



Western Cape  
Government

Education

# WESTERN CAPE EDUCATION DEPARTMENT

## ACCOUNTING OFFICER'S SYSTEM (AOS) FOR

### PART A - SUPPLY CHAIN MANAGEMENT AND MOVEABLE ASSET MANAGEMENT

### PART B - THE DELIVERY AND MAINTENANCE OF INFRASTRUCTURE

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## PART A

# SUPPLY CHAIN MANAGEMENT AND MOVEABLE ASSET MANAGEMENT

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## **FOREWORD**

Section 38 of the Public Finance Management Act, 1999 confers general responsibilities on Accounting Officers. It determines in sub-section 1 that:

***“The accounting officer for a department, trading entity or constitutional institution-***

- (a) must ensure that that department, trading entity or constitutional institution has and maintains –***
- (b) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and***
- (c) is responsible for the management, including the safeguarding and the maintenance of the assets, and for the management of liabilities, of the department.”***

To this end, this document, called the Accounting Officer's System is developed.

Its purpose is to:

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

Whilst the Accounting Officer's System addresses and sets out the policy aspects of Supply Chain and Moveable Asset Management in the Department, the Supply Chain Management Delegations set out the decision-making power that gives effect to the processes in the Accounting Officer's System. The delegations also aim to create a culture of ownership and accountability amongst decision-makers that in turn inspires trust.

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

## **EXECUTIVE SUMMARY**

Supply Chain Management draws together the once fragmented processes of procurement and provisioning as two processes in the same chain that has as its purpose the elimination of all non-value adding steps in order to render a fast, efficient and cost-effective service.

The Accounting Officer's System applies this concept in the Department by giving effect to the spirit and purport of the PFMA that is "let the manager manage and be accountable." It calls for initiative, innovation and the establishment of best practices by the Accounting Officer and the SCM unit, thus creating a culture of responsibility and imposing a burden of care not only on the Accounting Officer, but on each and every official in the Department.

In the reading and execution of this document, officials are, therefore, to be mindful of the principles of *Batho Pele*, the Pillars of Procurement as outlined in Section 217 of the Constitution and the Preferential Procurement Policy Framework Act and its Regulations.

This document sets out the functions of the Department and, in particular, the powers and functions, explicitly and per implication, vested in the Accounting Officer. It goes further by setting out all procedural, institutional and administrative actions involved in the day-to-day Supply Chain and Moveable Asset Management operations.

The Accounting Officer's System effectively constitutes the norm against which all the actions pertaining to Supply Chain and Moveable Asset Management of the Department will be executed, measured, and justified.

The Accounting Officer's System intends to achieve the following objectives:

- (a) Explain the Legislative System within which the Supply Chain of the Department functions, as well as the holistic view of how and where the Department fits into the order of things.
- (b) Identify and address all issues around institutionalisation with particular reference to the following phases of Supply Chain Management:
  - Demand Management;
  - Acquisition Management;
  - Contract Management;
  - Logistics Management;
  - Asset Management;
  - Disposal Management;
  - Compliance Monitoring, Risk Management and Internal Control;
  - Reporting of SCM Information; and
  - Regular Assessment of SCM Performance.

## **DEFINITIONS**

In this Accounting Officer's System, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

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

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

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

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

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

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

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

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

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

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

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

**“end-user”** means the relevant unit requesting moveable assets and to whom moveable assets are issued by the Department;

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

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

**“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;

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

“ **eprocurement solution**” (**ePS**) means a web-based system that houses the Western Cape Supplier Evidence Bank and is utilised for the request of quotations (RFQ's), the receipt thereof and the adjudication of quotations, submitted by suppliers;

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

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

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

“**senior official**” means an official with the rank of at least Assistant Director;

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

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

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

“**system**” refers to manual and/or computerised systems.

# **LEGISLATIVE FRAMEWORK**

## **1. PURPOSE**

To define all regulatory and functional legislation applicable to the Supply Chain and Moveable Asset Management System.

### **1.1 The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).**

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

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

***"When an organ of state in the national, provincial or local sphere of government, or any other department identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective."***

### **1.2 The Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA)**

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

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

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

### **The Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) (PPPFA),**

Subsection 2 of section 217 of the Constitution determines that:

***"Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-***

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

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

### 1.3 **The Preferential Procurement Regulations, 2017**

These are the enabling mechanisms of the PPPFA mentioned in paragraph 1.2. They set out the formulas for the point system and stipulate the rules and procedures governing the preferences that might be claimed in terms of this Act.

The Regulations are the basis upon which these preferences, in particular section 217 (2) of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), will be given and is based upon a point system:

- (a) 80/20 for tenders between R30 000.00 and equal to R50million (R50 000 000)
- (b) 90/10 for tenders above R50 million (R50 000 000)
- (c) Where the 10 and 20 points are preferences and the 80 and 90 points are for price respectively

#### The 80/20 Preference Point System

This system applies to all bids with a Rand value equal to, or above R30 000 and up to a Rand value of R 50 000 000 (all applicable taxes included). Organs of state may, however, apply this system on price quotations with a value less than R30 000, if and when appropriate. A total of 80 points is allocated for price and 20 points for B-BBEE status level of contribution. The points scored by a bidder in respect of the B-BBEE contribution must be added to the points scored for price and the contract must be awarded to the bidder who scores the highest total number of points.

#### The 90/10 Preference Point System

This system applies to all bids with a Rand value above R50 000 000 (all applicable taxes included). A total of 90 points is allocated for price and 10 points for B-BBEE status level of contribution. The points scored by a bidder in respect of B-BBEE contribution must be added to the points scored for price and the contract must be awarded to the tenderer who scores the highest total number of points.

The maximum premium for the application of the 80/20 preference point system amounts to 25% while the maximum premium for the 90/10 preference point system amounts to 11.1%. This is the maximum premium government is prepared to pay for promoting preferential procurement.

Points are allocated as follows:

**Table 1:**

<b>BBBEE Status Level Contributor</b>	<b>Number of Points for 80/20 system</b>	<b>Number of Points for 90/10 system</b>
<b>1</b>	<b>20</b>	<b>10</b>
<b>2</b>	<b>18</b>	<b>9</b>
<b>3</b>	<b>14</b>	<b>6</b>
<b>4</b>	<b>12</b>	<b>5</b>
<b>5</b>	<b>8</b>	<b>4</b>
<b>6</b>	<b>6</b>	<b>3</b>
<b>7</b>	<b>4</b>	<b>2</b>
<b>8</b>	<b>2</b>	<b>1</b>
<b>Non-compliant contributor</b>	<b>0</b>	<b>0</b>

#### **1.4 National Treasury Regulations are issued in terms of the PFMA dated March 2005**

Section 76(4) (c) of the PFMA determines that:

***“The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;”***

Regulation 16A regulates Supply Chain Management and particularly addresses the issue of Government Procurement. In terms of Regulation 16A 3.1.1 to 3.1.3:

***“3.1.1 The accounting officer or accounting authority of an institution to which these Instructions apply must develop, document, maintain and implement an effective and efficient supply chain management system.***

***3.1.2 The supply chain management system referred to in paragraph 3.1.1 must be consistent with:***

- (a) the Constitution of the Republic of South Africa, 1996;***
- (b) the regulatory framework for supply chain management in terms of the act referred to in the Western Cape Provincial Treasury Instructions 16A ;***
- (c) the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000);***
- (d) the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003);***
- (e) the State Information Technology Act, 1998 (Act 88 of 1998);***
- (f) the Construction Industry Development Board Act, 2000 (Act 38 of 2000);***
- (g) the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);***
- (h) the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);***
- (i) the Promotion of Access to Information Act, 2000(Act 2 of 2000); and***
- (j) any other applicable legislation.***

***3.1.3 The supply chain management system referred to in paragraph 3.1.1 must provide for at least the following:***

- (a) institutionalisation;***
- (b) demand management;***
- (c) acquisition management;***
- (d) compliance monitoring;***
- (e) contract management;***
- (f) logistics management;***
- (g) moveable asset management;***
- (h) disposal management;***

- (i) reporting of supply chain management information;**
- (j) regular assessment of supply chain management performance;**
- (k) risk management (including internal controls); and**
- (l) financial treatment and disclosure of assets and inventories.”**

Regulation 16A3.2.1 requires that:

**“The accounting officer or accounting authority must ensure that the supply chain management system gives effect to the core principles of behaviour as envisaged by the Five Pillars of Procurement which are:**

**(a) Fairness (ethics and fair dealing)**

- (i) comply with ethical standards;**
- (ii) recognise and deal with conflicts of interest or the potential therefor;**
- (iii) deal with suppliers even-handedly;**
- (iv) do not compromise the standing of the state through acceptance of gifts or hospitality;**
- (v) be scrupulous in the use of public property; and**
- (vi) provide assistance in the elimination of fraud and corruption.**

**(b) Equity**

- (i) advance the development of small, medium and micro enterprises;**
- (ii) empower black people including women, workers, youth, people with disabilities and people living in rural areas;**
- (iii) support the creation of work opportunities;**
- (iv) promote local enterprises; and**
- (v) support local products.**

**(c) Transparency (accountability and reporting)**

- (i) individuals and institutions are answerable for their actions and outcomes; and**
- (ii) openness and transparency in administration by external scrutiny through public reporting.**

**(d) Competiveness (open and effective competition)**

- (i) a framework of procurement legislation, policies, practices and procedures that is transparent;**
- (ii) openness in procurement processes;**
- (iii) encouragement of effective competition through procurement methods suited to market circumstances;**

- (iv) **observance of the provisions of the Preferential Procurement Policy Framework Act;**
- (v) **potential suppliers have reasonable access to procurement opportunities;**
- (vi) **where market circumstances limit competition – institutions recognise it and use procurement methods that take account of it;**
- (vii) **adequate and timely information is provided to suppliers to enable them to bid;**
- (viii) **bias and favouritism are eliminated;**
- (ix) **the cost of bidding for opportunities does not deter competent suppliers; and**
- (x) **costs incurred in promoting competition are at least commensurate with the benefits received.**

**(e) Cost effectiveness (value for money)**

- (i) **avoid any unnecessary costs and delays for the institution or suppliers;**
- (ii) **monitor supply arrangements on an on-going basis and reconsider if existing arrangements cease to provide the expected benefits; and**
- (iii) **ensure continuous improvement in the effectiveness and efficiency of internal processes and systems.**

**1.5 Accounting Officer's System (AOS)**

Development of the AOS gives effect to Section 38(1)(a)(iii) of the PFMA, as stipulated in paragraph 1.2 above.

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

**1.6 Promotion of the Administrative Justice Act, 2000 (Act No.3 of 2000) (PAJA)**

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

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

## **1.7 Promotion of the Access to Information Act, 2000 (Act No. 2 of 2000) (PAIA)**

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

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

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

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

Within SCM processes, PAIA becomes extremely relevant, e.g. in a situation where an unsuccessful bidder challenges a decision by the Department to not award a bid/tender to such bidder.

## **1.8 Protected Disclosures Act, 2000 (Act No 26 of 2000) (PDA)**

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

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

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

## **1.9 Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) (PCCAA)**

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

### **1.10 State Information Technology Agency Act, 1998 (Act No. 88 of 1998) (SITA)**

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

### **1.11 Construction Industry Development Board Act, 2000 (Act No.38 of 2000) (CIDBA)**

Certain government departments such as the Department of Transport and Public Works are mandated to deliver economic and social infrastructure, such as roads, school buildings, hospital buildings and general office buildings and to maintain these immovable assets. In the execution of its mandate the Department of Transport and Public Works contracts with service providers from the construction industry.

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

The Construction Industry Development Board (CIDB), a national body established by an Act of Parliament (Act 38 of 2000), is amongst others, responsible for developing the industry for the improved delivery of infrastructure to the South African public, working with all stakeholders for the sustainable growth of construction enterprises and the best practice of employers, contractors and the professions, identifying best practice and setting national standards and promoting common and ethical standards for construction delivery and contracts.

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

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

Furthermore, the CIDB Act requires that the National Minister responsible for Public Works must prescribe the manner in which public sector construction contracts may be invited, awarded and managed within the framework of the Register of Contractors and within the framework of the policy on procurement. It also requires that every government department must, subject to the policy on procurement, apply the Register of Contractors to its procurement process.

### **1.12 Competition Act, 1998 (Act No. 89 of 1998) (CA)**

The purpose of this Act is to promote and maintain competition in the Republic of South Africa in order to:

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

### **1.13 Other complementary legislation**

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

- (a) Departmental instructions issued in terms of the Provincial Treasury Instructions, 2019;
- (b) Departmental standard operating procedures issued in terms of the Provincial Treasury Instructions, 2019;
- (c) National and Provincial Treasury Practice Notes, Circulars and Instruction Notes;
- (d) National Treasury Framework for the Minimum Training and Deployment of SCM officials;
- (e) Construction Industry Development Board (CIDB) Regulations;
- (f) Construction Industry Development Board Guide to best practice;
- (g) Construction Industry Development Board Code of Conduct for all parties engaged in construction procurement;
- (h) CIDB Practice Notes;
- (i) National Conventional Arms Control Committee Instructions;
- (j) Department of Trade and Industry clearance in respect of contracts subject to the National Industrial Participation Program of that department;
- (k) National Treasury SCM Guide for Accounting Officers, 2004;

- (l) National policy strategy to guide uniformity in procurement reform processes in government;
- (m) The Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act No.4 of 2000);
- (n) The Conventional Penalties Act, 1962 (Act No.15 of 1962);
- (o) The Arbitration Act, 1965 (Act No.42 of 1965);
- (p) The Public Protector Act, 1994 (Act No.23 of 1994);
- (q) The Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- (r) The Intellectual Property Rights From Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008);
- (s) The Consumer Protection Act, 2008 (Act No. 68 of 2008);
- (t) The State Liability Act, 2011 (Act No. 14 of 2011);
- (u) The Public Audit Act, 2004 (Act No. 25 of 2004);
- (v) The Companies Act, 2008 (Act No. 71 of 2008);
- (w) The Interpretation Act, 1957 (Act No.33 of 1957);
- (x) The South African Revenue Act; and
- (y) Tax amendment Acts and regulations.
- (z) The Public Administration Management (PAM) Act (will come into operation when the regulations are promulgated.)

The above is not a complete list. There may be other pieces of legislation that may also be applicable in the SCM environment.

# **INSTITUTIONALISATION**

# CHAPTER 1

## FUNCTIONAL ARRANGEMENTS

### 1.1 PURPOSE

- 1.1.1 To communicate to all officials in the Department the institutional arrangements involving supply chain and moveable asset management activities. This is an on-going process in which a set of activities, structures and values become an integral and sustainable part of an organisation. It thus involves an element of internalisation. As we operate in a changing environment, these institutional arrangements will be updated from time to time as the need arises.
- 1.1.2 The AOS thus sets out the functions of the WCED Supply Chain Management and in particular the powers and functions explicitly and per implication vested in the Accounting Officer. It goes further by setting out all procedural, institutional and administrative actions involved in the day-to-day SCM operations. The AOS effectively constitutes the yardstick against which all the SCM actions of the WCED will be executed, measured and justified.

### 1.2 STRATEGIC VISION OF THE DEPARTMENT

Creating opportunity for all through improved education outcomes.

### 1.3 DEPARTMENTAL CORE FUNCTIONS AND SERVICE DELIVERY OBLIGATIONS

The core functions of SCM within the Department are:

- (a) Purchasing of goods and services of the desired quality, at lowest price, in the correct method and at the right time to get maximum value for money.
- (b) Minimizing procurement related costs by eliminating all non-value added functions and processes.
- (c) Serving the end-user (Responsibility Manager or line manager).
- (d) Ensuring compliance with all legislative requirements.
- (e) Ensuring that targets are met in respect of the procurement of goods and services.
- (f) Eliminating the duplication of functions, where possible.
- (g) Optimal utilisation and safeguarding of moveable assets.
- (h) Monitoring of compliance with the co-operation of line managers.
- (i) Verification of bidders who claim B-BBEE points.
- (j) Supporting Departments suppliers/service providers to register on the Central Supplier Database (CSD) and the Western Cape Supplier Evidence Bank (WCSEB).

## **1.4 THE UTILISATION OF SCM AS A DELIVERY MODEL TO GIVE EFFECT TO THE DEPARTMENT'S STRATEGIC VISION**

- 1.4.1 In order to become more effective, the Department annually sets out its Strategic Objectives which are documented in the Annual Performance Plan (APP). A large percentage of the Department's budget is spent via the SCM process, making the latter an integral part of enhancing the Department's service delivery to meet the strategic objectives identified in the APP.
- 1.4.2 Every Responsibility Manager must therefore, in line with Chapter 5 of the Treasury Regulations and Treasury Instruction 16A, paragraph 4.3 identify the goods and services they will require to achieve their strategic objectives. These matters of procurement will be included in the Procurement Plan for each Medium Term Expenditure Framework (MTEF) period. The Supply Chain will annually consolidate the requirements of the Responsibility Managers into a WCED Procurement Plan which will be approved by the Accounting Officer. This plan will be annually submitted to the Provincial Treasury in accordance with National Treasury Instruction Note 32/2011, Provincial Treasury Circular no 4/2018 and Provincial Budget Circular 2 of 2018/19. The approved plan will, amongst others, identify the goods/services required, the budget set aside for the procurement, the date that the goods/services will be required, when the request will be submitted and also the procurement method that will be employed for the specific procurement.
- 1.4.3 If any goods/services are requested and said procurement is not on the approved plan, such procurement must be approved by the Accounting Officer or delegated official before any procurement initiatives are undertaken.
- 1.4.4 The Department will pursue the following objectives in this regard:
- (a) Ensure adequate planning has taken place before procurement of goods and services;
  - (b) Ensure that procurement processes/projects are adequately funded or budgeted for;
  - (c) Define and develop simple standardised SCM processes to ensure the satisfactory delivery of goods and services and the control and management thereof;
  - (d) Build a purchasing culture within the Department that is performance orientated, flexible, yet aligned to prescribed procurement policy and procedure, socio-economically responsive but driven by customer satisfaction;
  - (e) Value for money procurement, and inventory and moveable asset management;
  - (f) Employment of strategies to minimize procurement costs;
  - (g) The use of service level agreements to elevate contract management and mitigate risks for the Department, where appropriate;
  - (h) Introduce mechanisms to adequately address concerns from the public with regards to the awarding of bids.

## 1.5 SCOPE OF THE APPLICATION OF THE ACCOUNTING OFFICER'S SYSTEM (AOS)

- 1.5.1 All officials and other role players involved with the supply chain management (SCM) must implement this AOS in a way that gives effect to:
- (a) Section 217 of the Constitution;
  - (b) Section 38 (1) (a) (iii) of the PFMA and other applicable provisions of the Act;
  - (c) Chapter 16A of the National Treasury Regulations dated March 2005 and Chapter 16A of the Provincial Treasury Instructions 23 September 2019;
  - (d) Ensure that it is consistent with other applicable legislation; and
  - (e) Not undermine the objective for uniformity in supply chain management.
- 1.5.2 This AOS applies when the Department:
- (a) Procures goods and services (in some instances, works); and
  - (b) Disposes of moveable assets that are no longer needed.
- 1.5.3 The AOS further provides for an enabling mechanism for SCM and for departmental arrangements, administrative duties and delegated powers affecting SCM for every official involved in the process.
- 1.5.4 All activities and processes included in this document will be measured against the five pillars of procurement which are ***fairness, equitability, transparency, cost-effectiveness and competitiveness.***

## 1.6 SUPPLY CHAIN MANAGEMENT UNIT

### 1.6.1 Establishment of the Unit

- 1.6.1.1 In terms of National Treasury Regulations, the Accounting Officer must establish a separate supply chain management unit within the Office of the Chief Financial Officer (CFO), to implement the Department's supply chain management system.
- 1.6.1.2 The Supply Chain Management unit must provide for at least the following:
- (a) demand management;
  - (b) acquisition management;
  - (c) logistics management;
  - (d) disposal management;
  - (e) risk management; and
  - (f) regular assessment of supply chain performance.

### 1.6.2 Structure of the SCM unit

In terms of the Regulations on Supply Chain Management and Regulations in terms of the PFMA: Framework for Supply Chain Management issued by the National Treasury, the Department is compelled to have a Supply Chain Management Unit.

- (a) The SCM Unit of the WCED resorts under the Chief Financial Officer (CFO) in terms of regulation 4(1) of the SCM Framework Regulations and Regulation 4 of the Regulations of the PFMA: Framework for Supply Chain Management.
- (b) The post establishment and organogram of the WCED for the Directorate: Procurement Management is reflected in **Diagram 1**.

### 1.6.3 Functions of the SCM unit

The supply chain management unit of the Department will be responsible for the following functions:

- (a) Implementation of the approved supply chain management system;
- (b) On-going maintenance of the SCM system to improve effectiveness and efficiencies of the system;
- (c) Reporting to the Accounting Officer on performance of the SCM system and comply to reporting requirements for SCM as prescribed by regulations and policy;
- (d) Enforcement of the regulatory framework for SCM within the Department (i.e. prescribed National, Provincial and Departmental SCM requirements aligned to legislation, policy and delegation frameworks within the Department);
- (e) Render assistance and administrative support to the line function managers and their delegates, other employees and the departmental bid committee in the performance of their SCM responsibilities;
- (f) Capacity building and training of employees involved in SCM processes;
- (g) Procure goods and services for the Department;
- (h) Manage bid administration processes which include but are not limited to:
  - (i) Check and arrange for the signing and approval of bid specifications;
  - (ii) Compile bid documents;
  - (iii) Advertise bids in the Government Tender Bulletin and/or any other media, etc.;
  - (iv) Advertise quotations according to the prescribed threshold via the e-Procurement Solution (ePS);
  - (v) Receive and open bids;
  - (vi) Check for compliance and signatures on bid documents;
  - (vii) Maintain a bid register;
  - (viii) Preparation of procedures and bid documents for evaluation at the Bid Evaluation Committee and submission to the Departmental Bid Committee and Accounting Officer or delegated officials;
  - (ix) Record and monitor the award of bids;

- (i) Adjudication of quotations, capturing of the award on the ePS in terms of delegated levels and monthly reporting of procurement statistics;
- (j) Administer and manage contracts within their delegated authority;
- (k) Communicate and liaise with service providers/contractors;
- (l) Execute delegations in terms of financial and SCM delegations;
- (m) Maintain and provide an efficient and effective logistical and asset management system for the Department;
- (n) Maintain a proper audit trail in respect of all transactions processed by the unit;
- (o) Develop departmental policies for implementation within the Department to ensure sound governance practices within SCM; and
- (p) Adhere to control measures and risk mitigation procedures defined by this AOS.

#### **1.6.4 Mandate of the SCM unit**

- 1.6.4.1 To procure on behalf of the Department within the parameters of the Department's delegation framework;
- 1.6.4.2 Exercise its powers as conferred through delegations;
- 1.6.4.3 Enforce a departmental monitoring and evaluation process in respect of the Department's compliance to SCM legislation, policy and this AOS; and
- 1.6.4.4 Issue departmental best practice guidelines for implementation within the Department to ensure sound governance practices within SCM.

#### **1.7 RESPONSIBILITIES OF LINE MANAGERS IN RELATION TO SCM**

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

- (a) Understand and plan for future needs;
- (b) Identify critical delivery dates;
- (c) Ensure that the necessary funds are available for goods and services to be procured;
- (d) Acquaint themselves with SCM procurement prescripts and policy as well as the requirements encapsulated within the AOS, so that the requirements enshrined within Section 217 of the Constitution are met when they are involved in the procurement processes of the Department;
- (e) Develop draft specifications for areas that require technical skill and needs associated with their programme or sub-programme deliverables;
- (f) Timeously provide the SCM unit with all the necessary information to arrange for the acquisition of goods and services;

- (g) Maintain a close and co-operative relationship with the SCM unit so that the goals and objectives of the Department are efficiently and effectively met when involved in SCM activity;
- (h) Abide by the National Treasury Code of Conduct and Provincial Treasury Code of Ethics for SCM Practitioners and declare any conflict of interest;
- (i) Provide technical advice and when co-opted, make presentations to the Departmental Bid Committee;
- (j) Be custodians of assets under their control; and
- (k) Manage contracts and report to SCM where required.

## 1.8 SUPPLY CHAIN MANAGEMENT DELEGATIONS

1.8.1 Delegations are issued to functionaries in terms of Section 44(1) of the PFMA, the Framework for SCM Regulations and the Provincial Treasury Instructions.

- a) The delegations will be reviewed as and when required and it does not divest the Accounting Officer from his/her power to retract all or any of the delegations if circumstances necessitate such a decision.
- b) The minimum standards for SCM delegation are attached in **Addendum 1**.
- c) Any official in the line of decision-making and not only the Accounting Officer or delegated official may:
  - refer any recommendation made by the Departmental Bid Committee, back to the Departmental Bid Committee for reconsideration, should he/she not agree with such recommendation which is required to offer sound advice to the Accounting Officer or delegated official to make a justifiable and correct decision.
  - However, in those instances where it is impractical to convene a Bid Committee meeting (cases of urgency or emergency), a matter may be presented directly to the Accounting Officer or delegated official for a decision and the matter must be presented to the next scheduled Bid Committee meeting for noting and inclusion into its minutes.
- d) When an official in the line of decision-making disagrees with the recommendation of the Departmental Bid Committee, such disagreement must be justified and the reasons must be documented in full.
- e) The following provisions on delegations apply:
  - Delegates should note that the execution of any delegated power is subject to the provisions for Sections 44(2) and 44(3) of the PFMA, the requirements of just administrative action as provided for in the Promotion of Administrative Justice Act and general administrative law principles, which include the principle of "*functus officio*" (already executed the specific function and may therefore not revisit that decision).
  - It must be noted that in terms of case law there are only two instances where an Accounting Officer may revisit a decision. If there is sufficient evidence of fraud or corruption, any decision taken may be revisited. The Accounting Officer may approach a Court of Law to have such decision reviewed and set-aside.

- The Accounting Officer or delegated official may, at any stage of a bidding process, refer any recommendation made by the Bid Evaluation Committee or Departmental Bid Committee back to such committee for reconsideration of the recommendation.
- The Accounting Officer or delegated official may, at any stage of a bidding process, refer any recommendation made by the Bid Evaluation Committee or Departmental Bid Committee back to such committee for reconsideration of the recommendation.
- The power to engage in supply chain management activities is vested in the Accounting Officer who may delegate his/her powers in writing to any official in the Department in terms of Section 44 of the PFMA respectively.
- Such delegation must take account of the legislative framework and the relevant AOS to ensure efficient and effective execution thereof. Procurement activities should, as far as possible be performed by supply chain management practitioners only.
- Where the Accounting Officer or delegated official disagrees with the recommendation of a bid committee, such decision should be justified and the reasons must be well documented and should preferably be referred back to the Bid Committee for re-consideration.

With reference to PTI 16A3.7.1 and Section 44 of the PFMA -

- (1) The Accounting Officer may:
  - (a) in writing delegate any of the powers entrusted or delegated to the Accounting Officer in terms of this Act, to an official in the Department or
  - (b) instruct any official in the Department to perform any of the duties assigned to the Accounting Officer in terms of this Act.
- (2) A delegation or instruction to an official in terms of section 44 (2)(1):
  - (a) is subject to any limitations and conditions prescribed in terms of the Act or as the relevant Treasury may impose;
  - (b) is subject to any limitations and conditions the Accounting Officer may impose;
  - (c) may either be to a specific individual or to the holder of a specific post in the Department; and
  - (d) does not divest the Accounting Officer of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The Accounting Officer may confirm, vary or revoke any decision taken by an official as a result of a delegation or instruction in terms of sub-section (1), subject to any rights that may have become vested as a consequence of the decision.

### 1.8.2 **Delegated persons**

Delegated officials will perform all relevant delegations issued by the Accounting Officer. Persons acting officially in a certain rank may exercise the delegations assigned to that rank. Delegations must be exercised responsibly.

The delegated officials will perform all delegations issued by the Accounting Officer. The following officials will exercise the delegations:

- (a) Supply Chain Management practitioners in the office of the CFO.
- (b) Officials acting in a certain rank may exercise the delegations assigned to that rank.
- (c) Other officials not in the Office of the CFO as indicated in the delegations.

### 1.8.3 **Failure to comply with the requirement of the delegations**

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

- (a) Recover from the delegated official(s), through the set administrative process, all expenses the Department has suffered/lost through the exercise of the delegations.
- (b) Institute the necessary steps in terms of misconduct (Consequence Management).

## 1.9 **REQUIRED COMPETENCIES FOR SUPPLY CHAIN MANAGEMENT UNIT**

### 1.9.1 **Competency Dictionaries**

- (a) The CFO will ensure that the following competencies exist within the supply chain management component namely:
  - (i) Financial acumen;
  - (ii) Accounting;
  - (iii) Cost and economic analysis;
  - (iv) Legal interpretation;
  - (v) Strategic sourcing;
  - (vi) Contract Management;
  - (vii) Document writing and Research;
  - (viii) Asset Management; and
  - (ix) Logistical and Disposal Management.

### 1.9.2 **Training of supply chain management practitioners and members of committees.**

- (a) All officials involved in the supply chain management functions of the Department must be trained and deployed in accordance with the National Treasury requirements.
- (b) It will be the responsibility of the CFO to:
  - (i) Provide guidance, training and deployment of supply chain management officials within a Department;
  - (ii) Develop officials for a career in SCM;
  - (iii) Provide immediate training with the focus on intensive training on all elements of SCM; and
  - (iv) Provide advance training that includes specialist skills within each element of SCM.
- (c) Ensure that, where necessary, training is provided for:
  - (i) Junior and/or Middle Managers;
  - (ii) Practitioners who are involved in the day-to-day operation of SCM; and
  - (iii) New entrants/new appointees in the SCM unit irrespective of the level at which they are appointed.
- (d) Ensure that content of the training materials of service providers are relevant and where applicable accredited by the relevant authority.
- (e) Have a phased in training strategy which covers short-term (basic SCM), medium- term (training on all elements of SCM and training on specialist skills) and long-term (formal diploma and degree courses at tertiary institutions) requirements.

### 1.9.3 **Training needs assessment**

- (a) A training needs assessment of all those officials involved in SCM activities will be done in accordance with the individual officials' performance management and development cycle.
- (b) Based on the training needs' assessment, the CFO must identify and fund the appropriate training interventions to address the identified needs. The interventions may amongst others include:
  - (i) person to person training which may include procurement planning, procurement processes and asset management;
  - (ii) training via short courses through bodies like the Provincial Treasury, National School of Government and/or outside service providers; and/or
  - (iii) formal training via higher education(tertiary) institutions.

## CHAPTER 2

### SCM COMMITTEES

#### 2.1 REQUIREMENTS

- 2.1.1 National Treasury Regulation 16A6.2 stipulates that the Department's SCM system must, *inter alia*, provide for the adjudication of bids through a bid adjudication committee, the establishment, composition and functioning of bid specification, evaluation and adjudication committees and the selection of bid adjudication members.
- 2.1.2 The WCED has exercised the option, in terms of paragraph 16A6.2 (e) of the National Treasury Regulations to have a Bid Committee which shall not have the powers to adjudicate bids but to make recommendations to the Accounting Officer or delegated official.
- 2.1.3 All members and co-opted members of the relevant committee must adhere to the Code of Conduct for Supply Chain Practitioners and must sign the prescribed declaration of interest declaring their interest, or otherwise, in any offer under consideration.
- 2.1.4 The effective functioning and performance of these committees is critical to the Accounting Officer's mandate which is to ensure a fair, equitable, transparent, cost-effective and competitive system.
- 2.1.5 The SCM Committees, specifically the Bid Specification, Bid Evaluation, Departmental Bid Committees and Quotation Committees, where appropriate are involved in different stages of the procurement process which are usually interlinked.
- 2.1.6 The Bid Specification and Bid Evaluation Committees make recommendation(s) to the Departmental Bid Committee which must in turn make recommendation(s) to the Accounting Officer via the Chief Financial Officer which leads to the awarding of departmental bids. It is therefore important that the Accounting Officer ensures that the principle of good governance is adhered to, prevents potential bias in the selection of committee members, as well as ensures that sound institutional memory is applied in the award of high value procurement purchases.
- 2.1.7 To perform and function effectively the SCM committees shall be comprised as follows:
- Chairperson;
  - Vice chairperson;
  - Other members (which may include alternate members);
  - Secretariat;

- Quorum of 60%

## 2.2 BID SPECIFICATION COMMITTEE

2.2.1 A bid specification committee (BSC) must be established to consider the specification of each bid with an estimated value of more than R500 000 (inclusive of VAT). This BSC may also consider specifications for quotations up to R500 000 (inclusive of VAT) as and when required.

The BSC must consist of at least three (3) officials plus a chairperson, appointed in writing by the Accounting Officer or delegated official. The Responsibility Manager that requires the goods/services or a representative, will be co-opted to the meeting to give specialist or technical input in respect of specifications.

2.2.2 The BSC must, in consultation with the Responsibility Manager, ensure the compilation of unbiased bid specifications and drafting of measurable evaluation criteria, for procurement undertaken by the Department.

### (a) Specifications

- (i) Must be drafted in an unbiased manner to allow all potential suppliers to submit an offer for their goods and services;
- (ii) Must take account of accepted standards with which the equipment, material or workmanship should comply, for example, those issued by the South African Bureau of Standards (SABS), the International Standards Organisation (ISO) or an authority accredited or recognised by the South African National Accreditation System (SANAS);
- (iii) Should, where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
- (iv) May not create trade barriers in contract requirements in the form of specifications, plans, drawings, designs, test methods, packaging and marking or labelling of conformity certification;
- (v) May not refer to any particular trademark, name, patent, design, type, specific origin or manufacturer, unless there is no other sufficiently precise or intelligible way of describing the characteristics of work, in which case such reference must be accompanied by the word "or equivalent";
- (vi) Must ensure that such goods/services are available in the market;
- (vii) Must specify the broad criteria intended for the evaluation of bids, to evaluate bids objectively;
- (viii) Must quote standards and technical specifications in bidding documents which should promote the broadest possible competition, while assuring that critical elements of performance or other requirements for the goods, services and/or works being procured are achieved;
- (ix) Must ensure that the quality and dimensions of goods/services required are not over specified or rigid to the extent that they will prevent bidders from submitting offers which are available and which will yield the same result in terms of meeting

the WCED's objectives. Where dimensions are specified, tolerances to the specified dimensions, that will be acceptable, must be included;

- (x) Must clearly specify the service to be rendered, the location where the goods/services must be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements and the warranty and maintenance requirements, as well as any other applicable terms and conditions;
- (xi) For each specification evaluated, members must sign the prescribed declaration of interest form declaring their interest or otherwise in the specification of goods/services that is under consideration; and
- (xii) The committee shall meet as and when required and minutes of every meeting must be signed by the Chairperson and Secretary and kept for record and audit purposes.

## **2.3 BID EVALUATION COMMITTEE**

2.3.1 A bid evaluation committee (BEC) must be established to evaluate, consider and recommend each formal bid received, that must be presented to the Departmental Bid Committee for recommendation. The BEC must consist of at least three (3) officials plus a chairperson appointed, in writing, by the Accounting Officer or delegated official.

2.3.2 The Responsibility Manager that requires the goods/services or a representative, will be co-opted to the meeting to give specialist or technical input in respect of the bids received.

