

NATIONAL TREASURY
Republic of South Africa
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SUPPLY CHAIN MANAGEMENT
A GUIDE FOR ACCOUNTING OFFICERS /
AUTHORITIES

PREFACE

This Guide sets out the philosophy behind the adoption of an integrated Supply Chain Management (SCM) function across government and will assist stakeholders to understand the responsibilities this implies. This document explains the impact of the changes for accounting officers/authorities at each step of the SCM cycle.

While the Constitution states that procurement practices must be fair, equitable, transparent, competitive and cost-effective, the present position is far from the ideal, for example:

- ◆ procurement and provisioning procedures are rule driven, and value for money is almost always equated to the lowest price tendered - the emphasis is on monitoring inputs;
- ◆ procurement and provisioning activities are not linked to budgetary planning;
- ◆ asset management is limited to control of inventory, rather than on ensuring a satisfactory return to the community for the funds invested;
- ◆ bid documentation are not uniform, causing uncertainty to bidders and practitioners;
- ◆ the Preferential Procurement Policy Framework Act, No 5 of 2000 (PPPFA) and its associated Regulations are complex and difficult to implement correctly, and procurement practitioners are not adequately trained in their application;
- ◆ the costs and outcomes of the PPPFA are not fully quantified, hence it is impossible to evaluate the merits of the system.

In September 2003, Cabinet adopted a SCM policy to replace the outdated procurement and provisioning practices (described above) across government with a SCM function that will be an integral part of financial management and will conform to international best practices. The new arrangements will promote uniformity in SCM processes and also in the interpretation of government's preferential procurement legislation and policies, which should themselves be seen in the context of other related legislative and policy requirements. Above all, these arrangements will mean that responsibility and accountability for SCM-related functions will be devolved to accounting officers/authorities.

The very substantial divide between the current outdated procurement and provisioning practices in government and the new integrated SCM function necessitates a phased implementation approach.

This Guide is intended to facilitate a general understanding of the changes to SCM practices. It must be seen as a step to assist accounting officers/authorities in the smooth implementation of supply chain management within their institutions. The Guide will be supplemented on a regular basis to keep abreast as the development of the supply chain management function within government progresses.

An informal approach has been followed to make the Guide as user friendly as possible. The term “institution” is used throughout the document to refer to all organs of state to whom the policy adopted by Cabinet applies.

The Guide is not a substitute for legislation and should not be used for legal interpretations. Nor does it in any way detract from the responsibilities Parliament and the legislatures expect all accounting officers/authorities to fulfil in terms of the Public Finance Management Act, 1999 (Act 1 of 1999 as amended by Act 29 of 1999) (PFMA), as well as the Preferential Procurement Policy Framework Act, Act 5 of 2000 (PPPFA).

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Glossary

Accounting Authority	As defined in Section 49 of the PFMA
Accounting Officers	As defined in Section 36 of the PFMA
Institution	In this document, the term is used to mean all constitutional institutions, public entities as defined in schedule 3A & 3C of the PFMA, national and provincial departments, trading entities and all school governing bodies.

Abbreviations

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

Introduction

1.1 Background

- 1.1.1 Government is intent on modernising the management of the public sector, to make it more people-friendly and sensitive to meeting the needs of the communities it serves. Immediately on taking office in 1994, Government initiated a series of budgetary and financial reforms. Since then, significant progress has been made in implementing these reforms.
- 1.1.2 A basic principle is that managers should be given the flexibility to manage, within a framework that satisfies the constitutional requirements of transparency and accountability. There are many obstacles to overcome, most notably, a series of deeply ingrained practices. The facade of control imposed by the former very detailed Treasury Instructions was an illusion, and in fact accountability was undermined, as departments were required to obtain 'approval' from Treasury for example, to 'write-off' minor debts. Another obstacle can be seen in the cumbersome procurement processes, where the legislation empowered Tender Boards to determine the award of contracts: thus an accounting officer/authority may well have had to accept responsibility for delays caused by Tender Board procedures.

1.2 Improving accountability

- 1.2.1 The PFMA aims to improve accountability by placing responsibility for decisions in the hands of each accounting officer/authority, and by ensuring that there is a framework of support from National Treasury, for example, in the form of 'best practice' guidelines, to assist managers in delivering services to communities as efficiently and effectively as possible.
- 1.2.2 The accountability chain is the most critical driver for improving financial management in the public sector. The Annual Report and the report of the Auditor-General will indicate achievement against the intentions specified in each department's strategic plan and may highlight areas that require improvement. An accounting officer/authority who fails to implement the measures suggested in Guideline documents (such as this one) may be personally liable in the event of scrutiny by the Standing Committee on Public Accounts (SCOPA) or the Provincial Accounts Committee.
- 1.2.3 A particular requirement of the PFMA is that each accounting officer/authority undertakes a 'risk assessment' for his or her

institution. Risk management acknowledges that all the activities of an institution involve some element of risk. Management should decide what is an acceptable level of risk (given cost and other social factors) by objectively assessing the factors (risks) that may prevent a particular activity from meeting its objective. In the case of SCM, this will include ensuring – on a case-by-case basis – that risks such as price or currency fluctuations are allocated to the appropriate party in unambiguous contract documents or that guarantees or insurance arrangements are in place (managers must manage!).

