementioned declarations, which must be completed by suppliers upon registration on the Central Supplier Database. The SBD 4 is a mandatory registration requirement.

The bidding document is valid for one year and the onus is on suppliers to update their profile on the supplier database should any information on the bid document change within the one year validity period.

For the purpose of checking the business interest of employees in suppliers doing business with the NWPG, the supplier information housed on the CSD will on a monthly basis be verified against a data dump from the employee information system (PERSAL) by the National Treasury.

Before an award is made the Department will establish:

- i. Whether or not the bidder is employed by government through the CSD.
- ii. Where a conflict is detected whether or not that official has appropriate authority to undertake remunerative work outside his or her employment in the Department. The Department takes a stand not to do business with government officials regardless if the official has approval from its employers.

7.1.5 FINANCIAL MISCONDUCT

The PFMA does not explicitly define financial misconduct. Section 81 (2) of the PFMA is an implied provision defining the characteristics of financial misconduct for an official, namely that:

- i. A power or duty must have been assigned in respect of Section 44 of the PFMA to an official; and
- ii. The official wilfully and negligently failed to exercise such assigned power or perform such duty.

The PFMA provides for the following actions to be taken by the AO or his/ her delegated authority against an official related to financial misconduct:

Table: Prescripts re financial misconduct:

PRESCRIPT	PROVISION
PFMA s84	Any disciplinary and criminal charges for financial misconduct against the official must be investigated, heard and disposed of in respect of statutory requirements or conditions of employment and regulations in respect of Section 85 (when issued).
Treasury Regulation 4.1	The accounting officer must ensure disciplinary proceedings are carried out.
Treasury Regulation 4.2	The accounting officer must ensure action within 30 days.
Treasury Regulation 4.3	The accounting officer must report as soon as the disciplinary process is completed to the Executive Authority; Department of Public Service and Administration and the Public Service Commission on the outcome.
Treasury Regulation 4.4	The accounting officer must report to the Provincial Treasury and Auditor General a schedule with the outcome, names, sanctions or further actions and changes to financial and risk management systems.



It must also be noted that in terms of Section 44(2) (d) of the PFMA, that any delegation or instruction in terms of section 44 (1) to an official does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty. Therefore the implementation of the required control measures and the monitoring of compliance to the requirements for SCM and this accounting officer's system are crucial in maintaining good corporate governance.

7.1.5.1. EQUAL TREATMENT

All departmental officials associated with SCM, particularly those dealing directly with service providers/suppliers or potential service providers/suppliers are required to:

- ☐ Provide all assistance in the elimination of fraud and corruption.
- ☐ Be fair, efficient, firm and courteous.
- ☐ Achieve the highest professional standards in the awarding of contracts.

7.1.6. OPENNESS

Practitioners should give reasons for their decisions and actions, subject to the provisions of PAIA.

7.1.7. INDEPENDENCE

All SCM practitioners and role players may not use their position for private gain or to improperly benefit another person.

If a SCM practitioners or other role player's family member, partner or associate of such official or role player, has any private or business interest in any bid to be submitted or to be adjudicated, such interest must be disclosed and recorded and the party with the interest must withdraw from participating in the evaluation process relating to the bid if there is a conflict of interest.

7.1.8. FRAUD AND CORRUPTION

The provisions of the Prevention and Combating of Corrupt Activities Act, 2004 shall be adhered to.

The SCMU must ensure that all officials, clients and other stakeholders (including service providers) are made aware of the implications of the Prevention and Combating of Corrupt Activities Act.

Fraud prevention and anti-corruption plans shall be instituted and the SCM practitioners or other role players must assist the AO or his/her delegated authority in combating corruption and fraud SCM System.

The AO or his/her delegated authority must reject a proposal for adjudication if he/she determines that the supplier/service provider recommended for adjudication, has engaged in corrupt or fraudulent activities in competing for the contract in question.

The Department must insist that a provision be included in the contract agreement, requiring contractors to permit the AO or his/her delegated authority to inspect their accounts and records relating to the performance of the

contract and to have them audited by auditors appointed by the AO in order to monitor and prevent corrupt activities.

Contractors shall observe the highest standard of ethics during the selection and execution of the contract and must assist in combating corruption in SCM in line with the Prevention and Combating of Corrupt Activities Act, by not giving, receiving or soliciting any item of value to influence the action of an official dealing with SCM.

The SCM Unit must maintain relevant registers of such tender defaulters.

7.1.9. FRONTING

A "front" is defined in the Oxford's Reader's Digest Complete Wordfinder as inter alia an "outward appearance" or "a person etc. serving to cover subversive or illegal activities".

In the context of procurement it could be stated simply as a person or entity that makes a representation of fact or circumstances which is technically incorrect, in order to obtain a benefit to which it knowingly is not entitled to.

Fronting implies:

- a. An element of misrepresentation;
- b. Fraudulent intent; and
- c. Wrongfulness.

It would therefore constitute fronting if a person/ entity claimed a B-BBEE status level of contribution to which they are not entitled to, thereby knowingly misleading the Department.

Fronting is inseparably linked to equity and therefore largely finds its application in those particular circumstances.

Where, after award of a contract it becomes evident that the award made to the organisation based on incorrect information constituting fronting, the appropriate action is to be taken in accordance with all legal remedies available, especially the Prevention and Combating of Corrupt Activities Act, 2004, the Promotion of Administrative Justice Act, 2000 as well as Regulation 13 of the PPPFA i.e. equity ownership, active management and active control.

Where the Department becomes aware of a possible fronting case, the following process should be followed as a starting point:

- (i) The Department must inform the bidder/contractor of the alleged/suspected offence, i.e.
 - o That he is suspected of contravening the provisions of the PPPFA or;
 - o Has promised, offered or given a bribe during the bidding process and/or after conclusion of contract; or
 - o Has acted in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of contract; or

- o That an agreement was entered into with the contractor on the strength of information furnished by him, and it became apparent after conclusion of such agreement that the information provided was incorrect.
- (ii) The bidder/contractor must be informed of the recourse sought.
- (iii) The bidder/contractor must also be afforded an opportunity to state their case. This is the application of the principles of natural justice, with particular reference to the *audi alteram partem* rule.
- (iv) The Department must follow the requirements for procedural fairness as outlined in Section 3 of the PAJA. Briefly it states:
 - An administrator (AO or his/her delegated authority) must give a person adequate notice of the nature and purpose of the proposed administrative action.
 - A reasonable opportunity to make representations.
 - A clear statement of the administrative action.
 - Adequate notice of any right of review or internal appeal, where applicable.
 - Adequate notice of the right to request reasons in terms of Section 5 of PAJA.

Remedies for Fronting

Accounting Officers must act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.

The Department may, in addition to any other remedy that it may have against the bidder or person:

- i. Disqualify the bidder or person from the bidding process;
- ii. Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- iii. Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- iv. Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the *audi alteram partem* (hear the other side) rule; and
- v. Forward the matter for criminal prosecution.

Legal Services may be consulted when any of the remedies are applied.

The details of any restrictions imposed on bidders, persons or contractors must be forwarded to the National Treasury for inclusion on the central Database of Restricted Suppliers.

7.1.10. BID RIGGING

Bid rigging occurs when bidders agree amongst themselves to eliminate competition in the procurement process, thereby denying the public a fair price. Bidders can eliminate competition in public procurement in many simple ways, for example:

- a. A competitor agrees to submit a non-competitive bid that is too high to be accepted or contains terms that are unacceptable to the buyer.
- b. A competitor agrees not to bid or to withdraw a bid from consideration.
- c. A competitor agrees to submit bids only in certain geographic areas or only to certain public organisations.

THE FOLLOWING STRATEGIES ARE AIMED TO PREVENT OR DETECT BID RIGGING PRACTICE:

Look for markets that are more susceptible to bid rigging and the presence of certain factors increases the need to take special precautions in designing public procurement procedures.

Table Bid-rigging factors:

Small number of bidders	The probability of bid rigging is higher if there are few bidders. Bid rigging requires bidders to reach an agreement that eliminates competition. It is also easier to reach an agreement if the same bidders are involved in repeated procurements.
Standardised or simple products	The chances of bid rigging are greater if the products or services being purchased are standardised and simple and do not change over time. Under these circumstances, it is easier to work out an agreement and have it last a long time.
Little or no entry	If entry in a certain bidding market is costly, hard or time consuming, firms in that market are protected from the competitive pressure of potential new entrants. The protective barrier helps support bid-rigging efforts.

LEARN ABOUT THE MARKET

By taking the time to learn about the products, suppliers and conditions in the marketplace, procurement agents are better able to design effective procurement processes, especially when market characteristics make collusion more likely. It is particularly useful to gather information about potential suppliers' prices and costs, including prices in other geographic areas or for similar products.

Knowledge of the prices that have been submitted in recent tenders for the same or similar products, as well as familiarity with recent trends in the market, help procurement officials to recognise what is acceptable and what is not.

ENCOURAGE STRONG PARTICIPATION BY BIDDERS

If the design of the tender process encourages participation by many bidders, then the chances of bid rigging are reduced. While the use of conditions can help to eliminate those firms that are unqualified for the task, careful judgement should be exercised in this regard, so as not to discourage qualified bidders. Unnecessary

restrictions on their size, composition or nature can reduce their number. Bidders can also be discouraged if the cost of preparing their bid is high. For this reason, it is advisable to help keep costs low by:

- a. Not changing bid forms unnecessarily
- b. Not requiring information that is of little use
- c. Allowing adequate time for bids to be prepared
- d. Using electronic bidding systems, if possible

HAVE CLEAR REQUIREMENTS AND ALLOW FOR UNPREDICTABILITY IN THE TENDER PROCESS

Tender specifications must be defined in terms of functional performance, where possible, rather than by reference to specific products. Allowing for alternative or innovative sources of supply can also make bid rigging schemes more difficult to implement. Clear tender requirements make it easier for firms to understand what is expected of them and may encourage additional firms to bid.

Predictable purchasing patterns facilitate bid-rigging schemes. It is therefore important to vary the scope of successive contract by aggregating or disaggregating contracts.

LIMIT COMMUNICATION AMONGST BIDDERS

Bid rigging requires bidders to communicate with each other. If the procurement process is designed to make it difficult for potential bidders to identify their competitors, then bid rigging becomes more difficult. It is therefore good practice to:

- a. Avoid bringing potential bidders together in face-to-face pre-bid meetings;
- b. Allow bidding by mail, by telephone or electronically, where practically possible i.e.: through an electronic quotation system; and
- c. Keep the identity of bidders undisclosed by using numbers, rather than names to identify them.

THE USE OF DECLARATIONS

The Department can also require those who bid for government contracts to submit a certificate of independent bid determination, i.e.: the SBD 4 certificate typically require a statement under oath from each firm confirming that there has been no collusive behaviour, whether through inappropriate communication between competitors, disclosure of bid prices or encouragement to rig bids. The certificate helps to remind bidders of their obligations not to collude. It can also be a way of emphasizing the penalties for bid rigging. Depending on the form of the certificate and the relevant legal requirements, a false certificate is aimed at providing an independent basis for prosecution, restriction and ultimately blacklisting.

EVALUATE THE CRITERIA FOR AWARDING CONTRACTS

The probability of bid rigging increases if you have a small number of potential bidders. It is therefore vital to consider the impact of the design of the procurement process on the number of bidders over the long term. Specifications should clearly describe all award criteria to encourage maximum participation.

PROVIDE TRAINING TO PROCUREMENT STAFF ABOUT BID RIGGING

Appropriate training and awareness is aimed at assisting procurement officials to design a procurement process that is less susceptible to bid rigging or recognise where the bid document is designed for the very purpose of promoting practices of collusion or bid rigging. Similarly, development of a database that contains past and present bid results will assist staff to detect potential problems quickly and help to rectify them.

7.1.11. COMBATIVE PRACTICES

Combative practices are unethical, illegal and prohibited and be avoided at all cost. They include but are not limited to:

- ☐ Suggestions of fictitious lower quotations.
- ☐ Reference to non-existent competition.
- ☐ Exploiting errors in bids.
- ☐ Soliciting bids from bidders whose names appear on the list of restricted bidders/suppliers/persons.

7.1.12. ABUSE OF PPPFA

The Department shall vigorously pursue all legal remedies available in the event that the SCM System is abused, particularly through for example, but not limited to the following ways:

- That a provider or contractor is suspected of contravening the PPPFA.
- Has promised, offered or given a bribe during the bidding process and/or after conclusion of the contract.
- Has acted in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of the contract.
- That an agreement was entered into with the contractor on the strength of information furnished by him, and it became apparent after conclusion of such agreement that the information provided was incorrect.

To protect both parties to an agreement, potential providers, contractors and officials must be made aware of the implications of any contraventions via the special conditions of contract and the applicable paragraphs in the GCC or CIDBA contract, in the case of construction or infrastructure procurement.

7.1.13. GRATIFICATIONS, HOSPITALITY AND GIFTS

The provision of hospitality by suppliers may represent an attempt to circumvent the rules on acceptance of gifts. While modest hospitality may be accepted, its frequency and scale should not be significantly greater than that which the Department would be likely to provide in return.

The basic rule is that no gift or money should be accepted. The only possible exception to this rule, are gifts of an inexpensive/seasonal nature such as business diaries, calendars or pens. If accepted, it should be done in accordance with the policy of the relevant Department and the extent of the gift should not be so substantial as to lead the reasonable person to believe that it would have had an impact on the decision making process.

The details of any gift that has been accepted must be disclosed in a register administered by a relevant official of that Department, regardless of the value of such gift. The offer of small gifts is an accepted part of commercial

life and care must be taken not to offend or damage relationships with suppliers when explaining that acceptance is contrary to the Department's normal practise.

Any attempts by suppliers to undermine the honesty of the official by the offering gifts or other inducements must be reported to the Accounting Officer. If doubt exists whether the gift may be accepted, it should rather be declined or referred to senior management.

7.2. SCM ABUSE MECHANISM

SCM system abuse investigations are vested in the PT:PCPO who will:

- Develop and implement a SCM abuse mechanism SOP.
- Maintain a matrix (spreadsheet) of SCM system abuse related information that will allow the recording of trends, such as identified risk areas, significant control weakness areas and pockets/areas of non-compliance. These trends and its analysis will assist management in taking action to improve financial governance and SCM practices.
- Report the status of SCM System abuse to the Departmental Top Management and relevant Audit Committees.
- Determine liability in law of persons other than public servants.
- Make recommendations on the recovery of the relevant irregular, fruitless and wasteful expenditure.

On detection of alleged SCM system abuse, i.e. when a SCM activity is suspected to constitute abuse of the SCM System, the relevant person must refer the matter to the PT:PCPO. The latter must record the alleged SCM system abuse, investigate and make a management decision on further action.

The following table provides indicators of activities through which SCM system abuse could be detected pro-actively (P) or re-actively (R):

Table ... – SCM system abuse detection

INDICATOR	P	R
Assessment of Annual Budgets	X	
Assessment of Strategic Plans	X	
Assessment of Annual Performance Plans	X	
Assessment of Monthly in-year revenue expenditure reports		X
Assessment of Adjustments Estimate	X	
Execution of directives from the EA	X	
Examination of AGSA findings		X
Examination of IA findings		X
Interpretation of Annual Reports		X
Interpretation of Interim and Annual Financial Statements		X
Examination of PT Reports	X	X
Whistle blowing		X

INDICATOR	P	R
Commitment of expenditure	X	
SCM spent analysis		X
Contract negotiation	X	
Contract conclusion	X	
Authorisation of payments		X
Verification of payments		X
Observation	X	
Examination of Standing Committee reports		X
Perusal of Media reports		X
Examination of Enterprise risk management findings	X	
Examination of FIU findings		X
Examination of FC findings		X
Tender adjudication	X	
Regulatory compliance testing		X
Examination of official disciplinary outcomes		X

ROLE PLAYERS ROLES AND RESPONSIBILITIES

The management of any form of SCM abuse by its nature involves various role-players, who are involved prior or during the process with different mandates. This Part identifies the most significant role-players and their mandates with regards to this process.

The most significant role-players and their mandates are:

- (i) **PT: PCPO** – to determine whether a SCM abuse activity resulted in an irregular expenditure and/or whether a SCM abuse activity resulted in fraud or corruption.
- (ii) **SCM M,E&C Forum** – to monitor and advise on the management of SCM abuse matters.
- (iii) **SCM Unit** – to manage and treat any SCM abuse activity, determine liability in law and recover resultant expenditure as well as to address any identified control weaknesses and training requirements.

Other role-players who may be involved during the management of SCM abuse cases are:

- (i) **Legal Services and State Attorney** – to provide legal support on questions of law and the management of resultant legal actions.
- (ii) **Departmental Risk Forum** – to monitor and identify risks relating to SCM abuse cases and to recommend risk mitigation actions.
- (iii) **Audit Committee** – to monitor the impact of SCM abuse on the effective financial management of the Department.
- (iv) **Top Management** – to monitor trends and advise on the management and treatment of SCM abuse matters.

7.3. DISPUTES AND COMPLAINTS

The SCM System of a Department must allow persons aggrieved by decisions or actions taken by the Department during implementation of the supply chain management system, to lodge within 14 days of the decision or action a written objection or complaint to the Department against the decision or action.

Fair, equitable and non-discriminatory complaints handling procedures that are well understood by both parties, is essential in effective handling of complaints as well as in establishing and maintaining good relationships with bidders, which would in turn reduce the likelihood of complaints.

The SCM System of a Department may provide for the appointment by the accounting officer/authority of an independent and impartial person not directly involved in the supply chain management processes of the Department to deal with the objection or complaint received.

An objection or complaint may be referred to the Provincial Treasury if:

- the objection or complaint is not resolved within 60 days; or
- no response is received from the Department within 60 days.

COMPLAINTS PREVENTION

Well-planned and well-conducted procurement is less likely to attract complaints. Thus Departmental actions in undertaking procurement processes must be robust and defensible. Many complaints arise due to a lack of understanding and poor communication between a Department and its bidders.

Strategies to minimise complaints can assist Departments to avoid unnecessary conflict and can save Departments and bidders valuable time and resources. The following strategies may assist to minimise or avoid supplier complaints:

- (a) planning the procurement process;
- (b) treating bidders ethically and impartially and encourage competition;
- (c) effective communication with bidders; and
- (d) providing feedback to bidders.

Planning the Procurement Process

Careful planning and well developed specifications and bid documentation can mitigate complaints. The Department can benefit by undertaking market research and using this knowledge to construct appropriate specifications. This includes understanding the market's capabilities in terms of the technical specifications of the procurement and the effort that will be required to prepare a submission.

Bid documentation will describe to the market what a Department needs, as well as the procurement process that will be followed. Thus the Department should take time to ensure that it is sufficiently comprehensive, clear and concise, unambiguous containing terminology that is easy to understand. Any minimum content and format

requirements, conditions for participation, specifications and evaluation criteria need to be carefully developed to avoid arbitrary discrimination against any bidder and should be clearly identified and justifiable.

The Department is bound by the process that they outline within their bid documentation and deviation from this may give rise to complaints. It is important that the processes outlined in the submission evaluation plan are consistent with the bid documentation and that they are followed.

The Department should also plan the procurement process to provide sufficient time for bidders to prepare and lodge a response to approach the market. This can avoid complaints concerning insufficient time to adequately respond.

Treat Bidders Ethically, Impartially and Encourage Competition

Conflict of interest issues can be a basis for complaints by bidders. The Department should ensure that it manages conflict of interest issues and not allow officials with conflicts of interest to be involved in a procurement process. The Department should ensure that a declaration of interest form is completed where required.

Clearly articulated procedures to receive and open all submissions which guarantee fairness, impartiality and confidentiality can assist to avoid complaints. The maintenance of high ethical standards will give bidders confidence in the procurement process including confidence in the complaints handling method. The Department must take care to avoid practices that are discriminatory and which may lead to a bidder gaining an unfair advantage over other bidders.

The Department should treat all bidders fairly, equitably, reasonably and consistently throughout the process. Thus all complainants should have the same opportunity to compete for government business.

Communicate Effectively with Bidders

Many complaints arise due to poor communication between bidders and Departments. Good communication helps to ensure that problems do not arise.

The Department needs to promptly respond to reasonable requests from bidders to provide information which enables them to prepare responsive submissions. However, it is important that the Department do not supply information that is confidential, sensitive to essential security or may impede competition amongst the bidders.

In providing access to information during the submission period it is important to ensure that no supplier receives an unfair advantage. Where bidders ask for clarification of issues relating to the evaluation criteria, specifications or other elements of the bid documentation, the Department should, unless there are exceptional circumstances, make all responses available to all bidders at the same time and in the same form.

Close attention to managing communication with bidders during the procurement process and any negotiations may assist in avoiding rumours about a bidding process.

It is good practice for the Department s to examine its procedures and systems at the end of each procurement process to ensure it was fair and equitable to all bidders and to see whether anything can be improved.

Finally, effective contract management and regular performance feedback to suppliers will help build and maintain a good working relationship.

Providing Feedback to Bidders

The Department can build good working relationships with both successful and unsuccessful bidders through feedback and debriefings. Debriefing contributes to transparency and confidence in the fairness of the procurement process and will often alleviate bidders' concerns that may otherwise have been raised with the Department as a complaint.

Why Provide Feedback to Bidders?

It is good practice for Departments to provide feedback to bidders in order to give effect to **section 217 of the Constitution of 1996**. This will ensure that feedback can be built into the Department's procurement procedures in order to:

- (aa) Preserve the highest standards of honesty, integrity, impartiality and objectivity;
- (bb) Be fair, efficient and courteous;
- (cc) Manage the bidding process so that genuine competition is preserved and discrimination is avoided;
- (dd) Debrief un/successful bidders of the outcome of the bidding process, within the bounds of commercial confidentiality, so as to facilitate better performance on future occasions; and
- (ee) Respond promptly, courteously and efficiently to suggestions, enquiries and complaints.

By providing good feedback, Departments will educate bidders by giving information about the procurement process and their expectations and this, in turn, may assist to improve their standard of future bid submissions.

Bidders can benefit from receiving feedback by getting the opportunity to:

- (aa) obtain information and to help them understand how and why decisions were made in relation to their submission: what they did well and what was lacking as well as any areas of their submission that did not comply with the approach to the market;
- (bb) obtain a better understanding of the Department's expectations thereby, assisting them to prepare and submit a higher standard of bid submissions in future procurement processes;
- (cc) establish or consolidate a fair, open and ethical relationship with Departments in order to gain confidence in the procurement process; and
- (dd) accept an offer of help and guidance to increase bidders' future chances of contracting with the NWPG.

Conversely, Departments can benefit from providing feedback to bidders by getting the opportunity to:

- (aa) be accountable and transparent in showing that their procurement process is robust and defensible;
- (bb) establish or consolidate a fair, open and ethical relationship with bidders;
- (cc) receive valuable information from bidders regarding the structure and content of the bid documentation;
- (dd) encourage confidence in the procurement process, thereby keeping bidders in competition and improving value for money prospects;
- (ee) educate bidders as to their expectations, thereby encouraging improved bid submissions for future procurement processes; and
- (ff) clear up any misconceptions and resolve any possible disputes with bidders, thereby minimising any possible complaints.

When Should the Department Provide Feedback?

Providing feedback applies to all procurement conducted by the Department in terms section 38 (a)(iii) of the Public Finance Management Act 1999, the Preferential Procurement Policy Framework Act, 2000, its accompanying Preferential Procurement Regulations 2011, the Broad-Based Black Economic Empowerment Act, 2003 and the National Treasury Regulations.

National Treasury's procurement policy framework requires all governmental Departments to promptly advise bidders of a decision relating to:

- (i) the acceptance of a bid, where successful bidders should be notified by registered or certified mail of the acceptance of their bids;
- (ii) the successful bid must be advertised in the Government Tender Bulletin and the original media in which the invitation to bid has been advertised in;
- (iii) when any bidder requests in writing to be provided with reasons why his/her own bid was unsuccessful; and
- (iv) an unsuccessful bid where a letter should be sent informing the bidder that his/her bid was unsuccessful.
 - (a) It is generally more effective for suppliers to receive feedback soon after the award has been made, and also easier for Departments to recall a bidder's submission and be able to discuss its strengths, weaknesses and why it was unsuccessful.
 - (b) Where feasible, Departments may decide to offer to provide feedback to unsuccessful bidders when their submission is disqualified from a procurement process prior to the award. This could be particularly useful where all submissions received were of a low standard. Feedback could assist bidders for future work, and allow the Departments to understand the reasons for the poor response.

Preparing a Feedback Session (a Debriefing)

Where a Department has arranged to meet with the unsuccessful bidder to conduct a debriefing session, it is good practice for the session to be planned and for Departmental officials (at least two officials being present) to take formal minutes of what is discussed in the meeting.

Debriefings can be tailored according to the nature, size and complexity of the procurement and feedback necessary.

COMPLAINTS HANDLING PROCEDURES

In the event that a complaint is received, Departments should aim to manage this process internally, where possible through communication and conciliation with the complainant. The Department needs to have fair, equitable and non-discriminatory complaint handling procedures that take account of the following:

- (a) the process needs to be systematic and well understood by the parties involved;
- (b) senior management and officials independent of the process should be involved as appropriate;
- (c) complaints should be dealt with in writing;
- (d) each party must have sufficient time to appropriately respond to developments;
- (e) if a matter has been referred to an independent and impartial person for review, Departments may be required to provide all relevant documents to that person; and
- (f) It is important for Departments to ensure that the initiation of a complaint process does not prejudice a bidder's participation in future procurement processes.

Complaints can be a way of assessing and improving performance. At the conclusion of a complaint process, it is good practice for Departments to investigate the circumstances that led to the complaint and take steps to ensure that similar problems do not re-occur.

The AO must ensure that the Department has a communication strategy that effectively communicates the Department's complaints handling procedures to all bidders.

Departmental procurement officials should receive appropriate training to ensure they understand and comply with complaint handling procedures. It is also good practice for a Department's complaints handling procedure to be available to all officials within the SCM unit.

Accessibility

- (a) The Department's complaints handling process should be documented, accessible and communicated to bidders and throughout the organisation; it should be clear to bidders and officials how to lodge a complaint.
- (b) Complaints processes should be user-friendly, making it easy for bidders to make a verbal or written complaint.
- (c) Accessibility of a complaints handling process involves practical considerations.

- (d) The Department must ensure that bidders have adequate avenues available to lodge a complaint with the Department and that such avenues are effectively communicated to bidders before, during and after the procurement process.

Management of Information

Complaints Register

- (i) The SCM unit of the Department must establish and maintain a complaints register that effectively captures all information and evidence regarding complaints lodged and resolved by the Department.
- (ii) The complaints register must include, but not limited to the following information:
- 1) reference number;
 - 2) date received;
 - 3) name of aggrieved party;
 - 4) description of complaint;
 - 5) type of complaint (formal or informal);
 - 6) responsible official;
 - 7) due date;
 - 8) outcome of the complaint; and
 - 9) date of response

Recording of complaints

- (a) The complaint and action taken should be recorded in complaints register; and
- (b) The Department needs to decide how much data it wants captured in the complaints register and how it will be recorded.

RESPONDING TO COMPLAINTS

Departments have a constitutional obligation to deal with complaints handling inter alia in a lawful, reasonable and procedurally fair manner as contemplated in **section 33 of the Constitution Act 108 of 1996** when such a complaint becomes an Administrative Action. The legal obligation on Departments to enforce section 33 of the Constitution reads as follows:

- (a) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (b) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

The national legislation enacted to ensure compliance to government's duty to fulfil their constitutional mandate is encompassed in the **Promotion of Administrative and Justice Act 2 of 2000 (PAJA)**.

PAJA, being a law of general application is applicable to all legislation and legal prescripts in South Africa, which would include that relating to public procurement and supply chain management. Thus, when interpreting any

policy or prescript relating SCM complaints or grievances, cognisance must be taken of the fact that it be dealt with in terms of PAJA.

As feedback given in terms of PAJA is required to give effect to section 33 of the Constitution, so to **Promotion of Access to Information Act, 2000, (PAIA)** impacts the process to be followed when complaints and grievances relating to procurement or SCM are lodged with Departments. For the rationale that Departments need to comply with PAJA, so too Departments are compelled to ensure that section 32 (access to information) of the Constitution is given effect to.

Section 32 of the Constitution states that:

“(1) everyone has the right of access to-

(a) any information held by the state;”

Hence, the PAIA was promulgated to ensure that the section 32 constitutional right to access of information is enforced by the State and against the State.

Based on the above mentioned legislation, the cumulative effect allows sufficient avenues and grounds which members of the public may pursue in order to lodge a complaint, request for information or even allege that their rights have been adversely infringed because of unfair or irregular SCM processes followed by and Department.

7.4. APPEAL MECHANISM

Bidders are allowed to appeal against a decision or action of the Department, but only after exhausting the internal remedies provided.

In strict legal terms the nature of an appeal has a specific meaning in relation to administrative actions, only allowing for a review of the processes followed by the administrator but not the merit of the discretionary decision taken by them. If the decision of the Department is taken on appeal, it means that the Department should show cause that it followed due process in awarding the tender.

The administrator will not have to defend the merits of any discretionary decisions taken subject to such decisions being reached following due process. In practical terms, it means that the Department will have to confirm that:

- a. Due process was followed in awarding the tender, i.e. all relevant legal prescripts were complied with;
and
- b. The discretionary decision made to award the tender was reached having followed such due process.

If an application for appeal is upheld, the only sanction could be that the tender evaluation and/or adjudication process must be re-constituted following due process. An administrative appeal does not allow the making of an alternative decision, but only to refer a matter back to follow due process.

From the above as well as the interpretation allowed thereto by recent case law [CC Groenewald v M5 Developments (283/09) [2010] ZASCA 47 [31 March 2010]; Loghdey v Advanced Parking Solutions CC Unreported, Case No. 20766/2008 (W) [25 February 2009]; Lohan Civil-Tebogo Joint Venture v Mangaung Plaaslike Munisipaliteit Unreported, Case No. 508/2009 (O) [27 February 2009], it is evident that the only avenue open to bidders who wish to appeal against a SCM decision to execute such right via a court of law.

7.5. ACCESS TO INFORMATION

The Act allows the public access to information held by the state and to information held by another member of the public if that information is needed to protect one's right.

All Departments must in terms of **Section 14 of the Promotion of Access to Information Act No 2 of 2000**, prepare a manual detailing the structure of the Department, the nature of the records held by the Department, and how to apply to gain access to those records.

When a request for information is made, the Department must comply with the procedural requirements in terms of its Manual as prescribed by section 14 of PAIA.

The Importance of Record Keeping

- (a) Proper record keeping ensures that all reasoning pertaining to the supply chain management/ procurement process are at the disposal of the Department when a bidder requests it.
- (b) Thus proper record keeping must be kept of all crucial meetings (i.e. bid specification, bid evaluation and bid adjudication committee meetings clearly documenting all decisions taken and reasoning thereof).
- (c) All records handed in during meetings as well as any consultations must be kept on file by the Department and this will be the required evidence to be presented by the Department when complaints or allegations of SCM abuse are raised.
- (d) In order to complement the record keeping process, it is important to note the judgment set out in the Supreme Court of Appeal which is set as a strong precedent and clearly illustrates the importance of record keeping.

Minister of Environmental Affairs v Phambili Fisheries/Bato Star 2003 (6) SA 428 (SCA)

"Even if someone does not like the decision, he/she must be satisfied with the process followed and that all arguments for and against the decision were considered and that the decision was a logical conclusion of all arguments"

8. MASTER DATA MANAGEMENT

8.1. NAMING CONVENTIONS

Currently more than 50 naming conventions are applied within the PFM environment, ranging from legislation, regulations, instructions, handbooks, guidelines, frameworks, standards, practice notes, circulars, etc. – collectively being called SCM norms.

The application of these naming conventions, although of value, are not uniform, shows dependencies on other activities and norms, are not appropriately recorded and communicated and do not address SCM in a consistent, systematic, holistic and sustainable manner.

Enforcement of the SCM norms issued is challenging as there are uncertainty to the status and the issuing mandate of these norms.

Maintenance of the SCM norms did not receive appropriate attention, resulting in certain norms issued still being applied whilst its supporting legislative mandates have been repealed.

All of the above poses a significant governance risk to effective, efficient and economical SCM implementation in the country.

In order to respond and mitigate the risks referred to above, whilst at the same time build SCM capacity, the SCMU will develop and issue a SCM Instruction, SCM Naming Conventions for incorporation and application in the SCM System.

8.2. ARCHIVING/FILING

The Departmental filing system and Electronic Content Management system (when operational) will apply for the recording and filing of SCM related documentation, unless specifically provided for differently in a relevant SOP or in the SCM System.

The Department is required by various legislation and prescripts to share data with participants not necessarily directly involved in the procurement cycle. The SCM Unit specifically has to ensure that the Department complies with these legislated requirements.

The Department will adhere to the following principles:

- a. Data is a resource that must be managed from a Department perspective
- b. The right data must be readily accessible by the right people for the right application (match information flow to decision makers)
- c. Two perspectives, namely the IT perspective (the how) and the business perspective (the why) need to be addressed, being:
 - i. IT perspective: In Master Data terms – IT understands the data architecture and the interdependencies. They know all the transactions required to enter data into the system, and what security roles are in place to limit access to those transactions. IT also has tools and knowledge on how to extract data from the database and batch import data en masse. IT knows the what, when, and how of Master Data.
 - ii. Business perspective: Business owns the Master Data and they make the decisions on specifics. What should the next item number be? How should we structure the routings? Who defines the standards for bin / storage location / building / plant / campus identifiers? What is the desired format for capturing customer street addresses consistently? How will we set up the chart of accounts? The business knows that who and the why of Master Data.

In order to respond to the IM Strategy and management requirements above, whilst at the same time build SCM capacity, the SCMU will develop and issue a SCM Instruction regarding the Master Data Management of SCM in the Department for incorporation and application in the SCM System.

9. OPTIMAL TECHNOLOGICAL SYSTEM

This Chapter deals generically with provincially operated financial system that are utilised in the supply chain management and asset management domain. Currently, all Provincial Departments are utilising a combination of systems for their procurement and provisioning requirements. It is the intention during the next two (2) years to migrate all Departments to one core supply chain management solution.

9.1. SCM SYSTEM[S]

To impact on SCM in its totality required that the operating systems for SCM also be fully aligned to the policy and regulatory frameworks that are currently being reviewed and refined.

This included a systems gap analysis to identify key areas for development that speaks to data integrity, internal control and segregation of duties, standardization of mandatory systems and reporting requirements. This work will be undertaken in liaison with the National Treasury and the resultant system enhancements will be effected, when available.

The Provincial Treasury will endeavor to develop and implement the following processes and procedures:

- (a) Implement a generic policy pertaining to access and system security;
Standardise system structures throughout Departments to facilitate management information and reporting requirements;
- (b) Limit / refuse access to new/ current users who have not completed the required formal training and acquired the requisite degree of competency in accordance with his / her profile;
- (c) Implement effective user account management;
- (d) Standardise user I.D's to PERSAL number;
- (e) Standardise password length;
- (f) Password expiry period;
- (g) Deactivate dormant as well as users who have left the service;
- (h) Verify and monitor that resubmission queues and exceptions are addressed as a matter of urgency; and
- (i) Catalogue / request reports on a monthly basis that require ongoing attention by Departments / institutions e.g. payments outstanding / older than thirty days.

Further refinement of policy and procedures in respect of the utilisation of the legacy systems and monitoring thereof by the Provincial Treasury are to ensure:

- (a) Enforcement and adherence to system requirements;
- (b) Segregation of duties in respect of requisitioning and approvals;

- (c) Better control measures that will result in efficient and effective systems' utilisation over the next two years, whilst the Province is preparing for the long awaited implementation of the National Integrated Financial Management Solutions; and
- (d) Consolidation of access control and systems configuration.

9.2. e-PROCUREMENT SOLUTION [ISS]

The ISS system currently used by the Province [ISS] /CSD facilitates the procurement of goods and services up to R500 000-00 in value. The ISS solution, in line with Government's overall strategy to achieve continuing improvement in value for money, enhance competitiveness of suppliers, and provide business communities with a convenient and effective medium, through which companies and individuals alike, could identify and exploit business opportunities, has been implemented and successfully so since 1999.

The value and benefits of the ISS for business and Departments alike, includes the following:

Business

- (i) Bringing business opportunities within the reach of a larger audience, inclusive of smaller and emerging businesses, thereby stimulating broader spectrum competition; automation of manual processes (streamlining of the procurement processes);
- (ii) Promotes greater understanding and responsiveness amongst buyers, suppliers and other partners in the supply chain process;
- (iii) Limits the risks of irregularities / fraud in the process as only quotations received via the [EPSi](#) are accepted;
- (iv) Suppliers need only once to register and maintain their profile whilst doing business with all Provincial Departments;
- (v) Suppliers are notified by automatic alerts when mandatory documents are about to expire; and
- (vi) Helpdesk and support available on working days from 08:00 – 17:00.

Departments

- (i) Automation of manual procurement processes (improved productivity, reduction in paperwork and telephone, fax costs, etc.);
- (ii) Compliance to section 217 of the Constitution;
- (iii) Sustainable preferential procurement strategy in place to support SMME's;
- (iv) Up to date and verified supplier information held centrally (valid tax clearance certificate, company registration documents, etc.);
- (v) Fair and transparent system that limits the possibility of irregularities/ fraud and collusion between suppliers and Departmental staff (quotes cannot be viewed or printed until the closing date/ time);
- (vi) Facilitates and streamlines provincial internal control processes;
- (vii) RFQ's are automatically scored in line with the PPPFA;

- (viii) Provision of appropriate and accurate management information;
- (ix) Audit trail of all transactions; and
- (x) User account management functionalities.

Access to the bid invitations is via a web based application to suppliers who are duly registered on the Central Supplier Database from NT. Access to this is free to the supplier and all that is required is a duly registered status on the CSD.

