

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

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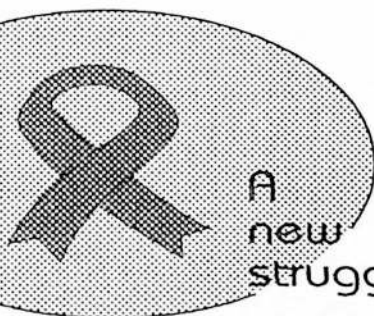
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## PROVINCIAL NOTICE

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NOTICE 48 OF 2004

### **EASTERN CAPE PROVINCIAL TREASURY**

#### **THE PUBLIC FINANCE MANAGEMENT ACT, 1999 (ACT NO. 1 OF 1999) AS AMENDED**

I, **Willem Hugh Nel**, 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.

Schedule 1 provides general provincial supply chain management instructions. Schedule 2 provides for the institutional arrangements for uniform application in the Eastern Cape Province.

Compliance with the requirements of these Supply Chain Management Provincial Treasury Instructions is mandatory for all Eastern Cape Institutions, namely provincial departments and provincial public entities listed in Schedule 3 of the Act.

These Instructions take effect from 1 November 2004.

.....  
**Willem Hugh Nel**  
**MEC FOR FINANCE**



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## **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- c) Replacing the outdated procurement and provisioning practices in government with a Supply Chain Management function and a systematic competitive procedure for the appointment of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 institutions 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 and accounting authorities in Eastern Cape Institutions.

### **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.

Comprehensive needs assessment is fundamental to identifying the demand, which includes 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.

Demand management in the context of infrastructure involves active interventions to influence demand for services and infrastructure. It focuses on the identified needs and service delivery strategies, not on infrastructure alone. Demand management is accordingly an alternative to the historical provision of infrastructure in response to demand for new services.

## 2.2 Acquisition Management

The major activity associated with this element is the acquisition of supplies, services, and engineering and construction works and rights.

Supplies and services which are not available within an institution can be sourced from other institutions or procured through a contract put in place by either the Eastern Cape Provincial Treasury or another institution (i.e. a transversal contract) or directly from the market.

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.

## 2.3 Logistics Management

The logistics management process deals with the coding of items, setting of inventory levels, issuing 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.

## 2.4 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 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, air and sea 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 institutions provides an opportunity to allow such 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) facilitating public access to 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 complaints procedures, where independent third parties not inline with PAJA/proatia 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 institution 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 institution to establish the manner in which it will organise and undertake its procurement. (Not instruction material, to be deleted).

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 Administrative Justice Act, (Act No. 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. The ombudsman office will monitor the speedy resolution of complaints presented to accounting officers and accounting authorities by complainants.

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

Accounting officers and accounting authorities may disregard the bid of any bidder if that bidder, or any of its directors 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 institutions 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 an external review by a Technical Review Committee comprising a representative from each institution and one or two experts nominated by the Provincial Treasury. This Technical Review Committee, chaired by an official appointed by the Provincial Treasury, will make recommendations for the award of a contract to the accounting officer or accounting authority that is to administer the procurement.

## Supply Chain Management Instructions

immediately report the breach or failure in writing to the accounting officer or accounting authority, as relevant.

## **2.2 Demand management**

### **2.2.1 Institutions shall during the demand management process, as relevant,:**

- 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 horizon 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 this need.

## **2.3 Acquisition management**

### **2.3.1 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 sourcing strategies has been considered:**

- a) in store
- b) utilisation of transversal contracts administered by the Provincial Treasury's Supply Chain Management Component; or
- c) acquisition of goods from the list of redundant / obsolete material,
- d) goods and assets from other institutions;
- e) sourcing of expertise from other institutions;
- f) public private partnerships.