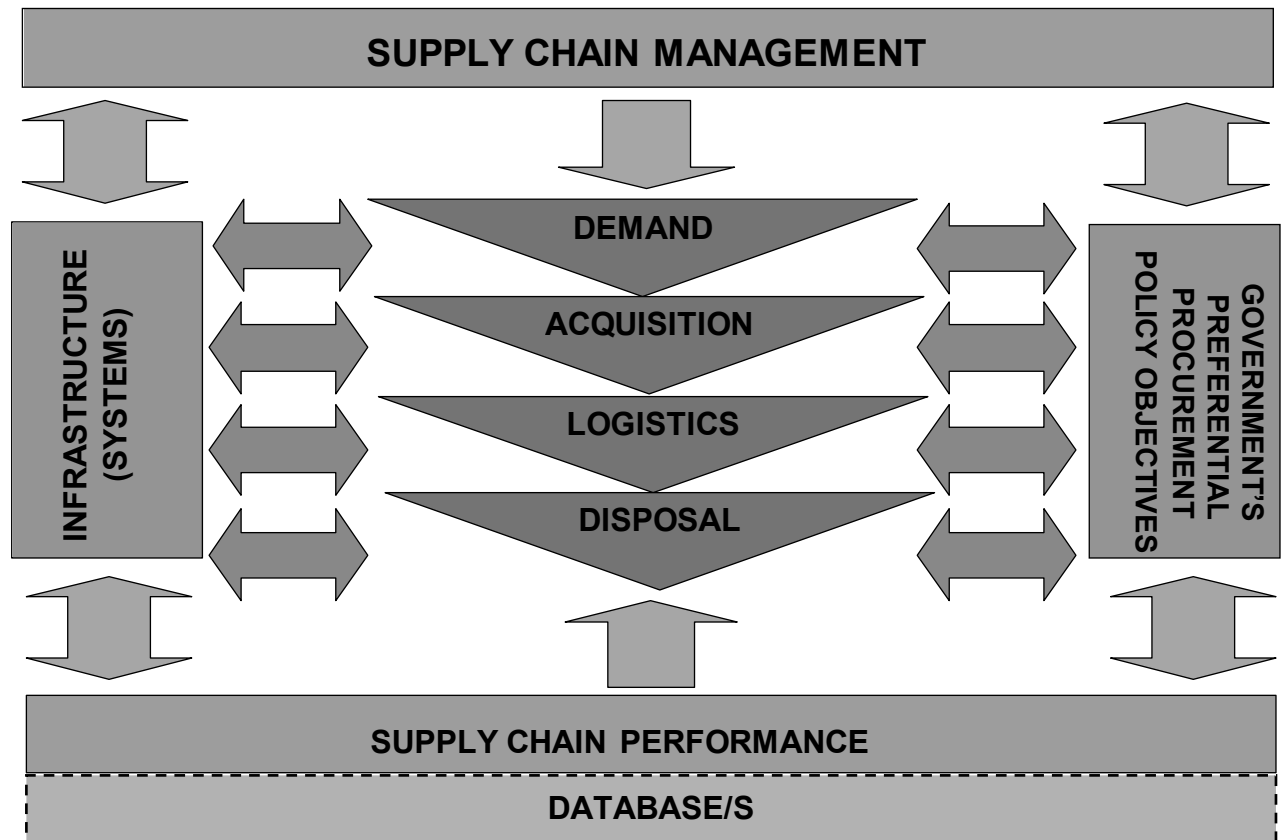
- 1.2.4 In addition, the award and management of contracts is an area where fraud and corruption has been found in the past and the institution's Fraud Prevention Plan should reflect this, through cost-effective use of control measures and procedures and an ethical culture.
- 1.2.5 The PFMA assigns considerable powers to accounting officers/authorities to enable them to manage their financial affairs within the parameters laid down by prescribed norms and standards. To this end, Cabinet resolved that the concept of Supply Chain Management be introduced within the public sector. These reform measures are summarised below.

1.3 Supply Chain Management: the new policy

- 1.3.1 There are four major objectives in the policy adopted by Cabinet. These are to:
 - Transform government procurement and provisioning practices into an integrated SCM function;
 - Introduce a systematic approach for the appointment of consultants;
 - Create a common understanding and interpretation of the preferential procurement policy; and
 - Promote the consistent application of 'best practices' throughout government's supply chain.
- 1.3.2 The supply chain function
 - 1.3.2.1 The introduction of an integrated SCM function will address the inefficiencies in government's current method of procurement, contract management, inventory/asset control and obsolescence planning. The integrated SCM function, where value is added at every stage, is shown in the diagram below.

SUPPLY CHAIN MANAGEMENT MODEL

Elements of supply chain management



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

- *Demand Management:* This is the beginning of the supply chain where:
 - a needs assessment to ensure that goods or services are acquired in order to deliver the agreed service is done;
 - specifications are precisely determined;
 - requirements are linked to the budget; and
 - the supplying industry has been analysed.

This phase will bring the supply chain practitioner close to the end user, to ensure that value for money is achieved.

- *Acquisitioning Management:* Traditionally, almost all the focus of procurement activity has been given to this stage (to the almost total exclusion of the other aspects of SCM). The management, rather than purely procedural considerations are:
 - to decide on the manner in which the market will be approached;
 - to establish the total cost of ownership of a particular type of asset;
 - to ensure that bid documentation is complete, including evaluation criteria;
 - to evaluate bids in accordance with published criteria; and
 - to ensure that proper contract documents are signed.
- *Logistics Management:* This aspect addresses:
 - the setting of inventory levels;
 - receiving and distribution of material;
 - stores, warehouse and transport management; and
 - the review of vendor performance.

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

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

1.3.2.3 This SCM policy applies to the acquisition and disposal of all goods, services, construction and road works and movable property of all institutions and all school governing bodies,

whether or not they have been assigned additional responsibilities in terms of section 21 of the South African Schools Act, 1996.

1.3.2.4 The acquisition and disposal of immovable property is regulated in terms of the Land Affairs Act and administered by the Department of Public Works.

1.3.2.5 The National Treasury has published a regulatory framework in terms of the PFMA to prescribe minimum norms and standards for SCM practices in Government. This will establish minimum reporting requirements for accounting officers/authorities that will enable the National Treasury to report progress to Cabinet on compliance as well as policy outcomes.

1.4 The appointment of consultants

1.4.1 Government makes considerable use of consultants from various disciplines and there are minimum requirements of quality and efficiency to be achieved when appointing them. It is necessary to impose measures to ensure that consultancy assignments are executed in such a way that the ethical principles of the relevant profession are met at all times. This includes ensuring that advice received is unbiased, i.e., free from any affiliation, economic or otherwise, which may cause conflict between the consultant's interests and those of Government. Hence a new approach has been defined which is set out in Chapter 5 of these guidelines.

1.5 Preferential procurement

1.5.1 The Preferential Procurement Policy Framework Act 2000 (Act 5 of 2000) and its accompanying Regulations were promulgated to prescribe a framework for a preferential procurement system. This Act and its Regulations incorporate the '80/20' and '90/10' preference point systems. However, the implementation of this legislation has not been without problems and Cabinet has recently approved the publication of a 'Broad-Based Black Economic Empowerment Bill', and a supporting strategy, which will lead to amendments to the Preferential Procurement Regulations during the course of 2004. The aim of the intended amendments to the Regulations is to align the Regulations with the aims of the Broad Based Black Economic Empowerment Act and its supporting Regulations.