9.3. CENTRAL SUPPLIER DATABASE

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

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

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

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

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

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

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

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

VOLUME 2: DEMAND MANAGEMENT

10. DEMAND MANAGEMENT SYSTEM

Demand Management within the Supply Chain Management (SCM) is an integral part of a series of cross functional activities that contributes to achieving the Strategic and Operational commitments of the Department by understanding and planning what goods, works or services are delivered to the right place, in the right quantity, with the right quality, at the right cost and the right time and from the right source.

Demand Management is the first element of the SCM function and is a cross-functional exercise that brings the Procurement official closer to the User, ensuring that value for money is achieved.

In Demand Management everything starts with the definition of the customer's service requirements i.e. required reaction time, lead-time reliability, back order and emergency order policies, etc.

Demand management forms an integral part of a series of activities within SCM that will contribute to achieving the measured goals of the Department by ensuring that goods, works or services are delivered as originally envisaged; with a reliable standard of quality and to the satisfaction of end-users.

Demand management ensures that controls exist for management to detect variances early and rectify them in a planned and orderly manner and to foster a culture of compliance, thereby assisting management to achieve its goals.

Managing Planning for results:

- (i) When Departments are planning and managing for results it should:
- (ii) Have a good understanding of the environment that they operate in;
- (iii) Have a clear vision of why they exist, what they need to achieve and how much they are achieving;
- (iv) Plan their work whilst keeping in mind a clear set of objectives, activities, outputs, outcomes and measures of success;
- (v) Deliver what they have planned – meeting budget, standards of timeliness, quality, accuracy and in a manner consistent with ethical practice;
- (vi) Take stock of progress by monitoring, measuring, reviewing and evaluating as they go;
- (vii) Learn from success and failure and modify what they do and how they do it.
- (viii) Report publicly on results to promote transparency; and
- (ix) Seek continuous improvement.

11. PLANNING AND LINKAGES

Demand Management includes the following activities:

- (a) Understanding future needs;
- (b) Identifying critical delivery dates;
- (c) Identifying the frequency of need;
- (d) Linking the requirement to the budget;
- (e) Analysing expenditure based on past spend patterns and future needs;



- (f) Determining the specifications;
- (g) Conducting a commodity analysis and checking for alternatives at least in case of strategic purchases; and
- (h) Conducting an industry analysis in case of strategic purchases.

A typical demand management system will integrate or link the following planning activities:

- (a) Strategic planning;
- (b) Procurement planning;
- (c) Needs analysis; and
- (d) Market analysis.

11.1. STRATEGIC PLANNING

The AO must develop and implement a supply chain strategy for his/her SCM Unit which must be reviewed on an annual basis. Such strategy must at least deal with:

- (a) SCM vision of the Department;
- (b) SCM goals and objectives linked to the Department's strategic objectives;
- (c) Commodity and market analysis in relation to the core functions of the Department;
- (d) Identified scarce commodities and procurement options;
- (e) strategic partners;
- (f) stakeholder involvement in the supply chain cycle;
- (g) identified cost drivers;
- (h) risk analysis and mitigation measures; and
- (i) goods and services to be procured over a five year period.

11.2. OPERATIONAL (PROCUREMENT) PLANNING

The AO must have an annual operational plan, which must be consistent with the SCM Strategy described above, for his/her SCM Unit.

This operational plan (procurement plan) must at least contain the following information:

- (a) Goods and services to be procured;
- (b) Method of Procurement;
- (c) Timelines to execute the procurement action;
- (d) Estimated value including all applicable taxes;
- (e) Confirmation that funds are available; and
- (f) The responsible office or regional office.

Procurement planning is one of the important sub-processes within Demand Management but is generally neglected as the responsibility therefore is not attached to a particular unit in Departments.

The development of procurement plans therefore becomes essential to ensure that procurement activities are timely executed and contracts are ideally in place before a new financial year begins. This will ensure that service delivery commences immediately and that there is no lag in expenditure.

Procurement planning must be aligned with the budget cycle and therefore budget holders become key drivers in the development of these plans. Procurement planning in the Province is still at an infant stage but needs to be accelerated as the absence thereof has been attributed for poor service delivery and not meeting Departmental service delivery goals.

The Procurement plan must annually be submitted to the relevant treasuries on a prescribed date and on a quarterly basis reviewed against the budget and the strategic and annual performance plans to ensure its relevance.

Developing a Procurement Plan

- (a) A Department's Procurement plan should be developed out of input from the Departmental strategic plan and various planning frameworks that gives effect to the service delivery mandate of the Department. The Procurement plan provides the key link between the Department's objectives and its detailed operational budgets. To provide this link the procurement plan should reflect the main areas of responsibility or service delivery within the Department's mandate.
- (b) Ideally those responsible to drive procurement in a Department should be involved at an early stage of the budgeting process and should be consulted on the likely cost of given purchases to feed into the budget.
- (c) The relationship that procurement officers have with users is important. The users' prime function is to carry out their normal line function duties but they play a critical role in the demand management process.
- (d) When considering demand planning, procurement officers must work with users to encourage them to consider the process as a convenient means of achieving their objectives. The role of users/line functionaries in the demand planning process can be summarised as follows:
 - (i) Identifying the requirements that they need to procure;
 - (ii) Providing input to the annual procurement plan;
 - (iii) Examining options for the goods, services and works required through the procurement process;
 - (iv) Working with other stakeholders and procurement officers to combine requirements to achieve economies of scale;
 - (v) Considering packaging options for the requirements with procurement and other stakeholders;
 - (vi) Developing requirement specifications;
 - (vii) Considering the analyses within individual procurement plans with procurement officers and other stakeholders; and
 - (viii) Timing their needs.

Advantages of the procurement planning process

The advantages of the procurement planning process are as follows:

- (a) Links are forged between the users/line function, finance section and procurement team from the earliest notion of there being a requirement. Procurement officials are then alerted for any information on the potential requirements.
- (b) Economies of scale are gained by uniting the requirements of different areas.
- (c) There are no surprises when requirements manifest themselves in later months.
- (d) Requirements can be timed to the year-end of economic operators that may be tendering so as to achieve better deals.
- (e) Everyone can plan and schedule resources for the coming year more effectively.
- (f) Periodic indicative notices can be published on the basis of the procurement plan (these are not obligatory but can help competition by pre-warning economic operators of new opportunities).
- (g) Co-operation with other contracting authorities is more fruitful.
- (h) The procurement plan is linked to the strategic plan of the contracting authority.

By not instituting procurement planning Departments will likely experience the following consequences:

- (a) Stakeholders, the finance Department and the procurement Department would work in isolation, unaware of each other's needs.
- (b) Requirements would be received by the procurement unit, for which no pre-planning would have been possible.
- (c) Procurement officers would miss information on the potential requirements because they would not know they existed.
- (d) Economies of scale would be lost because the requirements of different areas would be processed separately.
- (e) Requirements would not be timed to the year-end of potential economic operators and so better deals could not be achieved.
- (f) Resource scheduling would be difficult.
- (g) Periodic indicative notices would not be published as easily.
- (h) Co-operation with other contracting authorities would be more difficult as visibility of future needs would be limited.
- (i) There would be no procurement plan linked to the Departmental strategic plan.

The primary concept of procurement is that advanced planning; scheduling and joint project approach will result in cost savings, more efficient and effective processes, and therefore increased value-for-money. Procurement planning also links the strategy of the Department to procurement activity and individual purchases.

Role of users/line function during the planning stage

- (a) The role of users in the procurement process covers the annual planning exercise and the completion of the specific procurement plan.
- (b) The users' prime function is to carry its line function duties. Its involvement in demand planning process is for them a means to an end. Procurement officers must treat users as customers/clients, albeit internal.
- (c) When considering demand planning, procurement officers must work with users to encourage them to consider the process as a convenient means of achieving their objectives. The role of users/line functionary in the demand planning process can be summarised as:
 - (i) Identifying the requirements they need to procure;
 - (ii) Providing input to the annual procurement plan;
 - (iii) Examining options for the goods, services and works required with procurement;
 - (iv) Working with other stakeholders and procurement officers to combine requirements to achieve economies of scale;
 - (v) Considering packaging options for the requirements with procurement and other stakeholders;
 - (vi) Developing requirement specifications;
 - (vii) Considering the analyses within individual procurement plans with procurement officers and other stakeholders; and
 - (viii) Timing their needs.

11.3. NEEDS ANALYSIS

To inform the **Departmental Procurement Plan**, a needs analysis must be performed to identify the goods and services required to achieve the outcomes envisaged in the Department's Strategic Plan. This is an exercise to be performed by the end user (programme manager/responsibility manager) in conjunction with the supply chain practitioner with the assistance of a technical strategic sourcing specialist / analyst as required by the Department. Its aim is to ensure that value for money is achieved. Both current and future needs should be determined based on the strategic plan of the Department.

These needs should be documented in the form of a business case and must contain the following:

- (a) High level statement of needs;
- (b) Links between the needs and the programme's strategic outcomes;
- (c) Comprehensive understanding of the market and operating environment;
- (d) Indication of whole-of-life costs;
- (e) Costs / benefits / risks analysis.

The following approach should be followed to develop the business case which should be per **commodity** (group of related items) and not per individual item.

Table 2: Needs analysis methodology:

STEP	ACTIVITY
Identify the needs	(i) Consult with relevant stakeholders: perspectives, needs, wants, concerns, challenges, opportunities and risks. (ii) Identify and prioritise the needs. (iii) Develop a high level comprehensive statement of needs.
Review previous procurements	Review previous/current contract (if any) including: (i) quality of delivery - on time, on budget, to specification; (ii) calculate the whole-of-life cost; (iii) supplier's performance; (iv) performance in managing the contract and relationships with the supplier and stakeholders; (v) benefits, assumptions, intended & unintended consequences; (vi) opportunities for cost/efficiency benefits/gains.
Supply positioning	(i) Scan operating environment, including current and future policy considerations; (ii) Identify strategic outcomes and specific business objectives that are to be addressed by the procurement; (iii) Identify sustainability opportunities/issues.

History of delivery

A review of previous procurement, from the identification of needs through supplier selection, performance and results, will greatly inform how to proceed with the project. Actively seeking feedback from all stakeholders involved in the previous procurement is important to identify lessons learned. This means all stakeholders involved from the programme manager, sub-programme manager, contract manager, end-users or recipients of services as well as the supplier. Consider how these lessons can inform and add value to your procurement going forward. It may also be helpful to investigate the outcome of other Department's procurements for similar goods/services. Consider the problems Departments have encountered and successes they have achieved.

Spend analysis

A spend analysis involves identifying all expenditure (contract charges and other costs to the Department) related to the delivery of the goods/services over a period of time (an example would be the annual costs over a contract term of three years). The purpose is to quantify the whole-of-life costs and spend and cost trends. Compare this figure with your estimated budget. If the figures do not match, reconsider the level of budget the Department may require. If the budget is fixed the Department may need to reconsider what level of needs can be met.

Historic Spend

Analysing the historic spend, aims to achieve the following:

- (a) Look at previous purchases, volumes, economic cost drivers, users, etc.
- (b) Price changes by economic operator over time, patterns of change, by niche

- (c) Patterns of technology introduction
- (d) Changes in market

11.4.MARKET ANALYSIS

The need to research the supply market and the contribution of supply market research:

- (a) It is essential that procurement officials do proper market research. The Internet makes research a much easier option than it was previously. Supply market research involves understanding the full range of current and potential economic operators, current and potential products and services, and the nature and dynamics of the local and global markets involved ,(i.e. cost drivers, name brands, alternatives, where is the market located, etc.).
- (b) Procurement officers must not be limited to local country markets; they must extend their research so as to obtain regional and global views, bearing in mind that this also has cost involved as it relates to transport. This research complements current knowledge and experience held by the contracting Department which may be incomplete, fragmented or out-of-date. It aims to build a systematic, in-depth and comprehensive view of the whole market for the requirement in question.

A typical market analysis contains the following:

Table: Typical market analysis methodology:

Market Segment	Market Indicators
Market profile	<ul style="list-style-type: none"> (i) Market size, quantities, local, regional or international nature (ii) Commodity make-up (iii) Number of economic operators (iv) Niches and specialist areas
Market dynamics	<ul style="list-style-type: none"> (i) Market cycles, natural and induced (ii) Life cycles and how they are changing (iii) New segments being created or old ones dying (iv) Impact of current and future technology (v) Growth or decline, segment differences (vi) Profitability changes, where possible and relevant
Market diversity	<ul style="list-style-type: none"> (i) Fundamentals of supply and demand in the market (ii) Changes in capacity – past, present (iii) Changes in demand – past, present (iv) Impact of transportation, energy, raw material cost shocks, labour costs, etc. (v) Possible technology changes and cost implications (vi) Substitutes and allied products available (vii) Other products available that are not currently used (viii) Value-added – what is available? (ix) New/better options/uses being created by innovation and technology (x) Location of key global geographic centres and currency and duty impacts (xi) Geopolitical impacts, historical and future

Market Segment	Market Indicators
	(xii) Barriers to entry

11.5. ROLES AND RESPONSIBILITIES AND PORTFOLIO OF EVIDENCE

Graphically the roles and responsibilities as well as the portfolio of evidence of an effective demand management system can be reflected as follows:

Figure Demand Management System:

ROAD MAP TO DEMAND MANAGEMENT				
STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
IDENTIFY NEED	PLAN FOR NEED	PREPARE DOCS	BID SPEC COMM	APPROACH MARKET
WHO	WHO	WHO	WHO	WHO
Budget Holder	Line Function (Lead) SCM (Support) LED	SCM (Lead) Line Function (Support)	SCM (Facilitate) Line Function (Lead) Technical, Finance & Legal (Support)	SCM (Lead) Line Function (Support)
WHEN	WHEN	WHEN	WHEN	WHEN
During Budget Process	Date as per PP, except Emergency & Ad-Hoc	Date as per PP	Approval date of RFT	Date as per BSC Minutes
PORTFOLIO OF EVIDENCE				
1. Annual Performance Plan (APP)	4. Tender Strategy	11. Cover page	20. Appointment letters of BSC	26. Advertisement (Website/CIDB/Notice Boards/Newspapers/CSD/ Gov Gazette)
2. Budget Implementation Plan (BIP)	5. Specifications/TOR	12. Index	21. Declarations of interest	27. Bid Register
3. Procurement Plan (PP)	6. Risk Considerations	13. Tender documentation (from 2)	22. Agenda	28. PAIA Register
	7. Contract Considerations	14. BD's/GCC/CIDB/TCC/BBEEE	23. Minutes	29. Bid file
	8. Special Conditions/Min Specs	15. Form of offer	24. Tender documentation pack	
	9. Functionality adjudication criteria and weights	16. Explanation of Procurement process (evaluation mechanism)	25. Signature of award structure	
	10. Request for Tender (RFT)	17. Enquiries		
		18. List of returnable documents		
		19. Draft advertisement		

12. STANDARD BIDDING DOCUMENTS

In order to give effect to the requirements of National Treasury Regulation 16A8 and 16A9 and the spirit and import of National Treasury's Standard Bidding Documents (SBD) 4, 8 and 9.

The SBD 4, 8 & 9 bidding document therefore captures the following essential requirements:

- Declaration of past performance in relation to contracts;

- Declaration pertaining to bid rigging and collusive practices; and
- Conflict of interest.

Suppliers are required to annually complete the SBD 4 bid document which must be housed on the central supplier database. The onus is on suppliers to update their profile should any information on the bid document change. Any suppliers detected who submitted false information on the SBD4 bid documents in any respect will be suspended from the database.

Institutions are not required to request completion of the SBD 4 for every tender process, but must use the supplier database information for this purpose. The relevant SBD 4 bid document must be downloaded from the supplier database and kept in the bid file for reference, but only for the successful bidder.

In order to give effect to the requirements of the Preferential Procurement Regulations, 2011, the Provincial Treasury has issued the new SBD 6.1(a) and SBD 6.1(b) bidding documents thereby replacing the current preference claim form utilised in the province.

The SBD 6.1(a) and SBD 6.1(b) bidding documents therefore capture the following essential requirements: BBBEE status in terms of the 80/20 and 90/10 preference points respectively.

Suppliers are required to annually complete the SBD 6.1 bid document which must be housed on the central supplier database. The onus is on suppliers to update their profile should any information on the bid document change. Any suppliers detected who submitted false information on the SBD 6.1 bid document in any respect will be suspended from the database and such supplier must be dealt with in terms of Regulation 13 of the Preferential Procurement Regulations, 2011 and any fronting must be dealt with in terms of the National Department of Trade and Industry prescripts on fronting.

In the event that the SBD 6.1 bid document is not yet available on the supplier database, the institution must obtain a fully completed SBD 6.1 from the recommended bidder before the conclusion of the procurement process.

The other SBD forms issued by the National Treasury include the following:

- SBD 1: Invitation to Bid;
- SBD 2: Tax Clearance Certificate Requirements;
- SBD 3.1: Pricing Schedule – Firm Prices (Purchases)
- SBD 3.2: Pricing Schedule – Non-firm Prices (Purchases);
- SBD 3.3: Pricing Schedule (Professional Services);
- SBD 5: National Industrial Participation Programme; and
- SBD 7.2: Sale of Goods.

The Provincial Treasury may revise the prescribed bidding documents from time to time and issue new requirements when necessary.

13. DEVELOPMENT OF PRODUCT SPECIFICATIONS/TERMS OF REFERENCE

The quality of research and analysis both on the business needs and market informs the development of specification of requirements detailing the nature and scope of the goods/services that will be required to satisfy the needs.

Drafting the Specification

- (a) In drafting the specification the following must be considered:
- (i) Why are we doing this?
 - (ii) What results do we need to achieve?
 - (iii) How will the goods/services be delivered?
 - (iv) How well – what quality and standards apply?
 - (v) How much – what quantity or volume is required?
 - (vi) Where will the goods/services be delivered?
 - (vii) When will the goods/services be delivered – term of contract?
 - (viii) Who will be involved in the delivery: supplier / contract manager etc.?
- (b) Specifications may be written in various formats. Often the nature of the format will depend upon the type of procurement. Some popular formats include:
- (i) Terms of reference
 - (ii) Description of services
 - (iii) Scope of work
 - (iv) Service specification
 - (v) Specification of goods
 - (vi) Statement of work
 - (vii) Scope of requirements
- (c) Specifications may be very detailed identifying exactly how a product is used and which features are most and least important. The following questions should be asked when developing specifications for products and services:
- (i) What specifications are available on different products in the market?
 - (ii) Are specifications for these products too high or too low?
 - (iii) Are we buying features we do not need?
 - (iv) What do end-users value: durability etc.?
 - (v) Costs and benefits associated with features / services.
 - (vi) What if certain features / services were removed (price saving)?
 - (vii) Should specifications be drafted strictly or in a way that it relaxes the requirement to meet the specification (i.e. depends on the nature of the good or service needed. If goods or service has to strictly match the specification, then specifications are to be drafted as such)
 - (viii) Conduct specification meeting before drafting bid documents
 - (ix) Are the specifications unambiguous? (i.e. should not be ambiguous).
- (d) Specifications must be written broadly enough to encourage competition. The specification must not be so narrow that only a specific product can comply, nor may it be drafted around a specific brand. If, as an exception, a specific brand or trade mark is used in the specification, it must be accompanied by the



words "or similar" or "or equivalent" after the brand name or trademark, unless reasons for not doing so are provided.

- (e) It is accepted that subjective factors play a role in cases of certain supplies and services such as the aesthetic acceptability of, and personal taste in furniture, specific proven expertise, compatibility or creative thinking connected with certain services and compatibility of sophisticated electronic equipment. However, the Department's position is that any associated problems can be dealt with through specification clauses and conditions of bidding. In these cases the following broad guidelines apply:

Table: Specification guideline

SCENARIO	GUIDELINE
Where visible or tangible factors are present, such as the colour or the style of furniture	Being visible or tangible they can be specified and there is usually no reason why experts such as the SABS/SANS should not be approached in good time to draft proper specifications on the grounds of which sound evaluations and recommendations can be made on an organised basis and responsible decisions taken.
Where compatibility with existing equipment is required	Cases where the required item has to function together with existing equipment, such as office automation equipment: All requirements can be specified, one of which will be that the equipment must integrate with the existing equipment, which must also be specified. Naturally, this specific requirement in the specification will then be a primary criterion when adjudicating offers. Cases where the item is required as a direct component of existing equipment: The item is regarded as a proprietary spare part and is therefore so specified, with suitable motivation for the restriction of bids to one or more suppliers.
Where the knowledge and/or skills of individuals or companies are required in respect of services, such as marketing services, facilitating services, etc.	Although the field of creative thinking is involved here, the output which is desired can be specified and, for purposes of selecting a contractor, certain evaluation criteria can be specified together with weights (point values) attached to each criterion. Evaluation of offers in such cases is carried out by panel of knowledgeable people. Each panel member individually evaluates and allocates points in respect of each criterion and the collective results of allocated points are accepted for final award. The individual allocations must form part of the permanent record of the bid.

- (f) In respect of technical equipment, apparatus, machinery and fragile goods, the following must be clearly specified so that they may be priced separately for evaluation purposes:
- (i) Whether installation/erection is required;
 - (ii) Whether servicing/maintenance is required; and
 - (iii) The guarantee that is required.

Special condition as part of specifications

- (a) Special conditions of tender/bid' are the requirements or rules that the Department sets out in the bid document regarding the procedure for lodging an offer. They are scored as 'pass/fail' or 'yes/no'. Each offer must conform to these conditions to be eligible for further evaluation. An offer that fails to meet these conditions may be rejected as it is deemed to be non-responsive.
- (b) It is important to highlight such conditions and provide clear guidance in specifications for suppliers on what they must do to meet them. Sometimes these conditions are referred to as pre-qualifying criteria, special conditions should be used sparingly and only for critical requirements that are essential to the deliverables. Note that there must be a causal link between the conditions and the legally permissible purpose for which it is used, in other words it must have a direct bearing to the goods or services required.

Evaluation criteria as part of specifications

- (a) Evaluation criteria as part of specification also require that an evaluation methodology need to be decided upon. When specifications are compiled the manner in how offers will be evaluated must be considered. In this case the following procedure must be followed:

Table: Decision on evaluation criteria guideline

AREA	PROCEDURE
Evaluation criteria	<u>Establish evaluation criteria</u> (a) Prioritise and weight the evaluation criteria. (b) Identify what due diligence checks are appropriate (c) Identify when each due diligence check will occur
Decide evaluation methodology	<u>Decide on evaluation model: i.e. lowest price/weighted average etc.</u> (a) Is a two envelope system required; (b) Develop Rating Scale to guide evaluation panel scoring; (c) Determine panel decision making process: mathematical average/panel moderation; (d) Identify the information required from suppliers: supplier details/response to requirements/pricing/format etc. (e) Identify any required additional steps: interview/presentation/site visit etc. (f) Identify any optional additional steps: reserve the right to interview/presentation/site visit etc.

Below is a checklist for the minimum specifications which must be considered for inclusion, where applicable:

Table: Minimum Specification checklist:

SPECIFICATION CHECKLIST	RELEVANT(Y/N)
Description of the requirement	
Background.	
Objective of the project, where applicable.	
Quantity/volume applicable.	
Plans and drawings that reflect the text of the specification. <i>(Please note, that the order of precedence</i>	

SPECIFICATION CHECKLIST	RELEVANT(Y/N)
<i>between the drawings and the specifications should be specified.)</i>	
Minimum performance requirements.	
Expected outcomes/deliverables.	
Evaluation criteria including the ratio of points as applicable and the quantification thereof.	
The particulars pertaining to the goal to be met, where applicable.	
The delivery date(s), place(s) of delivery and/or the contract period applicable. In the case of period contracts a period of time for completion of the contract must always be prescribed in the relevant bid documents. This period of time must also be precisely stated, e.g. "contract period: 24 months". Statements such as "within x months" or "before x months" must not be used.	
Schedule for service delivery or completion date.	
Shelf life, where applicable.	
Packaging, where applicable.	
Whether installation/erection is required and if affirmative, an indication of the place/address where the installation/erection is to take place.	
Whether demonstration/training is required and if affirmative, an indication of the place/address where the demonstration/training is to take place.	
Whether a performance guarantee is required. Full particulars, amount and reasons must be given. Performance guarantees should be commensurate with the degree of contractual risk to which the Department is exposed and are normally applicable to large and complex contracts. Performance guarantees should spread the cost of the risk of failure between the contracting parties and should be set at such a level that all municipal costs relating to such failure are likely to be recovered.	
The warrantee requirement and period applicable (time period, parts and labour, onsite service and repair, extended warranty)	
Whether samples must be submitted and whether the samples must be tested before the award of the contract. Reasons for testing should be given.	
Where samples are to be submitted, the special conditions should state that samples must be submitted not later than the closing time or the date and time specified in the bidding documents.	
Indicate inspection, testing, analysis, standards or method requirements, where applicable. Where tests, inspections and analyses are a bid condition, the bid documents should specify that the premises of the bidder should be open at all reasonable hours for inspection by a representative of the Department acting on behalf of the Department.	
Price particulars applicable.	
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 reimbursable route are recorded for auditing purposes.	
Indicate in the case of capital goods, whether foreign export credit facilities should be utilized.	

SPECIFICATION CHECKLIST	RELEVANT(Y/N)
Competency and expertise requirements.	
Reporting requirements, where applicable.	
Available documentation pertaining to the specific project, where applicable.	
Detailed product requirements (materials used, colour, horsepower, minimum and maximum parameters).	
Detailed service requirements (what must be provided, what service performed).	
Performance requirements (what must it do, how is the work performed).	
Product certifications, professional licenses or required training.	
"Build inspection" at manufacture's facility during production.	
Any space or weight restrictions.	
Who handles the installation?	
What utilities are available?	
Training requirements, instructional and maintenance materials such as manuals or DVD's.	
Delivery instructions.	
When and where is it needed?	
Responsibilities (who hooks up the utilities, removes debris, disposes of the old equipment).	

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 the words "or equivalent" should be added after the 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. The quality required should not be over specified to the extent that it will be impossible for others to offer such a product.

In the case of period contracts, all specifications, drawings etc. must be numbered. When specifications are amended, the number must be amended also to indicate the year of the amendment. Thus contract ABC/2004 will be amended to ABC/2005 indicating the year of the amendment.

To simplify the evaluation process especially in terms of goods, a space should be left on the right hand side of each page, in which the bidder will indicate whether the offer complies with the specification or not. Particulars of the offer, such as any deviations will also be indicated in this space.

- **Contradictory stipulations:** Care must be taken to guard against obscurities and contradictions in specifications/TOR.
- **Private sector involvement:** It is a sound principle, however not compulsory, that suppliers/service providers of repute should, whenever required, be involved in the drafting of specifications. Therefore, the relevant industrial sector's representative body should, where possible, be involved in the decision of who to invite to attend specification compilation meetings.

- **Statutory requirements:** Care should be taken to ensure that specifications, where applicable, give effect to the requirements set by other control bodies and that they are not in conflict with legal or statutory requirements that have been stipulated.
- **Conditions in specifications:** Bidding and contract conditions must not be included in specifications, but in the rest of the full bid document.
- **Tolerances:** As a rule products cannot be manufactured precisely to dimension. Therefore, a specification of precise dimensions without tolerances will generally not be permitted. The necessary tolerances, which will take one of the following three forms must be set:
 - A minimum dimension.
 - A maximum dimension.
 - A median dimension with a tolerance to either side.

Other factors:

Any subjective factors playing a role in the determination of the specification/TOR can be dealt with through specification clauses and specific conditions.

Visible or tangible factors, such as colour or style of furniture can be specified.

Where compatibility with existing equipment is required, three broad groupings are identified:

- Cases where the required item has to function with existing equipment, such as office automation equipment. All requirements can be specified, one of which will be that the equipment must integrate with the existing equipment, which must also be specified. Naturally this will then be a primary criterion when evaluating offers.
- Cases where the item is required as a direct component of existing equipment. The item is regarded as a proprietary spare part and is so specified, with suitable motivation for restricted bidding if required.
- Cases where the required item must be the same as the existing items. It may be necessary, because of the large investment in the existing equipment in terms of capital, inventories and skills, to obtain the relevant approval beforehand for specifying the particular product by submitting motivation and the proposed procedure to be followed to the relevant delegated authority.

Where the knowledge and/or skills of individuals or companies are required in respect of services, such as advertising services, facilitating services, etc. Although creative thinking is involved here, the output, which is desired, can be specified and for purposes of selecting a contractor certain evaluation criteria can be specified together with points attached to each criterion.

It must be ensured that the SABS is approached in good time for the drafting of proper specifications. Where subjectivity plays a role in a specification, evaluation criteria must form part of the specification. Only then can sound evaluations and recommendations be made on a properly regulated basis and responsible decisions taken in respect of commodities and services.



Where items are required which cannot be specified at all, e.g. the purchase of works of art, the SCMU must be approached beforehand with a motivated application, which includes suggestions regarding the selection procedure, and if necessary, deviation from prescribed procedures.

Technical equipment:

In respect of technical equipment, apparatus, machinery and fragile goods, the following must be clearly specified so that they may be priced separately for evaluation purposes:

- Whether installation/erection is required.
- Whether servicing/maintenance is required.
- Whether demonstration/training is required.
- The warranty, which is required.
- Whether licenses are required and its related fees.

Servicing and maintenance can be divided into the following categories namely:

- Computer Hardware
- Normal maintenance

This would entail a contract for the repair of any broken components of the installed equipment. This might either be during or after the warranty period and should be indicated in the specification if required.

Maintenance costs are to be specified in terms of hourly tariffs for labour and the actual cost of materials. Therefore, a list of the materials is to be included in the bidding documents.

- **Preventative maintenance:** Preventative maintenance entails a service that is supplied to Municipality to keep the equipment in running order. The details will not be specified in the bidding documents. However, where it is known beforehand that certain parts will have to be replaced on a regular basis, these details (how, when, where and on what equipment) must be specified in the bidding documents. Any repairs done should be covered in the normal maintenance contract.
- **Support/standby services:** If the municipality does not wish to enter into maintenance and/or a preventive maintenance contract, a contract for the services of a skilled consultant/individual to rectify faults on equipment may be entered into on an as-and-when required basis.
- **Computer Software:** the municipality purchases the right to install a certain software product. After the initial license purchase with a number of concurrent users, the following fees are payable:
 - Entering into an optional maintenance agreement - this would ensure that all version changes, new releases etc. are supplied at the nominal monthly/annual cost as determined in the contract.
 - License fees - normally the software houses require that the Department pay renewal/license fees for the continual use of the product. This amount should normally be paid annually in advance.

In both cases the contract period must be determined and specified as open-ended contracts are not allowed.



User specifications versus technical specifications:

A technical specification determines mainly observable characteristics, such as the dimensions of the product and the material of which the product is to be manufactured. A user specification on the other hand describes mainly the result, which is to be achieved and how compliance is to be tested. The onus then rests on the supplier to offer a suitable product. Where appropriate, a special condition must prescribe that the bidder must substantiate its offer by means of a suitable certificate.

It is desirable, wherever possible in practice, to make use of user specifications. These are usually easier to draw up and they stimulate technological development and competition.

Specific brands or trademarks only:

If in exceptional cases a specific brand name or trademark is used in the specification the words "or equivalent" must be inserted after the brand name or trademark, unless reasons for doing so are provided and approved accordingly.

Specifying a brand name is acceptable where existing equipment is involved and the item comprises a component thereof, which must be of the same brand.

Fully motivated requests for the invitation of bids from multiple/single/sole source providers for a specific brand name or trade mark only must be submitted to the relevant award structure for approval prior to the invitation of the bid.

HOW TO PERFORM STRATEGIC SOURCING

Determine the lifecycle cost of each commodity. Lifecycle cost is a tool for applying the total cost of ownership (TCO) principle. Lifecycle costing includes costs associated from the commencement of the budgeting process until the requirement is disposed of.

Determine the total cost of ownership for each commodity. Total cost of ownership (TCO) is widely used for decisions on ownership of assets. It is based on the fact that all costs applicable to ownership should be included in any analysis where decisions should be made on the options of owning a capability or the contracting for the supply or the service.

Setting benchmarks for complying with targets.

Commence with the identification of contract conditions.

A sourcing strategy provides an indication of where the required goods and/or services may be procured, in the best interest of the municipality.

Requirements are not necessarily satisfied from outside sources only. All possible sources of supply are to be investigated.



The most appropriate method of satisfying the requirement is to be established. In this regard, the range of processes as defined in the subsequent sections, are to be considered.

One aspect is for instance to investigate the possibility of placing single orders with staggered deliveries in order to meet requirements as they arise, or utilizing the just in time (JIT) principle

**VOLUME 3:
ACQUISITION MANAGEMENT**

14 ACQUISITION MANAGEMENT SYSTEM

Acquisition management is a process of inviting, evaluating, and awarding of bids.

This process is a critical part of the SCM system as it involves direct contact with private partners whose rights are protected by various laws. There are several issues to consider when embarking upon the acquisition process:

- (a) The legislative framework that guides the procurement process;
- (b) All SCM prescripts issued by the National/Provincial Treasury; and
- (c) The delegations issued for Supply Chain Management as it will indicate the precise parameter within which a delegated official may act, along with any conditions or limitations attached to such action.

The acquisition management process as per the Provincial Treasury Practice Note 3 of 2008/2009 makes provision for specific forms of procurement, through:

- (i) Petty cash purchases, up to R 2000; (Not yet operational in the HS)
- (ii) Open Written Price Quotations, between R 2000 to R 500 000;
- (iii) Competitive bidding, above R 500 001.

Approval delegation for procurement:

Transaction value	Delegated to	Salary level
Up to R 30 000	Deputy Director	11-12
R 30 001 –R 250 000	Director	13
R 250 001 – R 500 000	Chief Director	14
R 500 001 – R 1 million	Departmental Bid Adjudication Committee	
R 1 million and above	Accounting Officer	15

When any of the above procurement processes are not practical or for certain specific commodities, the following types of acquisition management may also apply:

- (i) Limited bidding;
- (ii) Emergency procurement;
- (iii) Unsolicited bids;
- (iv) Transversal contracts;
- (v) Contracts arranged by other organs of state;
- (vi) Consultants; and
- (vii) IT via SITA.

Specific acquisition arrangements also apply to:

- (i) Sponsorships;
- (ii) Finance leases; and
- (iii) Grants.

For all price quotations the NWPG will apply the Central Supplier Database from the National Treasury as well as the ISS quotation system.

14. PETTY CASH (R 2000) (Not implemented for 2021/22 up 2023/24)

Petty Cash is a means whereby Departments are allowed to **utilise cash** to procure goods or services to a transactional value of R2000. The Department will procure requirements through this method to the value of

The following requirements must be utilised as control measures when dealing with petty cash purchases:

- (a) The keeping of a petty cash register must be entrusted to a responsible person in writing by the head of the office or section concerned and such person must enter all payments and replenishments in the petty cash register immediately.
- (b) A supporting voucher must be obtained for each payment.

The Department will establish internal procedures to ensure sound financial management of funds when goods and/or services are obtained by means of petty cash.

15. OPEN WRITTEN PRICE QUOTATIONS

The Department must procure goods or services between the value of R2 001 and R500 000 via open written price quotations. Purchases under this category are regarded as low value and hence the relaxation of rules. This category is more open to abuse and requires that the Department puts mechanisms in place to implement and monitor utilisation/exercising of such delegation.

Goods and services must be procured under this category subject to the following minimum conditions:

- Quotations must be obtained from at least three (3) different suppliers who are duly registered on the Central Supplier Database (CSD).
- In the event that it is impractical to obtain quotations from suppliers who are duly registered on the CSD:
 - (a) Departments may use suppliers known to them who may be approached, and reasons for such deviation must be recorded;
 - (b) Departments must demonstrate that the utilisation of the supplier is the only viable option, financially, strategically, practically, operationally and in respect of availability in the market and uniqueness of product or service;
 - (c) that the Department is in possession of all mandatory documentation at the time of award (i.e. tax clearance certificate and original SBD4); and
 - (d) the Department must inform the Provincial Treasury of all awards made to suppliers who are not duly registered on the CSD via the monthly report submitted to the Provincial Treasury within five working days after submission to the AO.

To the extent practical suppliers must be requested to submit quotations in writing;

- A quotation must be submitted in writing and the order must be placed only against written confirmation by the selected supplier;
- If it is not possible to obtain at least three quotations, the reasons must be recorded and signed off by the Director (SCM), or delegated authority, for audit purposes;
- The SBD4 bidding document of the successful supplier/bidder must have been verified as complete and current on the CSD; and
- In instances where the selected supplier is not duly registered on the supply database, the Department must ensure that the supplier has submitted a duly completed and signed SBD4 and tax clearance certificate.

16. WRITTEN PRICE QUOTATIONS THROUGH ISS

Goods or services between the value of R2 000 and R500 000 should be procured via the ISS/CSD, from suppliers who are duly registered on the Central Supplier Database [CSD].

Quotations obtained through the ISS /CSD are deemed to be competitive formal quotations as at least 3 accredited suppliers are given the opportunity to submit a quote in their relevant fields of business.

Goods and services must be procured under this category subject to the following minimum requirements:

- **ensure that prices obtained are reasonable;**
- **where prices are exorbitant**, the enquiry may be cancelled and re-requested outside the ISS, where the following requirements must be followed by the Department:
 - (a) request quotations from suppliers known to the Department and registered on the CSD;
 - (b) ensure that selected suppliers are tax compliant; SBD 4 has been completed; B-BBEE certificate and SBD 6.1 has been completed where preference points are claimed;
 - (c) ensure that the selected supplier is registered on the CSD, within seven days of awarding the contract (registration form and guide to be used); and
 - (d) In cases where the selected supplier is suspended on the CSD due to the lapse of compulsory documentation such as TCC or SBD4, Departments are requested to obtain such documents from the supplier and submit to the Provincial Treasury for the update of the supplier on the CSD. Copies of such documentation must be kept for record purposes.
- **where less than 3 quotations are received via the ISS**, the Department must evaluate the responses received in terms of responsiveness and cost effectiveness and if an award is made to record all reasoning for its decision – making as well as noting that more than 3 bidders were approached and indicating the number of offers received;

Where the Department is sure that sufficient exposure has been given to suppliers on the CSD and no responses were received the following process must be followed:

- (a) request quotations from suppliers known to the Department but not yet registered on the CSD;

- (b) ensure that selected suppliers are tax compliant; SBD 4 has been completed; B-BBEE certificate and SBD 6.1 has been completed where preference points are claimed;
- (c) ensure that the selected supplier is registered on the CSD, within seven days of awarding the contract (registration form and guide to be used);
- (d) In cases where the selected supplier is suspended on the CSD due to the lapse of compulsory documentation such as TCC or SBD4, Departments are requested to obtain such documents from the supplier and submit to the Provincial Treasury for the update of the supplier on the CSD. Copies of such documentation must be kept for record purposes.