### **2.3.2 Accounting officers and accounting authorities shall develop and implement their procurement policies relating to the procurement of supplies, services, engineering and construction works and disposals strictly in accordance with Practice Notes issued by the Treasury from time to time.**

### **2.3.3 The Treasury in consultation with the Supply Chain Management Units 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 acquiring of services and supplies through such contracts

- 2.3.4 Accounting officers and accounting authorities must 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, where applicable, 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>Contracts awarded, including the nature thereof.</li> <li>Value of contracts awarded including VAT</li> <li>Number of responsive tenders received</li> <li>The difference in tender value including 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> <ol style="list-style-type: none"> <li>supplies, non- professional services, professional services and engineering and construction works;</li> <li>standard procurement procedures (see Table 1 of schedule 2); and</li> <li>form of contract used.</li> </ol>
Expanded Public Works Programme	<ul style="list-style-type: none"> <li>Person days of employment created for targeted labour</li> <li>Amount paid to targeted labour</li> <li>Number of training person days provided to targeted labour</li> <li>Project wage</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, nature and value of contracts awarded that were either contracted with or subcontracted to enterprises who are:</p> <ol style="list-style-type: none"> <li>enterprises that attain "good and satisfactory contributor" status in terms of a BEE Score Card</li> <li>Black Business Enterprises</li> <li>Black-Empowered Business Enterprises</li> <li>Black Woman Business Enterprises</li> </ol>	<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	<p>The number, nature and value of contracts awarded that were either contracted with or subcontracted to enterprises who have a registered business address in the Eastern Cape Province</p>	<p>The data shall be broken down into district municipalities and into supplies, non-professional services, professional services and engineering and construction works.</p>

- 2.3.5 The reporting requirements may be reviewed from time to time and the Treasury will issue Practice Notes as required.
- 2.3.6 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.
- 2.3.7 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)
- 2.3.8 Accounting officers and accounting authorities must 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 must:**

- 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 must, 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;
- 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 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) selling per price quotation, competitive bid or auction, whichever is the most advantageous to the State, unless determined otherwise by Treasury (requirements as prescribed in regulation 5 and 6 of the of the Preferential Procurement Regulations, 2001, should be adhered to); or
  - f) 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 must :
- a) in relation to the sale or other disposal of provincial government assets, ensure that:
    - (i) immovable property is sold at market related prices, unless the relevant treasury determines otherwise;
    - (ii) movable assets are sold either by way of tender process, auction or at market related prices, whichever is the most advantages to the provincial government;
    - (iii) in the case of disposal of computer equipment, the provincial department of education must first be approached to indicate whether any educational institutions are interested in the equipment, and, if so, to arrange for the transport of such equipment at its own cost to any such interested educational institutions;
    - (iv) 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.



2.5.6 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 component within Treasury within two months of the financial year end or whenever such a list is updated; and

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, if appropriate, the Code of Practice for Enterprise Risk Management published by the Institute of Risk Management.

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 and transfer the risk where this is not the case.

## **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 Preferential Procurement Policy Framework Act, 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)

## **2.8 Letting of provincial government assets**

The accounting officer or accounting authority of an institution must in relation to the letting of provincial government assets:

- (i) ensure that all immovable property, excluding provincial government housing for government officials and political office bearers, is let at market related rates, unless Treasury determines otherwise or approves the letting of property free of charge; and
- (ii) annually review all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of provincial government property;



### 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 invested 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 must :

- 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 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 Annexure A of this Schedule, may disregard the bid of any bidder if that bidder, or any of its directors 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 must ensure that officials implementing the institution's Supply Chain Management system are appropriately trained and deployed in accordance with the requirements of the Framework for Minimum Training and Deployment issued by National Treasury.

## **6 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 Supply Chain Management Component within Treasury 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 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 Treasury to adjudicate on the matter, subject to:
- a) the adjudicator being appointed in terms of the agreement contained in Annexure A to this Schedule;
  - b) the tenderer agreeing to pay half the adjudicators fee and lodging a deposit equal to half the estimated fee amount with Treasury;
  - c) the tenderer accepting the standard terms and conditions established by Treasury for adjudication.
- 6.4 The institution which evaluated the tender shall be liable for the other half the adjudicator's fee.
- 6.5 Treasury shall nominate an adjudicator from its panel of adjudicators to deal with the dispute.