1.6 Promoting uniformity in SCM practices

Uniformity in SCM practices will be promoted in the following manner:

1.6.1 *Bid procedures, policies and control measures*

1.6.1.1 Efficiency and effectiveness in SCM will be improved by applying a uniform system in all institutions. Bidding procedures should become easy to interpret, cost effective, inexpensive, quick, transparent and free of corruption.

1.6.1.2 Accounting officers/authorities should ensure that a formal set of delegations is issued to bid evaluation/adjudication committees, which should be constituted of at least three members, of whom at least one should be a SCM practitioner. When it is deemed necessary, independent experts may also be co-opted to a bid evaluation/adjudication committee in an advisory capacity.

1.6.1.3 All members of bid adjudication committee(s) should be cleared at the level of “CONFIDENTIAL” and should be required to declare their financial interest annually.

1.6.2 *Contract documentation and contract options*

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

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

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

1.6.2.3 Uniformity in contract documentation will result in:

- Bidders being able to more easily determine the scope and extent of risk;
- Easier management of contracts between potential contracting parties and the streamlining of administrative procedures;
- Savings in cost and improvement in quality; and

- Greater transparency in terms of cost premiums paid in pursuit of Government's preferential procurement objectives.

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

1.7 The policy context: Related initiatives

1.7.1 Government's supply chain policies and practices impact on a broad range of other policies and regulations and also influence the economic behaviour of people, both within and outside the borders of the country. It is therefore imperative that procurement reform initiatives remain fully aligned with Government's broader policy focus and accounting officers/authorities should be aware of:

- *Competition law*: Restrictive business practices are regulated by the Competition Act (89 of 1998), which aims to outlaw anti-competitive practices between businesses, their supplier(s) and customers. This includes price-fixing and collusive bidding;
- *The National Small Business Act, Act No. 102 of 1996*: This Act establishes the National Small Business Council (NSBC) and also the Ntsika Enterprise Promotion Agency (Ntsika). The main function of Ntsika is to enable small businesses to compete successfully in the economy;
- *Anticorruption measures and practices*: The Constitution provides for rights such as just administration and access to information and requires high standards of ethics within public administration. Recent legislation dealing with transparency and anti-corruption measures strengthen Government's ability to combat corruption and also protects employees making disclosures against their employers in both the public and private sectors;
- *State Information Technology Agency (SITA) Act, (Act No. 88 of 1998, as amended by Act No. 38 of 2002)*: The Act requires that SITA must act as the procurement agency for every department's information technology requirements. This Act prescribes that all departments are compelled to procure all information and technology goods and services through Sita.

The accountability remains with the accounting officer / authority;

- *Trade policy:* Government's commitment to trade liberalisation should be reflected in its supply chain practices, by not precluding foreign companies from bidding for government contracts;
- *Labour issues:* As Government subscribes to international best practice principles of equitable and fair labour practices, accounting officers/authorities should ensure that suppliers/contractors comply with all provisions of Labour Law. Hence any supplier, service provider or contractor who abuses labour standards, should be designated as 'non-preferred'.
- *Safety, health and environment:* Government is committed to the highest standards of safety, health and environmental protection and promotes a culture of "non tolerance". Hence occupational health and safety issues should be considered not only for employees but also for contractors' employees performing work on site at any institution.
- *Public-Private Partnerships:* Whenever goods, works and/or services are procured by means of public private partnerships, Section 16 of the Treasury Regulations must be adhered to;
- *New partnership for Africa's development (NEPAD):* NEPAD is an initiative to accelerate a new relationship with the highly industrialised countries to overcome the widening development chasm between them and the African continent. A commitment is fostered on the part of governments, the private sector and other institutions of civil society towards the meaningful integration of all nations into the global economy and body politic. This requires the recognition of global interdependence in respect of production and demand, the protection of the environmental base that sustains the planet, reversal of the skills-loss from the continent and a global financial architecture that rewards good socio-economic management and global governance. All SCM practices should aim to support these objectives.
- *Black Economic Empowerment (BEE):* The definition of Historically Disadvantaged Individuals (HDIs) in the PPPFA and its Regulations includes, but is not exclusive to BEE. This aspect created considerable confusion amongst both SCM practitioners and suppliers of goods and services to government. The Broad-Based Black Economic Empowerment Act, No. 53 of 2003 which was promulgated in January 2004 will, when enacted, provide that the Minister of Trade and Industry may, amongst others, develop broad-

based transformation charters to promote BEE. This Act will require revisions to the Regulations of the PPPFA.

- *Proudly South African:* The Department of Trade and Industry has become a key sponsor and strategic partner of the 'Proudly South African' campaign which encourages South African companies to submit interesting and innovative achievements in the manufacturing field – new products, export achievements, new partnerships and successes and milestones. The objectives of this campaign should be supported through government's SCM processes, if and when opportunities arise.

Implementation strategy

2.1 Introduction

2.1.1 The introduction of the concept of an integrated SCM system for government will contribute significantly towards the improvement of financial management in the broader public sector. At the same time, it will create a consistent framework for achieving Government's preferential procurement objectives. It should be recognised, however, that the gap between the current procurement and provisioning procedures and practices and those contemplated in the policy adopted by Cabinet is substantial. Hence a three-phase strategy to move from the current position to that desired has been devised. These phases can be categorised as:

- firstly, the pre-tender board abolition or preparation phase;
- secondly, the immediate post-tender board abolition or full implementation phase;
- and lastly, the monitoring phase.

2.1.2 In order to achieve the ideals of good governance and to address deficiencies in supply chain management, fundamental institutional reforms will have to be implemented. These reforms need to promote efficient and effective procurement and provisioning systems and practices that enable government to deliver the required quality and quantity of services to communities. The establishment of uniformity in procedures, policies, documentation and contract options and the implementation of sound systems of control and accountability should form the cornerstone of institutional reform.

2.1.3 The policy and the regulatory frameworks will initially apply to constitutional institutions, public entities as defined in Schedule 3A and 3C of the PFMA, national and provincial departments and all school governing bodies. However, when the PPPFA Regulations are amended to come into line with the Broad-Based Black Economic Empowerment Act, the provisions may also include other listed public entities identified by the Minister. Until such time as the Act and Regulations are amended, accounting officers/authorities will be required to continue to implement the current requirements.

