



PROVINCE OF THE EASTERN CAPE  
IPHONDO LEMPUMA KOLONI  
PROVINSIE OOS-KAAP

**Provincial Gazette**  
**Igazethi Yephondo**  
**Provinsiale Koerant**

Johannesburg Bar Library  
Society of Advocates  
1st Floor Innes Chambers  
84 Pritchard Street  
Johannesburg 2001

Selling price: **R1,50**  
Other countries: **R1,95**

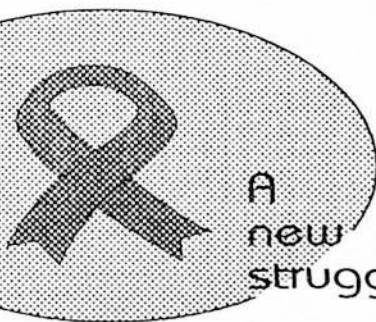
Vol. 11

BISHO/  
KING WILLIAM'S TOWN, 2 JULY 2004

**No. 1184**  
(Extraordinary)

**We all have the power to prevent AIDS**

AIDS  
affects  
us all



A  
new  
struggle

**Prevention is the cure**

**AIDS  
HELPLINE**

**0800 012 322**

DEPARTMENT OF HEALTH



9771682455006

01184

---

**CONTENTS • INHOUD***No.**Page  
No.* *Gazette  
No.***PROVINCIAL NOTICE**

33	Public Finance Management Act (1/1999): For public comment.....	3	1184
----	---	---	------

---

---

**PROVINCIAL NOTICE**

---

**No. 33****2 July 2004****PROVINCIAL TREASURY****THE PUBLIC FINANCE MANAGEMENT ACT, 1999 (ACT No. 1 of 1999)**

I, **Enoch Godongwana**, Member of the Executive Council responsible for Finance in the Province of The Eastern Cape, acting in terms of section 18 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), hereby issue the Supply Chain Management Instructions contained in Schedules 1 and 2 for public comment.

Schedule 1 provides general provincial supply chain management directives. Schedule 2 provides provincial procurement directives which are consistent with the national supply chain management framework and standard operational procedures to facilitate a uniform application of the directives in the Eastern Cape Province.

Compliance with the requirements of these supply chain management provincial treasury instructions is mandatory for all Eastern Cape provincial departments and Eastern Cape provincial public entities listed in Schedule 3 of the Act.



.....  
**Enoch Godongwana**  
**MEC: FINANCE AND PROVINCIAL EXPENDITURE**

## **AN OVERVIEW OF THE EASTERN CAPE PROVINCIAL SUPPLY CHAIN MANAGEMENT SYSTEM**

### **1 Background**

The Eastern Cape Provincial Government's procurement reform programme aims to achieve the following high level objectives:

- a) Promoting uniformity in the processes relevant to the repealing of tender board legislation and devolving the responsibility and accountability for procurement-related functions to accounting officers/authorities.
- b) Promoting uniformity in the interpretation of government's preferential procurement legislation and policies, also in the context of other broad-based but related legislative and policy requirements of government.
- c) Replacing the outdated procurement and provisioning practices in government with a supply chain management function and a systematic competitive procedure for the appointment of consultants as an integral part of financial management in government that conforms to internationally accepted best practice principles.
- d) Introducing parameters for the promulgation of a regulatory framework in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) to ensure compliance to minimum norms and standards; but in such a manner that the principles of co-operative governance are observed.

The Eastern Cape Provincial Treasury is in the process of implementing a new supply chain management policy to replace the current procurement and provisioning practices across all departments with a supply chain management function that forms an integral part of financial management and conforms to international best practice. National Regulations issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) relating to supply chain management were promulgated on 5 December 2003. This regulatory framework devolves responsibility and accountability for supply chain management related functions to accounting officers in Eastern Cape provincial departments and accounting authorities in Eastern Cape provincial entities.

### **2 An overview of the supply chain management system**

#### **2.1 Overarching supply chain management requirements**

The Public Finance Management Act requires that the supply chain management framework be fair, equitable, transparent, competitive and cost effective.

#### **2.2 Elements of supply chain management**

The national regulatory framework requires that a supply chain management system contains the following six elements:

- 2.2.1 demand management;
- 2.2.2 acquisition management;
- 2.2.3 logistics management;
- 2.2.4 disposal management;
- 2.2.5 risk management; and
- 2.2.6 regular assessment of supply chain performance.

##### **2.2.1 Demand Management**

Demand lies at the beginning of the supply chain. The major activities associated with identifying the demand are to establish requirements and to determine needs.



The objective of demand management in the context of the Eastern Cape is to ensure that the resources required to support the strategic objectives, as described in the Provincial Growth and Development Plan (PGDP), are delivered at the correct time, at the right price and at the right location, and that the quantity and quality will satisfy needs. In infrastructure projects, demand management will ensure that projects that support the Provincial Growth and Development Plan (PGDP) are identified, prioritised and budgeted for in systematic manner.

A comprehensive needs assessment is fundamental to identifying the demand, which includes an analysis of the needs, the frequency of need, linking of requirements with the medium term expenditure estimates and framework and strategic objectives of the province, an analysis of past expenditure as well as an analysis of the capability and capacity of industry to meet the demand. Demand management should bring supply chain practitioners within the institution closer to the end user to ensure that value for money is achieved.

### **2.2.2 Acquisition Management**

The major activities associated with acquisition are:

- a) acquire supplies, services, and engineering and construction works; and
- b) take delivery of supplies, project deliverables and engineering and construction works.

Supplies and services which are not available within an institution can be sourced from other institutions or procured.

It is during this stage in the supply chain that secondary objectives identified in the institution's preferential procurement policy, which may be promoted through specific contracts, are identified, the precise strategy of how the market is to be approached is determined, the total cost of ownership principle is applied, procurement documents are compiled, tender evaluation criteria are determined, tenders are evaluated and recommendations tabled, contracts are awarded, contracts are compiled and compliance with the provision of the contract is confirmed.

Acquisition management within the provisioning process deals with the decisions that have to be made in order to manage the acquisition of the required supplies or services from within the institution, or through procurement thereof from the open market.

### **2.2.3 Logistics Management**

The logistics management process deals with the coding of items, setting of inventory levels, placing of orders, receiving and distribution, stores / warehouse management, expediting orders, transport management and supplier performance. This process integrates with the financial system to generate payments to suppliers.

### **2.2.4 Disposal Management**

Disposal management focuses on obsolescence planning, depreciation, identifying where all redundant material is kept or located and the identification of appropriate strategies relating to the manner in which items are to be disposed of. Disposal and letting of provincial assets is the final process when an institution needs to do away with unserviceable, redundant or obsolete assets.

### **2.2.5 Risk Management**

Risk management is the culture, processes and structures that are directed towards the effective management of potential opportunities and adverse effects. Risk management forms an integral part of the supply chain management process.

### 2.2.6 Supply Chain Performance Measurement

Supply chain performance is characterised by a monitoring process and a retrospective analysis to determine whether or not the proper process was followed and the desired objectives achieved, i.e. has value for money been attained, has the proper process been followed, have the desired objectives been achieved, and is there room for improving the process, what is the assessment of suppliers, and what are the reasons for deviating from procedures?

## 3 Linking the supply chain to the Provincial Growth and Development Plan (PGDP)

The Eastern Cape Provincial Government has developed a Provincial Growth and Development Plan (PGDP) to establish a provincial vision, targets and programmes aimed at economic growth, employment creation, poverty eradication and income redistribution over the next decade resulting in a rapid improvement in the quality of life for the poorest people of the Province. This plan provides for the following quantified targets for growth and development in the Eastern Cape for the period 2004-2014:

- To maintain an economic growth rate of between 5% and 8% per annum.
- To reduce by between 60% and 80% the number of households living below the poverty line by 2014.
- To reduce by between 60% and 80% the proportion of people suffering from hunger by 2014.
- To establish food self-sufficiency in the Province by 2014.
- To ensure universal primary education (UPE) by 2014, with all children proceeding to the first exit point in a secondary education.
- To improve the literacy rate in the Province by 50% by 2014.
- To eliminate gender disparity in education and employment by 2014.
- To reduce by two-thirds the under-five mortality rate by 2014.
- To reduce by three-quarters the maternal mortality rate by 2014.
- To halt and begin to reverse the spread of HIV/AIDS by 2014.
- To halt and begin to reverse the spread of tuberculosis by 2014.
- To provide clean water to all in the Province by 2014.
- To eliminate sanitation problems by 2014.

The development of infrastructure, especially in the former homelands, is needed to eradicate poverty through the elimination of social backlogs in access roads, schools and clinics, water and sanitation and the 'kick starting' of economic growth by improving the road, rail and air networks of the Province. Infrastructure development will promote growth in agriculture, manufacturing and tourism by improving market access and by encouraging private investment. Poverty alleviation will also be promoted through the appropriate use of labour intensive and community based construction methods in the provision of infrastructure.

Supply chain management is central to service delivery and to the physical implementation of the PGDP, particularly in relation to the provision and maintenance of infrastructure. The devolving of responsibility and accountability for supply chain management related functions to provincial departments and provincial entities provides an opportunity to allow provincial institutions to more effectively deliver on their allocated areas of responsibility. The challenge lies in aligning supply chain management functions with the thrusts of the Provincial Growth and Development Plan and to report on progress made towards the provincial objectives.

## 4 Transparency in procurement

Procurement, which forms an integral part of acquisition and disposal management, has the greatest impact of all the activities associated with supply chain management on the private sector. The Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996) makes it

very clear that the procurement system must be fair, equitable, transparent, competitive and cost effective, as does the Public Finance Management Act.

A transparent procurement system is seen to:

- a) provide best value for money through increased competition and good economic governance;
- b) have outcomes that are predictable and easily replicated;
- c) improve the performance of industry and local markets;
- d) improve the global competitiveness of local industries;
- e) improve access to markets for small and medium enterprises;
- f) provide a means for combating bribery and corruption;
- g) enhance accountability and public confidence;
- h) minimize covert discrimination at the invitation, evaluation and execution stage;
- i) assist conscientious officials to resist pressures from their political masters seeking to depart from their "own" policies for reasons of political expediency; and
- j) minimize the concealing of not just discriminatory behaviour but also other illegitimate conduct, including corruption and patronage.