19 COMPETITIVE (OPEN) BIDDING

This is the process where all prospective bidders are provided with timely and adequate notification of a Department's requirements and an equal opportunity to bid for the required goods or services.

20.1. PROCESS

For all procurement in excess of R500 001.00, bids must be advertised in the Government Tender Bulletin and E-Tender Portal. If deemed practical or necessary by the Department, bids must also be advertised in other media. This will allow for unfettered competition and provides an opportunity for all prospective bidders to make an offer and compete on an equal basis. In the Department the department is using a pre-qualified database to obtain tenders for all HSDG related expenditure where the amount of the infrastructure is pre-determined by the provided quantum from National Department of Human Settlements.

Bid Invitation

- (a) Bids must be advertised by the relevant Supply Chain Management Unit in the *Government Tender Bulletin* for a minimum period of 21 days before bid closure as required by the **National Treasury Regulations, 2005**. Bids may also be advertised on the Provincial Government website and other publication media when needed.
- (b) In general, a normal time frame for closing of bids is at least 4 calendar weeks (21 days) after the date of publication. The reason for this is to grant bidders sufficient time to acquire the relevant bid documentation, evaluate their resources to determine whether it meets the bid requirements, to complete the bid documents and submit the bid documents. Furthermore, it also ensures fairness, equal opportunity, transparency and competitiveness. Where a compulsory information session is required, a bid must preferably close at least 2 weeks after the compulsory information session.
- (c) With relation to the limited bidding process on the pre-qualified data base the normal time frame for closing of bids are 14 days.
- (d) In justifiable circumstances the accounting officer may allow for the shortening of the closing date for bids. In terms of the **NTRs (2005)**, such shortening of advertising periods may only be done in urgent cases as determined by the accounting officer / relevant delegated authority.
- (e) When shortening advertising periods 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.

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- (f) When deciding on a shorter advertising period the monetary value as well as the complexity of the bid must be taken into account as well as the medium in which the bid is to be advertised.
- (g) If this process does not require that the bid be advertised in the Government Bulletin, permission in this instance should only be granted by the relevant delegatee on the provision of proper documented reasons/motivation.
- (h) In the interest of uniformity, fairness and in order to maintain bidder's confidence in the system, it is essential that a definite cut-off time be set for submitting bids and that it is strictly adhered to. The cut-off time for closure of bids is 11:00 on the day stipulated in the bid documents.
- (i) Bid documents must be ready before advertisement. The standard bid documents issued by National and Provincial Treasury must be used and customised according to the needs of the Department.
- (j) The Department must include the following or similar notification within all formal bid documents:
- (k) Bidders are allowed to collect bid documents or bid documents maybe posted to potential bidders. The former is preferable unless practicality necessitates otherwise. The Department must keep a register of bids collected and mailed which must include at least the following:
 - (i) the name of the bidders to whom documents were issued;
 - (ii) the bid number;
 - (iii) the name of the person who collected the bid;
 - (iv) the firm/company on whose behalf the document is collected;
 - (v) the phone number, the fax number, contact person;
 - (vi) the date and time the document was collected; and/or
 - (vii) the date the document was posted.
- (l) The register serves the purpose of a record in the event of disputes. It also serves the purpose of providing all the detail of the bidders who collected documents in the event where amendments have to be effected to the bid document.
- (m) The preferred method of receiving bids by a Department is via depositing of bid documents in the Departments' designated bid box. However in certain circumstances it may necessitate bids being received via post or courier services.
- (n) When bids are received by post or courier services, record thereof must be contained in the relevant register. The following details should be captured / recorded:
 - (i) The bid number.
 - (ii) The closing date of the bid.
 - (iii) The date and time the bid was received.
 - (iv) The name of the company who forwarded the bid or from whom the bid was received.
 - (v) How the bid was received, i.e. through courier services, or registry.
 - (vi) The state in which the bid was upon receipt, for example was it open.
 - (vii) Whether the bid was received on time.
 - (viii) Whether the bid was opened by the receiving officials and the reasons why the bid was opened.
 - (ix) Signature of the person that delivered the bid.
 - (x) Signature of the person who received the bid.



- (o) To ensure that the above information is adequately recorded, this register must be checked on a quarterly basis by the relevant head of SCM.
- (p) In the case of an advertised bid, the bid closing date may only be postponed if the new date is advertised in the Government Tender Bulletin before the original closing date. This would ensure that all bidders intending to bid are made aware of the postponement.
- (q) Bidders must be informed of any amendment to the bid documents in writing before the original closing date.
- (r) Bids may not be advertised too close to the period 15 December to 15 January as most suppliers / firms are closed during this period and responsive bids may not be assured / guaranteed. Similarly bids for building and related services must not be advertised or issued during the builders' holiday period and the closing date for bids must be set for no later than one week prior to the commencement of the holiday and at least 3 weeks after the end of the holiday period.
- (s) However, if it becomes necessary for the Department to advertise a bid during this period a submission must be made to the relevant delegatee in this regard for approval.
- (t) Bidders are required to submit bids valid for a period specified in the bidding documents. This period should be sufficient to enable the Department to complete the comparison and evaluation of bids, review the recommendation and award the contract. In the norm this is usually set for a period between 60-90 days.
- (u) An extension of bid validity, if justified in exceptional circumstances, should be requested in writing from all bidders before the expiration date. The extension should be for the minimum period required to complete the evaluation, obtain the necessary approvals and award the contract.
- (v) In the case of fixed price contracts, requests for second and subsequent extensions should be permissible only if the request for extension provides for an appropriate adjustment mechanism of the quoted price to reflect changes of inputs for the contract over the period of extension, if necessary.

20.2 LOCAL PRODUCTION AND CONTENT

In terms of Preferential Procurement Regulation 9(1), 2011 *"An organ of state must, in the case of designated sectors, where in the award of tenders local production and content is of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, services or works or locally manufactured, with a stipulated minimum threshold for local production and content will be considered."* Local content is a disqualifying criteria and contractors that are not compliant with this criterion must not progress to the functionality stage

20.3. BIDS BASED ON FUNCTIONALITY AS CRITERIA

In general, not all bids should be invited on the basis of functionality as a criteria. The need to invite bids on the basis of functionality depends on the nature of the required commodity or service, taking into account quality, reliability, viability and durability of a service and the bidder's technical capacity and ability to execute a contract.

When a Department invites a bid that will also be evaluated on the basis of functionality as a criterion. The following aspects must be clearly specified in the bid document:

(a) Evaluation criteria for measuring functionality

The evaluation criteria may include criteria such as; relevant experience, quality, qualifications of key personnel etc.

(b) Weight of each criterion

The weight that is allocated to each criterion should not be generic but should be determined separately for each bid on a case by case basis.

(c) Applicable values

The applicable values that will be utilised when scoring each criterion should be objective. As a guide, values ranging from 1 being poor, 2 being average, 3 being good, 4 being very good and 5 being excellent.

(d) Minimum qualifying score for functionality

The minimum qualifying score that must be obtained for functionality in order for a bid to be considered further should be generic. It should be determined separately for each bid on a case by case basis. The minimum qualifying score must not be prescribed so low that it may jeopardise the quality of the service required nor so high that it may be restrictive to the extent that it jeopardise the fairness of the SCM system.

20.4 CLOSING OF BIDS

Upon the closing time of bid (s) on a particular day, the bid box is closed at exactly 11:00 a.m. and all the bids should be removed for opening. The bids should be date stamped on the envelope, sorted according to particular bid numbers, recorded and sorted accordingly with those already received of similar bid numbers. In the interest of transparency this information is available for the scrutiny of interested parties on request.

All bids not received in envelopes, must be sealed in an envelope, if practical, and the bid number and closing date must be written on the envelope, if ascertainable. Bids received in envelopes (sealed or unsealed) without the bid number on the envelope, must be opened, the bid number ascertained, the envelope sealed and the bid number and closing date written on the envelope.

For security purposes all the pages of the bids received should be date stamped, and checked for any correction fluid marks, write-overs, deletions, signature omissions (especially on the bid forms), alternative offers, documents that should have been submitted with the bid, etc. Where the official who checks the bid finds correction fluid marks, write-overs or deletions, the official is required to initial next to it, co-initialled by a second official. Where certain forms, which require signatures, have not been signed, notes to that extent must be made on the temporary cover of the bid. The same applies to forms not included. Such bids must still be evaluated. The information must be brought to the attention of the evaluation team, once the bid is being evaluated. Due to the bulk documentation related to infrastructure only the pages of SBD forms on prices and documentation which may lead to a disqualification must be stamped during opening.

After this process, the bids, together with a covering letter should be forwarded to the relevant user or evaluation team for evaluation.

A copy of the covering letter should be placed on the main file (the file that was opened for the bid). The reason for the above process is to have strict control over bids as the absence thereof may be detrimental to the bid process, may waste a lot of time and may incur fruitless and wasteful expenditure.

20.5 UNSIGNED BIDS

The bid document should be structured and drafted in such a manner that it is clear once the bidder signs their written offer (the bid) it is the intention of the bidder to be bound by such offer.

Before acceptance, it must be ensured that the bidder who signed the document (SBD 1) does indeed have the authority to do so. For this purpose, documents such as company resolutions, references made to the company's memorandum of incorporation/articles of association etc. to confirm such authority should be obtained.

For the same reasons it is important that the signature of certificates, questionnaires and/or specification forms must also be validated. The Bid Evaluation Committee may **invalidate a bid if it is unsigned or not signed in indelible ink**. As this is a very drastic step under the circumstances, and may be a mere oversight by the bidder, **care should be taken to not invalidate a bid as a matter of course. Depending on circumstances, bidders should be approached to determine whether they would be willing to sign the particular documents and such signature must take place before acceptance**. It must be noted that **this is only permissible in the instance of missing signatures. No other amendments to the documentation are permissible**.

20.6 LATE BIDS

Bids are late if they are received at the address indicated in the bid documents after the closing time. A late bid must not be considered and where feasible must be returned unopened to the bidder accompanied by an explanation. The onus will be on the bidder to submit *prima facie* proof that the bid was delivered timeously. No exceptions to this rule should be entertained.

After the details of a late bid have been entered in the register, it must be returned to the bidder, preferably unopened unless circumstances dictate otherwise. If the sender's address is not indicated on the envelope, it must be opened to check the bidder's details, closed again and sent back to the bidder. Where bids are received through deposits in the bid box, and because the bid box is only opened on the closing time for a particular bid, two scenarios are possible: Bids may either be received in the bid box prior to the closing time of the bid (i.e. if it is a different bid than the one that closes on the particular day), or it may be received in the bid box on the closing date and time of the bid (i.e. a bid that closes on that particular day). In both instances, where applicable, all the details as indicated above are entered in the register.

15.3. CONTROL MEASURES FOR THE HANDLING OF BIDS

The following controls must be in place for the proper handling of bids:

- (a) A special lockable office for the receipt and storing of bids, as information contained in the documents is privileged.
- (b) A bid box that is open and accessible 24 hours per day 7 days a week including weekends and public holidays to ensure free access at all times.
- (c) Where a bid box is not open and accessible 24/7, it should be brought to the bidders' attention and should be reflected as such on the cover of the bid documents that have been issued to the bidders.



- (d) Date stamps may be used to stamp the time and date of receipt of bids to indicate whether / not bids have been received on time.
- (e) At least two persons must be involved in performing the following functions:
 - (i) advertisement of bid;
 - (ii) receiving of bids;
 - (iii) maintenance of bids;
 - (iv) opening, processing and storing of bids.
- (f) This also serves to protect officials involve in the abovementioned processes from potential irregular practices and to confirm and serve as witness for the late submission of bids and whether/not due process was followed. In this way the risks for the Department are also minimized, and operations are done in a spirit of consistency with the SCM regulations.
- (g) All bids to be entered into a register. In the interest of transparency this information is available for the scrutiny of interested parties on request.

15.4. EVALUATION OF BIDS

All bids duly lodged should be taken into consideration and evaluated by a Bid Evaluation Committee. The Department is not obliged to accept the lowest, highest or any bid. In considering bids for acceptance or before a formal contract is concluded, the following tests must be applied:

- (a) Compliance with bid conditions (legitimacy test).
- (b) Compliance with bid specification(s).
- (c) Local content consideration, if applicable
- (d) Functionality scoring
- (e) Comparison of prices and the allocation of preference points.
- (f) Consideration of any other factors that might have an influence on the award of the bid.

The above-mentioned includes but is not limited to:

- (a) The financial standing of a bidder;
- (b) The bidder's good standing with the South African Revenue Service;
- (c) Bidder's ability to manufacture, and/or supply goods or to render the required service.

It must be noted that a situation may arise where bids are received from suppliers who are not duly registered on the CSD. This may be due to a suspended status on the database or due to the fact that bids are advertised broadly on the *GTB* and websites which has a broader reach than the database suppliers. In the interest of just administration action, the Department should ensure that bidders who are not registered on the CSD are given sufficient opportunity to do so within a specified time so long as the registration process is concluded before the award of the bid.

Bids should be evaluated in terms of the following phases:

- (a) **Phase 1:** Checking of compliance with conditions and compulsory requirements of the bid (i.e. tax matters, requested documents, attendance of a compulsory information session if applicable, etc.). Only bids that complied with all requirements set out in Phase 1 of the evaluation process will proceed to the next phase. Refer to PPPFA section 1 of an acceptable tender.

- (b) **Phase 2:** Evaluate compliance with bid specifications and the bidder's ability to perform. Only bids that complied with all requirements set out in Phase 1 of the evaluation process will proceed to the next phase. This phase may include functionality as per PPPFA Regulation 4 or Local Content as per PPPFA Regulation 9.
- (c) **Phase 3:** Application of the Preference Point System (80:20 / 90:10). A bid should be awarded to the bidder that scored the highest number of points. Refer to PPPFA Regulations 5 or 6.
- (d) **Phase 4:** Consideration of additional objective criteria as per PPPFA Section 2(1)(f).

What constitutes additional objective criteria?

The PPPFA section 2(1)(f) is very clear that 'additional objective criteria' must be criteria additional to preferences (goals and RDP) and should relate to issues only identifiable once proposals are submitted and risks are identified. In this regard your attention is specifically directed to the matter of *Simunye Developers CC v Lovedale Public FET College*, where it was stated that "...there is clearly no statutory obligation on an organ of state to stipulate in the tender documents which objective criteria it may consider in a decision not to award the contract to the tenderer who has scored the highest points. In fact it would often be impossible to provide a numerous clauses of such criteria."

Mindful of various case law and academic papers, the following factors may be cited as additional objective criteria:

- Rotation of tenders (if so indicated during tender invitation as part of tender documents).
- Environmental considerations.
- Abnormally low tender (if PAJA is adhered to).
- Risk considerations specifically related to the preferred bidder, most of which is obtainable from the functionality criteria and the bidders' response thereto (if PAJA is adhered to).

If legal persons bid for the rendering of supplies or services, it may be required that the names and relevant qualifications of the actual people who will be responsible for the services or works be stated or the directors, trustees or members of such a legal person.

When evaluating against a technical specification, bidders are required to comply with all technical requirements as far as possible. If it is found that a bidder complies with all the technical requirements, extra features of that product/service offered cannot be taken into consideration unless the Department decides that the feature that the bidder has offered should be part of the specifications. Other bidders should then also be allowed to offer such features.

As a general rule it is acceptable to allow the submission of alternative offers which are almost but not strictly to specification irrespective of whether the bidder also submits offers conforming strictly to the specification criteria. The exception to this rule is to stipulate that bidders may not submit such offers. In such cases, this decision must be stated unequivocally in the bid invitation in order to avoid a situation where different offers are submitted on one set of bid documents, thereby compromising / prejudicing the position of the bidder. Factors to be considered are:

- (a) The delegatee must be convinced that other bidders' competitiveness is not adversely affected by the acceptance of a bid, which is not strictly to specification.
- (b) If the delegatee is not convinced, the offer that is not strictly to specifications may not be considered.

- (c) Where the difference in bidding price between the bid with acceptable deviations from specification and the lowest bid strictly to specification is small, a recommendation should be made to the Departmental Bid Adjudication Committee that the latter should be accepted as an alternative. In this instance, the programme concerned should indicate that it will carry the additional cost.
- (d) Where there is no such indication, or the programme is unable to bear such cost, such bid may not be accepted.

Where alternative offers differ materially from the specification the following approach must be taken:

- (a) Consider in the first instance whether or not the best option would be cancellation.
- (b) Ensure an open and fair process, affording equal opportunity to bid.
- (c) Determine whether or not a specification is inherently proprietary / unique to that particular bidder.
- (d) Stipulate the set cut-off date for offers to reach the Department.
- (e) Late offers are unacceptable.
- (f) Care must be taken not to expose the bid price of the bidder who initiated the altered specification.
- (g) All these offers must be opened simultaneously after the closing.

If the bidder is a supplier but not the actual manufacturer and will be sourcing the product(s) from another company, a letter from that company(ies)/supplier(s) confirming firm supply arrangement(s) in this regard, has to accompany such bid and failure to submit such document may invalidate the bid.

It is a requirement that the taxes of bidders must be in order or that satisfactory arrangements have been made with the South African Revenue Service (SARS). Failure to supply the relevant Tax Clearance certificate or proof that arrangements have been made with SARS will invalidate the bid. In this matter refer to the *Millennium Waste Judgement* regarding materiality and PAJA.

Prior to the award of any contract, the delegatee 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. This list of restricted suppliers is managed and maintained by the Office of SCM within the National Treasury. This list can be accessed on the National Treasury website: www.treasury.gov.za. Hence the Departments must ensure that the recommended bidder is not listed in National Treasury's Database of Tender Defaulters and Register of Restricted suppliers. Under no circumstances are Departments allowed to procure from suppliers listed on the Tender Defaulters' Database. For suppliers listed on the Register for Restricted Suppliers, the Department must apply due diligence and risk assessment before deciding to proceed with procurement from the supplier.

In order to give effect to the National Industrial Participation Programme, all contracts that have an imported content and a value \geq R10 million must within five days after award be reported to the Department of Trade and Industry at the following address:

Chief Director: Industrial Participation
Secretariat
Department of Trade and Industry
Private Bag X84
Pretoria
0001

The following information regarding the contracts mentioned above must be reported to the Department of Trade and Industry:

- (a) Bid number;
- (b) Description of the goods, works or services;
- (c) Date on which the contract was awarded;
- (d) Name, address and contact details of contractor; and
- (e) Imported content of contract, if possible.

15.5. EVALUATION OF BIDS BASED ON FUNCTIONALITY AS A CRITERIA

Evaluation of functionality

- (a) Bids must be evaluated in terms of the evaluation criteria indicated in the bid document. The amendment of evaluation criteria, weights, applicable values and minimum qualifying score for functionality is not allowed after the closure of the bid as it may jeopardise the fairness of the process.
- (b) A bid will be considered further if it achieves the prescribed minimum qualifying score for functionality. A bid that fails to achieve a minimum qualifying score must be disqualified.
- (c) Score sheets should be prepared and provided to panel members to evaluate the bids. The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation, indicated in the bid documents.
- (d) Each panel member should after thorough evaluation, independently award his/her own value to each individual criterion. Score sheets should be signed by panel members and if necessary, written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist.
- (e) If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows:
 - (i) The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria.
 - (ii) The scores for each criterion should be awarded to obtain the total score.

Application 80/20 or 90/10 preference point system

Only bids that achieve the minimum qualifying score/percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference points systems prescribed in Preferential Procurement Regulations, 2011.

15.6. EVALUATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT

Bids that were invited on the basis of local production and content should be evaluated by following a two stage bidding process:

Phase 1: Evaluation in terms of the stipulated minimum threshold for local production and content

- (a) Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as it may jeopardise the fairness of the process.

- (b) Bids must first be evaluated in terms of the minimum threshold for local production and content, thereafter functionality;
- (c) A bid will be disqualified if:
 - (i) The bidder fails to achieve the stipulated threshold for local production and content (and functionality if applicable); and
 - (ii) The Declaration Certificate for Local Content (SBD 6.2) is not submitted as part of the bid document

Phase 2: Application of 80/20 or 90/10 preference point systems

- (a) Only bids that achieve the minimum stipulated threshold for local production and content must be evaluated in this phase.
- (b) Contracts must be awarded at market related prices, taking into account benchmark prices. If the Department has sufficient time it may approach the *Dtlo* assist with benchmark prices, value for money and economies of scale; and
- (c) Prices may be negotiated with short listed/ preferred bidders however it must not prejudice other bidders. It is further subject to the accounting approval and bidders have been identified as preferred bidders through a competitive bidding process.

15.7. EVALUATION OF BIDS THAT SCORED EQUAL POINTS

In the event that two or more bids have scored equal total points, the successful bid must be the one that scored the highest points for B-BBEE.

When functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots. It is important that, as provided for in the Constitution of the Republic of South Africa (Act 108 of 1996), the process of drawing of lots should provide for an objective, fair and open procedure to determine the successful bidder. The process determined should ensure that there is no prejudice against any of the equal bids and further that the award may be made without interference and with impartiality.

The following is the preferred procedure when drawing lots:

- (a) A small container (e.g. box or hat) is used with a hole sufficiently small so that a hand may be placed inside, but not large enough so that the lots may easily be seen.
- (b) Pieces of paper may be used as lots, but it should be ensured that there is at least double the amount of lots than there are equal bids.
- (c) The lots should in all respects be equal, i.e. the same colour, weight, size, texture etc. Before the lots are inserted the names of each of the equal bids are written or printed on a lot and all lots are inserted in the box.
- (d) The container is then shuffled and an independent party or chairperson of the committee then draws one lot at a time in front of at least three witnesses, until the first lot with a name written or printed thereon is drawn.
- (e) The first lot to be drawn is the successful bidder.

15.8. DISCOUNTS

When calculating comparative prices:-

- (a) unconditional discounts must be taken into account for evaluation purposes;
- (b) conditional discounts must not be taken into account for evaluation purposes but considered only when payment is made.

15.9.SUB-CONTRACTING

A bidder must not be awarded the points claimed for BBBEE status level contribution if it is indicated in the bid documents that such a bidder intends subcontracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended subcontractor is an Exempted Micro Enterprise (EME) that has the capability to execute the sub-contract.

When a contract is awarded, a contractor is not allowed to subcontract more than 25% of the contract value to another enterprise that does not have equal or higher BBBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

In relation to a designated sector, a contractor must not be allowed to subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the minimum threshold.

15.10. AWARD OF BIDS

A bid must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.

A contract may be awarded to a bidder who did not score the highest total number of points, only in accordance with section 2 (1) (f) of the PPPFA (Act 5 of 2000). This may be done when objective criteria is contemplated in addition to specific goals as contemplated in subsections (d) and (e) of the PPPFA, which require that:

- (a) specific goals may include-
 - (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
 - (ii) implementing the programmes of the Reconstruction and Development Programme as published in *Government Gazette* 16085 dated 23 November 1994; and
- (b) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.

What constitutes additional objective criteria?

The PPPFA section 2(1)(f) is very clear that 'additional objective criteria' must be criteria additional to preferences (goals and RDP) and should relate to issues only identifiable once proposals are submitted and risks are identified. In this regard your attention is specifically directed to the matter of *Simunye Developers CC v Lovedale Public FET College*, where it was stated that "...there is clearly no statutory obligation on an organ of state to stipulate in the tender documents which objective criteria it may consider in a decision not to award the contract to the tenderer who has scored the highest points. In fact it would often be impossible to provide a numerous clausus of such criteria."

Mindful of various case law and academic papers, the following factors may be cited as additional objective criteria:

- Rotation of tenders (if so indicated during tender invitation as part of tender documents).
- Environmental considerations.
- Abnormally low tender (if PAJA is adhered to).
- Risk considerations specifically related to the preferred bidder, most of which is obtainable from the functionality criteria and the bidders' response thereto (if PAJA is adhered to).

15.11. REJECTION OF BIDS

Rejecting all bids is justified when there is a 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 bids received. If all bids were rejected, the Department 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. 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 unacceptable, new bids may be invited from the initially pre-qualified firms, or with the prior written agreement of the Accounting Officer, from only those that submitted bids in the first instance.

Bids should not be rejected for the purposes of obtaining lower prices, if the lowest evaluated acceptable bid exceeds the Department's estimated costs, unless approved budget for the procurement process dictates otherwise.

Individual bids may be disregarded in the following circumstances:

- (a) Where a bidder/ contractor/ service provider fails or has failed to comply with any of the conditions or compulsory requirements of the bid;
- (b) Where a bidder has withdrawn an offer;
- (c) Where a bid is late;
- (d) Where the bidder has amended an offer after the closing time for receipt of offers;
- (e) If it is determined that the supplier recommended for award, has engaged in corrupt or fraudulent activities in competing for the contract in question; and
- (f) Any rejection of bidders should be motivated and recorded for audit purposes.

15.12. CONCLUSION OF CONTRACT

A contract is concluded and becomes binding when a bid is accepted by the relevant delegatee and a signed letter of acceptance, by an authorised person, has been sent before the validity period has expired. Any decision regarding the awarding of a contract will be final and, on written request, reasons for the decision of the Department will be provided without revealing any information of any bidder that is afforded protection under the Promotion of Access to Information Act 2 of 2000 or by any other law.

Successful Bidders will be notified by registered post of the acceptance of bids. With the exception of period contracts, the under-mentioned particulars of the successful bidder must be published in the Government Tender Bulletin and CIDB (where relevant) for general information:

- (a) Name of the Contractor;
- (b) The relevant price and delivery basis;
- (c) The brand name of the product or the name of the manufacturer;
- (d) Where applicable, the preferences claimed; and
- (e) Where no bid has been accepted, particulars of the bids received are not to be made public.

All correspondence, including letters of acceptance, must be signed on behalf of the Accounting Officer and in accordance with relevant delegations. This is an administrative arrangement and although the Accounting Officer accepts accountability for the contract that is concluded, the signatory remains co-responsible for the contract and for the correctness of the data supplied. The letters of acceptance/SLA serve as the basis for placing orders and for the administration of the contract as well as for the settlement of disputes. The format and contents of the letters of acceptance must be written in a manner to enable SCM personnel to carry out the above-mentioned actions in a meaningful and responsible manner. All relevant information must be included in the letters of acceptance. It is essential that any conditions or stipulations, laid down by the Department be clearly and unambiguously included in the bid documents or letters of acceptance.

Care must be taken that letters of acceptance/SLAs do not contain conditions, or do not even imply the approval of conditions that the delegatee has not approved. Any special conditions set by the bidder, that has not been withdrawn, as well as any special conditions that have been approved and which have financial implications, must also be included in the letters of acceptance/SLAs.

In the case of joint bids or bids on behalf of companies still to be incorporated, the Department's rights must be protected at all times by binding all parties to the contracts both jointly and severally. The companies and/or persons concerned must therefore each receive a letter of acceptance/copy of the SLA addressed to their own addresses and care must be taken that they all have signed the bid documents appropriately. In the case of a company to be established, the contract must be ceded to the company as soon as it has been incorporated. In the case of period contracts where a large number of items are at stake, the contract notice may be used as part of the letter of acceptance/SLA.

In all cases, mistakes in the letters of acceptance must be reported to the relevant Head of the Department immediately. As the very first step, every effort must be made without delay to recover the original letter of acceptance from the contractor. Where it is not possible to recover the letter of acceptance unconditionally, all particulars of the incorrect acceptance must be reported to the Bid Adjudication Committee together with a recommendation regarding the corrective steps which are envisaged. A contract is only formalised when there is consensus reached and it is signed by both parties.

Where further documentation is signed by all parties concerned as an agreement in addition to the letter of acceptance, it is defined as a Service Level Agreement. It is not in all instances that a service level agreement is required. A Service Level Agreement is a document, which defines the relationship between the parties: the provider(s) and the recipient. This is clearly an extremely important document for both parties. If used it should:

- (a) Identify and define the Department's needs;
- (b) Provide a framework of understanding;
- (c) Simplify complex issues;
- (d) Reduce areas of conflict;
- (e) Encourage dialogue in the event of disputes; and
- (f) Eliminate unrealistic expectations.

Furthermore, Service Level Agreements should embrace a wide range of issues which amongst others will include the following:

- (a) Services to be delivered;
- (b) Performance, Tracking and Reporting;
- (c) Problem Management;

- (d) Legal Compliance and Resolution of Disputes;
- (e) Service provider and Department's duties and responsibilities;
- (f) Security;
- (g) IRP and Confidential Information; and
- (h) Termination.

All Service Level Agreements must be done in consultation with Legal Services and should also be approved by Legal Services. If not possible, the reasons must be recorded for audit purposes.

15.13. NEGOTIATIONS WITH PREFERRED BIDDERS

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

The Accounting Officer may negotiate the contract only with the preferred bidder identified by means of the competitive bidding process. Negotiations should include discussions of the Terms of Reference, the methodology, staffing, accounting officer's inputs, and special conditions of the contract. These discussions should not substantially alter / affect the original TOR or the terms of the contract, the quality of the final product and the relevance of the initial evaluation process. Major reductions in work inputs should not be made 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. 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. Financial negotiations should include clarification of the consultants' tax liability. Proposed unit rates for staff-months and reimbursable expenses should not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.

If the negotiations fail to result in an acceptable contract, the accounting officer should terminate the negotiations and invite the next ranked bidder for negotiations.

The original preferred bidder should be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked bidder, the accounting officer should not re-open the earlier negotiations. After negotiations are successfully completed, the accounting officer should promptly notify other bidders that they were unsuccessful.

15.14. CANCELLATION AND RE-INVITATION OF BIDS

Bids may be cancelled and fresh bids invited if:

- (a) conditions, specifications or any other information have to be changed/ mistakes are discovered in the documents before the closing date;
- (b) all bidders cannot be informed of the changes of the bid timeously;
- (c) in the event that, in the application of the 80/20 preference point system as stipulated in the bidding document all bids received exceeds the estimated rand value of R1 000 000; It should be noted that if one or more of the acceptable bids received are within the prescribed threshold of R 1000 000, all bids received must be evaluated on the 80/20 preference points system;
- (d) in the event that, in the application of the 90/10 preference point system as stipulated in the bidding document all bids received are equal to or below the estimated Rand value of R1 000 000; It should be noted that if one or more of the acceptable bids received are within the prescribed threshold of R 1000 000, all bids received must be evaluated on the 90/10 preference points system;
- (e) due to changed circumstances, there is no longer a need for the services, works or goods requested;
- (f) funds are no longer available to cover the total envisaged expenditure; and
- (g) if no acceptable bids are received.

Should the Department decide to cancel a bid, a submission must be drafted and submitted to the relevant delegatee regarding the cancellation of a bid. Where the latter decides to cancel the bid, cancellation must be communicated to all bidders who collected bids.

15.15. COMMUNICATION WITH BIDDERS

During consideration of bids, communication with bidders, may take place only within the delegated powers as set out by the SCM delegations. Communication with the bidder is only allowed when there appears to be ambiguity in documentation provided, and there is a need to confirm prices where there is uncertainty. The extent and purpose of the communication must be documented.

16. LIMITED BIDDING

Limited bidding is the process whereby bidding is reserved for a specific group or category of possible suppliers/service providers/contractors. It should be viewed as an **exception and not the rule** as this imposes a limitation on the provision of competitiveness. Departmental limited bidding will be permitted in instances where:

- (a) A business case was developed, that clearly indicates that a limited bidding process is the appropriate form of procurement. The business case must, amongst others, reflect a market and expenditure analysis of the relevant goods or services (commodity), whether the commodity is available from a sole, single or multiple source as well as how it was determined;
- (b) An open invitation process was initiated which resulted in an approved list of service providers or only one service provider who could provide the goods or services. In such case proposals should be invited from the approved list of service providers or the single service provider if applicable;
- (c) A competitive bidding process was initiated, but the bids received were all non-responsive or unaffordable and time is of the essence. In such cases re-invitation of bids may be limited to those service providers who initially submitted proposals;

- (d) Goods or services are designed or manufactured by the supplier or the supplier is the owner of the intellectual property. Written confirmation of such design, manufacturing or ownership of intellectual property must be obtained from the supplier and retained on the relevant bid file;
- (e) There exists legislative, technological or safety requirements or standards to limit the invitation to those suppliers or contractors who meet the requirements or standards. The aforementioned requirements or standards must be recorded by the Department and retained on the relevant bid file;
- (f) The Department has a specific need and may procure for exceptionally low prices for a limited period of time from a specific supplier. Written confirmation of the offer and the reasons for it must be provided by the supplier and retained on the relevant bid file as well as an indication that other relevant suppliers could not match the offer; or
- (g) Goods or services are offered by other Departments, trading entities or public entities, inclusive of service products, provided that prices are reasonable and market related.

When procuring goods or services through a limited bidding process, the SCM Unit must ensure that, where relevant:

- (a) the prescribed bidding documents have been completed;
- (b) the preferred bidders tax matters are in order;
- (c) the bid is evaluated in terms of the preference point system;
- (d) the required demand management process has been complied with;
- (e) all goods or services procured through a limited bidding process be recommended through the bid adjudication process prior to a final award being made by the relevant delegatee;
- (f) all limited bids over the value of R1 million (all applicable taxes included) is reported to the Provincial Treasury and the Auditor General within 10 working days;
- (g) all limited bids over the value of R5 million (all applicable taxes included) be executed in consultation with the Provincial Treasury prior to the award being made; and
- (h) reasons for the decision are documented and readily available to give effect to the PAJA.

21.1. FORMS OF LIMITED BIDDING

Multiple Source Bidding

This form of bidding is used in the case where the market has been tested and it is proven as fact that only a few prospective contractors will be able to present a bid. A detailed market analysis report must be available as substantiation.

Single Source Bidding

This form of bidding requires a pre-selection process that actually identifies only one bidder amongst a few prospective bidders to be requested to submit a bid/proposal. Reasons for utilizing single source bidding must be documented and be readily available, thus giving effect to the provisions of the Promotion of Just Administrative Action Act and the Promotion of Access to Information Act.

Sole Source Bidding

This form of bidding is used in the absence of competition where it has been established that only one source exists. Clear documentation in substantiation of such a bidding process must be available.

17. EMERGENCY PROCUREMENT

An "Emergency" may be defined as being a situation where immediate action is necessary in order to avoid a dangerous or risky situation, misery, provided that the situation was unforeseen.

The Department may in cases of emergency dispense with the invitation of competitive bids if impractical and may obtain goods or services by means of quotations or direct appointment.

22.1. EMERGENCY PROCUREMENT PRINCIPLES

The following principles will apply:

- (i) The best procurement procedure for every individual case should be applied.
- (ii) The Accounting Officer may approve a direct appointment of the best available service provider in circumstances where the situation may be dangerous, risky and life or property is at stake
- (iii) With regard to direct appointment where it is not possible to follow a reasonable procurement process the user Directorate must submit a condonation submission to DBAC for rectification of the procedures.
- (iv) The reasoning behind the specific appointment should be well-defined in order to stand the test of time.
- (v) Issues which should be considered are the availability of the service provide in a short period of time, if a supplier is already busy with a project in the same area, which may save time on site establishment, the capability of the service provider to start the project with immediate effect.

17.3. PROCUREMENT STRATEGY PER CATEGORY (RESPONSE PLAN)

- (a) The following procurement strategies will apply based on the *strategic commodities required as well as the delivery standards*:

	Predictable emergency incidence	Ad hoc emergency incidence
1	Price lists/framework agreements	3 quotes
2	Period appointments of consultants/ Turnkey developers	Single/sole source bidding through pre-qualified data base
3	Preferred list of suppliers	Expand or extend existing contracts
4	Multiple source bidding	Share with other organs of state
5	Expand or extend existing contracts	Other, as motivated
6	Share with other organs of state	

- (b) Full recorded motivations are required to substantiate need, classification and categorisation.
- (c) Poor planning will not justify an emergency incidence procurement incidence.

17.4. PROFILES OF SERVICE PROVIDERS (PRE-REQUISITES)

- (a) The *classification and categorisation certificate* must record consideration of the profile of specific service providers as detailed below:

- i. Geographic location of emergency *vis-a-vis* location of service provider.
- ii. Responsiveness (turn-around time).
- iii. Past performance of service provider(s) having a direct bearing on their ability to perform under the specific circumstances.
- iv. Capacity to render service, mindful of current obligations.
- v. Price in relation to market and need.

17.5. CONSIDERATIONS (OPTIONS)

(a) The *classification and categorisation certificate* must record the following considerations/options:

- i. Possibility to expand existing contracts (piggy-back).
- ii. Contracts procured by other organs of state (TR 16A.6.6).
- iii. Interim solution or permanent solution.

17.6. FUNDING MECHANISMS

(a) The *classification and categorisation certificate* must record the following financial/funding implications:

- i. Vote
- ii. Programme
- iii. Sub-programme
- iv. Interdepartmental financial arrangements
- v. Grant funding
- vi. Other sources of funding
- vii. Funding challenges (e.g. roll-overs, more than one financial year commitment, etc.)

17.7. ROLE-DEFINITION

(a) The **SCMU** will:

- i. Play a facilitative and advisory role during the classification, categorisation, approval, procurement, contract management and reporting activities related to emergency incidence procurement.
- ii. Report to NT, PT and AGSA as prescribed.
- iii. Conduct such contract administration functions as relevant.

(b) The **line function** component will manage and conclude all processes related to the classification, categorisation, approval, procurement, contract management and reporting activities related to emergency incidence procurement.