2.3.3 A bid evaluation committee is responsible for the evaluation of bids received. The bid evaluation committee must:

- (a) Evaluate bids in accordance with the criteria stipulated in the bid document and check/verify:
  - (i) compliance with conditions of the bid (legitimacy tests);
  - (ii) compliance with specification;
  - (iii) factors that might have an influence on the award of the bid;
  - (iv) bids for completeness and technical correctness;
  - (v) where forms, requiring signatures, have not been signed – notes must be made and reported to the Bid Committee;
  - (vi) all other registers for completeness and correctness; and
  - (vii) supplier detail and claims in terms of preference points and B-BBEE status.
- (b) Allocate points in terms of the evaluation criteria and preference claims;
- (c) Evaluate each bidder's ability and capability to execute the contract (where required);
- (d) Report any non-compliance with the AOS to the Bid Committee, CFO and Accounting Officer;

- (e) Submit a recommendation report to the bid committee with regard to the awarding of the bid or any other related matter;
- (f) Re-evaluate bids in cases where recommendations have been referred back to the bid evaluation committee by the departmental bid committee or the Accounting Officer/delegated official;
- (g) For each bid evaluated, members of the committee must sign the prescribed declaration of interest declaring their interest or otherwise in any bid under consideration; and
- (h) The committee shall meet as and when required and minutes of every meeting must be signed by the Chairperson and Secretary and kept for record and audit purposes.

## **2.4 DEPARTMENTAL BID COMMITTEE**

2.4.1 The Accounting Officer or delegated official must establish and appoint a bid committee (BC) that will serve for a maximum period of three (3) years. The BC must consist of at least four senior officials constituted as follows:

- a) Chairperson;
- b) Vice-chairperson;
- c) Other members (cross-functional teams comprising senior officials (at least on Middle Management level) of whom at least one must be a supply chain practitioner);
- d) Secretariat (an official from the SCM unit is required to perform this duty).

Neither a member of the bid specification committee nor a member of the bid evaluation committee may be a member of the bid committee. A line manager who is a standing member of the bid committee who also serves on the BEC or BSC, in terms of their own programme/sub-programme procurement needs, or acts as an advisor to either committee, must recuse himself/herself when such a bid is being discussed and will have no voting rights when the recommendation is made in respect of such bid. He/she may be requested to give clarity as a member of the BEC or BSC.

2.4.2 For the purpose of continuity and not to delay meetings, the Accounting Officer or delegated official may also appoint other members to temporarily replace members that are absent from meetings due to illness, leave, etc. The Accounting Officer or delegated official will also decide whether or not such other members will have the same powers as members.

2.4.3 The bid committee is responsible for considering reports and recommendations made by the bid evaluation committee and, making a recommendation to the Accounting Officer or delegated official to make the final award.

2.4.4 The bid committee must ensure that:

- a) all necessary bid documents have been submitted;

- (b) disqualifications are justified and that valid and accountable reasons/motivations were furnished for passing over of the bid;
- (c) scoring has been fair, consistent and correctly calculated and applied; and
- (d) bidders' declarations of interests have been taken cognisance of.

2.4.5 The bid committee must also consider and rule on all recommendations/reports regarding the amendment, variation, extension / expansion, cancellation or transfer of contracts awarded and may also, if and when required to do so, consider for approval the recommendations of the bid specification committee in order to ensure that:

- (i) Proper and unbiased specifications were compiled for specific requirements;
- (ii) Proper terms of reference were drawn up for the service required, clearly indicating the scope of the requirement, the evaluation criteria, as well as weights and values;
- (iii) Strategic sourcing principles were applied and that the market was properly researched and analysed;
- (iv) Necessary funds are available;
- (v) The special conditions of contract, in addition to the general terms and conditions of contract, are appropriate, and
- (vi) The appropriate preference point system is prescribed.

2.4.6 All members as well as the secretary of the bid committee must be cleared at the level of 'Confidential' and must declare their financial interest.

2.4.7 Each member, as well as all officials rendering administrative support must sign a declaration of interest, impartiality and confidentiality at each Bid Committee meeting. Members are to declare that they will:

- a) accept the confidentiality of the meeting;
- b) not make known anything regarding the meeting, unless officially authorised;
- c) not purposefully favour or prejudice anyone;
- d) declare that they have no interest in companies that have submitted bids for consideration.

2.4.8 If a bid other than the one recommended by the Bid Evaluation Committee is recommended by the Bid Committee, the reasons for such recommendation must be documented and the Accounting Officer or delegated official may after consideration of the reasons for the deviation, ratify or reject the recommendation of the Bid Committee.

2.4.9 If the Accounting Officer or delegated official approves a bid other than the one recommended by the Bid Committee, the Auditor-General, the Provincial Treasury and the National Treasury must be notified of the reasons for deviating from such recommendation.

2.4.10 The Accounting Officer or delegated official may, at any stage, refer any recommendation made by the Bid Evaluation Committee or the Bid Committee back to that committee for reconsideration.

## **2.5 QUOTATION COMMITTEE**

- 2.5.1 A quotation committee (QC) must be established to consider all procurement requests in excess of R2 000 up to R500 000 (inclusive of VAT).
- 2.5.2 The Department has multiple Quotation Committees.
- 2.5.3 Each of the QCs will consist of at least three (3) officials, plus a chairperson, appointed in writing by the Accounting Officer or delegated official.
  - 2.5.3.1 The Quotation Committee (Head Office Supply Chain Unit) considers all procurement requests up to the value of R500 000 (inclusive of VAT). The Responsibility Manager that requires the goods/services or a representative, will be co-opted to the meeting to give specialist or technical input in respect of the offers received.

The Chairperson of this committee may approve and award up to a value of R200 000 (inclusive of VAT). The Deputy-Director: SCM Operations may approve an award up to a value of R500 000 subject to prior recommendation by the Quotation Committee.
  - 2.5.3.2 The Quotation Committee for Learning and Teaching Support Material (LTSM) considers all procurement requests in respect of LTSM up to the value of R500 000.00 (inclusive of VAT). The Chairperson of the LTSM Quotation Committee approves awards up to the value of R500 000.00 (inclusive of VAT).
  - 2.5.3.3 A quotation committee will also be appointed at each Education District Office (EDO) to handle all procurement requests up to the threshold value of R100 000.00 (inclusive of VAT). This committee will be appointed by the Accounting Officer or delegated official and will comprise officials in the Finance and SCM Division of the Education District Office. The chairperson will be the Deputy Director: Corporate Services. A vice Chairperson must also be appointed. The Responsibility Manager that requires the goods/services or a representative, will be co-opted to the meeting to give specialist or technical input in respect of the offers received.
- 2.5.4 In instances where the price of the highest total point's scorer exceeds the delegated threshold of the relevant Chairperson, the case must be evaluated by the relevant committee and a memorandum motivating the award or how to proceed with the relevant procurement must be submitted to the Accounting Officer or the delegated official via the Bid Committee.
- 2.5.5 In those instances where quotations received by Education District Offices exceed the value of R100 000 (inclusive of VAT), the Head Office Quotation Committee will evaluate such offers and make recommendations in respect of the award to the relevant Chairperson (up to the threshold value of R500 000 (inclusive of VAT)). In cases where the value of the RFQ recommended exceeds R500 000 (inclusive of VAT), the RFQ needs to be cancelled and the competitive bidding process, as discussed in Chapter 10 of the AOS needs to be followed.
- 2.5.6 All deliberations of the committee must be duly minuted, signed by the Chairperson and secretary and filed for audit purposes.

## **2.6 STOCK-TAKE COMMITTEE**

2.6.1 A stock-take committee (STC) must be established for stock taking procedures. The STC must comprise at least three (3) officials, appointed in writing by the Accounting Officer or delegated official.

The functions of the stock-take committee will be to:

- a) Ensure that all moveable assets are subjected to the stock-take;
- b) Ensure that all moveable assets are physically counted and verified against the asset register;
- c) Ensure that all deficiencies and surpluses are recorded and investigated;
- d) Report on the outcome of the stock-take; and
- e) Plan the stock-take programme and submit same to the Director: Procurement Management for approval.

The committee shall meet as and when required and minutes of every meeting must be signed by the Chairperson and Secretary and filed for audit purposes.

## **2.7 DISPOSAL COMMITTEE**

2.7.1 The Accounting Officer or delegated official must appoint a disposal committee to dispose of the moveable assets of the Department. The Disposal Committee must comprise of at least three (3) officials plus a chairperson appointed in writing by the Accounting Officer or delegated official. Technical advisors or specialists may be co-opted in respect of the disposal of specific classes of assets.

2.7.2 The committee will be constituted, as follows:

- (a) The Chairperson who must be an official who has the required skill and competencies for moveable asset management, disposal procedures, library materials;
- (b) Three (3) other members from different sections in the supply chain unit of which one (1) will be appointed as vice-chairperson;
- (c) Co-opted members who have sound knowledge of the moveable assets of the Department; and
- (d) An official who is physically and directly in control of the asset may not serve on the committee as a member.
- (e) The disposal of library material is dealt with by a separate disposal committee.

2.7.3 The committee shall meet as and when required and minutes of every meeting must be signed by the Chairperson and Secretary and kept for record and audit purposes.

#### 2.7.4 **Functions of the committee will be as follows:**

- (a) The Chairperson must determine the date when the assets earmarked for disposal have to be inspected and notify the committee members of the relevant details in writing;
- (b) if the asset is determined to be redundant, obsolete, damaged or unserviceable, record substantiating reasons for same;
- (c) motivate its recommendations for the disposal of the relevant assets to the relevant delegated officials;
- (d) remove all barcode labels and cancel the government mark on assets with a cross ("X") to indicate that it is no longer State property; and
- (e) maintain detailed records of all disposals for audit purposes;
- (f) inspect the interior of furniture to ensure that they do not contain any official documents which may be lost in the disposal process.

### 2.8 **NEGOTIATION COMMITTEE**

This Negotiation Committee (NC) is appointed by the Accounting Officer or delegated official for the purpose of negotiating a market-related price with tenderers as provided for in Regulation 7(9)(b)(i)-(iii) of the Preferential Procurement Regulations 2017, as well as to negotiate with service providers/suppliers revised terms and conditions in respect of contracts which include, but are limited to, additional or decreased services/commodity quantities and increased or decreased prices in those cases where approval is given by the Accounting Officer to undertake such negotiation.

- (a) Members of the committee must sign the prescribed declaration of interest form declaring their interest;
- (b) The committee shall meet on an ad-hoc basis or as and when required;
- (c) Minutes of every meeting shall be kept and the chairperson and secretary shall sign such minutes; and
- (d) The Committee must make a recommendation to the Departmental Bid Committee for consideration and approval by the Accounting Officer or delegated official.

### 2.9 **DUTIES AND POWERS OF THE VARIOUS COMMITTEE MEMBERS**

#### 2.9.1 **Chairperson**

- (a) The Chairperson:
  - (i) has a casting vote as well as a deliberate (ordinary) vote;
  - (ii) retains all his/her rights as a member;
  - (iii) may adjourn a meeting;
  - (iv) may rule on points of order which will be final;
  - (v) may withdraw any proposal or other matter under discussion before it is put to the vote; and
  - (vi) convenes extraordinary or ad-hoc committee meetings on request.

- (b) The Chairperson must:
- (i) In the case of the Departmental Bid Committee, determine the dates for committee meetings for each financial year in consultation with the appointed committee members;
  - (ii) In the case of the other committees convene meetings as and when required;
  - (iii) maintain order during a meeting and ensure that business is conducted in an orderly manner;
  - (iv) before opening a meeting, ensure that it is properly constituted and that a quorum is in place;
  - (v) protect the rights of every member;
  - (vi) vacate his / her seat to the vice chairperson, should he/she wish to partake in a discussion in a partial manner;
  - (vii) regulate participation in discussions;
  - (viii) deal with items in the sequence of the agenda;
  - (ix) ensure that members know exactly what they are required to vote on;
  - (x) ensure that only one member holds the floor at any one time;
  - (xi) provide guidance by directing the meeting, but shall not dominate;
  - (xii) conduct meetings in a formal manner; and
  - (xiii) formulate clearly the decisions to be minuted , sign and approve the minutes after they have been verified for correctness.

### **2.9.2 Vice-Chairperson (where appointed)**

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

### **2.9.3 Members**

- (a) Members of the Committees shall:
  - (i) be fully conversant with the powers and limitations of the Committee as well as all directives pertaining to Supply Chain Management, including but not limited to, the relevant sections of the Constitution, Public Finance Management Act and accompanying Treasury Regulations, Preferential Procurement Policy Framework Act, Broad-Based Black Economic Empowerment Act and accompanying Regulations, all directives issued by National Treasury/relevant Provincial Treasury as well as the delegated powers issued by the Accounting Officer or delegated official and at all times act in accordance with the above-mentioned legislation and procedures;
  - (ii) apply their minds to matters at hand in order to take meaningful and accountable decisions and in the event of doubt or uncertainty, to propose that matters be referred back for clarification;

- (iii) in advance, furnish a written apology should he/she not be able to attend a meeting;
- (iv) strive to be punctual for meetings and to be present for the duration of a meeting;
- (v) prepare properly for each meeting by studying the agenda and submissions/reports;
- (vi) be familiar with meeting procedures in order to make a contribution in the correct manner; and

(b) Members have the right to:

- (i) have advance knowledge of the agenda;
- (ii) submit proposals and participate in proceedings;
- (iii) vote;
- (iv) have a dissenting voice/vote; and
- (v) have the reasons therefore recorded.

#### **2.9.4 Co-opted members/advisors**

- (a) Co-opted members/advisors have the same powers and duties as members excluding the right to vote on any matter under discussion.
- (b) Members of the Bid Evaluation Committee may present their recommendations / reports to the Bid Committee and clarify any issues but shall not have any voting powers.

#### **2.9.5 Observers**

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

#### **2.10 ADMINISTRATIVE AND SECRETARIAL SUPPORT**

- (a) The Secretary must:
  - (i) In conjunction with the chairperson / vice-chairperson compile an agenda;
  - (ii) Give notice of proposed meetings to committee members;
  - (iii) Process and distribute all submissions/reports together with the agenda to committee members at least three (3) working days before the actual meeting takes place;
  - (iv) Minute all decisions taken at meetings;
  - (v) Adhere strictly to the requirements of the National Archives of South Africa Act, No. 43 of 1996 and accompanying directives;
  - (vi) Ensure that the proceedings at meetings are recorded;
  - (vii) Give written feedback of all decisions taken by the committee; and be responsible for all the administrative tasks of the Committee.

# CHAPTER 3

## ETHICAL STANDARDS

### 3.1 COMPLIANCE WITH ETHICAL STANDARDS

- 3.1.1 The Department expects that all members of staff involved in the procurement processes possess a high level of professionalism and integrity. It must be borne in mind that all SCM practitioners are responsible for the successful implementation of the initiative pertaining to Preferential Procurement. SCM practitioners have a duty to ensure that the system is not abused for any purpose, neither for the sake of the Department nor for any potential contractor/service provider.
- 3.1.2 Any employee suspected of acting contrary to this, will be dealt with in terms of the relevant prescripts and disciplinary procedures. The behaviour of all personnel will be based on the following:
- (a) open, honest and co-operative business relations with colleagues and vendors;
  - (b) confidentiality of both government and commercial information;
  - (c) avoidance of conflict of interest or a perception of bias and disclosure of such to the Head of the SCM unit;
  - (d) fair dealings and impartial conduct in the evaluation of bids;
  - (e) high standards of professionalism and competence as well as the encouragement of similar standards amongst colleagues;
  - (f) mutual trust and respect;
  - (g) an environment where business can be conducted with integrity and in a fair and reasonable manner;
  - (h) recognizing and dealing with conflicts or the potential thereof;
  - (i) dealing with suppliers even-handedly;
  - (j) ensuring that they do not compromise the good standing of the state through acts of impropriety, which may arise from the acceptance of gifts and hospitality;
  - (k) the scrupulous use of public property; and
  - (l) providing assistance in the elimination of fraud and corruption.
- 3.1.3 The Accounting Officer or delegated official has the right to request security clearance for any serving or newly appointed official involved in Supply Chain Management.

### 3.2 CONFIDENTIALITY

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

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

### **3.3 CODE OF CONDUCT FOR SCM PRACTITIONERS**

- 3.3.1 SCM practitioners should ensure that they perform their duties effectively and with integrity, in accordance with the relevant legislation, including the Public Service Regulations issued by the Department of Public Service and Administration, National Treasury Regulations, Provincial Treasury Instructions (PTI's) and directives issued by the Accounting Officer. SCM practitioners should also ensure that public resources are administered responsibly.
- 3.3.2 Practitioners should, at all times, be fair and impartial in the performance of their functions. At no time should any undue preferential treatment be given, to any group or individual. Nor should practitioners unfairly discriminate against any group or individual. Practitioners should not abuse the power and authority vested in them.
- 3.3.3 Practitioners should comply with the Code of Conduct for the Public Service as contained in Chapter 2 of the Public Service Regulations, 2017 and the Code of Ethics as contained in Paragraph 3.8.1 of the PTI's 2019.
- 3.3.4 Practitioners should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties. Practitioners should declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest.
- 3.3.5 Practitioners should not take improper advantage of their previous office after leaving their official position.
- 3.3.6 Practitioners are accountable for their decisions and actions to the public and should use public property scrupulously.
- 3.3.7 Only the Accounting Officer or delegated official has the authority to commit the government to any transaction for the procurement of goods and/or services. All transactions conducted by a SCM practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make false or misleading entries into such a system for any reason whatsoever.
- 3.3.8 SCM Practitioners should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only if it is in the public interest to do so.
- 3.3.9 Any information that is the property of the government or its supplier should be protected at all times. No information regarding any bid/contract / bidder/contractor may be revealed if such an action will infringe on the relevant bidder's/contractor's personal rights.
- 3.3.10 Matters of confidential nature in the possession of supply chain practitioners should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise.

### **3.4 CONFLICT OF INTEREST**

- 3.4.1 It will be expected that every official involved in supply chain management activities, be it in the development of specifications or management of a contract, sign the code of conduct document as issued by the National Treasury.

Each official will annually be issued with a code of conduct which is to be duly signed by the relevant official and retained for audit purposes. In addition, it will be expected that every official will declare his/her interest each and every time he/she is involved with a procurement related matter, declare any business, commercial interest or financial interest and/or activities undertaken for financial gain that may give rise to a possible conflict of interest as prescribed by the Accounting Officer or delegated official.

### **3.5 GRATIFICATIONS, HOSPITALITY AND GIFTS**

- 3.5.1 The provision of hospitality by suppliers may represent an attempt to circumvent the rules on acceptance of gifts. While modest hospitality may be accepted, its frequency and scale should not be significantly greater than that which the Department would be likely to provide in return.
- 3.5.2 The basic rule is that no gift or money should be accepted. The only possible exception to this rule, are gifts of an inexpensive/seasonal nature such as business diaries, calendars or pens. If accepted, it should be done in accordance with the Departmental Policy on the Acceptance of Gifts by Office based Officials and the extent of the gift should not be so substantial as to lead the reasonable person to believe that it would have had an impact on the decision making process. Officials may accept small gifts not exceeding R350.00 in value, but officials must ensure that such gifts are duly recorded in the gift register. Should an official receive a gift of a value in excess of R350.00, the gift must be recorded in the gift register and the Accounting Officer or delegated official must be requested to condone the receipt of such a gift.
- 3.5.3 The details of any gift that has been accepted must be disclosed in a register administered by a relevant official of the Department, regardless of the value of such gift. The offer of small gifts is an accepted part of commercial life and care must be taken not to offend or damage relationships with suppliers when explaining that acceptance is contrary to the Department's normal practice.
- 3.5.4 Any attempts by suppliers to undermine the honesty of the official by the offering of gifts or other incentives must be reported to the Accounting Officer or delegated official. If doubt exists whether the gift may be accepted, it should rather be declined or referred to senior management.

# CHAPTER 4

## SYSTEMS

### 4.1 INTRODUCTION

4.1.1 Currently, some Provincial Departments (including Provincial Parliament) utilise a combination of the Logistical Information System (LOGIS) and e-Procurement solution in the supply chain management and asset management environment for their procurement and provisioning requirements. The National Treasury is developing the Integrated Financial Management System (IFMS) which incorporates the functionalities of the ePS and LOGIS. Once developed, the Provincial Treasury will facilitate its implementation at all Western Cape Government departments.

### 4.2 LOGISTICAL INFORMATION SYSTEM

4.2.1 In order to impact on SCM in its totality, it is required that the operating systems for SCM also be fully aligned to the policy and regulatory frameworks that are currently being reviewed and refined.

4.2.2 To align policy and regulatory frameworks, the Provincial and National Treasuries will conduct a systems gap analysis on LOGIS to identify key areas for development that speaks to data integrity, internal control and segregation of duties, standardisation of mandatory systems and reporting requirements.

4.2.3 The transfer of system access control functions to the Provincial Treasury has enforced the following processes and procedures which are further enforced by the LOGIS User Account Management Policy attached as **Addendum 29**:

- (a) Implement a generic policy pertaining to access and system security;
- (b) Standardise system structures throughout departments to facilitate management information and reporting requirements;
- (c) Limit / refuse access to new/ current users who have not completed the required formal training and acquired the requisite degree of competency in accordance with his / her profile;
- (d) Implement effective user account management;
- (e) Standardise user I.D's to PERSAL number;
- (f) Standardise password length;
- (g) Login password expiry period;
- (h) Deactivate dormant as well as users who have left the system;
- (i) Verify and monitor that resubmission queues and exceptions are addressed as a matter of urgency; and
- (j) Catalogue / request reports on a monthly basis that require ongoing attention by departments / institutions e.g. payments outstanding / older than thirty (30) days.

4.2.4 Further refinement of policy and procedures in respect of the utilisation of the systems and monitoring thereof by the Provincial Treasury will ensure:

- (a) Enforcement and adherence to system requirements;
- (b) Segregation of duties in respect of requisitioning and approvals;
- (c) Better control measures that will result in efficient and effective systems' utilisation whilst the Province is preparing for the implementation of the National Integrated Financial Management Solutions; and
- (d) Consolidation of access control and systems configuration.

### **4.3 ALTERNATIVE SYSTEMS SUITE**

4.3.1 Given the delays in the implementation of the Integrated Financial Management Solutions (IFMS) by the National Treasury, it has become necessary for the Provincial Treasury to consider alternative options for the Province in order to give effect to the improvements it had been planning from a systems perspective. This has resulted in a series of engagements with National Treasury.

4.3.2 The following approach was adopted by Provincial Treasury:

- (a) Give effect to all compulsory / mandatory fields identified for LOGIS; and
- (b) As a last resort, reserve the option to acquire an e-procurement system if the combination initiatives referred to above do not deliver the desired results.

4.3.3 All processes will run concurrently thereby allowing the Province to give effect to envisaged improvements for SCM from a systems' perspective as well as simultaneously prepare for the implementation of the IFMS.

### **4.4 E-PROCUREMENT SOLUTION**

4.4. The e-Procurement Solution currently facilitates the procurement of goods and services and infrastructure procurement up to R500 000-00 (inclusive of VAT). The ePS, in line with Government's overall strategy to achieve continuing improvement in value for money, enhance competitiveness of suppliers, and provide business communities with a convenient and effective medium, through which companies and individuals alike, could identify and exploit business opportunities, has been implemented provincially by the Provincial Treasury.

4.4.2 The value and benefits of the ePS for business and departments include the following:

#### **(a) Business**

- (i) Bringing business opportunities within the reach of a larger audience, inclusive of smaller and emerging businesses, thereby stimulating broader spectrum competition; automation of manual processes (streamlining of the procurement processes);
- (ii) Promotes greater understanding and responsiveness amongst buyers, suppliers and other partners in the supply chain process;
- (iii) Limits the risk of irregularities / fraud in the process as only quotations received via the ePS are accepted;

- (iv) Suppliers need only register once and maintain their profile whilst doing business with all Provincial Departments;
- (v) Suppliers are notified by automatic alerts when mandatory documents are about to expire; and
- (vi) Helpdesk and support available on working days from 08:00 – 17:00.
- (vii) Access to the bid invitations is via a web-based application to suppliers who are duly registered on the Western Cape Supplier Evidence Bank (WCSEB). Access to this is free to the supplier and all that is required is an actively registered status on the WCSEB.

**(b) Departments**

- (i) Automation of manual procurement processes (improved productivity, reduction in paperwork and telephone, fax costs, etc.);
- (ii) Compliance to Section 217 of the Constitution;
- (iii) Sustainable preferential procurement strategy in place to support Small, Medium and Micro Enterprises(SMME's);
- (iv) Up to date and verified supplier information held centrally (valid tax clearance certificate, tax compliance status certificate (not housed on the WCSEB), company registration documents, etc.);
- (v) Fair and transparent system that limits the possibility of irregularities/ fraud and collusion between suppliers and departmental staff (quotes cannot be viewed or printed until the closing date/ time);
- (vi) Facilitates and streamlines provincial internal control processes;
- (vii) Request for quotations (RFQ's) are automatically scored in line with the PPPFA requirements;
- (viii) Provision of appropriate and accurate management information;
- (ix) Audit trail of all transactions; and
- (x) User account management functionalities.

**(c) Access to the Bid invitations**

Access to the bid invitations is via a web-based application to suppliers who are duly registered on the CSD and Western Cape Supplier Evidence Bank (WCSEB). Access to this is free to the supplier and all that is required is an actively registered status on the WCSEB.

4.4.3 The roles and responsibilities pertaining to the ePS of Departmental Supply Chain managers are as follows:

- (i) Orientation of departmental system users
- (ii) Identification of training needs and provide person-to-person training
- (iii) Evaluate and recommend system enhancements
- (iv) Distribute system notice/ circular and emphasise issues that require attention

- (v) Monitor effective utilisation of the system on departmental & institutional level
- (vi) Responsibility for the compilation and maintenance of the departmental manuals and procedures
- (vii) Liaison between departmental system users and Provincial Treasury
- (viii) Render a departmental user support (helpdesk) function
- (ix) Inform Provincial Treasury of dormant users on the system as well as users who have left the system
- (x) Scheduling/ request specific reports on a monthly basis that requires on-going attention of departments/ institutions

#### **4.5 WESTERN CAPE SUPPLIER EVIDENCE BANK (WCSEB)**

- 4.5.1 It is a mandatory requirement for suppliers to register on the Western Cape Supplier Evidence Bank (WCSEB).
- 4.5.2 The WCSEB is a management tool and central repository of governance documentation in respect of the Western Cape Bid Document (WCBD) 4, WCBD 6.1 and B-BBEE certificate or affidavit and complies with the legislative requirements of the Western Cape Government (WCG).
- 4.5.3 The required data and supporting documentation, housed as attachments within the WCSEB, will be verified by Provincial Treasury and if the minimum mandatory requirements are met, a supplier's profile will be approved. The WCG requires that the supplier profiles are maintained and that suppliers are notified when their Tax Compliance status and WCBD 4 and / or BB-BEE status level of contribution certificate are about to expire, within an agreed timeframe prior to expiry. Before a supplier starts the registration process, the supplier needs to accept the Terms & Conditions as stipulated by Western Cape Provincial Treasury.
- 4.5.4 A supplier's profile will only be suspended on the Western Cape Supplier Evidence Bank Database due to:
- (a) An outdated WCBD 4(Declaration of Interest).
  - (b) Suspended Supplier responses will be made non-compliant to quotation requests by departments.
- 4.5.5 There are procedures for supplier verification on the CSD and WCSEB when procuring via the informal quotation, formal quotation and emergency procurement processes.

- (a) If a supplier is not registered on the CSD and WCSEB, the identified supplier must be notified that it has to register on both the CSD and WCSEB within seven (7) calendar days of the date of order;
- (b) If a supplier is suspended on the WCSEB, the supplier must be requested to submit the original and valid WCBD 4 (valid for one year), and where applicable, BB-BEE certificate together with the WCBD 6.1 and the department will avail same to the Provincial Treasury to uplift the suspension on the WCSEB;
- (c) If a supplier is only registered on the CSD, the supplier must also register on the WCSEB within seven (7) calendar days before the award of the contract;
- (d) If a supplier is not registered on the CSD but suspended on the WCSEB, the department must obtain the documents in paragraph (b) above. The supplier must register on the CSD within seven (7) calendar days of the date of order;
- (e) At the time of the awarding of the contract, the bidder must provide written evidence that confirms its tax status. A supplier will no longer be suspended for a non-compliant tax status on the WCSEB. The tax status will be verified via a live link on the CSD that will be available on the WCSEB.
- (f) The CSD and WCSEB will not apply when procuring via petty cash
- (g) Foreign suppliers with a local registered entity are required to register on the CSD and WCSEB, which means that foreign suppliers with no local registered entity/office are excluded from the compulsory registration requirement on the CSD and WCSEB.

All awards made in this manner must be reported to the Provincial Treasury via the monthly reporting process (Annexure C & D)

#### **4.6 CENTRAL SUPPLIER DATABASE (CSD)**

- 4.6.1 Cabinet approved steps to accelerate the modernisation of public procurement through Cabinet Resolution dated 10 December 2016. Consequently, the National Treasury established the Central Supplier Database (CSD) on behalf of all departments.
- 4.6.2 Through the existence of the CSD, price quotations and bids are invited and accepted from prospective suppliers listed on the CSD. This excludes transactions concluded through petty cash, sundry payments and foreign suppliers with no local entity. If it is not possible to obtain quotations from the list of CSD suppliers, the department must conduct a market analysis to identify possible suppliers, record the process and submit the list of prospective suppliers identified through this analysis to the delegated official for approval.
- 4.6.3 In respect of emergency procurement, a supplier that is not registered on the CSD and WCSEB must register as soon as possible but not later than seven (7) calendar days from the date of order, failing which, no further business may be conducted with such supplier until duly registered.
- 4.6.4 As opposed to the WCSEB, the CSD is not a repository of supplier information. Consequently, suppliers are required to submit hardcopies of compliance information which has to be accessed and verified on the CSD. The key information of prospective suppliers that is to be verified are: Business registration including Directorship and Membership;

- (a) Bank account holder information;
- (b) In the service of the State status;
- (c) Tax compliance status;
- (d) Identity number;
- (e) BB-BEE status level of contribution;
- (f) Tender defaulter and restriction status; and
- (g) Any additional and supplementary verification information communicated by the National Treasury.

4.6.5 Proof of registration, certification or accreditation with any industry or board that is not provided by the CSD must be verified through the submission by a bidder of physical documentation and this must be verified through manual procedures.

4.6.6 When requesting bids, prospective suppliers must be informed through the tender documentation that they must be registered on the CSD prior to submitting bids, due to the integration of the CSD with LOGIS and BAS. The supplier needs to be duly registered at the time of award.

# DEMAND MANAGEMENT

# CHAPTER 5

## CONCEPT OF DEMAND MANAGEMENT

### 5.1 INTRODUCTION

- 5.1.1 Demand Management within Supply Chain Management (SCM) is an integral part of a series of cross-functional activities that contributes to achieving the strategic and operational commitments of the Department by understanding and planning what goods, works or services are delivered to the right place, in the right quantity, with the right quality, at the right cost and the right time and from the right source.
- 5.1.2 Demand Management is the first element of the SCM function and is a cross-functional exercise that brings the SCM Practitioner closer to the User, ensuring that value for money is achieved.
- 5.1.3 In Demand Management everything starts with the definition of the customer's service requirements i.e. required reaction time, lead-time reliability, back order and emergency order policies, etc.
- 5.1.4 Demand Management forms an integral part of a series of activities within SCM that will contribute to achieving the measured goals of the Department by ensuring that goods, works or services are delivered as originally envisaged; with a reliable standard of quality and to the satisfaction of end-users.
- 5.1.5 Demand management ensures that controls exist for management to detect irregularities early and rectify them in a planned and orderly manner and to foster a culture of compliance, thereby assisting management to achieve its goals.
- 5.1.6 When the Department is planning and managing for results, it should:
- (a) Have a good understanding of the environment that it operates in;
  - (b) Have a clear vision of why it exists, what it needs to achieve and how much it is achieving;
  - (c) Plan the work whilst keeping in mind a clear set of objectives, activities, outputs, outcomes and measures of success;
  - (d) Deliver what has been planned – meeting budget, standards of timeliness, quality, accuracy and in a manner consistent with ethical practice;
  - (e) Take stock of progress by monitoring, measuring, reviewing and evaluating objectives, activities and outcomes;
  - (f) Learn from success(es) and failure(s) and modify processes accordingly;
  - (g) Report publicly on results to promote transparency; and
  - (h) Seek continuous improvement.

## 5.2 DEMAND MANAGEMENT ACTIVITIES

Demand Management includes the following activities:

- (a) Understanding future needs;
- (b) Identifying critical delivery dates;
- (c) Identifying the frequency of need;
- (d) Linking the requirement to the budget;
- (e) Analysing expenditure based on past spend patterns and future needs;
- (f) Determining the specifications;
- (g) Conducting a commodity analysis and checking for alternatives at least in the case of strategic purchases; and
- (h) Conducting an industry analysis in the case of strategic purchases.

## 5.3 PROCUREMENT STRATEGY

5.3.1 The Accounting Officer or delegated official must in terms of the PTIs develop and implement a Procurement strategy for the SCM unit which will be reviewed as and when required. Such strategy must at least deal with:

- (a) Procurement vision of the Department;
- (b) Procurement goals and objectives linked to the Department's strategic objectives;
- (c) Commodity and market analysis in relation to the core functions of the Department;
- (d) Identified strategic and scarce commodities and procurement options;
- (e) Strategic partners where appropriate;
- (f) Stakeholder involvement in the supply chain cycle;
- (g) Empowerment impact assessments for procurement above an amount of R10 million;
- (h) Implementation of municipal regional indicators;
- (i) Identified cost drivers;
- (j) Risk analysis and mitigation measures; and
- (k) Goods and services to be procured over at least a 3-year period; and
- (l) Where applicable, for planning in excess of the 3-year period;
- (m) Just –in- time delivery to reduce the amount of stock on hand.

5.3.2 The Procurement Strategy for the Western Cape Education Department's SCM unit is attached as **Addendum 2**.

## 5.4 PROCUREMENT (OPERATIONAL) PLANNING

5.4.1 The Department must have an Annual Procurement Plan, which must be consistent with the Procurement Strategy described in paragraph 5.3.1 above, for the SCM unit.

5.4.2 The procurement plan must at least contain the following information:

- (a) Goods and services to be procured;
- (b) Method of Procurement;
- (c) Timelines to execute the procurement action;
- (d) Estimated value including all applicable taxes;

(e) Confirmation that funds are available; and

(f) The responsibility manager.

5.4.3 Procurement planning is one of the important sub-processes within Demand Management. Procurement planning will contribute to enhancement and achievement of service delivery objectives.

5.4.4 The development of a procurement plan therefore become essential to ensure that procurement activities are timeously executed and contracts are ideally in place. This will ensure that service delivery commences timeously.

5.4.5 Procurement planning must be aligned with the financial year cycle and therefore Responsibility Managers become key drivers in the development of the plan. The linking of procurement requirements to the budget and budget planning process has become a key focus of the budgeting process. The Procurement Plan needs to be aligned with the Annual Performance Plan (APP).

#### 5.4.6 **Developing a Procurement Plan**

(a) The Procurement Plan should be developed from the departmental strategic plan and various planning frameworks that give effect to the service delivery mandate of the department. The Procurement Plan provides the key link between the Department's objectives and its detailed operational budgets. To provide this link the Procurement Plan should reflect the main areas of responsibility or service delivery within the Department's mandate.

(b) Ideally those responsible to drive procurement in the Department should be involved at an early stage of the budgeting process and should be consulted on the likely cost of given purchases to feed into the budget.

(c) The relationship that procurement officers have with users is important. The users' primary function is to carry out their normal line function duties but they play a critical role in the demand management process.