2.1.4 The approved policy envisages a cascading set of documents, structured as follows:

- A Framework for SCM to be issued in terms of the PFMA;

- National Treasury Guide for SCM to be issued, mainly directed at national accounting officers/authorities to assist them in fulfilling their obligations;
- Provincial Treasury Instructions and Guidelines directed at provincial accounting officers/authorities, ensuring fulfilment of their responsibilities in the Provincial sphere;
- Accounting officers' directives/procedures, in terms of section 38 of the PMFA; and
- Accounting authority standards issued in terms of section 51 of the PFMA to enable them to fulfil their fiduciary responsibilities.

The sections below highlight the impact on each of the stakeholders in the SCM process.

2.2 National Treasury

- 2.2.1 To make sure that all treasuries are acting in unison, the National Treasury, as with the implementation of the PFMA, will draw up a checklist to make sure that all relevant aspects are addressed and will also monitor the process of phased implementation to ensure success.
- 2.2.2 A provision has been included in the PFMA amendment Bill to repeal the National State Tender Board Act, thus allowing implementation to proceed. Furthermore, the State Tender Board Regulations have been amended by means of a promulgation in the *Government Gazette* to allow accounting officers of national departments to procure goods and services either through the State Tender Board (until the State Tender Board Act has been repealed) or alternatively in terms of the PFMA.
- 2.2.3 The National Treasury will issue a limited number of practice notes in terms of the framework to guide uniformity in practices and procedures in the different spheres of government whilst provincial treasuries will issue further practice notes in a cascading fashion to guide the more detailed implementation of SCM functions.
- 2.2.4 A SCM Office has been established in the National Treasury to oversee the implementation of the SCM policy, in conjunction with provincial treasuries. Its main functions are to:
- (i) Formulate and advise on SCM policy;
 - (ii) Administer national procurement legislation and regulations;
 - (iii) Promote communications and liaison between different SCM units;
 - (iv) Monitor the performance of SCM Units at national, provincial and local government level;
 - (v) Serve as a linkage between national government and the SCM units located in institutions;

- (vi) Issue regulations to ensure uniform application of the national SCM policy, including:-
 - (a) Addressing the requirement for consistency with other policy initiatives in government;
 - (b) Ensuring that material construction standards become increasingly aligned with those standards that support international best practice;
 - (c) Establishing selection standards for the appointment of consultants;
 - (d) Observing the principles of co-operative governance as expounded in the Constitution; and
 - (e) Promoting the policy objectives outlined in the PPPFA and accompanying Regulations;
- (vii) Establish minimum reporting requirements for accounting officers/authorities;
- (viii) Investigate complaints received from the public regarding bid procedures and irregularities;
- (ix) Maintain a database of non-preferred suppliers;
- (x) Monitor the manner in which policy is implemented in respect of government's procurement reform objectives, the manner in which targets are set and attained, value for money obtained and delivery mechanisms; and
- (xi) Facilitate the arrangement of transversal contracts, provided that they are cost-effective.

2.2.5 The National Treasury, in conjunction with the Department of Trade and Industry is in the process of aligning the Preferential Procurement Regulations, 2001 with the aims of the Broad-Based Black Economic Empowerment Act, No. 53 of 2003.

2.3 Tender Boards

2.3.1 To prepare departments for the new policy, tender boards, in liaison with the relevant treasuries, should begin to significantly delegate their authority to departments so that the latter can begin to build capacity. In this endeavour, their relevant treasuries should support accounting officers/authorities.

2.3.2 In addition, tender boards (to the extent that they still exist), working closely with their respective treasuries, should monitor the situation and only step in should circumstances dictate, but on the clear understanding that this is a targeted (i.e. directed at a weak department or specific sector) and not a blanket intervention.

2.4 Provincial Treasuries

2.4.1 Provincial treasuries will be required to:

- Reconfigure their current procurement and provisioning sections to enable them to deal with the issues listed under the responsibilities of the national SCM Office. The standards set by provincial treasuries should complement those set by the national SCM Office, and should not jeopardise national objectives;
- Publish regular practice notes to address relevant SCM topics such as performance specifications, procurement documentation, targeted procedures and integrity management; and
- Repeal all provincial Tender Board Legislation by their respective legislatures to allow for preparatory implementation steps. A further intervention would be the introduction of depreciation rates linked to the various categories of goods/assets including buildings and roads, so that this can be incorporated into an integrated budgetary planning process.

2.5 Institution

2.5.1 In terms of sections 38 and 51 of the PFMA, accounting officers/authorities are fully responsible and should be held accountable for any expenditures relating to SCM within their line of responsibility. Any expenditure incurred should be subject to appropriate regulation and accounting officers'/authorities' directives and procedures. However, to ensure uniformity within the SCM system, national policy guidelines issued by the SCM Office will provide the necessary parameters.

2.5.2 It is the responsibility of each accounting officer/authority to work out the detailed implementation of the principles contained in the SCM policy. The measurement of progress of implementation against the implementation plan should form an integral part of the performance agreements of accounting officers/authorities.

2.5.3 The development of a world-class professional SCM system should result in continuing improvement in affordability and value for money, based on total cost of ownership and quality of procurement as competition amongst suppliers is enhanced. In dealing with suppliers and potential suppliers, institutions should:

- Preserve the highest standards of honesty, integrity, impartiality and objectivity;
- Be fair, efficient, firm and courteous;

- Achieve the highest professional standards in the awarding of contracts, so as to maximise value for money while adhering to international standards;
- Provide clear specifications for requirements which encourage innovation and refer, where appropriate, to relevant technical and other standards;
- Make available as much information as suppliers need to respond to the bidding process and to define and publicise procurement contact points;
- Manage the bidding process so that genuine competition is preserved and discrimination is avoided;
- Make available the broad criteria intended for the evaluation of bids, to evaluate bids objectively and to notify the outcome promptly;
- Within the bounds of commercial confidentiality, to debrief unsuccessful bidders of the outcome of the bidding process so as to facilitate better performance on future occasions;
- Achieve the highest professional standards in the management of contracts;
- Pay promptly for work done in accordance to standards as set by a legal and binding contract; and
- Respond promptly, courteously and efficiently to suggestions, enquiries and complaints.