A procurement system may be considered to be transparent if:

- a) the terms upon which the procurement process are to be conducted and the criteria upon which any decisions are to be made are properly documented and made widely available;
- b) the eventual procurement award decision, and where appropriate, any intermediate decisions, is made publicly available as are the reasons given for these decisions; and
- c) it is possible to verify that the documented procedures and criteria were indeed applied.

Transparency is maintained through:

- a) the publishing of rules that comprehensively define the procurement process;
- b) publicly announcing the provincial government's procurement requirements;
- c) articulating in procurement documents how submissions will be evaluated;
- d) notifying all of the unsuccessful tenderers (and members of the public who request the information) which tenderer received the award and for what amount;
- e) the debriefing of unsuccessful tenderers;
- f) the provision of protest procedures, where independent third parties can review all records; and
- g) the employment of appropriate oversight in order to audit all procurement-related actions.

From the foregoing, it is clear that a transparent procurement system is characterized by the documentation of clear rules and the means to verify that those rules were followed. The development and documentation of unique procurement processes, procedures and methods for each provincial department and entity is a task that requires significant resources and specialist inputs. It is a better deployment of scarce resources to adopt a generic procurement system which provides standard operational procedures which are sufficiently flexible to satisfy all the needs of the province, establish provincial directives which are consistent with the overarching national supply chain management framework within which this generic system is to be implemented and to provide the necessary guidance to enable each provincial department and entity to establish the manner in which it will organise and undertake its procurement.

This uniform approach to procurement improves transparency, increases efficiencies and enables audits for compliance with requirements of the national and provincial supply chain management frameworks to be readily undertaken. It also facilitates staff mobility between institutions, reduces duplication of effort where resources are scarce and engenders a culture of consistency and predictability within the procurement process. It also forms the basis for staff accreditation and the development of standard training courses to capacitate officials and others engaged in procurement.



## **5 Provincial Treasury mechanisms for complaints**

The national regulations issued in terms of the Public Finance Management Act require that each provincial treasury must establish a mechanism to receive and consider complaints regarding alleged non-compliance with the prescribed minimum norms and standards, and to make recommendations for remedial actions to be taken if non-compliance of any norms and standards is established, including recommendations of the legal steps to be taken in the case of corruption, fraud or other criminal offences.

Complaints in the supply chain are invariably from:

- a) aggrieved persons who consider that the advertisements of tenders and expressions of interest were not made in accordance with the provincial treasury instructions;
- b) aggrieved unsuccessful tenderers who consider that the solicitation of tender offers and the award of contracts was made in breach of the rules for procurement;
- c) contractors who consider that the province have breached the terms and conditions of the contract;
- d) contractors who consider that they have been unfairly placed under restrictions to do business with the province and state;
- e) the public who perceive that tax payers monies are being wasted or are being poorly utilized; and
- f) failure to comply with legislative requirements.

The Promotion of Just Administration Act, (Act 3 of 2000) deals with unfair administrative action by provinces. Dispute resolution mechanisms such as adjudication can be used to resolve contractual disputes and to resolve disputes regarding the award of tenders where tenderers are compensated for the cost of tendering, should the award be found to be made not in accordance with an institution's rules for procurement. General complaints and complaints regarding advertisements are best dealt with by accounting officers and authorities, failing which the matter should be referred to a procurement ombudsman located in the Eastern Cape Provincial Treasury's supply chain management unit. The ombudsman office will monitor the speedy resolution of complaints presented to accounting officers and accounting authorities by complainants.

## **6 Placing persons under restrictions**

Accounting officers and accounting authorities may place persons under restrictions from participating in public procurement for a finite period of time where they have been found to have:

- a) engaged in corrupt or fraudulent practice; or
- b) willfully or negligently failed to comply with the provisions of a contract entered into with an institution.

## **7 Interim arrangements**

It is unreasonable to expect all provincial departments and provincial entities to assume full responsibility for their procurement arrangements in terms of the supply chain management requirements immediately after the provincial tender board is disbanded. Accordingly, the regulations issued in terms of the Public Finance Management Act make provision for interim arrangements to address gaps in capacity.

A practical approach is to allow all provincial institutions to take responsibility for their own procurement but to provide a temporary external support mechanism, put in place by the Eastern Cape Provincial Treasury, to assist those accounting officers or accounting authorities who do not have sufficient capacity to do so. Tenders for which institutions consider themselves not qualified to evaluate will be provisionally evaluated by these institutions and will be subject to



## Schedule 1

## Supply Chain Management Framework

- 2.1 The accounting officer in a provincial department or accounting authority in a provincial entity shall establish within their respective institutions:
- a) a supply chain management system which as a minimum provides for demand management, acquisition management, logistics management, disposal management, risk management and the regular assessment of supply chain performance in accordance with the provisions of 2.2 to 2.7, respectively; and
  - b) a separate supply chain management unit within the office of their institution's chief financial officer, to implement the institution's supply chain management system.

- 2.2 Delegations by accounting officers and accounting authorities made in terms of section 44 of the Act shall be made in a manner that promotes the principle of segregation of duties in order to ensure control and to officials either within the supply chain management unit or to those having program responsibility.
- 2.3 An official in the supply chain management unit who becomes aware of a breach of or failure to comply with any aspect of the supply chain management system shall immediately report the breach or failure in writing to the accounting officer or accounting authority.

## **2.2 Demand management**

### **2.2.1 Institutions shall during the demand management process.**

- a) determine what resources the institution needs to deliver services in terms of their strategic plans and the Eastern Cape Provincial Growth and Development Plan.
- b) perform detailed infrastructure planning for a 5 to 10 year period that is consistent with their institution's strategic plan and which is aligned with the Provincial Growth and Development Plan;
- c) establish current needs, priorities and infrastructure programmes;
- d) forecast future needs;
- e) link requirements associated with needs and programmes to budgets;
- f) identify the broad scope of work associated with projects;
- g) perform an analysis of past expenditure, in terms of cost, suppliers, service providers, contractors and other institutions, to understand the manner in which the institution fulfilled needs in the past.
- h) establish the frequency of requirements associated with identified needs;
- i) examine the question of economies of scale, lead and delivery times;
- j) perform an industry analysis with a view to establishing capability and capacity to satisfy requirements; and
- k) perform a commodity analysis.

### **2.2.2 Institutions shall, in relation to assets, undertake the following in order to determine the resources needed to support their strategic and operational plans:**

- a) an analysis of the key issues that may influence the institution's requirements for assets in the medium term;
- b) an analysis of the appropriateness of existing assets in relation to the institution's strategic plan and the needs of its clients; and
- c) an identification of the need for new assets and the development of strategies to meet the need.

## **2.3 Acquisition management**

### **2.3.1 Accounting officers and accounting authorities shall develop and implement their procurement policies relating to the procurement of supplies, services and engineering and construction works strictly in accordance with the provisions of Schedule 2.**

### **2.3.2 Accounting officers and accounting authorities may proceed with the procuring of supplies, services and engineering and construction works only after the feasibility and desirability of satisfying these requirements by ensuring that one or more of the following alternative acquisition strategies has been considered:**

- a) acquisition of redundant / obsolete material, goods and assets from other institutions;
- b) sourcing of expertise from other institutions;

- c) utilisation of transversal contracts administered by the Treasury's Supply Chain Management Component; or
- d) public private partnerships.

2.3.3 The Treasury shall identify which supplies and services may be acquired through transversal contracts and shall maintain and publish a list of transversal contracts that have been entered into together with pertinent data relating thereto to facilitate decisions by institutions to acquire supplies and services through such contracts. Accounting officers and accounting authorities shall arrange with the Treasury's Supply Chain Management Component to make use of these contracts and abide by any conditions associated with the acquisition of services and supplies through such contracts.

2.3.3 Accounting officers and accounting authorities shall provide the Treasury with monthly reports in an approved format and in terms of the Treasury's Reporting and Monitoring Guidelines for Programmes on their acquisitions and expenditure. Such reports shall as a minimum contain the information set out in Table 1:

**Table 1: Minimum reporting requirements**

Topic	Data to be reported on	Reporting requirements
Procurement	<ul style="list-style-type: none"> <li>• Number of contracts awarded.</li> <li>• Value of contracts awarded excluding VAT</li> <li>• Average number of responsive tenders received</li> <li>• The difference in tender value excluding VAT between that of the successful tenderer and the tenderer whose submission was used to score the financial offers in the evaluation of tenders</li> </ul>	<p>The data shall be broken down into:</p> <ul style="list-style-type: none"> <li>a) supplies, non- professional services, professional services and engineering and construction works;</li> <li>b) standard procurement procedures (see Table 1 of schedule 2)</li> </ul>
Expanded Public Works Programme	<ul style="list-style-type: none"> <li>• Contract participation goals achieved in the performance of the contract:</li> <li>• Number of persons employed:</li> <li>• Number of days of formal training provided to targeted labour</li> </ul>	<p>The data shall be obtained in accordance with the procedures provided in the Department of Public Works' Guidelines for the Implementation of Labour Intensive Infrastructure Projects under the Expanded Public Works Programme. The contract participation goals and number of persons employed shall be broken down into women, youth and persons with disabilities</p>
Broad Based Black Economic Empowerment	<p>The number and percentage of the value of contracts awarded that were either contracted with or subcontracted to enterprises who are:</p> <ul style="list-style-type: none"> <li>a) enterprises that attain "good and satisfactory contributor" status in terms of a BEE Score Card</li> <li>b) Black Business Enterprises</li> <li>c) Black-Empowered Business Enterprises</li> <li>d) Black Woman Business Enterprises</li> </ul>	<p>In the absence of an applicable Code of Good Practice on Black Economic Empowerment issued by the Minister of Trade and Industry in accordance with the provisions of the Broad-Based Black Economic Empowerment Act, reporting will only take place in terms of Black Business Enterprises, Black-Empowered Business Enterprises and Black Woman Business Enterprises. The data shall be broken down into the different categories of enterprises. The definitions for the various enterprises shall be based on those contained in Government's Broad-based Black Economic Empowerment Strategy prepared by the Department of Trade and Industry</p>



Local economic development	The number and percentage of the value of contracts awarded that were either contracted with or subcontracted to enterprises who have a registered business address in the Eastern Cape Province	The data shall be broken down into district municipalities and into supplies, non-professional services, professional services and engineering and construction works.
----------------------------	--	--

2.3.5 Procurement associated with Public Private Partnerships shall be conducted in accordance with the provisions of National Treasury Regulation 16 issued in terms of the Act.