(d) When considering demand planning, procurement officers must work with Responsibility Managers to encourage them to consider the process as a convenient and necessary means of achieving their objectives. The role of Responsibility Managers/line functionaries in the demand planning process can be summarised as follows:

(i) Identifying the requirements that they need to procure;

(ii) Providing input to the annual Procurement Plan;

(iii) Examining options for the goods, services and works required through the procurement process;

(iv) Working with other stakeholders and procurement officers to combine requirements to achieve economies of scale;

(v) Considering packaging options for the requirements with procurement and other stakeholders;

(vi) Developing requirement specifications;

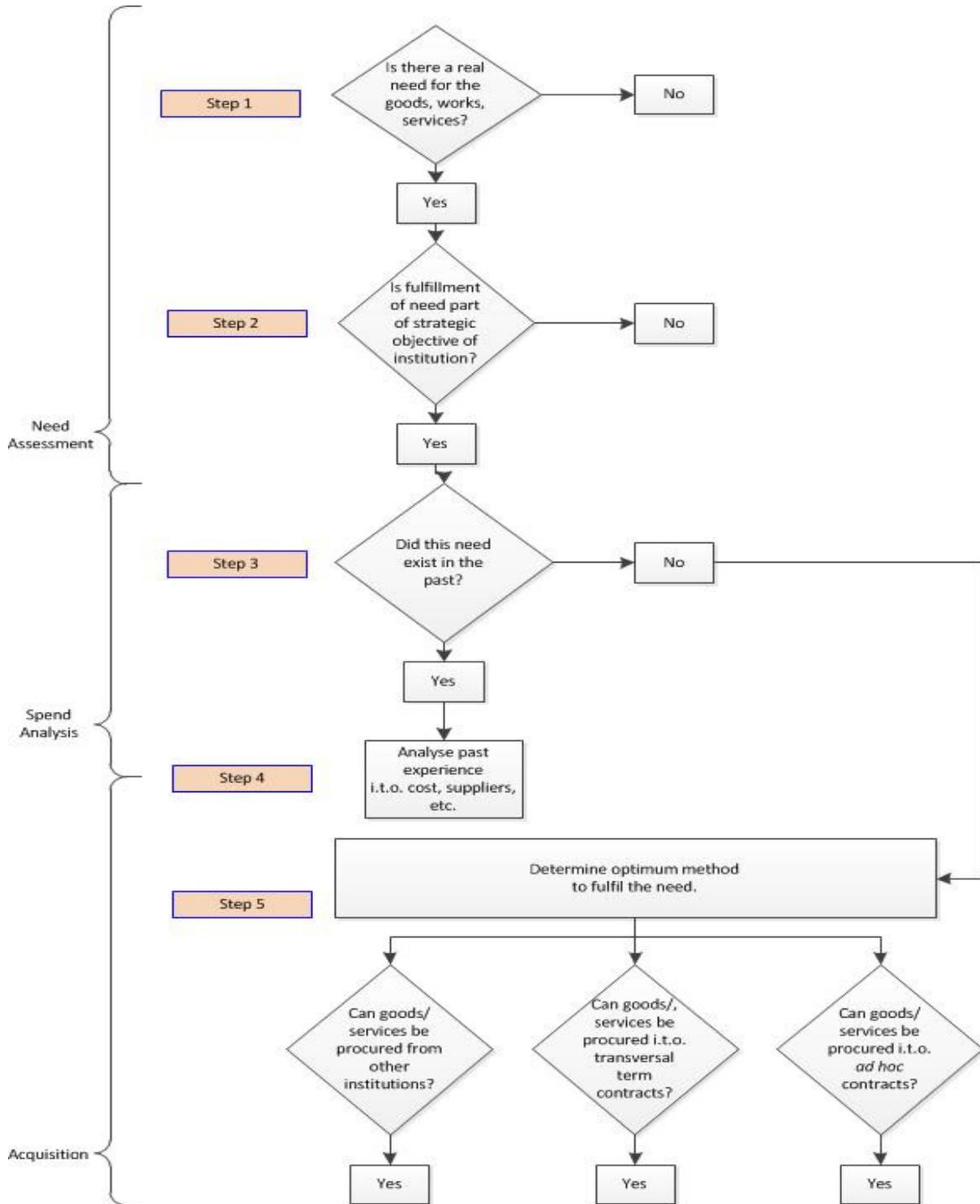
(vii) Considering the analyses within individual procurement plans with procurement officers and other stakeholders;

(viii) Timing their needs; and

(i) Weighing their needs against funds in their respective budgets.

5.4.7 The Provincial procurement pre-populated template for the Procurement Plan was issued by Provincial Treasury and is attached as **Addendum 3**.

5.4.8 The following diagram – **Figure 1** - depicts the Demand Management process:



#### 5.4.9 Advantages of the procurement planning process

The advantages of the procurement planning process are as follows:

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

5.4.10 By not instituting procurement planning, the Department will inevitably experience the following consequences:

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

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

#### 5.4.12 Role of users/line function during the planning stage

- (a) The role of users in the procurement process covers the annual planning exercise and the completion of the specific procurement plan.
- (b) The users' primary function is to execute its line function duties. Their involvement in the demand planning process is for them a means to an end. Procurement Officers must treat users as customers/clients, albeit internally.
- (c) When considering demand planning, Procurement Officers must work with users to encourage them to consider the process as a convenient means of achieving their objectives. The role of users/line functionaries in the demand planning process can be summarised as detailed in paragraph 5.4.6(d).

### 5.5 IDENTIFICATION OF THE NEED

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

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

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

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

**Table 2:**

STEP	ACTIVITY
<b>Identify the needs</b>	<ul style="list-style-type: none"><li>(i) Consult with relevant stakeholders: perspectives, needs, wants, concerns, challenges, opportunities and risks.</li><li>(ii) Identify and prioritise the needs</li><li>(iii) Develop a high level comprehensive statement of needs.</li></ul>

<b>Review previous procurements</b>	Review previous/current contract (if any) including: <b>(i)</b> quality of delivery - on time, on budget, to specification; <b>(ii)</b> calculate the whole-of-life cost; <b>(iii)</b> supplier's performance; <b>(iv)</b> performance in managing the contract and relationships with the supplier and stakeholders; <b>(v)</b> benefits, assumptions, intended and unintended consequences; <b>(vi)</b> opportunities for cost/efficiency benefits/gains.
<b>Supply positioning</b>	<b>(i)</b> Scan operating environment, including current and future policy considerations; <b>(ii)</b> Identify strategic outcomes and specific business objectives that are to be addressed by the procurement; <b>(iii)</b> Identify sustainability opportunities/issues.

#### 5.5.4 History of delivery

A review of previous procurement, from the identification of needs through supplier selection, performance and results, will greatly inform how to proceed with the project.

Actively seeking feedback from all stakeholders involved in the previous procurement is important to identify lessons learned. This means all stakeholders involved from the programme manager, sub-programme manager, contract manager, end-users or recipients of services. The Accounting Officer or delegated official may consider how these lessons can inform and add value to future procurement processes. It may also be helpful to investigate the outcome of other department's procurements for similar goods/services and consider the problems those departments may have encountered and the successes they have achieved.

#### 5.5.5 Spend analysis

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

#### 5.5.6 Historic Spend

Analysing the historic spend, aims to achieve the following:

- Look at previous purchases, volumes, economic cost drivers, users, etc.;
- Price changes by economic operator over time, patterns of change, by niche;
- Patterns of technology introduction; and
- Changes in the market.

## 5.6 MARKET ANALYSIS

5.6.1 The Responsibility Manager is required to complete a business case which must contain the market analysis which he/she conducted in respect of the goods/services he/she requires. The Internet makes research a much easier option than it was previously.

5.6.2 Market research involves understanding;

- the full range of current and potential economic operators,
- current and potential products and services, and
- the nature and dynamics of the local and global markets involved ,(i.e. cost drivers, name brands, alternatives, where is the market located, etc.).

5.6.3 The Department must not be limited to local country markets; the research may be extended to obtain regional and global information, bearing in mind that this also has costs involved as it relates to transport, rates of exchange, import duties and taxes, etc.). This research complements current knowledge and experience held by the contracting department which may be incomplete, fragmented or out-of-date. It aims to build a systematic, in-depth and comprehensive view of the whole market for the requirement in question.

5.6.4 A typical market analysis contains the following:

**Table 3:**

Market Segment	Market Indicators
<b>(a) Market profile</b>	<p>(i) Market size, quantities, local, regional or international nature            (ii) Commodity make-up            (iii) Number of economic operators            (iv) Niches and specialist areas</p>
<b>(b) Market dynamics</b>	<p>(i) Market cycles, natural and induced            (ii) Life cycles and how they are changing            (iii) New segments being created or old ones dying            (iv) Impact of current and future technology            (v) Growth or decline, segment differences            (vi) Profitability changes, where possible and relevant</p>
<b>(c) Market diversity</b>	<p>(i) Fundamentals of supply and demand in the market            (ii) Changes in capacity – past, present            (iii) Changes in demand – past, present            (iv) Impact of transportation, energy, raw material cost shocks, labour costs, etc.            (v) Possible technology changes and cost implications            (vi) Substitutes and allied products available            (vii) Other products available that are not currently used            (viii) Value-added – what is available?            (ix) New/better options/uses being created by innovation and technology            (x) Location of key global geographic centres and currency and duty impacts            (xi) Geopolitical impacts, historical and future            (xii) Barriers to entry</p>

## 5.7 DEVELOPMENT OF SPECIFICATIONS/ TERMS OF REFERENCE (TOR)

5.7.1 The business case and market analysis informs the development of the specifications detailing the nature and scope of the goods/services that will be required to satisfy the Department's needs.

### 5.7.2 Drafting the Specification

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

they be drafted around a specific brand. If, as an exception, a specific brand or trademark is used in the specification, it must be accompanied by the words “or similar” or “or equivalent” after the brand name or trademark, unless reasons for not doing so are provided in this respect. Cognisance must be taken of policies - the Buy South African campaign as well as the gazetted Local Content requirements and ISO standards.

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

**Table 4:**

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

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

5.7.3 **Special condition as part of specifications**

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

5.7.4 **Evaluation criteria as part of specifications**

Evaluation criteria as part of a specification also require that an evaluation methodology is decided upon. When specifications are compiled, the manner in which offers will be evaluated must be considered. In the aforementioned case the following procedure must be followed:

**Table 5:**

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

# CHAPTER 6

## PLANNING FOR THE APPOINTMENT OF CONSULTANTS

### 6.1 INTRODUCTION

6.1.1 The National Treasury in Supply Chain Management Practice Note 3 of 2003 and the Guide for Accounting Officers, 2004, defines the term for consultant, as follows:

***“consultant includes, among others, consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, other multinational organizations, investment and merchant banks, universities, research agencies, government agencies, Non-Governmental Organisations (NGOs), and individuals.”***

6.1.2 National Treasury Instruction (NTI) 3 of 2017/18 (Cost Containment Measures) has prescribed revised measures which must be taken into account upon the appointment of consultants (professional service providers).

6.1.3 In general, the demand management procedures and the acquisition management procedures described in chapter 5 and 6 respectively apply to the appointment of consultants. Only the peculiarities of appointing consultants are dealt with herein, as the services to which these procedures apply are of an intellectual and advisory nature.

6.1.4 However, the aforementioned procedures do not apply to general services such as construction works, manufacture of goods, operation and maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, catering, cleaning and security in which the physical aspects of the activity predominate.

### 6.2 PLANNING FOR CONSULTANTS

6.2.1 Consultants may be appointed to assist in a wide range of activities such as policy advice, Accounting Officer's reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and identification, preparation, and implementation of projects to complement and comply with the Department's strategic objectives or mandate in these areas.

6.2.2 Consultants should only be engaged when the necessary skills and/or resources to perform a project/duty/study are not available within the Department and it cannot be reasonably expected either to train or to recruit people in the time available. The prescribed form "Application for the appointment of Consultants" must be completed by the Branch Head.

6.2.3 The relationship between the Department and the consultant will be one of purchaser/provider and not employer/employee. The work undertaken by a consultant will be regulated by a contract. The end-user directorate will be, responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets and should take remedial action if performance is below standard.

All non/mal-performance must be reported to the SCM unit who will report the non/mal-performance to the Accounting Officer or delegated official via the Bid Committee.

- 6.2.4 Consultants may either be appointed in terms of the procurement processes of the Department or in terms of the Public Service Act, 1994 (Act No 103 of 1994). However, National Treasury has advised that where the latter may not be the most appropriate option, consultants should be appointed by means of the competitive bidding processes, whenever possible.
- 6.2.5 It should be noted that the appointment of Transaction Advisors as defined in Treasury Regulation 16 to the PFMA, who are to be appointed by institutions to render advice in relation to Public-Private Partnerships, such appointment should be done in terms of the practice note No. 02 of 2004 issued by the National Treasury specifically for that purpose.
- 6.2.6 The procedure to appoint consultants applies to all contracts for consulting services. In procuring any consulting services the Accounting Officer or delegated official should be satisfied that the:
- (i) procedures to be used will result in the selection of consultants who have the necessary professional qualifications;
  - ii) selected consultant will carry out the assignment in accordance with the agreed schedule, and
  - (iii) the scope of the service is consistent with the needs of the project.
- 6.2.7 Consultants will be appointed in accordance with the various forms of procurement as prescribed in the relevant regulated industries and the various forms of procurement as set out in the Provincial Treasury Instructions, 2019. Processes and procedures outlined in Acquisition Management will be followed when appointing consultants.
- 6.2.8 Bid documentation for the appointment of consultants must include a clause that rates of remuneration will be subject to negotiation, not exceeding the applicable rates as listed here-under in paragraph 6.2.10.
- 6.2.9 Consultants must, where practical, be appointed on an output-specified basis, subject to a clear specification of deliverables and associated remuneration.
- 6.2.10 Consultants may only be remunerated at the rates:
- (a) determined in the "Guideline on fees for Audits" done on behalf of the Auditor-General of South Africa (AGSA), as issued by the South African Institute of Chartered Accountants (SAICA);
  - (b) set out in the "Guide on Hourly Fee Rates for Consultants" as issued by the Department of Public Service and Administration (DPSA); or
  - (c) prescribed by the body regulating the profession of the consultant.

- 6.2.11 All contracts of consultants must include penalty clauses for late performance and these clauses must be invoked where deemed necessary.
- 6.2.12 Hotel accommodation and related costs for consultants may not exceed the amount prescribed in NTI 4 of 2017/18 and related Addendum(s) issued by National Treasury. Air travel must be restricted to economy class, unless otherwise determined and claims for kilometres may not exceed the rates approved by the Automobile Association of South Africa.
- 6.2.13 The appointment of consultants must be approved by the Accounting Officer or the delegated official on the recommendation of the Bid Committee in instances where the SCM processes are followed.

### **6.3 NEEDS ANALYSIS**

- 6.3.1 As reflected in Chapter 5, a proper needs analysis must be compiled and the need for consultants must be linked to the strategic objective of the relevant programme. Issues that should specifically be identified are:
  - (a) Why there is a need for consultants;
  - (b) Is it a once-off service or will it be a recurring service;
  - (c) If it is a recurring service, will the establishment be adjusted, if not why not; and
  - (d) Is any transfer of skills required?
- 6.3.2 Further, as instructed in NTI 03 of 2017/2018, the Department must:
  - (a) Ensure that consultants are appointed only where this is a cost-effective alternative to the utilisation of staff employed by the department;
  - (b) The appointment of consultants must be supported by a motivated business case setting out an analysis of the underlying skills gap and a diagnosis of requirements and specified deliverables.

### **6.4 TERMS OF REFERENCE (TOR)**

- 6.4.1 The business case and market analysis informs the development of the specifications detailing the nature and scope of the goods/services that will be required to satisfy the Department's needs. The Responsibility Manager should prepare the TOR. The TOR should define clearly the task directive (methodology), objectives, goals and scope of the assignment and provide background information, including a list of existing relevant studies and basic data, to facilitate the consultants' preparation of their bids.
- 6.4.2 The scope of the services described should be compatible with the available budget. Timeframes linked to various tasks should be specified as well as the frequency of monitoring actions. The respective responsibilities of the consultant should be clearly defined. The evaluation criteria, their respective weights, the minimum qualifying score for functionality and the values that will be applied for evaluation should be clearly indicated.

The evaluation criteria should include at least the following:

- (a) consultant's experience relevant to the assignment;
- (b) quality of the methodology;
- (c) qualifications of key personnel; and
- (d) transfer of knowledge and skill (where applicable);
- (e) pre-bid briefing sessions or presentations by bidders as part of the evaluation process where needed.

6.4.3 If the assignment / contract include an important component for training or transfer of knowledge and skills, the Terms of Reference (TOR) should indicate the objectives, nature, scope and goals of the training programme, including details of trainers and trainees, skills to be transferred, timeframes and monitoring and evaluation arrangements. The cost for the training programme should be included in the consultant's contract and in the budget for the assignment.

## 6.5 METHOD OF SELECTING CONSULTANTS WHEN COMPILING TOR

6.5.1 When developing the terms of reference, the various approaches to select consultants must be considered. The following approaches can be followed although the quality and cost based selection (QCBS) approach is preferred as it is based both on the quality of the services to be rendered and on the cost of the services to be provided.

**Table 6**

Approach	Type of assignment
Quality-based selection (QBS)	QBS is appropriate for complex or highly specialised assignments for which it is difficult to define precise TOR.
Selection under a fixed budget	This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed.
Least -cost selection	This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of non-complex works, etc.) where well-established practices and standards exist and in which the contract amount is small.
Selection based on Consultants' Qualifications	This method may be used for very small assignments for which the need for preparing and evaluating competitive proposals is not justified.
Single-source selection	Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection and should therefore be done in conjunction with limited bidding as outlined in the Accounting Officer's System.
Selection of individual consultants	Individual consultants may normally be employed on assignments for which: <ul style="list-style-type: none"> <li>• teams of personnel are not required;</li> <li>• no additional outside (home office) professional support is required; and the experience and qualifications of the individual are the paramount requirement.</li> </ul>

## **6.6 OTHER AREAS TO NOTE:**

### **6.6.1 Conflict of Interest**

- (a) Consultants should not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the State.
- (b) Without limitation on the generality of this rule, consultants should not be hired under the following circumstances:
  - (i) A firm, which has been engaged by the Accounting Officer or delegated official, to provide goods, services or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project.
  - (ii) Similarly, a firm hired to provide consulting services for the preparation or implementation of a project and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier consulting services for the same project), unless the various firms (consultants, contractors, or suppliers) are performing the contractor's obligations under a turnkey or design-and-build contract.
  - (iii) Consultants or any of their affiliates should not be hired for any assignment which, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare an engineering design for an infrastructure project, should not be engaged to prepare an independent environmental impact assessment for the same project and consultants assisting a client in the privatisation of public assets should not purchase nor advise purchasers of such assets.

### **6.6.2 Associations between Consultants**

- (a) Consultants may associate with each other to complement their respective areas of expertise, or for other reasons. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The "association" may take the form of a joint venture or a sub-consultancy.
- (b) In case of a joint venture, all members of the joint venture should sign the contract and are jointly and severally liable for the entire assignment. Once the bids or Requests for Proposals (RFPs) from service providers are issued, any association in the form of a joint venture or sub-consultancy among firms should be permissible only with the approval of the Accounting Officer or delegated official. Consultants should however not be compelled to form associations with any specific firm or group of firms, but may be encouraged to form associations with the aim to enhance the transfer of skills.

# **VOLUME 4**

# **ACQUISITION MANAGEMENT**

## CONCEPT

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

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

- (a) The legislative framework that guides the procurement process;
- (b) All SCM prescripts issued by the National and Provincial Treasuries; and
- (c) The delegations issued for Supply Chain Management indicates the precise parameter within which a delegated official may act, along with any conditions or limitations attached to such action. If circumstances require the advertisement of bid or award of a contract to be expedited and the situation is of such a nature that it is impossible to immediately convene a Departmental Bid Committee meeting, a memorandum detailing the need and required action will be submitted by the SCM unit to the Accounting Officer or delegated official for a decision which will be confirmed at the next scheduled meeting of the Departmental Bid Committee.

The acquisition management process makes provision for forms of procurement as per the Provincial Treasury Instructions through:

- (i) Petty cash purchases;
- (ii) Informal quotations;
- (iii) Formal invitation of price quotations;
- (iv) Competitive bidding;
- (v) Limited bidding;
- (vi) Emergency procurement;
- (vii) Unsolicited bids;
- (viii) Transversal contracts; and
- (ix) Contracts arranged by other organs of state

# CHAPTER 7

## PETTY CASH

### 7.1 PETTY CASH PURCHASES:

- 7.1.1 Petty Cash is a means whereby the Department may **utilise cash** to procure goods or services up to a transactional value of R2 000.00 per request. Application for amounts greater than R2000.00 must be directed to Directorate: Financial Accounting.
- 7.1.2 The following requirements must be utilised as control measures when dealing with petty cash purchases:
  - (a) The maintenance of a petty cash register must be entrusted to a responsible person and such person must enter all payments and replenishments in the petty cash register on a daily basis.
  - (b) A supporting voucher must be obtained for each payment.
- 7.1.3 The Department will establish internal procedures to ensure sound financial management of funds when goods and/or services are obtained by means of petty cash.
- 7.1.4 The CSD and WCSEB will not apply when procuring via petty cash.
- 7.1.5 The Standard Operating Procedure for Petty Cash is attached as **Addendum 4**.

## **CHAPTER 8**

### **INFORMAL QUOTATIONS**

- 8.1 In the Western Cape Education Department goods and services will be procured primarily through formal quotations invited via the e-Procurement Solution (ePS), unless provided for elsewhere.
- 8.2 As an alternative to the use of petty cash, in the Education District Office (EDO) environment, Informal Quotations up to the threshold value of R2000 (inclusive of VAT) may be obtained from at least three (3) different suppliers who:
- (a) are duly registered on the Western Cape Supplier Evidence Bank (WCSEB); and
  - (b) which quotations comply with the minimum requirements as issued by Internal Control.
- 8.3 In relation to paragraph 8.1 above, the use of informal quotations are only permitted in the following instances;
- (a) Petty cash as referred to in Chapter 7;
  - (b) Urgent and emergency instances as referred to in Chapter 12 and permitted through the delegations of the Accounting Officer as contained in Addendum 8;
  - (c) Procurement through approved SITA contracts where quotations have to be sourced from approved vendors for the relevant commodities;
  - (d) Procurement of travel, accommodation and car hire as referred to in paragraph 11.1(h) of this AOS;
  - (e) The maintenance of equipment by the supplier of such equipment or its approved service agent in which case certification of the appointment as an agent has to accompany the quotation. This does not construe limited bidding as referred to in Chapter 11 of this AOS; and
  - (f) Instances as approved by the Accounting Officer as a deviation from the normal procurement procedures
- 8.4 In the event of urgent and emergency procurement, a written motivation substantiating the urgent or emergency event must be submitted by an official on at least the level of Director and which motivation must outline the reasons, nature of the event, its likely causes, whether the event could be categorised as foreseen and unforeseen (as defined in Chapter 12 of this AOS) as well as the implications should immediate action not be undertaken. An application form for limited bidding needs to be submitted together with supporting documentation.
- 8.5 In the event that it is impractical to obtain quotations from suppliers who are duly registered on the CSD and WCSEB, the EDO:
- (a) may use suppliers who are able to submit a quotation for the relevant goods/services;
  - (b) must demonstrate that the utilisation of the supplier is the only viable option, financially, strategically, practically, operationally, availability in the market and the uniqueness of the product or service and these reasons must be recorded for audit purposes;

- (c) must obtain from the supplier all mandatory documentation at the time of award (i.e. valid tax clearance certificate/tax compliance status certificate and original and duly signed WCBD4);
- (d) If it is not possible to obtain at least three (3) written quotations, the reasons must be recorded for audit purposes.

8.6 The following are applicable in respect of informal quotations referred to in Chapters 9, 11 and 12 of this AOS:

8.6.1 the WCBD4 bidding document of the successful supplier/bidder must be verified as complete and current on the WCSEB and ;

8.6.2 where the selected supplier is not duly registered on the supplier database, the Department must ensure that the supplier has submitted a duly completed and signed WCBD4 and valid tax clearance certificate/ printed tax compliance status certificate.

8.7 In terms of Supplement 1 of Provincial Treasury Circular no. 28 of 2019 dated 01 October 2019, the procurement template - **Addendum 5** - must be duly completed by the buyer for each purchase for the monetary value between R0 and R500 000 (inclusive of VAT) and signed by the Chairperson of the relevant Quotation Committee. **Addendum 6** must be completed by the Chairperson of the Quotation Committee at Education District Offices for each purchase for the monetary value between R0 and R100 000(inclusive of VAT).

## CHAPTER 9

# FORMAL INVITATION OF PRICE QUOTATIONS

- 9.1 Goods or services between the value of R2 000 and R500 000 (inclusive of VAT) are procured via the e-Procurement Solution (ePS), from suppliers who are duly registered on the CSD and Western Cape Supplier Evidence Bank (WCSEB). The threshold limit for the Education District Offices is R100 000 (inclusive of VAT).
- 9.2 Quotations obtained through the IPS are deemed to be competitive formal quotations as all possible accredited suppliers are given the opportunity to submit a quotation in their relevant fields of business and per their commodity registration on the WCSEB.
- 9.3 Goods and services must be procured under this category subject to the following minimum requirements:
- 9.3.1 **Ensure that prices obtained are reasonable.**
- 9.3.2 **Where prices are unreasonable**, the enquiry may be cancelled and informal quotations may be invited noting the following requirements:
- (a) request quotations from suppliers known to the Department but not yet registered on the CSD and WCSEB;
  - (b) ensure that selected suppliers are tax compliant by checking the tax status on the CSD, the WCBD 4 has been duly completed and signed, the B-BBEE certificate and WCDB 6.1 have been completed where preference points are claimed;
  - (c) ensure that the supplier's registration form together with the supporting documentation is submitted to PT for registration on the WCSEB. The supplier must ensure that it is registered within seven (7) days of being awarded the contract (registration form and guide to be used); and
  - (d) in cases where the supplier is suspended on the WCSEB due to the lapse of mandatory documentation, such as a WCBD4, obtain such documents from the supplier and submit to PT for the update of the supplier on the WCSEB. Copies of such documentation must be kept for record and audit purposes.
- 9.3.3 **Where less than 3 quotations are received via the ePS**, the Department must evaluate the responses received in terms of responsiveness and cost effectiveness and, if an award is made, record all reasons for its decision making and indicating the number of offers received.
- 9.3.4 Where the Department is sure that sufficient exposure has been given to suppliers on the CSD and WCSEB and **no** responses were received, the following process may be followed:

- (a) request quotations from suppliers known to the Department but not yet registered on the CSD and WCSEB;
- (b) ensure that selected suppliers are tax compliant by cross checking the tax status on the CSD; the WCBD 4 has been duly completed and signed; the B-BBEE certificate and WCDB 6.1 have been completed where preference points are claimed;
- (c) ensure that the successful supplier's registration form together with supporting documentation is submitted to PT for registration on the WCSEB. The appointed supplier must ensure that it is registered within seven (7) days of being awarded the contract (registration form and guide to be used);
- (d) in cases where the selected supplier is suspended on the CSD and WCSEB due to the lapse of compulsory documentation such as a TCC/ tax compliance status certificate or WCBD4, obtain such documents from the supplier and submit to PT to update the profile of the supplier on the WCSEB. Copies of such documentation must be kept for record and audit purposes.

9.3.5 An award is made to the acceptable offer that scored the highest total number of points if the procurement value is equal to or above R10 000.00 (inclusive of VAT). The prescribed Contract Form (WCBD 7.1) must be issued to the successful supplier.

9.3.6 Awarded quotations must be adjudicated on the ePS to ensure integrity of procurement information.

9.3.7 Where the offer that scored the highest total number of points has been evaluated as non-compliant, points must be recalculated.

9.3.8 Ensure that the recommended bidder is not listed in the National Treasury (NT) Register of Tender Defaulters and the Register of Restricted Suppliers. Suppliers listed in the Tender Defaulters' Database may not be used. The WCSEB will flag a supplier that is on the NT list of restricted suppliers and tender defaulters based on the information housed on the CSD.

9.3.9 A recommendation on the relevant prescribed template must be formulated and submitted via the Quotation Committee for approval.

9.3.10 All officials involved in the obtaining of the quotations and appointing the service provider must declare their interest.

9.3.11 If it is deemed necessary to request the extension of the validity period of price quotations, all communication between the parties needs to be documented and mutual agreement with bidders obtained.

#### 9.4 **In the event that it is impractical to obtain quotations via the ePS:**

9.4.1 Quotations may be obtained from suppliers known to the Department and reasons for such must be recorded and approved by the Accounting Officer or delegated official;

9.4.2 ensure that:

- (a) selected suppliers are tax compliant,
- (b) the WCBD 4 has been duly completed and signed,
- (c) the B-BBEE certificate and WCDB 6.1 has been completed where preference points are claimed; and

(d) the selected supplier submits registration form together with the supporting documentation to PT for registration on the WCSEB. The supplier must ensure that it is registered within seven (7) days of being awarded the contract (registration form and guide to be used).

9.5 **Where the ePS is not functional** for a period of time and time is of the essence for the delivery of goods and services, the Department may use the procurement method referred to in Chapter 8 (informal quotations).

9.6 Where it is impractical to utilise suppliers who are duly registered on the WCSEB, the requirements as prescribed in paragraph 4.5.6 must be applied.

9.7 In terms of Supplement 1 of Provincial Treasury Circular no. 28 of 2019 dated 01 October 2019, the procurement template - **Addendum 5** - must be duly completed by the buyer for each purchase for the monetary value between R0 and R500 000 (inclusive of VAT) and signed by the Chairperson of the relevant Quotation Committee. **Addendum 6** must be completed by the Chairperson of the Quotation Committee at Education District Offices for each purchase for the monetary value between R0 and R100 000 (inclusive of VAT).

# CHAPTER 10

## COMPETITIVE (OPEN) BIDDING

### 10.1 COMPETITIVE BIDDING

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

### 10.2 PROCESS

For all procurement in excess of R500 000.00(inclusive of VAT), bids must be advertised in at least the Government Tender Bulletin (GTB) and on the National Treasury eTender Publication Portal. In respect of infrastructure there may be an additional requirement to advertise an event on the CIDB website. If deemed practical or necessary by the Department, bids may also be advertised in other media. This provides an opportunity for all prospective bidders to make an offer and to compete on an equal basis.

### 10.3 BID DOCUMENTATION FOR COMPETITIVE BIDS

- 10.3.1 To ensure uniformity, all bids excluding construction and construction related projects, will be based on the General Conditions of Contract (GCC), issued by the National Treasury. The standard wording of the GCC must not be amended. Any aspect not covered by the GCC must be dealt with in the Special Contract Conditions (SCC). SCC regulates conditions relevant to a specific bid and should be recommended by the Bid Specification Committee and approved by the Accounting Officer or delegated official. In the case of conflict between the SCC and the GCC, the provisions in the SCC shall prevail.
- 10.3.2 To give effect to the requirements of the National Treasury Regulations and the Public Service Regulations prohibiting an employee from conducting business with an organ of state and/or holding a directorship in a private or public company doing business with an organ of state, the Provincial Treasury has issued a consolidated bidding document, referred to as the WCBD4 (Declaration of Interest). The WCBD4 bidding document captures the following:
- (a) declaration of the bidder's past performance in relation to contracts;
  - (b) declaration pertaining to bid rigging and collusive practices; and
  - (c) conflict of interest.
- 10.3.3 Suppliers are required to annually complete the Declaration of Interest (WCBD4) which must be housed on the WCSEB. The onus is on suppliers to update their profile should any information on the Declaration of Interest change. Any suppliers found to have submitted false information on the Declaration of Interest in any respect will be suspended from the database. The Declaration of Interest is valid for a period of twelve (12) months from the date of signature.

- 10.3.4 The Department is not required to request completion of the WCBD4 for every bid process. If the supplier is duly registered on the supplier database, then departments must use the supplier database information for this purpose. The relevant WCBD4 must be downloaded from the supplier database and kept in the bid file for reference, but only for the successful bidder. SCM Practitioners must use the information supplied by the bidders in the table (shareholders) on the WCBD4 and verify same against the Department's establishment. In this process, where it is established that there are employees of the institution (defined as the WCG) it must be ascertained whether these officials have obtained approval for remunerative work outside the public service (RWOPS).
- 10.3.5 To give effect to the requirements of the Preferential Procurement Regulations, 2017, the Provincial Treasury has issued the new WCBD 6.1 (a) and 6.1 (b) Preference Points Claim Form thereby replacing the previous preference points claim form utilised in the province.
- 10.3.6 Potential suppliers are required to annually complete the WCBD 6.1 Preference Points Claim Form which must be housed on the central supplier database. The onus is on suppliers to update their profile should any information on the WCBD 6.1 Preference Points Claim Form change. However given that there are different preference points thresholds, the correct form must be availed to bidders if it is found that the one housed on the WCSEB does not meet the claim requirements of the bid threshold. Any suppliers found to have submitted false information on the WCBD 6.1 Preference Points Claim Form will be suspended from the Central Supplier Database and such supplier must be dealt with in terms of Regulation 14 of the Preferential Procurement Regulations, 2017. Any fronting will be dealt with in terms of the National Department of Trade and Industry prescripts on fronting.
- 10.3.7 In the event that the WCBD 6.1 Preference Points Claim Form is not yet available on the supplier database, the Department must obtain a fully completed WCBD 6.1 Preference Points Claim Form from the recommended bidder before the conclusion of the procurement process.
- 10.3.8 The SBD 7.1 and 7.2 bidding documents issued by the National Treasury have been consolidated into one form, WCBD 7.1- Contract Form for Goods or Services.
- 10.3.9 The other WCBD forms include the following:
- WCBD 1 (Option 1&2) Invitation to Bid;
  - WCBD 3.1 - Pricing Schedule – Firm Prices (Purchases);
  - WCBD 3.2 - Pricing Schedule – Non-firm Prices (Purchases);
  - WCBD 3.3 - Pricing Schedule (Professional Services);
  - WCBD 3.4 - Specification Compliance Schedule(Goods);
  - WCBD 5 - National Industrial Participation Programme;
  - WCBD 6.2 - Local Production and Content; and
  - WCBD 7.2 Contract form for sale of Goods or Works

## 10.4 PUBLIC INVITATION FOR COMPETITIVE BIDS

### 10.4.1 Bid Invitation

- (a) Bids must be advertised by the relevant Supply Chain Management Unit in at least the Government Tender Bulletin for a minimum period of 21 days before bid closure as required by the National Treasury Regulations (NTRs), and on the eTender Publication Portal of the National Treasury. In respect of infrastructure procurement the event must be advertised on the CIDB website. Where a compulsory information session is required, a bid must preferably close at least two (2) weeks after the compulsory information session.
- (b) In justifiable circumstances the Accounting Officer may allow for the shortening of the closing date for bids. In terms of the NTRs, such shortening of advertising periods may only be done in cases as approved by the Accounting Officer or delegated official.
- (c) When shortening advertising periods, cognisance must also be taken of the fact that the shortening of the closing date must not disadvantage any potential suppliers from bidding for the requirements.
- (d) When deciding on a shorter advertising period, the monetary value as well as the complexity of the bid, must be taken into account as well as the medium in which the bid is to be advertised.
- (e) If this process does not require that the bid be advertised in the Government Bulletin, permission in this instance must be granted by the delegated official on the provision of proper documented reasons or motivation.
- (f) In the interest of uniformity, fairness and in order to maintain bidders' confidence in the system, it is essential that a definite cut-off time be set for submitting bids and that it is strictly adhered to. The cut-off time for closure of bids issued by the Western Cape Government is 11:00 on the day stipulated in the bid documents unless otherwise approved by the delegated official in a specific instance.
- (g) The Department must include the following or similar notification within all formal bid documents:

#### Compulsory registration on the Central Supplier Database and Western Cape Supplier Evidence Bank

The Provincial Government of the Western Cape will ONLY contract with businesses duly registered on the Central Supplier Database and Western Cape Supplier Evidence Bank.