2.5.4 In furthering these principles, labour standards should not be compromised. Furthermore, suppliers must demonstrate "good standing" as far as all their tax, levy and service charge obligations are concerned as a prerequisite for doing business with Government. Failure to meet such obligations should be sufficient grounds for exclusion from participation in public sector procurement. All databases reflecting contracting activities should be made accessible to officials of the South African Revenue Services (SARS).

2.5.5 National procurement policy charters and targets should be used by accounting officers/authorities to set their own short and medium term policy targets at the appropriate contract level.

2.5.6 Capacity building would include the establishment of SCM units in the relevant Chief Financial Officer (CFO) structures, the establishment of clear lines of authority and accountability and performance criteria for the minimising of risk, quicker and more efficient sourcing and better asset and inventory management. It is the responsibility of every accounting officer/authority to ensure that their SCM personnel are adequately trained. The National Treasury is in the process of facilitating the development of appropriate training material in conjunction with SAMDI, IPFA and other service providers to assist accounting officers/authorities in the training of their personnel.

- 2.5.7 Adequate CFO capacity in the form of appropriate structures with fully skilled and professional SCM personnel are key success factors, particularly as this function was either neglected or dealt with in a very fragmented or desultory manner and made worse by a lack of understanding of industry dynamics (which has an important bearing on the success or failure of preferential procurement).

2.6 Support

2.6.1 Training

To fully achieve the SCM objectives in the policy document, it will be necessary to introduce a dedicated, well-trained, professional SCM cadre in government. It is the responsibility of every accounting officer/authority to ensure that their SCM personnel are adequately trained. The National Treasury will however provide support by facilitating the development of appropriate training material in conjunction with SAMDI, IPFA and other training service providers.

2.6.2 Monitoring and guidance

The SCM Office established in the National Treasury will oversee the implementation of the policy and any supporting regulations and standards issued in conjunction with Provincial Treasuries and CFO's from the different spheres of government.

2.7 Medium-term policy issues

2.7.1 Introduction

As implementation proceeds, it will be necessary to ensure that broader policy issues are reflected in SCM practices.

2.7.2 Reviewing the PPPFA and associated Regulations

- 2.7.2.1 The Broad-Based Black Economic Empowerment (BBBEE) strategy has highlighted the problems associated with the current definition of BEE (and by implication the definition of 'HDI' in the PPPFA). The Strategy document defines BEE as "an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people that manage, own and control the country's economy, as well as significant decreases in income inequalities". BBBEE defines "black people" as a generic term, which means Blacks, Coloureds and Indians, and amendments to the PPPFA will need to incorporate this, but possibly to go further and include women and disabled people.

The definition of HDI can be amended in the light of the public comments received on the BBBEE.

2.7.3 Introducing targets based on charters to enhance preferential policy objectives

- 2.7.3.1 The current PPPFA and its associated Regulations promote HDIs and a broad-ranging set of developmental objectives by means of allotting preference points to these various policy objectives. The unlimited discretion currently afforded to practitioners to allot points to these objectives has watered down the impact of promoting HDIs very significantly. The narrowly based black ownership structure in the South African economy also limits the scope for an immediate meaningful acceleration of direct participation by HDIs in government contracts. This gives rise to a great number of artificially created partnership and joint venture arrangements (fronting practices), where the premiums under the preference system are “earned” without any real contribution to achieving government’s preferential policy objectives.
- 2.7.3.2 To overcome the flaws associated with the PPPFA and its Regulations, it is necessary to adopt a more integrated approach as suggested in the BBBEE strategy, where a balanced scorecard methodology is proposed for measuring performance. This would seek to leverage government’s preferential policy objectives both directly and indirectly – directly in respect of, for example, contracting directly with black owned enterprises where legitimate opportunities arise and indirectly through, for example, granting preferences to non-black owned enterprises for achieving Government’s preferential policy objectives within such enterprises.
- 2.7.3.3 The BBBEE Act provides that the Minister of Trade and Industry may issue codes of practice that could include “qualification criteria for preferential purposes for procurement and other economic activities”. Where BEE should at all times be included as a priority, at least until certain prescribed targets have been achieved, allowance should also be made for pursuing other policy priorities through the PPPFA (such as job creation and SMME development). Charters should be developed and targets set in respect of the various policies, but in such a way that priorities are appropriately linked and mutually supportive.

2.8 Fraud and corruption

- 2.8.1 Government’s policy is to require that contractors, including consultants, observe the highest standard of ethics during the selection and execution of contracts. In pursuance of this policy, Government defines, for the purposes of this provision, the terms set forth below:

- “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution; and
- “fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the accounting officer/authority, and includes collusive practices among bidders/contractors (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the accounting officer/authority of the benefits of free and open competition.

2.8.2 The accounting officer/authority:

- must reject a proposal for award if he/she determines that the supplier/service provider recommended for award, has engaged in corrupt or fraudulent activities in competing for the contract in question;
- may insist that a provision is included in the contract agreement with the contractor, requiring contractors to permit the accounting officer/authority and/or relevant treasury to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the accounting officer/authority/relevant treasury.

Demand management

3.1 Introduction

3.1.1 Demand management is the first phase of SCM. The objective is to ensure that the resources required to fulfil the needs identified in the strategic plan of the institution are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs. As part of this element of SCM, a total needs assessment should be undertaken. This analysis should be included as part of the strategic planning process of the institution and hence will incorporate the future needs.

3.1.2 It is vital for managers to understand and utilize sound techniques to assist them in their planning, implementation and control activities. As part of the strategic plan of the institution, resources required for the fulfilment of its obligations should be clearly analysed. This includes a detailed analysis of the goods, works and services required, such as how much can be accomplished, how quickly and with what materials, equipment, etc.