2.3.6 Persons appointed for a limited period to perform duties to a post on the fixed establishment, shall as a general rule be appointed in terms of section 8(c)(ii) of the Public Service Act, 1994 (Act No. 103 of 1994).

2.3.7 Accounting officers and accounting authorities shall prior to issuing any request for information or any tenders regarding the introduction of an e-procurement system, liaise and obtain permission from the Treasury to commence with the establishment and maintaining of such a system.

## 2.4 Logistics management

2.4.1 Accounting officers and accounting authorities shall:

- a) ensure that processes (whether manual or electronic) and procedures are in place for the effective, efficient, economical and transparent use of the institution's resources, whilst maintaining effective financial and management controls;
- b) maintain a proper record of all the applicable assets, or groups of assets under their control;
- c) ensure that, amongst others, the preventative mechanisms are in place to eliminate theft, losses, wastage and misuse of assets;
- d) account for all damage to and losses of assets in accordance with Treasury Regulation 12 (Management of losses and claims) issued in terms of the Act; and
- e) investigate all damages to and losses of resources and assets with a view of possible recovery.

2.4.2 Institutions shall, as applicable:

- a) develop strategies for maintaining the appropriate level of service for existing fixed assets using a planned approach to maintenance that will ensure the delivery of maintenance services, such as:
  - i) routine inspections and servicing;
  - ii) corrective maintenance; or
  - iii) preventive maintenance; and
- b) establish which items and what minimum or maximum levels are to be kept in stock, whilst allowing for a safety margin to be added to the minimum level and embracing the concept of just-in-time delivery, to lower the cost of storage and associated risks;
- c) monitor the reliability of suppliers in terms of delivery periods, quantity, and quality and report underperforming suppliers to their supply chain management unit or the unit under whose jurisdiction the contract falls;
- d) verify all supplies received for quality and quantity against the ordering documentation;
- e) observe all legislative requirements including municipal by-laws and safety regulations when items are being stored;
- f) properly arrange and store stock and equipment in such a manner that the checking and handling thereof is facilitated and the possibility of damage, exposure, deterioration and perishing thereof is limited or eliminated;



- g) conduct a stocktaking / asset verification of all assets in stock or on distribution at least once a year and account for differences; and
- h) properly authorise and correctly utilise all trip authorities.

## 2.5 Disposal management

- 2.5.1 Accounting officers and accounting authorities shall establish disposal committees as and when the need arises to decide on how best to undertake disposals. Such committees shall comprise not less than three officials, one of whom shall be a supply chain functionary.
- 2.5.2 Accounting officers and accounting authorities may proceed with a disposal using a procurement procedure provided in Schedule 2 only after the feasibility and desirability of using one or more of the following alternative disposal strategies in the best interests of the province has been considered:
  - a) transfer to another institution in terms of section 42 of the Act;
  - b) transfer to another institution at market related value;
  - c) transfer to another institution free of charge, bearing in mind that the assets cannot be transferred to a sub-office, school, etc, without the approval of the Head Office of the Institution under which jurisdiction such sub-office, school, etc., falls;
  - d) recycling or reuse of component materials;
  - e) dispose of by means of dumping at an authorised dump site, burning, demolition, etc.
- 2.5.3 The reasons for adopting a disposal strategy shall be recorded and forwarded to the accounting officer or accounting authority or his delegate for acceptance and auditing purposes.
- 2.5.4 Inventory items and assets may be traded in for other stores items or assets provided that the highest possible trade-in prices are obtained.
- 2.5.5 The accounting officer or accounting authority shall ensure that:
  - a) immovable property is sold at market related prices, unless otherwise permitted by the Provincial Treasury or such property is disposed of by means of a procurement procedure provided for in Schedule 2;
  - b) in the case of the disposal of firearms, the National Conventional Arms Control Committee approves of any sale or donation of firearms to any person or institution within or outside the Republic.
  - c) in relation to the letting of provincial assets:
    - (i) all immovable property, excluding provincial housing for provincial officials and political office bearers, is let at market related rates, unless the Provincial Treasury determines otherwise or approves the letting of property free of charge; and
    - ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of provincial property are reviewed annually; and
  - d) the institution maintains a list of all redundant, obsolete materials, goods and assets and forwards a copy of such list to the supply chain management unit within Provincial Treasury within two months of the financial year end or whenever it is updated.
- 2.5.6 The Provincial Department of Education shall be approached to make free transfers of any computer equipment to an educational institution. The institution disposing computer

equipment shall bear the cost of transporting such equipment to the educational institution accepting such transference.

2.5.7 All assets transferred to another institution shall be by means of an issue voucher.

## **2.6 Risk management**

2.6.1 Accounting officers and accounting authorities shall establish and implement risk management processes within their institutions involving the establishment of the context and the identification, analysis, evaluation, treatment, communication and ongoing monitoring of risks in accordance with the guidance provided in AS/NZS 4360: Risk Management (obtainable from Standards South Africa or the Australian Standards' website ([www.standards.au.com](http://www.standards.au.com))).

2.6.2 Risk shall be:

- a) identified on a case-by-case basis; and
- b) allocated to the party best able to manage such risks.

2.6.3 The institution should bear the cost of risks where the cost of transferring risk is greater than that of retaining such risk.

## **2.7 Regular assessment of supply chain performance.**

Institutions shall regularly assess the performance of the supply chain focusing on:

- a) the achievement of goals within the supply chain management framework, particularly those associated with the Provincial Growth and Development Plan, the Expanded Public Works Programme and Broad Based Black Economic Empowerment;
- b) compliance with the Provincial Treasury Instructions in terms of section 18(2)(a) of PFMA
- c) savings generated;
- d) stores efficiency;
- e) the quality of the end product / deliverable;
- f) cost variance per item;
- g) non-compliance with contractual conditions and requirements;
- h) whether supply chain objectives are consistent with Government's broader policy focus; and
- i) cost efficiency of the procurement process (i.e. the cost of the process itself)

## **3 Ethical standards for officials of the institution**

Officials in the discharge of their duties shall:

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratuity from any person, or supplier/contractor for themselves or their family;
- b) perform their duties efficiently, effectively and with integrity;
- c) ensure that public resources are administered responsibly;
- d) be fair and impartial in the performance of their functions;
- e) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- f) not abuse the power vested in them;
- g) comply with the code of conduct for the Public Service as contained in Chapter 2 of the Public Service Regulations, 2001;

- h) declare in writing to the head of the supply chain management unit, to the extent required by their position, any business, commercial and financial interest or activities undertaken for financial gain that may raise a possible conflict of interest and withdraw from participating in any manner whatsoever in the process relating to that contract;
- i) 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;
- j) not take improper advantage of their previous office after leaving their official position;
- k) ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act;
- l) assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system;
- m) use public property scrupulously;
- n) record and account for the transactions conducted in an appropriate accounting system;
- o) not make false or misleading entries in accounting systems;
- p) be open about their decisions and actions that they take, give reasons for the actions that they take and restrict information only if it is in the public interest to do so; and
- q) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise, even after separation from the public service.

#### **4 Avoiding abuse of the supply chain management system**

##### **4.1 The accounting officer or accounting authority shall:**

- a) take all reasonable steps to prevent abuse of the supply chain management system;
- b) investigate any allegations against the institution, an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system or the procedures associated with the procurement system, and when justified:
  - i) take steps against such official or other role player and inform the Treasury of such steps;
  - ii) report any conduct that may constitute an offence to the South African Police Service; and
  - iii) maintain a register of all allegations received and the outcomes of the investigations relating thereto

##### **4.2 Accounting officers and accounting authorities, provided that they have conducted an investigation in accordance with the provisions of Annex A of this Schedule, may place persons under restrictions from participating in public procurement for a definite period of time in accordance with National Treasury Norms and Standards where they have been found to have:**

- a) engaged in corrupt or fraudulent practice; or
- b) willfully or negligently failed to comply with the provisions of a contract entered into with an institution.

##### **4.3 Accounting officers and accounting authorities shall notify the Treasury of the names of all persons placed under restrictions. The Treasury shall, upon receipt of such notification notify the National Treasury of such restrictions, and where such restrictions apply to a contractor registered in terms of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000) the Construction Industry Development Board.**



## **5 Training of supply chain management officials**

The accounting officer or accounting authority of an institution shall ensure that officials implementing the institution's supply chain management system are appropriately trained and deployed.

## **6 Provincial Treasury mechanisms for dealing with complaints**

- 6.1 All complaints regarding the supply chain management system shall be addressed to the relevant accounting officer or accounting authority. A complaint may only be referred to the Treasury's Supply Chain Management Component should the accounting officer or accounting authority fail to investigate the complaint and communicate the outcome of the complaint to the complainant within three months of the complaint being lodged or more than three complaints having similar substance are lodged with a particular accounting officer or accounting authority.
- 6.2 The Treasury shall establish a panel of adjudicators to resolve disputes relating to the evaluation of tender offers by an institution and, where relevant, the award of tender preparation costs..
- 6.3 Tenderers may dispute the evaluation of their tender offers after the award of the contract, within 10 days of receipt of an unsuccessful tenderer notification, by requesting in writing the relevant accounting officer or accounting authority to appoint an adjudicator from the panel of adjudicators established by the Treasury to adjudicate on the matter, subject to:
- a) the adjudicator being appointed in terms of the agreement contained in Annex B of this Schedule;
  - b) the tenderer agreeing to pay half the adjudicators fee and lodging a deposit equal to half the estimated fee amount with the Treasury;
  - c) the tenderer agreeing to waive all rights to overturn the award of the tender to another party and to limit any compensation to the reasonable costs of preparing the tender.
- 6.4 The institution which evaluated the tender shall be liable for the other half the adjudicator's fee.
- 6.5 The tenderer disputing the evaluation shall be entitled to nominate an adjudicator from the Treasury's panel of adjudicators.
- 6.6 In the event that the adjudication does not proceed for whatever reason, the tenderer disputing the evaluation may refer the matter to court.