All prospective service providers are invited to register as a supplier on the Western Cape Supplier Evidence Bank and Central Supplier Database.

Enquiries regarding the registration process may be referred to PT at the WCSEB Helpdesk – telephone number 0861 225 577 or the walk in centre. Or National Treasury at the CSD Helpdesk – telephone 012 315 5509/email: [csd@treasury.gov.za](mailto:csd@treasury.gov.za)

Or register on line via <https://secure.csd.gov.za/Home/RegistrationProcess>

All suppliers who are currently registered on the database are also invited to update their status by contacting the WCSEB Call Centre – telephone numbers 021 680 4666 / 021 680 4632 / 021 680 4630

- (h) Bidders are allowed to collect bid documents or bid documents may be posted to potential bidders. If a document is to be e-mailed for practical reasons this must be approved by the Accounting Officer or delegated official. The former is preferable unless practicality necessitates otherwise. The Department must keep a register of bids collected and mailed which must include at least the following:
- (i) name of the bidders to whom documents were issued;
  - (ii) bid number;
  - (iii) name of the person who collected the bid;
  - (iv) firm/company on whose behalf the document is collected;
  - (v) phone number, the fax number, contact person;
  - (vi) date and time the document was collected; and/or
  - (vii) date the document was posted.
- (i) The register serves as a record in the event of disputes. It also provides all the details of the bidders who collected documents in the event where amendments have to be effected to the bid document and availed to those potential bidders.
- (j) The preferred method of receiving bids by the Department is via depositing of bid documents in the Departments' designated bid box. However, in certain circumstances it may necessitate bids being received via post or courier services.
- (k) When bids are received by post or courier services, record thereof must be contained in the relevant register. The following details must be captured/ recorded:
- (i) bid number
  - (ii) closing date of the bid
  - (iii) date and time the bid was received
  - (iv) name of the company who forwarded the bid or from whom the bid was received
  - (v) how the bid was received, i.e. through courier services, or registry
  - (vi) the state in which the bid was received upon receipt, for example was it opened?
  - (vii) whether the bid was received on time
  - (viii) whether the bid was opened by the receiving officials and the reasons why the bid was opened
  - (ix) signature of the person who delivered the bid
  - (x) signature of the person who received the bid
- (l) To ensure that the above information is adequately recorded, this register must be checked on a monthly basis by the Deputy Director: SCM Operations.
- (m) In the case of an advertised bid, the bid closing date must only be postponed if the new date is advertised in the Government Tender Bulletin (GTB) before the original closing date. This will ensure that all bidders intending to bid are made aware of the postponement. If it is not possible, the original bid invitation must be cancelled and fresh bids must be invited.

- (n) Bidders must be informed of any amendment to the bid documents in writing before the original closing date.
- (o) Bids must not, as far as possible, be advertised to close over the period 15 December to 15 January as most suppliers/firms are closed during this period and responsive bids may not be guaranteed. Similarly, bids for building and related services must not be advertised or issued during the builders' holiday period and the closing date for bids must be set for no later than one (1) week prior to the commencement of the holiday and at least three (3) weeks after the end of the holiday period.
- (p) However, if it becomes necessary for the Department to advertise a bid during this period, a submission must be made to the Accounting Officer/delegated official in this regard for approval.
- (q) Bidders are required to submit bids valid for a period specified in the bidding documents. This period should be sufficient to enable the Department to evaluate the bids, make a recommendation and award the contract. As a norm, this is usually set for a period of ninety (90) days, unless otherwise approved.
- (r) An extension of bid validity, if justified in exceptional circumstances, must be requested in writing from all bidders before the expiration date. The extension must be for the minimum period required to complete the evaluation, obtain the necessary approvals and award the contract.
- (s) In the case of fixed price contracts, requests for second and subsequent extensions must be permissible only if all bidders agree to the requested further extension of validity.

## **10.5 BIDS BASED ON FUNCTIONALITY AS A CRITERION**

- 10.5.1 In general, not all bids should necessarily be invited on the basis of functionality as a criterion. The need to invite bids on the basis of functionality as a criterion depends on the nature of the specific commodity or service, taking into account quality, reliability, viability and durability of a service and the bidder's technical capacity and capability to execute a contract.
- 10.5.2 When a Department invites a bid or request for quotation that will also be evaluated on the basis of functionality as a criterion, the following aspects must be clearly specified in the bid document:
- (a) **Evaluation criteria for measuring functionality**  
The evaluation criteria may include criteria such as - relevant experience, quality, qualifications of key personnel, etc.
  - (b) **Points for each criterion**  
The points that are allocated to each criterion should not be generic but should be determined separately for each bid on a case by case basis.
  - (c) **Points for each sub-criterion**  
The applicable points that will be utilised when scoring each criterion should be objective. As a guide, points range as follows:
    - 1 = poor
    - 2 = average
    - 3 = good

4 = very good

5 = excellent

(d) **Minimum qualifying score for functionality**

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

## 10.6 LOCAL PRODUCTION AND CONTENT

- 10.6.1 In terms of Preferential Procurement Regulation 8(2&4), 2017 *“An organ of state must, in the case of a designated sector, advertise the invitation to tender with a specific condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content will be considered.” “If there is no designated sector, an organ of state may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.”*
- 10.6.2 The Department of Trade and Industry (DTI) has designated and determined the stipulated minimum threshold for local production and content. A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.”
- 10.6.3 The WCG is experiencing various challenges in implementing local production and content from a practical perspective and these are:
- (a) The readiness and availability of the market to respond to requirements in the Western Cape. The focus is on local production and manufacture and not on supply;
  - (b) The awareness of the legislative requirements in the supplier community;
  - (c) Impact on total cost of ownership, value for money and the cost to government;
  - (d) Impact on service delivery;
  - (e) Unpacking of technical legislative requirements to the supplier community;
  - (f) Vetting and development of specifications by the DTI and its impact on the procurement process;
  - (g) Vetting of vendors;
  - (h) Applicability of the requirements to services and works;
  - (i) Deviation requests and approval; and
  - (j) Requirements when no bids are received or when bids are non-responsive.

#### 10.6.4 Designated Sectors

- (a) The National Treasury issues Instruction Notes in terms of invitation and evaluation of bids based on a stipulated minimum threshold for local production and content.
- (b) Goods, services or works that have been designated for local production and content must contain a specific bidding condition that only locally manufactured / produced goods, services or works with a stipulated minimum threshold for local production and content will be considered.
- (c) It must be stipulated in bid invitations that the exchange rate to be used for the calculation of local content/local production must be the exchange rate published by the South African Reserve Bank( SARB) at 12:00 noon on the date, one week prior to the closing date of bid.
- (d) The formula to calculate local content/production must be disclosed in the bid documentation.
- (e) The WCBD 6.2 and Annexure C must be duly completed, signed and submitted by the bidder at the closing date and time of the bid.

#### 10.6.5 Non-Designated Sectors

*"If there is no designated sector, an organ of state may include, as a specific condition of the tender, that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered."*

#### 10.7 CLOSING OF BIDS

- 10.7.1 Upon the closing time of bid(s) on a particular day, the bid box is closed at exactly 11h00 and all the bids should be removed for opening. The bids should be date stamped on the envelope, sorted according to particular bid numbers, recorded and sorted accordingly with those already received of similar bid numbers. In the interest of transparency this information is available for the scrutiny of interested parties on request.
- 10.7.2 All bids not received in envelopes, must be sealed in an envelope and the bid number and closing date must be written on the envelope, if ascertainable. Bids received in envelopes (sealed or unsealed) without the bid number on the envelope, must be opened, the bid number ascertained, the envelope sealed and the bid number and closing date written on the envelope.
- 10.7.3 For security purposes all the pages of the bids received must be date stamped, and checked for any correction fluid marks, write-overs, deletions, signature omissions (especially on the bid forms), alternative offers, documents that should have been submitted with the bid, etc. Where the official who checks the bid finds correction fluid marks, write-overs or deletions, the official is required to initial next to it, co-initialled by a second official. Where certain forms, which require signatures, have not been signed, notes to that extent must be made on the temporary cover of the bid. The same applies to forms not included. Such bids must be evaluated. The information must be brought to the attention of the evaluation team when the bids received are handed over for evaluation.

- 10.7.4 The bids received, must be forwarded to the evaluation team for evaluation together with a covering letter. A copy of the covering letter must be placed on the main file (the file that was opened for the bid).

## **10.8 UNSIGNED BIDS**

- 10.8.1 The bid document should be structured and drafted in such a manner that it is clear, once the bidder signs their written offer (the bid), it is the intention of the bidder to be bound by such offer.
- 10.8.2 Before acceptance, it must be ensured that the bidder who signed the document (WCBD 1) indeed has the authority to do so. For this purpose, documents such as company resolutions, references made to the company's memorandum of incorporation/articles of association etc. to confirm such authority should be obtained.
- 10.8.3 For the same reasons, it is important that the signatures of certificates, questionnaires and/or specification forms are validated. The Bid Evaluation Committee may invalidate a bid if it is unsigned or not signed in indelible ink. As this is a very drastic step under the circumstances, and may be a mere oversight by the bidder, care should be taken not to invalidate a bid as a matter of course. Depending on circumstances, bidders should be approached to determine whether they would be willing to sign the particular documents and such signature must take place before acceptance. It must be noted that this is only permissible in the instance of missing signatures. No other amendments to the documentation are permissible.

## **10.9 LATE BIDS**

- 10.9.1 Bids are late if they are received at the address indicated in the bid documents after the closing time or at an address not advertised in the bid advertisement and in the bidding document. A late bid must not be considered and where feasible must be returned unopened to the bidder accompanied by an explanation. The onus will be on the bidder to submit *prima facie* proof that the bid was delivered timeously. No exceptions to this rule should be entertained.
- 10.9.2 After the details of a late bid have been entered in the register, it must be returned to the bidder, preferably unopened unless circumstances dictate otherwise. If the sender's address is not indicated on the envelope, it must be opened to check the bidder's details, closed again and sent back to the bidder. Where bids are received through deposits in the bid box, and because the bid box is only opened on the closing time for a particular bid, two scenarios are possible: Bids may either be received in the bid box prior to the closing time of the bid (i.e. if it is a different bid than the one that closes on the particular day), or it may be received in the bid box on the closing date and time of the bid (i.e. a bid that closes on that particular day). In both instances, where applicable, all the details as indicated above are entered in the register.

## **10.10 CONTROL MEASURES FOR THE HANDLING OF BIDS**

- 10.10.1 The following controls must be in place for the proper handling of bids:
- (a) A designated office for the receipt of bids and a secure room (eg. a strong room) for the storing of bids, as information contained in the documents is privileged.

- (b) A bid box that is accessible to bidders 24 hours per day 7 days a week including weekends and public holidays to ensure free access at all times.
- (c) Where a bid box is not accessible 24/7, it should be brought to the bidders' attention and should be reflected as such on the cover of the bid documents that have been issued to the bidders.
- (d) Date stamps must be used to stamp date of receipt of bids to indicate whether or not bids have been received on time.
- (e) At least two persons must be involved in performing the following functions:
  - (i) receiving of bids; and
  - (ii) opening, processing and recording of bids.
- (f) This also serves to protect officials involved in the abovementioned processes from potential irregular practices and to confirm and serve as witness for the late submission of bids and whether/not due process was followed. In this way the risks for the Department are also minimized, and operations are done in a spirit of consistency with the SCM regulations.
- (g) All bids received are to be entered into a register. In the interest of transparency this information is available for the scrutiny of interested parties on request.
- (h) All samples submitted by bidders must be received, retained and returned to the bidders once the contract has been awarded/ cancelled, according to an approved standard operating procedure (SOP).

## **10.11 EVALUATION OF BIDS**

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

- (a) Compliance with bid conditions (legitimacy test).
- (b) Compliance with bid specification(s).
- (c) Consideration of any other factors that might have an influence on the award of the bid.
- (d) Comparison of prices and the allocation of preference points. The calculation of prices by the bidder must be checked and if discrepancies are detected, the price must be verified. The bidder must acknowledge in writing that an error was indeed made. It is only in such instances that a different price to that recorded in the bidding document may be considered (a bidder does not get a further opportunity after bid closure to submit a price).
- (e) Due diligence process (the capacity of the bidder to execute the bid deliverables)

10.11.2 The above-mentioned includes but is not limited to:

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

- 10.11.3 It must be noted that a situation may arise where bids are received despite the notice referred to in paragraph 10.4.1 (i) above which formed part of the bid invitation (i.e. bid documents), from suppliers who are not duly registered on the CSD and WCSEB. This may be due to a suspended status on the supplier database or due to the fact that bids are advertised broadly on the GTB and websites which has a broader reach than the database suppliers.
- 10.11.4 In the interest of just administrative action, given that compulsory registration is a Provincial requirement and not a regulatory requirement, courts will consider whether or not the WCG did everything in its power to make suppliers aware of this requirement as well as whether or not the bidder had sufficient opportunity to register. In instances like these, the Department should ensure that bidders who are not registered on the CSD and WCSEB are given sufficient opportunity to do so within a specified time as long as the registration process is concluded before the award of the bid.
- 10.11.5 Where it is impractical to utilise suppliers who are duly registered on the CSD and WCSEB, the requirements as prescribed in paragraph 4.5.6 must be followed.
- 10.11.6 Bids should be evaluated in terms of the following phases:
- (a) **Phase 1:**
- Checking of compliance with conditions and compulsory requirements of the bid (i.e. Active registration on the CSD/WCSEB, requested documents, attendance of a compulsory information session if applicable, etc.). Only bids that complied with all requirements set out in Phase 1 of the evaluation process will proceed to the next phase.
- (b) **Phase 2:**
- Evaluate compliance with bid specifications and the bidder's ability to perform. Only bids that complied with all requirements set out in Phase 2 of the evaluation process will proceed to the next phase.
- (c) **Phase 3:**
- Application of the Preference Point System (80:20 / 90:10). A bid must be awarded to the bidder that scored the highest total number of points.
- 10.11.7 If legal persons bid for the rendering of supplies or services, it may be required that the names and relevant qualifications of the actual people (the directors, trustees or members) who will be responsible for the services or works be stated.
- 10.11.8 When evaluating against a technical specification, bidders are required to comply with all technical requirements as far as possible. If it is found that a bidder complies with all the technical requirements, extra features of that product/service offered cannot be taken into consideration unless the Department decides that the feature that the bidder has offered should be part of the specifications. Other bidders should then also be allowed to offer such features.
- 10.11.9 As a general rule it is acceptable to allow the submission of alternative offers which are almost but not strictly to specification irrespective of whether the bidder also submits offers conforming strictly to the specification criteria. The exception to this rule is to stipulate that bidders may not submit such offers. In such cases, this decision must be stated unequivocally in the bid invitation in order to avoid a situation where different offers are submitted on one set of bid documents, thereby compromising / prejudicing the position of the bidder. Factors to be considered are:

- (a) The delegatee must be convinced that other bidders' competitiveness is not adversely affected by the acceptance of a bid, which is not strictly to specification.
- (b) If the delegatee is not convinced, the offer that is not strictly to specifications may not be considered.
- (c) Where the difference in bidding price between the bid with acceptable deviations from specification and the lowest bid strictly to specification is small, a recommendation should be made to the Departmental Bid Committee that the latter should be accepted as an alternative. In this instance, the programme concerned should indicate that it will carry the additional cost.
- (d) Where there is no such indication, or the programme is unable to bear such cost, such bid may not be accepted.

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

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

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

10.11.12 It is a requirement that the taxes of bidders must be in order or that satisfactory arrangements have been made with the SARS. Failure to supply the relevant Tax Clearance Certificate/Tax compliance status certificate downloaded from e-Filing or proof that arrangements have been made with SARS will invalidate the bid.

10.11.13 Prior to the award of any contract, the delegatee should ensure that neither the recommended bidder nor any of the directors are listed as companies/directors/persons restricted to do business with the public sector. This list of restricted suppliers is managed and maintained by the Office of SCM within the National Treasury. This list can be accessed on the National Treasury website: [www.treasury.gov.za](http://www.treasury.gov.za). Departments must ensure that the recommended bidder is not listed in National Treasury's Database of Tender Defaulters and Register of Restricted suppliers. Under no circumstances is the Department allowed to procure from suppliers listed on the Tender Defaulters' Database. For suppliers listed on the Register for Restricted Suppliers, the Department must apply due diligence and risk assessment before deciding to proceed with procurement from the supplier.

10.11.14. In order to give effect to the National Industrial Participation Programme, all contracts that have an imported content and a value  $\geq$  R10 million must within five (5) days after award be reported to the Department of Trade and Industry at the following address:

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

10.11.15 The following information regarding the contracts mentioned in paragraph 10.12.14 must be reported to the Department of Trade and Industry:

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

## **10.12 EVALUATION OF BIDS BASED ON FUNCTIONALITY AS A CRITERION**

10.12.1 Bids invited on the basis of functionality as a criterion must be evaluated in three phases, namely:

- (a) Phase 1 - compliance with bid conditions and compulsory requirements;
- (b) Phase 2 - evaluation of functionality; and
- (c) Phase 3 - application of 80/20 or 90/10 preference point system.

### **10.12.2 Evaluation of functionality**

- (a) Bids must be evaluated in terms of the evaluation criteria indicated in the bid document. The amendment of evaluation criteria, weights, applicable values and minimum qualifying score for functionality is not allowed after the closure of the bid as it may jeopardise the fairness of the process.
- (b) A bid will be considered further, if it achieves the prescribed minimum qualifying score for functionality. A bid that fails to achieve a minimum qualifying score must be disqualified.
- (c) Score sheets must be prepared and provided to panel members to evaluate the bids. The score sheet should contain all the criteria and the weight for each criterion as well as the values to be applied for evaluation, indicated in the bid documents.
- (d) Each panel member must, after thorough evaluation, independently award his/her own value to each individual criterion. Score sheets must be signed by panel members

and if necessary, written motivation may be requested from panel members where vast discrepancies in the values awarded for each criterion exist.

- (e) If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality must be calculated as follows:
  - (i) The value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria.
  - (ii) The scores for each criterion should be awarded to obtain the total score.

#### 10.12.3 **Application of the 80/20 or 90/10 preference point system**

Only bids that achieve the minimum qualifying score/percentage for functionality must be evaluated further in accordance with the 80/20 or 90/10 preference points systems prescribed in the Preferential Procurement Regulations, 2017.

### 10.13 **EVALUATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT**

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

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

- (a) Bids must be evaluated in terms of the evaluation criteria stipulated in the bid documents. The amendment of the stipulated minimum threshold for local production and content after the closure of bids is not allowed as it may jeopardise the fairness of the process.
- (b) functionality (if applicable) must also be evaluated in phase 1;
- (c) bids must first be evaluated in terms of the minimum threshold for local production and content, thereafter functionality; and
- (d) A bid will be disqualified if:
  - (i) The bidder fails to achieve the minimum stipulated threshold for local production and content (and functionality if applicable); and
  - (ii) The Declaration Certificate for Local Content (WCBD 6.2) is not submitted as part of the bid document.

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

- (a) Only bids that achieve the minimum stipulated threshold for local production and content must be evaluated in this phase.
- (b) Contracts must be awarded at market related prices, taking into account benchmark prices. If the Department has sufficient time it may approach the DTI to assist with benchmark prices, value for money and economies of scale; and
- (c) Prices may be negotiated with shortlisted/preferred bidders but it must not prejudice other bidders. It is further subject to the Accounting Officer's or delegated official's

approval and bidders have been identified as preferred bidders through a competitive bidding process.

#### **10.14 EVALUATION OF BIDS THAT SCORED EQUAL POINTS**

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

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

10.14.3 In the event that two or more bids are equal in all respects, the award must be decided by the drawing of lots.

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

10.14.5 The following is the preferred procedure when drawing lots:

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

#### **10.15 DISCOUNTS**

When calculating comparative prices:-

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

## **10.16 SUB-CONTRACTING**

- 10.16.1 A bidder must not be awarded the points claimed for B-BBEE status level contribution if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended subcontractor is an Exempted Micro Enterprise (EME) that has the capability to execute the sub-contract.
- 10.16.2 In relation to a designated sector, a contractor must not be allowed to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the minimum threshold.

## **10.17 AWARD OF BIDS**

- 10.17.1 A bid must be awarded to the bidder who scored the highest total number of points in terms of the preference point systems.
- 10.17.2 A contract may be awarded to a bidder who did not score the highest total number of points, only in accordance with Section 2(1)(f) of the PPPFA (Act 5 of 2000). This may be done when objective criteria are contemplated in addition to specific goals as contemplated in sub-sections (d) and (e) of the PPPFA, which require that:
- (a) specific goals may include-
    - (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
    - (ii) implementing the programmes of the Reconstruction and Development Programme (RDP) as published in *Government Gazette* 16085 dated 23 November 1994; and
  - (b) any specific goal, for which a point may be awarded, must be clearly specified in the invitation to submit a tender.

## **10.18 REJECTION OF BIDS**

- 10.18.1 Rejecting all bids is justified when there is a lack of effective competition or bids are not substantially responsive. However, lack of competition should not be determined solely on the basis of the number of bids received. If all bids were rejected, the Department must review the causes justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids. If rejection is due to lack of competition, wider advertising must be considered. If the rejection was due to most or all of the bids being unacceptable, new bids may be invited from the initially pre-qualified firms, or with the prior written agreement of the Accounting Officer or delegated official, from only those that submitted bids in the first instance.
- 10.18.2 Bids must not be rejected for the purposes of obtaining lower prices, if the lowest evaluated acceptable bid exceeds the Department's estimated costs, unless the approved budget for the procurement process dictates otherwise.
- 10.18.3 Individual bids may be disregarded in the following circumstances:

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

## **10.19 CONCLUSION OF CONTRACT**

- 10.19.1 A contract is concluded and becomes binding when a bid is accepted by the Accounting Officer or delegated official and a signed letter of acceptance, by an authorised person, has been sent before the validity period has expired and the relevant bidder has accepted the award by signing the requisite WCBD 7.1 Contract Form. Any decision regarding the awarding of a contract will be final and, on written request, reasons for the decision of the Department will be provided without revealing any information of any bidder that is afforded protection under the PAIA or by any other law.
- 10.19.2 Successful Bidders will be notified, in writing, of the acceptance of bids. With the exception of period contracts, the under-mentioned particulars of the successful bidder must be published in the Government Tender Bulletin and on the e Tender Publication Portal of the National Treasury for general information:
- (a) Name of the Contractor;
  - (b) The relevant price and delivery basis;
  - (c) The brand name of the product or the name of the manufacturer;
  - (d) Where applicable, the preferences claimed; and
  - (e) Where no bid has been accepted, particulars of the bids received are not to be made public.
- 10.19.3 All correspondence, including letters of acceptance, must be signed on behalf of the Accounting Officer or delegated official and in accordance with the relevant delegations. This is an administrative arrangement and although the Accounting Officer or delegated official accepts accountability for the contract that is concluded, the signatory remains co-responsible for the contract and for the correctness of the data supplied. The letters of acceptance and/or Service Level Agreement (SLA) serve as the basis for placing orders and for the administration of the contract as well as for the settlement of disputes. The format and contents of the letters of acceptance must be written in a manner to enable SCM practitioners to carry out the above-mentioned actions in a meaningful and responsible manner. All relevant information must be included in the letters of acceptance. It is essential that any conditions or stipulations, laid down by the Department, be clearly and unambiguously included in the bid documents or letters of acceptance.

- 10.19.4 Care must be taken that letters of acceptance and/or SLAs do not contain conditions, or do not even imply the approval of conditions that the delegated official has not approved. Any special conditions set by the bidder, that has not been withdrawn, as well as any special conditions that have been approved and which have financial implications, must also be included in the letters of acceptance and/or SLAs.
- 10.19.5 In the case of joint bids or bids on behalf of companies still to be incorporated, the Department's rights must be protected at all times by binding all parties to the contracts both jointly and severally. The companies and/or persons concerned must therefore each receive a letter of acceptance/copy of the SLA addressed to their own addresses and care must be taken that they all have signed the bid documents appropriately. In the case of a company to be established, the contract must be ceded to the company as soon as it has been incorporated. In the case of period contracts where a large number of items are at stake, the contract notice may be used as part of the letter of acceptance and/or SLA.
- 10.19.6 In all cases, mistakes in the letters of acceptance must be reported to the relevant Head of the Department immediately, whereupon, every effort must be made without delay to recover the original letter of acceptance from the contractor. Where it is not possible to recover the letter of acceptance unconditionally, all particulars of the incorrect acceptance must be reported to the Bid Committee together with a recommendation regarding the corrective steps which are envisaged. A contract is only formalised when there is consensus reached and it is signed by both parties.
- 10.19.7 Where further documentation is signed by all parties concerned as an agreement in addition to the letter of acceptance, it is defined as a Service Level Agreement (SLA). It is not in all instances that a SLA is required. A SLA is a document, which defines the relationship between the parties: the provider(s) and the recipient. This is clearly an extremely important document for both parties. It should:
- (a) Identify and define the Department's needs;
  - (b) Provide a framework of understanding;
  - (c) Simplify complex issues;
  - (d) Reduce areas of conflict;
  - (e) Encourage dialogue in the event of disputes; and
  - (f) Eliminate unrealistic expectations.
- 10.19.8 Furthermore, SLA's should embrace a wide range of issues which include, amongst others, the following:
- (a) Services to be delivered;
  - (b) Performance, Tracking and Reporting;
  - (c) Problem Management;
  - (d) Legal Compliance and Resolution of Disputes;
  - (e) Service provider and Department's duties and responsibilities;

- (f) Security;
- (g) Confidential Information; and
- (h) Termination.

10.19.9 All SLA's must be done in consultation with Legal Services. It should also be legally vetted by Legal Services.

## **10.20 NEGOTIATIONS WITH PREFERRED BIDDERS**

- 10.20.1 Negotiations with bidders identified as preferred bidders through a competitive bidding process may take place provided that approval has been obtained from the Accounting Officer or delegated official and such a process does not allow the bidder concerned a second (unfair) opportunity, is not to the detriment of any other supplier/bidder and does not lead to a higher price than the bid as submitted.
- 10.20.2 Negotiations should include discussions of the Terms of Reference (TOR), the methodology, staffing, Accounting Officer's or delegated official's inputs, and special conditions of the contract. These discussions should not substantially alter / affect the original TOR or the terms of the contract, the quality of the final product and the relevance of the initial evaluation process. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology should be incorporated in "Description of Services," which should form part of the contract. The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm.
- 10.20.3 The key staff proposed for substitution should have qualifications equal to or better than the key staff initially proposed. Financial negotiations should include clarification of the consultants' tax liability. Proposed unit rates for staff-months and reimbursable items should not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons.
- 10.20.4 If the negotiations fail to result in an acceptable contract, the Accounting Officer or delegated official should terminate the negotiations and invite the next ranked bidder for negotiations.
- 10.20.5 The tenderer scoring the highest points should be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked bidder, the Accounting Officer or delegated official should not re-open the earlier negotiations. After negotiations are successfully completed, the Accounting Officer or delegated official should promptly notify other bidders that they were unsuccessful.

## 10.20.6 Points of note

- (a) As one goes into a negotiation, there is one striking question that one needs to ask oneself: "Is the price the only subject for negotiation?"
- (b) Negotiation is both an art and a science. Successful negotiators are those with the ability to strategically position themselves so as to become the most favoured by the suppliers. Therefore, buyers need to be ethically conscious, and present themselves professionally.
- (c) To achieve all this, negotiators may require the necessary skills in order to effectively negotiate for a win-win outcome. As the parties go into negotiations, there is a need to have a clear strategy and a mandate to make decisions. To negotiate successfully, a negotiator should:
  - (i) focus on common ground rather than differences;
  - (ii) try to address needs and interests, not positions;
  - (iii) be committed to meeting the needs of all parties involved;
  - (iv) exchange information and ideas;
  - (v) not go into meetings with clenched fists;
  - (vi) develop options for mutual gain;
  - (vii) use objective criteria for standards of performance;
  - (viii) be committed to honesty and integrity;
  - (ix) be trusted;
  - (x) plan and prepare for meetings;
  - (xi) set clear objectives and targets;
  - (xii) know when to use certain strategies;
  - (xiii) know and understand suppliers and the supply market;
  - (xiv) know how to use financial knowledge to influence outcomes;
  - (xv) know how to influence and close the deal;
  - (xvi) know how to turn a 'no' into 'yes'; and
  - (xvii) understand negotiation behaviours.

## 10.21 CANCELLATION AND RE-INVITATION OF BIDS

### 10.21.1 Bids may be cancelled and fresh bids invited if:

- (a) conditions, specifications or any other information have to be changed due to a change in need / or mistakes are discovered in the documents before or after the closing date;
- (b) all bidders cannot be informed of the changes of the bid timeously;
- (c) in the event that, in the application of the 80/20 preference point system as stipulated in the bidding document all bids received exceed the estimated rand value of R50 000 000. It should be noted that if one or more of the acceptable bids received are within the prescribed threshold of R 50 000 000, all bids received must be evaluated on the 80/20 preference points system;

- (d) in the event that, in the application of the 90/10 preference point system as stipulated in the bidding document all bids received are above the estimated Rand value of R50 000 000. It should be noted that if one or more of the acceptable bids received are above the prescribed threshold of R50 000 000, all bids received must be evaluated on the 90/10 preference points system;
- (e) due to changed circumstances, there is no longer a need for the goods or services, works specified in the invitation;
- (f) funds are no longer available to cover the total envisaged expenditure; and
- (g) no acceptable bids are received.
- (h) There is a material irregularity in the tender process.

10.21.2 Should the Department decide to cancel a bid, a submission must be drafted and submitted via the Bid Committee to the Accounting Officer or delegated official regarding the cancellation of the bid. Where the latter decides to cancel the bid, cancellation must be communicated to all bidders who collected bids. A tender invitation can only be cancelled for the second time with the prior approval of Provincial Treasury.

## **10.22 COMMUNICATION WITH BIDDERS**

10.22.1 During consideration of bids, communication with bidders, may take place only within the delegated powers as set out by the SCM delegations. Communication with the bidder is only allowed when there appears to be ambiguity in documentation provided, and there is a need to confirm prices where there is uncertainty. The extent and purpose of the communication must be documented.

10.22.2 If bidders set their own conditions, which might contradict or be in conflict with the bid conditions and it is in the interest of the Department to accept these conditions set by the bidder, and insofar as those conditions do not prejudice other bidders, recommendations for acceptance may be made via the Bid Committee to the Accounting Officer or delegated official.

10.22.3 However, where it is not in the interest of the Department to accept same, or prejudice to other bidders is inevitable, the bidder may be requested to renounce/withdraw these conditions. Where such conditions have financial implications or their withdrawal implies a second chance to bid, the facts must be pointed out to the Accounting Officer or delegated official. If the condition is of such a nature that it is materially unacceptable, the bid may be invalidated. In this instance the bidder must be informed in clear terms of the (that) consequence should the bidder fail to adhere to the abovementioned request. Cognisance of the legal implications should be taken when exercising these steps.

# CHAPTER 11

## LIMITED BIDDING

### 11.1 INTRODUCTION

11.1.1 Limited bidding is the process whereby bidding is reserved for a specific group or category of possible suppliers/service providers/contractors. It should be viewed as an **exception and not the rule** as this imposes a limitation on the provision of competitiveness. Departmental limited bidding will be permitted in instances where:

- (a) a business case was developed, that clearly indicates that a limited bidding process is the appropriate form of procurement. The business case must, amongst others, reflect a market and expenditure analysis of the relevant goods or services (commodity), whether the commodity is available from a sole, single or multiple sources as well as how it was determined;
- (b) an open invitation process was initiated which resulted in an approved list of service providers or only one service provider who could provide the goods or services. In such cases, proposals should be invited from the approved list of service providers or the single service provider, if applicable;
- (c) a competitive bidding process was initiated, but the bids received were all non-responsive or unaffordable and time is limited. In such cases re-invitation of bids may be limited to those service providers who initially submitted proposals;
- (d) goods or services are designed or manufactured by the supplier or the supplier is the owner of the intellectual property. Written confirmation of such design, manufacturing or ownership of intellectual property must be obtained from the supplier and retained on the relevant bid file;
- (e) there exists legislative, technological or safety requirements or standards to limit the invitation to those suppliers or contractors who meet the requirements or standards. The afore-mentioned requirements or standards must be recorded by the Department and retained on the relevant bid file;
- (f) the Department has a specific need and may procure for exceptionally low prices for a limited period of time from a specific supplier. Written confirmation of the offer and the reasons for it must be provided by the supplier and retained on the relevant bid file as well as an indication that other relevant suppliers could not match the offer; or
- (g) goods or services are offered by other departments, trading entities or public entities, inclusive of service products, provided that prices are reasonable and market related.
- (h) Until such time that a transversal contract has been arranged for the utilization of a travel management agency, written quotations will be obtained from at least three (3) travel management agencies who are willing to accept WCED orders without opening an account. However, the informal quotation system is to be utilised only for air travel, vehicle hire and accommodation.

11.1.2 When procuring goods or services through a limited bidding process, the SCM unit must ensure that, where relevant:

- (a) the prescribed bidding documents have been completed;
- (b) the preferred bidder's tax matters are in order;
- (c) the bid is evaluated in terms of the preference points system;
- (d) the required demand management process has been complied with;
- (e) all goods or services procured through a limited bidding process be recommended through the bid adjudication process prior to a final award being made by the relevant delegatee;
- (f) all limited bids over the value of R1 million (all applicable taxes included) are reported to the Provincial Treasury and the Auditor-General within ten (10) working days;
- (g) all limited bids over the value of R5 million (all applicable taxes included) be executed in consultation with the Provincial Treasury prior to the award being made; and
- (h) reasons for the decision are documented and readily available to give effect to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).

## **11.2 FORMS OF LIMITED BIDDING**

### **11.2.1 Multiple Source Bidding**

This form of bidding is used in the case where the market has been tested and it is proven as fact that only a few prospective contractors will be able to present a bid. A detailed market analysis report must be available as substantiation.

### **11.2.2 Single Source Bidding**

This form of bidding requires a pre-selection process that actually identifies only one bidder, amongst a few prospective bidders, to be requested to submit a bid/proposal. Reasons for utilising single source bidding must be documented and be readily available, thus giving effect to the provisions of the Promotion of Administrative Justice Act (PAJA) and the Promotion of Access to Information Act (PAIA).

### **11.2.3 Sole Source Bidding**

This form of bidding is used in the absence of competition where it has been established that only one source exists. Clear documentation in substantiation of such a bidding process must be available.

In the case of a sole service provider, the identified supplier/service provider must submit a certification that the relevant supplier/service provider is indeed the manufacturer/distributor/reseller/ of the goods (product)/service. However, notwithstanding the afore-mentioned, nothing precludes the WCED from seeking other methods of certification and/or verification.