(c) The **Delegated Authority [DA]** will be accountable for all processes related to the classification, categorisation, approval, procurement, contract management and reporting activities related to emergency incidence procurement.

(d) The **Bid Adjudication Committee [BAC]** will consider and recommend procurement strategies in relation to 'predictable emergency incidence procurement' and review all processes related to the

classification, categorisation, approval, procurement, contract management and reporting activities related to emergency incidence procurement.

- (e) The **Financial Accounting** and **Management Accounting** Divisions in the Department will record and execute the necessary budgetary and accounting transactions.

22.8. EMERGENCY INCIDENCE PROCUREMENT PROCESS

In the event of emergency situations, officials will need flexibility in how they procure goods and services that are necessary to their response and it is accepted that it would be impractical to adhere to the competitive bidding procedures.

In adopting a more flexible procurement process, officials should still, as far as feasible, adhere to the procurement principles of being fair, equitable, transparent, competitive and cost-effective. Officials are to balance the need to act without delay against meeting the overarching public sector obligations of being accountable and to act lawfully and with integrity.

In order to embark on an emergency incidence procurement process, the relevant Accounting Officer or his/her delegated authority needs to validate and approve the classification of emergency as well as the category of procurement process to be adopted i.e. a 'predictable emergency incidence procurement process' or an 'ad hoc emergency incidence procurement process'.

Once approval as contemplated above has been obtained the procurement process as detailed below must be adhered to.

For each category of 'predictable emergency incidence procurement process' or '*ad hoc* emergency incidence procurement process' a management and treatment process must be developed as is graphically depicted below.

Figure: Predictable emergency procurement process

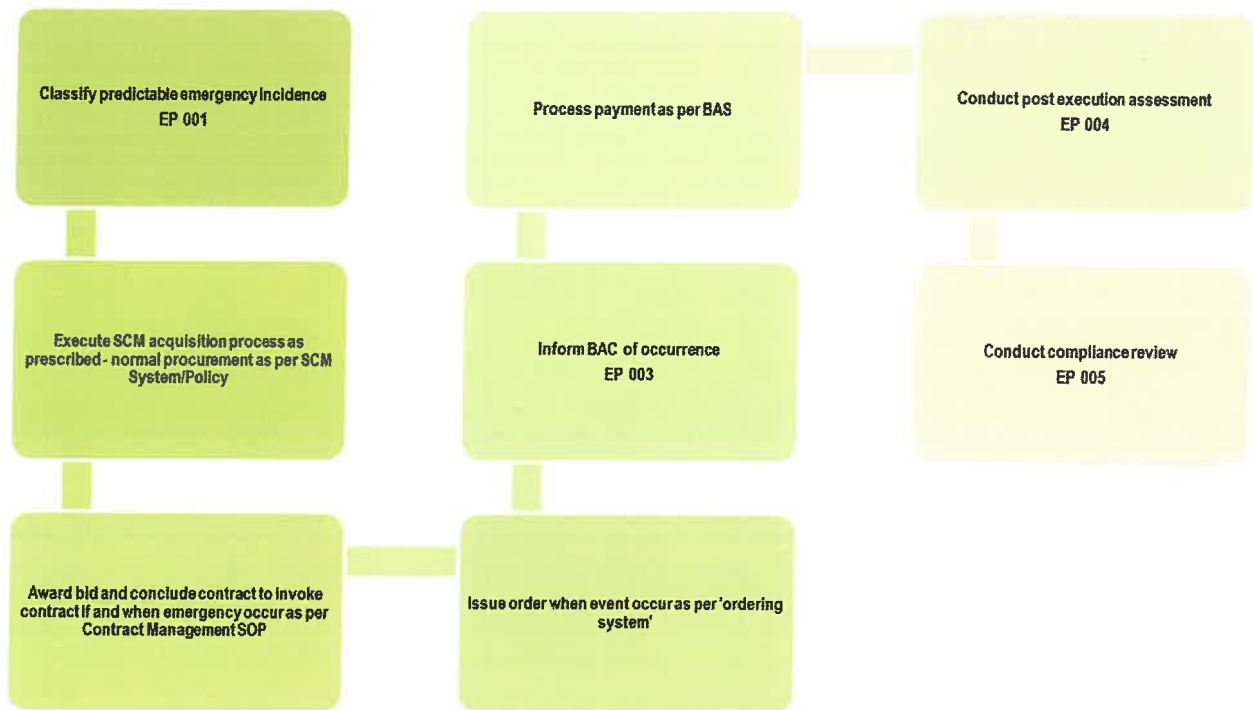
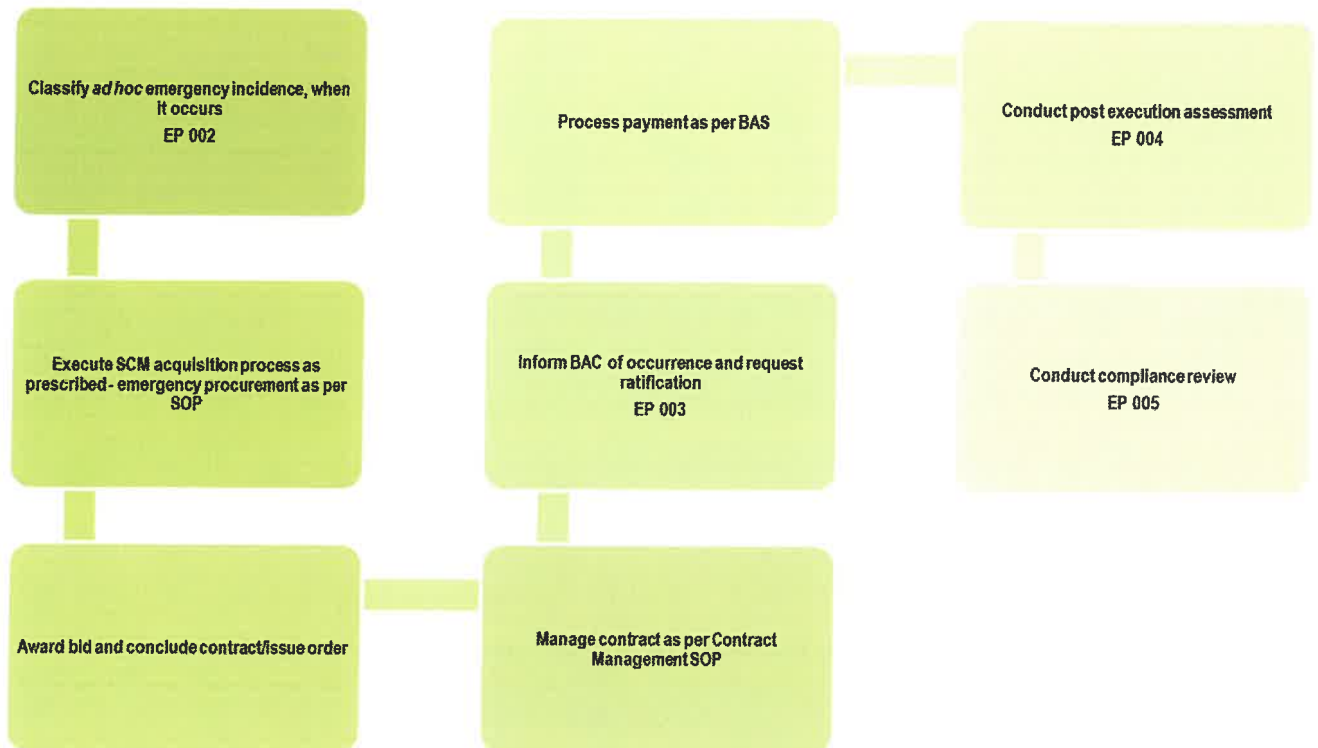


Figure: Ad-hoc emergency procurement process



18. UNSOLICITED BIDS

An unsolicited proposal means any proposal received by the Department outside its normal procurement process. The Department is not obliged to consider any unsolicited proposal.

23.1. CRITERIA FOR CONSIDERATION OF AN UNSOLICITED PROPOSAL

An unsolicited proposal may be considered if the proposal includes at least the following information:

- (a) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement of the bidder;
- (b) an offer in writing clearly setting out the proposed cost of the goods/ services; and
- (c) a value proposition which demonstrates a clear measurable, foreseeable efficiency gain for the Department.

If the decision is to consider the unsolicited proposal, a registered letter must be sent to the proponent confirming the decision to consider the proposal.

The following information must be requested from the proponent, if not already provided for in the initial proposal:

- (a) the proponent's name, address, identification or registration number (if a corporation), VAT registration number and the contact details of its authorised representative;
- (b) identification of any confidential or proprietary data not to be made public;
- (c) the names of other South African Departments that have received a similar unsolicited bid;
- (d) a declaration from the proponent to the effect that the unsolicited bid was not as a result of any non-public information obtained from officials of the Department or any other Department;
- (e) a concise title and abstract (approximately 200 words) of the proposed good or service;
- (f) a statement of the objectives, approach and scope of the proposed good or service;
- (g) a statement describing how the proposal is demonstrably innovative and supported by evidence that the proponent is the sole provider of the innovation;
- (h) a statement of the anticipated benefits or cost advantages to the Department including the proposed price (as in the initial proposal) or total estimated cost for providing the good or service in sufficient detail to allow a meaningful evaluation by the Department;
- (i) a statement showing how the proposed project supports the Department's strategic growth and development plan and its other objectives; and
- (j) the period of time for which the proposal is valid for consideration, which may not be less than six months.

23.2. REJECTION OF AN UNSOLICITED PROPOSAL

In unsolicited proposal must be rejected if the proposal:

- (a) relates to known Departmental requirements that may, within reasonable and practical limits, be acquired through conventional competitive bidding methods;
- (b) relates to goods or services which are generally available;
- (c) does not fall within the Department's powers and functions; and
- (d) does not comply with the criteria stated above.

- (b) the procedure for further developing the project and responding to issues raised by the Department;
- (c) the allocation of responsibility for developing bid documents in accordance with the Department's supply chain management systems, provided that the development of the documentation must always be under the supervision of the Department;
- (d) the information in the unsolicited proposal must be treated as confidential; and
- (e) the purchase of intellectual property rights, if any.

23.6 CALCULATION OF COSTS

In calculating costs, the Department and the proponent must restrict their consideration to direct costs incurred by the proponent in developing technical and other materials.

If the Department and the proponent cannot reach consensus, the Department will not be responsible for any costs which the proponent has incurred in preparing and submitting the unsolicited proposal. The Department may not implement the project proposed in the unsolicited proposal for the current or next financial year and may not utilise at any time the proprietary information provided by the proponent as part of its unsolicited proposal.

23.7 PROCUREMENT

If the unsolicited proposal agreement is concluded, the Department must prepare and issue the prescribed bidding documents to the proponent for completion.

The process to be followed when procuring a service provider shall include:

- (a) the preparation of a Request for Qualification (RFQ) to test the market for the existence of other private entities capable of providing the good/ service;
- (b) the preparation of a draft contract for the provision of the good/ service should there be no adequate response to the RFQ;
- (c) the preparation of a Request for Proposal (RFP) with a draft contract should there be one or more adequate responses to the RFQ;
- (d) conducting a competitive bidding process among the firms qualified in the RFQ and the proponent;
- (e) recommendation through the bid adjudication process prior to the final award being made by the accounting officer/authority;
- (f) the final award must be approved by the accounting officer/authority; and
- (g) reimbursement of the proponent should the proponent not be awarded the contract for the provision of the good/service at the conclusion of the competitive bidding process. The quantum of the reimbursement shall be those audited costs of the proponent from the point in time where the accounting officer/ authority was solicited by the proponent to the conclusion of the competitive process in terms of the unsolicited proposal agreement.

The foregoing bid processes must –

- (a) be developed by the Department
- (b) disclose that the bid originated from an unsolicited proposal
- (c) provide the agreed costs and terms of payment to the proponent, and require that all bidders, save for the proponent, make allowance for these costs and pay such costs to the proponent directly, if their bid is successful.

23.8 USING EXTERNAL CONSULTANTS TO ASSIST IN EVALUATING UNSOLICITED PROPOSALS

After receiving an unsolicited proposal and before accepting or rejecting the proposal, independent consultants or experts may be approached by the Department to assist in evaluating such proposal.

These consultants must however undertake that any confidential material or information provided by the proponent will not be disclosed to anyone other than an employee or agent of such a third party who will, in turn, treat the information or material as confidential and give an undertaking to do so. The cost of obtaining independent advice must be covered by the Department, unless the proponent withdraws the proposal prior to entering into an unsolicited proposal agreement, in which event the proponent will be liable to the Department for these costs.

23.9 USE OF UNSOLICITED PROPOSAL

The Department may not use any data, concept, idea, or other part of an unsolicited proposal as the basis or part of the basis, for a solicitation or in negotiations with any other firm unless the project proceeds to procurement and the proponent is notified of and agrees to the intended use, provided that, this prohibition does not preclude the use of any data, concept or idea in the proposal that also is, or becomes, available from another source without restriction. The Department further will not disclose any information identified in the unsolicited proposal agreement as confidential.

23.10. REPORTING

The Provincial Treasury must be notified in writing within ten working days of receipt of an unsolicited proposal whether such proposal had been considered or rejected by the Department.

Department's must report all concluded unsolicited proposal agreements in its annual report.

19. TRANSVERSAL CONTRACTS

The National Treasury must facilitate the arrangement of all transversal term contracts for goods or services that have been designated by the National Treasury as being transversal in nature.

A provincial treasury may, after consultation with the National Treasury, facilitate the procurement of a transversal term contract for goods or services for provincial institutions in the province other than for goods or services for which a transversal term contract has been concluded by the National Treasury.

Procurement in terms of transversal term contracts must -

- (a) be in accordance with a system as approved by the National Treasury which must, as far as practically possible, be similar to the system prescribed in this Chapter for competitive bids; and
- (b) follow a strategic sourcing methodology and leverage buying power to achieve economies of scale.

When required by the relevant treasury for purposes of facilitating a transversal term contract, the accounting officer or accounting authority participating in a transversal term contract must, in writing, appoint the required number of employees from the institution who have the required expertise to serve on the relevant bid committees.

The accounting officers and accounting authorities of all Departments, constitutional institutions and 3A and 3C public entities must participate in transversal contracts applicable to the institution, unless the relevant treasury has exempted the institution from such participation.

The relevant treasury must provide institutions with a list of goods or services, no later than six months before the commencement of the next financial year, that are proposed to be procured in the next financial year through transversal term contracts in order to determine the extent of the need for such goods or services that may be provided for in such contracts.

- (a) After goods or services have been procured through a transversal term contract, the accounting officer or accounting authority of a participating institution must ensure that, where appropriate, a service level agreement is entered into between the supplier and the institution before any goods or services are ordered in terms of the contract.
- (b) The provisions of the service level agreement must be consistent with the terms and conditions of the relevant transversal term contract.

The bidding process will be managed through cross functional teams and bid committees that will be responsible for the development and compilation of specifications, and the evaluation and adjudication of bids.

The cross-functional team will be constituted with officials from the various participating government institutions and will be responsible for amount others, the drafting of the terms and conditions of contracts, industry and end user analyses through strategic sourcing and the compilation of bid documentation.

The Provincial Treasury will facilitate the procurement processes and bid committees related to transversal contracts as discussed under the Committee Systems in Volume 1 of the SCM System.

24.1 CONTRACTS PROCURED BY OTHER ORGANS OF STATE

The Department may procure goods and services under a contract secured by another organ of state/ only if:

- (a) The contract secured by that other organ of state is supported by a business case, analysing the commodity, the market and the appropriate sourcing method; or
- (b) The other organ of state has followed a competitive bidding process when procuring the goods/services and the process was fair, cost effective, transparent, competitive and equitable;
- (c) The procurement process was compliant with the relevant Legislative Framework;
- (d) The Department has no reason to believe that such contract was not validly procured;
- (e) The other organ of state and relevant service provider have consented to such procurement in writing;
- (f) The Department procures under the same terms and conditions as provided for in the original contract or more beneficial terms or conditions; and
- (g) A separate service level agreement is concluded for this purpose which clearly stipulates the duration of the contract with particular emphasis on the start and end date. Such start and end date must not be outside the contract period of the other organ of state.

When another organ of state wishes to procure from the Department, a written request outlining the following should be submitted to the Department:

- (n) Detailed reasons for the request;

- (o) Clearly demonstrate the benefits that the organ of state will achieve from procuring from the contract;
- (p) Clearly demonstrate that the five pillars of procurement will not be infringed; and
- (q) Written consent that the organ of state will conform to the terms and conditions of the existing contract.

The AO of the procuring institution must, within 10 days of concluding the contract, report the transaction to the relevant treasury and publish details of the transaction on the e-tender portal.

24.2 GENERAL NOTES RE 'PIGGY-BACKING'

The main aim of the legislation in allowing this provision, was to ensure that where an organ of state already followed a competitive bidding process and another require the same goods or services, the latter does not have to execute the same tender process, but may directly contract with the service provider selected through a competitive bidding process.

The prescripts provide specific explicit criteria applicable prior to entering into a contract with a service provider, which are:

- a. The SCM System should allow for such an activity. It is important to note such a procurement activity is not regarded as a limited bid or deviation.
- b. To ensure competitiveness the Department must confirm that the services were procured via a competitive tendering process.
- c. To ensure valid and due processes were followed the onus is placed on the Department that it has to satisfy itself that the contract was validly procured, i.e. fully compliant with the PFMA and its Regulations, PPPFA and its Regulations as well as the CIDBA, its Regulations and Uniform Standards. This may require a verification process.
- d. The Department should record the demonstrable discounts or benefits for the Department by following the process. Some arguments that can be considered would be:
 - i. The Constitution, section 41(1)(h)(ii) requires that: 'all spheres of government and all organs of state within each sphere must co-operate with one another in mutual trust and good faith by assisting and supporting one another.'
 - ii. The Intergovernmental Relations Framework Act, 2015 (Act 13 of 2005) – [IGRFA] also provides that: 'in conducting their affairs the national government, provincial governments and local governments must seek to achieve the object of this Act, by avoiding unnecessary and wasteful duplication.'
 - iii. By avoiding duplication of processes, savings can be incurred related to the administrative costs in preparing, printing, advertising and evaluating tenders.
 - iv. A further benefit is also the time-saving factor, in that the approximately 60-120 days procurement process can be avoided.

Due to the applicability of the PPPFA and its Regulations, it is further important that the relevant Department confirms whether this procurement activity will not defeat its own PPPFA Policy objectives or that the local content provisions of PPPFA Regulation 9 are appropriately addressed, if relevant.

Limited prescript are provided to the nature of the specifications or scope of work, fees/price and term of contract in either the PFMA, TR's or other NT prescripts.

It goes without saying that certain criteria are inherent to a contract procured this way, as the contract needs to correspond with the tender offer and application. In this regard the following defensible criteria is put forward:

- (a) Specifications or scope of work must be 'materially' the same as the initial tender offer, i.e. a turnkey contract cannot be replaced with a normal services contract. It is accepted that as organs of state do not have exactly the same environment, needs or requirements. It would therefore be impossible in certain instances to have the exact same specifications or scope of work requirements. The operating word in this instance would therefore be '**materially the same**'. Please refer to the materiality discussion in the handbook of Prof P Bolton in: '**The Law of Government Procurement in South Africa, 2006**' page 201 under the heading '**Scope of negotiation after the award of a tender**'.
- (b) Fees or prices should be the same, unless the service provider is willing to provide the services at a reduced or discounted rate, which is allowed during contract negotiations with the service provider. In the event that unit rates or Bills of Quantities-[BOQ] apply it is accepted that as the need could be for example less houses to be build or fewer units are required, the offered rates or BOQ of the original tender must apply, unless discounted or reduced. This would mean that the original total offered tender price may differ, as long as the unit rates or BOQ remains the same.
- (c) Contract duration must be the same as the original tender. This means that if the original tender was invited for a three year period, the newly procured contract must also be for a three year period. In the event that the original tender was invited two years' prior and this process only commence in year 3 of the contract – the duration of the contract will be the same as the original tender, i.e. 3 years and **NOT** the remaining one year. If the latter is pursued, it will result in a material change to the initial tender scope and duration and may result in the process being regarded as flawed and will result in an invalid contract.

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

It is therefore important that the Department in its SCM System provides for the decision-making governance arrangements related to applying the procurement activity. It is recommended that the authority to approve whether to follow a 'piggy backing' procurement activity should vest in the Accounting Officer or appropriate senior manager on approval of the Bid Adjudication Committee. This will ensure that this process is not abused to avoid a tender procedure or abuse the SCM System.

Once a contract has been concluded with the service provider the normal contract management principles of contract law as well as NT prescripts such as NT circular 32 of 2011, will apply.

A review of recent case law and relevant published media

Prof Bolton: *The Law of Government Procurement in South Africa (2006) page 164*, confirms that 'piggy-backing' provides an exemption to a Department from following a competitive tender process if such process for a similar need was already followed by another organ of state. The provision relates to the process for the selection of a service provider. Once the service provider has been selected, the Department is bound to the normal contract requirements and prescripts.

Traverso J in Aquafund (Pty) Limited v Premier of the Western Cape⁵ has pointed out that a distinction must be drawn between, on the one hand, the process of considering tenders and the making of recommendations [administrative actions

governed by PAJA] and, on the other hand, the conclusion of a contract after acceptance of a tender [governed by contract law].

19. APPOINTMENT OF CONSULTANTS

For the purpose of this SCM System, the term consultant includes, among others, consulting firms, engineering firms, construction managers, 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.

The planning for consultants is specifically addressed herein as it was area of concern identified by the National Treasury and hence is the only commodity specifically addressed in the National Treasury Regulations. In general, the demand management procedures and the acquisition management procedures identified above apply.

25.1. PLANNING FOR CONSULTANTS

The Department can use consultants to assist in a wide range of activities such as policy advice, reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and identification, preparation, and implementation of projects.

Consultants should only be engaged when the necessary skills and/or resources to perform a project/duty/study are not available and it cannot be reasonably expected either to train or to recruit people in the time available.

The relationship between the Department and the consultant will be one of purchaser/provider and not employer/employee. The work undertaken by a consultant will be regulated by a contract. The end-user directorate will be, responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets and should take remedial action if performance is below standard. All mal-performance will be reported to the SCM unit and Bid Adjudication Committee.

Should the Department experience additional work demands which are not permanent and there are no suitable vacancies available, the Department will consider creating additions to their fixed establishment based on the specific nature of the activities to be undertaken as well as the level at which the activities are to be performed. This may include appointing persons on contract in terms of the Public Service Act, 1994. Under no circumstances should a person be appointed as a consultant merely to be granted higher remuneration packages than are prescribed by the Public Service Act, 1994.

Consultants will be appointed in accordance with the various forms of procurement as prescribed in the relevant regulated industries and the various forms of procurement. Processes and procedures outlined in Acquisition Management will be followed when appointing consultants.

25.2. NEEDS ANALYSIS

As reflected in Demand Management a needs analysis must be compiled and the need for consultants must be linked to the strategic objective of the relevant programme. Issues that should specifically be identified are:

- (a) Why the need for consultants;
- (b) Is it a once-off service or will it be a recurrent service;
- (c) If a recurrent service will the establishment be adjusted, if not why not; and

- (d) Is any transfer of skills required?

25.3. TERMS OF REFERENCE (TOR)

The end user / line function in consultation its SCM Unit should prepare the TOR. 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.

The scope of the services described should be compatible with the available budget.

Time frames linked to various tasks should be specified, as well as the frequency of monitoring actions. The respective responsibilities of the consultant should be clearly defined. The evaluation criteria, their respective weights, the minimum qualifying score for functionality and the values that will be applied for evaluation should be clearly indicated. The evaluation criteria should include at least the following:

- (a) consultant's experience relevant to assignment;
- (b) quality of the methodology;
- (c) qualifications of key personnel; and
- (d) transfer of knowledge (where applicable);
- (e) pre-bid briefing sessions or presentations by bidders as part of the evaluation process where needed.

If the assignment / contract include 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.

25.4. METHOD OF SELECTING CONSULTANTS WHEN COMPILING TOR

When developing the terms of reference the various approaches to select consultants must be considered. The following approaches can be followed although the Quality and cost based selection (QCBS) approach is preferred as it is based both on the quality of the services to be rendered and on the cost of the services to be provided.

Table: QCBS re consultants:

Approach	Type of assignment
Quality based selection (QBS)	QBS is appropriate for complex or highly specialized assignments for which it is difficult to define precise TOR
Selection under a fixed budget	This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed
Least cost selection	This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, etc.) where well-established practices and standards exist and in which the contract amount is small.
Selection based on Consultants' Qualifications	This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified.
Single source selection	Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and therefore should be done in conjunction with limited bidding as outlined in the Accounting Officer's system.
Selection of individual consultants	Individual consultants may normally be employed on assignments for which: <ul style="list-style-type: none"> • 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.

25.5. OTHER AREAS TO NOTE:

Conflict of Interest

- (a) 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.
- (b) Without limitation on the generality of this rule, consultants should not be hired under the following circumstances:
 - (i) A firm, which has been engaged by the accounting officer/authority to provide goods or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project.
 - (ii) 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 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.
 - (iii) Consultants or any of their affiliates should not be hired for any assignment which, 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 privatisation of public assets should not purchase, nor advise purchasers of such assets.

Associations between Consultants

- (a) 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.

- (b) 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 providers 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 delegate. Consultants should however not be compelled to form associations with any specific firm or group of firms, but may encourage associations with the aim to enhance transfer of skills.

26. ROSTER (PRE-QUALIFIED DATA BASE)

A roster system may be applied for a list of pre-approved suppliers, subject to the development and adoption of a Roster System Policy containing the following:

- a. Roster scope for Professional Service Providers and consultants.
- b. Registration of service providers.
- c. Qualification to be registered on the Roster System database.
- d. Sequencing and ranking of service providers on the Roster System database.
- e. Selection of a service provider on the Roster System database.
- f. Appointment of a service provider.
- g. Roster System computer based.

Roster Scope for Professional Service Providers and Consultants

- a. The professionals and consultants that work on pre-determined tariffs are a subset of the Professional Service Provider collective. The key basis for this principle is that some professionals no longer issue or work on gazetted tariffs. Hence, The Roster System should only apply to Professional Service Providers with pre-determined and gazetted tariffs.
- b. In this context it may include but not be limited to the following list of Professional Service Providers or consultants:
 - i. Architectural Services
 - ii. Construction Services
 - iii. Dispute Resolution Professionals
 - iv. Engineering Services
 - Civil Engineering Services
 - Electrical Engineering
 - Geotechnical Engineering
 - Mechanical Engineering
 - Miscellaneous Engineering Services
 - Structural Engineering
 - v. Environmental Impact Studies
 - vi. Landscape Architectural Services
 - vii. Management Services
 - viii. Quantity Surveying Services
 - ix. Land Surveying
 - x. Transportation Planning

- xi. Town Planning
 - xii. Property Valuations
 - xiii. Arbitrations
-
- c. Guidelines tariffs that are issued by the National Department of Public Service and Administration determine hourly rates for consultants and could be adopted by the Department. These fees are only applicable to consulting disciplines for which no such standardized rates have already been determined by professional institutes or associations established in terms of legislation
 - d. Where no gazetted tariffs exist for a particular profession, it may, at the Department's discretion, be acceptable for a proposed schedule of tariffs to be submitted to the PT:PCPO for approval on an annual basis. The duly approved tariffs should then be deemed to satisfy the requirement of "pre-determined tariffs" for that profession in terms of this policy. It should be noted that this avenue should only be acceptable for recognized professions providing Professional Services
 - e. Professional Service Providers and consultant disciplines without a pre-determined tariff list should be sourced through existing agreed mechanisms (verbal quotations; three quotations; or competitive bids).
 - f. The logic to not source Professional Service Providers (PSP's) who work on pre-determined tariffs via a competitive process (such as three quotations or bids) is that there is no sense in comparing multiple offers where they are all the same rate. This principle supports the "cost effective" principles in the section 217 of the Constitution.
 - g. A tariff or rate is only one factor in a total cost equation. Other factors may include the scope and/or the time taken to fulfil a task or responsibility, such as:
 - i. Where some factors are variable, then the competitive sourcing methods of quotations and bids should be used e.g. if one service provider may be able to complete the work more efficiently than another, then the Professional Service Provider should be sourced via a quotation or competitive bid and not via the Roster System.
 - ii. Other total cost factors should all be constant or fixed (and not variable) before the Roster System is used for sourcing Pre-Determined Tariff PSPs i.e. the scope should be adequately defined and the time-period should also be firm (for example two months).

Registration of service providers

- a. Calls for Expressions of Interest for admission to the database in specified service disciplines should be made every two years in suitable media and in a manner that enables a wide spectrum of qualified respondents to respond to the call.
- b. Professional Service Providers should be requested to submit particulars sufficient for the Department to evaluate their eligibility and to establish their credentials and to assess their capabilities and capacities to perform work in service disciplines and sub disciplines.
- c. In order for the Professional Service Providers to be registered on the Roster System database they should also be registered on the Department's supplier database. The reason for this is that the Department already has a process and procedures in place for registration and there is no sense in duplication
- d. All registrations on the Roster System database should be administered centrally by the Supply Chain Management Unit:

- e. Registration on the Roster System database should be valid for a period of two years or such period to be determined by the Supply Chain Management Unit.
- f. Professional Service Providers should be required to advise the administrator of the database of any changes that impact their registration status on the Roster System database.
- g. Renewal of Professional Service Providers registration on the Roster System database should be required every two years.
- h. Service providers should be allowed to register for admission to the Roster System database at any time.

Qualification to be registered on the Roster System database

- a. Qualification of a Professional Service Providers should typically be done when the supplier registers on the Roster System.
- b. This qualification can be updated as the Professional Service Provider progresses and acquires other capabilities and experience.
- c. Admission to the Roster System database requires service providers to submit particulars sufficient for the Department to evaluate their eligibility and to establish their credentials and to assess their capabilities and capacities to perform contracts envisaged by the Department.
- d. Service providers should be registered on the Roster System against the different service disciplines applied for and verified by the Department.
- e. Sequencing and Ranking of service providers on the Roster System database:
 - i. A set of pre-defined weighted factors, where the weighting of these factors should be determined beforehand and should be transparent, should be used to determine initial ranking on the Roster System database per service discipline and sub-discipline.
 - ii. Factors that should be taken into account in determining the positioning of service providers on the database (by service discipline) should include:
 - Value of successfully completed previous work conducted for the Department where value of the work should mean, value of all work a service provider has performed for the Department in the preceding year period.
 - The B-BBEEE status of the service provider.
 - When the amendments to the PPPFA is approved, the B-BBEE level of the service provider should be used
 - iii. Performance of the service provider should not be a determinant of the sequencing of service providers on the Roster System. The rationale is that it may potentially impact on the Department's new service provider developmental initiatives and easily be manipulated. Should a service provider have performed poorly to the point that it is blacklisted, then such service provider should be taken off the Roster System immediately.
 - iv. Service provider sequence and updates of sequence on the Roster System database should be triggered by the following events:
 - Allocation of a new assignment to a service provider (new contract awarded).
 - Where the service provider declines such new assignment, the service providers' sequence should

change to reflect as if the service provider had accepted.

- Roster System database sequence updates should take place monthly.
 - After suppliers have been registered on the database.
 - Service providers should be removed from the Roster System database when such service provider no longer conducts business or is blacklisted due to default or misconduct by the Department.
- v. Should there be service providers that are equal in value and B-BBEE level, then they should be sequenced according to a random number generator or date of registration on the Department's supplier register.

Selection of a Professional Service Provider on the Roster System database

- a. To limit risk and exposure to the Department, the sourcing of Professional Service Providers via the Roster System should be limited within an upper Rand value threshold of R500 000.
- i. All projects exceeding this threshold should follow:
- (a) The standard competitive quote and bidding process of the Department.
 - (b) The limited quote and bidding process where appropriate.
- ii. To limit the Departmental risk and exposure associated with project delays, the sourcing of service providers should be limited to pre-qualified service providers admitted to Roster System
- b. Where the assignment does not qualify as a Roster System appointment and a limited bid is required, the Roster System database should be used only for identification of the top listed service providers on the Roster System database that the bid would be limited to.
- c. Deviation appointments should follow the separate bidding process, as follows:
- a. The Roster System database should be used to identify and select three service providers based on the following selection factors:
- Select three Professional Service Providers from the required service discipline or sub discipline and from the top of the list for that discipline.
 - The three service providers should meet selection criteria of location (if applicable) and qualification.
 - Qualification should always take preference where location criteria is not met
- d. Selection on the basis of quality should not necessarily mean the best quality available, but quality appropriate for the assignment.
- e. The Roster System selection process should always be executed by the SCM Unit, who should recommend the selected service provider to the line management for appointment.
- f. Where a recommended service provider declines an assignment offered, that service provider should move to the bottom of the list, and the service provider next in line should be selected.
- g. All correspondence relating to the Roster System and correspondence in this regard between Service Providers and the Department should be in writing.

Appointment of the Service Provider

- a. The final appointment of the service provider is either processed using mechanisms in the SCM System or the line

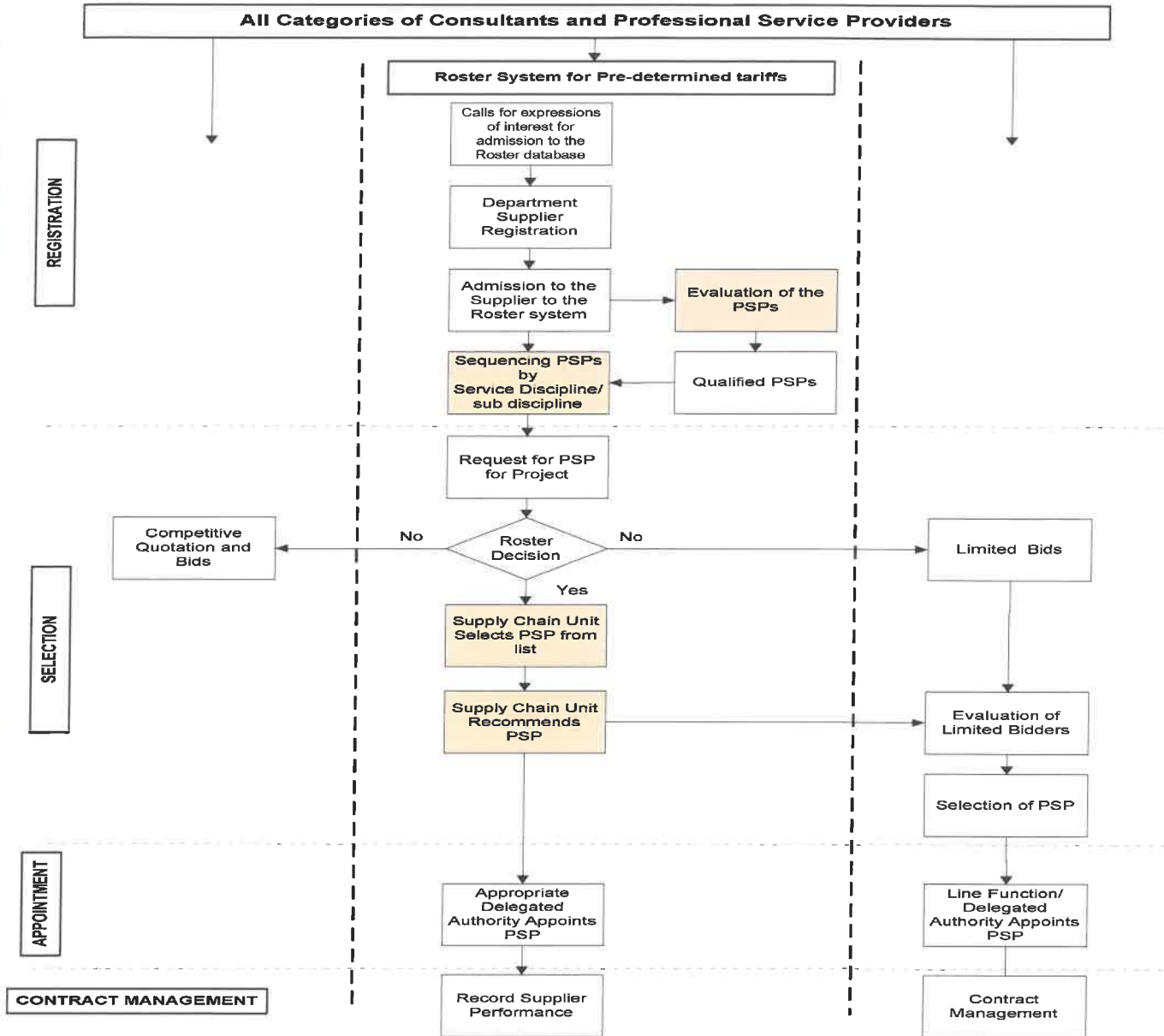
function with the appropriate delegated authority.

Roster System Computer Based

- a. The professional services supplier Roster should operate as a centralised database to be used by the Department.
- b. The system should preferably be an electronic system, due to:
 - i. IT is a key enabler to compile and credibly implement the Roster System approach therefore the Roster System database should be populated with relevant data to enable the Roster System.
 - ii. The Roster System should be programmed to determine various service discipline allocations, ranking and sequencing of service providers, and administrative activities.
 - iii. Programmed electronic databases should provide integrity of the Roster System and remove subjectivity concerning Roster System activities.
 - iv. Security of the system should be such that the Roster System cannot be unduly manipulated so as to influence service provider selection.
- c. The effectiveness of the Roster System should be evaluated using the monitoring mechanisms in the SCM PPOS; hence it should be necessary to record key performance indicators relating to time, cost and the attainment of specific goals associated with a service provider contract. All records of admissions, deletions and transactions on the database should be stored for a period of five years.

PROCESS FLOW

The following diagram is generally self-explanatory and shows that the Roster System for pre- determined tariffs is a subset of the collective broader categories of consultants and Professional Service Providers. The high level process logic for the Roster System activities that fall within the Roster System boundaries and those process activities outside the boundaries is further illustrated, *in Graph below.*



28. CENTRAL SUPPLIER DATABASE

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

The required data and supporting documentation, housed as attachments, will be verified by the service provider responsible for the management of the supplier database and if the minimum mandatory requirements are met, their profile will be approved.