## **7 Interim arrangements**

- 7.1 Accounting officers and accounting authorities may, should they deem it necessary, submit certain tender evaluation reports to the Technical Review Committee, established by the Treasury within their supply chain management unit, for their review and ratification in terms of an agreement entered into with Treasury.
- 7.2 The Technical Review Committee, which shall be chaired by an official within the Treasury's supply chain unit, shall comprise of a representative for each provincial



department or provincial entity nominated by their respective accounting officer or accounting authority and any specialists nominated by the Treasury. This Technical Review Committee shall:

- a) Review tender evaluation reports received from institutions, provided that at least one representative from that institution is present when reports from their institution are considered; and
- b) make recommendations for the award of tenders to the relevant institution's accounting officer or accounting authority.

7.3 Accounting officers and accounting authorities shall provide the Treasury and Provincial Auditor General with written reasons for not accepting the tenderer recommended by the Technical Review Committee within 14 days of awarding a contract.

7.4 The quorum for a Technical Review Committee meeting shall be not less than four persons, one of whom shall be a supply chain management functionary from the Treasury.

**Annex A****Investigation procedures for placing natural and juristic persons under restrictions from participating in public procurement****A1 Preliminary investigation**

- A1.1 An accounting officer or accounting authority may initiate an investigation to establish whether a natural or juristic person has engaged in corrupt or fraudulent practice or has willfully or negligently failed to comply with the provisions of an institution's contract.
- A1.2 An investigating officer must investigate any complaint brought against a person in terms of A1.1, hereafter referred to as "the accused", to determine if reasonable grounds exist to suspect that the accused has engaged in corrupt or fraudulent practice or has willfully or negligently failed to comply with the provisions of a contract entered into with the institution.
- A1.3 If the investigating officer is satisfied that reasonable grounds as contemplated in A1.2 exist, he or she must:
- a) investigate the matter; and
  - b) obtain evidence to determine if in his or her opinion any action may be taken against the accused.
- A1.4 An investigating officer may not question the accused unless he or she informs that accused that he or she:
- a) has the right to be assisted or represented by another person; and
  - b) is not obliged to make any statement and that any statement so made may be used in evidence against him or her.
- A1.5 The investigating officer must, after the conclusion of the investigation, submit a report to the accounting officer or accounting authority, as relevant, making his or her recommendations regarding any matter referred to it in terms of A1.1.

**A2 Hearing of complaint**

- A2.1 The accounting officer or accounting authority shall after considering a report of the investigating officer, act in accordance with the recommendations of the investigating officer if he or she is convinced that sufficient grounds exist for such action.
- A2.2 The accounting officer or accounting authority shall notify the accused of the intended investigation by hand or registered mail and that notice shall inform the accused:
- a) of the details and nature of the action or omission by the accused under investigation that may constitute corrupt or fraudulent practice or willful or negligent failure to comply with the provisions of a contract entered into with the institution and with which the accused is charged;
  - b) that he or she must, in writing, admit or deny responsibility for that action or omission;
  - c) that he or she may, together with the admission or denial, submit a written explanation regarding the action or omission under investigation;
  - d) of the period within which his or her plea in terms of paragraph (b) must be submitted to the accounting officer or accounting authority.

- A2.3 If an accused admits that he or she is guilty of the action or omission, he or she is considered to have performed a corrupt or fraudulent practice or to have willfully or negligently failed to comply with the provisions of an institution's contract, as the case may be, and after he or she has explained his or her action or omission, the accounting officer or accounting authority may recommend to the Treasury that the accused be suspended from participating in public procurement for a period of time
- A2.4 The acquittal or the conviction of the accused by a court of law on a criminal charge does not bar proceedings against him or her under these provincial treasury instructions even if the facts stated in the notice referred to in A2.2, would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.
- A2.5 The accounting officer or accounting authority must appoint a committee to hear a case if the accused:
- a) denies the charge; or
  - b) fails to comply with A2.2(b).
- A2.6 The committee must consist of at least:
- a) two persons who have expertise in the fields relevant to the investigation; and
  - b) a person qualified in law, who must act as the chairperson of the committee.
- A2.7 The committee may, for the purposes of these instructions, appoint a person to assist it in the performance of its functions.
- A2.8 At a hearing the accused:
- a) may personally be present at the inquiry of the proceedings;
  - b) may be assisted or represented by another person in conducting the proceedings;
  - c) has the right to be heard;
  - d) may call witnesses;
  - e) may cross-examine any person called as a witness in support of the charge;
  - f) may have access to documents produced in evidence;
  - g) may admit at any time before conviction that he or she is guilty of the action or omission under investigation despite the fact that he or she denied responsibility or failed to react in terms of A2.2(b); and
  - h) may, in the case where he or she makes an admission in terms of subparagraph (g), be deemed to be guilty of the charge in relation to the action or omission under investigation.
- A2.9 The accused may during an inquiry:
- a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; or
  - b) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which a witness suspects or believes to have a bearing on the subject of the inquiry.
- A2.10 The record of evidence which has a bearing on the charge before the committee and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if:
- a) the record is accompanied by a certificate from the chairperson of that commission; and

- b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- A2.11 If the action or omission with which the accused is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the accused as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.
- A2.12 After the conclusion of the hearing, the committee must, within 30 days:
- a) decide whether or not the accused is guilty of the transgression he or she is charged with;
  - b) if the committee finds that the accused is guilty of that transgression, take cognizance of any aggravating or mitigating circumstances;
  - c) inform the accused and the accounting officer or accounting authority of the finding and the reasons for that finding;
  - d) inform the accused of his or her right to judicial review of the finding in terms of section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- A2.13 An accused found guilty of a transgression in terms of these provincial treasury instructions may:
- a) address the committee in mitigation of sentence; and
  - b) call witnesses to give evidence on his or her behalf in mitigation of the finding.
- A2.14 If the accused is found guilty of the transgression he or she is charged with or, or if he or she admits that he or she is guilty of the charge, the committee must inform the accounting officer or accounting authority accordingly and recommend the appropriate action to be taken.



## Annex B

### Adjudication of challenges relating to the evaluation of tender offers

#### B1 Definitions

- a) "Adjudicator" means the person named as such in the Contract or appointed in accordance with this Procedure.
- b) "Complainant" means the sole trader, partnership or legal entity that submitted a tender offer and who is disputing the correctness of the award of the contract.
- c) "Cost of tendering" means direct staff costs excluding office overheads and profits, copying costs, typing charges, courier and postage charges and travel costs;
- d) "Day" means calendar day;

#### B2 General principles

- B2.1 The adjudicator shall be appointed by the accounting officer or accounting authority to decide if the complainant should have scored more tender evaluation points than the tenderer who was awarded the contract and should have been awarded the contract, and if so, to determine the tenderer's reasonable cost of tendering. The accounting officer or accounting authority shall notify in writing the adjudicator, the complainant and the institution's supply chain management unit simultaneously of the adjudication.
- B2.2 The object of adjudication is to reach a fair, rapid and inexpensive determination of a dispute arising from the evaluation of tender offers in respect of a particular tender and the Procedure shall be interpreted accordingly.
- B2.3 The adjudicator shall be an individual appointed by the accounting officer or accounting authority and shall act impartially and in accordance with the rules of natural justice.
- B2.4 The supply chain management unit shall deliver to the adjudicator the tender evaluation report together with a copy of the tender submissions of the complainant and the tenderer who was awarded the contract within 7 working days of being notified that adjudication will take place. The adjudicator shall notify the accounting officer forthwith if the tender submission is not received within the stated period. Should the adjudicator not receive the copy of the tender submissions from the supply chain management unit within 20 working days, the adjudication shall be abandoned and the complainant shall be notified according.
- B2.5 In making a decision, the adjudicator may take the initiative in ascertaining the facts and the correct procedure provided for in Schedule 2. The adjudication shall be neither an expert determination nor arbitration but the Adjudicator may rely on his own expert knowledge and experience.
- B2.6 The adjudicator's decision shall be binding.
- B2.7 The institution shall pay the complainant his reasonable cost of tendering without delay, should the adjudicator find that the complainant should have been awarded more tender evaluation points than the tenderer who was awarded the contract and should have been awarded the contract, but not before the complainant has paid the adjudicator any outstanding fees not covered by the cash deposit.
- B2.8 The institution shall pay the adjudicator fifty percent of his fees within 30 days of being invoiced, but not before the adjudicator has submitted his findings to the accounting officer or accounting authority.

000002120000

- B2.9 The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected from liability.

### **B3 The Notice of Adjudication**

A complainant shall give notice to the accounting officer or accounting authority within 10 days of receiving a notice issued in terms of sub-clause 3.8 of Schedule 2 of its intention to refer the dispute to adjudication by giving a written Notice of Adjudication. The Notice of Adjudication shall include:

- a) the name of the proposed adjudicator, the title of the contract, and the tender reference number;
- b) a breakdown of the tenderer's cost of tendering in relation to that tender; and
- c) a R10 000 cash deposit.

### **B4 Conduct of the adjudication**

- B4.1 The Adjudicator shall reach his decision within 28 days after the dispute has been referred to him for adjudication, unless the accounting officer or accounting authority agrees to extend this period.
- B4.2 The Adjudicator shall determine the matters set out in B2.1.
- B4.3 The Adjudicator shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable. He shall not be required to observe any rule of evidence, procedure or otherwise, of any court, except the rules of natural justice. Without prejudice to the generality of these powers, he may ask for further information and meet and question the institution's tender committee and any other person involved in the evaluation of the tender.
- B4.4 The Adjudicator may obtain legal or technical advice having first notified the accounting officer or accounting authority of his intention to do so.
- B4.5 Wherever possible, the Adjudicator shall reach his decision without the process of a formal hearing.