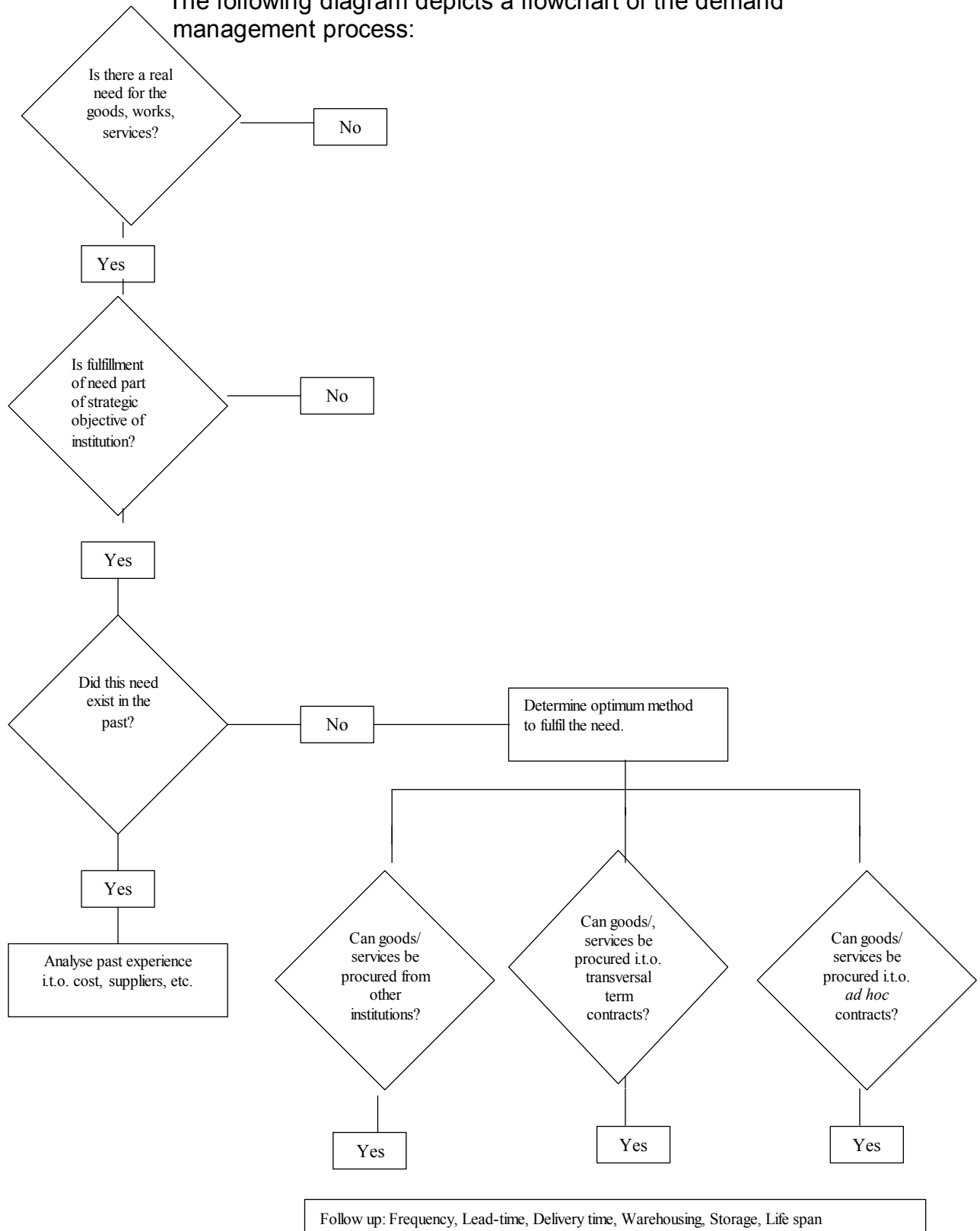
3.2 Demand considerations

Accounting officers/authorities should ensure that:

- Future as well as current needs are understood;
- Requirements are linked to the budget;
- Specifications are determined;
- The need forms part of the strategic plan of the institution;
- An analysis of the past expenditure may assist in determining the manner in which the institution fulfilled this need in the past;
- The optimum method to satisfy the need is considered, including the possibility of procuring goods, works or services from other institutions (e.g. stationery, printing and related supplies from the Government Printer or furniture from the Department of Correctional Services), or on transversal or ad hoc contracts;
- The frequency of the requirement is specified;
- The economic order quantity is calculated;
- Lead and delivery times are identified; and
- An industry and commodity analysis is conducted.

Managing demand will be a cross-functional exercise that brings the supply chain practitioner closer to the end user and ensures that value for money is achieved.

The following diagram depicts a flowchart of the demand management process:



3.3 Preferential procurement strategy

- 3.3.1 As each accounting officer/authority should determine a strategy for the institution to achieve government's broader policy goals through the SCM process, aspects such as enhancing BEE and promoting HDIs as required in the Preferential Procurement Regulations, 2001, should be taken into account. Goals to be attained should be identified for each contract individually after the relevant industry and community have been consulted. It should also be borne in mind that adherence to these requirements might lead to a premium being paid by the institution. The maximum premium for the application of the 80/20 preference point system (for contracts equal to or less than R 500 000) amounts to 25%, while the maximum for the 90/10 preference point system (for contracts exceeding R500 000) amounts to 11,11%.

3.4 Specification of goods/works or services

- 3.4.1 Standards and technical specifications quoted in bidding documents 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. It is recommended that as far as possible, the institution should specify accepted standards such as those issued by Standards South Africa (the division of the South African Bureau of Standards responsible for standards), the International Standards Organisation or an authority recognised by the South African National Accreditation System (SANAS) with which the equipment or materials or workmanship should comply.
- 3.4.2 Specifications should be based on relevant characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications should be avoided. If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" should be added after such reference. The specification should permit the acceptance of offers for goods which have similar characteristics and which provide performance at least equivalent to those specified. The quality of goods/services required should, however, not be over-specified to the extent that it will be impossible for others to offer such a product.

Acquisition management

4.1 Introduction

- 4.1.1 In the past, most of the focus in the procurement process was devoted to “meeting the requirements of the Tender Board”. Once the new policy is operational, Tender Boards will be abolished and institutions will become responsible for their procurement processes, within the framework published by the National Treasury.
- 4.1.2 In order to facilitate the introduction of the new arrangements, this chapter offers a step-by-step guide which institutions will need to apply.

4.2 Treasury support

- 4.2.1 When a contract has to be arranged for goods and services which do not form part of the normal line functions of the institution, or when an institution does not have the capacity to arrange a specific contract, the relevant Treasury may be approached to assist in this regard.

4.3 Delegations

- 4.3.1 Every accounting officer / authority should, in terms of sections 44 and 56 of the PFMA, delegate officials within his / her SCM unit, to deal with SCM processes. It is recommended that bid evaluation/adjudication committees be delegated to adjudicate and award bids, or make recommendations to the accounting officer / authority regarding the award of any bid. The principle should be vested such that no individual official should be in a position to take a decision in isolation regarding the award of a bid.