**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 Treasury 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 appointed by Treasury, shall comprise of a representative from each participating institution nominated by the respective accounting officer or accounting authority and any specialists that may be nominated by the Treasury. This Technical Review Committee shall:
- a) Review tender evaluation reports received from an institution, provided that at least one representative from that institution is present when such reports are considered; and
  - b) make recommendations for the award of tenders to an accounting officer or accounting authority of that institution.
- 7.3 Accounting officers and accounting authorities must provide Treasury and the 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 three persons, one of whom shall be a Supply Chain Management functionary from Supply Chain Management Component within Treasury.

**Annexure A****Adjudication of challenges relating to the evaluation of tender offers****A1 Definitions**

- a) "Adjudicator" means the person named as such in the Contract or appointed in accordance with this Procedure.
- b) "Complainant" means a juristic person 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;

**A2 General principles**

- A2.1 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.
- A2.2 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.
- A2.4 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 accordingly and be provided with written reasons therefore.
- A2.5 In making a decision, the adjudicator may take the initiative in ascertaining the facts and the correct procedure in the awarding of the tender. The adjudication shall be neither an expert determination nor arbitration but the Adjudicator may rely on his own expert knowledge and experience.
- A2.6 The adjudicator's decision shall be binding.
- A2.7 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.
- A2.8 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 or her findings to the accounting officer or accounting authority.



- A2.9 The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his or her 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.

### **A3 The Notice of Adjudication**

A complainant shall give notice to the accounting officer or accounting authority within 10 days of receiving a notice of the outcome of a tender 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 cash deposit equal to 50 % of the estimated adjudicator's fee.

### **A4 Conduct of the adjudication**

- A4.1 The Adjudicator shall reach his decision within 28 days after the dispute has been referred to him or her for adjudication, unless the accounting officer or accounting authority agrees to extend this period.
- A4.2 The Adjudicator shall determine the matters set out in A2.1.
- A4.3 The Adjudicator shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable. He or she 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 or she 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.
- A4.4 The Adjudicator may obtain legal or technical advice having first notified the accounting officer or accounting authority of his or her intended action.
- A4.5 Wherever possible, the Adjudicator shall reach his or her decision without the process of a formal hearing.

### **A5 The Decision**

The Adjudicator shall reach his or her decision and so notify the complainant, the accounting officer or accounting authority of the institution and Supply Chain Management Component within Treasury together with his or her reasons within the time limits of A4.1.

## Schedule 2

### Institutional Arrangements

#### 1 Supply Chain Management structures within institutions

- 1.1 The accounting officer or accounting authority of an institution must ensure that the Supply Chain Management structures of the institution, mentioned in 1.3 below, function in accordance with the Public Finance Management Act, the Regulations made in terms of that Act and these Treasury Instructions, and in a manner that is fair, equitable, transparent, competitive and cost-effective.
- 1.2 Institutions must implement their institutional arrangements in accordance with the Guidelines on Institutional Arrangements that will be issued as a Practice Note by Treasury.
- 1.3 The following structures must be put in place:
- (a) A Supply Chain Management Unit within the office of their institution's chief financial officer, to implement the institution's supply chain management system.
  - (b) At least one Bid Specification Committee for the compiling of bid (tender) specifications. The specifications should be written in an unbiased manner to allow all potential bidders to offer their goods and services. The preparation of specifications may be undertaken by a department or institution, a committee, one or more qualified officials or an external consultant under the direction of the Accounting Officer/Authority.
  - (c) At least one Bid Evaluation Committee to evaluate and make recommendations to the Departmental Award Authority.
  - (d) An Award Authority to consider recommendations made by the Bid Evaluation Committee to the Authority in accordance with the department's supply chain management system and, when applicable, also those made by the Technical Review Committee and to take final decisions on the award of contracts.
  - (e) At least one Disposal Committee to make recommendations to the Award Authority on the disposal of assets.