### **B5 The Decision**

The Adjudicator shall reach his decision and so notify the complainant, the accounting officer or accounting authority of the institution and the Treasury's Supply Chain Management Unit together with his reasons within the time limits of B4.1.

## Schedule 2

### PROCUREMENT PROCEDURES

#### 1 Definitions

For the purposes of this schedule the following definitions apply:

"Act" means the Public Finance Management Act, 1999 (Act No.1 of 1999)

"construction management" means a contracting strategy similar to a management contract, the main difference being that the trade contracts are between the employer and the various trade contractors;

"construction procurement" means procurement in the construction industry, including the invitation, award and management of contracts;

"construction industry" means the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment;

"contract data" means the document that states the applicable conditions of contract and associated contract-specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract;

"design and build" means a contracting strategy in terms of which the contractor undertakes most of the design and all construction in accordance with the employer's brief and his detailed tender submission, usually for a lump sum price.

"develop and construct" means a contracting strategy similar to design and build, except that the employer issues a concept design on which tenders are based;

"disposal" means the divestiture of assets, including intellectual property, and other rights and goodwill by any means, including sale, rental, lease, license, tenancy, franchise, auction or any combination thereof;

"engineering and construction works" contract means a contract for the provision of a combination of supplies and services, arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of structures, including building and engineering infrastructures;

"expression of interest" means a request for tenderers to register their interest in undertaking a specific contract or to participate in a project or programme and to submit their credentials so they may, in terms of the organization's procurement procedures, be invited to submit a tender offer should they qualify or be selected to do so

"form of offer and acceptance" means the documents that formalize the legal process of offer and acceptance;

"institution" means departments and public entities within the Eastern Cape that are subject to the Act

"list of returnable documents" means the document that lists everything the employer requires a tenderer to submit with his tender submission

00002110

"management" contract means a contracting strategy in term of which a management contractor is appointed to engage and manage a number of trade contractors to carry out construction on the basis of designs issued by the employer, as and when they are completed with the trade contracts being between the management contractor and the various trade contractors.

"pricing instructions" means the document that provides the criteria and assumptions which it will be assumed in the contract, that the tenderer has taken into account when developing his prices, or target, in the case of target cost contracts

"procurement" means the process which creates, manages and fulfils contracts relating to the provision of supplies, services, engineering and construction works or disposals or any combination thereof

"quality (functionality)" means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs

"services contract" means the contract for the provision of labour or work, including knowledge-based expertise, carried out by hand, or with the assistance of equipment and plant.

"scope of work" means the document that specifies and describes the supplies, services, or engineering and construction works which are to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed.

"site information" means the document that describes the site as at the time of tender, to enable the tenderer to price his tender and to decide upon his method of working and programming.

"supplies contract" means a contract for the provision of materials or commodities made available for purchase.

"tender data" means the document that establishes the tenderer's obligations in submitting a tender and the employer's undertakings in administering the tender process and evaluating tender offers.

"tender notice and invitation to tender" means the document that alerts prospective contractors to the nature of the supplies, services and engineering and construction works required by the employer and contains sufficient information to solicit a response.

"Treasury" means the Eastern Cape Provincial Treasury

## **2 Precedence of documents**

Requirements contained in this schedule shall take precedence in the interpretation of any ambiguity or inconsistency between it and the SANS 294: 2004, *Construction procurement processes, methods and procedures*, published by Standards South Africa (hereinafter "SANS 294").

## **3 General requirements**

- 3.1 Procurement shall be undertaken in accordance with the requirements of SANS 294, subject to preferential procurement policies being implemented by using only one or more of the following methods:



- a) accelerated rotation on an electronic database where the nominated procedure is used;
  - b) tender evaluation criteria; and
  - c) breaking down (unbundling) of projects into smaller contracts to facilitate the participation of targeted enterprises.
- 3.2 No departures shall be made from the provisions of SANS 294 without the approval of the Treasury.
- 3.3 Construction procurement shall be undertaken in accordance with the provisions of this Schedule and the:
- a) the CIDB Code of Conduct for all parties engaged in Construction Procurement; and
  - b) the CIDB Standard for Uniformity in Construction Procurement.
- 3.4 Accounting officers and accounting authorities shall develop and document a procurement system and procurement implementation policy for their respective institutions in accordance with the requirements of SANS 294 and furnish the Treasury with a copy of the system and implementation policy and any amendments thereto within 30 days of approving such a policy or amendments.
- 3.5 Institutions shall make payments due to contractors in accordance with the provisions of the contract and may only withhold disputed amounts and retention monies, if applicable.
- 3.6 Contracts relating to information technology shall be prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act.
- 3.7 The details set out in sub-clause 6.7.7 of SANS 294 shall be published in the Government Gazette within 30 calendar days of a duly authorized representative of an institution signing of the acceptance portion of the Form of Offer and Acceptance in respect of any contract awarded in terms of the open, qualified and proposal procedure.
- 3.8 The details set out in sub-clause 6.7.7 of SANS 294 shall be included in the notification issued to all unsuccessful tenders sent in terms of sub-clause 6.7.5 of SANS 294. Such notifications shall be sent within two weeks from the date that the duly authorized representative of an institution signs the acceptance portion of the Form of Offer and Acceptance.
- 3.9 Accounting officers and accounting authorities may charge a refundable or non-refundable fee for tender documents if and when necessary, provided that:
- a) the fee is reasonable and reflects only the cost of printing and delivery to prospective tenderers; and
  - b) that all monies received for the sale of bidding documents must be paid into the Provincial Revenue Fund in terms of sections 11(3), 13(1), 21(2) and 22(1) of the Act.
- 3.10 Tender evaluation reports shall be prepared in accordance with the provisions of subclause 6.6.7 of SANS 294, using the proforma evaluation forms contained in Annex A.

#### **4 Conduct of officials**

Officials involved in procurement shall in addition to complying with the requirements of sub-clause 4.2.1 of SANS 294, observe the ethical standards set out in Schedule 1.

## 5 Solicitation of tender offers

- 5.1 Tender offers shall be solicited using one of the standard procurement procedures and tender evaluation methods provided for in Tables 1 and 3 of SANS 294.
- 5.2 As a general rule, engineering and construction works, supplies and services other than professional services shall be solicited using a standard method in accordance with the provisions of Table 1, subject to the procurement procedures that are adopted being within the thresholds established in Table 2 or within any amendments to these thresholds issued by National Treasury.

**Table 1: Standard methods for procuring different categories of contracts**

Category of contract	Type of procurement	Standard method
Engineering and construction works	Design by employer (normal)	Open Procedure with Method 1 or Method 2
	Design and build / develop and construct	Proposal procedure using two-stage system with Method 1, 2, 3 or 4; Qualified Procedure with Method 1 or 2 and eligibility criteria framed around the attainment of a minimum quality score or requirements; or Qualified Procedure with Method 3 or 4
	Management contractor / Construction Management	
	Works which require exceptional quality or where it is desirable to invite a limited number of tenders who are of a similar capability and size	
	Estimated value less than one fifth of the threshold for quotations provided for in Table 2.	Negotiated Procedure with Method 1
	Estimated value does not exceed the threshold provided for in Table 2.	Quotation Procedure with Method 1 or 2
	The works are largely identical to works previously executed and it is not in the organization's interest to solicit other offers or cannot be technically or economically separated from a previous contract	Negotiated Procedure with Method 1
Supplies	Simple works designed by the employer where the estimated value of the contract does not exceed the threshold provided for in Table 2.	Nominated Procedure with Method 1 or Method 2
	Purchase of readily available supplies where the value of the contract does not exceed the threshold provided for in Table 2.	Shopping Procedure with Method 1
	Estimated value does not exceed the threshold provided for in Table 2.	Quotation Procedure with Method 1 or 2
	Normal	Open Procedure with Method 1 or 2
	Supplies which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	Qualified Procedure with Method 1 or 2 and eligibility criteria framed around minimum quality requirements.
	Only one supplier has the required product or the supplies cannot be separated from a previous contract	Negotiated Procedure with Method 1
	Supplies which are readily available and which are frequently required where the estimated value does not exceed threshold provided for in Table 2.	Nominated Procedure with Method 1 or Method 2
Services other than professional services	Estimated value does not exceed the threshold provided for in Table 2.	Quotation Procedure with Method 1 or 2
	Normal	Open Procedure with Method 1 or 2
	Services which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	Qualified Procedure with Method 1 or 2 and eligibility criteria framed around minimum quality requirements.
	Only one service provider has the required product or the supplies cannot be separated from another previous contract	Negotiated Procedure with Method 1
	Services which are readily available and which are frequently required where the estimated value does not exceed the threshold provided for in Table 2.	Nominated Procedure with Method 1 or Method 2

- 5.3 Professional services shall be solicited using a standard method in accordance with the provisions of Table 3, subject to the procurement procedures that are adopted being within the thresholds established in Table 2.

**Table 2: Thresholds applicable to certain procurement procedures**

Procedure	Threshold
Negotiated procedure	(Specific requirements as indicated in Tables 1 and 3)
Nominated procedure	Up to an estimated value inclusive of Value Added Tax of R 100 000 in respect of supplies. Up to an estimated value inclusive of Value Added Tax of R 250 000 in respect of services including professional services and engineering and construction works.
Open procedure	-
Qualified procedure	-
Quotation procedure	Up to an estimated value inclusive of Value Added Tax of R 100 000.
Proposal procedure using the two-envelope system	-
Proposal procedure using the two-stage system	-
Shopping procedure	Up to a value of R 5 000 inclusive of Value Added Tax.