## **11.3 SYSTEMS AND PROCESSES FOR THE PROPER HANDLING OF LIMITED BIDDING**

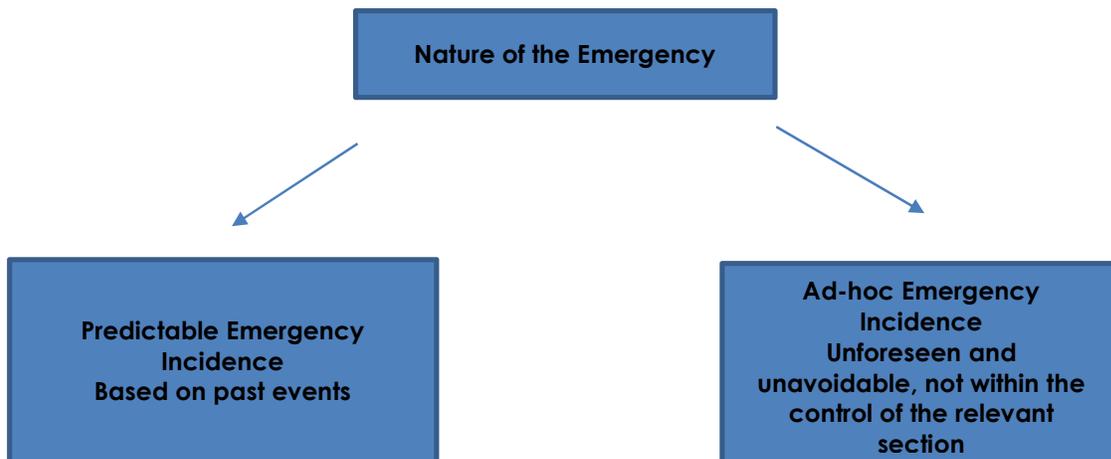
11.3.1 With the exception of those cases specifically mentioned in the Supply Chain Management Delegations, limited bidding must follow the same procedure relating to bid documentation, closing dates, opening of bids, evaluation and awarding as is the case in competitive bidding.

11.3.1 A Standard Operating Procedure for Limited Bidding Procurement together with an Application for Limited Bidding and Checklist is attached as **Addendum 7**.

# CHAPTER 12

## EMERGENCY PROCUREMENT

- 12.1 An "Emergency" in the WCED is defined as being when unforeseen events make it extremely urgent to obtain goods or services which cannot be procured in time by means of the formal bid procedures; or a situation where immediate action is necessary in order to avoid a dangerous or risky situation or misery, provided that the situation was unforeseen.
- 12.2 The Department may in cases of emergency, dispense with the invitation of competitive bids if impractical and may obtain goods or services by means of quotations. This must be done in accordance with the Department's Emergency Procurement Policy.
- 12.3 The following diagram sets out the nature and conditions warranting an emergency:



- 12.4 The SCM Emergency Procurement Policy together with the Standard Operating Procedures for the procurement of goods/services (*ad-hoc* and predictable) in emergency situations is attached as **Addendum 8**.
- 12.5 Conditions warranting an Emergency should include the existence of one or more of the following:
- (a) The possibility of injury or death;
  - (b) The prevalence of human suffering or deprivation of rights;
  - (c) The possibility of damage to property or a resultant of loss of property;
  - (d) Interruption of essential services or support services critical to the effective functioning of the WCED;
  - (e) The possibility of serious damage occurring to the natural environment; and
  - (f) The possibility that the failure to take the necessary action may result in the WCED not being able to render an essential service to the community.

The prevailing situation should be of such a scale and nature that it could not allow for the full formal procurement process to be followed. Emergencies should not be granted in respect of circumstances other than those contemplated above and/or further specified in **Addendum 8**. **It must be noted that poor planning does not justify an emergency procurement incidence.**

# CHAPTER 13

## UNSOLICITED BIDS

### 13.1 INTRODUCTION

An unsolicited proposal means any proposal received by the Department outside its normal procurement process. The Department is not obliged to consider any unsolicited proposal.

### 13.2 CRITERIA FOR CONSIDERATION OF AN UNSOLICITED PROPOSAL

13.2.1 An unsolicited proposal may be considered if the proposal includes at least the following information:

- (a) proof of ownership of design, manufacturing, intellectual property, copyright or any other proprietary right of ownership or entitlement of the bidder;
- (b) an offer in writing clearly setting out the proposed cost of the goods/ services; and
- (c) a value proposition which demonstrates a clear measurable, foreseeable efficiency gain for the Department.

13.2.2 If the decision is to consider the unsolicited proposal, a registered letter must be sent to the proponent confirming the decision to consider the proposal.

13.2.3 The following information must be requested from the proponent, if not already provided for in the initial proposal:

- (a) the proponent's name, address, identification or registration number (if a corporation), VAT registration number and the contact details of its authorised representative;
- (b) identification of any confidential or proprietary data not to be made public;
- (c) the names of other South African departments that have received a similar unsolicited bid;
- (d) a declaration from the proponent to the effect that the unsolicited bid was not as a result of any non-public information obtained from officials of the Department or any other department;
- (e) a concise title and abstract (approximately 200 words) of the proposed good or service;
- (f) a statement of the objectives, approach and scope of the proposed good or service;
- (g) a statement describing how the proposal is demonstrably innovative and supported by evidence that the proponent is the sole provider of the innovation;
- (h) a statement of the anticipated benefits or cost advantages to the Department including the proposed price (as in the initial proposal) or total estimated cost for providing the good or service in sufficient detail to allow a meaningful evaluation by the Department;
- (i) a statement showing how the proposed project / offer supports the Department's strategic growth and development plan and its other objectives; and

- (j) the period of time for which the proposal is valid for consideration, which may not be less than six (6) months.

13.2.4 When procuring goods or services as a result of an unsolicited proposal/bid, the Accounting Officer must ensure that:

- (a) the prescribed bidding documents have been completed; and
- (b) a recommendation is made through the Bid Committee process prior to a final award being made by the Accounting Officer.

13.2.5 The authority to approve a final award as a result of an unsolicited proposal/bid may not be delegated by the Accounting Officer.

### **13.3 REJECTION OF AN UNSOLICITED PROPOSAL**

13.3.1 An unsolicited proposal must be rejected if the proposal:

- (a) relates to known departmental requirements that may, within reasonable and practical limits, be acquired through conventional competitive bidding methods;
- (b) relates to goods or services which are generally available;
- (c) does not fall within the Department's powers and functions; and
- (d) does not comply with paragraph 13.2.1 above.

13.3.2 If the unsolicited proposal is rejected the Department will:

- (a) notify the authorised representative of the proponent by registered post that the Department has rejected the unsolicited proposal;
- (b) ensure that it does not make use of any of the intellectual property or proprietary data in the unsolicited proposal; and
- (c) return to the proponent by registered mail all documents received in the unsolicited proposal including any copies of these documents.

### **13.4 EVALUATION OF UNSOLICITED PROPOSALS**

13.4.1 An unsolicited proposal is compliant if:

- (a) the good(s) or service(s) offered is a unique, innovative concept that will be exceptionally beneficial to, or have exceptional cost advantages for the Department;
- (b) the person who made the proposal is the sole provider of the good(s) or service(s); and
- (c) the need for the good(s) or service(s) has been established during the strategic planning and budgeting processes.

13.4.2 The Department may enter into direct negotiation with the proponent outside the normal competitive bidding process.

## **13.5 PUBLIC PRIVATE PARTNERSHIP (PPP) COMPLIANT UNSOLICITED PROPOSALS**

- 13.5.1 If the unsolicited proposal is a PPP, the necessary National Treasury Regulation should be complied with.
- 13.5.2 If the unsolicited proposal is not compliant to the requirements for PPP's, a comprehensive evaluation of the unsolicited proposal must be undertaken. This includes a feasibility study that evaluates the costs and benefits of procuring the good(s) or service(s) from the proponent including, as appropriate, an assessment of:
- (a) any unique, innovative, researched or meritorious methods, approaches or concepts demonstrated in the unsolicited proposal;
  - (b) the overall scientific, technical, or socio-economic merit of the unsolicited proposal;
  - (c) the potential contribution of the unsolicited proposal to the Department's strategic growth and development plan;
  - (d) an assessment of whether the proposed cost of the project is realistic, affordable and justified; and
  - (e) any other fact which, in the opinion of the Department, is relevant to the particular unsolicited proposal.
- 13.5.3 If at the conclusion of the feasibility study, a clear business case has been established and the good(s) or service(s) involves an innovative design or involves an innovative approach to project development and management or presents a new and cost-effective method of service delivery, the Department must proceed with the processes to develop and execute an unsolicited bid agreement as set out in paragraph 13.6.1 below. If the feasibility study does not reveal the above, the Department must reject the unsolicited proposal as prescribed in paragraph 13.3.1 above.

## **13.6 UNSOLICITED PROPOSAL AGREEMENT**

- 13.6.1 If the Department proceeds with the unsolicited proposal, the Accounting Officer must negotiate an unsolicited proposal agreement with the proponent, in order to establish amongst others:
- (a) the methodology for determining any costs to be reimbursed to the proponent, should the procurement processes set out in paragraph 13.8.3 below result in an award for the good(s) or service(s) being made to a party other than the proponent;
  - (b) the procedure for further developing the project and responding to issues raised by the Department;
  - (c) the allocation of responsibility for developing bid documents in accordance with the Department's supply chain management systems, provided that the development of the documentation must always be under the supervision of the Department;
  - (d) the information in the unsolicited proposal must be treated as confidential; and
  - (e) the purchase of intellectual property rights, if any.

## **13.7 CALCULATION OF COSTS**

- 13.7.1 In calculating costs for the purposes of paragraph 13.6.1 (a) above, the Department and the proponent must restrict their consideration to direct costs incurred by the proponent in developing technical and other materials in meeting paragraph 13.6.1, above.
- 13.7.2 If the Department and the proponent cannot reach consensus, the Department will not be responsible for any costs which the proponent has incurred in preparing and submitting the unsolicited proposal. The Department may not implement the project proposed in the unsolicited proposal for the current or next financial year and may not utilise at any time the proprietary information provided by the proponent as part of its unsolicited proposal.

## **13.8 PROCUREMENT**

- 13.8.1 If the unsolicited proposal agreement is concluded, the Department must prepare and issue the prescribed bidding documents to the proponent for completion.
- 13.8.2 The process to be followed when procuring goods and services from a provider shall include:
- (a) the preparation of a Request for Qualification (RFQ) to test the market for the existence of other private entities capable of providing the goods/services;
  - (b) the preparation of a draft contract for the provision of the good(s) or service(s) should there be no adequate response to the RFQ;
  - (c) the preparation of a Request for Proposal (RFP) with a draft contract should there be one or more adequate responses to the RFQ;
  - (d) conducting a competitive bidding process among the firms qualified in the RFQ and the proponent;
  - (e) recommendation through the bid committee process prior to the final award being made by the Accounting Officer or delegated official;
  - (f) the final award must be approved by the Accounting Officer; and
  - (g) reimbursement of the proponent should the proponent not be awarded the contract for the provision of the good(s) and service(s) at the conclusion of the competitive bidding process. The quantum of the reimbursement shall be those audited costs of the proponent from the point in time where the Accounting Officer was solicited by the proponent to the conclusion of the competitive process in terms of the unsolicited proposal agreement.
- 13.8.3 The foregoing bid processes must –
- (a) be developed by the Department;
  - (b) disclose that the bid originated from an unsolicited proposal;
  - (c) provide the agreed costs and terms of payment to the proponent, and require that all bidders, save for the proponent, make allowance for these costs and pay such costs to the proponent directly, if their bid is successful.

### **13.9 USING EXTERNAL CONSULTANTS TO ASSIST IN EVALUATING UNSOLICITED PROPOSALS**

- 13.9.1 After receiving an unsolicited proposal and before accepting or rejecting the proposal, independent consultants or experts may be approached by the Department to assist in evaluating such proposal.
- 13.9.2 These consultants must however undertake that any confidential material or information provided by the proponent will not be disclosed to anyone other than an employee or agent of such a third party who will, in turn, treat the information or material as confidential and give an undertaking to do so. The cost of obtaining independent advice must be covered by the Department, unless the proponent withdraws the proposal prior to entering into an unsolicited proposal agreement, in which event the proponent will be liable to the Department for these costs.
- 13.9.3 The appointment of such external consultants will be done in accordance with the requirements as stipulated in Chapter 6.

### **13.10 USE OF UNSOLICITED PROPOSALS**

The Department may not use any data, concept, idea, or other part of an unsolicited proposal as the basis or part of the basis, for a solicitation or in negotiations with any other firm unless the project proceeds to procurement and the proponent is notified of and agrees to the intended use, provided that, this prohibition does not preclude the use of any data, concept or idea in the proposal that also is, or becomes, available from another source without restriction. The Department further will not disclose any information identified in the unsolicited proposal agreement as confidential.

### **13.11 REPORTING**

- 13.11.1 The Provincial Treasury must be notified in writing within ten (10) working days of receipt of an unsolicited proposal whether such proposal had been considered or rejected by the Department.
- 13.11.2 The Department must record all proposals/unsolicited bids received and rejected/awarded. All concluded unsolicited proposal agreements must be reported in the Department's annual report.

## CHAPTER 14

### TRANSVERSAL CONTRACTS

- 14.1 Transversal contracts will be arranged by the following three departments as per the Provincial Treasury Instructions:
  - 14.1.1 Department of the Premier for Corporate Shared Services (CSC) in respect of human resources, organisational development, provincial training, corporate communication and information technology related goods or services where it has a financial or contractual impact on other departments;
  - 14.1.2 Department of Transport and Public Works for accommodation requirements where such provision has a financial or contractual impact on other departments generally; and
  - 14.1.3 Provincial Treasury for goods or services where no single department may be determined as the custodian for the provision of such goods or services.
- 14.2 The three departments mentioned above will obtain written application from other Accounting Officers or accounting authorities to participate in the arrangement of the contemplated transversal contract.
- 14.3 Where the Department opts to participate in a transversal contract facilitated by the National Treasury, Provincial Treasury and Provincial Departments, the Department **will not** solicit bids for the same or similar product or service during the tenure of the transversal term contract.

## **CHAPTER 15**

### **CONTRACTS PROCURED BY OTHER ORGANS OF STATE**

- 15.1 The Department may procure goods and services under a contract secured by another organ of state, when the following are satisfied:
  - 15.1.1 the contract secured by that other organ of state is supported by a business case, analysing the commodity, the market and the appropriate sourcing method;
  - 15.1.2 there is no potential conflict of interest between officials of the Department and the service provider;
  - 15.1.3 there is a clear advantage to be gained by the Department in terms of resources saved;
  - 15.1.4 the Department has no reason to believe that such contract was not validly procured;
  - 15.1.5 the other organ of state and relevant service provider have consented to such procurement in writing;
  - 15.1.6 the Department procures under the same terms and conditions as provided for in the original contract or more beneficial terms or conditions;
  - 15.1.7 expenditure on goods or services by the other organ of state should not be more than 50% of the original contract value; and
  - 15.1.8 a separate service level agreement is concluded for this purpose which clearly stipulates the duration of the contract with particular emphasis on the start and end date. Such start and end dates must not be outside the contract period of the other organ of state.
- 15.2 When another organ of state wishes to procure from the Department, a written request outlining the following must be submitted to the Department:
  - 15.2.1 Detailed reasons for the request must;
  - 15.2.2 Clearly demonstrate the benefits that the organ of state will achieve from procuring from the contract;
  - 15.2.3 Clearly demonstrate that the five pillars of procurement will not be infringed; and
  - 15.2.4 Written consent that the organ of state will conform to the terms and conditions of the existing contract.

# **VOLUME 5**

# **CONTRACT MANAGEMENT**

# CHAPTER 16

## MANAGING CONTRACTS

### 16.1 INTRODUCTION

- 16.1.1 Contract management is the process that enables both parties to enter into contract to meet their obligations in order to deliver the objectives required from the contract. It also involves building good working relationships between the customer and provider. It continues throughout the duration of a contract and involves proactive management to anticipate future needs and reacting to situations that may arise.
- 16.1.2 The aim of contract management is to obtain the goods or services as agreed in the contract and to achieve value for money. This means optimising the efficiency and effectiveness of the services or the relationship described by the contract, balancing costs against risks and actively managing the customer-provider relationship. Contract management may also involve aiming for continuous improvements in performance over the duration of the contract.

### 16.2 CONTRACT MANAGEMENT ACTIVITIES

- 16.2.1 Contract management activities are grouped into three areas:
- (a) Service delivery management: ensures that the service is being delivered as agreed, to the required level of performance and quality. This is the role of the line management component using the contract.
  - (b) Relationship management: keeps the relationship between the two parties open and constructive, aiming to resolve or ease tensions and identify problems timeously. This responsibility is primarily that of line management supported by SCM.
  - (c) Contract administration: handles the formal governance of the contract and changes to the contract documentation. This is the role of SCM.
- 16.2.2 All three activities must be managed optimally to ensure effective and efficient contract management.
- 16.2.3 Adequate preparation and concluding the correct type of contract are essential foundations for good contract management. The arrangement must be flexible to accommodate change. A key factor is "intelligent customer capability": the knowledge of both the customer's and the provider's business, the service being provided and the contract itself. The capability, which touches all three areas of contract management, forms the interface between supply and demand that is, between the business needs of the customer (which refers to the line management) and the provider.
- 16.2.4 Contracts need to be managed according to the Contract Management Framework (CMF) outlined in the Contract Management Guide (CMG) issued by National Treasury in August 2010. Contract Management best practice guidelines issued by the Chief Directorate Legal Services Corporate Services Centre dated March 2013 also have reference.

### **16.3 ELEMENTS OF CONTRACT MANAGEMENT**

The elements of contract management include the following:

- (a) Ensuring that all relevant documentation setting out the rights and obligations of both parties are in place, and signed;
- (b) Ensuring change control, i.e. managing changes, amendments and variations to any part of the original agreement (only by written amendment signed by both parties);
- (c) Measuring performance against contract requirements or service level agreements;
- (d) Implementing corrective action whenever significant/unacceptable deviations against the original agreement occur;
- (e) Managing the payment system especially the 30 day period within which payments must be made;
- (f) Managing compliance to delivery instructions, quality and quantity control; and
- (g) Managing the process of default and application of penalties.

### **16.4 NOTIFICATION OF ACCEPTANCE**

16.4.1 Successful bidders shall be advised, in writing, of the acceptance of their bid/s. Awards shall be published in the Government Tender Bulletin and on the eTender Publication Portal of National Treasury as well as other media by means of which the bids were advertised. Bids are not available for perusal by the public, but, at the written request of a Bidder or interested party in terms of the procedures for the Promotion of Access to Information Act, the following particulars may be furnished where the information has not been published in the Government Bid Bulletin. The particulars to be published are as follows:

- (a) name of the contractor;
- (b) the relevant price and delivery method;
- (c) the brand name of the product or the name of the manufacturer, and
- (d) where applicable, the preferences claimed.

Where no bid/s has/have been accepted, particulars of the bids received are not made public. The application to advertise must preferably be lodged with the Government Printer after the letter of acceptance and Service Level Agreement (SLA) is issued.

16.4.2 The letter of acceptance and SLA must preferably be collected by the contractor and signed at the WCED Head Office. Where impractical in respect of learner transport contracts, it must be sent to the Education District Office where the bidder is requested to sign the documents. However, the documents may be sent by registered mail / faxed or scanned and submitted via e-mail when the aforementioned cannot be achieved. The date of signature on the WCB 7.1 Contract Form shall be regarded as the date of notice of acceptance of the offer and resultant contract. Therefore, the contract is effective from the time that the letter of acceptance is registered/faxed/scanned provided that this occurs before the expiry of the validity of the offer.

- 16.4.3 Letters of acceptance and SLAs are signed by an official delegated the authority to do so. This is an administrative arrangement and although the Accounting Officer accepts accountability for the contract which is concluded, the signatory remains co-responsible for the contract and for the correctness of the data/information supplied.
- 16.4.4 The letters of acceptance and the SLAs serve as the basis for placing orders and for the administration of the contract as well as for the settlement of disputes. The format and contents of the letters of acceptance must therefore be such that supply chain management practitioners may carry out the aforementioned actions in a meaningful and responsible manner. Therefore, all relevant information must be included in the letters of acceptance. In particular, it is essential that any conditions or stipulations, laid down by the WCED must be clearly and unambiguously included in the Bid Documents or letters of acceptance.
- 16.4.5 Care must be taken that letters of acceptance and the SLA contain no conditions and do not imply the approval of conditions that the delegated person has not approved. As required through National Treasury Instruction Note No. 32 of 2011, all SLAs must be legally vetted before they are issued to contractors. Any conditions set by the bidder as well as any special conditions that may have been approved, must also be included in the letters of acceptance and SLAs.
- 16.4.6 In the case of joint bids or bids on behalf of companies still to be incorporated, the Department's rights must be protected at all times by binding all parties to the contracts both separately and individually. The firms and/or persons concerned must therefore each receive a letter of acceptance and copy of the SLA addressed to their own addresses and care must be taken that they all have signed the bid documents.
- 16.4.7 In the case where a company is to be established, the contract must be ceded to the new company as soon as it has been incorporated.
- 16.4.8 Mistakes in the letters of acceptance must, in all cases, be reported to the Director: Procurement Management immediately. As the very first step, the original letter must be retracted, in writing, without delay. If the successful bidder refuses to accept the corrective notice, it must be reported to the Director: Procurement Management immediately. Where it is not possible to recover the letter of acceptance unconditionally, all particulars of the incorrect acceptance must be reported to the Accounting Officer or delegated official via the Departmental Bid Committee together with a recommendation regarding the corrective steps which are envisaged. A legal opinion may be obtained where necessary.
- 16.4.9 Where further documentation is signed by all parties concerned as an agreement in addition to the letter of acceptance, it is regarded as part of the formal contract. A SLA is a document, which defines the relationship between two parties: the provider and the recipient. This is an extremely important document for both parties. If used properly it must:
- (a) Facilitate service delivery in line with the specification;
  - (b) Provide a framework for understanding;
  - (c) Simplify complex issues;
  - (d) Reduce areas of conflict and lay down procedures for resolution;
  - (e) Encourage dialogue in the event of disputes; and
  - (f) Eliminate unrealistic expectations.

16.4.9.1 Specifically, it must embrace a wide range of issues. Amongst these are the following:

- (a) Services/product to be delivered;
- (b) Performance, Tracking and Reporting;
- (c) Problem Management;
- (d) Legal Compliance and Resolution of Disputes;
- (e) Customer Duties and Responsibilities;
- (f) Security;
- (g) Confidential Information; and
- (h) Termination clauses.

## **16.5 CONTENT OF CONTRACTS**

The contract concluded must amongst others consist of:

- (a) general conditions of contract issued by the National Treasury;
- (b) where applicable, special conditions in relation to the specific goods or services procured;
- (c) Service Level Agreement(SLA) where applicable;
- (d) submitted bid documents;
- (e) documentation for the claiming of preferential points;
- (f) WCBD4;
- (g) a valid tax clearance certificate/ tax compliance status certificate verified on the CSD; and
- (h) letter of acceptance.

## **16.6 GENERAL CONDITIONS OF CONTRACT**

General Conditions of Contract issued by National Treasury must form part of all bid documents and may not be amended.

## **16.7 SPECIAL CONDITIONS OF CONTRACT/SERVICE LEVEL AGREEMENT**

The special conditions should include, but are not limited to:

- (a) a preamble that serves to explain the rationale for the conclusion of the contract or to provide contextual or background information;
- (b) governance protocols;
- (c) reporting on performance in terms of the contract or agreement in respect of contracts that extend over a period of time;
- (d) a periodic review of the contract or agreement by the parties in respect of contracts that extend over a period of time;

- (e) clauses that clearly and unambiguously set out the rights and obligations of the parties, relevant to the specific subject matter in respect of which the contract is entered into;
- (f) service levels, if applicable; and
- (g) incorporation of other documents as annexures.

## **16.8 CONTRACTS IN RELATION TO INFORMATION TECHNOLOGY**

- 16.8.1 Contracts relating to information technology must be prepared in accordance with the State Information Technology Agency Act, 1998 (Act 88 of 1998), State Information Technology Agency Amendment Act, 2002 (Act 38 of 2002) and any regulations issued in terms of the Acts.
- 16.8.2 National Treasury SCM Practice Note 5 of 2009/10 and National Treasury SCM Circular no 2 of 2017/18 provides guidance to the procedures to be followed when procuring ICT related goods/services through SITA.

## **16.9 LEGAL VETTING OF CONTRACTS**

- 16.9.1 The Accounting Officer must ensure that all contracts entered into by the Department are legally sound.
- 16.9.2 Where service level agreements are part of the contract it must be forwarded to Legal Services for vetting.
- 16.9.3 In the event of any uncertainty, the matter must be referred to the Deputy Director-General: Legal Services in the Department of the Premier. (DoTP)

## **16.10 ACCESS TO CONTRACTS/INFORMATION**

- 16.10.1 Under normal circumstances, bids (awarded) are not accessible to the public. However, on written request, interested parties may request the following information in terms of the procedures for the Promotion of Access to Information Act (PAIA), if said information has not been published in the Government Tender Bulletin:
  - (a) names and addresses of all bidders;
  - (b) the prices and basis of delivery offered by all bidders;
  - (c) the brand name of the product and the name of the manufacturer, in respect of the accepted bid (only the accepted bid); and
  - (d) the preference points claimed by the successful bidder.
- 16.10.2 In addition to the information provided in paragraph 16.10.1 (Provincial Treasury SCM Practice Note 1, Chapter 2 and the PAIA), any further information may be furnished, as deemed necessary, by the Department and as guided by the applicable legislation, the Constitution and relevant case law.
- 16.10.3 Any information requested, if not provided in terms of the Promotion to Information Act), will be furnished at the discretion of the Department and will be guided by legislation and policy. The Department may withhold information or publication of the information if:
  - (a) it will impede law enforcement; or
  - (b) it will not be in the public interest;
  - (c) it will harm the legitimate interest of the Department;

- (d) it might hinder fair competition between suppliers, bidders or contractors; and
- (e) a case/matter is *sub judice*.

## 16.11 MONITORING

Constant monitoring by Responsibility Managers who requested the goods/services is essential to ensure that contractors meet their contractual obligations and that contracts are executed with as little disruption as possible. There are several ways in which monitoring may be undertaken:

(a) Regular site inspections.

In respect of a service, where the service is being rendered at the departmental site or at the contractor's own site, the relevant Responsibility Manager must visit the site regularly to ascertain whether the service is being rendered in accordance with the contract.

(b) Regular meetings

The relevant Responsibility Manager should have regular meetings with contractors to discuss contract issues i.e. progress, foreseeable contract problems, price variations, etc.

(c) Reporting

- (i) Regular reports from contractors as well as the SCM Unit are crucial for efficient contract management. Contractors must be informed via the SLA that reporting must take place on predetermined issues. The timeframes for this reporting must also be made known to the contractor prior to the start of the contract.
- (ii) For products, a contractor may be requested to report on the following issues:
  - Number of orders received;
  - Date of orders and from what component;
  - Quantities ordered on individual items; and
  - Delivery date of orders.
- (iii) The information must be scrutinised and matched with the Department's records to ascertain whether there are any anomalies in the rendering of the service or delivery of the product.
- (iv) When the Department renews an existing contract or enters into a new contract, these reports play a crucial role in the Demand Management phase as it provides crucial historical/current contract/item information. This in turn, has a direct influence on the Acquisition Management phase as it influences the form of bidding used.
- (v) Requirements for service performance reports and management information should be defined before and during contract negotiations, and confirmed during the transition period of the contract. Information requirements may change during the lifespan of the contract, which should be flexible enough to allow for this. Where possible, the provider's own management information and performance measurement systems should be used.

## CHAPTER 17

### ENFORCEMENT AND ADMINISTRATION OF CONTRACTS

#### 17.1 BREACH OF CONTRACT

17.1.1 Breach of contract is when one of the parties to the agreement breaches a term thereof and does not comply thereto or indicates that it will not or be able to comply with the terms of the agreement.

17.1.2 Breach may be committed in several ways, i.e:

- (a) A supplier may fail to perform on or before the date fixed for performance and the supplier would then be said to be *in mora* (in default) in respect of the obligation in question.
- (b) Where no definite time for performance is agreed upon, the Department must demand performance within a specified time (must be reasonable in the circumstances) and if the Contractor or service provider has failed to perform in that time, he is regarded as being *in mora* (breach of time aspect).
- (c) The supplier may render performance on time, but deviate from the performance required by the agreement (e.g. use materials of inferior quality).
- (d) The supplier may repudiate his/her obligation(s) in the sense that he/she may, before or after the due date for performance, make it plain by his/her words or actions that he/she does not intend to perform, or perform properly, in terms of his/her obligation(s). The test in each case is whether the supplier has acted in such a manner as to lead to a reasonable conclusion that he/she does not intend to fulfil the obligation(s). If a supplier repudiates his/her obligations after having breached these obligations in some other way, the Department could (if the situation is not amicably resolved) claim relief on the basis of either form of breach.

17.1.3 Where cancellation of a contract is considered as a remedy for breach, it is always advisable to obtain legal advice in order to minimise risk for the department. Cancellation should be regarded as the last resort. However, should this remedy be used it must be done in consultation with Legal Services.

17.1.4 Cancellation of a contract is usually prejudicial to the Department. Therefore serious thought must be given to the grounds for considering cancellation. Clarity must be reached beforehand on the question of whether the contractor will have a claim against the Department or not, and if so, whether the cancellation may be justified. If a contract is cancelled, the matter must be fully documented and the following be taken into account:

- (a) The particular contract condition empowering the action;
- (b) What further arrangements will be made for completing the contract and
- (c) Whether additional costs will be recovered from the contractor

- (d) If the additional costs cannot be accurately determined, a careful estimation thereof must be made;
- (e) Any claim for the recovery of additional costs must be limited to the minimum actual amounts. Therefore, in such cases, the Department cannot summarily authorise purchasing to the best advantage, since this might prejudice the recovery of the additional costs from the original contractor. There may be other avenues of action that might result in lower additional costs. As an alternative, a new contract may be concluded through the normal bidding procedures. In this process, account must be taken of the time elapsed between the closing of bids and the cancellation of the contract and the effect of the cancellation on the Department's schedules.

## 17.2 REMEDIES FOR BREACH

The following remedies should be considered before the cancellation of a contract is contemplated:

### 17.2.1 Specific Performance (Enforcement)

- (a) The most obvious remedy for breach of contract is an order for specific performance, i.e. an order compelling the defaulter to perform what he has undertaken to do or restraining him from what he has agreed not to do. The court always has the discretion to refuse an order for specific performance, for instance where it is impossible for the contractor or service provider to perform; it would produce an inequitable result or would be against public policy. If enforcement is denied it would be possible to claim damages from the contractor or service provider.

### 17.2.2 Damages

- (a) An award for damages is an order to pay a sum of money for losses suffered. The primary rule being that the sufferer can claim so as to be put in the economic position he would have occupied if the contract had been properly performed. The aim is to compensate the innocent party for its real pecuniary (monetary) losses. The rules of Unjustified Enrichment must be applied. The onus of proof should as far as possible be placed on the contractor or service provider to make provision for situations where damages might be claimed.
- (b) There is a duty on the innocent party (party who wants to claim damages) to mitigate its losses or damages. The sufferer cannot recover damages for losses that he could reasonably have avoided. Thus, the Department must, as far as possible, minimise (mitigate) damages, if and when it occurs.
- (c) The parties may include in the contract a provision regulating the amount of damages to which the aggrieved party is entitled on breach. These penalties (also any forfeiture) are governed by the Conventional Penalties Act, 1962. In view thereof, if a contract contains a penalty clause or stipulation, damages may not be claimed in addition to the penalty, nor, unless the contract expressly provides otherwise, *in lieu* of it.
- (d) Breach, no matter how serious it is, does not, cancel the agreement. This is so even if the agreement contains a provision that indicates that, on default occurring, the agreement will *ipso facto* (by the fact itself) become null and void. It is only where the aggrieved party cancels the agreement on account of the breach that it comes to an end. In the absence of cancellation, each party remains liable to carry out or complete

their respective performance, although, if the aggrieved party chooses to claim damages in lieu of performance, the defaulter is *pro tanto* (to this extent) relieved of his/her duty to perform.

- (e) Generally, cancellation operates retrospectively (*ab initio*). This means that the parties are put in the positions they would have been in, had the contract never been concluded. Each party is relieved of the duty to perform further and is obliged to restore to the other any performance(s) received in terms of the agreement (*restitutio integrem*). There are exceptions to this general rule.
- (f) Because cancellation has legal consequences on the reciprocal rights and obligations of the parties, it is available only where the parties have incorporated a cancellation clause in the contract or where the breach is of a sufficiently serious nature. If the breach relates to time, the question is whether time could be said to be 'of the essence of the contract'.
- (g) If the breach consists of a failure to perform according to the strict terms of the agreement, other tests would apply, i.e. is the breach sufficiently serious, does it go to the root of the contract?
- (h) Where repudiation of the whole contract is concerned, it is usually regarded as sufficiently grave to justify cancellation. Cancellation clauses frequently contain a rider to the effect that the innocent party may only exercise his right to cancel on account of breach if he has given the defaulter notice of the breach and the latter has failed to remedy it within a certain period. A provision of this sort is binding and, in general, the innocent party must bring himself strictly within its wording if he wishes to enforce his right to cancel. However a notice provision is not applicable where the defaulter has repudiated the agreement (unless the provision expressly says so).

### **17.3 ELECTION OF REMEDIES**

- 17.3.1 When goods or services do not comply with the provisions or requirements of the contract, or problems are experienced in the execution of the contract, the matter must be brought to the attention of the contractor/service provider in writing.
- 17.3.2 On breach, the innocent party has a choice of remedies. If cancellation is not permitted, he may claim specific performance or damages *in lieu* of performance. In either case, he/she may claim damages for any further losses resulting from the breach. If the contract contains a cancellation clause, or if the breach is sufficiently serious to warrant cancellation, the innocent party has the further alternative of cancellation and damages (including damages for further losses).
- 17.3.3 In general, the aggrieved party is not obliged to cancel where cancellation is permissible. He is entitled to keep the contract alive and seek an order for specific performance or an award of damages in lieu of specific performance. This is so, even where the defaulter repudiates the entire contract prior to the date for performance. The sufferer may ignore the repudiation and claim performance or damages in lieu of performance when the due date arrives.
- 17.3.4 Before action is taken (relating to breach), the Department must inform the contractor/service provider that action will be taken in accordance with the contract conditions unless he complies with the contract conditions and satisfactorily delivers goods or services within a specified reasonable time. If the contractor/service provider does not perform satisfactorily despite the warning, the Department may consider cancelling the contract concerned and/or enforcing other appropriate remedies.

- 17.3.5 When correspondence is addressed to the contractor/service provider, reference must be made to the bid or contract number, the item number and the number and date of any relevant invoice, statement or letter received from the contractor/service provider. Otherwise the number and date of the order, a short description of the goods or service and details of the destination if applicable, must be supplied.
- 17.3.6 Details of all cases where equipment, vehicles, implements, machinery, apparatus, etc. fail during the guarantee period and have to be replaced or repaired, or where the provision of spares or service is unsatisfactory, must be recorded, irrespective of whether the Department has satisfactorily finalised the matter with the contractor/service provider. The purpose of this requirement is for the Department to keep a record of unsatisfactory performance of services and defective goods/ products delivered.
- 17.3.7 If a contract is cancelled or rejected, the contractor/service provider must be requested to indicate to the Department, within a given time limit, how goods in possession of the Department must be disposed of and warned that if he does not react to the request, the goods will be returned to him at his cost. If he ignores the request, the Department must act accordingly.
- 17.3.8 When the Department has to buy out goods and services at the contractor's/service provider's expense, the loss to the Department must always be restricted to the minimum since it is difficult to justify the recovery of unreasonable additional costs from the contractor/service provider.
- 17.3.9 If a contractor/service provider repeatedly fails to perform or there is non/mal-performance and these actions cause the Department serious inconvenience, loss or embarrassment, corrective steps should be taken. All substantiated complaints regarding the performance of contractors, including contracts concluded in terms of the delegated powers, must be recorded. A register must be maintained.
- 17.3.10 If the contractor/service provider does not deliver the goods or services within the contract period, the Department may after informing the contractor/service provider, at their own discretion, either deduct an amount as a percentage of the value of the contract amount as a penalty for each day that the delay continues, or instead of such a penalty, claim compensation for any actual damage or loss suffered, provided that where beneficial use of the completed portion is enjoyed, the penalty shall be applied to the value of the outstanding portion only.