4.4 Assessment of the market

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

4.4.2 The optimum method to satisfy the need is considered, including the possibility of procuring goods, works or services from other institutions (e.g. stationery, printing and related supplies from the Government Printing Works or furniture from the Department of Correctional Services), or on transversal or ad hoc contracts;

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

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

4.5 Sourcing strategy

4.5.1 Obtaining goods and / or services does not imply that these requirements should be procured from outside sources only. As part of acquisition management, all possible methods of obtaining the requirements should be investigated, such as obtaining the goods and / or services by means of a transversal term contract, could other institutions satisfy the requirements at a better price; are the requirements available on the list of redundant / obsolete material / goods from other institutions.

4.5.2 The optimum sourcing strategy and technique should be used, taking due cognisance of the nature of the commodity or service required, the conditions of delivery, among others, just-in-time-delivery, the prospective suppliers and the goals to be promoted as contemplated in the Preferential Procurement Policy Framework Act. Sourcing strategies might include, among others, the following:

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

4.6 Establishment of a database of suppliers when obtaining quotations

4.6.1 To stimulate the promotion of BEE and the development of HDIs and SMMEs, it is suggested that institutions should advertise in the local media for businesses to register as potential suppliers for goods and services to be obtained by means of quotations. The accounting officer/authority may further categorise the suppliers

according to the goods/services they are capable of supplying. Quotations for the required goods/services should be obtained from all potential suppliers in the specific category or on a rotation basis from various suppliers.

- 4.6.2 It is also suggested that the list should be updated on a regular basis, but at least once a quarter to allow for all potential suppliers to register.
- 4.6.3 Supply chain management practitioners should operate within their delegated authority. Subdividing of requirements to avoid the invitation of formal competitive bids should not be allowed.
- 4.6.4 To avoid any accusations of favouritism, it is suggested that a minimum of three quotations be obtained. Where this is not possible, each case should be dealt with on its own merits. The reasons for not obtaining at least three quotations should be recorded and approved by the accounting officer/authority or his/her delegate. Requests for quotations exceeding R30 000 must comply with the provisions of the PPPFA.
- 4.6.5 In order to facilitate the introduction of the new arrangements, this Guide offers a step-by-step run through the acquisition process institutions will need to apply.

4.7 Acquisition process

4.7.1 What are you buying? Is it:

IT?	Communicate your need to SITA
Building, Engineering or Construction works?	The Construction Industry Development Board (CIDB) has been established by government to promote the uniform application of policy to the construction industry. When calling for construction bids, accounting officers/authorities should utilise the standard bidding documents issued by the CIDB.
A Public Private Partnership?	Ensure you follow section 16 of the Treasury Regulations
Consultancy?	Follow the procedure below and refer to Chapter 5 of this Guide
Something else	Continue below

4.7.2 You require something not listed above: can you obtain it:

From the list of redundant/obsolete material/goods from other institutions?	YES	Contact the relevant institution
	NO	Continue below
From another institution?	YES	Contact the relevant institution
	NO	Continue below

On a transversal term contract?	YES	Order from the contract or contact your Treasury
	NO	Continue below

4.7.3 You are buying something not available from the list above: can you only buy it in SA?

NO	Is there a need for international sourcing?	YES	Advertise opportunity
		POSSIBLY	Note DTI's requirement
		NO	Source from local supplier: continue below
YES	Source from local supplier	Continue below	

4.7.4 How are you going to buy it?

Is the value up to R5000?	YES	Obtain at least 3 verbal quotations, if possible from database Established for this purpose
Is the value up to R 100 000?	YES	Obtain at least 3 written quotations, if possible from database Established for this purpose
Is the value above R 100 000?	YES	Use competitive bidding process: Continue below

4.7.5 Urgent an emergency cases

- 4.7.5.1 In urgent and emergency cases, an institution may dispense with the invitation of bids and may obtain the required goods, works or services by means of quotations by preferably making use of the database of prospective suppliers, or otherwise in any manner to the best interest of the State.
- 4.7.5.2 Urgent cases are cases where early delivery is of critical importance and the invitation of competitive bids is either impossible or impractical. (However, a lack of proper planning should not be constituted as an urgent case.)

4.7.5.3 Emergency cases are cases where immediate action is necessary in order to avoid a dangerous or risky situation or misery.

4.7.5.4 The reasons for the urgency/emergency and for dispensing of competitive bids, should be clearly recorded and approved by the accounting officer/authority or his/her delegate.

4.7.6 Accommodation and conferences

Accommodation and/or facilities for conferences, seminars, workshops, “lekgotlas” etc. should, whenever possible, be obtained by means of competitive bidding. Should it not be possible or practical to follow the normal competitive bidding process, the accommodation and/or conference facilities should be obtained by means of written quotations, as is proposed under urgent and emergency cases above.

4.7.7 Can I negotiate directly with a supplier?

YES, only	but	Subject to the accounting officer's/authority's approval and ▪ There is an urgent need for the goods, works or services, and engaging in bidding proceedings would be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part; ▪ Owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods; or ▪ Bidders have been identified as preferred bidders through a competitive bidding process.
Continue below		

4.7.8 Can I use “limited bidding”?

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

		requirements and an equal opportunity to bid for the required goods, works or services. This allows for unfettered competition.
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4.7.9 Can I use “two-stage bidding”?

YES, if...	It is ‘turnkey’¹ or contracts for large complex plants or works of a special nature, when it may be undesirable or impractical to prepare complete detailed technical specifications in advance. Hence a two-stage bidding procedure may be used, under which first unpriced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents and the submission of final technical proposals and priced bids in the second stage. These procedures are also appropriate in the procurement of equipment that is subject to rapid technological advances, such as major computer and communications systems, e.g.: ▪ If it is not feasible to formulate detailed specifications for the goods, works or services, to identify their characteristics; ▪ If it seeks bids, proposals or offers as to various possible means of satisfying needs; ▪ because of the technical character of the goods or works, or because of the nature of the services, it is necessary for the procuring entity to negotiate with suppliers or contractors; or ▪ when the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs.
NO	Continue below

4.7.10 How do bidding procedures work?

There are essentially five distinct stages in the bidding process and these are:

- Compiling bid documents;
- Inviting bids;
- Receiving bids;

¹ “turnkey” – providing for a supply in a state ready for operation.

- Evaluating bids;
- Clearing successful bidder's and awarding contracts.