The Department will ensure that all procurement will be done in line with the CSD requirements. The Department will not do business with any government official. The CSD report will be check to ensure that the service provider is not a government official. If the service provider selected by ISS is identified as a government official after the quotations are received the quotation will be disregarded and the next preferred service provider will be selected for the services.

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

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

29. FINANCE LEASES

Refer to TR 13.2

The AO may enter into finance lease transactions without the approval of the Provincial Treasury, provided that:

- a. The finance lease is found to be more economical than an operating lease;
- b. The period of the finance lease does not exceed 36 months or 60 months in respect of motor vehicles; and
- c. The finance lease is for the acquisition of goods that is required for the day to day operational requirements of the institution for which funds have been provided for in the approved budget of the institution.

In instances where the lease period exceeds the period stipulated therein, the institution must obtain written approval from the Provincial Treasury prior to entering into such a lease.

Where found to be more economical than an operating lease, the Department or other relevant authority may, on behalf of institutions, enter into finance lease transactions for the acquisition of land and buildings for operational purposes.

The entering into finance lease transactions is subject to:

- a. Expenses relating to the acquisition been provided for in the approved budget of the institution; and
- b. Prior written approval of the Provincial Treasury has been obtained for the acquisition.

30. GRANTS/SPONSORSHIPS

Where goods or services are fully financed by means of a grant in accordance with a technical assistance agreement as required in terms of the Reconstruction and Development Programme Act, 1998, accounting officers must ensure that the procurement of goods or services is done in accordance with the requirements of the donor as included in the technical assistance agreement.

Should the donor require that goods or services be procured in accordance with the donor's own procurement procedures, no approval is required by the institution from the Minister of Finance for exemption from the requirements of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), and its related Regulations.

If the procurement of goods or services is partially funded by means of a grant in accordance with a technical assistance agreement and the remainder is funded by the institution, the requirements of the Preferential Procurement Policy Framework Act, 2000 (Act of 2000) and its related Regulations must be applicable in relation to the funds provided by the institution.

If a distinction cannot be made in terms of which part of a contract will be funded by donor funding or institutional funding the

following should be applied:

- a. If the bulk of the expenditure is funded by means of a grant, the procurement of goods or services must be done in accordance with the requirements of the donor as included in the technical assistance agreement; and
- b. If the bulk of the expenditure is funded by means of institutional contributions, the procurement of goods or services must be done in accordance with domestic requirements provided that the donor agrees.

Granting of a sponsorship

- a. The AO may approve sponsorships of state money and other movable property in the interest of the Department.
- b. When such cash amounts exceed R100 000 per case, the approval of the PT:PCPO must be sought.

Acceptance of a sponsorship to the Department

- a. The AO must promptly disclose to the National Treasury and the relevant Provincial Treasury any sponsorship promised, offered or granted, whether directly or through a representative or intermediary, by any person who is :
 - i. A provider or prospective provider of goods or services; or
 - ii. A recipient or prospective recipient of goods disposed or to be disposed.
- b. The AO may approve the acceptance of any sponsorship to the Department.
- c. All cash sponsorships must be paid into the Departmental Main Bank Account.
- d. Where it is not apparent for what purpose a sponsorship should be applied, the AO may decide how it must be utilized.
- e. All sponsorships received during the course of the financial year must be disclosed as a note to the annual financial statements of the Department.
- f. Donor funding received in terms of the Reconstruction and Development Fund Act (Act 7 of 1994, as amended by Act 79 of 1998), must be dealt with as determined by the National Treasury from time to time.

Identity of sponsors

- a. When a donor or sponsor requests to remain anonymous, the AO must submit to the PT:PCPO a certificate from both the Public Protector and the Auditor-General, which states that the identity of the donor or sponsor has been revealed to them, that they have noted it and have no objection.
- b. The above provision in no way limits the Auditor-General or the Public Protector from supplying this information to their staff, and where they deem it in the public interest, to report on this.

VOLUME 4:

CONTRACT MANAGEMENT

31. MANAGING CONTRACTS

Contract management is the process that enables parties to a contract to meet their obligations in order to deliver the objectives required from the contract. It also involves building good working relationships between customer and provider. It continues throughout the duration of a contract and involves proactive management to anticipate future needs and reacting to situations that may arise. The aim of contract management is to obtain the goods or services as agreed in the contract and achieve value for money. This means optimising the efficiency, effectiveness of the services or relationship described by the contract, balancing costs against risks and actively managing the customer-provider relationship. Contract management may also involve aiming for continuous improvements in performance over the duration of the contract.

31.1. CONTRACT MANAGEMENT ACTIVITIES

Contract management activities may broadly be grouped into three areas:

- (a) Service delivery management: ensures that the service is being delivered as agreed, to the required level of performance and quality.
- (b) Relationship management: keeps the relationship between the two parties open and constructive, aiming to resolve or ease tensions and identify problems early.
- (c) Contract administration: handles the formal governance of the contract and changes to the contract documentation.

All three activities must be managed optimally to ensure effective contract management.

Adequate preparation and concluding the correct type of contract are essential foundations for good contract management. The arrangement must be flexible to accommodate change. A key factor is "intelligent customer capability": the knowledge of both the customer's and the provider's business, the service being provided and the contract itself. The capability, which touches all three areas of contract management, forms the interface between supply and demand that is, between the business needs and the provider.

31.2. ELEMENTS OF CONTRACT MANAGEMENT

The elements of contract management include the following:

- (a) Ensuring that all relevant documentation setting out the rights and obligations of both parties are in place, and signed;
- (b) Ensuring change control, i.e. managing changes to any part of the original agreement;
- (c) Measure performance against contract requirements or service level agreements;
- (d) Implement corrective action whenever significant/unacceptable deviations against the original agreement occurs; and
- (e) Manage the payment system.

31.3. NOTIFICATION OF ACCEPTANCE

Successful bidders must be notified by registered post of the acceptance of their bids. With the exception of period contracts, the particulars of the successful bids must be advertised in at least the *Government Tender Bulletin* for a minimum period of 21 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer may determine. The particulars to be published are as follows:

- (a) name of the contractor;

- (b) the relevant price and delivery method;
- (c) the brand name of the product or the name of the manufacturer, and
- (d) where applicable, the preferences claimed;
- (e) where no bids has been accepted, particulars of the bids received are not made public;
- (f) the application to advertise must preferably be lodged with the Government Printer after the letter of acceptance and Service Level Agreement is issued.

31.4. CONTENT OF CONTRACTS

The contract concluded must amongst others consist of:

- (a) general conditions of contract issued by the National Treasury;
- (b) where applicable, special conditions in relation to the specific goods or services procured;
- (c) Service Level Agreement
- (d) submitted bid documents;
- (e) documentation for the claiming of preferential points;
- (f) SBD 4;
- (g) tax clearance certificate; and
- (h) letter of acceptance.

31.5. GENERAL CONDITIONS OF CONTRACT

General Conditions of Contract issued by National Treasury must form part of all bid documents and may not be amended.

31.6. SPECIAL CONDITIONS OF CONTRACT/SERVICE LEVEL AGREEMENT

The special conditions should include, but is not limited to:

- (a) a preamble that serves to explain the rationale for the conclusion of the contract or to provide contextual or background information;
- (b) governance protocols;
- (c) reporting on performance in terms of the contract or agreement in respect of contracts that extend over a period of time;
- (d) a periodic review of the contract or agreement by the parties in respect of contracts that extend over a period of time;
- (e) clauses that clearly and unambiguously set out the rights and obligations of the parties, relevant to the specific subject matter in respect of which the contract is entered into;
- (f) service levels, if applicable; and
- (g) incorporation of other documents as annexures.

31.7. CONTRACTS IN RELATION TO INFORMATION TECHNOLOGY

Contracts relating to information technology must be prepared in accordance with the State Information Technology Act, 1998 (Act 88 of 1988), and any regulations issued in terms of that Act. National Treasury SCM Practise Note 5 of 2009/10 provides guidance to the procedures to be followed when procuring ICT related goods/services through SITA.

31.8. LEGAL VETTING OF CONTRACTS

The AO must ensure that all contracts entered into by the Department are legally sound. Where service level agreements are part of the contract it should be forwarded to Legal Services for vetting.

31.9. ACCESS TO CONTRACTS/INFORMATION

Under normal circumstances, bids (awarded) are not accessible to the public. However, on written request, interested parties may request the following information, if said information has not been published in the Government Tender Bulletin:

- (a) Names and addresses of all bidders;
- (b) the prices and basis of delivery offered by all bidders;
- (c) the brand name of the product and the name of the manufacturer, in respect of the accepted bid (only the accepted bid);
and
- (d) the preference points claimed by the successful bidder.

Any information requested, if not provided in terms of the Promotion to Information Act), will be furnished at the discretion of the Department and will be guided by the legislation and policy. The Department may withhold information or publication of the information if:

- (a) it will impede law enforcement; or
- (b) it will not be in the public interest;
- (c) it will harm the legitimate interest of the Department;
- (d) it might hinder fair competition between suppliers, bidders or contractors; and
- (e) a case / matter is sub-judice.

31.10. MONITORING

Constant monitoring is essential to ensure that contractors meet their contractual obligations and that contracts run with as little disruption as possible. There are several ways in which monitoring may be undertaken:

(a) Regular site inspections.

In respect of a service, where the service is being rendered at the Departmental site or at the contractor's own site, the Department must visit the site regularly to ascertain whether the service is still being rendered in accordance with the contract.

(b) Regular meetings

The Department should have regular meetings with contractors to discuss contract issues i.e. progress, foreseeable contract problems, price variations etc.

(c) Reporting

(i) Regular reports from contractors as well as the SCM Unit are crucial for efficient contract management. Contractors must be informed via the SLA that reporting must take place on predetermined issues. The timeframes for this reporting must also be known to the contractor prior to the start of the contract.

(ii) For products a contractor may be requested to report on the following issues:

- (aa) Number of orders received;
- (bb) Date of orders and from what component;

- (cc) Quantities ordered on individual items; and
 - (dd) Delivery date of orders.
- (iii) The information must be scrutinised and matched with the Department's records to ascertain whether there are any anomalies in the rendering of the service or delivery of the product.
- (iv) When the Department renews an existing contract or enters into a new contract, these reports play a crucial role in the Demand Management phase as it provides crucial historical / current contract/item information. This in turn has a direct influence on the Acquisition Management phase as it influences the form of bidding used.
- (v) Requirements for service performance reports and management information should be defined before and during contract *negotiations*, and confirmed during the transition period of the contract. It is likely that information requirements will change during the lifespan of the contract, which should be flexible enough to allow for this. Where possible, use should be made of the provider's own management information and performance measurement system.

32. ENFORCEMENT AND ADMINISTRATION OF CONTRACTS

32.1. BREACH OF CONTRACT

Breach of contract is when one of the parties to the agreement breaches a term thereof and does not comply thereto or indicates that it will not comply with the terms of the agreement.

Breach may be committed in several ways, i.e.:

- (a) A supplier may fail to perform on or before the date fixed for performance and the supplier would then be said to be in *mora* (failure to comply in time) in respect of the obligation in question.
- (b) Where no definite time for performance is agreed upon, the Department must demand performance within a specified time (must be reasonable in the circumstances) and if the Contractor or service provider has failed to perform in that time, he is regarded as being in *mora* (breach of time aspect).
- (c) The supplier may render performance on time, but deviate from the performance required by the agreement. (i.e. use materials of inferior quality).
- (d) The supplier may repudiate his obligation(s) in the sense that he/she may, before or after the due date for performance, make it plain by his/her words or actions that he does not intend to perform, or perform properly, in terms of his obligation(s). The test in each case is whether the supplier has acted in such a manner as to lead a reasonable man to the conclusion that he does not intend to fulfil the obligation(s). If a supplier repudiates his obligations after having breached it in some other way, the Department could (if the situation is not amicably resolved) claim relief on the basis of either form of breach.

Where cancellation is considered as a remedy for breach, it is always advisable to obtain legal advice in order to minimise risk to the province. Cancellation should be regarded as the last resort. However should this remedy be used it must be done in consultation with Legal Services.

Cancellation of a contract is usually prejudicial to the Department. Therefore serious thought must be given to the grounds for considering cancellation. Clarity must be reached beforehand on the question of whether the contractor will have a claim against

the Department or not, and if so, whether the cancellation may be justified. If a contract is cancelled, the matter must be fully documented and the following be taken into account:

- (a) The particular contract condition empowering the action;
- (b) What further arrangements will be made for completing the contract? and
- (c) Whether additional costs will be recovered from the contractor?
- (d) If the additional costs cannot be accurately determined, a careful estimate thereof must be made;
- (e) Any claim for the recovery of additional costs must be limited to the minimum actual amounts. Therefore, in such cases, Departments cannot summarily authorise purchasing to the best advantage of the Department, since this might prejudice the recovery of the additional costs from the original contractor. There may be other avenues of action that might result in lower additional costs. As an alternative, a fresh contract may be concluded through the normal bidding procedures. In this process, account must be taken of the time elapsed between the closing of bids and the cancellation of the contract and the effect of the cancellation on the Department's schedules.

32.2. REMEDIES FOR BREACH

The following remedies should be considered before the cancellation of a contract is contemplated:

Specific Performance (Enforcement)

- (a) The most obvious remedy for breach of contract is an order for specific performance, i.e. an order compelling the defaulter to perform what he has undertaken to do or restraining him from what he has agreed not to do. The court always has discretion to refuse an order for specific performance, for instance where it is impossible for the contractor/service provider to perform; it would produce an inequitable result or would be against public policy. If enforcement is denied it would be possible to claim damages from the contractor/service provider.

Damages

- (a) An award for damages is an order to pay a sum of money for loss suffered. The primary rule being that the sufferer can claim so as to be put in the economic position he would have occupied if the contract had been properly performed. The aim is to compensate the innocent party for its real pecuniary (monetary) losses. The rules of Unjustified Enrichment must be applied. The onus of proof should as far as possible be placed on the contractor/service provider to make provision for situations where damages might be claimed.
- (b) It should be kept in mind that there is a duty on the innocent party (party who wants to claim damages) to mitigate its losses/damages. The sufferer cannot recover damages for losses that he could reasonably have avoided. Thus Departments are requested as far as possible to minimise (mitigate) damages, if and when it occurs.
- (c) The parties may include in the contract a provision regulating the amount of damages to which the aggrieved party is entitled on breach. These penalties (also any forfeiture) are governed by the Conventional Penalties Act, 1962. In view thereof, if a contract contains a penalty clause or stipulation, damages may not be claimed in addition to the penalty, nor, unless the contract expressly provides otherwise, *in lieu* of it.

- (d) Breach, no matter how serious it is, does not, as such, cancel the agreement. This is so even if the agreement contains a provision that indicates that, on default occurring, the agreement will *ipso facto* become null and void. It is only where the aggrieved party cancels the agreement on account of the breach that it comes to an end. In the absence of cancellation, each party remains liable to carry out or complete their respective performance, although, if the aggrieved party chooses to claim damages in lieu of performance, the defaulter is *pro tanto* (to this extent) relieved of his/her duty to perform.
- (e) Generally, cancellation operates retrospectively (*ab initio*). This means that the parties are put in the positions they would have been in, had the contract never been concluded. Each party is relieved of the duty to perform further and is obliged to restore to the other any performance(s) received in terms of the agreement (*restitutiointegrem*). There are exceptions to this general rule.
- (f) Because cancellation has legal consequences on the reciprocal rights and obligations of the parties, it is available only where the parties have incorporated a cancellation clause in the contract or where the breach is of a sufficiently serious nature. If the breach relates to time, the question is whether time could be said to be 'of the essence of the contract'.
- (g) If the breach consists of a failure to perform according to the strict terms of the agreement, other tests would apply, i.e. is the breach sufficiently serious, does it go to the root of the contract?
- (h) Where repudiation of the whole contract is concerned, it is usually regarded as sufficiently grave to justify cancellation. Cancellation clauses frequently contain a rider to the effect that the innocent party may only exercise his right to cancel on account of breach if he has given the defaulter notice of the breach and the latter has failed to remedy it within a certain period. A provision of this sort is binding and, in general, the innocent party must bring himself strictly within its wording if he wishes to enforce his right to cancel. However a notice provision is not applicable where the defaulter has repudiated the agreement (unless the provision expressly says so).

32.3. ELECTION OF REMEDIES

On breach, the innocent party has an election of remedies. If cancellation is not permitted, he may claim specific performance or damages in lieu of performance. In either case, he/she may claim damages for any further losses resulting from the breach. If the contract contains a cancellation clause, or if the breach is sufficiently serious to warrant cancellation, the innocent party has the further alternative of cancellation and damages (including damages for further losses).

In general the aggrieved party is not obliged to cancel where cancellation is permissible. He is entitled to keep the contract alive and seek an order for specific performance or an award of damages in lieu of specific performance. This is so, even where the defaulter repudiates the entire contract prior to the date for performance. The sufferer may ignore the repudiation and claim performance or damages in lieu of performance when the due date arrives.

Before action is taken (relating to breach), the Department must inform the contractor/service provider that action will be taken in accordance with the contract conditions unless he complies with the contract conditions and satisfactorily delivers goods or

services within a specified reasonable time. If the contractor/service provider does not perform satisfactorily despite the warning, the Department may consider cancelling the contract concerned and/or enforce other appropriate remedies.

When goods or services do not comply with the provisions or requirements of the contract, or problems are experienced in the execution of the contract, the matter must be brought to the attention of the contractor/service provider in writing.

When correspondence is addressed to the contractor/service provider, reference must be made to the bid or contract number, the item number and the number and date of any relevant invoice, statement or letter received from the contractor/service provider. Otherwise the number and date of the order, a short description of the goods or service and details of the destination if applicable, must be supplied.

Details of all cases where equipment, vehicles, implements, machinery, apparatus, etc. fail during the guarantee period and have to be replaced or repaired, or where the provision of spares or service is unsatisfactory, must be recorded, irrespective of whether the Departments have satisfactorily finalised the matter with the contractor/service provider. The purpose of this requirement is for the Department to keep a record of unsatisfactory performance of services and defective goods/ products delivered.

If a contract is cancelled or rejected, the contractor/service provider must be requested to indicate to the Department, within a given time limit, how goods in possession of the Department must be disposed of and warned that if he does not react to the request, the goods will be returned to him at his cost. If he ignores the request, the Department must act accordingly.

When a Department has to buy out goods and services at the contractor's/service provider's expense, the loss to the Department must always be restricted to the minimum since it is difficult to justify the recovery of unreasonable additional costs from the contractor/service provider.

If a contractor/service provider repeatedly mal-performs and his actions cause the Department serious inconvenience, loss or embarrassment, corrective steps should be taken. All substantiated complaints regarding the performance of contractors, including contracts concluded in terms of the delegated powers, must be recorded.

If the contractor/service provider does not deliver the goods or services within the contract period, the Department may after informing the contractor/service provider, at their own discretion, either deduct an amount as a percentage of the value of the contract amount as a penalty for each day that the delay continues, or instead of such a penalty, claim compensation for any actual damage or loss suffered, provided that where beneficial use of the completed portion is enjoyed, the penalty shall be applied to the value of the outstanding portion only.

32.4. NEGOTIATING A SETTLEMENT OR AMENDING THE CONTRACT

Settlement is an agreement whereby a dispute (usually but not exclusively regarding an uncertainty as to the terms of a legal relationship, or even whether or not such a relationship exists at all) is resolved by way of compromise or negotiation. The purpose thereof is to avoid extreme measures such as litigation. It is advisable that in this instance, the Department consults with legal services and where required obtain a legal opinion before making a decision of negotiating or amending a contract.

In the same way the parties to the contract (being the Department and the Contractor) may by consensus/agreement amend the contract or terms thereof. Once again, the Department must consult with legal services and where required obtain a legal opinion in this regard.

For the sake of protecting both parties to the agreement as well as for the purposes of the Auditor-General the settlement or amendment must be in writing and signed by the parties involved or any authorised party representing those parties. These actions are subject to the provisions of the formal contractual requirements between the parties as well as the Common Law of Contract.

32.5 REMEDIES IN TERMS OF MISREPRESENTATION

Misrepresentation in this context means that a bidder/ service provider/contractor provided certain information or put forward certain facts in his bid or additional documentation knowing that such facts are untrue or incorrect. The bidder would have intended to misrepresent the facts as such misrepresentation would not have been as a result of a *bona fide* mistake by the bidder. This section provides for remedies in the case of misrepresentation.

In order to implement these remedies, the Department has to be sure that the information provided was indeed incorrect. The misrepresentation has factual and not merely an expressed opinion by the Department. The stated fact (misrepresentation) must be sufficiently material so that a reasonable person would have regarded such 'fact' as important in deciding whether to enter into the contract or not. Furthermore, to be successful with a claim for misrepresentation, it will have to be shown that the particular fact (or misrepresentation) induced the Department to contract and had the Department known the misrepresented fact(s) it would not have contracted or would have contracted on different terms. If the Department would have contracted even though the facts have been misrepresented, it would not be entitled to the remedy of rescission. However if the Department would have contracted on other terms if it had known that the facts had been misrepresented, the Department may be entitled to the remedy of damages.

Where the Department wishes to rescind the contract and obtain restitution (i.e. both parties return what is due to each other as if the contract had not been initiated), certain rules are applicable. First, on becoming aware of the fact that there has been a misrepresentation, the Department must not do anything, prior to rescission, which would lead the other party reasonably to believe that he intends to abide by the contract and not rescind it: it must not, for instance, exercise an act of ownership over an article purchased or service rendered etc. Secondly, the Department must communicate its decision to rescind to the supplier/contractor within a reasonable time of becoming aware of the misrepresentation. Failure to follow these rules could be construed as if the Department has waived its right to rescind the contract. After rescission, restitution (restoration to the position one would have been in had the misrepresentation not take place) must take place.

32.6 RECOVERING DAMAGES BY SET-OFF

Set-off consists in the automatic extinction of debts by operation of law on grounds of policy, or a dispositive act whereby one party gives effect to the extinction of the debts by means of a unilateral legal act. This means that the Department may hold back monies due to the Contractor in the event of cancellation by the Department as a result of mal-performance by the Contractor, or for any loss, damage or additional cost the Department incurred due to defective performance by the Contractor. It enhances efficiency by

promoting the speedy settlement of debts without the need for a costly and cumbersome duplication of performance. Thus it may be interpreted to be a means of enforcing a claim indirectly.

In order to enforce this remedy the following considerations must be taken into account:

- (a) The Department must have suffered damages or incurred a loss directly or consequentially.
- (b) Set-off may also be used for damages such as additional cost the Department might have incurred in obtaining the service of a third party to remedy the defects which the current contractor failed to remedy within a reasonable time.
- (c) This remedy may also be used to claim for latent defects in the product/service provided by the contractor or for any other defect resulting in the product/service not conforming to conditions / specifications of contract.

In order to use this remedy there are certain requirements that must be met, such as:

- (a) The debt must be mutually owed.
- (b) It must be *iusdem generis* (of the same kind). For example: a money debt cannot be set-off against a claim for delivery of property.
- (c) The debt must be due and enforceable. Set-off does not operate if the debt is subject to a suspensive condition or only enforceable at a future date.
- (d) The debt must be liquidated.

32.7 CANCELLATION AS A RESULT OF FORCE MAJEURE / VIS MAJOR

Force majeure / *Vis major* may be defined as an act of God, i.e. a natural disaster or some other circumstance beyond the control of the contractor. The force majeure clause is a common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, or an event described by the legal term *act of God* (such as hurricane, flooding, earthquake, volcanic eruption, etc.), prevents one or both parties from fulfilling their obligations under the contract.

Cancellation of a contract entails the termination of the consequences of a valid contract, i.e. performance. This remedy is available only in exceptional circumstances.

Firstly, the party responsible for performance must give written notice within 3 days (business days) of the date on which the force majeure / vis major occurred. Where reasonably possible the party responsible for performance must do everything possible to deliver or comply with the terms of the contract. Dates and times allowed for the performance shall be agreed upon by both parties.

Failure to give notice of the force majeure, allows the aggrieved party to the contract the right to refuse amendment of the date and time on which performance was due and that the aggrieved party may exercise the remedies available for breach.

In practice, most force majeure clauses do not excuse a party's non-performance entirely, but only suspends it for the duration of the force majeure unless the party responsible for the performance (as opposed to the party first affected by the force majeure) agrees in writing to render such performance.

Department may cancel the contract without prejudice to any other rights it might have if the force majeure persists after a period of 21 days. If the Department wishes to have these remedies at its disposal, it must ensure that the contract caters for these provisions.

32.8 INSOLVENCY

The Department has various rights, which it may exercise in the case of liquidation, sequestration or judicial management of contractors.

When the estate of a contractor is liquidated for whatever reason, a choice must be made in consultation with Legal Services of whether to claim against the estate or not. The risk to the Department is the determining factor and the choice with the smallest degree of risk is preferred. All action must nevertheless be taken in accordance with the relevant National Treasury Regulations.

Where an estate is involved, all claimants accept responsibility for both assets and liabilities. Therefore, if a claim is registered against an estate, the claimant must accept his share of any costs that have to be defrayed.

There are three types of claims against an estate:

- (a) "Protected creditors", e.g. the Receiver of Revenue.
- (b) "Preference claims", e.g. a bank or a building society having a secured claim over the assets i.e. a notarial bond.
- (c) "Concurrent claims", which are all claims that do not fall into the categories of (a) and (b)

The first two categories of claims are paid out in full before the third category is considered, which places the third category in a weak position if a contractor is sequestrated, liquidated or placed under judicial management.

If a firm or person is liquidated /sequestrated, it is regarded in laymen's terms to something similar to a breach of contract. The liquidator or administrator is given the choice of carrying out the contract or not. In the majority of cases the liquidator or administrator will elect to cancel the contract and a provisional claim against the estate should be registered under the proviso that a final claim will not be submitted if the Department will have to make a financial contribution.

A procuration could be signed in terms of which the liquidator may act on behalf of the Department. If the liquidator indicates that no dividend will be paid out to concurrent claimants the Accounting Officer of the Department concerned may also decide that it would be more economical to write off the relevant amount.

32.9 VARIATION AND WAIVER

Variation is an alteration to the legal consequences of the contract. This may take place only by mutual agreement of the parties, and entails not merely changing the effect of a term, but also removing a term from the contract. On the other hand, waiver is a unilateral act meaning that one party to the contract decides on his own to abandon a right or remedy, which it may have without altering the terms of that contract.

The Department should obtain a legal opinion before engaging in this specific exercise and thoroughly investigate the legal implications of such action. Furthermore, it is of the utmost importance that such agreement to waive or vary the terms of the contract be in writing for the sake of certainty and protection of both parties involved.

32.10 CESSION OF CONTRACTS

Cession of a contract refers to the transfer of rights and obligations in terms of the contract to another party other than the original contracting party. Various reasons may exist why bidders would want to transfer their rights and obligations, the bidder might have merged with another bidder, bidder may be in a position that he cannot effectively render the service and may want to transfer it to another entity.

With cession, the Department should keep in mind that the contract was originally awarded to a specific bidder because of specific reasons, i.e. highest points, lowest price etc. The identity of the bidders is therefore of paramount importance to the Department and care should be taken that the party to which the contract will be ceded to, complies as far as possible with these requirements, especially if the contract is ceded in the early stages of the contract period.

Care should be taken if a request to cede a contract within the first three months of conclusion of the contract in view of problems with firms "fronting" for others and it is with this in mind that it is recommended that approval to abandon, transfer, cede, delegate, assign or sublet contracts within three months after conclusion thereof shall only be granted in compelling circumstances, e.g. in the case of the death of the Contractor. Other compelling circumstances could be sequestration or liquidation, mergers etc.

If approval is granted, the Department must ensure that the necessary documentation is completed by the new contractor so as to ensure that a complete understanding is reached and that it accepts the terms and conditions of the contract in writing.

Reasons for the ceding the contract must be recorded and the cessionary's ability to carry out the contract must be established. Unless it is otherwise in the best interests of the Department, the transfer should not be approved if the Department would suffer a loss as a result thereof or if there is an increased risk to the Department..

The same conditions used for the award of the bids concerned must be made applicable to the cession of contracts. For instance, if the original contract was subject to the provision of surety, the same degree of surety, or better, must be provided by the cessionary. If this is not possible the reasons for it should be fully documented and placed on file for audit purposes.

32.11 SERVICE LEVEL AGREEMENT (SLA)

The Service Level Agreement will be more frequently used when a service is provided to the Department, as opposed to when a product is supplied to the Department.

Even though the agreement may be described as a standard agreement, the Department's rights and obligations in terms of the Service Level Agreement will be dependent upon the specific service rendered, or product supplied to the Department. The terms and conditions will have to be adjusted to suit the circumstances of each contract.

Contents of clauses relating to the Provision of Services, Use of Services, Remuneration and Limitation of Liability will have to be negotiated for each contract.

When SLA's is contemplated it should adhere to the SLA template issued and amended by Legal Services from time to time.

32.12 CONTRACT PRICE ADJUSTMENTS

Price adjustments, in any form, are incidental to the conclusion of any contract as a result of the period of the contract and the constant change in economic conditions. There are 3 main circumstances for price adjustments:

- (a) price adjustments linked to inflationary and statutory adjustments;
- (b) price adjustments as a result of rate of exchange variations; and
- (c) price adjustments not provided for in a bid/contract. (Extra-contractual price adjustments.)

In the bid invitation, provision must be made for the bidder to indicate if their prices are subject to any escalation. The bidder by means of indices, Consumer Price Index (CPI), Production Price Index (PPI) or fixed period adjustments will indicate such price adjustments. Steel & Engineering Industry Federation of South Africa (SEIFSA), through Statistics South Africa receives the PPI'S and CIP'S for publication. The SBD 3.2 pricing schedule must be utilised for all goods/services that would be subject to price escalations.

For the sake of efficiency, the Department should acquire a breakdown of the price at the conclusion of the contract. This is more convenient and enables determining which part of the price would be subject to such increases or adjustments.

In order for proper contract management to take place in respect of Contract Price Adjustments (CPA), the following questions needs to be asked from the bidder in the bid documents:

- (a) Is the price offered, firm for the duration of the contract?
- (b) If not firm, indicate details as to non-firm price structures.
- (c) Are prices linked to proven cost increases or formula-based adjustments? (formula based price adjustments are Price Production and Consumer Price indices (PPI & CPI) together with the relevant Steel & Engineering Industry Federation of South Africa-SEIFSA).
- (d) If formula-based, what indices will be utilised to measure such price adjustment claim during the contract period?

Should Bidders indicate that price adjustment would be subject to the Production Price Index (PPI), they must clearly and accurately indicate details as to what tables in the PPI will be utilised for such price adjustment.

This will form the basis for the entire contract period and if the company later submits a claim, the above will be used as the basis for such claim. It should be indicated to the company that the information is compulsory.

Once the contract is up and running, contractors are compensated for actual, proven additional expenses in connection with the aforesaid indices, provided that the relevant tables and base data of the CPI or PPI is used for the calculation of the bid price. PPI or CPI Tables that were indicated at the bid stage will now be used in order to calculate the differences claimed for.

The importance of requesting the bidder to stipulate whether his price is firm or not is amplified considering that should a bid be accepted, and the bidder did not indicate whether / not his prices is firm, such a bidder may after acceptance increase his price. Apart from the fact that a Department may not be able to afford such an increase, it may also lead to an unfair advantage to the bidder when taking into consideration that his price might now be higher than other bidders who competed against him.

It must however be noted that if a bidder gives a firm price, it does not mean that such a price will not be subject to change. A definition of a firm price is as follows:

“Firm prices means prices which are only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding upon the contractor and demonstrably have an influence on the prices of any supplies, or the rendering costs of any services, for the execution of the contract.”

Where a bidder does not offer a firm price, such bidder may stipulate the means by which the price will be adjusted. For example: Non-firm prices linked to proven adjustments, prices linked to fixed period adjustments, prices linked to escalation formula adjustments or prices subject to rate of exchange fluctuations.

Bidders may claim price adjustments on different methods and for different reasons. As a bidder's price consists of various factors/variables, they may wish to claim adjustments on a combination of factors and methods. A Department may, in terms of a special condition, spell out the rules on how and on what basis prices will be adjusted. It is true that firm or non-firm prices may be offered, whilst there is provision for price adjustments by means of a formula.

Where a formula is allowed in the bid documents, the structure of the formula has to be agreed upon. The bidder's attention must be drawn to the requirement that the values of the variable factors in the formula must be specified in their bids. The relation between these factors must be reasonable.

Price adjustments in accordance with escalation formulae based on inflation indices are allowed on no more than 85% of the price, unless strong reasons to the contrary are provided. The risk attached to price increases in respect of the remaining 15% of the price must be accommodated in the supplier's price.

Where price adjustments based on escalation formulae are accepted and irrespective of stipulations to the contrary elsewhere in the bid documents, variations in the actual costs for whatever reason are for the account of the contractor. This implies that proven cost increases and formula-based adjustments cannot both be entertained at the same time.

32.13 EXTENSIONS AND EXPANSIONS AGAINST THE ORIGINAL CONTRACT

In exceptional circumstances, an accounting officer may deem it necessary to expand or vary orders against the original contract.

The National Treasury Instruction Note 32 on Enhancing Compliance Monitoring & Improving Transparency & Accountability In SCM dated 24 April 2012 requires that any contract expansion / extension must be accordance with the thresholds set by them which is 20% or R20 million in respect of construction related goods related goods, works and/services and 15% or 15 million in respect of all other goods and services, whichever is the lower amount.

Departments are required to forward motivations for all expansions/extensions in excess of these thresholds above to the Provincial Treasury and to the Auditor General within 10 working days after the Accounting Officer has granted approval for the expansion and / or extension for reporting purposes. The Provincial Treasury will scrutinise such reports and only take appropriate action where deemed necessary. Such reports sent to the Provincial Treasury will be assessed on a case by case basis against policy and prescripts. The Provincial Treasury will only provide a written response if any findings of risk, non-compliance, and budgetary threat are noted.

The above is not applicable to transversal term contracts facilitated by the Provincial Treasury and specific terms contracts as in such contracts, orders are placed as and when commodities are required and that at the time of awarding the contract, required quantities are not known.

-CONTRACT MANAGEMENT (APPLICABLE TO ALL CONTRACTS)

Contract management can be defined as maintaining control or influence over the contractual agreement between the Department and the contractor including the administering and regulating of the agreement. The relevant line function unit assumes responsibility for contract management whilst the SCM Unit takes responsibility for maintaining original contract documentation and monitoring contracts in terms of renewals, transfers, terminations, amendments and price adjustments.

CONTRACT ADMINISTRATION DEFINITION

- Contract Administration is defined as the functions performed before or after a contract is signed or finalised, and includes the handling or issuance of tenders, the handling of payments and budgeting and the resolution of disputes from contracts.
- The duties associated with contract administration are taking control of the way the contract is prepared, analysed and negotiated.
- A contract administrator may issue a request for proposal to potential bidders and inviting them to bid on a contract.
- Once a bidder is selected, the contract administrator sees the contract to its conclusion, handing it over to the contract manager after the agreement is signed by all parties concerned.

OVERVIEW

Contract administration concentrates on the over-all relationship between the department and the supplier from contract award to contract close-out ensuring the supplier delivers the product and/or service in conformance with the bid document requirements. The contract administrator must completely understand all aspects of the bid document.

CONTRACT ADMINISTRATION STEPS

STEP 1–

Assign contract administrator

Personnel assigned to perform contract administration activities are referred to as a “contract administrator”.

The person assigned as contract administrator must be made aware of the expectations and requirements of the position.

A contract administrator must:

1. Have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract.
2. Communicate with both the contract manager and supplier on contractual issues.
3. Maintain records or logs for archiving purposes at the completion of the contract.

STEP 2 – Maintain relationship with contract manager	<p>Although the quantum of contract administration activities may differ depending on the magnitude of the contract, it is critical that the contract administrator involves the contract manager (<i>if the contract management responsibility has been assigned to another official</i>) in the contract administration activities. The contract manager remains the liaison between the Department and the successful bidder.</p>
STEP 3 – Establish the fundamentals material to the specific contract	<p>Once a bid is awarded, the contract administration responsibilities should be reviewed with the person assigned to the role. Any additional contract administration activities specific to the transaction should be identified and specified.</p>
STEP 4 – Communication is key	<p>A key factor in successful contract administration is communication. It is essential for contract administrators to understand the provisions of the bid document, have the ability to communicate contract obligations to all parties involved, and maintain control over the contract performance.</p>
STEP 5- Post-award orientations	<p>Prior to commencing services it is important that the contract administrator, bidder and contract manager meet to ensure a clear and mutual understanding of all contract requirements and to identify and resolve potential problems prior to any contract performance.</p>
STEP 6 – Open and maintain contract administration file	<p>The contract administration file should consist of the following dividers:</p> <ol style="list-style-type: none"> 1. Cover page 2. Index page 3. Complete copy of bid document with all attachments to the involved parties. 4. Signed contract , attachments and addendums 5. Key departmental staff and supplier personnel contacts, their responsibilities and authority. 6. Internal policies and procedures specific to the contract. 7. Contract reporting requirements between the contract administrator, contract manager and / or the supplier. 8. Contract payment process, including review time and processing time requirements to avoid payment penalties. 9. Acceptance criteria and review processes as required by the contract. 10. 'Special Conditions' to contract. 11. Amendments, variations or extensions. 12. Resolving disputes or any other contractual issues. 13. Reporting requirements for the bid document performance monitoring, audit files and retention. 14. Health and Safety clearances and notices 15. Public notices (general day to day notices to the public) 16. Logistical requirements (assessment of equipment and human resources) 17. Logistics plan 18. Logistical clearances (copies of permits, vehicle licences, access control of staff and contractors) 19. Tax clearances 20. Declarations of interest 21. Guarantees or warrantees (if applicable) 22. Clearances for quarantine goods 23. International transports and compliance documents, permits, licenses and clearances

24. Compliance notices (all related Government programs)
25. Contractor feedback
26. Legal matters (if applicable)
27. Contract termination
28. Project closure
29. File closure

THE DO'S AND DON'TS OF CONTRACT ADMINISTRATION

The Contract

Administrator MUST:

Effective contract administration activities include:

1. Notifying the contractor to begin work.
2. Monitoring contract activities in liaison with the contract manager for compliance with:
 - a. Work progress to ensure services are performed according to the quality, quantity, objectives, timeframes and manner specified within the contract.
 - b. Preferences granted to contractors and/or subcontractors to ensure attainment of preferential goals.
 - c. Review progress reports, status reports, and timesheets as required.
3. Monitoring that the contract manager approves the final product/services by submitting a written document accepting the deliverables.
4. Providing any documentation to the relevant treasury and AGSA when requested in terms of the PFMA.
5. Monitoring expenditures, ensuring funding availability when contract extends over multiple years.
6. Verifying accuracy of invoices and ensuring that the relevant programme manager approves invoices for payment.
7. Identifying and informing the contract manager of any amendments and/or contract renewals in a timely fashion as determined by Departmental policies and complexity of the request (often three – six months in advance).
8. Ensuring that the contract manager verifies all work is completed and accepted by the department prior to the contract expiration date.
9. Performing contract close out activities:
 - a. Completing Contractor Evaluation Report for consulting services or in accordance with department policies and procedures.
 - b. Notifying responsible parties when funds can be disencumbered.
10. Channelling any contract disputes immediately to the Departmental principles and legal services.
11. Keeping an accurate auditable paper trail of contract administration.
12. Ensure compliance by the contractor and contract manager with regards to external and/or applicable procedures not specifically defined in the contract.