#### **17.4 NEGOTIATING A SETTLEMENT OR AMENDING THE CONTRACT**

- 17.4.1 A settlement is an agreement whereby a dispute (usually but not exclusively regarding an uncertainty as to the terms of a legal relationship, or even whether or not such a relationship exists at all) is resolved by way of compromise or negotiation. The purpose thereof is to avoid extreme measures such as litigation. It is advisable that in this instance, the Department consults with legal services and where required obtains a legal opinion before making a decision of negotiating or amending a contract.
- 17.4.2 In the same way the parties to the contract (being the Department and the Contractor) may, by consensus/agreement, amend the contract or terms thereof. Once again, the Department must consult with legal services, and where required, obtain a legal opinion in this regard.

17.4.3 For the sake of protecting both parties to the agreement, the settlement or amendment must be in writing and signed by the parties involved or any authorised party representing those parties. These actions are subject to the provisions of the formal contractual requirements between the parties as well as the Common Law of Contract.

## **17.5 REMEDIES IN TERMS OF MISREPRESENTATION**

17.5.1 Misrepresentation in this context means that a bidder/service provider/contractor provided certain information or put forward certain facts in his bid or additional documentation knowing that such facts are untrue or incorrect. The bidder would have intended to misrepresent the facts as such misrepresentation would not have been as a result of a *bona fide* mistake by the bidder. This section provides for remedies in the case of misrepresentation.

17.5.2 In order to implement these remedies, the Department has to be sure that the information provided was indeed incorrect. The misrepresentation has been proved factual and not merely an expressed opinion by the Department. The stated fact (misrepresentation) must be sufficiently material that a reasonable person would have regarded such 'fact' as important in deciding whether to enter into the contract or not. Furthermore, to be successful with a claim for misrepresentation, it will have to be shown that the particular fact (or misrepresentation) induced the Department to contract and had the Department known the misrepresented fact(s) it would not have contracted or would have contracted on different terms. If the Department would have contracted even though the facts have been misrepresented, it would not be entitled to the remedy of rescission. However, if the Department would have contracted on other terms if it had known that the facts had been misrepresented, the Department may be entitled to the remedy of damages.

17.5.3 Where the Department wishes to rescind the contract and obtain restitution (i.e. both parties return what is due to each other as if the contract had not been initiated), certain rules are applicable. First, on becoming aware of the fact that there has been a misrepresentation, the Department must not do anything, prior to rescission, which would lead the other party reasonably to believe that he intends to abide by the contract and not rescind it: it must not, for instance, exercise an act of ownership over an article purchased or service rendered etc. Secondly, the Department must communicate its decision to rescind to the supplier/contractor within a reasonable time of becoming aware of the misrepresentation. Failure to follow these rules could be construed as the Department having waived its right to rescind the contract. After rescission, restitution (restoration to the position one would have been in had the misrepresentation not take place) must take place.

## **17.6 RECOVERING DAMAGES BY SET-OFF**

17.6.1 Set-off consists in the automatic extinction of debts by operation of law on grounds of policy, or a dispositive act whereby one party gives effect to the extinction of the debts by means of a unilateral legal act. This means that the Department may hold back monies due to the contractor/service provider in the event of cancellation by the Department as a result of non/mal-performance by the Contractor, or for any loss, damage or additional cost the Department incurred due to defective performance by the contractor/service provider. It enhances efficiency by promoting the speedy settlement of debts without the need for a costly and cumbersome duplication of performance. Thus, it may be interpreted to be a means of enforcing a claim indirectly.

- 17.6.2 In order to enforce this remedy the following considerations must be taken into account:
- (a) The Department must have suffered damages or incurred a loss directly or consequentially.
  - (b) Set-off may also be used for damages such as additional cost the Department might have incurred in obtaining the service of a third party to remedy the defects which the current contractor failed to remedy within a reasonable time.
  - (c) This remedy may also be used to claim for latent defects in the product/service provided by the contractor or for any other defect resulting in the product/service not conforming to conditions / specifications of contract.
- 17.6.3 In order to use this remedy there are certain requirements that must be met, such as:
- (a) The debt must be mutually owed.
  - (b) It must be *iusdem generis* (of the same kind). For example: a money debt cannot be set-off against a claim for delivery of property.
  - (c) The debt must be due, enforceable and payable. Set-off does not operate if the debt is subject to a suspended condition or only enforceable at a future date.
  - (d) The debt must be liquidated.

## **17.7 CANCELLATION AS A RESULT OF FORCE MAJEURE / VIS MAJOR**

- 17.7.1 *Force majeure / Vis major* may be defined as an act of God, i.e. a natural disaster or some other circumstance beyond the control of the contractor/service provider. The *force majeure* clause is a common clause in contracts that essentially frees both parties from liability or obligation when an extraordinary event or circumstance beyond the control of the parties, such as a war, strike, riot, crime, or an event described by the legal term *act of God* (such as hurricane, flooding, earthquake, volcanic eruption, etc.), prevents one or both parties from fulfilling their obligations under the contract.
- 17.7.2 Cancellation of a contract entails the termination of the consequences of a valid contract, i.e. performance. This remedy is available only in exceptional circumstances.
- 17.7.3 Firstly, the party responsible for performance must give written notice within three (3) days (business days) of the date on which the *force majeure / vis major* occurred. Where reasonably possible, the party responsible for performance must do everything possible to deliver or comply with the terms of the contract. Dates and times allowed for the performance shall be agreed upon by both parties.
- 17.7.4 Failure to give notice of the *force majeure*, allows the aggrieved party to the contract the right to refuse amendment of the date and time on which performance was due and that the aggrieved party may exercise the remedies available for breach.
- 17.7.5 In practice, most *force majeure* clauses do not excuse a party's non-performance entirely, but only suspends it for the duration of the *force majeure* unless the party responsible for the performance (as opposed to the party first affected by the *force majeure*) agrees in writing to render such performance.

17.7.6 The Department may cancel the contract without prejudice to any other rights it might have if the *force majeure* persists after a period of 21 days or as soon as reasonably possible. If the department wishes to have these remedies at its disposal, it must ensure that the contract caters for these provisions.

## **17.8 INSOLVENCY**

17.8.1 The Department has various rights, which it may exercise in the case of liquidation, sequestration or judicial management of contractors/service providers.

17.8.2 When the estate of a contractor/service provider is liquidated for whatever reason, a choice must be made in consultation with Legal Services of whether to claim against the estate or not. The risk to the Department is the determining factor and the choice with the smallest degree of risk is preferred. All action must nevertheless be taken in accordance with the relevant National Treasury Regulations.

17.8.3 Where an estate is involved, all claimants accept responsibility for both assets and liabilities. Therefore, if a claim is registered against an estate, the claimant must accept his share of any costs that have to be defrayed.

17.8.4 There are three types of claims against an estate:

(a) "Protected creditors", e.g. the Receiver of Revenue (SARS).

(b) "Preference claims", e.g. a bank having a secured claim over the assets, i.e. a notarial bond.

(c) "Concurrent claims", which are all claims that do not fall into the categories of (a) and (b).

17.8.5 The first two categories of claims are paid out in full before the third category is considered, which places the third category in a weak position if a contractor/service provider is sequestered, liquidated or placed under judicial management.

17.8.6 If a firm or person is liquidated /sequestered, it is regarded in laymen's terms to something similar to a breach of contract. The liquidator or administrator is given the choice of carrying out the contract or not. In the majority of cases the liquidator or administrator will elect to cancel the contract and a provisional claim against the estate should be registered with the proviso that a final claim will not be submitted if the Department will have to make a financial contribution.

17.8.7 A procuration could be signed in terms of which the liquidator may act on behalf of the Department. If the liquidator indicates that no dividend will be paid out to concurrent claimants, the Accounting Officer or delegated official may also decide that it would be more economical to write-off the relevant amount in terms of the relevant prescripts.

## **17.9 VARIATION AND WAIVER**

17.9.1 Variation is an alteration to the legal consequences of the contract. This may take place only by mutual agreement of the parties, and entails not merely changing the effect of a term, but also removing a term from the contract. On the other hand, waiver is a unilateral act meaning that one party to the contract decides on his own to abandon a right or remedy, which it may have without altering the terms of that contract.

- 17.9.2 It is of the utmost importance that such agreement to waive or vary the terms of the contract be in writing, for the sake of certainty and protection of both parties involved.
- 17.9.3 In exceptional cases the Department should obtain a legal opinion from Legal Services before engaging in the variation or waiver of a contract to determine and investigate the legal implications of such action.

## **17.10 CESSION OF CONTRACTS**

- 17.10.1 Cession of a contract refers to the transfer of rights and obligations in terms of the contract to another party other than the original contracting party. Various reasons may exist why bidders would want to transfer their rights and obligations. The bidder might have merged with another bidder or the bidder may be in a position that he cannot effectively render the service and may want to transfer it to another entity.
- 17.10.2 With cession, the Department should keep in mind that the contract was originally awarded to a specific bidder because of specific reasons, i.e. highest total points, etc. The identity of the bidder is, therefore, of paramount importance to the Department and care should be taken that the party to which the contract will be ceded, complies as far as possible with these requirements, especially if the contract is ceded in the early stages of the contract period.
- 17.10.3 Care should be taken in the case of a request to cede a contract within the first three (3) months of conclusion of the contract in view of problems with firms "fronting" for others. It is with this in mind that it is recommended that approval to abandon, transfer, cede, delegate, assign or sublet contracts within three months after conclusion thereof shall only be granted in compelling circumstances, e.g. in the case of the death of the contractor/service provider. Other compelling circumstances could be sequestration or liquidation, mergers etc.
- 17.10.4 If approval is granted, the Department must ensure that the necessary documentation is completed by the new contractor so as to ensure that a complete understanding is reached and that contractor accepts the terms and conditions of the contract in writing.
- 17.10.5 Reasons for ceding the contract must be recorded and the ability of the cessionary to carry out the contract must be established. Unless it is otherwise in the best interests of the Department, the transfer should not be approved if the Department would suffer a loss as a result thereof or if there is an increased risk to the Department.
- 17.10.6 The same conditions used for the award of the bids concerned must be applicable to the cession of contracts. For instance, if the original contract was subject to the provision of surety, the same degree of surety, or better, must be provided by the cessionary. If this is not possible, the reasons should be fully documented and placed on file for audit purposes.

## **17.11 SERVICE LEVEL AGREEMENT (SLA)**

- 17.11.1 The Service Level Agreement will be more frequently used when a service is provided to the Department, as opposed to when a product is supplied to the Department.
- 17.11.2 Even though the agreement may be described as a standard agreement, the Department's rights and obligations in terms of the SLA will be dependent upon the specific service rendered, or product supplied to the Department. The terms and conditions will have to be adjusted to suit the circumstances of each contract.

- 17.11.3 Contents of clauses relating to the Provision of Services, Use of Services, Remuneration and Limitation of Liability will have to be negotiated for each contract.
- 17.11.4 When SLAs are drafted, they should adhere to the SLA template issued and vetted by Legal Services from time to time.

## **17.12 CONTRACT PRICE ADJUSTMENTS**

- 17.12.1 Price adjustments, in any form, are incidental to the conclusion of any contract as a result of the period of the contract and the constant change in economic conditions. There are three (3) main circumstances for price adjustments:
- (a) price adjustments linked to inflationary and statutory adjustments;
  - (b) price adjustments as a result of rate of exchange variations; and
  - (c) price adjustments not provided for in a bid/contract. (Extra-contractual price adjustments.)
- 17.12.2 In the bid invitation, provision must be made for the bidder to indicate if their prices are subject to any escalation. The bidder by means of indices, Consumer Price Index (CPI), Production Price Index (PPI) or fixed period adjustments will indicate such price adjustments. Steel & Engineering Industry Federation of South Africa (SEIFSA), through Statistics South Africa receives the PPI's and CPI's for publication. The WCBD 3.2 pricing schedule must be utilised for all goods/services that would be subject to price escalations.
- 17.12.3 For the sake of efficiency, the Department should acquire a breakdown of the price at the conclusion of the contract. This is more convenient and allows the Department to determine which part of the price would be subject to such increases or adjustments.
- 17.12.4 In order for proper contract management to take place in respect of Contract Price Adjustments (CPA), the following questions need to be asked from the bidder in the bid documents:
- (a) Is the price offered, firm for the duration of the contract?
  - (b) If not firm, indicate details as to non-firm price structures.
  - (c) Are prices linked to proven cost increases or formula-based adjustments? (formula based price adjustments are Producer Price Index and Consumer Price indices together with the relevant Steel & Engineering Industry Federation of South Africa-SEIFSA).
  - (d) If formula-based, what indices will be utilised to measure such price adjustment claim during the contract period?
- 17.12.5 Should bidders indicate that price adjustment would be subject to the Producer Price Index (PPI), they must clearly and accurately indicate details as to what tables in the PPI will be utilised for such price adjustment.

- 17.12.6 This will form the basis for the entire contract period and if the company later submits a claim, the above will be used as the basis for such claim. It should be indicated to the company that the information is compulsory.
- 17.12.7 Once the contract is up and running, contractors are compensated for actual, proven additional expenses in connection with the aforesaid indices, provided that the relevant tables and base data of the PPI or CPI is used for the calculation of the bid price. PPI or CPI Tables that were indicated at the bid stage will be used to calculate the differences claimed.
- 17.12.8 The importance of requesting the bidder to stipulate whether his price is firm or not is amplified considering that should a bid be accepted, and the bidder did not indicate whether / not his prices are firm, such a bidder may after acceptance increase his price. Apart from the fact that the Department may not be able to afford such an increase, it may also lead to an unfair advantage to the bidder when taking into consideration that his price might now be higher than other bidders who competed against him.
- 17.12.9 It must however be noted that if a bidder gives a firm price, it does not mean that such a price will not be subject to change. A definition of a firm price is as follows:
- “Firm prices means prices which are only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding upon the contractor and demonstrably have an influence on the prices of any supplies, or the rendering costs of any services, for the execution of the contract.”***
- 17.12.10 Where a bidder does not offer a firm price, such bidder may stipulate the means by which the price will be adjusted. For example: Non-firm prices linked to proven adjustments, prices linked to fixed period adjustments, prices linked to escalation formula adjustments or prices subject to rate of exchange fluctuations.
- 17.12.11 Bidders may claim price adjustments on different methods and for different reasons. As a bidder's price consists of various factors/variables, they may wish to claim adjustments on a combination of factors and methods. The Department may, in terms of a special condition, spell out the rules on how and on what basis prices will be adjusted. It is true that firm or non-firm prices may be offered, whilst there is provision for price adjustments by means of a formula.
- 17.12.12 Where a formula is allowed in the bid documents, the structure of the formula has to be agreed upon. The bidder's attention must be drawn to the requirement that the values of the variable factors in the formula must be specified in their bids. The relation between these factors must be reasonable.
- 17.12.13 Price adjustments, in accordance with the escalation formulae based on inflation indices, are allowed on no more than 85% of the price, unless good valid reasons to the contrary are provided. The risk attached to price increases in respect of the remaining 15% of the price must be accommodated in the supplier's price.
- 17.12.14 Where price adjustments based on escalation formulae are accepted and irrespective of stipulations to the contrary elsewhere in the bid documents, variations in the actual costs for whatever reason are for the account of the contractor. This implies that proven cost increases and formula-based adjustments cannot both be entertained at the same time.

### **17.13 EXTENSIONS AND EXPANSIONS AGAINST THE ORIGINAL CONTRACT**

- 17.13.1 An Accounting Officer or delegated official may deem it necessary to expand or vary orders against the original contract.
- 17.13.2 The National Treasury Instruction Note 32 on Enhancing Compliance Monitoring & Improving Transparency and Accountability in SCM dated 24 April 2012 requires that any contract expansion/extension must be in accordance with the thresholds set by the Provincial Treasury which is 20% or R20 million in respect of construction related goods, works and/services and 15% or R15 million in respect of all other goods and services, whichever is the lower amount.
- 17.13.3 Departments are required to forward motivations for all expansions/extensions in excess of these thresholds mentioned in paragraph 17.13.2 to the Provincial Treasury and to the Auditor-General within ten (10) working days after the Accounting Officer or delegated official has granted approval for the expansion and/or extension for reporting purposes.
- 17.13.4 The Provincial Treasury will scrutinise such reports and only take appropriate action where deemed necessary.
- 17.13.5 Such reports sent to the Provincial Treasury will be assessed on a case by case basis against policy and prescripts. The Provincial Treasury will only provide a written response if any findings of risk, non-compliance, and budgetary threat(s) are noted.
- 17.13.6 All Departments are required to submit cases of contract expansions and extensions to the Provincial Treasury which are required to address the minimum key criteria as reflected in **Addendum 9**.
- 17.13.7 Paragraph 17.13.2 is not applicable to transversal term contracts facilitated by the Provincial Treasury and specific term contracts as in such contracts, orders are placed as and when commodities are required and that at the time of awarding the contract, required quantities are not known.

**VOLUME 6**

**LOGISTICS MANAGEMENT**

# CHAPTER 18

## LOGISTICS MANAGEMENT

### 18.1 INTRODUCTION

Logistics Management is integral to Supply Chain Management. It involves requisitioning, coding of items, setting inventory levels, placing orders, receiving and distribution, stores/warehouse management, expediting orders, transport management. This process integrates with the financial systems to generate payments to suppliers.

### 18.2 REQUISITIONING

When a need arises for products / services / hiring, the applicant must request the goods/services via a requisition, from the SCM Unit in the manner as prescribed through the Procurement System in use. Such requests must undergo the relevant authorization processes. The relevant Responsibility Manager or his/her delegatee (SCM champion) initiating the request must authorize all requisitions originating from his/her program thus confirming the requirement and the availability of funds. The Log 1 Request/Requisitioning form is attached as **Addendum 10**.

### 18.3 ORDERING

- 18.3.1 The purpose of this function is to place orders through the relevant procurement processes and purchasing system, on the prescribed order form, for goods/services required by the Department from suppliers appointed. However, this process may only occur if the order has been approved by the relevant delegated official and is a valid request.
- 18.3.2 The SCM Unit is responsible for ordering goods and services based on requisitions received from the different Responsibility Managers (Program Managers). The order should be cross-referenced to the requisition and checked for accuracy and authority. Performance specifications, as determined by the Responsibility Manager (program manager) should be communicated to the suppliers as part of the ordering process.
- 18.3.3 Where a formal written contract exists, orders should be placed in accordance with the written contract. Where there is no formal written contract in place it should be ensured that the necessary procurement procedures were followed before an order is placed.
- 18.3.4 It is the responsibility of the SCM Unit to inform the end-user requiring the goods or services of the order and to send a copy of the approved order to the end-user. The end-user must use the copy of the approved order to check against the delivery note and complete the goods received note.
- 18.3.5 As supplier performance is dependent on the accuracy of the requisitioning and ordering process, it is of the utmost importance that when an order is placed with a supplier that the necessary checks and balances are in place to ensure that the order reflects the correct specifications and specified delivery conditions (delivery period, quality and quantity). This is a shared responsibility between the SCM unit and the end-user.
- 18.3.6 A transaction order checklist must be duly completed and signed by the SCM Practitioner responsible for generating orders. The checklist is attached as **Addendum 11**.

18.3.7 The Standard Operating Procedure detailing the process for ordering, receiving and payment of goods/services is attached as **Addendum 12**.

#### **18.4 RECEIVING**

18.4.1 The receiving function is to accept goods from suppliers and to acknowledge receipt thereof. This is the responsibility of the end-user (program manager or the delegated official) requesting the goods/services for directly delivered items.

18.4.2 The official who receives the goods should compare the goods delivered to the delivery note and order to ensure only goods for which valid orders have been placed are accepted. Deliveries should be carefully examined before any delivery is accepted. The following should be checked when receiving goods:

- (a) Any evidence of damage or shortage in delivery vis-à-vis the quantities reflected in the order, should be investigated immediately and particulars should be endorsed on the delivery and/ goods received notes;
- (b) If a complete check is not possible, the goods must at least be counted and a superficial check of the quality of goods performed. It may not always be practical to quality check the contents of boxes, but obvious damages may be easily detected and goods rejected, e.g. if a box is wet or there is seepage.
- (c) The Responsibility Manager or the delegated official must acknowledge receipt of the goods actually received through cross-referencing to the purchase order and signing the delivery note or goods received note. The completed goods received note and/or signed delivery note must be sent to the SCM Unit to initiate payment.

##### **18.4.3 Purchasing Receipts**

- (a) No deliveries will be accepted without a delivery note/invoice and a purchase order number reference;
- (b) All items received must be confirmed against a valid purchase order;
- (c) No packaging or material that displays any visible damage / fault must be received unless approved by the Responsibility Manager. Should there be an emergency requirement or the driver cannot remain, the delivery note will be noted "Received pending investigation" and the damage described or a picture taken of the damages, where possible;
- (d) The receiver must confirm the following information on the purchase order against the actual delivery:
  - (i) Supplier
  - (ii) Order Number
  - (iii) Description of item being delivered; and
  - (iv) Quantity of Items being delivered
- (e) Material that does not conform to the specifications and description issued by the buyer on the purchase order must not be accepted and received, based on the visual inspection;
- (f) The goods received note must be signed by the relevant WCED official receiving the goods as well as the person delivering the goods on behalf of the supplier; and

- (g) The completed goods received note and signed delivery note must be sent to the SCM unit.

#### 18.4.4 **Recording of Receipts**

Manual or computerised records for ordering (purchasing) and receiving items must include at least the following:

- (i) Order date;
- (ii) Order number;
- (iii) Supplier code and name;
- (iv) Item code (must be unique for "the same" items);
- (v) Item description (will be linked to the item code);
- (vi) Item location (shelf, bin, etc.);
- (vii) Quantity ordered;
- (viii) Authorisation no. and dated signature or electronic authorisation of ordering officer;
- (ix) Delivery date;
- (x) Delivery note number;
- (xi) Quantity delivered;
- (xii) Quantity still to be delivered; and
- (xiii) Any comments regarding the status of the order where necessary.

### 18.5 **ISSUING / DISTRIBUTION OF ITEMS**

- 18.5.1 The relevant end-user signs a Goods Received Note if he/she is satisfied with the delivered item. The signed Goods Received Note ultimately forms part of the payment package.
- 18.5.2 The Western Cape Education Department (WCED) makes use of consumables or inventory items when carrying out its functions in order to render the services it is mandated to deliver. These include various items, amongst others copy paper, printer cartridges, writing materials, office stationery, medicines, assets such as equipment and furniture etc.
- 18.5.3 Inventory items are further classified as warehousing inventories or non-warehousing inventories. Warehousing inventories is defined as inventory that is held and managed at the warehouses in the WCED. Non-warehousing inventories are defined as inventory that is not held or kept at warehouses but rather procured for immediate issue or transfer to end users (schools). Such inventories must be recognised in the accounting records of the WCED.
- 18.5.4 Inventories that qualify for recognition (warehousing inventories and non-warehousing inventories) will be reflected at cost. At year end, the value of such inventories will be calculated by means of the average weighted cost formula as LOGIS provides such values. Only unissued stock in warehouses are to be counted and recognised for reporting purposes while stock in holding areas will be considered issued stock and not disclosed.

## 18.6 EXPENDITURE CONTROL

### 18.6.1 Invoicing

All invoices must be certified as follows:

- (i) That the invoice is correct and has not been paid previously by the delegated official or by officials who have actual knowledge of the goods supplied and the services rendered;
- (ii) All copies of invoices are an exact copy of the original invoice;
- (iii) Faxed copies of invoices on 'Fax Roll Paper' may not be used for payment purposes.
- (iv) No information may be changed on invoices due for payment purposes. If information needs to be changed, the supplier must be requested to issue a revised invoice.

### 18.6.2 Credit notes

- (a) Faxed copies of credit notes on 'Fax Roll Paper' may not be used for payment purposes.
- (b) All copies of credit notes must be certified to be an exact copy of the original credit note.
- (c) No information may be changed on credit notes due for payment purposes. If information needs to be changed the supplier must be requested to issue a revised credit note.
- (d) In instances where no further payments will be made to a specific supplier, credit notes may not be accepted but must be replaced by an Electronic Funds Transfer (EFT) transaction.

### 18.6.3 Payments

- (a) Invoices received must be verified for correctness against the order where after they should be certified and approved by the Responsibility Manager or the delegated official, then forwarded for payment to the SCM Unit. Any variations must be investigated and checked for correctness before payment is affected. A proper audit trail must be kept of all decisions taken.
- (b) Payment must at all times be done according to the order price except in cases where sufficient proof exists for paying the invoice amount.
- (c) All payments must be pre-authorized and authorised, before sending the payment request through to the relevant office for actual payment.
- (d) Delegated officials must, before authorising payments, assure themselves of the following:
  - (i) That the goods/services have been received/rendered according to requirements; and
  - (ii) That the invoice and/or claim have not been previously paid.(Duplicate payment)
- (e) The transaction payment checklist must be duly completed and signed by the delegated official authorising the payment. The checklist is attached as **Addendum 13**.

- (f) Monthly accounts and statements of outstanding balances from suppliers to the Department must be verified and reconciled with the Department's records. Any discrepancies must immediately be taken up in writing with the supplier concerned.
- (g) Before payment is effected, the official verifying the voucher for payment must ensure that the certificate in support of the voucher is in order. If a certificate is found to be defective, or if there are reasonable grounds for doubting its accuracy, the certificate must be returned to the official who issued it, who must amend the mistake and initial the correction. It remains the duty of officials who examine the certificates to institute the necessary enquiry, if, in their opinion, a certificate is inconsistent with the facts.
- (h) The delegated official verifying the voucher for payment must certify it accordingly and make sure that the following requirements have been complied with before proceeding with the payment:
  - (i) that the claim forms a proper charge against Departmental funds and has not already been paid. The payment is in accordance with a law, regulation, tariff or agreement or that it is fair and reasonable;
  - (ii) covered by competent authority;
  - (iii) correct in respect of the period covered by the claim;
  - (iv) correct with regard to computations;
  - (v) supported, where applicable, by the necessary documents or an explanation of absence; and
  - (vi) is in order.
- (i) A partial payment must not be made unless it is supported by a certificate indicating that the amount of the payment requested is fully covered by or equal to the value of goods or equipment already delivered and/or services already rendered.
- (j) A pre-payment or partial payment in terms of a contract or written agreement must be brought into account against the appropriate vote or service and a voucher for such payment must:
  - (i) show the total amount payable in terms of the written contractual agreement;
  - (ii) show the total amount of all previous payments under the contract or agreement;
  - (iii) show the total payments to date, including the payment being made by the voucher;
  - (iv) show the balance due; and
  - (v) be supported by a certificate from a duly authorised person that the supplier is entitled to the payment in terms of the written contractual agreement. The official stamp on the invoice is deemed to be the certificate.
- (k) Payments for supplies or services or for work done under written contractual agreement must be supported by certificates from duly authorised persons to the effect that such payments are in accordance with the terms of the written contractual agreement and, where applicable, that work to the value of the amount to be paid has been properly performed.

- (l) Where consultants are contracted to perform work on behalf of the Department, a certificate for a partial payment must first be obtained from duly authorised persons before a payment may be effected.
- (m) A final payment, upon completion of a contract, must be supported by a certificate from a duly authorised official in the Department stating that the terms of the contract have been properly complied with in every respect.
- (n) Payments may only be made to persons to whom they are due or their duly authorised representatives. The officials responsible for making the actual payment must satisfy themselves that the representatives concerned are duly authorised by means of a power of attorney or other proper authority to receive such payments.
- (o) Where an error or overcharge is made in an invoice or claim, or where such invoice or claim contains an item which is not acceptable as a charge against Departmental monies and the payment voucher differs from the account submitted, the Department must request that the supplier issues a revised invoice for payment. Payment must then be made against the revised invoice.
- (p) Exact record must be kept of all negotiations with the supplier/claimant to ensure a proper audit trail to determine the commencement of the thirty (30) day period to pay an invoice.

**VOLUME 7**  
**MOVEABLE ASSET**  
**MANAGEMENT**  
**AND**  
**DISPOSAL MANAGEMENT**

# CHAPTER 19

## CHARACTERISTICS OF ASSETS

### 19.1 DEFINITION OF ASSETS

- 19.1.1 An asset is a resource, as defined by the National Treasury, which is controlled by the Department and from which future economic benefit or service potential is expected to be derived.
- 19.1.2 The following recognition criteria must be met in order for an item to be regarded as an asset:
- (a) The asset has service potential or future economic benefit for the Department;
  - (b) The Department has the capacity to control the service potential or future economic benefit of the assets; and
  - (c) The service potential or future economic benefit of the asset arose from past events as defined by the National Treasury.

### 19.2 CLASSIFICATION OF ASSETS

Assets vary considerably in their size and nature and it is useful to classify them into groupings for management control and financial treatment. Management control refers to categorising assets as land and buildings, office furniture and equipment, computer equipment, etc. Financial treatment on the other hand, refers to classifying assets as either current or capital. Assets for the purpose of this framework and policy will be divided into the following classes:

#### 19.2.1 Current and Non-Current Assets

- (a) Current assets have a short life expectancy (normally less than twelve (12) months) due, either to an inherent feature, or because they will be converted into cash or another asset or consumed within the Department within a short time frame (raw materials and inventory (e.g. printers or cartridges) are examples of this). These assets are generally referred to as 'current' in accounting terms, as they may be consumed or converted into cash within the next twelve (12) months of the reporting date.
- (b) In contrast, non-current assets have an extended useful life (longer than twelve (12) months) and it is usually expected that these assets would be used over more than one reporting period. This may reflect their physical life (e.g. motor vehicle) in the case of tangible assets or their legal life (e.g. patent) in the case of intangible assets.

#### 19.2.2 Tangible assets

Tangible assets are physical in nature. These are assets that one can touch and feel and can either be current or non-current. All tangible assets are either moveable or immovable.

#### 19.2.3 Intangible assets

Intangible assets do not have a physical form. Examples of intangible assets are:

- (i) Trademarks;
- (ii) Licences;
- (iii) The legally enforceable rights associated with copyright and patents;
- (iv) Mineral exploration rights;
- (v) Computer software;
- (vi) Entertainment, literary or artistic originals; and
- (vii) Other assets (e.g. new information, specialised knowledge) that have not been classified elsewhere, whose use in production is restricted to the units that have established ownership rights over them or to other units licensed by the latter.

#### 19.5.4 **Minor assets**

- (a) Various types of assets exist but due to their value, they cannot be classified as major assets. An example is chairs. There is however a need to control these types of assets. Minor assets are assets with an acquisition value of less than R5 000.00 per item. There is a need to control various assets that cannot be classified as major assets. This is due to their value as they clearly have lifespans in excess of one (1) year. Items that may be included in such a list are endless and will continuously change.
- (b) To provide sufficient guidance to regulate the classification of assets with a monetary value of less than R5 000.00, without unnecessarily forcing the Department into controlling items that are worth less than the effort needed to control them, the following broad guidelines are proposed:
  - (i) To be categorised as minor assets, the goods must have the characteristics of capital assets with the exception that they have a value of less than R5 000.00.
  - (ii) Items must have a normal lifespan of more than one (1) year.
  - (iii) It must be possible to physically mark the item without damaging it.
  - (iv) Items must be categorised as one of the broad categories prescribed.
  - (v) All computer software with a monetary value of less than R5 000 will be regarded as an E-class consumable.
  - (vi) All expenditure on minor assets will be classified as current expenditure.

#### 19.2.5 **Major assets**

All assets of a value exceeding R5 000.00 are classified as major assets. All expenditure on major assets will be classified as capital expenditure.

### 19.3 **CATEGORIES OF ASSETS**

For the purposes of financial reporting, assets within the Department will be classified according to the following categories:

- (a) Machinery and equipment;
- (b) Furniture and office equipment;
- (c) Computer equipment;
- (d) Transport assets;
- (e) Heritage assets; and
- (f) Intangible assets.

# CHAPTER 20

## ASSET MANAGEMENT PLAN

### 20.1 INTRODUCTION

20.1.1 Public Finance Management Act, Act 1 of 1999:

(a) Section 38 of the PFMA confers general responsibilities on the Accounting Officer. It determines at Section 38 (1) (d) that the Accounting Officer of a Department:

*"..is responsible for the management, including the safe-guarding and the maintenance of the assets, and for the management of the liabilities, of the Institution, trading entity or constitutional institution; "*

20.1.2 The asset base of the Department primarily consists of computer hardware and software and office furniture and equipment. These assets facilitate the program delivery responsibilities. As such, the Department has an asset portfolio which is relatively small in comparison to its operating budget.

### 20.2 ASSET STRATEGIC PLAN

20.2.1 In attaining service delivery objectives, resources (assets) are required. Government has a structured way of obtaining and utilising resources in line with applicable legislation. The legislation requires an Asset Management Strategy that will be implemented to attain service delivery objectives. The plan must provide for a five (5) year period for planning and costing asset needs as opposed to the three (3) years of the MTEF.

20.2.2 The Department's Asset Management Strategy will incorporate the following (and which will be reviewed annually):

- (a) Linking the requirement to service delivery. This is to determine which assets are required in terms of the five (5) year Procurement Plan e.g. appointment of new staff, procurement of new equipment, etc.
- (b) Funding and Acquisition Plan;
- (c) Operational Plan;
- (d) Disposal Plan; and
- (e) Risk Management Plan.

### 20.3 LINKING THE REQUIREMENT TO SERVICE DELIVERY

Requests for new assets must be justified by a thorough evaluation of all service delivery options by Responsibility Managers. Asset needs must be directly linked to the services to be delivered.

## 20.4 ASSET FUNDING AND ACQUISITION PLAN

- 20.4.1 An Asset Funding and Acquisition Plan (**Addendum 14**) is compiled for the Department on an annual basis during the planning phase and addresses the following:
- (a) the programme delivery requirements inclusive of the service strategies and standards; and
  - (b) the rationale behind acquiring assets and how the assets will serve and fit into the strategic objectives and service delivery goals of the Department.
- 20.4.2 The funding and acquisition plan is derived from the department's procurement plan that stretches over the three (3) year planning period. The procurement plan speaks to the assets to be purchased by the various responsibility managers in order to ensure that the set strategic objective and goals are met. The acquisition of the department's assets is funded through the utilisation of the allocated budgets of the various cost centre managers/responsibility managers.

## 20.5 OPERATIONAL PLAN

- 20.5.1 An operational plan will be compiled, adjusted and reviewed as and when needed to ensure that it serves its intended purpose and that it is always current in terms of the programme needs and the strategic objectives of the Department.
- 20.5.2 Assets within a programme are one of the key inputs utilised to enable programme outputs. The starting point is to establish a link between programme delivery and assets and as such asset management is most effective when it is aligned to the delivery of the Department's outcomes and programs.
- 20.5.3. Provincial Treasury Instruction Chapter 16A, paragraph Part 9.1.3 requires the accounting officer or accounting authority to ensure that the following principles are captured into the moveable asset management system of the institution:
- i. *"Moveable asset management activities must be undertaken within the institution's strategic objectives that is driven by programme and service delivery needs; and*
  - ii. *Moveable asset management planning and decisions must be integrated into the strategic and procurement planning processes ...;"*
- 20.5.4. The ultimate aim is to develop an Asset Management Strategy that takes into account:
- a) existing assets that are required and are presently capable of servicing programme delivery needs;

- b) existing assets that are required but are below the necessary standard and need refurbishment or replacement to meet programme delivery needs;
- c) assets which are surplus to programme delivery needs and can be disposed of; and
- d) assets which must be acquired to meet programme delivery needs.