**Table 3: Standard methods for procuring professional services**

Type of procurement	Standard method
In most cases, except in the case of complex or highly specialised assignments or those that invite innovations on the basis of quality alone.	Nominated, Open, Qualified or Quotation Procedures or the Proposal Procedure using the two envelope system with either: <ul style="list-style-type: none"> <li>• Methods 3 or 4; or</li> <li>• Methods 1 and 2 with eligibility criteria framed around the attainment of a minimum quality score or quality related requirements</li> </ul>
A complex or highly specialised assignment, for which it is difficult to define the precise scope of work and tenderers are expected to demonstrate innovation in their proposals. An assignment that has a high downstream impact and requires the best available experts. An assignment could be carried out in substantially different ways, hence proposals will not be comparable.	Proposal Procedure using the two envelope system with either Method 3 or 4; Proposal Procedure using the two stage tendering system with Method 1 or 2 and eligibility criteria framed around the rejection of unacceptable proposals and quality related requirements; or Proposal Procedure using the two stage tendering system with Method 3 or 4 with weighting for price equal to zero.
A standard or routine assignment where well established practices and standards exist and in which the contract amount is small.	Proposal Procedure using the two envelope system with Method 1 or 2 and eligibility criteria framed around minimum quality related requirements
An assignment that represents a natural continuation of previous work carried out by the firm. A rapid selection is essential (eg in an emergency operation). Estimated value less than one third of the threshold for quotations provided for in Table 2. An assignment where only one firm is qualified or has the experience of exceptional worth for the assignment.	Negotiated Procedure with Method 1
Estimated value within the threshold provided for in Table 2	Quotation Procedure with Method 1 or Method 2
A relatively small assignment which does not justify the preparation and evaluation of competitive proposals where the estimated value does not exceed the threshold provided for in Table 2.	Nominated Procedure with Method 1 or Method 2.
A simple assignment which is precisely defined and the budget fixed.	Proposal Procedure using the two envelope system with Method 1 and 2 and eligibility criteria framed around minimum quality related requirements



- 5.4 The "Guide for Hourly Fee Rates for Consultants" issued by the Department of Public Service and Administration or, where available and appropriate, any guideline fee determined by an institute, association or statutory council in accordance with legislation, shall be used to evaluate the reasonableness of fees that are negotiated in the negotiated procedure, or proposal procedure using the two stage system.
- 5.5 Applications for admission to a data base developed for the purpose of using the quotation procedure shall be advertised in local newspapers or other suitable media every three months. Such data base shall be updated at least every three months.
- 5.6 Projects shall not be subdivided to reduce the estimated tender value to fall within a threshold applicable to a specific procurement procedure.
- 5.7 Accommodation and or conference facilities for conferences, seminars, workshops, "lekgotlas", and the like shall be obtained by means of one of the procurement procedures provided for in Table 1, subject to the procurement procedures that are adopted being within the thresholds established in Table 2.

## **6 Recording and reporting**

- 6.1 The reasons for the following shall be recorded and forwarded to the accounting officer or accounting authority or his delegate for their acceptance and compliance auditing purposes:
- a) A departure is made from the provisions of this schedule.
  - b) Less than five tenderers are short-listed in the nominated procedure, except where the estimated value of the tender inclusive of Value Added Tax is within the threshold provided in Table 2 for the quotation procedure and not less than three tenderers are short-listed.
  - c) Less than three tenderers are invited to submit quotations in the quotation procedure or in the nominated procedure where the estimated value of the tender inclusive of Value Added Tax is within the limits provided in Table 2 for the quotation procedure.
  - d) Less than five tenderers are short-listed in the qualified procedure.
  - e) The negotiated procedure is used to solicit a tender offer from a sole source provider.
  - f) The minimum time frames provided for the solicitation of tender offers in SANS 294 or in 9.3.2 of this Schedule are reduced.
  - g) Departures are made from the requirements of 5 for the solicitation of tender offers due to the presence of, or imminent risk of, extreme or emergency situations arising from one or more of the events outlined in clause 6.3.1.2 of SANS 294.
  - h) Selecting a particular disposal procedure provided for in sub-clause 6.3.10 of SANS 294.
- 6.2 Unless other parameters and requirements are provided for in the institution's procurement policy, the reasons for departing from the following shall be recorded and forwarded to the accounting officer or accounting authority, as relevant, or his delegate for their acceptance and compliance auditing purposes:
- a) the percentage score allocated to the financial offer where Method 3 or Method 4 (see Table 3 of SANS 294) is less than 40% (i.e. the percentage score for quality exceeds 60%).
  - b) the quantum of work is such that it is necessary to increase the work or to perform additional work within the broad scope of the contract such that the final contract amount, excluding any price adjustment, is more than the following percentages higher than the contract amount at the time that the contract was awarded:
    - i) services and supplies:  
15%



- ii) engineering and construction works 30%

## **7 Functioning and composition of bid committees**

- 7.1 An accounting officer and accounting authority shall establish permanent bid committees within their respective institutions comprising not less than three officials, one of whom shall be a supply chain functionary, to evaluate tenders and make recommendations for the award of a contract.
- 7.2 Members of a bid committee shall be cleared at the level of "CONFIDENTIAL".
- 7.3 Bid committee members shall not act as panel members for the evaluation and scoring of quality in submissions.
- 7.3 Bid committees shall evaluate tender submissions and calls for expressions of interest and, as appropriate, make recommendations for,:
- a) the award of a tender including the acceptance of proposals made by a tenderer in the process of offer and acceptance;
  - b) commencing with the negotiations with a preferred tenderer in a two stage tendering process; and
  - c) the acceptance of the shortlist prepared for a procurement.
- 7.4 Bid committees may co-opt independent experts to participate as advisors in the workings of the committee.
- 7.5 Bid committees may be delegated by an accounting officer or accounting authority to make the award of the contract.
- 7.6 The quorum for a bid committee shall not be less than 3 members, provided that one of the members present is a supply chain functionary.

## **8 Advertisements**

- 8.1 All calls for expressions of interest and invitations for tender offers using the open, qualified and proposal procedure shall be advertised in the Government Tender Bulletin at least 30 days before the closing date for tenders and, if deemed necessary by the accounting officer or accounting authority, or their respective delegates, in order to ensure greater exposure to potential tenderers, in other appropriate media.
- 8.2 All procurement documents shall be made available on the publication date of the advertisement.
- 8.3 Advertisements for admission to data bases shall be published in the Government Tender Bulletin.

## **9 Procurement documents**

### **9.1 General**

- 9.1.1 Procurement documents for engineering and construction works, services and supplies shall be in accordance with the provisions of SANS 294 and be formatted and compiled under the headings contained in Tables 5 where a three volume approach is adopted or Table 6 where a single volume approach is adopted.
- 9.1.2 The contract arising from the solicitation of tender offers using a three volume approach or the Negotiated Procedure shall be formatted and compiled under the headings contained in Table 7.

**Table 5: Standard headings and sequencing of documents when soliciting tenders where a three volume approach is adopted**

Volume	Contents	
	Number	Heading
Volume 1	<b>Part 1: Tendering procedures</b>	
	T1.1	Tender Notice and Invitation to Tender
	T1.2	Tender Data
Volume 2	<b>Part 2: Returnable documents</b>	
	T2.1	List of Returnable Documents
	C1.1	Form of Offer and Acceptance
	C1.2	Contract Data (Part 2: Data Provided By The Contractor)
	C2.2	Activity Schedule / Bill of Quantities
Volume 3	<b>Part 2: Returnable Schedules</b>	
	<b>Part 1: Agreement and Contract Data</b>	
	C1.2	Contract Data (Part 1: Data provided by the employer)
	<b>Part 2: Pricing data</b>	
	C2.1	Pricing Instructions
	<b>Part 3: Scope of Work</b>	
	C3	Scope of Work
	<b>Part 4: Site information (engineering and construction works contracts only)</b>	
	C4	Site Information

**Table 6: Standard headings and sequencing of documents when soliciting tenders where a single volume approach is adopted**

Contents	
Number	Heading
<b>Part 1: Tendering procedures</b>	
T1.1	Tender Notice and Invitation to Tender
T1.2	Tender Data
<b>Part 2: Returnable documents</b>	
T2.1	List of Returnable Documents
T2.2	Returnable Schedules
<b>Part 1: Agreement and Contract Data</b>	
C1.1	Form of Acceptance
C1.2	Contract Data
<b>Part 2: Pricing data</b>	
C2.1	Pricing Instructions
C2.2	Activity Schedule / Bill of Quantities
<b>Part 3: Scope of Work</b>	
C3	Scope of Work
<b>Part 4: Site information (engineering and construction works contracts only)</b>	
C4	Site Information

**Table 7: Standard headings and sequencing of documents in the contract**

Contents	
Number	Heading
<b>Part 1: Agreements and contract data</b>	
C1.1	Form of Offer and Acceptance
C1.2	Contract Data
<b>Part 2: Pricing data</b>	
C2.1	Pricing Instructions
C2.2	Activity Schedule / Bill of Quantities
<b>Part 3: Scope of Work</b>	
C3	Scope of Work
<b>Part 4: Site information (engineering and construction works contracts only)</b>	
C4	Site Information

9.1.3 The Notice and Invitation to Tender shall, as a minimum, contain the wording provided in Annex B.

- 9.1.4 The schedule of deviations in the Form of Offer and Acceptance contained in SANS 294 shall form an integral part of this form. The form shall be used with minimal contract specific amendments to form the basis of agreements arising from the solicitation of tender offers.

## 9.2 Preferencing schedules

Preferencing schedules relating to the targeting of enterprises and targeted labour shall not differ substantially from the samples provided in Annexes C and D. These returnable schedules shall, if applicable to the contract, be incorporated in the scope of work when the contract is compiled where a three volume approach in the solicitation of tender offers is adopted.

## 9.3 Tender Data

- 9.3.1 The Tender Data in all contracts other than engineering and construction works contracts where the register of contractors is applied shall include the following:

Clause number (refer to Annex F of SANS 294)

F.2.23

The tenderer is required to submit with his tender an original valid Tax Clearance Certificate issued by the South African Revenue Services.

- 9.3.2 The tender offer validity period provided for in the Tender Data shall not exceed 60 calendar days.

- 9.3.3 The Tender Data shall reference the tender evaluation method that is to be used and contain at least the following wording, depending upon the tender method that is used:

### Method 1: Financial offer

Clause number (refer to Annex F of SANS 294)

F.3.11

The procedure for the evaluation of responsive tenders is Method 1

### Method 2: Financial offer and preferences

Clause number (refer to Annex F of SANS 294)

F.3.11

The procedure for the evaluation of responsive tenders is Method 2

The financial offer will be scored using Formula 1 / 2\* (option 1) where the value of  $W_1$  is 80 / 90\*\*

\* Delete reference to formula that is not applicable \*\* Delete inappropriate value in accordance with the Regulations issued in terms of the Preferential Procurement Policy Framework Act.