The Contract

Administrator MUST

NOT:

Contract administrators are not authorised to:

1. Instruct the contractor to start work before the contract is awarded.
2. Change the scope of the contract without doing so through the formal SCM amendment process.
3. Direct the contractor to perform work that is not specifically described in and funded by the contract.
4. Extend the time period of the contract without execution of an approved amendment.
5. Allow the contractor to incur any additional costs over the limit set by the contract.

6. Sign a contract as the department's authorised signatory unless authorised in writing.
7. Sign any contractor's contract form.
8. Provide any form of warrantee or guarantee on behalf of the Department.

ETHICS

All officials who perform contract administration functions not only need to understand how to administer a contract but are also expected to adhere to and conduct business by maintaining the same ethical standards as if they were a buyer.

Contract administrators must:

- 4 Conduct themselves in a professional manner, refraining from mixing outside friendships with business.
- 5 Accurately account for expenditures and property received.
- 6 Be aware that perceptions can override reality.
- 7 Involve the department's SCM, management and legal services when questions arise regarding acceptable or unacceptable behaviour when dealing with suppliers.

RECORD KEEPING

Good record keeping	<p>The Department is responsible for maintaining records in sufficient detail to allow anyone to review documentation and understand how the procurement was requested, conducted, awarded and administered.</p> <p>Contract administrators must maintain good record keeping activities and ensure the records are turned over for archiving at the completion of the contract term.</p> <p>The records maintained by the contract manager must be incorporated into the contract file and retained for compliance and/or auditing purposes.</p> <p>According to sections 11 and 12 of the National Archives Act, 2001 (Act 36 of 2001) – public records must be maintained for 20 years.</p>
Record retention requirement	<p>The Department is reminded of the examination and audit requirements as prescribed requiring transaction documentation to be retained for three (3) years after payment of the last invoice unless a longer period is required in the contract.</p>
Recommended IT and administrative retention periods	<p>Electronic document management systems may require additional documentation filing and retention requirements</p>

3.4 CONTRACT ADMINISTRATION

The accounting officer must ensure that the supply chain management system of the institution provide for contract management to include, but not limited to:

- Recording of contracts in a contract register;
- Monitoring and regular reporting on contracts;
- Evaluation of compliance with transversal contracts in which the institution participates;
- Identification of institutional period contracts that are nearing expiry;
- Evaluation of applications for price adjustments;
- Evaluation of applications for variations, amendments, and cancellations; and

➤ Invoking of penalty clauses.

Both the user division/line manager and the SCMU have a responsibility towards administrating a contract. In general contract administration responsibilities are as follows:

CONTRACT ADMINISTRATION DEFINITION

- Contract Administration is defined as the functions performed before or after a contract is signed or finalised, and includes the handling or issuance of tenders, the handling of payments and budgeting and the resolution of disputes from contracts.
- The duties associated with contract administration are taking control of the way the contract is prepared, analysed and negotiated.
- A contract administrator may issue a request for proposal to potential bidders and inviting them to bid on a contract.
- Once a bidder is selected, the contract administrator sees the contract to its conclusion, handing it over to the contract manager after the agreement is signed by all parties concerned.

OVERVIEW

Contract administration concentrates on the over-all relationship between the department and the supplier from contract award to contract close-out ensuring the supplier delivers the product and/or service in conformance with the bid document requirements. The contract administrator must completely understand all aspects of the bid document.

CONTRACT ADMINISTRATION STEPS

STEP 1– Assign contract administrator	<p>Personnel assigned to perform contract administration activities are referred to as a “contract administrator”.</p> <p>The person assigned as contract administrator must be made aware of the expectations and requirements of the position.</p> <p>A contract administrator must:</p> <ol style="list-style-type: none"> 4. Have sufficient knowledge of contracting principles as it relates to their responsibilities in administering the contract. 5. Communicate with both the contract manager and supplier on contractual issues. 6. Maintain records or logs for archiving purposes at the completion of the contract.
STEP 2 – Maintain relationship with contract manager	<p>Although the quantum of contract administration activities may differ depending on the magnitude of the contract, it is critical that the contract administrator involves the contract manager (<i>if the contract management responsibility has been assigned to another official</i>) in the contract administration activities. The contract manager remains the liaison between the Department and the successful bidder.</p>
STEP 3 – Establish the fundamentals material to the specific contract	<p>Once a bid is awarded, the contract administration responsibilities should be reviewed with the person assigned to the role. Any additional contract administration activities specific to the transaction should be identified and specified.</p>
STEP 4 – Communication is key	<p>A key factor in successful contract administration is communication. It is essential for contract administrators to understand the provisions of the bid document, have the ability to communicate contract obligations to all parties involved, and maintain control over the contract performance.</p>

STEP 5-**Post-award orientations**

Prior to commencing services it is important that the contract administrator, bidder and contract manager meet to ensure a clear and mutual understanding of all contract requirements and to identify and resolve potential problems prior to any contract performance.

STEP 6 –**Open and maintain contract administration file**

The contract administration file should consist of the following dividers:

30. Cover page
31. Index page
32. Complete copy of bid document with all attachments to the involved parties.
33. Signed contract ,attachments and addendums
34. Key departmental staff and supplier personnel contacts, their responsibilities and authority.
35. Internal policies and procedures specific to the contract.
36. Contract reporting requirements between the contract administrator, contract manager and / or the supplier.
37. Contract payment process, including review time and processing time requirements to avoid payment penalties.
38. Acceptance criteria and review processes as required by the contract.
39. 'Special Conditions' to contract.
40. Amendments, variations or extensions.
41. Resolving disputes or any other contractual issues.
42. Reporting requirements for the bid document performance monitoring, audit files and retention.
43. Health and Safety clearances and notices
44. Public notices (general day to day notices to the public)
45. Logistical requirements (assessment of equipment and human resources)
46. Logistics plan
47. Logistical clearances (copies of permits, vehicle licences, access control of staff and contractors)
48. Tax clearances
49. Declarations of interest
50. Guarantees or warrantees (if applicable)
51. Clearances for quarantine goods
52. International transports and compliance documents, permits, licenses and clearances
53. Compliance notices (all related Government programs)
54. Contractor feedback
55. Legal matters (if applicable)
56. Contract termination
57. Project closure
58. File closure

THE DO'S AND DON'TS OF CONTRACT ADMINISTRATION**The Contract Administrator MUST:**

Effective contract administration activities include:

13. Notifying the contractor to begin work.
14. Monitoring contract activities in liaison with the contract manager for compliance with:
 - a. Work progress to ensure services are performed according to the quality, quantity, objectives, timeframes and manner specified within the contract.

	<ul style="list-style-type: none"> b. Preferences granted to contractors and/or subcontractors to ensure attainment of preferential goals. c. Review progress reports, status reports, and timesheets as required. <ol style="list-style-type: none"> 15. Monitoring that the contract manager approves the final product/services by submitting a written document accepting the deliverables. 16. Providing any documentation to the relevant treasury and AGSA when requested in terms of the PFMA. 17. Monitoring expenditures, ensuring funding availability when contract extends over multiple years. 18. Verifying accuracy of invoices and ensuring that the relevant programme manager approves invoices for payment. 19. Identifying and informing the contract manager of any amendments and/or contract renewals in a timely fashion as determined by Departmental policies and complexity of the request (often three – six months in advance). 20. Ensuring that the contract manager verifies all work is completed and accepted by the department prior to the contract expiration date. 21. Performing contract close out activities: <ul style="list-style-type: none"> a. Completing Contractor Evaluation Report for consulting services or in accordance with department policies and procedures. b. Notifying responsible parties when funds can be disencumbered. 22. Channelling any contract disputes immediately to the Departmental principles and legal services. 23. Keeping an accurate auditable paper trail of contract administration. 24. Ensure compliance by the contractor and contract manager with regards to external and/or applicable procedures not specifically defined in the contract.
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<p>The Contract Administrator MUST NOT:</p>	<p>Contract administrators are not authorised to:</p> <ol style="list-style-type: none"> 9. Instruct the contractor to start work before the contract is awarded. 10. Change the scope of the contract without doing so through the formal SCM amendment process. 11. Direct the contractor to perform work that is not specifically described in and funded by the contract. 12. Extend the time period of the contract without execution of an approved amendment. 13. Allow the contractor to incur any additional costs over the limit set by the contract. 14. Sign a contract as the department's authorised signatory unless authorised in writing. 15. Sign any contractor's contract form. 16. Provide any form of warrantee or guarantee on behalf of the Department.
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ETHICS

All officials who perform contract administration functions not only need to understand how to administer a contract but are also expected to adhere to and conduct business by maintaining the same ethical standards as if they were a buyer.

Contract administrators must:

1. Conduct themselves in a professional manner, refraining from mixing outside friendships with business.
2. Accurately account for expenditures and property received.
3. Be aware that perceptions can override reality.

4. Involve the department's SCM, management and legal services when questions arise regarding acceptable or unacceptable behaviour when dealing with suppliers.

RECORD KEEPING

Good record keeping	<p>The Department is responsible for maintaining records in sufficient detail to allow anyone to review documentation and understand how the procurement was requested, conducted, awarded and administered. Contract administrators must maintain good record keeping activities and ensure the records are turned over for archiving at the completion of the contract term.</p> <p>The records maintained by the contract manager must be incorporated into the contract file and retained for compliance and/or auditing purposes.</p> <p>According to sections 11 and 12 of the National Archives Act, 2001 (Act 36 of 2001) – public records must be maintained for 20 years.</p>
Record retention requirement	<p>The Department is reminded of the examination and audit requirements as prescribed requiring transaction documentation to be retained for three (3) years after payment of the last invoice unless a longer period is required in the contract.</p>
Recommended IT and administrative retention periods	<p>Electronic document management systems may require additional documentation filing and retention requirements</p>

35. SUCCESSION PLANNING

The accounting officer must ensure that the supply chain management system of the institution provide for contract management to include, but not limited to:

- Recording of contracts in a contract register;
- Monitoring and regular reporting on contracts;
- Evaluation of compliance with transversal contracts in which the institution participates;
- Identification of institutional period contracts that are nearing expiry;
- Evaluation of applications for price adjustments;
- Evaluation of applications for variations, amendments, and cancellations;
- Invoking of penalty clauses; and
- During the contract period as well as thereafter a review process is executed.

36. CONTRACTOR ASSESSMENT

The Department must ensure that the performance of all contractors is assessed during the period of the contract.

At the completion stage of the project/contract, an assessment of the contractor shall be undertaken and this assessment should be available for future reference.

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

- a. Capacity and capability to deliver (delivery periods).
- b. Quality.

- c. Quantity.
- d. Attainment of objectives.
- e. Other criteria determined by the Department (such as availability of facilities, reliability, flexibility, price, financial stability, response time, technical competence, creativity and innovation) should also be monitored.

Contractors shall be systematically monitored for performance against the same criteria as those used in the registration process for the provider list or the criteria set in the specification/terms of reference, where applicable. In other words was the contractor (chosen from a provider list or a bidding process) able to perform according to the contract conditions.

When contractors do not perform according to the contractual obligations and the Department does not address the matter during the execution of the contract, such non-performance cannot be deemed as sound reasoning for passing over the bid of such supplier/service provider when evaluating future bids.

It is important that all instances of breach of contract and the ensuing actions that were taken must be recorded in a prescribed format so that management information can be extracted for reporting purposes, as required.

37. CONTRACT MANAGEMENT MONITORING (COMPLIANCE CHECKLIST)

The Compliance Division in the SCM Unit/ PT:PCPO will execute its mandated compliance checks as per the following the checklist:

CONTRACT MANAGEMENT AND ADMINISTRATION COMPLIANCE CHECKLIST				
		COMPLIANCE ISSUE	RISK	RECOMMENDATION
24.	A contract has been signed and recorded in accordance with the Bid adjudication resolution.			
25.	A contract manager has been appointed to manage the contract			
26.	A contract administration has been appointed to administer the contract			
27.	A mechanism to escalate disputes has been established			
28.	Contract management objectives and requirements have been developed as outlined in the bid documentation			
29.	A contract management plan has been developed as outlined in the acquisition planning guideline			
30.	A specific risk management plan has been developed			
31.	Ensure any relevant legislation, policies and regulations are met e.g. PFMA, CIDB, AO-SCM System, TR's, PTI's, OHS&W legislation, privacy legislation, intellectual property, free trade agreements, trade practices legislation, etc.			
32.	Identify any actual or potential conflicts of interest and how these were dealt with			

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33.	Confirm the identification and mitigation of risks in the existing contract			
34.	Adherence to the requirements of the contract management objectives			
35.	Confirm monitoring of the performance of suppliers against the contract obligations and key performance indicators			
36.	Confirm authorisation and processing of claims for payment in accordance with the contract			
37.	Confirm maintenance of adequate records (paper and electronic) of all communication interactions with the supplier as appropriate			
38.	Confirm existence of a record of progress against milestones and timeframes			
39.	Confirm record of feedback on supplier performance from stakeholders and customers			
40.	Confirm record/minutes of meetings with the supplier as required			
41.	Confirm existence of regular (eg weekly, monthly, quarterly and annual) contract review meetings with the supplier and recording of the outcomes			
42.	Confirm the recording of processed requests and appropriate approvals for variations to the contract in accordance with the contract.			
43.	Resolution of any disputes and performance management issues in a quick and informal manner as required			
44.	Application of dispute resolution and performance management procedures as documented in the contract where required			
45.	Provision of regular performance summary reports to the appropriate senior manager/oversight committee as required			
46.	Confirm regular review of the contract management/ project plan			
47.	Recorded reports on the achievement of the intended procurement objectives (as approved in the bid adjudication) during the contract period and at the conclusion (e.g. closure reports).			
48.	Monitor and review the risks identified in the contract management plan or risk management plan			

VOLUME 5: LOGISTICS AND INVENTORY MANAGEMENT

38. LOGISTICS MANAGEMENT

Logistics Management is integral to Supply Chain Management. It involves requisitioning, coding of items, setting inventory levels, placing orders, receiving and distribution, stores/warehouse management, expediting orders, transport management. This process integrates with the financial systems to generate payments to suppliers.

38.1. REQUISITIONING

When a need arises for products / services / hiring, the applicant must request the goods/services via a requisition, from the SCM Unit in the manner as been prescribed through the Procurement System in use. Such requests must undergo the relevant authorization processes. The relevant budget holder (program manager) or his/her delegatee initiating the request must authorize all requisitions originating from his/her program thus confirming the requirement and the availability of funds.

38.2. ORDERING

The purpose of this function is to place orders on the prescribed order form for goods/services required by the Department with suppliers appointed through the relevant procurement processes and purchasing system. This process may only happen if the order has been approved by the relevant delegated official and is a valid request.

The SCM Unit is responsible for ordering goods and services based on requisitions received from the different programs. The order should be cross-referenced to the requisition and checked for accuracy and authority. Performance specifications, as determined by the budget holder (program manager) should be communicated to the suppliers as part of the ordering process.

Where a formal written contract exists, orders should be placed in accordance with the written contract. Where there is no formal written contract in place it should be ensured that the necessary procurement procedures were followed before an order is placed.

As supplier performance is dependent on the correctness of the requisitioning and ordering process, it is critical that when an order is placed with a supplier that the necessary checks and balances are in place to ensure that the order reflects the correct specifications and specified delivery conditions (delivery period, quality and quantity). This is a shared responsibility between the SCM unit and the end user.

39 INVENTORY MANAGEMENT

39.1 PLANNING

Advantages and Disadvantages of keeping Inventory

Advantages	Disadvantages
Keeping inventory may be required to mitigate risks to service delivery as it allows operations to meet unexpected surges in demand.	Items can deteriorate while they are being kept. This is significant for items having a limited life. However, it is also an issue for any inventory item as stock could be accidentally damaged while it is being stored.

Advantages	Disadvantages
When buying in bulk, which is usually cheaper, the Department may save costs associated with purchase price fluctuations and discounts.	Holding inventory is expensive, i.e. the cost of keeping stock in warehouses or containers and resources to manage and safeguard inventory.
Keeping inventory of critical items can also mitigate risks of an unexpected interruption in supply from outside the operation or within the operation.	Inventory can become obsolete while they are being stored.
Inventory allows supply and demand operations to be 'decoupled'. This means that they can operate independently to suit their own constraints and convenience while the stock of items absorbs short-term differences between supply and demand.	Large piles of inventory around the place need to be managed. It needs to be counted, looked after, and accounted for.
Improved service delivery. Inventory allows customers to be served quickly and conveniently (as and when needed).	Shrinkage/Pilfering

Inventory policies must in particular address the disadvantages of keeping stock and provide strategies and techniques to prevent inventory from becoming too high, or dwindling to levels that could put the operations of the Department at risk.

The Inventory Management Framework articulates the importance of inventory management as follows:

- (a) Departments should manage inventory in such a way that they are able to maximise a return on their investment in order to deliver more services or a higher level of service to the communities they serve. Where services are paid for by rates and taxes the question of accountability for public funds arises. The importance of inventory management in the public sector is therefore based on the need to:
- i. demonstrate accountability for public resources;
 - ii. improve transparency and credibility of information used for making policy choices; and
 - iii. improve efficiency.
- (b) Improving inventory management can lead to:
- (i) increases in investment revenue or freeing up of resources to be used elsewhere due to a reduction in stock held in inventory; and
 - (ii) a reduction in losses due to theft, wastage, damage, spoilage or misuse.

In an environment characterised by limited resources it is natural for managers to forgo Inventory Management efforts in lieu of more pressing needs. However, any Department irrespective of the size of its inventory will gain from Inventory Management which can mean lower purchasing and inventory holding costs, better quality of products while a reduction in losses or otherwise freeing up resources to be utilised in other areas may lead to increasing the rate of delivery of basic services.

The Impact of computerised systems on Inventory Management

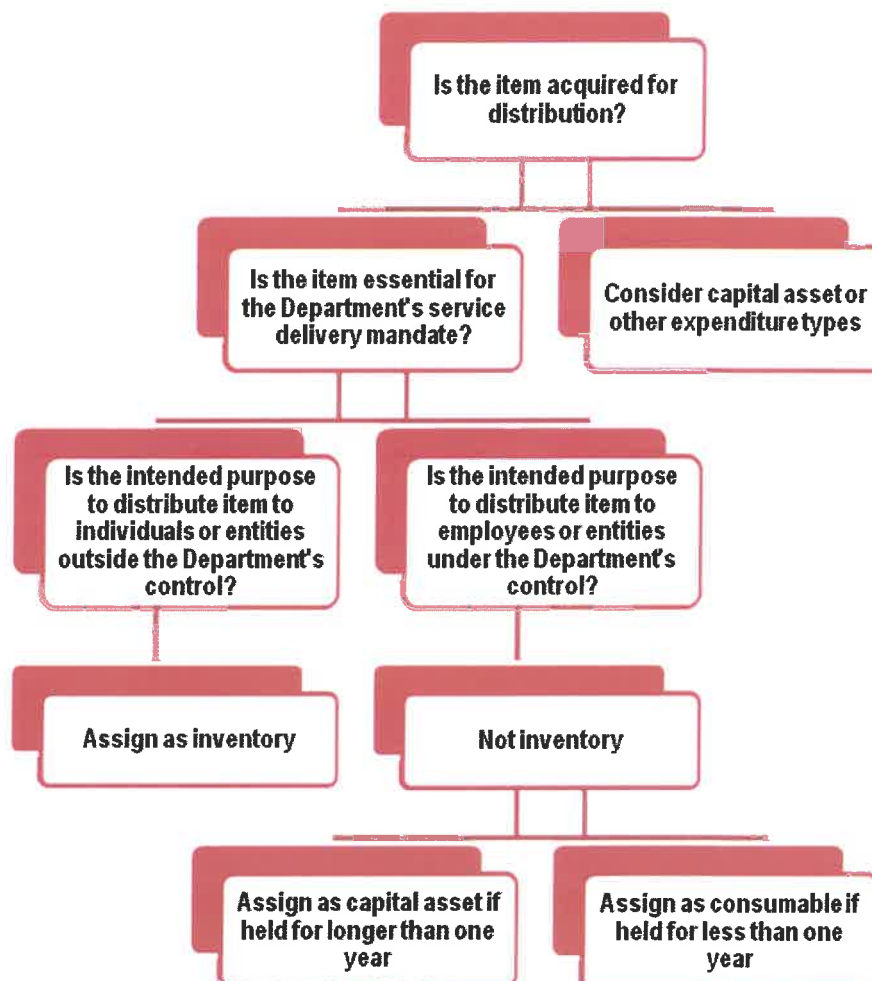
- (a) A computerised integrated Supply Chain Management System is at the heart of effective implementation of inventory management. The Department has limited stock and a computer system is not practical at this stage.

- (b) Having due regard for the aforementioned state of the systems environment, it must be noted that information and data requirements specified and contained in this document constitute critical information required (irrespective of the system in use, whether manual or electronic), in order for Departments to manage inventory.
- (c) The absence of an integrated financial management system may pose a challenge to efficient warehouse organisation and inventory control as information is contained in various systems. Sufficient information, if properly coordinated, however exists within Departments which will enable them to over time gather such information.

39.2. INVENTORY CLASSIFICATION

All items that are procured, donated or received as a result of transfers from other Departments must be evaluated against the Inventory Classification Decision Tree. If the criteria are met, it should be classified as inventory and must be grouped in the appropriate inventory category:

Figure ...: Asset Recognition and Classification Decision Tree



39.3. INVENTORY RECOGNITION, MEASUREMENT AND DISCLOSURE

All items of inventory that are procured, produced, donated or received as a result of transfers from other Departments must be recognised in the accounting records of the Department in accordance with the Modified Cash Standard (2013) issued by NT as follows:

“Inventories shall be recognised as an asset, if and only if,

- (a) it is probable that future economic benefits or service potential associated with the item will flow to the Department; and***
- (b) the cost of the inventories can be measured reliably.”***

The value of the inventory must be measured against the criteria defined by Modified Cash Standard (2013) issued by NT as follows:

Initial measurement

“Inventories that qualify for recording as an asset shall initially be measured at cost.

Where inventories are acquired through a non-exchange transaction, their cost shall be measured at fair value as at the date of acquisition.”

Subsequent measurement

“Inventories shall be measured at the lower of cost and net realisable value, except where the paragraph below applies.”

“Inventories shall be measured at the lower of cost and current replacement cost where they are held for:

- a) distribution through a non-exchange transaction; or***
- b) consumption in the production process of goods to be distributed at no charge or for a nominal charge.”***

Where items of inventory are interchangeable inventory items are reflected using the weighted average cost formulas;

Where items of inventory are not ordinarily interchangeable, specific identification of individual costs shall be used;

Only unissued stock in bulk stores are to be counted and recognised while stock issued to sub stores e.g. offices, wards in hospitals, etc. must be considered issued stock and not disclosed;

When an item of inventory has been included in the accounting records, it must be disclosed in the annual financial statements according to the appropriate accounting policies;

Any changes to the format for reporting of inventory in the Annual Financial Statements will be indicated in the Modified Cash Standard and the Accounting Manual for Departments;

Inventory will be disclosed in the relevant annexure as prescribed in the Modified Cash Standard and the Accounting Manual for Departments;

The Opening Balance for a specific reporting year must be represented by the closing balance as at 31 March of the previous reporting year;

Adjustments to prior year balances: This represents adjustments to prior year inventory which were only corrected in the current year. The following can give rise to adjustments:

- (a) Surpluses and shortages identified during the last stock take for the previous year which had not been corrected on the balances before the end of the previous year. The surpluses and shortages therefore represent the difference between recorded inventory amounts and actual inventory levels;
- (b) Reclassification of inventory to assets after the previous year end. All assets previously classified as inventory need to be accounted for and transferred from Inventory to either the major or minor assets register; and
- (c) Reclassification of Assets to Inventory after the previous year end. All inventory that were previously classified as assets need to be accounted for and transferred from the asset register to the inventory register.

Additions/Purchases-Cash: All cash additions for the year must be reflected. The cash additions as per the Inventory system should reconcile with the amount reflected for inventories in goods and services in the financial statements;

Additions-Non-cash: The fair value or cost price, if supplied, of inventory received in kind or as donations from sources outside of the government or as transfers without costs from other Departments during the reporting year is disclosed here. Adequate supporting documentation of such receipts should be kept;

Disposals: All approved disposals of inventory must be disclosed. This would include obsolete, damaged or lost inventory that are not available for distribution or production;

Issues/transfers: All inventory issued to cost centres or external stores for production, distribution or consumption must be recorded;

Adjustments: This represents correction of errors that occurred in the current financial year that relate to inventory. It includes the difference between the initial recognition amount (cost of inventory purchased) and weighted average;

Closing Balance: This will be the value of the inventory as at 31 March of the accounting year after a stock take has been undertaken, the physical quantities compared to the system quantities, corrections made to the system and any movements between the counting date and 31 March of the reporting year affected.

Calculation of Stock Levels, Safety Stock, Re-order Quantities and Re-order Points

- (a) The **Analytical Technique** can be regarded as the "foundation" of the logistical system, because it primarily determines what stock items and quantities thereof should be kept in stock. By implication this technique spells out which items/records should be created as well as what quantities should be stocked.
- (b) The analytical technique facilitates the purchasing of stock, where practical and economical, directly for use according to the need. This concept also includes A-, B- and D-items and where the supplier is situated in the same town/city it facilitates delivery as and when necessary. As a result it prevents the unnecessary storing of items, it

limits the risk of losses, it requires the minimum of storage place, a saving of manpower in terms of stock management, control is promoted and the available capital for stock purchases can be used more effectively.

- (c) Within the analytical technique items are classified as follows:
- (i) **A-Items:** Items that reflect a minimum consumption of six during the last two to three consecutive financial years, and in respect of which the average annual consumption value is equal to or greater than the classification sum.
 - (i) **B-Items:** Items that reflect a minimum consumption of six during the last two to three consecutive financial years, and in respect of which the average annual consumption value is less than the classification sum.
 - (ii) **C-Items:** Items that, during any of the last two consecutive financial years, had a consumption of less than six, as well as all new items that are purchased directly for a specific purpose.
 - (iii) **D-Items:** All items, that comply with the definition of a C-item, but which are essential, must be available immediately upon request.
 - (iv) **E-Items:** All livestock and service dogs, irrespective of the consumption tendency, are divided under this class. The symbol "E" must be entered/ used on the item record.
 - (v) **F-Items:** All containers, bags, scrap metals, scrap paper and textiles, that have sales value, irrespective of the consumption tendency, is divided into this class. The symbol "F" must be entered/ used on the item record.
- (b) Stock levels are only calculated with regard to A- and B-items, which are items that are constantly used. (Livestock revised tertiary products and uniforms are excluded.) The purpose of stock levels amongst others ensures rapid movement of capital, preventing stock becoming obsolete, best utilisation of storage room/space, stock is not depleted and that demands can be satisfied immediately at all times. For this purpose two levels are determined, namely a **minimum** and a **maximum level**. The **minimum level** is the quantity that is required to provide for the demand during the delivery period, according to contract or from previous experience of items delivered/supplied by supply depots, which is the period between the date of order and the date of delivery. The **maximum level** is the maximum quantity, which is **normally** purchased/ requested at a time upon reaching the safety factor level on the item record. In all cases of A- and B-items, 20% of the minimum stock level on the item record is automatically calculated by the system and added to the minimum stock level. This is then displayed as a safety factor level on the item record in order to make provision for unforeseen factors such as delay per rail, strikes, etc.
- (c) With regard to A- and perishable B-items, the minimum days and quantity must always be the same as the maximum days and quantity. With regard to B-items, the maximum days are always 182 (hundred and eighty two) and the maximum quantity always equal to 50% of the average annual consumption. Cases of D-items will occur where only a very small quantity (in many cases only one) of an item must be kept in stock and no consumption figure is available, or if it is available, it cannot be accepted as representative. The minimum level must be stated on "nil" in such cases, thus is supplementation only considered when the stock is completely depleted. Then only the maximum must be ordered. In order to ensure that the maximum remains within limits with regard to D-items, the maximum must be set at six (6).

39.4 INVENTORY MOVEMENTS

19.7.1 The following general principles apply to all Movements:

- (a) The warehouse/stores function includes the physical safeguarding of stock, control over movements, keeping stock records, stocktaking and storage of stock;
- (b) The receiving function accepts goods from suppliers and acknowledges receipt thereof. This is the responsibility of the budget holder (program manager) of the program requesting the goods/ services for directly delivered items or the Warehouse/Store Manager in the case of stock items. The responsibility in respect of non-store items delivered to transit areas rests with both the Warehouse/Store Manager and the End-user;
- (c) All goods not delivered directly to the end user must be received at the various transit areas. The transit areas are responsible for accepting goods from suppliers, acknowledging receipt, confirmation of delivery against purchase order and physical inspection of goods delivered;
- (d) Goods received at the stores are stored until requested by an end-user. The relevant unit is responsible for the management of the warehouse/stores function within the Department;
- (e) No movement of stock will take place without a written documented authority, e.g. a duly authorised requisition. These documents are collectively known as transfer documents and include requisitions; goods received notes and issue vouchers;
- (f) All transactions, including, recording orders, receipts, issues and returns must be recorded on a computerised or manual system;
- (g) If a manual system is used all signatures of authorised employees/practitioners must be affixed to the source documentation;
- (h) The Inventory recording system, being manual or automated, must be reconciled to the financial records at the end of each month;
- (i) Store items required by end users are to be requested (by requisition) from the relevant store. An issue voucher must be generated for all goods issued from the warehouse/storeroom;
- (j) Wherever there is a movement of stock both the deliverer and the receiver must sign the transfer document after having checked the description and quantity of the items being transferred against the source documents;
- (k) Transfer documents must be pre numbered and filed numerically;
- (l) Documents must be regularly reviewed by an independent person for authorisation;
- (m) Documents must be sequence checked and missing documents investigated;
- (n) Inventory items are considered consumed after having been issued to the end-user and the relevant unit does not keep further record; and
- (o) All transfer documents must be kept on file in the warehouse/storeroom office in accordance with legislative requirements for the retention of information.

Transfers

- (a) Transfers refer to any movement of stock or asset from any store or location in a Department to a store or location in another Department;

- (b) Transfers between units/ programmes/sub-programmes in the same Department are known as internal transfers whilst transfers from one Department to another or to any Department / store outside of the Department is known as external transfers

39.5. STOCKTAKING OF INVENTORY

Frequent comparison and reconciliation of un-issued stock with stock as per approved records is required to timeously identify discrepancies and initiate investigations. Preventative measures should be put in place to reduce the possibility of a re-occurrence of the problem that caused the discrepancy.

Stores shall be subjected to a complete stock take at least once in every financial year as near as possible to year-end to minimize the amount of reconciliation between the stock counts at stock take and the counts at the end of the financial year. The Office of the Auditor-general (AG) must be provided with the scheduled dates of all stock takes at least one calendar month in advance to allow them to observe the stock take if necessary. Written acknowledgement by the AG should be kept for audit purposes.

The AO is responsible for the administrative issues of the annual stock take conducted within his Department. Included in the responsibilities is the delegated authority to appoint, in writing, competent persons to take stock and to report their findings. To ensure proper segregation of duties, the person appointed should not directly be in charge of the store.

Surpluses and deficits shall, as soon as they have been confirmed, be accounted for in a suspense register. All particulars and supporting documentation should be kept for audit purposes. Once all surpluses and deficits have been accounted for, the Disposal Committee/ Board of Survey should evaluate each individual case (storeroom), and recommend to the Accounting Officer any further steps to be taken. Steps may include the recovery of stock losses from officials.

Members of the Departmental Stock - Take Committee cannot serve on the Disposal Committee for the disposal of items identified by them.

A stock take certificate should be issued for each store, a copy thereof must be provided to the AG. The following officials must sign the stock take certificate:

- (a) The Chairperson of Stock take committee
- (b) The relevant store manager;
- (c) The head of the SCM Unit; and

A stock take certificate for the Department should be issued once all stock take certificates have been received, reviewed and matters resolved. The stock take certificate should be signed by the Accounting Officer and at least contain the following information:

- (a) A statement to the effect that all vouchers series are up to date and vouchers have been correctly filed;
- (b) Inventory controllers (store managers) had been appointed in writing;
- (c) A complete stock take of inventories has been carried out; and
- (d) The information as provided is a true reflection of the state of stores administration within the Department.

- (e) A copy of the stock take certificate must be submitted to PT for reporting purposes.

FURTHER, TO SUCCESSFULLY EXECUTE THE ABOVE MENTIONED POLICY PROVISIONS, THE FOLLOWING WILL APPLY:

39.6. REQUESTS TO STORES

All requestors must complete the requisition form to request items from the store;

- (a) End-user requests must be completed accurately and be duly authorised;
- (b) No items will be issued to an end-user without an approved request form;
- (c) The request form must contain at least the following information:
 - (i) Cost Centre code
 - (ii) Cost Centre Description
 - (iii) Item code
 - (iv) Item Description
 - (v) Quantity requested
 - (vi) Date Requested
- (d) All requestors must sign for material received from the warehouse/storeroom.

39.7. ISSUING AND DISPATCH

Only duly appointed employees/practitioners will complete the issuing / dispatch function;

The system must be updated immediately upon the physical issue of inventory from the warehouse/storeroom and the relevant expense must be posted (where applicable);

All relevant issuing documentation must be generated and completed as required;

All requestors must sign for material received from the warehouse/storeroom; and

Internal Stock transfers will only be completed between like storage facilities within the same operating division.

39.8. RECORDING OF ISSUES

Manual or computerised records for issues from store must include at least the following:

- (a) Issue date;
- (b) Issue number;
- (c) Name of warehouse/storeroom, stockroom or other;
- (d) Item code (must be unique for "the same" items);
- (e) Item description (will be linked to the item code);
- (f) Item location (shelf, bin, etc.);
- (g) Quantity issued;

- (h) Issued to code (organisation, project or job code); and
- (i) Note any comments regarding the issue where required.

39.9. RETURNS TO STORE

All material returned to stock must be correctly prepared and packaged by the end-user;

A goods return transaction is completed accurately on the system within the allowable goods receipt processing time of 48 hours or immediately upon return from inspection; and

All material returned to stock must be returned against the cost centre it was issued to.

39.10. RECORDING OF RETURNS TO STORE

Manual or computerised records for returns to store must include at least the following:

- (a) Return date
- (b) Return number
- (c) Name of warehouse/storeroom, stockroom or other
- (d) Item code (must be unique for "the same" items)
- (e) Item description (will be linked to the item code)
- (f) Item location (shelf, bin, etc.)
- (g) Quantity returned
- (h) Returned from code (cost centre, project or job code)
- (i) Note any comments regarding the return
- (j) Authorisation no. and dated signature or electronic authorisation of receiving officer
- (k) Authorisation no. and dated signature or electronic authorisation of issuing officer.

39.11. STORES TO SUPPLIER

Materials destined to be returned to a supplier must be assessed and resolved speedily;

Materials to be returned to a supplier will be coordinated and managed by the respective buyer;

The end-user will be responsible for following-up with the respective supplier;

Returns generated as the result of some fault on the supplier's part, will be processed with associated fees assumed by the supplier;

The supplier will be responsible for uplifting the materials from the warehouse/storeroom;

SCM must compile a valid removal permit;

The Removal Permit will at a minimum contain the following information:

- (a) Description of Item being removed
- (b) Quantity of Item being removed
- (c) Copy of the returned delivery note
- (d) Supplier name
- (e) Signature of the delegated warehouse/storeroom employee/practitioner
- (f) Date of removal

No materials will be physically issued out of the warehouse/storeroom without:

- (a) all required documentation completed accurately and authorised; and
- (b) all required system transactions completed accurately and authorised.