20.5.5 Moveable asset Strategic Plans will provide for the integration between these key organisational planning activities and asset management, allowing strategic goals to be integrated with the asset portfolio in order to meet the Department's program delivery requirements and achieve the desired outputs and ultimately outcomes (outcomes orientated planning).

20.5.6. Provincial Treasury Instruction Chapter 16A at Part 9.2.3 further provides details on the structure and content of asset management plans, more specifically:

- (a) *an operational plan which defines the use of existing moveable assets and which should include matters such as access, security, accountability, the monitoring of performance, training of staff in the use of moveable assets and estimates of operating costs*

20.5.7. Data Sources

The following systems represent the approved SCM systems that will be used to source data/information required to support demand management activities within the Department:

**Data Sources**

System Name	Description	Data sources
LOGIS	The Treasury approved national ordering system.	Purchase Order information
Basic Accounting System (BAS)	The Treasury approved national payment system.	Invoice and Payment related data.
HARDCAT	WCED Asset Management System	Asset Register

20.5.8. The majority of the department's asset base consists primarily of computing hardware and software and office furniture and equipment, which facilitate program delivery responsibilities but are not central to the mandate of the Department. Desktop computers, office furniture and equipment are used by most staff members, but are an essential component of the Department's asset base, and a component whose contribution to the Department's program delivery must be recognised. By their nature, however, they are typically low-maintenance items, with computer equipment becoming obsolete within a few years. Consequently, it may suffice to visually monitor their condition and upgrade or replace them as required. This activity is performed during the annual stock take when all assets are physically verified, inspected and the operational capability determined. It is

during this activity that the level and standard of performance of each asset is determined. Due to the nature of the bulk of the department's assets, they are seldom, if ever over utilised, while some assets, e.g. boardroom tables and chairs, visitor's chairs etc. might be considered under-utilised for certain periods (when not used during meetings, etc.). A Standard Operating Procedure for the stocktaking process is attached as **Addendum 23**

#### 20.5.9 **Asset Condition Assessment**

- (a) A structured condition assessment process must be part of the annual stock-take process; and
- (b) A condition assessment for each asset must comply with the condition scale defined in the table below:

**Table: Scale of Asset Condition and Definitions**

Rating	Status	Definition
C5	Excellent	Asset has no defects; condition and appearance are as new.
C4	Good	Asset exhibits superficial wear and tear, minor defects, minor signs of deterioration to surface finishes; but does not require major maintenance; no major defects exist.
C3	Fair	Asset is in average condition; deteriorated surfaces require attention; services are functional, but require attention; deferred maintenance work exists.
C2	Poor	Asset has deteriorated badly; general appearance is poor with eroded protective coatings; elements are defective, services are frequently failing; significant number of major defects exists.
C1	Very Poor	Asset has failed; is no longer operational and unfit for normal use.

#### 20.5.10 **Physical Control and Safeguarding of Assets**

- 20.5.10.1 The Public Finance Management Act (PFMA) provides a disciplined and consistent framework for recording and reporting the information needed for asset management. The department controls assets of various classes and has a duty of stewardship over assets under its control, irrespective of how such assets may be reported in the financial statements. This necessitates the development of a culture of care and attaching responsibility towards the users of assets. This section provides mechanisms by which financial and performance accountability may be established
- 20.5.10.2 It is imperative that the physical control measures ensuring that departmental assets are safeguarded against theft and improper operational and maintenance practices are in place and that the physical existence and location of all assets are accurately reflected in the asset register.
- 20.5.10.3 Physical Control and Safeguarding of Assets include the following sub processes:
  - (i) Receiving and Inspection
  - (ii) Applying standardized naming methodology

(iii) Asset Tagging and Allocation

(iv) Safeguarding against theft and losses

(v) Movement Control

(vi) Physical Verification

(vii) Updating the asset register

20.5.10.4 National Treasury Regulation 10.1.1 requires the Accounting Officer of an institution to take full responsibility and ensure that proper control systems exist for assets and that preventative mechanisms are in place to eliminate theft, losses, wastage and misuse. The Accounting Officer shall ensure that the following preventative controls are in place to safeguard assets against theft and damages:

- (i) Physical safeguarding of assets through controlling movements and safeguarding in daily operational activities or when the asset is stored;
- (ii) Safeguarding against operational misuse;
- (iii) Control of and accountability for assets will be vested in the responsibility manager/cost centre manager/chief user as the case may be. The purpose of the afore-mentioned decision is to ensure that proper control mechanisms are put in place to adequately maintain and protect assets and maximise their output or service potential;
- (iv) The responsibility manager/cost centre manager/chief user, as the case may be, shall ensure that:
  - (a) Financial responsibility for assets is established through the budget process;
  - (b) The assets are properly used and remain in a good condition;
  - (c) The performance of the asset conforms to standard; and
  - (d) The assets are properly accounted for.
  - (e) To detect if any theft and damages occurred the following measures shall be followed:
    - (i) Periodic asset verification through physical counts at least once per annum; and
    - (ii) Conditional Assessment of assets to ensure that they still meet the requirements for service delivery.

20.5.10.5 Safeguarding of Assets

The following general principles apply to all asset movements:

- (i) The responsibility manager/cost centre manager/chief user is responsible for ensuring the physical safeguarding of assets and control over movements;
- (ii) Wherever there is a movement of assets, the deliverer and the receiver must sign the movement of asset form; and

- (iii) The original asset movement form must be sent to the sub-directorate Asset Management and a copy must be kept on file in the office of the responsibility manager/cost centre manager/chief user for the retention of information.

#### 20.5.10.6 Receiving and Inspection - Purchasing receipts

- (i) No asset will be accepted without a delivery note/invoice and a purchase order number reference;
- (ii) All assets received must be confirmed against a valid purchase order;
- (iii) The receiver must confirm the following information on the purchase order against the actual delivery:
  - (a) Supplier;
  - (b) Description of item being delivered;
  - (c) Quantity of Items being delivered;
  - (d) Make and Model; and
  - (e) Size and Dimension.
- (iv) Assets that do not conform to the specifications and description issued by the buyer on the purchase order must not be accepted and received based on the visual inspection.
- (v) The completed goods received note and signed delivery note must be sent to the SCM unit to initiate payment;

#### 20.5.10.7 Specific Controls for safeguarding:

- (i) All assets leaving the premises of the Department must be assigned to a specific person, who would take responsibility for the asset. Assets leaving the premises must be accompanied by a duly completed and signed removal form (SRM001) for handing in at security. A copy thereof is attached as **Addendum 28**;
- (ii) It is the responsibility of such a person to ensure the asset is safeguarded and specific controls are implemented;
- (iii) End users must ensure care and safety measures are taken with assets in his/her possession and used directly by the end-user. These include laptops, cell-phones, cameras, data projectors and office furniture used on a daily basis;
- (iv) Laptops/cameras/video cameras/data projectors:
  - (a) When these assets are not in use they must be locked in a secure cupboard/safe/strong room and the key held by the responsible person/asset controller;
  - (b) An inventory list of these assets, under control of the responsible person /asset controller, should be kept.

#### 20.5.10.8 Safeguard against operational misuse

- i) All assets must only be used for the intention they are procured.

#### 20.5.10.9 Asset Verification

- i) Periodic Verification Process (Quantity verification)
- (ii) All moveable assets shall be actively controlled, through the implementation of a movement policy including an annual asset count. The annual asset count is discussed in detail in **Addendum 23**, SOP for Stocktake Procedures.

20.5.10.10 Asset Identification and Control

- i) The department must ensure that all moveable assets are identifiable, allocated to a duly authorised responsibility manager/cost centre manager/chief user and physical location for control purposes.

20.5.10.11 Asset Tagging

- i) To ensure all assets are identifiable and to facilitate effective management and control of assets, the procedures set out in **Addendum 27**, SOP Barcoding of WCED assets must be followed.

20.5.10.12 Recording of assets in the asset register

- (i) All moveable items that were procured, received as donations or received from transfers from other departments or institutions and comply with the definition of an asset must be recognised in the moveable asset register;
- (ii) The asset register shall be maintained in the format determined by the National Treasury. The format complies with the requirements of Generally Recognised Accounting Practice (GRAP) and any other applicable governing prescripts;
- (iii) Both minor and capital assets must be reflected in the departmental asset register;
- (iv) Only duly authorised officials may access the asset register; and
- (v) The maintenance of the asset register is dealt with in **Addendum 26**, SOP Database maintenance.

**20.6 MAINTENANCE PLAN**

20.6.1 As mentioned in paragraph 20.5.8, the majority of the department's assets are computer hardware, computer software, office furniture and equipment. By nature these assets are low-maintenance items and will therefore require little or no planned maintenance. Only unplanned maintenance will therefore be undertaken by the department. Two categories of unplanned maintenance, which are applicable, are indicated in the table below:

<b>Unplanned Maintenance</b>	<b>Routine Breakdown Maintenance</b>	<b>&amp;</b>	Unplanned and reactive maintenance actions performed to restore an asset to operational condition, as a result of an unforeseen failure.
	<b>Incident Maintenance</b>		

## **20.7 DISPOSAL PLAN**

20.7.1 Asset disposal is the final stage in the asset life cycle. Proper planning and management of asset disposal is therefore an integral part of the strategic process.

### **20.7.2 Disposal Planning Process**

- (a) The planning of asset disposal will be done on a quarterly basis or as the need arises. Any assets that are not suitable or necessarily fulfilling the mandate of the Department, such as damaged, redundant/surplus, obsolete, irreparable, unserviceable assets, will be disposed of.
- (b) The disposal plan that results from the asset disposal process is part of the Asset Management Framework and is aligned with the acquisition and operational planning process. This indicates that disposal and acquisition planning needs to be very closely aligned. This integration is undertaken as part of the overall Asset Management Strategy.

## **20.8 RISK MANAGEMENT PLAN**

20.8.1 The department's risk management plan is attached as **Addendum 22**.

# CHAPTER 21

## ASSET REGISTER

### 21.1 ASSET REGISTER

The Department's asset register will comprise:

- (a) a register of all moveable assets;
- (b) a register of all library material; and
- (c) a register of all mobile units, (classrooms, kitchens or containers).

These registers will provide the detail to the figures disclosed in the annual financial statements. The asset register contains information on each asset that includes, as a minimum, the cost price, date acquired, location and condition.

The asset register for moveable assets will be maintained by the Supply Chain.

The asset register for the library materials will be maintained by the Directorate: Cape Teaching and Leadership Institute (CTLI).

The asset register for mobile units will be maintained by the Directorate: Infrastructure Management and Planning.

### 21.2 FEATURES OF AN ASSET REGISTER

The minimum fields required for an asset register are the following:

(a) **Asset Data:**

- (i) Description of the asset;
- (ii) Asset classification;
- (iii) Date purchased/received;
- (iv) Cost price/valuation amount;
- (v) Condition;
- (vi) Depreciation rate/useful life;
- (vii) Accumulated depreciation; and
- (viii) Individual identification number (barcode/ serial or unique asset number).

(b) **Asset Record:**

- (i) Cost centre;
- (ii) Location;
- (iii) Responsible person;
- (iv) Description;
- (v) Date received;

- (vi) Cost price/valuation amount;
- (vii) Quantity; and
- (viii) Individual identification number (barcode/serial or unique asset number).

### **21.3 CONTINUOUS MAINTENANCE OF ASSET REGISTER**

21.3.1 The Department must conduct an annual stock take of all assets verifying the physical existence of assets. The asset register must be updated after variances (surpluses and shortages) have been investigated and resolved as identified during the process.

#### **21.3.2 Basic controls over assets**

- (a) In terms of the PFMA, all officials have a responsibility to safeguard the assets of the Department in their area of responsibility.
- (b) Recording and safe keeping of documentation relating to acquisition and additions of assets; barcoding of assets; disposal of assets; transfers and performance of monthly reconciliations are important in keeping the asset register up to date and ensuring control over assets.
- (c) Issuing officials with inventory lists for all assets under their control is a control measure emphasising the importance of Section 45(e) of the PFMA, which places the responsibility on officials for the management of the assets, including safeguarding and maintenance of all assets within an official's area of responsibility.
- (d) Physical access to assets must be limited to only those persons that need access to the assets to perform their normal duties. Authorisation must be provided for the use of assets outside the normal working environment.
- (e) The relevant official must ensure that the removal of assets is recorded and the condition thereof checked when returned.
- (f) All assets in the Department must be counted and verified annually. This must be done in accordance with a stock-take program.

### **21.4 REPORTING ON ASSETS**

At the end of each financial year or as soon as possible thereafter, the Department must report to the Provincial Treasury that a complete count of all its assets has been completed.

### **21.5 PFMA REQUIREMENTS**

The PFMA provides a disciplined and consistent framework for recording and reporting the information needed for asset management. Asset management has been implemented to satisfy the need for decision-making information and to alleviate the lack of available information.

## 21.6 POLICIES ADOPTED

### 21.6.1 Asset Thresholds

As indicated in Chapter 19, assets are divided into minor and major assets depending on their values.

### 21.6.2 Depreciation Method

The straight-line method of depreciation is the method selected and approved for use in all Provincial Departments. This method is advantageous because of its simplicity to calculate and, it is the most commonly used. Although LOGIS has been enabled to apply this method, the WCG does not currently depreciate its assets but carries them on the asset registers at either the cost price, where available, or fair value as determined when the asset was added to the asset register.

### 21.6.3 Accounting and Recognition of Assets in Financial Statements

- (a) The value of the Department's assets must be disclosed in the financial statements if they meet the:
  - (i) probability criteria (it is probable that any future economic benefits or service potential associated with the asset will flow to the entity); and
  - (ii) measurement criteria (the asset has a cost or value that can be measured with reliability).
- (b) In assessing whether an asset meets these criteria and therefore qualifies for disclosure in the financial statements, consideration must also be given to the materiality considerations. In assessing whether an item meets the definition of an asset, attention needs to be given to its underlying substance and economic reality and not merely its legal form. For example, a laptop bag may be acquired at a high expense but it is prone to wear and tear and is therefore regarded as a consumable item. The mere fact that it exists does not mean that it must be disclosed in the financial statements but rather how the item is treated in terms of its asset classification.

## 21.7 LEASING OF ASSETS (CLASSIFICATION OF LEASES)

21.7.1 A lease is classified as a **finance lease if it transfers** substantially all the risks and rewards incidental to ownership.

21.7.2 A lease is classified as an **operating lease if it does not transfer** substantially all the risks and rewards incidental to ownership.

21.7.3 Risks include the possibilities of losses from lack of use, technological obsolescence or changes in value due to changing economic conditions. Rewards may be represented by the expectation of service potential or profitable operation over the asset's economic life and gain from appreciation in value or realisation of a residual value.

21.7.4 Whether a lease is a finance lease or an operating lease depends on the substance of the transaction rather than the form of the contract. Although the following are examples of

situations which would normally lead to a lease being classified as a finance lease, a lease does not need to meet all these criteria in order to be classified as a finance lease:

- (a) the lease transfers ownership of the asset to the lessee by the end of the lease term;
- (b) the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable for it to be reasonably certain, at the inception of the lease, that the option will be exercised;
- (c) the lease term is for the major part of the economic life of the asset even if title is not transferred;
- (d) at the inception of the lease the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset;
- (e) the leased assets are of a such a specialised nature that only the lessee can use them without major modifications; and
- (f) the leased assets cannot easily be replaced by another asset.

21.7.5 Other indicators of situations that individually or in combination could also lead to a lease being classified as a finance lease are:

- (a) if the lessee can cancel the lease, the lessor's losses associated with the cancellation are borne by the lessee;
- (b) gains or losses from the fluctuation in the fair value of the residual value accrue to the lessee (for example, in the form of a rent rebate equalling most of the sales proceeds at the end of the lease); and
- (c) the lessee has the ability to continue the lease for a secondary period at a rent that is substantially lower than market rent.

## **21.8 ACCOUNTING STANDARDS**

The Department must refer to the National Treasury Modified Cash Standard: Chapter for Capital Assets which prescribe the accounting for Capital Assets in the secondary financial information to the Annual Financial Statements (AFS).

# CHAPTER 22

## DISPOSAL MANAGEMENT

### 22.1 INTRODUCTION

- 22.1.1 Disposal is the process when the Department needs to relinquish unserviceable, redundant or obsolete moveable assets. The responsibility manager/cost centre manager/asset controller is responsible for the identification of unserviceable, redundant or obsolete assets within their programs. Once the unserviceable, redundant or obsolete moveable assets have been identified, the relevant responsibility manager / cost centre manager / asset controller must notify, in writing, the Asset Management component.
- 22.1.2 The Accounting Officer must appoint a disposal committee that deals with disposals and makes recommendations to the delegated official with regard to the disposal of any asset.
- 22.1.3 The Standard Operating Procedure for the disposal of assets must be applied when assets are disposed of, as it gives guidance on the procedure to be followed.

### 22.2 DISPOSAL OPTIONS

If the disposal of any asset is approved, one of the following disposal options must be followed:

(a) **Transfer to another institution**

This method entails transferring the moveable asset to another state institution at market related value. Market related value is the Rand value to be received from a third party in the open market.

(b) **Transfer to another government institution free of charge**

This method entails transferring the moveable assets to another government institution free of charge. Should this method be chosen, the reasons for disposing of the asset free of charge must be recorded and motivated by the Disposal Committee and specifically approved by the Accounting Officer or delegated official. The best interests of the State should be the deciding factor in all such cases.

(c) **Selling per price quotation / competitive bid**

- (i) Advertisements are placed on the IPS where the competitive bidding process is followed. The advertisement must provide for sufficient detail to elicit meaningful response from prospective bidders. The assets must be available for inspection.
- (ii) Factors to be considered when deciding whether to offer the goods for quotations or competitive bids include:
- (aa) The value of the asset to be disposed of;
  - (bb) The age of the asset;
  - (cc) The general attractiveness to the wider group of buyers; and
  - (dd) The prospect of increasing the net sale value compared to an alternate method of sale.

(d) **Selling per auction**

- (i) Factors to be considered when deciding whether to offer the goods for auction include:
  - (aa) The assets are valued at less than the cost of disposing of the goods through bids;
  - (bb) Unsuccessful attempts at selling these items through price quotations/bids;
  - (cc) It is reasonable to believe the assets will not attract bids;
  - (dd) The auction must be advertised in two local newspapers;
  - (ee) Security on communication on disposal in the Department; and
  - (ff) Security at the auction venues

(e) **Selling as scrap**

- (i) In cases where assets have no use or sale value in its original form but the material it is made of is of value e.g. wood, metal, etc. such material should be offered for sale in accordance with the delegations depending on the expected revenue to be made from the material. The sale of scrap must always be cost effective.

(f) **Destruction**

- (i) Destruction of assets is undertaken when it is considered uneconomical to proceed with disposal by any other means. Destruction may be appropriate for assets, which no longer have a sale value. Factors to be considered when deciding whether to offer the assets for destruction include:
  - (aa) the assets are not fit to be used anymore e.g. it is a health risk;
  - (bb) the assets are valued at less than the cost of disposing through bids, price quotations or auctioning;
  - (cc) neither the Department nor any other department can use the asset in its current form;
  - (dd) the Department was unsuccessful in selling the assets via price quotation / competitive bidding/ auctioning; and
  - (ee) it is reasonable to believe the assets will not attract offers.
- (ii) The Asset Management component is responsible for the **destroying** of scrapped moveable assets. Destroying can either be done by incineration, burying, dumping at an allocated dumpsite or any other means that have been proven to not adversely affect the environment and is not contrary to any law, by-law or regulation.

(g) **Trade-In**

- (i) If appropriate, assets may be traded in on purchase of new assets. In such cases, the highest possible trade-in price is to be negotiated with the highest point scorer by the SCM Unit. The order placed should be for the net amount, as charged against the vote. The actual value of the new asset should, however, be reflected on the relevant register.

(h) **Salvage**

- (i) Some moveable assets identified for disposal may have reusable components and the Department may arrange for removal of these components prior to the application of another method of disposal.

**22.3 DISPOSAL PROCESS**

The Standard Operating Procedure for the Disposal of Assets is attached as **Addendum 15**.

**22.4 REVENUE FROM DISPOSAL OF STATE ASSETS**

All monies received from the sale of moveable assets must be paid into the Provincial Revenue Fund in terms of Section 22(1) of the PFMA. When assets are sold as scrap the correct SCOA codes need to be applied to ensure that the value of assets disposed of as scrap can be accurately accounted for in the Annual Financial Statement (AFS).

# **VOLUME 8**

# **EDUCATION DISTRICT OFFICES**

# CHAPTER 23

## APPLICATION BY EDUCATION DISTRICT OFFICES

### 23.1 SCOPE AND APPLICATION

The Accounting Officer's System will *mutatis mutandis* apply to Education District Offices (EDO). The Education District Offices are thus bound to adhere to all relevant prescripts which include the National and Provincial Treasury Practice and Instruction Notes. The EDOs can thus only conduct business with entities actively registered on the CSD and WCSEB.

### 23.2 ENABLING CONDITIONS AT DISTRICT OFFICES

23.2.1 EDOs have been delegated authority and functions to procure goods and services in terms of SCM guidelines.

23.2.2 The following must be in place for the delegated functions at Education District Offices:

- (a) An Education District Office Quotation Committee duly appointed by the CFO:
  - (i) The Education District Office Quotation Committee must be chaired by an official with the rank of Deputy Director: Corporate Services.
  - (ii) The Committee shall have at least three (3) additional members, which shall include a financial administration expert and two other members from the Corporate Services Branch.
  - (iii) The Education District Office Quotation Committee shall perform the applicable functions as indicated in paragraph 2.5 in respect of the Head Office Quotation Committee.
  - (iv) Minutes of the Education District Office Quotation Committee must be submitted to the relevant District Director.
- (b) System and resource requirements
  - (i) The computer equipment must be able to access the internet so that the ePS can be accessed.
  - (ii) An ePS Administrator must be identified to upload, download and schedule the offers received.

### 23.3 DELEGATIONS

23.3.1 Education District Offices may only utilise the system of written quotations as is documented in paragraph 8.2 and allowed through delegation number 39 of the AOS.

- 23.3.2 All Education District Offices must utilise the ePS to obtain competitive quotations for goods/services to a threshold of R100 000.00 including VAT. Any need that exceeds this estimated amount must be submitted to Head Office to obtain the competitive quotations via the ePS.
- 23.3.3 The EDO Quotation Committee may accept the offer that meets the advertised specifications and in so doing scores the highest total preference points, to a maximum threshold value of R100 000.00 including VAT. Offers that exceed the R100 000 threshold value must be submitted to the Quotation Committee at Head Office for consideration through a motivated request.
- 23.3.4 The functions of the EDO Quotation Committee shall apply *mutatis mutandis*, as outlined in paragraph 2.5.

#### **23.4 AREAS OF PROCUREMENT THAT EDUCATION DISTRICT OFFICES MAY EXECUTE**

- 23.4.1 Purchase consumables and services.
- 23.4.2 Place orders with the Government Printing Works (GPW) for the supply of stationery that the GPW has on its standard catalogue for the State.

#### **23.5 EXCLUSIONS**

- 23.5.1 Education District Offices may not purchase any assets (furniture and other equipment).
- 23.5.2 The Education District Offices will not have authority to purchase school furniture. This is a function assigned to the Directorate Institutional Resource Support.

#### **23.6 REPORTING**

- 23.6.1 The Education District Offices must ensure that all quotations accepted are adjudicated on-line (ePS). Reports will be drawn by Provincial Treasury and the sub-directorate SCM Planning, Policy and Performance Management to monitor compliance.
- 23.6.2 The Education District Offices must report monthly regarding all procurement to head office. All procurement reports must be submitted to the Director: Procurement Management by the 7th day of each month.

**VOLUME 9**

**COMPLIANCE  
MONITORING,  
RISK MANAGEMENT  
AND  
INTERNAL CONTROL**

# CHAPTER 24

## COMPLIANCE MONITORING

### 24.1 INTRODUCTION

- 24.1.1 Compliance monitoring is a fundamental part of SCM and is one of the main ways to ensure adherence to regulatory requirements. It can involve a range of inspection and reporting activities carried out to determine compliance with regulatory requirements (e.g. checking on progress with an improvement programme) with the specific drive towards attaining good corporate governance.
- 24.1.2 In terms of Chapter 16A6.1.2 of the Provincial Treasury Instructions, the Accounting Officer for a Department must ensure that procedures and control measures are in place to ensure compliance with financial and supply chain management prescripts.

### 24.2 INSTITUTIONAL ARRANGEMENTS OR REQUIREMENTS

The internal compliance monitoring for the Head Office SCM unit as well as other units within the WCED where procurement takes place (e.g. EDO's LTSM, Infrastructure etc.) will be undertaken by the Sub-Directorate: SCM Policy, Planning and Performance Management. The Internal Performance Monitoring and Evaluation System will be utilised to monitor and evaluate the SCM unit and is attached as **Addendum 16**.

### 24.3 COMPLIANCE MANAGEMENT

The management of compliance monitoring includes the following:

- (a) Adherence to the Accounting Officer's System (AOS) for SCM.
- (b) Introduction of checklists: (from requisitioning to payment authorisation) to ensure that the required controls, checks and balances are in place and monitored before the Department commits itself to the issuing of orders and payment of invoices.
- (c) Introduction of procurement templates: to ensure that the minimum procurement requirements required by legislation and the National or Provincial Treasury for the various procurement methods are met. These include the following:
  - (i) Petty Cash;
  - (ii) Procurement between R0 – R2000 at EDO's
  - (iii) Procurement between R2001- R10 000;
  - (iv) Procurement between R10 000 – R500 000;
  - (v) Procurement above R500 000;
  - (vi) Emergency Procurement;
  - (vii) Limited Bidding; and
  - (viii) Unsolicited Bids.

- (d) Frameworks, templates or checklists that assist in the identification, actions to be taken and reporting requirements for:
  - (i) Fruitless and Wasteful Expenditure;
  - (ii) Unauthorised Expenditure; and
  - (iii) Irregular Expenditure.

# CHAPTER 25

## MONITORING SCM ABUSE

### 25.1 INTRODUCTION

The abuse of the SCM system represents a significant potential risk to the Department's assets, service delivery efficiency and reputation. The Department will not tolerate any abuse that may result in corrupt or fraudulent activities, whether internal or external. Instances of fraud or corruption will be reported to the Accounting Officer and CFO for investigation and possible sanctions.

### 25.2 INTERNAL AND EXTERNAL ABUSE OF SCM SYSTEM

25.2.1 Although the Provincial Treasury is the custodian of SCM policy and prescripts, it is the Department's responsibility to ensure that the SCM system is not abused by departmental officials or contractors / service providers. Any abuse can be to the financial detriment of the Department, harmful to its reputation and impact on service delivery. Any allegation against any party of improper conduct or failure to comply with the SCM system will be investigated.

25.2.2 In the event that the preferential procurement point system is abused, the Department will follow the remedies available in terms of the PPPFA and also the South African Law of Contract (i.e. common law). The provisions of such contraventions/breach of non-compliance to legislation, policy and prescripts must be clearly stated in the bid documents and subsequently in the contract or service level agreement as required.

### 25.3 MONITORING OF ABUSE OF THE SCM SYSTEM

Monitoring of abuse in the SCM system includes the following –

- (a) Complaints management (from internal and external stakeholders);
- (b) Management of information on the business interests of employees and all recourse taken against non-compliance in respect of SCM;
- (c) Prevention and detection of fraud and corruption; and
- (d) Detection of fronting and abuse of PPR and B-BBEE requirements.

### 25.4 COMPLAINTS MANAGEMENT

25.4.1 The supply chain management system of the Department must allow persons aggrieved by decisions or actions taken by the Department, to lodge within fourteen (14) days of the decision or action a written objection or complaint to the Department against such decision or action.

25.4.2 **Any dispute, grievance or complaint will be dealt with in terms of the dispute mechanisms** provided for in the General Conditions of Contract and where applicable, the Service Level Agreement. Any objections or complaints should be handled in a fair, equitable and non-discriminatory manner that is well understood by all affected parties.

25.4.3 The supply chain management system of a Department may provide for the appointment by the Accounting Officer of an independent and impartial person not directly involved in the supply chain management processes of the Department to deal with the objection or complaint received.

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

- (a) the objection or complaint is not resolved within sixty (60) days of receipt of such objection or complaint; or
- (b) no response is received from the Department within sixty (60) days of receipt of such objection or complaint.

## **25.5 COMPLAINTS PREVENTION**

25.5.1 Well-planned and well-conducted procurement is less likely to attract complaints. Thus departmental actions in undertaking procurement processes must be in terms of the requirements of Section 217 of the Constitution and the 5 pillars of procurement.

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

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

### **25.5.3 Planning the Procurement Process**

- (c) Careful planning, well developed specifications and bid documentation can mitigate complaints. The Department can benefit by undertaking market research and using this knowledge to compile appropriate specifications. This includes understanding the market's capabilities in terms of the technical specifications of the procurement and the effort that will be required to prepare a submission.
- (d) Bid documentation must describe to the market what the Department needs, as well as the procurement process that will be followed. Thus, the Department should take time to ensure that the bid document is sufficiently comprehensive, clear and concise, unambiguous and containing terminology that is easy to understand. Any minimum content and format requirements, conditions for participation, specifications and evaluation criteria need to be carefully developed to avoid arbitrary discrimination against any bidder and should be clearly identified and justifiable.
- (e) The Department is bound by the process that is outlined within the bid documentation and deviation from this may give rise to complaints. It is important that the processes outlined are consistent with the bid documentation and that they are followed.

- (f) The Department should also plan the procurement process to provide sufficient time for bidders to prepare and lodge a response. This can assist in reducing complaints concerning insufficient time to adequately respond.

#### 25.5.4 **Treat Bidders Ethically, Impartially and Encourage Competition**

- (a) Conflict of interest issues can be a basis for complaints by bidders. The Department should ensure that conflict of interest issues are managed and not allow officials with conflicts of interest to be involved in a procurement process. The Department should ensure that a declaration of interest form is completed where required.
- (b) Clearly articulated procedures to receive and open all submissions which guarantee fairness, impartiality and confidentiality can assist in reducing complaints. The maintenance of high ethical standards will give bidders confidence in the procurement process including confidence in the complaints handling method. The Department must take care to avoid practices that are discriminatory and which may lead to a bidder gaining an unfair advantage over other bidders.
- (c) The Department should treat all bidders fairly, equitably, reasonably and consistently throughout the process. Thus, all bidders should have the same opportunity to compete for government business.

#### 25.5.5 **Communicate Effectively with Bidders**

- (a) Complaints may arise due to poor communication. Good communication helps to ensure that problems do not arise.
- (b) The Department must ensure that it responds promptly to reasonable requests from bidders to provide information which enables them to prepare responsive submissions. However, it is important that the Department does not supply information that is confidential, sensitive to essential security or may impede competition amongst the bidders.
- (c) In providing access to information during the submission period it is important to ensure that no supplier receives an unfair advantage. Where bidders ask for clarification of issues relating to the evaluation criteria, specifications or other elements of the bid documentation, the Department should, unless there are exceptional circumstances, make all responses available to all bidders at the same time and in the same form.
- (d) Close attention to managing communication with bidders during the procurement process and any negotiations may assist in avoiding rumours about a bidding process.
- (e) It is good practice for the Department to examine its procedures and systems at the end of each procurement process to ensure it was fair and equitable to all bidders and to see whether any part of the processes can be improved.
- (f) Finally, effective contract management and regular performance feedback to suppliers will help build and maintain good working relationships with suppliers.

### 25.5.6 Providing Feedback to Bidders

- (a) The Department can build good working relationships with both successful and unsuccessful bidders through feedback and debriefings. Debriefing contributes to transparency and confidence in the fairness of the procurement process and will often alleviate bidders' concerns that may otherwise have been raised as a complaint.
- (b) **Why Provide Feedback to Bidders?**
  - (i) It is good practice for the Department to provide feedback to bidders in order to give effect to Section 217 of the Constitution. This will ensure that feedback can be built into the Department's procurement procedures in order to:
    - (aa) Preserve the highest standards of honesty, integrity, impartiality and objectivity;
    - (bb) Be fair, efficient and courteous;
    - (cc) Manage the bidding process so that genuine competition is preserved and discrimination is avoided;
    - (dd) Debrief both successful and unsuccessful bidders of the outcome of the bidding process, within the bounds of commercial confidentiality, so as to facilitate better performance on future occasions; and
    - (ee) Respond promptly, courteously and efficiently to suggestions, enquiries and complaints.
  - (c) By providing constructive feedback, the Department will educate bidders by giving information about the procurement process and their expectations and this, in turn, may assist to improve the standard of future bid submissions.
    - (i) Bidders can benefit from receiving feedback by getting the opportunity to:
      - (aa) obtain information and to help them understand how and why decisions were made in relation to their submission: what they did well and what was lacking as well as any areas of their submission that did not comply with the approach to the market;
      - (bb) obtain a better understanding of the Department's expectations, thereby assisting them to prepare and submit a higher standard of bid submissions in future procurement processes;
      - (cc) establish or consolidate a fair, open and ethical relationship with the Department in order to gain confidence in the procurement process; and
      - (dd) accept an offer of help and guidance to increase bidder's future chances of contracting with the WCG.
    - (ii) Conversely, the Department can benefit from providing feedback to bidders by getting the opportunity to:
      - (aa) be accountable and transparent in showing that their procurement process is robust and defensible;
      - (bb) establish or consolidate a fair, open and ethical relationship with bidders;

- (cc) receive valuable information from bidders regarding the structure and content of the bid documentation;
- (dd) encourage confidence in the procurement process, thereby keeping bidders in competition and improving value for money prospects;
- (ee) educate bidders as to their expectations, thereby encouraging improved bid submissions for future procurement processes; and
- (ff) clear up any misconceptions and resolve any possible disputes with bidders, thereby minimising any possible complaints.

#### 25.5.7 **When should the Department provide feedback?**

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

#### 25.5.8 **Preparing a Feedback Session (a Debriefing)**

- (a) Where the Department has arranged to meet with the unsuccessful bidder to conduct a debriefing session, it is good practice for the session to be planned and for departmental officials (at least two officials being present) to take formal minutes of what is discussed in the meeting.
- (b) Debriefings can be tailored according to the nature, size and complexity of the procurement and feedback necessary.

### 25.6 **COMPLAINTS HANDLING PROCEDURES**

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

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

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

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

25.6.4 Departmental procurement officials should receive appropriate training to ensure they understand and comply with complaint handling procedures which may also be made available to all officials within the SCM unit.

25.6.5 **Accessibility**

- (a) The Department's complaints handling process should be documented, accessible and communicated to bidders and throughout the organisation; it should be clear to bidders and officials how to lodge a complaint.
- (b) Complaints processes should be user-friendly, making it easy for bidders to make a verbal or written complaint.
- (c) Accessibility of a complaints handling process involves practical considerations.
- (d) The Department must ensure that bidders have adequate avenues available to lodge a complaint with the Department and that such avenues are effectively communicated to bidders before, during and after the procurement process.