### Method 3: Financial offer and quality

Clause number (refer to Annex F of SANS 294)

F.3.11

The procedure for the evaluation of responsive tenders is Method 3

The score for quality is to be calculated using the following formula:

$$W_Q = W_2 \times S_Q / M_S$$

where  $W_2$  is the percentage score given to quality and equals \_\_\_\_\*  
 $S_Q$  is the score for quality allocated to the submission under consideration  
 $M_S$  is the maximum possible score for quality in respect of a submission

The score for financial offer is calculated using Formula 1 / 2\* (option 1 / 2\*) where  $W_1$  is the percentage score given to financial offer and equals \_\_\_\_\*:

\* Delete reference to formula and option that is not applicable \*\* Insert value such that  $W_1 + W_2 = 100$

**Method 4: Financial offer, quality and preferences**

Clause number (refer to  
Annex F of SANS 294)

F.3.11

The procedure for the evaluation of responsive tenders is Method 4

The score for quality is to be calculated using the following formula:

$$W_Q = W_2 \times S_Q / M_S$$

where  $W_2$  is the percentage score given to quality and equals \_\_\_\_\*  
 $S_Q$  is the score for quality allocated to the submission under consideration  
 $M_S$  is the maximum possible score for quality in respect of a submission

The score for financial offer is calculated using Formula 1 / 2\* (option 2) where  $W_1$  is the percentage score given to financial offer and equals \_\_\_\_\*:

The score for quality and financial offer is to be combined, before the addition of the score for preference, as follows:

$$W_C = W_3 \times (1 + \frac{S - S_m}{S_m})$$

Where  $W_3$  is the number of tender evaluation points for quality and financial offer and equals 80 / 90\*\*

$S$  is the sum of score for quality and financial offer of the submission under consideration

$S_m$  is sum of the score for quality and financial offer of the submission scoring the highest number of points

\* Insert values such that  $W_1 + W_2 = 100$

\*\* Delete inappropriate value in accordance with the Regulations issued in terms of the Preferential Procurement Policy Framework Act.

**9.4 Contract data**

9.4.1 The contract data in respect of prime or main contracts must reference one of the following standard industry forms of contract unless the publishers of such forms of contract indicate that such a form of contract is not suited for the intended application:

- a) engineering and construction works contract;
  - i) General Conditions of Contract for Construction Works as published by the South African Institution of Civil Engineering;
  - ii) Conditions of Contract for Construction, Conditions of Contract for Plant and Design-Build, Conditions of Contract for FIDIC EPC/Turnkey Projects or Short Form of Contract as published by the International Federation of Consulting Engineers (FIDIC);
  - iii) JBCC series 2000 Principal Building Agreement or Minor Works Agreement as published by the Joint Building Contracts Committee; or
  - iv) NEC Engineering and Construction Short Contract NEC Engineering and Construction Contract as published by the Institution of Civil Engineers.
- b) services contract (professional);
  - i) Standard Professional Services Contract as published by the Construction Industry Development Board; or
  - ii) NEC Professional Services Contract as published by the Institution of Civil Engineers..
- c) services contract (facilities);
  - i) NEC Term Services Contract as published by the Institution of Civil Engineers.
- d) supplies contract;



- i) General conditions of purchase as published by the Construction Industry Development Board;
- ii) Supply of Goods (Short Contract) as published by the Construction Industry Development Board;
- iii) Contract for the Supply and Delivery of Goods as published by the Construction Industry Development Board; or
- iv) The Supply Contract as published by the Construction Industry Development Board.

9.4.2 The standard industry forms of contract listed in 9.4.1 shall be used with minimal project specific variations and additions which do not change their intended usage.

9.4.3 Guarantees, which guarantee performance with a stated financial benefit in the event of non-performance, should as a general rule should not be required in service, professional service and supply contracts. Guarantees of an insurance company or bank and retention monies required in engineering and construction contracts shall be in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement.

9.4.4 Interest on late payments shall be at a level that approximates commercial rates of interest or as provided for in a standard form of contract.

9.4.5 As a general rule, no advance payments shall be made to contractors. Contractors should only be paid for amounts due for work completed or partially completed in terms of their contract

9.4.6 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than that set out below with a first amount payable not exceeding 5% of the limit of indemnity:

Consulting Engineering Firms	R1 000 000
Others	R 500 000

9.4.7 Penalties that are applied for late completion shall as a general rule be set at a level that covers all the institution's direct costs.

9.4.8 Payment to professional service providers should wherever possible be made on the basis of activities satisfactorily completed or on the basis of milestones achieved.

## 9.5 Submission Data

The Submission Data in all contracts other than engineering and construction works contracts where the register of contractors is applied, may include the following:

Clause number (refer to Annex H of SANS 294)

H.2.11

The respondent is required to submit with his expression of interest an original valid Tax Clearance Certificate issued by the South African Revenue Services.

## 10 Applying the CIDB Register of Contractors in engineering and construction works contracts

The CIDB Register of Contractors shall be applied to engineering and construction works contracts in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement and the Construction Industry Development Regulations issued in terms of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000).

## 11 Award of contracts

- 11.1 Institutions shall not enter into a contract, other than an engineering and construction works contract where the CIDB Register of Contractors is applied, with tenderers who are not in possession of an original tax clearance certificate. Institutions shall, except in the case on engineering and construction works where the Register of Contractors is applied, forward for audit purposes the contractor's original tax clearance certificate together with a copy of the completed Form of Offer and Acceptance to:

South African Revenue Services  
Private Bag X9012  
East London  
5200

For attention: Sandra Gardiner      Tel 043-706 5402      Fax 043-706 5533

- 11.2 Institutions shall not enter into a contract with a contractor whose company or principals are listed on National Treasury's database as being prohibited from doing business with the public sector.
- 11.3 From 15 August, 2005, institutions shall not enter into an engineering and construction works contract with a contractor that is not appropriately registered with the Construction Industry Development Board.
- 11.4 Only the accounting officer or accounting authority or their duly authorised delegate may commit their respective institutions to a contract, except where the quotation or nominated procedure is used and the tender committee is duly authorised to award the contract.
- 11.5 Accounting authorities and accounting officers shall:
- a) reject a proposal for the award of a contract if the recommended tenderer has committed a corrupt or fraudulent act in competing for the particular contract; or
  - b) cancel a contract awarded to contractor if:
    - i) if the contractor committed any corrupt or fraudulent act during the tender process or the execution of that contract; or
    - ii) if any official or other role player committed any corrupt or fraudulent act during the tender process or the execution of that contract that benefited that contractor.
- 11.6 Accounting officers and accounting authorities shall submit a report to the Treasury on all actions taken in respect of 11.5.
- 11.7 The accounting officer or accounting authority may disregard the tender of any tenderer who has failed to perform on any previous contract.
- 11.8 Professional service providers who are commissioned to prepare a scope of work for a particular procurement (i.e. a document that specifies and describes the supplies, services, or engineering and construction works which are to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed) shall as a general rule be precluded from submitting tender offers for that procurement

**12 Preferencing arrangements**

- 12.1 Provincial entities that make use of preferences shall do so in accordance with the provisions of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- 12.2 Accounting officers and accounting authorities shall develop a preferential procurement policy for their respective institutions in accordance with the requirements of SANS 294 and furnish the Treasury with a copy of the policy and any amendments thereto within 30 days of approving such a policy or amendments.
- 12.3 Policy themes and specific goals shall be aligned with the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and the targets associated with the Provincial Growth and Development Plan (PGDP) 2004-2014.
- 12.4 No tenderer, respondent or contractor shall be obliged to attain specific goals, including the forming of joint ventures, relating to a preferential procurement policy in order to be eligible to submit tenders or to be considered responsive for the award of a contract. Specific goals relating to a preferential procurement policy shall only be implemented through tender evaluation methods or accelerated rates of rotation on an electronic data base in accordance with the provisions of SANS 294.
- 12.5 Accounting officers and accounting authorities shall prepare an annual report on the outcomes of their preferential procurement policy in respect of a financial year and submit such a report to the Treasury within two months of the financial year end.

**13 National Industrial Participation Program**

An accounting officer or accounting authority shall obtain clearance for a recommended tenderer from the Department of Trade and Industry, in respect of the following contracts which are subject to the National Industrial Participation Program of that Department:

- a) purchases or lease contracts (goods, equipment or services) with an imported content in a single contract which exceeds US\$ 10 million; or
- b) multiple contracts for the same products or services each exceeding US\$ 3 million awarded to one tenderer over a 2-year period which in total exceeds US\$ 10 million.

**Annex A****Proforma forms to facilitate the evaluation of tenders**

Form 1:	Financial offer and preferences
Form 2:	Financial offer, quality and preferences
Form 3:	Scoring of financial offer
Form 4:	Scoring of preferences (Direct preference and direct participation)





<b>Eastern Cape Provincial Treasury</b>	<b>TENDER OFFER EVALUATION REPORT</b>  <b>Form 2: Financial offer, quality and preferences</b>	<b>TENDER REF NO.:</b> .....  <b>DESCRIPTION OF WORK:</b> ..... .....
---	--	--

[illegible]

RECOMMENDED TENDERER:

.....

**NOTE:** If highest ranked tender offer is not recommended for the award of the contract, attach a brief report citing reasons for not recommending that tender offer.  
#Insert name of target group if direct preference option is used and contract participation goal if direct participation option is used.

\*Calculate preferences separately on form provided.



Direct Preference Option: Preference =  $W_p \times (D_T) / (X)$  and  $P \leq W_p$   
**Where:**  $W_p = 10 / 20$  (delete inapplicable value)  
 $D_T$  is the tendered Contract Participation Goal  
 $X$  is the maximum Contract Participation Goal  
 above which no further tender adjudication points are awarded = .....%.

\* If this value differs from the tendered Contract Participation Goal for any reason acceptable to the Employer, the adjusted Contract Participation must be entered into the schedule of deviations contained in the Form of Offer and Acceptance.