39.12. STORES REGISTER

Manual or computerised records for each item of inventory must include at least:

- (a) Name of warehouse/storeroom/store
- (b) Item code, must be unique for the same item
- (c) Item description linked to the item code
- (d) Inventory control classification
- (e) Item location (bin or shelf)
- (f) Authorised person responsible for the item
- (g) Purchasing unit of measure
- (h) Unit of issue
- (i) Alternative units of measure
- (j) Consumption history for each financial year both quantity and value
- (k) Suppliers both one-time vendors as well as contracted suppliers
- (l) Lead time in days between order and delivery
- (m) Safe stock level
- (n) Minimum stock level
- (o) Maximum Stock level
- (p) Reorder level
- (q) Economic re-order quantity
- (r) Quantity on hand
- (s) Unit price of quantity on hand
- (t) Quantity on order (purchased not received)
- (u) Quantity reserved (ordered by user not issued)
- (v) Status (item on hold/damaged)
- (w) Shelf-life and expiry indicator

39.13. DISPOSAL AND WRITE - OFF**Identification of Inventory for Disposal**

- (a) Determine surplus stock;
- (b) The relevant Store is responsible for the identification of redundant or obsolete (disposable) inventories;
- (c) The relevant user must notify the Store manager/s in writing of all issued items identified as redundant or obsolete (disposable) inventories within their programs;
- (d) The relevant Store must assess all inventory items for disposal and determine the appropriate quantity and timing for disposing of obsolete and surplus inventory by considering both inventory holding and ordering cost and an analysis of usage;
- (e) Should the analysis performed in Paragraph 19.19.1 (d) indicate a required change in item policy to prevent future surplus e.g. changes to minimum and maximum stock levels, the relevant programme manager or the relevant unit must initiate the appropriate change control procedure to have the item policy amended in the inventory management system;
- (f) Where item codes are used, the item codes of inventory identified as obsolete must be suspended in the inventory management system to prevent users from mistakenly selecting these item codes with future requests;
- (g) All items of inventory identified for disposal must be physical removed to the disposal locations to prevent the items from being issued to users;
- (h) The inventory system must be updated to reflect the disposal storage bin number of all items as and when items are moved to the disposal location;
- (i) In the case of damaged/redundant/obsolete items, the relevant unit must prepare a report with reasons as to why the item had become damaged/redundant/obsolete;
- (j) In the case of redundant/obsolete items, the relevant unit must include in the report mentioned at (i) all possible options for utilising such items to the best advantage of the state;
- (k) The relevant unit must submit the report mentioned in (i) above to the Disposal Committee;
- (l) The Disposal committee must physically verify and independently inspect the stock items submitted for disposal; and
- (m) Disposal must be done as soon as practically possible.

The Disposal Committee

- (a) The accounting officer or his/her delegatee must appoint the members of the disposal committee of which at least one must be an SCM/AM official;
- (b) These members must be appointed in writing and must consist of a chairperson and at least two additional members;
- (c) In the case of specialised inventory (e.g. pharmaceutical supplies, ammunition or agricultural livestock), a technical expert mandated by law in the field must be co-opted in writing to advise in the disposal process;
- (d) The members of the disposal committee will have a duty sheet and must be familiar with the policies and legislative prescripts with regard to inventory management and disposal;
- (e) Any person that is in direct control of the inventory items cannot form part of the disposal committee but may act as an advisor;
- (f) The Chairperson of the disposal committee must issue a Disposal Schedule indicating predetermined dates for the specific financial year when the committee will meet and evaluate identified disposals;

- (g) The appointed chairperson of the disposal committee must formalise the predetermined dates and times of the disposal meetings for the financial year and this will be communicated to all parties;
- (h) Ad hoc dates can be arranged should there be an urgent need for any ad-hoc disposal requests;
- (i) Disposals must be performed on a quarterly basis during the financial year or if no disposals as an when required. The exact dates must be communicated in terms of the disposal schedule:
- (i) 1st Quarter (April – June)
 - (ii) 2nd Quarter (July – September)
 - (iii) 3rd Quarter (October – December)
 - (iv) 4th Quarter (January – March)
- (j) If the disposal Committee is of the opinion that the item(s) which has been earmarked for disposal had become unusable due to possible negligence, an indication must be made on the schedule that the incident be investigated and possible action be taken against the implicated employee/practitioner. This incident should be isolated and noted in the minutes of the disposal committee meeting and dealt with as part of the loss control procedure;
- (k) The disposal committee must decide on the method of disposal. The Chairperson and all the members must sign the disposal schedule as well as supporting documentation;
- (l) The disposal committee must take into account the following before deciding on the method of disposal:
- (i) The physical condition of the item;
 - (ii) The reasons as to why the item must be disposed of;
 - (iii) The most cost effective manner/method of disposal; and
 - (iv) Possible environmental impact for the chosen method of disposal.
- (m) Detailed records must be kept of all the activities of the disposal committee. These records should consist of at least, but are not limited to the:
- (i) Agenda of the meeting;
 - (ii) Minutes of the meeting;
 - (iii) Appointment Letters;
 - (iv) Quarterly disposal schedules;
 - (v) Attendance list and declarations of interest; and
 - (vi) Disposal Certificate.
- (n) The chairperson and all the members of the disposal committee must sign the disposal report and forward it to the accounting officer or his/her delegate for authorisation; and
- (o) System authorisation can only be performed once the committee has recommended and the delegated authority has approved and signed the disposal register.

If disposal of any item is approved, one of the following disposal options must be followed:

- (a) Transfer to another Department at market related value. Market related value is the Rand value to be received from a third party in the open market.
- (b) Transfer to another Department free of charge: This method entails transferring items to another Department free of charge. Should this method be chosen, the reasons for disposing of the item free of charge must be recorded and

motivated by the Disposal Committee and specifically approved by the accounting officer/authority or his/her delegate. The best interests of the State should be the deciding factor in all such cases.

- (c) Selling: This is the process by which stock that is identified as redundant / scrap / obsolete is removed from stock and sold or issued to other Departments or to external vendors in an attempt to recoup some or all of the cost / value of the material:
- (i) The SCM manages the sale of the inventory and issues the tender or arranges an auction;
 - (ii) The selling of items must at all times be done in a fair/competitive and scrupulous manner;
 - (iii) Notice of the selling of items must be given in advance (At least 14 days prior to the actual selling date and all possible buyers must be informed);
 - (iv) Items can be sold in one of the following categories:
 - (aa) As a lot;
 - (bb) As an individual item;
 - (cc) As scrap. (If selling the items as scrap the correct SCOA item code should be used.)
- (d) In all cases, lot numbers must be allocated to each lot/item and a date and time must be stipulated on the notice of selling as to when potential buyers can view the items;
- (e) The notice of selling must contain the following information:
- (i) Closing time and date for bids;
 - (ii) Date and time and place when and where the items can be viewed by potential buyers;
 - (iii) The conditions of sale; and
 - (iv) Any other important information to protect the state against claims derived from the selling of state property.
- (f) Selling per price quotation / competitive bid: The value of the assets/ inventories to be sold will determine the methodology. Under normal circumstances the cost of advertisements and auctioneers exceed the possible revenue gain of the disposal. Therefore the Department will advertised only in the Department through notice boards and e-mail to all staff.
- i. The value of the item to be disposed of;
 - ii. The age of the item;
 - iii. The general attractiveness to the wider group of buyers; and
 - iv. The prospect of increasing the net sale value compared to an alternate method of sale.
- (g) The items must be put out according to the different lots and personnel may view it during a period not to exceed one week after which personnel members may put in an offer in a sealed envelope in the Departmental tender box.
- (h) Members who forms part of the evaluation process may not tender to avoid a possible conflict of interest during the process.
- (i) The highest price offered will be accepted as the successful offer.
- (j) Selling per auction: Selling per auction is an option when:
- (i) A contract for auctioneering services exists;
 - (ii) It is cost effective to procure the services of a private auctioneer; and
 - (iii) It is cost effective to auction the items to be disposed of.

- (k) Selling as scrap: In cases where inventory have no use or sales value in its original form but the material it is made of is of value e.g. wood, metal, etc. such material should be offered for sale in accordance with the delegations depending on the expected revenue to be made from the material. The sale of scrap must always be cost effective.
- (l) Destruction of inventory: Destruction of inventory is undertaken when it is considered uneconomical to proceed with disposal by any other means. (j) Destruction may be appropriate for items, which no longer have a sale value. Factors to be considered when deciding whether to offer the goods for destruction include-
- (i) the items are not fit to be used anymore e.g. it is a health risk;
 - (ii) the items are valued at less than the cost of disposing of it through bids or price quotations or auctioning;
 - (iii) neither the controlling Department nor any other Department can use the item in its current form;
 - (iv) the Department was unsuccessful in selling the items via price quotation / competitive bidding/ auctioning;
 - (v) it is reasonable to believe the items will not attract bids;
 - (vi) Destroying can either be by incineration, burying, dumping in an allocated dumpsite or any other means that has been proven to not adversely affect the environment and is not contrary to any law, bylaw or regulation; and
 - (vii) Inventory identified as hazardous should be disposed of in such a manner as to satisfy the requirements of the relevant acts, regulations and Municipal by-laws.
- (m) Trade-In: If appropriate, inventory items may be traded in on purchase of new store (inventory) items. In such cases the highest possible trade-in price is to be negotiated with the preferred supplier by the SCM Unit. Details of the trade-in should also be noted on the purchase requisition, which must be prepared for the new item to be purchased. 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 the relevant inventory system.
- (n) Recycling: If feasible, the discarded inventory and materials can be reclaimed or recovered, refined or reprocessed, and converted into new or different products. In future, Provincial Departments will have the responsibility of setting policy and specific targets for waste reduction and recycling.

Reporting

- (a) The Disposal report must be available listing all Disposals reported and authorised by the Disposal Committee to date. The report must contain the following information:
- (i) Item Code
 - (ii) Item Description
 - (iii) Quantity
 - (iv) Reason for Disposal
 - (v) Method of Disposal
 - (vi) Submission Date
 - (vii) Approval Date
 - (viii) Authorisation Number
 - (ix) Authorised Signature Name

- (x) Average Price / Value
- (b) A Monthly / Annual Report listing all Disposals for the current financial year should be available. The report must include the following:
- (i) Item Code
 - (ii) Item Description
 - (iii) Quantity
 - (iv) Reason for Disposal
 - (v) Method of Disposal
 - (vi) Submission Date
 - (vii) Approval Date
 - (viii) Authorisation Number
 - (ix) Authorised Signature Name
 - (x) Average Price / Value
 - (xi) Total Disposals for Financial Year
 - (xii) Revenue on disposal of inventory/scrap items

Segregation of Duties

- (a) There must be appropriate segregation of duties for disposal and scrapping for individuals between:
- (i) The identification of goods to be disposed or scrapped;
 - (ii) Assessing and approving the disposal and scrapping;
 - (iii) The receipt of the proceeds; and
 - (iv) The access to the accounting records.

Revenue from disposal of State Assets

All monies received from the sale of inventories must be paid into the Provincial Revenue Fund in terms of section 13 (1) of the PFMA, Act No 1 of 1999. When inventory are sold as scrap the correct SCOA codes must be applied to ensure that the value of inventory disposed of as scrap can be accurately accounted for in the Annual Financial Statements.

Disposal Records

- (a) Manual or computerised records for disposals must include at least the following:
- (i) Disposal date;
 - (ii) Disposal number;
 - (iii) Disposal method (sale, etc.)
 - (iv) Inventory operation (name of warehouse/storeroom, stockroom or other);
 - (v) Item code (must be unique for "the same" items);
 - (vi) Item description (will be linked to the item code);
 - (vii) Item location (shelf, bin, etc.);
 - (viii) Quantity disposed;

- (ix) Value disposed;
- (x) Disposal cost (cost of arranging the disposal where applicable);
- (xi) Disposal revenues;
- (xii) Disposal profit / loss where applicable;
- (xiii) Disposal reason code (obsolete, expired, slow moving, transfer);
- (xiv) Note any comments regarding the disposal where applicable;
- (xv) Authorisation no. and dated signature or electronic authorisation of disposal officer;
- (xvi) Authorisation no. and dated signature or electronic authorisation of higher authority.

Annual complete stock takes

- (a) At least one stock take per annum must be conducted by independent counters (staff not employed in the warehouse or stockroom being counted);
- (b) The Auditor-General (AG) must be provided with the scheduled dates of all stock takes at least one calendar month in advance to allow them to observe the stock take if necessary. Written acknowledgement by the AG must be kept for auditing purposes;
- (c) Physical Inventory Counts must be performed timeously as per the Physical Inventory Count Schedule by the delegated employees/practitioners;
- (d) The delegated authority must appoint, in writing, competent persons to take stock and to report their findings. To ensure proper segregation of duties, the person appointed must not directly be in charge of the store;
- (e) Physical Inventory Counts must be completed as per the formal Physical Inventory Count Procedure document;
- (f) Explanation / reasons must be investigated / determined independently for all variances;
- (g) The System must be updated timeously and accurately on completion of the count;
- (h) A stock take certificate must be issued for each store and kept for audit purposes;
- (i) The following officials must sign the stock take certificate:
 - (i) The Chairperson of the stock take committee
 - (ii) The relevant store manager
 - (iii) The head of the SCM Unit
- (j) A stock take certificate for the Department must be issued once all stock take certificates have been received, reviewed and matters resolved;
- (k) The stock certificate must be signed by the delegated authority and at least contain the following information:
 - (i) A statement to the effect that all vouchers are up to date and vouchers have been correctly filed;
 - (ii) Inventory controllers (store managers) had been appointed in writing;
 - (iii) Physical Count officials had been appointed in writing;
 - (iv) A complete stock take of inventories has been carried out; and
 - (v) The information as provided is a true reflection of inventory valuation and the state of stores administration within the Department.

Minimum Requirements for stock take

- (a) When conducting stock take, information about the stock take must be recorded either manually or electronically. At least the following must be recorded:
- (i) Inventory operation (name of warehouse, stockroom or other);
 - (ii) Stock take name (e.g. quarterly count of A items for quarter ended June 2013);
 - (iii) Date and time of count;
 - (iv) Authorisation number and dated signature or electronic authorisation of counter;
 - (v) Authorisation number and dated signature or electronic authorisation of supervisor;
 - (vi) Item code (must be unique for "the same" items);
 - (vii) Item description (will be linked to the item code);
 - (viii) Item location (shelf, bin, etc.);
 - (ix) Quantity on hand as per inventory records (manual or computerised system);
 - (x) Quantity on hand as per count in good condition;
 - (xi) Quantity on hand as per count in poor condition (expired, obsolete, unserviceable etc.);
 - (xii) Variance (adjustment required to manual or computerised records);
 - (xiii) Second count carried out (indicate y/n); and
 - (xiv) Variance reason.

Inventory loss control

This is the process that results from a loss/discrepancy usually as a result of theft. Items that cannot be verified must not be included in the financial records of the Department:

- (a) When discrepancies are identified and subsequent investigation confirms the loss, the loss control procedure must be instituted as the continued recognition of the item in the inventory will distort both financial data and impact on inventory management procedures;
- (b) The disjuncture between the requirement to remove these items from the inventory and the time it takes to conclude the loss control procedure is acknowledged, nevertheless the following will apply:
- (i) An item of inventory that cannot be verified or accounted for must be placed into suspense allowing for the item to be excluded from inventory valuation and future inventory counts and to prevent the item from being included in resource planning techniques such as materials requirement planning; and
 - (ii) The item is removed from the inventory records when the loss control procedures is finalised.

Stock verification adjustment

- (a) Appropriate segregation of duties must exist between the counting and the stock adjustments process;
- (b) Inventory adjustments may not be carried out unless the correct procedure has been followed and all the delegated powers of authority have been adhered to;
- (c) Explanation / reasons must be investigated / determined independently by the Warehouse Supervisor for all variances;
- (d) The following additional information must be recorded for each adjustment:
- (i) Date and time of adjustment;
 - (ii) Authorisation number and signature or electronic authorisation of adjuster;

- (iii) Adjustment;
- (iv) Reason for adjustment; and
- (v) Action required to follow - up on discrepancy.

Organisation of responsibilities for stock taking

- (a) Chairperson of Stock Take Committee - A knowledgeable employee/practitioner must be appointed as the Chairperson of Stock Take Committee. The functions of the Chairperson include inter alia the following:
- (i) Determine a stock take programme;
 - (ii) Ensure that all accounting transactions have been finalised;
 - (iii) Appoint stock take teams;
 - (iv) Coordinate stock take activities at storerooms and inventories at all levels;
 - (v) Deal with discrepancies by ensuring investigation of the causes; and
 - (vi) Submit reports.
- (b) Stock take teams - Teams must be appointed to do stock take at storerooms and on inventories. The functions of the stock take team include inter alia the following:
- (i) Execute stock take programme;
 - (ii) Investigating discrepancies;
 - (iii) Prepare Adjustment Vouchers for authorisation;

39.14. PERFORMANCE MEASUREMENT

Inventory key performance indicators must be identified and agreed upon by the relevant stakeholders;

These KPI's must be monitored periodically and compared to an agreed benchmark;

If any variations occurs a root cause analysis must be done and action be implemented and followed up;

Key Performance Indicators must be aligned to Departmental objectives. The following represent the minimum KPI's that must be monitored and are not exhaustive:

- (a) **Monthly Inventory Value**
- (i) The value of inventory at the end of the month is a strong indicator of the Department's ability to match its inventory levels to its operational needs. The Department must adhere to stringent limits on the value of inventory within a given month. This must be extended to analysing the inventory value over a quarter. This requires set limits on inventory value relative to the fluctuating demands.
- (b) **Incidence of Out of Stock**
- (i) The incidence of "stock-outs" is also a key performance indicator. However, in this case, it's the measurement of the lack of finished product inventory needed for operations. Understanding this KPI involves measuring the length of time of the stock-out and its impact on costs and service delivery for example, any service delivery delays resulting from the non-availability of materials.

(c) The Value of Obsolete and Damaged Inventory

- (i) This KPI measures the costs relative to obsolete and damaged inventory. The Department must set goals and objectives predicated on controlling the incidence of damaged inventory caused by poor handling and ensuring proper item specification and demand planning is defined to prevent obsolescence. Reducing the impact of obsolete and damaged inventory will allow Departments to reduce inventory costs. In most cases, damaged and obsolete inventory can only be sold as scrap.

(d) Incidence of Product Returns

- (i) This key performance indicator measures the incidence of products returned to suppliers and the impact on costs and service delivery. These include:
 - (aa) The original cost to purchase parts and materials;
 - (bb) The cost to take these products back; and
 - (cc) Impact on service delivery (delays)

(e) Early Receipts to MRP Date (required date)

- (i) Early receipts to MRP date - This is a measure on your Planning efficiencies. Some planners or warehouse personnel may request that the material be brought in long before the plant/operators need the parts. Reasons for doing so may be quality, lead time variance, buffer stock etc. Early receipts to MRP produce higher levels of inventory that are not required yet. In a way, this is at the other end of the JIT scale. Measure: MRP due date versus Receive to Dock (stores) date.

(f) Early PO Receipts to PO Due Date

- (i) Early receipts to PO date - This is a measure on your suppliers and their diligence to supply per the contract date. Early receipts to PO produce unexpected deliveries turning up, congested goods inwards and of course higher than projected inventory levels. Measure: PO due date vs Receive to Dock (stores) date.

(g) Inventory Lead Time

- (i) Lead time is the length of time it takes to obtain inventory from suppliers.

(h) Average Age of inventory

- (i) The (average) age of each product in stock.
- (ii) The average age of each product in stock is a measurement that estimates the average time to issue out or consume a particular stock item.

(i) Generally preferred inventory valuation method.

- (i) Assumes inventory is sold in the order that it is stocked, with the oldest goods sold first and the newest goods sold last. Uses the unit cost per batch of acquired/produced goods, and counts the inventory backwards from the newest batch.

(k) Inventory Carrying Cost

- (i) It is measure by Inventory Carrying Rate X Average Inventory Value

(m) Stock Cover

- (ii) Stock cover is the length of time that inventory will last if current usage continues.

VOLUME 6:

MOVABLE ASSET MANAGEMENT

40. PROVINCIAL ASSET MANAGEMENT POLICY MOVABLE ASSET

40.1. PROVINCIAL ASSET MANAGEMENT MOVABLE ASSETS

40.2. FUTURE ECONOMIC BENEFIT

In applying the definition of assets, the focus will largely be service potential rather than future economic benefit as the Department's primary concern is service delivery and to redistribute wealth for a variety of social and economic purposes.

Assets that are used to deliver goods and services in accordance with the strategic objectives of the Department but do not directly generate net cash inflows are often described as embodying "service potential". Service potential is thus the capacity of an asset singly or in conjunction with other assets to contribute directly or indirectly to achieving our objectives.

40.3. CONTROLS

The question on how an entity may control an asset without owning it refers to the control of the economic benefit or service potential of the asset rather than the "physical" control.

On the question whether the Department enjoys the benefits of the asset and prevents others from sharing in those benefits, legal title and physical possession are good indicators of control but they are not infallible. Many assets for example, receivables and property are associated with legal rights, including the right of ownership. In determining the existence of an asset, the right of ownership is not essential.

40.4 PAST TRANSACTIONS

Transactions or events expected to occur in the future do not give rise to assets. Assets are recognised from the point where control over the asset is transferred to the Department and normally represents payment, taking of possession etc.

There is a close association between incurring expenditure and generating assets but the two do not necessarily go hand in hand. The incurring of expenditure may provide evidence that future economic benefit was sought, but is not conclusive proof that an item satisfies the definition that an asset was obtained. On the other hand the absence of expenditure does not necessarily mean that no assets were obtained, for example donations etc.

40.5 CLASSIFICATION

Assets vary considerable in their size and nature, and it is useful to classify them into groupings for management control and financial treatment. For example, management control will refer to categorising assets as land and buildings, office furniture and equipment, computer equipment etc. Financial treatment on the other hand will refer to classifying assets as either current or capital. Assets for the purpose of this framework and policy will be divided into the following classes:

Current and Non-Current Assets

- (a) Current assets have an expected short life (normally less than 12 months) due either to an inherent feature or because they will be converted into cash or another asset or consumed within the Department within a short timeframe (raw materials and inventory are examples of this). These assets are generally referred to as 'current' in accounting terms, as they may be consumed or converted into something else within the next twelve months after the reporting date.

- (b) In contrast, non-current assets have an extended useful life greater than one year and is usually expected that these assets would be used during more than one reporting period. This may reflect their physical life (e.g. motor vehicle) in the case of tangible assets or their legal life (e.g. Patent) in the case of intangible assets.

Tangible assets

- (a) Tangible assets are physical in nature. These are assets that one can touch and feel and can be either current or non-current. All tangible assets are either movable or immovable.

Intangible assets

- (a) Intangible assets are assets belonging to the category 'intangible' do not have a physical form. Examples of intangible assets are:
- (i) Trademarks;
 - (ii) Licences;
 - (iii) The legally enforceable rights associated with copyright and patents;
 - (iv) Mineral exploration rights;
 - (v) Computer software;
 - (vi) Entertainment, literary or artistic originals; and
 - (vii) Other assets (e.g. new information, specialised knowledge) that have not been classified elsewhere, whose use in production is restricted to the units that have established ownership rights over them or to other units licensed by the latter.

Minor assets

- (a) Minor assets are assets with a cost price less than R5000. The need to control innumerable assets that cannot be classified as major assets because of their value but, clearly have lifespans in excess of one year, has been identified. Items that may be included in such a list are endless and will continuously change.
- (b) In order to provide sufficient guidance to regulate the classification of assets with a monetary value of less than R5 000, without unnecessarily forcing the Department into controlling items that are worth less than the input needed to control it, the following broad guidelines are proposed:
- (i) To be categorised as minor assets, the goods must have the characteristics of capital assets with the exception that it will have a value of less than R5 000.
 - (ii) Items must have a normal lifespan of more than one year.
 - (iii) It must be possible to physically mark the item without damaging it.
 - (iv) Items must be categorised as one of the broad categories prescribed.
 - (v) All computer software with a monetary value of less than R5 000 will be regarded as an E-class consumable.
 - (vi) All expenditure on minor assets will be classified as current expenditure.

Major assets

- (a) All assets costing more than R5 000.00 are classified as major assets. All expenditure on major assets will be classified as capital expenditure.

40.6 CATEGORIES

For the purposes of financial reporting, assets within the Department will be classified as per the following categories:

- (a) Other machinery and Equipment;
- (b) Furniture and Office Equipment;
- (c) Computer Equipment;
- (d) Transport Assets;
- (e) Heritage Assets; and
- (f) Intangible Assets.

41. ASSET PLANS

PFMA:

Section 38 of the PFMA confers general responsibilities on the Accounting Officer. It determines at Section 38 (1) (d) that the Accounting Officer of a Department:

“..is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the Institution, trading entity or constitutional institution;”

For the majority of Departments however their asset base will consist primarily of computing hardware and software and furniture and fittings, which facilitate their program delivery responsibilities. As such, the majority of Departments will have asset portfolios which are relatively small in comparison to their operating budget. The policies below have therefore been developed to provide for a level of generality that ensures that specific institutional needs can be accommodated.

The policies outlined in this chapter will have relevance for all NWPG Departments irrespective of the size of their asset base.

41.1. SYSTEMS

Walker/Bas Systems

41.2. ASSETS STRATEGY

In attaining service delivery objectives, resources (assets) are required. Government has a structured way of obtaining and utilising resources in line with applicable legislation. The legislation requires an Asset Management Strategy that will easily be implemented to attain service delivery objectives. Such plan must provide a 5 year time (long term perspective) horizon for planning and costing asset needs as opposed to the 3 years of the MTEF (short term perspective).

The following should be noted when aligning the asset strategic plans with other planning periods:

- (a) Asset Strategic Plans are revised annually to adjust budget estimates and therefore provide input to the budgeting process and the Annual Performance Plans.



- (b) Strategic Plans identify strategically important outcomes orientated goals and objectives against which Departments' medium-term results can be measured. Although a Department's Strategic Plan must indicate policies and plans to be achieved over a minimum 5 year planning period, some plans especially those relating to infrastructure projects, may have timing horizon that spans 5 years or more.
- (c) When preparing the Funding Plan, estimates are developed based on an assumption of constant chain of replacement, using the useful life of individual assets. The funding plan also considers all alternatives to asset ownership based on the cost of owning and controlling the asset over its expected useful life. Irrespective of whether the useful life of an asset is shorter than or extends beyond the 5 year planning period the cost of owning the asset for its entire useful life must be determined.

The Department's Asset Management Strategy will incorporate the following:

- (a) Linking the requirement to service delivery
- (b) Acquisition Plan
- (c) Operational and Maintenance Plan
- (d) Disposal Plan

Categories of movable assets to be included in asset strategic plans

- (a) Departments must evaluate their movable asset base and identify the categories of assets for which an Asset Strategic Plan must be developed; and
- (b) Asset categories defined above must be reviewed on an annual basis.

41.3. LINKAGES

Proposals for new assets must be justified by a thorough evaluation of all service delivery options. Asset needs must be directly linked to the services to be delivered. Before embarking on a procurement process it must be established which assets are surplus to requirements or require refurbishment in order to bring them up to the required standard.

41.4 ACQUISITION PLANNING

An Acquisition Plan as part of the Procurement Plan must be drawn up for the Department on an annual basis during the planning phase and should as the minimum address the following:

- (a) the programme delivery requirements inclusive of the service strategies and standards; and
- (b) the rationale behind acquiring assets and how the assets will serve and fit into the strategic objectives and service delivery goals of the Department.

To ensure that programmes follow a budgeting norm of acquiring needs in terms of the budget allocated and not budgeting according to the needs, only the following will be addressed in the acquisition plan of the Department:

- (a) Only capital asset needs.
- (b) Non-asset solutions considered inclusive of the utilisation of existing assets,
- (c) A complete analysis of the alternative methods of acquisition,

- (d) Personnel involved in the acquisition and their roles and responsibilities,
- (e) The time-frame for the acquisition process as well as the time and budget necessary for this task.

41.5 OPERATIONAL AND MAINTENANCE

The Department must conduct a periodical review of the useful life of all assets. If the expectations are significantly different from previous estimates, the assets should be re-valued and the asset register adapted using the balance adjustments function on the system.

The physical existence of assets should also annually be verified with the asset register via the annual asset count and verification process. The asset register should be updated after the variances have been investigated and resolved (surpluses and shortages) as identified during the process.

Basic controls over assets

- (a) The control structure needed within the Department in relation to asset management is an essential element of good corporate governance and is a necessary precursor to effective implementation of asset management principles. It consists of the systems, processes and procedures established within the Department to ensure that management's plans and intentions are implemented.
- (b) Recording and safe keeping of documentation relating to acquisition and additions of assets; bar coding of assets; disposal of assets; transfers; maintenance of assets and performance of monthly reconciliations are crucial in keeping the asset register up to date and ensuring control over assets.
- (c) Issuing officials with inventory lists for all assets under their control is a control measure emphasizing the importance of section 45 (e) of the PFMA, which puts the responsibility to officials for the management of the assets, including safeguarding and maintenance of all assets within an official's area of responsibility.
- (d) Physical access to assets should be limited to only those persons that need access to the assets to perform their normal duties. Special authorisation must be provided for the use of assets in abnormal circumstances.
- (e) The removal of assets should be recorded and the condition checked when received back.
- (f) All assets in the Department must be counted and verified annually. This must be done in accordance with a program that should be compiled and approved during the last quarter of the previous financial year.

41.6 DISPOSAL PLAN (see also inventory management for disposal procedures)

Asset disposal is the final stage in the asset life cycle. Its proper planning and management is therefore an integral part of the strategic process. The disposal plan will be finalised after approval of funding of the acquisition of new assets have been identified on the acquisition plan. The effective planning of disposals is critical to the management of the Department's assets and should be supported by competent and professional advice and the use of accurate and relevant information.

Disposal Planning Process

- (a) The planning of asset disposal involves doing an analysis of the current stock of assets the Department has, and mapping those assets to the needs necessitated by the Departmental service delivery mandate. Any assets that are not suitable or necessary fulfilling the mandate of the Department such as damaged, redundant/surplus, obsolete, irreparable, unserviceable assets will have to be disposed. These are then included in the Department's asset disposal plan.
- (b) The disposal plan that results from the asset disposal process is part of the Asset Management Framework and is aligned with other complementary processes such as the acquisition planning process and the operations and maintenance planning process. For instance, the benefits from retaining a surplus asset outweigh those from disposing it; the asset maintenance plan will need to accommodate this finding. In another case, the disposal of one asset may require the acquisition of another asset to replace it or the acquisition of an alternate means of service delivery. This indicates that disposal planning and acquisition planning need to be very closely aligned. This integration is often undertaken as part of the overall Asset Management Strategy.
- (c) It is crucial that components of the asset management plans cover the same timeframe to ensure:
 - (i) Integration between them (i.e. a decision taken at a disposal stage influence decisions taken at the acquisition stage and vice versa); and
 - (ii) Coordination of asset management processes across the Department (Departments with surplus assets should be able to make them available to other Departments who need them.)

42. ASSET REGISTER

The Department will establish and maintain an asset register. Both minor and major assets must be reflected in the asset register of the Department.

This asset register will consist of all assets of the Department and will provide the detail to the figures disclosed in the annual financial statements. An asset register contains information on each asset that includes the cost price, date acquired, location, condition and expected life span.

VOLUME 7:
DISPOSAL MANAGEMENT

43. DISPOSAL MANAGEMENT (see also inventory management for disposal procedures)

Redundant, excess and obsolete fixed assets must be disposed of in a transparent, fair and equitable manner.

In general assets that become too expensive to maintain or operate, unserviceable assets, surplus assets or those that would no longer support the services delivery requirements of a department should be disposed of.

The accounting officer of a department must appoint a disposal committee in writing.

Disposal plans must be prepared by department and these must be reviewed annually.

43.1 DISPOSAL OPTIONS

The department shall dispose its moveable assets using the following methods of disposals;

Public auction

Internal auction

Public tender

Public bidding

Transfer to another institution in terms of section 42 of the PMFA

Transfer to another institution at market related value

Transfer to another institution free of charge

Sale to another institution

Sale to staff

Trade in

Donation

Destroy

Scrapping

Write off

Rehabilitation

Recycle

Return to supplier

Revitalization

Burn

Bury

- Disposal of movable assets must be at market related value and the disposal method applied must be the most advantageous to the department
- All movable assets disposals irrespective of the mode of disposal should be approved by the accounting officer
- The accounting officer or accounting authority must when disposing of firearms, obtain the approval of the National Conventional Arms Control Committee for any sale or donation of firearms to any person or institution within or outside the republic of South Africa.
- The accounting officer or accounting authority must, when disposing of computer equipment first approach any state institution involved in education and/or training to determine whether such an institution requires such equipment
- In the event of the computer equipment being required by such a state institution, the accounting officer or accounting

authority may transfer such equipment free of charge to the identified institution

- In the event of a betterment, renewal or upgrade of an asset certain parts will be removed or replaced during the refurbishment or rehabilitation process by operations
- These parts will remain in the control of the department, until such time that a decision is taken by management to permanently dispose of the parts
- Once approval for disposal has been granted by the accounting officer shall invite provincial treasury to conduct a pre-disposal audit.
- All disposed assets should be removed from the asset register and the record of disposal with the inventory of assets disposed filed for at least a period of five years.
- When assets are sold, the proceeds received from the sale is regarded as departmental revenue and should be deposited to the Provincial Revenue Fund upon receipt thereof.
- Copies of the approved by accounting officer of the disposal and proof that the actual disposal has been conducted must be submitted to provincial treasury within 14 days of disposal

43.2 PROCESS (see also inventory management for disposal procedures)

43.3 REVENUE FROM SALE OF ASSETS (see also inventory management for disposal procedures)

VOLUME 8

- COMPLIANCE, RISK MANAGEMENT AND INTERNAL CONTROL



44. COMPLIANCE MONITORING

The management of compliance monitoring includes the following:

- (a) Adherence to the SCM System.
- (b) Introduction of checklists: (from requisitioning to payment authorisation) to ensure that the required controls, checks and balances are in place and monitored before the Department commits itself to the issuing of orders and payment of invoices.
- (c) Introduction of procurement templates: to ensure that the minimum procurement requirements required by legislation and the National /Provincial Treasury for the various procurement methods are met. These include the following:
 - (i) Petty Cash;
 - (ii) Procurement between R2001- R500 000;
 - (iii) Procurement above R500 000;
 - (iv) Emergency Procurement;
 - (v) Limited Bidding;
 - (vi) Unsolicited Bids
- (d) Frameworks, templates or checklists that assists in the identification, actions to be taken and reporting requirements for:
 - (i) Fruitless and Wasteful Expenditure;
 - (ii) Unauthorized Expenditure; and
 - (iii) Irregular Expenditure.

45. MONITORING SCM SYSTEM ABUSE

SCM system abuse represents a significant potential risk to the Department's assets, service delivery efficiency and reputation. The Department will not tolerate any abuse that may result in corrupt or fraudulent activities, whether internal or external. Instances of fraud or corruption will be reported to the relevant Department for investigation and possible sanctions.

45.1. INTERNAL AND EXTERNAL ABUSE OF SCM SYSTEM

Although the Provincial Treasury is the custodian of SCM policy and prescripts, it is the Department's responsibility to ensure that the SCM system is not abused by Departmental officials or contractors / service providers. Any abuse can be to the financial detriment of the Department, harmful to its reputation and impact on service delivery. Any allegation against any party of improper conduct or failure to comply with the SCM system will be investigated.

In the event that the preferential procurement point system is abused, the Department will follow the remedies available in terms of the PPPFA and also the South African Law of Contract (i.e. common law). The provisions of such contraventions / breach of legislation, policy and prescripts must be clearly stated in the bid documents and subsequently in the contract / service level agreement as required.

45.2. MONITORING SCM SYSTEM ABUSE

Monitoring of SCM system abuse includes the following -

- (a) Complaints management (from internal and external stakeholders);
- (b) Management of information on the business interests of employees and all recourse taken against non-compliance in respect of SCM;
- (c) Prevention and detection of fraud and corruption; and
- (d) Detection of fronting and abuse of PPR and B-BBEE requirements.

45.3. COMPLAINTS MANAGEMENT

The supply chain management system of a Department must allow persons aggrieved by decisions or actions taken by the Department during implementation of the supply chain management system, to lodge complaint within 14 days of the decision or action a written objection or complaint to the Department against the decision or action.

Fair, equitable and non-discriminatory complaints handling procedures that are well understood by both parties, is essential in effective handling of complaints as well as in establishing and maintaining good relationships with bidders, which would in turn reduce the likelihood of complaints.

The supply chain management system of a Department may provide for the appointment by the accounting officer/authority of an independent and impartial person not directly involved in the supply chain management processes of the Department to deal with the objection or complaint received.

An objection or complaint may be referred to the Provincial Treasury if:

- a. the objection or complaint is not resolved within 60 days; or
- b. No response is received from the Department within 60 days.

45.5. COMPLAINTS PREVENTION

Well-planned and well-conducted procurement is less likely to attract complaints. Thus Departmental actions in undertaking procurement processes must be robust and defensible. Many complaints arise due to a lack of understanding and poor communication between a Department and its bidders.

Strategies to minimise complaints can assist Departments to avoid unnecessary conflict and can save Departments and bidders valuable time and resources. The following strategies may assist to minimise or avoid supplier complaints:

- (e) planning the procurement process;
- (f) treating bidders ethically and impartially and encourage competition;
- (g) effective communication with bidders; and
- (h) providing feedback to bidders.

Planning the Procurement Process

- (a) Careful planning and well developed specifications and bid documentation can mitigate complaints. Departments can benefit by undertaking market research and using this knowledge to construct appropriate specifications. This includes understanding the market's capabilities in terms of the technical specifications of the procurement and the effort that will be required to prepare a submission.
- (b) Bid documentation will describe to the market what a Department needs, as well as the procurement process that will be followed. Thus Departments should take time to ensure that it is sufficiently comprehensive, clear and concise, unambiguous containing terminology that is easy to understand. Any minimum content and format requirements, conditions

for participation, specifications and evaluation criteria need to be carefully developed to avoid arbitrary discrimination against any bidder and should be clearly identified and justifiable.

- (c) Departments are bound by the process that they outline within their bid documentation and deviation from this may give rise to complaints. It is important that the processes outlined in the submission evaluation plan are consistent with the bid documentation and that they are followed.
- (d) Departments should also plan the procurement process to provide sufficient time for bidders to prepare and lodge a response to approach the market. This can avoid complaints concerning insufficient time to adequately respond.