25.6.6 **Management of Information**

(a) **Complaints Register**

- (i) The supply chain management unit of the Department must establish and maintain a complaints register that effectively captures all information and evidence regarding complaints lodged and resolved by the Department.
- (ii) The complaints register must include, but not be limited to the following information:
  - (aa) reference number;
  - (bb) date received;
  - (cc) name of aggrieved party;

- (dd) description of complaint;
- (ee) type of complaint (formal or informal);
- (ff) responsible official;
- (gg) due date;
- (hh) outcome of the complaint; and
- (ii) date of response

#### 25.6.7 Recording of complaints

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

### 25.7 RESPONDING TO COMPLAINTS

25.7.1 The Department has a constitutional obligation to deal with complaints in a lawful, reasonable and procedurally fair manner as contemplated in Section 33 of the Constitution, which reads as follows:

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

25.7.2 The PAJA was enacted to ensure compliance to government's duty to fulfil their constitutional mandate in terms of Section 33 of the Constitution.

25.7.3 PAJA, being a law of general application, is applicable to all legislation and legal prescripts in South Africa, including that relating to public procurement and supply chain management. Any policy or prescript relating to SCM complaints or grievances must be dealt with in terms of PAJA.

25.7.4 The PAIA is also applicable when complaints and grievances relating to procurement are lodged with the Department. Section 32 of the Constitution states that:

*"(1) everyone has the right of access to-*  
*(a) any information held by the state."*

25.7.5 The above mentioned legislation allows sufficient avenues and grounds which members of the public/bidders may pursue in order to lodge a complaint, grievance, request for information or even allege that their rights have been adversely affected because of unfair or irregular SCM processes followed by the Department.

### 25.8 THE PRINCIPLE OF *FUNCTUS OFFICIO*

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

- 25.8.2 *Functus officio*, "having performed his office," is a legal term used to describe a public official, court, governing body, statute, or other legal instrument that retains no legal authority because his or its duties and functions have been completed.
- 25.8.3 *Functus officio* only applies to final decisions taken so a decision may be revoked before it is made final. Hence finality is arrived at when the decision is published, announced or otherwise conveyed to those affected by it. This would similarly be the case when a decision is taken to award a bid to a supplier/service provider/contractor.
- 25.8.4 Based on the fact that the decision is *functus*, members of the public (i.e. suppliers, competitors, etc.) could raise complaints, grievances or serious allegations relating to the SCM system which requires that the decision be revisited. Hence the requirements articulated above in respect of complaints handling aims to ensure that the decision of the Accounting Officer or delegated official stands, unless revoked by a competent court of law and that the complaint, grievance or allegation be dealt with in the same manner by the Department. It also ensures that up until award, a complaint may be dealt with before a decision is made and becomes *functus*.
- 25.8.5 The above requirements have been developed to build a complaints handling mechanism on how to deal with members of the public when complaints arise before it becomes litigious.
- 25.8.6 PTI 16A3.9.1 requires that the SCM system must allow aggrieved persons to lodge within fourteen (14) days a written objection or complaint against a decision or action taken by the Department.

## **25.9 THE APPLICATION OF THE PROMOTION OF ADMINISTRATION OF JUSTICE ACT, 2000 TO THE SUPPLY CHAIN MANAGEMENT SYSTEM**

***(Note: This section relating to PAJA only indicates instances when bidders request information from departments.)***

- 25.9.1 When complainants seek relief in terms of PAJA, such complainant should ensure that the alleged action taken is *prima facie* administrative action. The converse would be true for the Department. Thus, the Department must be in a position to identify whether the alleged complaint is *prima facie* administrative action or not. In order to establish whether such action is deemed to be administrative action, all of the following requirements must be satisfied by the complainant/applicant in order to corroborate his/her allegations:
- (a) The decision taken must be of an administrative nature;
  - (b) Such decision must have been taken by an administrator (department); and
  - (c) The decision must have been taken in terms of an empowering provision (i.e. legislation, regulation or legal prescript governing SCM).
- 25.9.2 If the decision made by the Department satisfies the above-mentioned requirements in paragraph 25.9.1, the alleged *prima facie* administrative action is procedurally fair and the allegation of unfair administrative action by the complainant cannot be upheld. All matters involving the allegation of unfair administrative action should be referred to Legal Services in the Department of the Premier to advise the Department on the process followed and to ensure the decision of the Department is legally sound.

**25.9.3 After an administrative decision has been taken:**

Adequate notice must be given by the Department to the aggrieved party/complainant of their right to request reasons for the administrative action (as defined in terms of Section 5 of PAJA).

**25.9.4 When the Department informs such complainant(s) of their right to request reasons, the Department must indicate to such complainant(s) the following:**

- (a) Where the request can be made;
- (b) To whom it must be made;
- (c) When it must be made; and
- (d) The applicable fee to be paid.

**25.9.5 What is regarded as adequate reasons?**

There is no universal parameter to the exact reasons to be given. The Department must simply provide a satisfactory explanation of the reasons for a specific decision taken. The reasons need not convince the complainant that the decision was correct but be logical and procedurally correct. The reasons must have enough detail to explain why the decision (administrative action) was taken. This would then include that due process had been followed in accordance with all policies and prescripts governing the SCM system and public procurement.

**25.9.6 Failure of the Department to submit any reasons to the aggrieved party/complainant**

Should the Department fail to submit any reasons as requested by the aggrieved party/complainant, it will be presumed that such a decision was taken without any good reason in terms of Section 5(3) of PAJA.

**25.10 COMPLAINTS REFERRED TO EXTERNAL STAKEHOLDERS (PROVINCIAL TREASURY)**

25.10.1 A dispute, objection, complaint, grievance or query may be referred to the Provincial Treasury if the dispute, objection, complaint, grievance or query is not resolved within sixty (60) days of receipt thereof.

25.10.2 However, sometimes a complaint will be lodged directly with the Provincial Treasury without first having been referred to the relevant department. In this case, the Provincial Treasury will send a copy of the complaint to the Department and request the Department's written response.

25.10.3 Other external bodies who may be involved in a complaint:

- (a) National Treasury (via Provincial Treasury);
- (b) Legal Services;
- (c) South Africa Revenue Services; and
- (d) Any other organs of state.

## **25.11 APPOINTMENT OF AN INDEPENDENT AND IMPARTIAL PERSON**

- 25.11.1 If the complaint is not resolved to the aggrieved party's satisfaction, the aggrieved party may subsequently lodge a request for further investigation of the matter by an independent and impartial person.
- 25.11.2 An "independent and impartial person" means "a person":
- (a) Not influenced or controlled by others in matters of opinion or conduct by acting for him/herself;
  - (b) Not influenced by the thought or action of others;
  - (c) Not relying on another or others for aid or support.
- 25.11.3 To ensure that an aggrieved party has confidence in the integrity of the complaint handling process, the investigator appointed by the Accounting Officer should:
- (a) not have been involved with the bid evaluation or the contract award and administration of the relevant contract;
  - (b) be independent of direction from anyone who was involved in the process; and
  - (c) possess supply chain management experience and common sense, at an organisational level, where they can communicate credibly and frankly to those stakeholders and affected parties within the process.
- 25.11.4 In order for the process to remain transparent and for the bidder to have confidence that their complaint is being handled effectively, it is good practice for the investigator to promptly contact the aggrieved party, in writing, once they have been appointed. This also provides the opportunity for the investigator to ask the bidder to provide further information regarding their complaint and to pose any questions the investigator may have.
- 25.11.5 To ensure that the review is conducted fairly and comprehensively, the investigator should have access to all files and records relating to the bidding process and to any reports or communications by officials involved in the process, including written records of all communication related to the complaint.
- 25.11.6 If the investigator is not satisfied with the existing written records relating to the tender process in question, they may wish to interview those involved in the tender process to obtain the information they require.
- 25.11.7 The nominated investigator should sign a declaration of interest, impartiality and confidentiality.
- 25.11.8 The Accounting Officer will approve the appointment of an independent and impartial person.

## **25.12 ACCESS TO INFORMATION**

- 25.12.1 PAIA allows the public access to information held by the state and to information held by another member of the public if that information is needed to protect one's rights.
- 25.12.2 The PAIA details the structure of the Department, the nature of the records held by the Department and how to apply to gain access to those records held by the Department.

25.12.3 When a request for information is made, the Department must comply with the procedural requirements in terms of its Manual as prescribed by Section 14 of PAIA. For ease of reference, all provincial departmental Section 14 Manuals may be found at (<http://www.westerncape.gov.za/eng/pubs/guides/>)

#### 25.12.4 The Importance of Record Keeping

- (a) Proper record keeping ensures that all reasons pertaining to the supply chain management or procurement process are available when a bidder/aggrieved party requests it.
- (b) Thus, proper record keeping must be kept of all important meetings (i.e. bid specification, bid evaluation and bid committee meetings - clearly documenting all decisions taken and reasons therefor).
- (c) All records handed in during meetings as well as any consultations must be kept on file by the Department and this will be the required evidence to be presented by the Department when complaints or allegations of abuse in SCM are raised.
- (d) In order to complement the record keeping process, it is important to note the judgment set out in the Supreme Court of Appeal case - **Minister of Environmental Affairs v Phambili Fisheries/Bato Star 2003 (6) SA 428 (SCA)**. It stated that: **“Even if someone does not like the decision, he/she must be satisfied with the process followed and that all arguments for and against the decision, were considered and that the decision was a logical conclusion of all arguments”**.

### 25.13 BUSINESS INTEREST OF EMPLOYEES

25.13.1 In terms of Chapter 16A3.8.2 of the PTIs, the supply chain management system of the Department must, irrespective of the procurement process followed, prohibit any award to a person:

- (a) who is in the service of the Provincial Government Western Cape; or
- (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder, is a person in the service of the Provincial Government Western Cape;
- (c) unless that official has appropriate authority to undertake remunerative work outside his or her employment with the Department (RWOPS).

25.13.2 Before the Accounting Officer enters into any contract with an entity for the sale, lease, supply or purchase of goods or services, the entity must, in the prescribed manner, disclose any business interest that an employee or a family member of an employee who is in the service of the WCG has in that entity.

25.13.3 An employee of the Department must disclose in the prescribed manner to the Accounting Officer any business interest that the employee or any family member of the employee has in an entity conducting business with the WCG.

25.13.4 The WCBD 4 bidding document makes provision for the above-mentioned declarations, which must be completed by suppliers upon registration on the Western Cape Supplier Evidence Bank. The WCBD 4 is a mandatory registration requirement.

25.13.5 The WCBD 4 bidding document is valid for one (1) year and the onus is on suppliers to update their profile on the supplier database should any information on the bid document change within the one (1) year validity period.

25.13.6 For the purpose of checking the business interest of employees in suppliers doing business with the WCG, the supplier information housed on the database will on a monthly basis be verified against a data dump from the employee information system (PERSAL) by the Provincial Treasury. The Provincial Treasury will notify Departments upon detection of any possible business conflict of interest. (Document has been provided).The CSD also has several interfaces and linkages with various government departments and agencies which serve as a source of information i.e. government employee (potential conflict of interest).

25.13.7 This data dump does not include municipal employee information as this information is not available to the Provincial Treasury mainly due to the various and non-integrated systems utilised by municipalities.

25.13.8 Before an award is made the Department must establish:

(a) Whether or not the bidder is employed within its own staff establishment and whether or not the bidder is on the list provided by the Provincial Treasury that was matched against the public service PERSAL information; and

(b) Where a conflict is detected whether or not that official has appropriate authority to undertake remunerative work outside his or her employment in the Department (RWOPS).

25.13.9 The document for Investigating and Reporting Business Conflict of Interests is attached as **Addendum 18**.

25.13.10 In instances where the employee information was not available or was not checked at the time of the award, the Department must verify on a monthly basis against information provided by the Provincial Treasury whether any payments were made to persons on the list of employees provided. In these instances the procedure for the disclosure of irregular expenditure must be complied with.

## **25.14 PREVENTION OF FRAUD AND CORRUPTION**

25.14.1 Government has indicated that SCM is a high risk area having the potential for fraudulent and corrupt activities. Hence the WCG has focused on putting in the desired internal controls within its departments to ensure that it eliminates the potential for such activities. The Department has a Fraud Prevention Plan in place.

25.14.2 "**Fraud**" is intentional deception made for personal gain or to damage another individual or may be described as the unlawful and intentional making of a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

25.14.3 The legal definition of fraud is that it is the:

(a) unlawful;

(b) intentional;

(c) misrepresentation of facts (distortion of the truth);

(d) calculated to prejudice another.

25.14.4 The Department must prove all four of these elements of the legal definition:

- (a) **Unlawfulness:** Any distortion of the truth is unlawful. So, if the Department can prove a misrepresentation of facts, the Department automatically proves the unlawfulness.
- (b) **Intention:** The Department has to prove two things, namely that the perpetrator:
  - (i) knew that the information was false; and
  - (ii) realised that someone, not necessarily the victim, could suffer prejudice because of it.
- (c) **Misrepresentation:** the Department must prove that the perpetrator lied or deceived someone, by either stating something or by failing to reveal essential information.
- (d) **Calculated to prejudice:** the Department has to prove actual prejudice or potential prejudice. It is not important that the complainant must have suffered prejudice or potential prejudice. The prejudice may refer to anyone.

25.14.5 To produce a working definition of corruption requires acknowledgement that general definitions of corruption are difficult to produce, and necessitates that reference be made to the act of corruption as legally defined in relevant statutes. It is also important to note that producing one legally acceptable definition for corruption has posed problems. There has been no consensus on what would be the universally acceptable definition of corruption, as well as the types of conduct which would constitute corruption.

25.14.6 One of the main steps that the Prevention and Combating of Corrupt Activities Act takes is to make certain actions, crimes (some of which might not have been regarded as crime in the past). To do this, it has to “define” or explain what the crime of corruption is.

25.14.7 To this end, the Act defines corruption legally which may be summarised as follows:  
“**Corruption** is where a person (A) gives (or offers to give) someone in a position of power (B) something (called ‘gratification’ in the Act) to use that power, illegally and unfairly, to the advantage of A (or a third person). B will also be guilty of the same crime if he/she accepts (or offers to accept) the gratification to wrongly use his position.” *(Prevention & Combating of Corrupt Activities Act, 2004 (Act No.12 of 2004))*

25.14.8 The table below (Table 13) includes the provisions in the PFMA, Treasury Regulations and Provincial Treasury Instructions related to fraud, theft, corruption and irregular expenditure:

**Table 13**

PRESCRIPT	PROVISION
PFMA S38 (1)(c)(ii)	The Accounting Officer must take effective and appropriate steps to prevent irregular expenditure and losses resulting from criminal conduct.
PFMA S38 (1)(g)	On discovery of any irregular expenditure, the Accounting Officer must immediately report to the Provincial Treasury and the tender board. In circumstances where a tender board is not functional, such reports must be submitted to the department's central SCM unit.

<b>PFMA S38 (1)(h)</b>	The Accounting Officer must take effective and appropriate disciplinary steps against any official who contravenes or fails to comply with this Act (PFMA, NTRs, PTIs), or commits an act which undermines financial management or departmental internal control systems or makes or permits irregular expenditure.
<b>PFMA S40(3)(b)</b>	The annual report and annual financial statements must include particulars of material losses through criminal conduct and irregular expenditure and also which criminal/disciplinary actions were taken as well as any material losses recovered or written off.
<b>PFMA S45(c)</b>	Each official must take effective and appropriate steps to prevent irregular and under collection of revenue within their area of responsibility.
<b>Treasury Regulation 9.1.2</b>	When an official of an institution discovers unauthorised, irregular or fruitless and wasteful expenditure, that official must immediately report such expenditure to the Accounting Officer and the Provincial Treasury. When an irregular expenditure involves procurement also to the procurement authority or tender board. In circumstances where a tender board is not functional, such reports must be submitted to the department's central SCM unit.
<b>Treasury Regulation 9.1.4</b>	The Accounting Officer must determine the appropriateness of disciplinary steps taking into account: <b>(a)</b> Circumstances of transgression; and <b>(b)</b> Extent of expenditure involved; and <b>(c)</b> Nature and seriousness of transgression
<b>Treasury Regulation 9.1.4</b>	Recovery is done in terms of National Treasury Regulation 12 - Note: a legal culpability test must be conducted via the Office of the State Attorney.
<b>Treasury Regulation 9.1.5</b>	The amount of the irregular expenditure determined by the appropriate authority must be disclosed as a note to the annual financial statements.
<b>PTI 11.1.2(b)</b>	Requires compliance with National Treasury guidelines for the preparation of annual reports for national and provincial departments, issued annually.

#### 25.14.9 The Accounting Officer must:

- (a) take all reasonable steps to prevent abuse of the SCM system;
- (b) investigate any allegations against an official or other role-player of corruption, improper conduct or failure to comply with the SCM system, and when justified:
  - (i) take steps against such official or other role-player and inform Provincial Treasury of such steps; and
  - (ii) report any conduct that may constitute an offence to the South African Police Service.
- (c) check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, nor any directors are listed as companies or persons prohibited from doing business with the public sector;
- (d) reject any bid from a supplier who fails to provide written proof from the South African Revenue Service that the supplier either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations;
- (e) reject a proposal for the award of a contract if the recommended bidder has committed a corrupt or fraudulent act in competing for the particular contract, or
- (f) cancel a contract awarded to a supplier:
  - (i) if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract; or

- (ii) if any official or other role-player committed any corrupt or fraudulent act during the bidding process, that benefited that supplier.

25.14.10 The Accounting Officer:

- (a) may disregard the bid of any bidder if that bidder, or any of its directors have:
  - (i) abused the Department's SCM system;
  - (ii) committed fraud or any other improper conduct in relation to the SCM system; and
  - (iii) failed to perform on any previous contract.
- (b) Must inform the Provincial Treasury of any action taken in terms of paragraph 25.14.10(a).

25.14.11 The Department will pursue the remedies available not only in terms of Preferential Procurement Regulation 13 (2), but also the South African Law of Contracts (i.e. Common law) when a contractor or service provider:

- (a) is suspected to have claimed/ obtained its B-BBEE status level of contribution on a fraudulent basis; or
- (b) has promised, offered or given a bribe during the bidding process and/or after conclusion of contract; or
- (c) has acted in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of the contract; or
- (d) an agreement was entered into with the contractor on the strength of information furnished by him, and it became apparent after conclusion of such agreement that the information provided was incorrect; or
- (e) did not fulfil any of the conditions of the contract.

25.14.12 To protect both parties in the agreement (bidder/ contractor/ service provider and the Department) provision must be made in the bid documents informing bidders of the implications of these contraventions and the approach thereto.

**25.15 FINANCIAL MISCONDUCT**

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

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

25.15.2 The PFMA provides for the following actions (Table 14) to be taken by the Accounting Officer or the delegated official against an official related to financial misconduct:

**Table 14**

<b>PRESCRIPT</b>	<b>PROVISION</b>
<b>PFMA S84</b>	Any disciplinary and criminal charges for financial misconduct against the official must be investigated, heard and disposed of in respect of statutory requirements or conditions of employment and regulations in respect of Section 85 (when issued).
<b>Treasury Regulation 4.1</b>	The Accounting Officer must ensure disciplinary proceedings are carried out.
<b>Treasury Regulation 4.2</b>	The Accounting Officer must ensure action within thirty (30) days.
<b>Treasury Regulation 4.3</b>	The Accounting Officer must report as soon as the disciplinary process is completed to the Executive Authority; Department of Public Service and Administration and the Public Service Commission on the outcome.
<b>Treasury Regulation 4.4</b>	The Accounting Officer must report to the Provincial Treasury and Auditor- General by means of a schedule detailing the outcome, names, sanctions or further actions and changes to financial and risk management systems.

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

#### **25.16 FRONTING OR ABUSE OF THE PPR AND B-BBEE REQUIREMENTS**

25.16.1 A "front" is defined as an "outward appearance" or "a person, etc. serving to cover subversive or illegal activities".

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

25.16.3 Fronting implies:

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

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

25.16.5 **The process in dealing with fronting:**

- (a) The process in dealing with fronting must be in accordance with the rules of Administrative Law, specifically PAJA as well as the Constitution of the Republic of South Africa.

- (b) The Department will inform the bidder of the alleged or suspected offence, i.e. that he/she is suspected of:
  - (i) Claiming or obtaining a B-BBEE status level of contribution on a fraudulent basis; or
  - (ii) promising, offering or giving a bribe during the bidding process and/or after conclusion of contract; or
  - (iii) acting in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of contract; or
  - (iv) concluding an agreement with the Department on the strength of information furnished by it, after which it became apparent that the information provided was incorrect.
- (c) The bidder/contractor must be informed of the recourse or appropriate remedy sought.
- (d) The Department must also be given the opportunity to state its case. This is the application of the principles of natural justice, with particular reference to the *audi alterem partem* rule.
- (e) The Department must follow the requirements for procedural fairness as outlined in Section 3 of the PAJA which in summary is, as follows:
  - (i) an administrator must give a person adequate notice of the nature and purpose of the proposed administrative action;
  - (ii) a reasonable opportunity to make representations;
  - (iii) a clear statement of the administrative action;
  - (iv) adequate notice of any right of review or internal appeal, where applicable and
  - (v) adequate notice of the right to request reasons in terms of Section 5 of the PAJA.

#### 25.16.9 Remedies for Fronting

- (a) The Accounting Officer must act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.
- (b) The Department may, in addition to any other remedy that it may have against the bidder or person:
  - (i) Disqualify the bidder or person from the bidding process;
  - (ii) Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (iii) Cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (iv) Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding ten (10) years, after applying the *audi alteram partem* (hear the other side) rule; and

- (v) Forward the matter for criminal prosecution.
- (c) Departments must consult with their Legal Services when it intends applying any of the afore-mentioned remedies.
- (d) The details of any restrictions imposed on bidders, persons or contractors must be forwarded to the National Treasury (NT) for inclusion on the NT Database of Restricted Suppliers.

# CHAPTER 26

## RISK MANAGEMENT AND INTERNAL CONTROL

### 26.1 INTRODUCTION

- 26.1.1 Supply chain management (SCM) is a systematic process that ensures that goods and services are delivered to the right place, in the right quantity, with the right quality, at the right cost and at the right time. It is part of a broader function of managing expenditure on and payments for the goods and services that are involved in delivering services required by the Department.
- 26.1.2 In order to achieve service delivery goals effectively, efficiently and economically, managers must ensure that proper controls exist over the entire business process, from planning (determining the demand for goods and services), procuring (through a fair, equitable, transparent, competitive and cost-effective system), managing logistics and disposing of goods no longer required. It is imperative that risks associated with these processes are managed at all stages in the cycle.

### 26.2 INTERNAL CONTROL

- 26.2.1 As required by Chapter 16A13.2.2 of the PTI's, the internal control framework provides for:
- (a) the entire virtuous cycle of supply chain management;
  - (b) identified risks;
  - (c) control activities;
  - (d) type of control activity (management, administrative and accounting);
  - (e) preventative, detective and corrective control activities;
  - (f) responsible employee; and
  - (g) management assessment.
- 26.2.2 The Department's Internal Control Framework for Supply Chain Management and Moveable Asset Management is attached as **Addendum 19**.
- 26.2.3 The appendices to the framework address the transaction life cycles of the following areas:
- (a) Moveable asset management; and
  - (b) Supply chain management (goods & services).

### 26.3 RISK MANAGEMENT

- 26.3.1 Risk management is a process used for identifying, assessing, and prioritising risks of different kinds within the supply chain and asset management domain. Once the risks are identified, the risk manager will be required to develop a plan to minimise or eliminate the impact of events or circumstances which may place the SCM processes at risk.

26.3.2 Risk management in the supply chain management context ensures that the Department identifies and understands the risks to which it is exposed. Risk management also guarantees that the Department creates and implements an effective plan to prevent losses or reduce the impact if a loss occurs.

26.3.3 A risk management plan includes strategies and techniques for recognising and confronting these threats. Good risk management does not have to be expensive or time consuming; it may be as uncomplicated as answering these three questions:

- (a) What can go wrong?
- (b) What will we do, both to prevent the harm from occurring and in response to the harm or loss?
- (c) If the loss occurs, how will we pay for it?

#### 26.3.4 **Operational Risks Impacting on Supply Chain Management**

Operational risk is the exposure of an organisation to losses resulting from internal failures or shortcomings of people, processes and systems. Supply Chain Management is also reliant on people, processes and systems to function effectively.

##### (a) **People**

- (i) There is always a human factor to consider in any supply chain activity. The knowledge, experience, capability and reliability of the purchasing and supply personnel in supply chain processes are critical risk factors.

##### (b) **Processes**

- (i) Process risk is the risk of the supply chain processes being insufficient and causing inefficiency and unexpected losses. This includes execution errors due to flaws in the processes, for example the miscommunication of a need between a user and purchasing and supply.
- (ii) Processes form part of the operations environment and therefore have a strong interactive relationship with people and systems. Any changes in processes affect people and systems; for example changes in the supply chain processes may alter the way in which people perform their different activities and may also require the adaptation of the system that is used in these processes.
- (iii) People and systems, on the other hand, can also affect processes; for example the introduction of e-procurement and e-commerce in an institution may require that supply chain processes be changed to facilitate efficient operational performance.

##### (c) **Systems**

- (i) Systems risks are those resulting from systems failures and are therefore primarily based upon the dependency of supply chain and technology. Supplier records are mostly kept in digital format on computer systems, accounting and reporting are done via electronic systems, and the bulk of orders and payments may take place electronically.

- (ii) This makes supply chain management vulnerable to any disruption in the efficient functioning of systems, and also to system obsolescence. New technologies often have implications of complexity and uncertainty. The newer the technology, the greater the risk that it may not perform as expected. New systems often require modifications in order for them to function smoothly. Although forming part of people risks, new skills are needed for the use of new technologies, which require the running of effective training programmes.
- (iii) The following are examples of systems risks:
  - (aa) Systems failure;
  - (bb) Security breach;
  - (cc) Implementation failure;
  - (dd) Insufficient systems capacity; and
  - (ee) Poor data integrity
- (iv) Technological controls are required throughout the Department to ensure that technology is protected against human error, data theft, equipment failure, fire, heat, water, smoke, corrosive fumes, etc.

#### 26.3.5 External Risk

- (a) External events risks refer to those external factors that could affect the Department negatively such as natural disasters, and particular supply and supplier risk, of which the following are examples:
  - (i) External supplier that does not adhere to agreed delivery dates;
  - (ii) Physical security risk at warehouses where supplies are stored;
  - (iii) The litigation risks pertaining to purchasing and supply contracts;
  - (iv) Natural disaster risks delaying the delivery of purchased materials;
  - (v) Labour actions risks leading to non-compliance; and
  - (vi) Government regulations pertaining to purchasing materials.
- (b) As the Department's purchasing and supply management has no direct control over external factors, it is often difficult to manage risk proactively. Although it is difficult to quantify these factors, it is important for purchasing and supply management to try to anticipate these risks in order to reduce the factors' adverse effects.

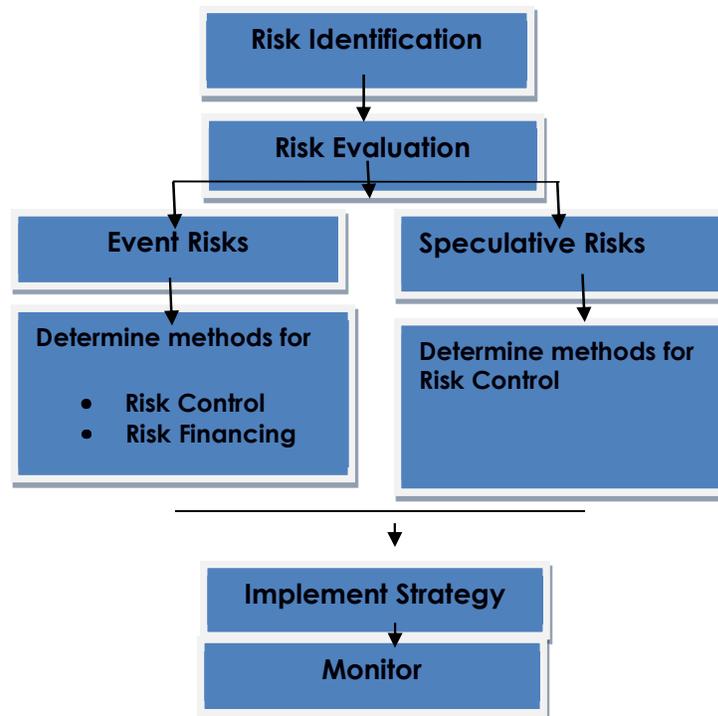
#### 26.3.6 The Risk Management Process

- (a) All departments seek optimal trade-offs between the perceived risks and the potential returns they are facing. Therefore, the first step of risk management is to identify the risks.
- (b) The second step is to assess the impact of the risks on the Department and the third consists of determining a strategy to deal with or eliminate the risks. The strategy is then implemented, monitored and evaluated.

- (C) This process is referred to as the risk management model. Although the risk management process may differ or vary for different types of risk, certain steps are fundamental to this process and should therefore always be present in one form or another.

### 26.3.7 Figure 5: SCM Risk Management Model

The following risk management model for SCM should be followed:



- (a) The risk management process shall be applied to all stages of supply chain management, be it the Demand phase (conceptual stage, project definition, etc.), Acquisition Phase (specification preparation, acquisition approval or implementation to completion) or any of the other management phases.
- (b) Risk management is an integral part of the good management of supply chain management activities and cannot be effectively performed in isolation from other aspects of supply chain management.
- (c) Appropriate risk management conditions should therefore be incorporated in contracts.
- (d) Where risks are perceived or anticipated, the Department should retain the responsibility for the risk, how it can be minimised and how it will be managed. The Department will aim at business continuity in all possible circumstances, although it is unlikely to be cost-effective to plan for every possibility, and a certain level of risk will have to be accepted.

# **VOLUME 10**

## **REPORTING OF SCM INFORMATION AND REGULAR ASSESSMENT OF SUPPLY CHAIN MANAGEMENT PERFORMANCE**

# CHAPTER 27

## SCM REPORTING

### 27.1 INTRODUCTION

The reporting of SCM information assists in ensuring that individuals and organisations are answerable for their plans, actions and outcomes. Openness and transparency in administration, by external scrutiny through public reporting, is an essential element of accountability. Within the supply chain management framework:

- (a) heads of departments are accountable to their MECs for the overall management of supply chain management activities;
- (b) the Chief Financial Officer, supply chain management directors and SCM managers are accountable to heads of departments for various high-level management and co-ordination activities;
- (c) individual supply chain management practitioners are accountable to supply chain managers and to their clients, for the services they provide; and
- (d) any person exercising supply chain management functions must have regard to departmental requirements in this Accounting Officer's System and are accountable to management.

### 27.2 REPORTING FORMATS

27.2.1 As required in terms of PTI 16A6.3.1, the head of the supply chain management unit of the Department must within fifteen (15) working days after the end of each month submit a report via the Chief Financial Officer to the Accounting Officer containing information on procurement transactions during that month.

27.2.2 The report referred to must contain at least the following;

- (a) required information on procurement transactions for each form of procurement as specified in paragraph 16A5.2 of the PTIs;
- (b) compliance to norms and standards prescribed for the various forms of procurement;
- (c) any patterns observed that could be construed as irregular in the responses received from the issuance, management or handling of requests for quotations via the e-Procurement Solution (ePS);
- (d) any problems experienced with the invitation of price quotations through the e-PS;
- (e) information on payments outstanding after the prescribed thirty (30) day period;
- (f) any problems experienced with the implementation of the Accounting Officer's System; and
- (g) any other information as prescribed by the Provincial Treasury.

- 27.2.3 The Provincial Treasury has issued a reporting format for monthly and quarterly reporting via Supplement 4 of Provincial Treasury Circular 14 of 2012 with the specified minimum requirements for the Province.
- 27.2.4 The Department has adapted the reporting format to its own business processes and needs identified as Reporting on Supply Chain Management (Annexure D). The template is attached as **Addendum 20**.

# CHAPTER 28

## SCM PERFORMANCE MONITORING

### 28.1 INTRODUCTION

- 28.1.1 In accordance with PTI 16A12.1, the Accounting Officer must ensure that the supply chain management system provides for an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised processes are being followed and whether the desired objectives are being achieved.
- 28.1.2 The performance monitoring and evaluation system referred to above must, amongst others, provide for a scorecard mechanism which describes the key strategic and operational performance targets to be met in relation to the strategic and operational planning processes referred to in Part 4 of the PTIs.
- 28.1.3 The scorecard used for SCM is:
- (a) a measurement-based performance monitoring framework that displays organisational measures graphically and groups it into categories, as a dashboard;
  - (b) a strategic performance monitoring and evaluation system for the organisation;
  - (c) a communications tool to make strategy clear to all SCM Practitioners;
  - (d) a way to balance financial and non-financial views of the organisation's performance;
  - (e) a system for increasing accountability;
  - (f) a commitment to change; and
  - (g) a way of aligning the organisation's vision with human and capital resources, and with day-to-day operations.

### 28.2 SCM SCORECARD

The SCM scorecard will be utilised for the function of monitoring the supply chain unit.

## **DEFINITIONS**

In this Accounting Officer's System, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

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

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

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

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

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

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

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

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

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

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

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

**“end-user”** means the relevant unit requesting moveable assets and to whom moveable assets are issued by the Department;

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

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

**“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents;

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

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

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

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

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

**“senior official”** means an official with the rank of at least Assistant Director;

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

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

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

**“system”** refers to manual and/or computerised systems.

## **LIST OF ADDENDUMS**

NAME OF DOCUMENT	REFERENCE
Supply Chain Management Delegations	<b>Addendum 1</b>
Supply Chain Management Strategy	<b>Addendum 2</b>
Procurement Plan template	<b>Addendum 3</b>
Petty Cash Standard Operating Procedure	<b>Addendum 4</b>
Quotations (Procurement Template: R1- R500, 000)	<b>Addendum 5</b>
Quotations (Procurement Template: R1- R100, 000)	<b>Addendum 6</b>
Limited Bidding Process	<b>Addendum 7</b>
SCM Emergency Procurement Policy	<b>Addendum 8</b>
Contract Expansions and Extensions template	<b>Addendum 9</b>
LOG 1 (requisition) form	<b>Addendum 10</b>
Transaction Checklist for Orders	<b>Addendum 11</b>
Standard Operating Procedure for Ordering, Receiving and Payment of goods/services	<b>Addendum 12</b>
Transaction Checklist for Payments	<b>Addendum 13</b>
Asset Acquisition Plan	<b>Addendum 14</b>
Disposal of Moveable Assets	<b>Addendum 15</b>
Internal Performance Monitoring and Evaluation System	<b>Addendum 16</b>
Business Plan template for items on the approved Procurement Plan	<b>Addendum 17</b>
Investigating and reporting business conflict of interest template	<b>Addendum 18</b>
Internal Control Framework for Supply Chain Management (goods/services and moveable asset management)	<b>Addendum 19</b>
Monthly and Quarterly reporting on Supply Chain Management (Annexure D) template	<b>Addendum 20</b>
Fraud Prevention Plan	<b>Addendum 21</b>
Risk Management Plan	<b>Addendum 22</b>
Standard Operating Procedure for Stocktaking	<b>Addendum 23</b>
Administering of Donations and other assets excluding cash donations	<b>Addendum 24</b>
Administering of losses	<b>Addendum 25</b>
Database maintenance	<b>Addendum 26</b>
Barcoding of assets	<b>Addendum 27</b>
SRM001 Goods removal form	<b>Addendum 28</b>
LOGIS user manual policy	<b>Addendum 29</b>
Inventory Management Policy	<b>Addendum 30</b>
Standard Operating Procedure for Inventory stock count, verification and reconciliation	<b>Addendum 31</b>
Code of Ethics for Supply Chain Practitioners	<b>Addendum 32</b>