#Insert name of target group if direct preference option is used and contract participation goal if direct participation option is used.



## Annex B

## Standard Notice and Invitation to Tender

	<b>Guidance</b>
Tenders are invited for the provision of . . . . .	<i>Describe briefly what is to be procured, and if appropriate, over what time period.</i>
The Employer is .....	
The physical address for collection of tender documents is: .....	
Documents may be collected during working hours after 09:00 on .....	
A non-refundable tender deposit of R.....payable by cheque made out in favour of the Employer is required on collection of the tender documents.	<i>Omit if not a requirement</i>
Queries relating to the issues of these documents may be addressed to Mr/Ms . . . . ., Tel No. . . . ., Fax No. . . . . e mail . . . . .	
A compulsory pre tender meeting with representatives of the Employer will take place at . . . . . on . . . . . starting at . . . . hrs.	<i>Omit if not a requirement</i>
The closing time for receipt of tenders is . . . . . hrs on . . . . . Telegraphic, telephonic, telex, facsimile and late tenders will not be accepted.	
Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the Tender Data.	

## Annex C

**Sample preferencing schedule where direct preferences are granted in respect of targeted enterprise status**

<b>PREFERENCING SCHEDULE</b> <b>(Direct preference)</b>		
<b>1 Definitions</b>  <p align="center">The following definitions shall apply to this schedule:</p> <p align="center"><i>Insert definitions for Targeted Enterprises in here</i></p>		
<b>2 CONDITIONS ASSOCIATED WITH THE GRANTING OF PREFERENCES</b> The tenderer, who being a Targeted Enterprise undertakes to: <ol style="list-style-type: none"> <li>1) not subcontract more than ...*% of the Net Amount of the Contract to non-Targeted Enterprises;</li> <li>2) remain a Targeted Enterprise for the duration of the Contract;</li> <li>3) accept the sanctions set out in Section 3 below should conditions 1 or 2 be breached;</li> <li>4) complete the Tender Preference Claim Form contained in Section 4 below; and</li> <li>5) complete a Targeted Declaration Affidavit and submit this with the tender.</li> </ol>		
<b>3 SANCTIONS RELATING TO BREACHES OF PREFERENCING CONDITIONS</b>  Termination of the Contract or a financial penalty payable to the Employer equal to .... times the number of tender evaluation points awarded in respect of the preference claimed.		
<b>4 TENDER PREFERENCE CLAIM IN RESPECT OF ENTERPRISE STATUS OR STRUCTURE OF THE TENDERING ENTITY</b>  I/we apply on behalf of my/our firm for the following preference:  <i>Insert category description and percentage of maximum tender evaluation points</i>		
<b>Category of Targeted Enterprise</b>	<b>Percentage of maximum tender evaluation points provided for in the Preferential Procurement Policy Framework Act (Act 5 of 2000)</b>	<b>Preference claimed for Targeted Enterprise status (Y=yes)</b>

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the firm or sole proprietor confirms that he / she understands the conditions under which such preferences are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender preferences.

Signature : .....

Name : .....

Duly authorised to sign on behalf of : .....

Telephone : .....

Fax : .....

te : .....

\*insert percentage value, typically between 20 and 25%

## Annex D

**Sample preferencing schedule where preferences are granted in respect of the direct participation of targeted enterprises and / or labour**

<b>PREFERENCING SCHEDULE</b> <b>(Direct participation)</b>													
<p><b>1 DEFINITIONS</b></p> <p>The following definitions shall apply to this schedule:</p> <p><i>Insert definition for Targeted Enterprises and / or Targeted Labour in here.</i></p>													
<p><b>2 CONDITIONS ASSOCIATED WITH THE GRANTING OF PREFERENCES</b></p> <p>The Tenderer, undertakes to:</p> <ol style="list-style-type: none"> <li>1) engage one or more Targeted Enterprises / Targeted Labour (adjust as necessary) in accordance with the provisions of the SANS 1914- <i>(insert part number and title as relevant)</i> as varied in Section 3 hereunder;</li> <li>2) deliver to the Employer, within 5 working days of being requested in writing to do so, a completed Joint Venture Disclosure Form (Annex D of SANS 1914-1) and a Joint Venture Agreement, should a joint venture be proposed at prime contract level with Targeted Partners to satisfy Contract Participation Goal undertakings <i>(adjust wording to reflect documentation that is required or delete)</i>;</li> <li>3) deliver to the Employer, within 5 working days of being requested in writing to do so, a Targeted Enterprise Declaration Affidavit in respect of all Targeted Enterprises engaged at prime contract level to satisfy Contract Participation Goal undertakings <i>(delete if not required)</i>;</li> <li>4) accept the sanctions set out in Section 4 below should such conditions be breached;</li> <li>5) complete the Tender Preference Claim Form contained in Section 5 below; and</li> <li>6) complete the Supporting Contract Participation Goal Calculation contained in this schedule.</li> </ol>													
<p><b>3 VARIATIONS TO THE TARGETED CONSTRUCTION PROCUREMENT SPECIFICATION SANS 1914- <i>(insert part number)</i></b></p> <p>The variations to SANS 1914- <i>(insert part number)</i> are set out below. Should any requirements of the variations conflict with requirements of SANS 1914- <i>(insert part number and title as relevant)</i>, the requirements of the variations shall prevail.</p> <p><i>Insert variations if any. If none, insert "There are no variations".</i></p>													
<p><b>4 SANCTIONS</b></p> <p>In the event that the Tenderer fails to substantiate that any failure to achieve the Contract Participation Goal relating to the granting of a preference was due to quantitative under runs, the elimination of items, or any other reason beyond the Contractor's control which may be acceptable to the Employer, it shall be liable to pay to the Employer a financial penalty calculated in the following manner:</p> $P = \frac{0,15 \times (D - Do) \times N_A}{(100)}$ <p>where</p> <table style="margin-left: 20px;"> <tr> <td>D</td> <td>=</td> <td>tendered Contract Participation Goal percentage.</td> </tr> <tr> <td>Do</td> <td>=</td> <td>the Contract Participation Goal which the Employer's representative based on the credits passed, certifies as being achieved upon completion of the Contract.</td> </tr> <tr> <td>N<sub>A</sub></td> <td>=</td> <td>Net Amount</td> </tr> <tr> <td>P</td> <td>=</td> <td>Rand value of penalty payable</td> </tr> </table>		D	=	tendered Contract Participation Goal percentage.	Do	=	the Contract Participation Goal which the Employer's representative based on the credits passed, certifies as being achieved upon completion of the Contract.	N <sub>A</sub>	=	Net Amount	P	=	Rand value of penalty payable
D	=	tendered Contract Participation Goal percentage.											
Do	=	the Contract Participation Goal which the Employer's representative based on the credits passed, certifies as being achieved upon completion of the Contract.											
N <sub>A</sub>	=	Net Amount											
P	=	Rand value of penalty payable											
<p><b>5 TENDER PREFERENCE CLAIM IN RESPECT OF ENTERPRISE STATUS OR STRUCTURE OF THE TENDERING ENTITY</b></p> <p>I / we hereby tender a Contract Participation Goal of .....% in order to claim a preference.</p>													



The undersigned, who warrants that he / she is duly authorised to do so on behalf of the firm or sole proprietor confirms that he / she understands the conditions under which such preferences are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender preferences.

Signature : .....

Name : .....

Duly authorised to sign on behalf of : .....

Telephone : .....

Fax : ..... Date : .....

#### **SUPPORTING CONTRACT PARTICIPATION GOAL CALCULATION**

*Insert Annex A: Tendered goal calculation from relevant part of SANS 1914*

00002101  
10120000

**Note:** The documents referred to in column 1 are obtainable from the organisations referred to in column 2.

Column 1	Column 2
Provincial Growth and Development Plan	Office of the Premier Eastern Cape Address: Legislative Building First Floor Independence Avenue Bisho Tel: 040-609 2207 Fax: 040 635 1166
Guidelines for the Implementation of Labour Intensive Infrastructure Projects under the Expanded Public Works Programme	Department of Public Works Address: EPWP Unit Room 609 Central Government Building Cnr Bosman and Vermeulen Streets Pretoria Tel 012 - 337 3115 Fax 012 - 326 6820
1 SANS 294, Construction procurement processes, procedures and methods 2 SANS 1914: Targeted construction procurement 3 AS/NZS 4360: Risk Management	Standards South Africa tel: 012 428 7911 fax: 012 344 1568 Address: 1 Dr Lategan Road Groenkloof Pretoria
1 CIDB Standard for uniformity in Construction Procurement 2 CIDB Standard Professional Services Contract CIDB General conditions of purchase 3 CIDB Supply of Goods (Short Contract) 4 CIDB Contract for the Supply and Delivery of 5 Goods 6 CIDB The Supply Contract	Construction Industry Development Board Tel: 012-481-9030 Fax: 012-343-7153 Address: 1 Dr Lategan Road Block N and R SABS Campus Brooklyn Pretoria Website <a href="http://www.cidb.org.za">www.cidb.org.za</a>
1 General Conditions of Contract for Construction Works 2 NEC Engineering and Construction Short Contract NEC Engineering and Construction Contract 3 NEC Professional Services Contract	South African Institution of Civil Engineering Address: East Wing Howick Gardens Waterfall Park Bekker Street Midrand Tel: 011-805 5947 Fax: 011-805 5971
1 FIDIC Conditions of Contract for Construction 2 FIDIC Conditions of Contract for Plant and Design-Build 3 FIDIC Conditions of Contract for EPC/Turnkey Projects 4 FIDIC Short Form of Contract	South African Association of Consulting Engineers Address: St James House 20 Georgian Crescent Bryanston SANDTON Tel: 011-463 2022 Fax: 011-463 7383
1 JBCC series 2000 Principal Building Agreement 2 JBCC series 2000 Minor Works Agreement	Master Builders Association Address: 82 Worraker Street Newton Park Port Elizabeth Tel: 041-3651835 Fax: 041-3641676
NEC Term Services Contract	<a href="http://www.neccontract.com/pdf/1stEditionDraft.pdf">www.neccontract.com/pdf/1stEditionDraft.pdf</a>

11120000