Treat Bidders Ethically, Impartially and Encourage Competition

- (a) Conflict of interest issues can be a basis for complaints by bidders. Departments should ensure that they manage conflict of interest issues and not allow officials with conflicts of interest to be involved in a procurement process. Departments should ensure that a declaration of interest form is completed where required.
- (b) Clearly articulated procedures to receive and open all submissions which guarantee fairness, impartiality and confidentiality can assist to avoid complaints. The maintenance of high ethical standards will give bidders confidence in the procurement process including confidence in the complaints handling method. Departments must take care to avoid practices that are discriminatory and which may lead to a bidder gaining an unfair advantage over other bidders.
- (c) Departments should treat all bidders fairly, equitably, reasonably and consistently throughout the process. Thus all complainants should have the same opportunity to compete for government business.

Communicate Effectively with Bidders

- (a) Many complaints arise due to poor communication between bidders and Departments. Good communication helps to ensure that problems do not arise.
- (b) Departments need to promptly respond to reasonable requests from bidders to provide information which enables them to prepare responsive submissions. However, it is important that Departments do not supply information that is confidential, sensitive to essential security or may impede competition amongst the bidders.
- (c) In providing access to information during the submission period it is important to ensure that no supplier receives an unfair advantage. Where bidders ask for clarification of issues relating to the evaluation criteria, specifications or other elements of the bid documentation, Departments should, unless there are exceptional circumstances, make all responses available to all bidders at the same time and in the same form.
- (d) Close attention to managing communication with bidders during the procurement process and any negotiations may assist in avoiding rumours about a bidding process.
- (e) It is good practice for Departments to examine their procedures and systems at the end of each procurement process to ensure it was fair and equitable to all bidders and to see whether anything can be improved.
- (f) Finally, effective contract management and regular performance feedback to suppliers will help build and maintain a good working relationship.

Providing Feedback to Bidders

Departments can build good working relationships with both successful and unsuccessful bidders through feedback and debriefings. Debriefing contributes to transparency and confidence in the fairness of the procurement process and will often alleviate bidders' concerns that may otherwise have been raised with the Department as a complaint.

Why Provide Feedback to Bidders?

- (i) It is good practice for Departments to provide feedback to bidders in order to give effect to **section 217 of the Constitution of 1996**. This will ensure that feedback can be built into the Department's procurement procedures in order to:
 - (ff) Preserve the highest standards of honesty, integrity, impartiality and objectivity;
 - (gg) Be fair, efficient and courteous;
 - (hh) Manage the bidding process so that genuine competition is preserved and discrimination is avoided;
 - (ii) Debrief un/successful bidders of the outcome of the bidding process, within the bounds of commercial confidentiality, so as to facilitate better performance on future occasions; and
 - (jj) Respond promptly, courteously and efficiently to suggestions, enquiries and complaints.
- (iii) By providing good feedback, Departments will educate bidders by giving information about the procurement process and their expectations and this, in turn, may assist to improve their standard of future bid submissions.
- (iv) Bidders can benefit from receiving feedback by getting the opportunity to:
 - (ee) obtain information and to help them understand how and why decisions were made in relation to their submission: what they did well and what was lacking as well as any areas of their submission that did not comply with the approach to the market;
 - (ff) obtain a better understanding of the Department's expectations thereby, assisting them to prepare and submit a higher standard of bid submissions in future procurement processes;
 - (gg) establish or consolidate a fair, open and ethical relationship with Departments in order to gain confidence in the procurement process; and
 - (hh) accept an offer of help and guidance to increase bidders future chances of contracting with the NWPG.
- (v) Conversely, Departments can benefit from providing feedback to bidders by getting the opportunity to:
 - (gg) be accountable and transparent in showing that their procurement process is robust and defensible;
 - (hh) establish or consolidate a fair, open and ethical relationship with bidders;
 - (ii) receive valuable information from bidders regarding the structure and content of the bid documentation;
 - (jj) encourage confidence in the procurement process, thereby keeping bidders in competition and improving value for money prospects;
 - (kk) educate bidders as to their expectations, thereby encouraging improved bid submissions for future procurement processes; and
 - (ll) clear up any misconceptions and resolve any possible disputes with bidders, thereby minimising any possible complaints.

When Should The Departments Provide Feedback?

- (c) Providing feedback applies to all procurement conducted by the NWPG in terms section 38 (a)(iii) of the Public Finance Management Act 1999, the Preferential Procurement Policy Framework Act, 2000, its accompanying Preferential Procurement Regulations 2011, the Broad-Based Black Economic Empowerment Act, 2003, the National Treasury Regulations as well as the Western Cape Provincial Treasury Instructions.
- (d) National Treasury's procurement policy framework requires all governmental Departments to promptly advise bidders of a decision relating to:
20. the acceptance of a bid, where successful bidders should be notified by registered or certified mail of the acceptance of their bids;
 21. the successful bid must be advertised in the Government Tender Bulletin and the original media in which the invitation to bid has been advertised in;
 22. when any bidder requests in writing to be provided with reasons why his/her own bid was unsuccessful; and
 23. an unsuccessful bid where a letter should be sent informing the bidder that his/her bid was unsuccessful.
- (e) It is generally more effective for suppliers to receive feedback soon after the award has been made, and also easier for Departments to recall a bidder's submission and be able to discuss its strengths, weaknesses and why it was unsuccessful.
- (f) Where feasible, Departments may decide to offer to provide feedback to unsuccessful bidders when their submission is disqualified from a procurement process prior to the award. This could be particularly useful where all submissions received were of a low standard. Feedback could assist bidders for future work, and allow the Departments to understand the reasons for the poor response.

Preparing a Feedback Session (a Debriefing)

23.3. Where a Department has arranged to meet with the unsuccessful bidder to conduct a debriefing session, it is good practice for the session to be planned and for Departmental officials (at least two officials being present) to take formal minutes of what is discussed in the meeting.

23.4. Debriefings can be tailored according to the nature, size and complexity of the procurement and feedback necessary.

45.6. COMPLAINTS HANDLING PROCEDURES

In the event that a complaint is received, Departments should aim to manage this process internally, where possible through communication and conciliation with the complainant. Departments need to have fair, equitable and non-discriminatory complaint handling procedures that take account of the following:

- (g) the process needs to be systematic and well understood by the parties involved;
- (h) senior management and officials independent of the process should be involved as appropriate;
- (i) complaints should be dealt with in writing;
- (j) each party must have sufficient time to appropriately respond to developments;

- (k) if a matter has been referred to an independent and impartial person for review, Departments may be required to provide all relevant documents to that person; and
- (l) It is important for Departments to ensure that the initiation of a complaint process does not prejudice a bidder's participation in future procurement processes.

Complaints can be a way of assessing and improving performance. At the conclusion of a complaint process, it is good practice for Departments to investigate the circumstances that led to the complaint and take steps to ensure that similar problems do not re-occur.

The accounting officer must ensure that the Department has a communication strategy that effectively communicates the Department's complaints handling procedures to all bidders.

Departmental procurement officials should receive appropriate training to ensure they understand and comply with complaint handling procedures. It is also good practice for a Department's complaints handling procedure to be available to all officials within the SCM unit.

Accessibility

- (e) The Department's complaints handling process should be documented, accessible and communicated to bidders and throughout the organisation; it should be clear to bidders and officials how to lodge a complaint.
- (f) Complaints processes should be user-friendly, making it easy for bidders to make a verbal or written complaint.
- (g) Accessibility of a complaints handling process involves practical considerations.
- (h) The Department must ensure that bidders have adequate avenues available to lodge a complaint with the Department and that such avenues are effectively communicated to bidders before, during and after the procurement process.

Management of Information

(a) Complaints Register

- (i) The supply chain management unit of the Department must establish and maintain a complaints register that effectively captures all information and evidence regarding complaints lodged and resolved by the Department.
- (ii) The complaints register must include, but not limited to the following information:
 - 1) reference number;
 - 2) date received;
 - 3) name of aggrieved party;
 - 4) description of complaint;
 - 5) type of complaint (formal or informal);
 - 6) responsible official;
 - 7) due date;
 - 8) outcome of the complaint; and
 - 9) date of response

Recording of complaints

- (c) The complaint and action taken should be recorded in complaints register; and
- (d) The Department needs to decide how much data it wants captured in the complaints register and how it will be recorded.

45.7. COMPLAINTS REFERRED TO EXTERNAL STAKEHOLDERS (PROVINCIAL TREASURY)

A dispute, objection, complaint or query may be referred to the Provincial Treasury if the dispute, objection, complaint or query is not resolved within 60 (sixty) days of receipt thereof.

However, sometimes a complaint will be lodged directly with the Provincial Treasury without first having been referred to the relevant Department. In this case, the Provincial Treasury will send a copy of the complaint to the Department and request the Department written response.

Other external bodies who may be involved in a complaint:

- (a) National Treasury (via Provincial Treasury);
- (b) Legal Services;
- (c) South Africa Revenue Services; and
- (d) Other organs of state.

45.8. APPOINTMENT OF AN INDEPENDENT AND IMPARTIAL PERSON

If the complaint is not resolved to the bidder's satisfaction, the aggrieved party may subsequently lodge a request for further investigation of the matter by an independent and impartial person.

An "independent and impartial person" means "a person":

- (a) not influenced or controlled by others in matters of opinion or conduct by acting for him/herself;
- (b) not influenced by the thought or action of others;
- (c) not relying on another or others for aid or support.

To ensure bidders have confidence in the integrity of the complaint handling process, the investigator appointed by the accounting officer should:

- (a) not have been involved with the bid evaluation or the contract award and administration of the relevant contract;
- (b) be independent of direction from anyone who was involved in the process; and
- (c) possess supply chain management experience and common sense, at an organisational level, where they can communicate credibly and frankly to those stakeholders and affected parties within the process.

In order for the process to remain transparent and for the bidder to have confidence that their complaint is being handled effectively, it is good practice for the investigator to promptly contact the bidder in writing once they have been appointed. This also provides the opportunity for the investigator to ask the bidder to provide further information regarding their complaint and to answer any questions the investigator may have.

To ensure that the review is conducted fairly and comprehensively, the investigator should have access to all files and records relating to the bidding process and to any reports or communications by officials involved in the process, including written records of all communication related to the complaint.

If the investigator is not satisfied with the existing written records relating to the tender process in question, they may wish to interview those involved in the tender process to obtain the information they require.

To ensure the requirements are met, the nominated investigator should sign a declaration of interest and confidentiality.

Approval for the appointment of an independent and impartial person must be obtained by the accounting officer.

45.9. ACCESS TO INFORMATION (The Promotion of Access to Information Act 2 of 2000 (PAIA))

The Act allows the public access to information held by the state and to information held by another member of the public if that information is needed to protect one's right.

All Departments must in terms of **Section 14 of the Promotion of Access to Information Act No 2 of 2000**, prepare a manual detailing the structure of the Department, the nature of the records held by the Department, and how to apply to gain access to those records.

When a request for information is made, the Department must comply with the procedural requirements in terms of its Manual as prescribed by section 14 of PAIA.

46. RISK MANAGEMENT

46.1. RISK MANAGEMENT RELATED TO SCM

Risk management is a process used for identifying, assessing, and prioritising risks of different kinds within the supply chain and asset management domain. Once the risks are identified, the risk manager will be required to create a plan to minimise or eliminate the impact of negative events.

Risk management in the supply chain management context ensures that a department identifies and understands the risks to which it is exposed. Risk management also guarantees that the department creates and implements an effective plan to prevent losses or reduce the impact if a loss occurs.

A risk management plan includes strategies and techniques for recognizing and confronting these threats. Good risk management does not have to be expensive or time consuming; it may be as uncomplicated as answering these three questions:

- (ii) What can go wrong?
 - a. What will we do, both to prevent the harm from occurring and in response to the harm or loss?

- b. If something happens, how will we pay for it?

Operational Risks Impacting on Supply Chain Management:

- a. Operational risk is the exposure of an organisation to losses resulting from internal failures or shortcomings of people, processes and systems. Supply Chain Management is also reliant on people, processes and systems to function effectively.
- b. **People**
- i. There is always a human factor to consider in any supply chain activity. The knowledge, experience, capability and reliability of the purchasing and supply personnel in supply chain processes are critical risk factors.
- c. **Processes**
- i. Process risk is the risk of the supply chain processes being insufficient and causing inefficiency and unexpected losses. This includes execution errors due to flaws in the processes, for example the miscommunication of a need between a user and purchasing and supply.
- (a) Processes form part of the operations environment and therefore have a strong interactive relationship with people and systems. Any changes in processes affect people and systems; for example changes in the supply chain processes may alter the way in which people perform their different activities and may also require the adaptation of the system that is used in these processes.
- (b) People and systems, on the other hand, can also affect processes; for example the introduction of an e-procurement and e-commerce in an enterprise may require that supply chain processes be changed to facilitate efficient operational performance.
- d. **Systems**
- ii. Systems risks to those resulting from systems failures and are therefore primarily based upon the dependency of supply chain and technology. Inventory and supplier records are mostly kept in digital format on computer systems, accounting and reporting are done via electronic systems, and the bulk of orders and payments may take place electronically.
- (c) This makes supply chain management vulnerable to any disruption in the efficient functioning of systems, and also to system obsolescence. New technologies often have implications of complexity and uncertainty. The newer the technology, the greater the risk that it may not perform as expected. New systems often require modifications in order for them to function smoothly. Although forming part of people risks, new skills are needed for the use of new technologies, which require the running of effective training programmes.
- (d) The following are examples of systems risks:
- Systems failure;
 - Security breach;
 - Implementation failure;
 - Insufficient systems capacity; and
 - Poor data integrity
- (e) Technology controls are required throughout the department to ensure that technology is protected against human

error, data theft, equipment failure, fire, heat, water, smoke, corrosive fumes etc.

e. External Risk

iii. External events risks refer to those external factors that could affect the department negatively like natural disasters, and particular supply and supplier risk, of which the following are examples.

- (b) External supplier that does not adhere to agreed delivery dates;
- (c) Physical security risk at warehouses where supplies are stored;
- (d) The litigation risks pertaining to purchasing and supply contracts;
- (e) Natural disaster risks delaying the delivery of purchased materials;
- (f) Labour actions risks leading to non-compliance; and
- (g) Government regulations pertaining to purchasing materials.

(f) As a department's purchasing and supply management have no direct control over external factors, it is often difficult to manage risk proactively. Although it is difficult to quantify these factors, it is important for purchasing and supply management to anticipate these risks in order to reduce the factors' adverse effects.

f. The Risk Management Process

- (h) All departments are looking for optimal trade-offs between the perceived risks and the potential returns they are facing. Therefore the first step of risk management is to identify the risks.
- (i) The second step is to assess the impact of the risks on the department and the third consists of determining a strategy to deal with or eliminate the risks. The strategy is then implemented, monitored and evaluated.
- (j) This process is referred to as the risk management model. Although the risk management process may differ from one department to the next and may vary for different types of risk, certain steps are fundamental to this process and should therefore always be present in one form or another.

46.2 RISK MANAGEMENT PROCESS

iv. The risk management process shall be applied to all stages of supply chain management, be it the Demand, phase (conceptual stage, project definition, etc.), Acquisition Phase (specification preparation, acquisition approval or implementation to completion) or any of the other management phases.

(g) Risk management is an integral part of good management of supply chain management activities and cannot be effectively performed in isolation from other aspects of supply chain management.

(h) Appropriate risk management conditions should therefore be incorporated in contracts.

(i) Where risks are perceived or anticipated, the department should retain the responsibility for the risk, how it can be minimised and how it will be managed should it occur. The department will be aiming at business continuity in all possible circumstances, although it is unlikely to be cost effective to plan for every possibility, and a certain level of risk will have to be accepted.

Typical SCM Risk Management System

Risk management activities should always add value to the procurement process. The effort expended in managing risk should be commensurate with:

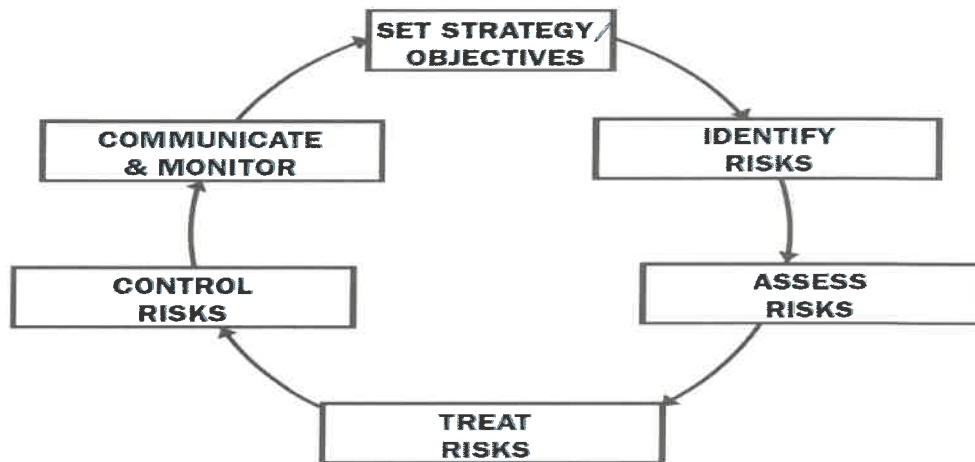
- g. the nature of the procurement

- h. the cost of the procurement
- i. the complexity of the procurement
- j. the significance of the procurement to the agency or government program.

The risk management process is applicable to all stages of procurement, from identifying a need, satisfying that need, and ultimately through to disposal. It is an integral part of good procurement management. Effectively managing risk can lead to significant savings in resources, timely delivery and improved quality of services and relationships with clients.

It is important to note that risk management isn't a once off process. Risk in procurement change all of the time. The risk process must therefore be a continual one and be managed and revisited at every stage of the procurement cycle and throughout the duration of the contract.

Figure: A continuous Risk management process:



The seven steps of the risk management process are:

- k. Establishing the context
- l. Risk identification
- m. Risk analysis
- n. Risk evaluation
- o. Risk treatment
- p. Communication and consultation, and
- q. Monitoring and review.

Operational risk during a bidding process and resultant contract:

Risk is defined as uncertainty of outcome, whether positive opportunity or negative threat. In the area of SCM risk management, the term 'management of risk' incorporates all the activities required to identify and control risks that may have an impact on (i) the award of the bid, (ii) the successful bidder being able to deliver and (iii) the SCM contract being

able to be executed and managed. It is important to note that it remains the Department's responsibility to maintain the service wherever possible

Many risks involved in SCM relate to the bid failing, or delivery not being to the right level of quality. These could inter alia include:

- r. Poor bid specifications.
- s. Poor contract design.
- t. Poor contract administration and/or management.
- u. Limited departmental capacity.
- v. Tight timeframes.
- w. Lack of capacity.
- x. Key staff on the bidder side is redeployed elsewhere, eroding the quality of the service provided.
- y. The bidder's business focus moves to other areas after contract award, reducing the added value for the department in the arrangement.
- z. Bidder's financial standing deteriorates after contract award, eventually endangering their ability to maintain agreed levels of service.
- aa. Demand for a service is much greater than expected and the bidder cannot cope.
- bb. Demand for a service is too low, meaning economies of scale are lost and operational costs are disproportionately high.
- cc. Staff on the department side with 'intelligent department' skills is transferred or move on (possibly to the bidder).
- dd. The department is obliged to make demands that cannot be met, perhaps in response to changes in legislation.
- ee. Force majeure: factors beyond the parties' control disrupt delivery; for example, premises cannot be accessed because of a natural disaster.
- ff. Fundamental changes in the departmental requirements, perhaps as a result of changes in policy, make the arrangement a higher or lower priority or change.
- gg. The level of demand for the service.
- hh. The department's inability to meet their obligations under the contract.

Where risks are perceived or anticipated, the department should retain responsibility for the risk, how it can be minimised and how it will be managed should it occur. The department will be aiming for business continuity in all possible circumstances, although it is unlikely to be cost-effective to plan for every possibility, and a certain level of risk will have to be accepted.

Questions to consider for each individual risk include:

- ii. Who is best able to control the events that may lead to the risk occurring?
- jj. Who can control the risk if it occurs?
- kk. Is it preferable for the department to be involved in the control of the risk?
- ll. Who should be responsible for a risk if it cannot be controlled?

mm. if the risk is transferred to the provider:

- v. Is the total cost to the department likely to be reduced?
- (j) Will the recipient be able to bear the full consequences if the risk occurs?
- (k) Could it lead to different risks being transferred back to the department?
- (l) Would the transfer be legally secure (will the transfer be accepted under common law)?

When a bidder is made responsible for managing a risk, it is referred to as having been 'transferred' to the bidder. It is important to remember that transferred risks still have to be managed by the department, and cannot be forgotten about simply because the contract obliges the bidder to deal with them. Bidders will want payment for managing or taking on risks and ideally this should be built into the contract.

A key point is that business risk can never be transferred to the bidder. Although the bidder may be under severe financial pressure for non-fulfilment, this will not compensate the department for failing to fulfil its obligations and deliver key outcomes. For example, a critical service may fail, endangering the lives of citizens.

Although the bidder failed to deliver, the ultimate responsibility remains with the department. It is essential to consider the whole supply chain when analysing the risks to a bid or contract. While a relationship based on trust, openness and communication is desirable, a department with too much 'hands-on' involvement in the bidder's business can end up taking back transferred risk, by not allowing the bidder to take responsibility for managing it. This take-back is itself a risk to the contract, closely linked with the issue of intelligent department skills.

A full understanding of what the bidder can and cannot do should enable the department to strike the right balance between 'hands-on' and 'hands-off' styles of contract management.

Risks can be identified and managed – even though it takes a level of risk analysis on the part of the department. Most bidders who submit proposals to the department for various types and sizes and contracts do not list all things that could go wrong on their side. Since all proposals are highly competitive documents designed to convince the department to select their respective product or service, it is highly unlikely that real risks will be articulated and pre-identified by the bidder in the bid documents. The responsibility of the department to be able to identify and predict certain risk eventualities can only be accurately assessed if the department has a clear understanding of:

- nn. The nature of the project.
- oo. The required criteria a bidder should possess in order to successfully complete the project.
- pp. An understanding of the environment where the product or service will be delivered into.
- qq. Corporate memory or lessons learnt from similar projects.

In events where due to the technical or special nature of goods and services required, it is not possible to determine the exact specifications without inputs from the industry, the SCM Unit may be approached to guide such inputs to be received.

There are 3 distinct phases in any selection, appointment and delivery process of a bid that can be analysed and the various risks assessed:

Figure Bid-risk factors:



rr. **BID RISK – PRE-BID FACTORS** – [responsibility of the Bid Specification Committee]:

- (m) **In-house vs outsourcing:** Savings are certainly the main draw of outsourcing, but research recently noted that other reasons for outsourcing are on the rise. For instance, more than 40% of respondents said they would outsource to improve customer relationships. Another 37% said outsourcing could help them develop new products or services, and about one-third said outsourcing would be important in helping to expand into geographies they couldn't otherwise enter. The survey also revealed that executives increasingly are willing to outsource functions considered core to the business. Although IT remained the most outsourced activity, with about 60% sending those duties outside their institutions, 70% of respondents outsource one or more of what could be considered strategic functions.
- (n) **Legislative/Legal requirements:** There are a host of prescripts that govern the bid process as indicated in Part 9 above. Although designed to reduce subjectivity in the selection criteria, they can create a potential hazard due to the technical nature and legalities that govern the various SCM processes. The SCM regulations are clear in determining various quantifiable criteria that are to be applied in the bid process.
- (o) **Deliverables:** The bid specifications are designed to guide the bidders in meeting the expectations of the bid requirements. Deliverables are to be clearly stipulated against timelines and monetary cost. SCM practitioners should be wary of bidders who have merely replicated the specifications of the bid without any apparent attempt to interpret or contextualise what the objectives of the bid are.
- (p) **Timeframes:** The bid timeframes need to be realistic in what is expected of the bidder. Unfortunately the drafters of bids can be under budgetary or political pressure and may include unrealistic timelines in the bid. Effective supply chain management should question the viability of potentially setting up a bidder to fail or be forced to submit/deliver sub-standard work so as to meet these aggressive targets. In the bid the bidder should have a clear Gantt chart that specifies the entire project plan coupled with resourcing and milestone dates.
- (q) **Departmental resources:** Of importance in the facilitation of the entire bid (as well as post-bid project roll-out) the department needs to ensure that there are sufficient capacitated departmental resources to monitor the process throughout contracting and implementation.
- (r) **Costs:** Pricing is a key selection criterion in all bids. Although it should not be a case of "cheapest bidder wins", the justification of a more expensive bidder over another is the first criteria point that comes under scrutiny. Often the

most contested issues between bidders are who was the cheapest. The pre-bid phase forces the department to consider what a realistic price is for the meeting of the deliverable. *(Hint: if there is a very wide pricing discrepancy between the bidders – a variation of more than 100% - then it is possible that the bid specifications have not been clearly specified.)*

- (s) **Social versus economic gain:** The goal of socio-economic gain is generally to bring about socioeconomic development, usually in terms of improvements in metrics such as GDP, life expectancy, literacy, levels of employment, etc. Although harder to measure, changes in less-tangible factors are also considered, such as personal dignity, freedom of association, personal safety and freedom from fear of physical harm. Economic gain on the other hand consists of the economic system of a country, the labor, capital and land resources, and the economic agents that socially participate in the production, exchange, distribution, and consumption of goods and services of that area. The aim of economic gain is to get the best result at the best cost. It is however a responsibility of government to not only focus on economic gain but also socio-economic benefits when procuring goods and services and to weight the gain in both aspects prior to finalising its specifications.
- (t) **Political risk:** Service delivery is ultimately linked to political promises and must be considered. However, NO political interference with SCM processes at any stage is allowed.

ss. **BIDDER RISK – MID-BID FACTORS** -[responsibility of the Bid Evaluation Committee]:

- i. Profile –The profile of the bidder should be assessed against the core competencies of the company. In all construction or civil engineering related work, the CIDB grading must also be verified.
- ii. Capacity/staff/size/location – Having conducted the appreciative inquiry (Part 11), the SCM practitioner will have a better understanding of the bidder capabilities required in order to meet the demands of the project.
- iii. Preferences/BBBEE – the SCM practitioner is well guided here in terms of the Treasury Regulations on how to measure and assess the preference status of a bidder. Because of its nature and the competitiveness between bidders, fronting is a reality that needs to be assessed and mitigated.
- iv. Financial position – Ultimately the bidder needs to demonstrate that they are able to commence the project and have sufficient cash flow to ensure project floatation and reduce the risk of delay through strike action, inability to pay plant hire, liabilities and staff costs.
- v. Experience – the bidder will need to submit various references and articulate experience from similar projects. The bidders should have the following information included in the bid relating to their past experience:
 - Name of client
 - Nature of project
 - Monetary value of project
 - Project dates
 - Client reference name and title
 - Client contact number (and e-mail address) and referrals.

tt. **CONTRACT RISK – POST-BID FACTORS** - [responsibility of the Contract Administrator]:

- vi. **Project risks:** The unique nature of each project will determine the nature of the project risks that can arise

throughout the project lifespan. There are certain generic project management criteria that can serve as early warning signs that a project could start losing traction:

- A high churn of project staff
- Diluted progress reports
- Minutes that appear repetitive
- Progress reports that echo the last report
- Scope creep at early stages of the project
- Missing of project milestones
- A lack of visible progress
- An inability to engage meaningfully and contextually with department project managers
- Invoices without detail
- Poor quality products
- An over- reliance on sub-contractors

(u) **Contract administration and management risks** - Refer to risks in step 7 of the contract management portion of SCM Instruction .../2011 related to SCM contract administration and management.

Whilst these steps clearly demonstrate the 3 stages that create separate risks in the bid process, there are also tools and methodologies that can assist in the identification, assessment, and mitigation of risks -The 7-Step Risk Management Toolkit below may assist.

7-STEPS TO CONDUCT RISK ASSESSMENT AND RELATED MANAGEMENT

NOTE STATUS OF TOOLKIT:

This toolkit has been designed to guide the risk management approach and treatment and should be applied on a discretionary basis. It is not a mandatory tool, except if the relevant bid has been identified as a 'strategic commodity'.

STEP 1: ASSESS THE REASON FOR BID

By analysing the need for bids and its subsequent evaluation process, SCM practitioners are forced to look at all factors in a HOLISTIC manner. This allows for a wider evaluation of all potential risk factors.

In determining the need for a bid, the procurement plan should be consulted and can be obtained from the SCM Unit.

A methodology designed for this type of assessment is known as *Appreciative Inquiry*. This process forces the evaluator to look for all factors in the bid that will enable success.

Guiding questions at this phase are:

- a. What factors will make this bid a success?
- b. What factors already exist/are in place that will enable the success of this bid?
- c. What environmental factors promote the success of this bid?
- d. What are the positive characteristics that existed in past similar projects?

The result of this phase is a list of enablers that promote the success of the bid. These enablers identify the positives within the overall bid and often counter an over-pessimistic risk-based assessment of the process. To achieve successful service delivery, the SCM official should seek to promote enablers rather than promote limitations within a bid. The balance is to enhance the positives and reduce the negative impact of risks.

STEP 2: ASSESSMENT OF THE CURRENT AND FUTURE STATE

By employing a Force Field Analysis, the SCM team jot down the main points of what the current as-is status is i.e. the area that is to be positively affected by the bid. These points should focus on the main features that are to be addressed through the bid. They should also try to be quantifiable as possible (use of metrics).



Figure ...: Diagrammatic illustration of the Force Field Analysis Model

The enablers listed in the earlier process are then positioned as “driving forces” – i.e. they are designed to move the current state towards the desired future to -be state. The desired state is the articulation of what the bid is meant to achieve. The use of metrics is again important as it forms the basis for performance measures throughout the project. The first part of risk identification is now tabled during the identification of restricting factors or elements that will inhibit the reaching of the desired state.

STEP 3: RISK IDENTIFICATION

By tabling the various restrictive factors that may derail or hinder the process of the bid, the first process of risk identification has now occurred. The most value in this process is derived from experienced SCM practitioners who also have knowledge of project implementation.

Whilst the SCM regulations can be prescriptive in HOW the bid is awarded, the identification of risks is a process of identifying possible known factors that could derail the bid.

STEP 4: RISK QUANTIFICATION

The only way to prioritise the risks associated with the bid is to attach a value or quantify a risk. The tool used for this is the Risk Management Matrix (RMM). The RMM is designed to look at the probability of a risk happening (of the likelihood of it happening), and then determine the level or impact that this risk will have on the project.

By scoring the risks, the next step is to rank them with the highest value first. Once tabled and arranged, it is easy to determine where the most amount of effort needs to be spent in order to minimise the potential risk that exists at a specific stage within the project.

STEP 5: RISK MINIMISATION AND CONTINGENCIES

Because the RMM has now prioritised the risks, the SCM Unit is now able to formulate various plans and strategies around how best to minimise the risk. There are various ways to manage the risk and can be remembered with the acronym MARTA:

- a. **Mitigate** - Reduce the severity of its impact
- b. **Avoid** - Don't do the thing that makes the risk possible
- c. **Reduce** - Make the risk less likely to happen
- d. **Transfer** - Move the impact of the problem to another party (e.g. insure such as paid insurance or outsource with penalties for failure)
- e. **Accept** - Do nothing or set aside budget to cope with the impact
- f. It is recommended that each of the risk mitigation strategies be evaluated to determine what the best approach would be per project.

There are also various risks that can occur POST APPOINTMENT in the built environment, namely:

- **Contract Documents**
 - Health and Safety Plan – is it convincing, tailor made?
 - Environmental Plan - is it convincing, tailor made
 - Quality Assurance Plan – contractor must explain how they will check in-house on quality – is it convincing?
 - Surety, Insurances, Guarantees, JBCC documents – are they signed promptly, delivered on time etc.?
- **Capability**
 - Sufficient equipment/plant on site?
 - Experienced permanent core team in key positions? – check CVs
 - Ratio of casual to permanent staff – sufficient permanent employees to enable good quality workmanship?
 - Working capital – can contractor pay labor, order material without difficulty?
- **Site establishment**
 - Has site been made secure with danger tape, warning signs etc.?
 - Is labor wearing safety shoes, hats?
 - Site office – has this been set up?
- **Programme**
 - Is program viable and well thought out?
 - Is programme adhered to, and if not, why?
 - Administration
 - Is Site instruction book well administered?
 - Are payment claims correctly presented
- **General**
 - Site meetings – do relevant representatives from contractor attend?
 - Variation orders – does contractor have the ability to cope with doing these?
 - Are contractor decision makers on site sufficiently?

- Is communication response time from contractor quick and efficient?

STEP 6: DETERMINATION OF EFFORT

Getting lost in the detail of minor matters is often the cause of delay and frustration in the bid and project process. By being able to apportion effort towards the more important matters first it is likely that the majority of risks and issues can be managed comfortably. The Pareto 80/20 Principle should be at the forefront of managers who are overseeing these processes.

The Pareto 80/20 principle guides the SCM practitioners in determining the EFFORT needed to mitigate the risk versus the IMPACT that this effort will have on the bid or project. The nature of the principle is that 20% of your effort can resolve or have a positive impact over 80% of task at hand. Of course, the opposite is also true in that 80% of the effort is often only directed at 20% of the task.

NOTE: the use of this principle does not translate into the fact that certain key tasks or activities can be ignored in totality; it simply means that effort should be directed in the appropriate area.

STEP 7: DETERMINATION OF ACTIONS

Once all risks have been identified, quantified, prioritised, and the mode of minimisation chosen, the department is then able to document the necessary actions that need to be taken in the MARTA of the risks.

By tabling a clear action plan, the department is then able to allocate the Responsibility and Accountability of a particular task. It can also include who needs to be Consulted and who needs to be Informed in various processes. This last tool is known as a RACI Action Plan.

Rules on the application of the risk assessment toolkit

In a further effort to make the SCM process transparent and objective, an Excel based Risk Management Toolkit (RMT) has been created.

The RMT is designed to be used across the three stages of bid management, i.e. (i) pre-bid, (ii) mid-bid and (iii) post-bid. By its nature it is designed to quantify and determine thresholds around decision-making for SCM practitioners.

Use of the toolkit is as follows:

- uu. **Establishment of a RMT Panel:** The RMT should not be used officially in isolation. By creating a panel, collective inputs can be collated and quantified with credibility. Multiple viewpoints also assist in the moderation and consideration of various assessment criteria when evaluating a bid. The RMT panels will consist of the following members:
 - vii. **Pre-bid:** Bid Specification Committee members
 - (v) **Mid-bid:** Bid Evaluation Committee members
 - (w) **Post-bid:** Contract Administrator/Manager
- vv. **Uniform Assessment:** The outcomes of the RMT (Risk Management Toolkit) can only be considered fair if all

bidders are evaluated in the same manner.

- ww. **Consistency of the RMT Panel:** The evaluation panel should have a 75% consistency rate so that all evaluations are done in a level of uniformity.
- xx. **Evaluation over Time Span:** All bidders competing for the same project should be evaluated over the same evaluation period and delays between bidder evaluations should be reduced.
- yy. **Training:** All practitioners who use the RMT are to be trained by their supervisors in this regard with the trainee acknowledging this on-the-job training.

47 INTERNAL CONTROL

The SCM internal control framework must provide for:

- (a) the entire virtuous cycle of supply chain management;
- (b) identified risks;
- (c) control activities;
- (d) type of control activity (management, administrative and accounting);
- (e) preventative, detective and corrective control activities;
- (f) responsible employee; and
- (g) Management of assessment.

The appendices to the framework addresses the transaction life cycles of the following areas:

- (a) Moveable asset management; and
- (b) Supply chain management (goods & services).

48 SCM REPORTING

The reporting of SCM information assists in ensuring that individuals and organisations are answerable for their plans, actions and outcomes. Openness and transparency in administration, by external scrutiny through public reporting, is an essential element of accountability. Within the supply chain management framework:

- (a) AO's are accountable to their MECs for the overall management of supply chain management activities;
- (b) Heads of supply chain management and senior supply chain management directors are accountable to AO's/CFO's for various high-level management and co-ordination activities;
- (c) Individual supply chain management officers are accountable to heads of supply chain management, and to their clients, for the services they provide; and

All people exercising supply chain management functions must have regard to Departmental requirements in this SCM system and are accountable to management

49 SCM PERFORMANCE MANAGEMENT

The AO must ensure that the supply chain management system provides for an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised processes are being followed and whether the desired objectives are being achieved.

The performance monitoring and evaluation system referred to above must, amongst others, provide for a scorecard mechanism which describes the key strategic and operational performance targets to be met in relation to the strategic and operational planning processes referred to in Demand Management.

The scorecard used for SCM is:

- (a) a measurement-based performance monitoring framework that displays organisational measures graphically and groups it into categories, as a dashboard;
- (b) a strategic performance monitoring and evaluation system for the organisation;
- (c) a communications tool to make strategy clear to everyone;
- (d) a way to balance financial and non-financial views of the organisations performance;
- (e) a system for increasing accountability;
- (f) a commitment to change; and
- (g) a way of aligning the organisations vision with human and capital resources, and with day-to-day operations.

Improvement Interventions

The AO must ensure that the supply chain management system provides for an effective internal performance monitoring and evaluation system in order to determine, on the basis of retrospective analysis, whether the authorised supply chain management processes are being followed and whether the desired objectives are being achieved

The supply chain management system of a Department may provide for the appointment by the accounting officer/authority of an independent and impartial person not directly involved in the supply chain management processes of the Department to deal with the objection or complaint received.

An objection or complaint may be referred to the Provincial Treasury if:

- c. the objection or complaint is not resolved within 60 days; or
- d. No response is received from the Department within 60 days.

VOLUME 9:
INFRASTRUCTURE AND CONSTRUCTION
See policy on SIDMP

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RECOMMENDED BY:


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DIRECTOR SCM
MILLICENT TUMANE

01/April/2021
.....

DATE

RECOMMENDED BY

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CHIEF FINANCIAL OFFICER

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DATE

APPROVED BY:


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HEAD OF DEPARTMENT
ADVOCATE N. SEPHOTI

15/04/2021
.....

DATE