#### 2 Supply Chain Management structures within Treasury

- 2.1 The Treasury shall establish the following structures within its administration to assist provincial departments in implementing and managing their supply chain management systems:

- (a) a Supply Chain Management Component; and
- (b) a Technical Review Committee.

##### 2.2 Supply Chain Management Component

- 2.2.1 The Supply Chain Management Component will report to the Accountant-General of the Province and serve as a link with the Supply Chain Management Office of the National Treasury, which was established to oversee the implementation of national policies on Supply Chain Management. It will also act as provincial coordinator and perform a directional role.

- 2.2.2 Other functions of the Supply Chain Management Component are –

- (a) the formulation and giving of advice on provincial Supply Chain Management policy;

- (b) the administration of provincial Supply Chain Management legislation;
- (c) the promotion of communications and liaison between different supply chain management units within the province;
- (d) the monitoring of performance of those Supply Chain Management units;
- (e) serving as a linkage between the national SCM Office and those Supply Chain Management units;
- (f) the issuing of instructions and practice notes to ensure uniform application of the provincial Supply Chain Management policy;
- (g) addressing the requirement for consistency with other policy initiatives in Government;
- (h) the establishment of minimum reporting requirements for those Supply Chain Management units;
- (i) the investigation of complaints received from the public regarding bid procedures and irregularities and oversight of departmental investigations;
- (j) the rendering of secretarial services to the Technical Review Committee;
- (k) maintaining a database of non-preferred suppliers;
- (l) monitoring the implementation of policy in respect of –
  - (i) the Government's procurement reform objectives;
  - (ii) the manner in which targets are set and attained;
  - (iii) value for money obtained; and
  - (iv) delivery mechanisms;
- (m) facilitating the arrangements, monitoring and administration of transversal contracts for two or more departments;
- (n) facilitating participation in national transversal contracts if requested to do it;
- (o) the development of appropriate supply chain management tools;
- (p) maintaining Supply Chain Management information;
- (q) the coordination of coding requirements;
- (r) the determination of a disposal strategy;
- (s) the performance of obsolescence planning;
- (u) maintaining a provincial database of redundant goods;
- (v) the coordination of provincial information for the national database of redundant goods;
- (w) the formulation of a distribution strategy;
- (x) giving functional system support.

### 2.3 Technical Review Committee

- 2.3.1 The purpose of the Technical Review Committee is to review evaluation reports received from an institution and make recommendations to an accounting officer or accounting authority for the award of a tender.
- 2.3.2 The Technical Review Committee shall review the following contracts:
  - (a) contracts of which the value exceeds the departmental predetermined threshold;
  - (b) contracts which are complex or sensitive, where agreement between the heads of departments is needed;
  - (c) transversal period contracts; and
  - (d) any other contract referred by the accounting officer or accounting authority of an institution to Treasury, with Treasury's approval.
- 2.3.2 The decision of what must be regarded as of transversal nature, must be a consensus decision between the departments concerned and must also be to the best advantage of the Province.
- 2.3.3 An institution may award a contract referred to in paragraph 2.3.1 only after the bids for the contract have been submitted to the Supply Chain Management Component within

the Treasury and the Technical Review Committee has made recommendations to the accounting officer or accounting authority of that institution on the award of the contract.

2.3.4 Other powers of the Technical Review Committee are –

- (a) the performance of compliance checks on quotation/bid evaluations referred to it; and
- (b) the formulation of recommendations to Award Authorities in accordance with Supply Chain Management policy framework.

**3 Departmental predetermined threshold value**

- 3.1 The accounting officer of a department must for the purpose of item (a) of paragraph 2.3.1 determine the threshold value of contracts above which the department may make an award only after recommendations of the Technical Review Committee have been received. Such determination must be based on the department's capacity.
  - 3.2 The accounting officer must review the departmental predetermined threshold value annually.
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