Each of these stages are described in the sections below.

4.8 Compiling bid documents

- 4.8.1 Experience suggests that inadequate attention given to this aspect of the process causes the majority of problems in the entire procurement process. Hence accounting officers/authorities are urged to ensure that the necessary attention is given to the areas outlined below:

General and Special Contract Conditions	To strive towards uniformity, all contracts must be based on the General Conditions of Contract (GCC), issued by the National Treasury. (Annexure "A"). Any aspect not covered by the GCC should be dealt with in the special contract conditions (SCC). These conditions should form an integral part of the bidding documents. Accounting officers/authorities should ensure that the prescripts of the PPPFA and the Regulations pertaining thereto, are adhered to. The basis for bid evaluation and selection should be clearly outlined in the instructions to bidders and/or in the specifications.
Using Standard Bidding Documents	Institutions should customise and use the appropriate Standard Bidding Documents (SBDs) issued by the National Treasury with minimum changes acceptable to the accounting officer/authority, as necessary to address contract- and project-specific issues. Where no relevant standard bidding documents have been issued, the institution should use other internationally recognised standard contract forms acceptable to the accounting officer/authority, in concurrence with the relevant Treasury. All bids and contracts should be subject to the General Conditions of Contract (Annexure A). The standard wording of the General Conditions of Contract must not be amended. The standard bid documentation and General Conditions of Contract issued by the Construction Industry Development Board should be utilized in cases of bids related to the construction industry.
Type of contract	The bidding documents should clearly state the type of contract to be entered into and contain the appropriate contract provisions. The most common types of contracts provide for payments on the basis of lump sum prices, unit prices, reimbursable cost plus fees, or combinations thereof. Reimbursable cost contracts should be acceptable only in exceptional circumstances, such as conditions of high risk or where costs cannot be determined in advance with sufficient accuracy. Such contracts should include appropriate incentives to limit costs and may only be concluded subject to the approval of the accounting officer/authority. It is advisable that the reasons and formal approval for following the reimbursement route are recorded for auditing purposes.

Language and Clarity of Documents	Bidding documents should be prepared in at least English. Bidding documents should be worded such that they permit and encourage competition.
Bid Content	Documents should specify clearly and precisely the work to be carried out, the location, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements and the warranty and maintenance requirements, as well as any other terms and conditions. In addition, bidding documents should define the tests, standards and methods that would be employed to judge the conformity of equipment as delivered or works as performed, with the specifications. Drawings should be consistent with the text of the specifications and the order of precedence between the two should be specified. In addition to price, the bidding documents should specify any factors, which will be taken into account in evaluating bids and how such factors would be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, payment terms, etc. are permitted, conditions for their acceptability and the method of their evaluation should be expressly stated. Each prospective bidder should be provided the same information and should be assured of an equal opportunity to obtain additional information on a timely basis. Institutions should provide reasonable access to project sites for visits by prospective bidders. For works or complex supply contracts, particularly those requiring refurbishing of existing works or equipment, a pre-bid meeting may be arranged for potential bidders to meet with the institution's representatives to seek clarifications. Minutes of the meeting should be provided to all prospective bidders. Any additional information, clarification, correction of errors, or modifications of bidding documents should be sent to each recipient of the original bidding documents in sufficient time before the deadline for receipt of bids to enable bidders to take appropriate actions. If necessary, the deadline should be extended.
Inspections, tests and analyses	If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution, or on completion be subject to inspection, the bid documentation should also specify that the premises of the bidder or contractor should be open at all reasonable hours for inspection by a representative of the institution or organisation acting on behalf of the institution.

Tax clearance	It is Government's policy not to enter into business arrangements with any supplier whose tax affairs are not in order, or who has not made satisfactory arrangements with SARS to meet any outstanding obligations. SARS will, on request, issue tax clearance certificates (valid for 6 months) to potential suppliers. SARS has ruled that only original certificates should be accepted and that copies of acceptance of bids together with copies of the original tax clearance certificate supplied by the contractor be forwarded to them for control purposes at the following address: The Commissioner South African Revenue Services Private Bag X923 PRETORIA 0001 For attention: Cecilia Makgeledisa Tel: (012) 422 4444 Fax: (012) 422 6843 E mail: cmakgeledisa@sars.gov.za If a "request for information" (RFI) bid is advertised, it is not necessary for tax clearance certificates to be presented. However, should it not be included in the RFI bid, it must be included as a condition of bid in the documents distributed to the bidders who did qualify.
Registration of suppliers/bidders	Suppliers / bidders who are compelled to register with controlling authorities regarding their goods / services to be delivered / rendered, should ensure that their relevant registration is in order prior to the closure of the bids. Institutions should ensure that registration requirements are in place prior to making such a requirement a condition of tender.
Use of brand names	Specifications should be based on relevant characteristics and/or performance requirements. References to brand names, catalogue numbers, or similar classifications should be avoided. If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" should be added after such reference. The specification should permit the acceptance of offers for goods which have similar characteristics and which provide performance at least equivalent to those specified.

Pricing	Bidders should be required to quote unit prices or lump sum prices and such prices should include all duties, taxes, percentage fees for cost reimbursable contracts and other levies. Bidders should be allowed to obtain all inputs from any eligible sources in order to offer their most competitive bids. In the case of turnkey contracts, the bidder should be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price should include all duties, taxes, and other levies.
Preparation time	The time allowed for the preparation and submission of bids should be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than 30 days from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, should be allowed for competitive bidding. Where large works or complex items of equipment are involved, this period should generally be not less than twelve weeks to enable prospective bidders to conduct investigations before submitting bids. In such cases, the institution is encouraged to convene pre-bid conferences and arrange site visits. In justifiable circumstances accounting officers/authorities may allow shortening of the closing date. Cognisance should also be taken of the fact that the shortening of the closing date should not disadvantage any potential suppliers from bidding for the requirements.
Bid submission	Bidders should be permitted to submit bids by mail or by hand. The deadline and place for receipt of bids should be specified in the invitation to bid. To standardise on the closing time of bids, it is recommended that bids should close at 11:00.
Price adjustments due to escalation	In some instances it might be in the best interest of the State to allow price adjustments based on escalation. What the best option should be will require a careful analysis of all related aspects that will influence the adjusted price, including the cost for the additional administrative work. If the accounting officer / authority resolves to allow price escalation as part of the contract, this should be specified in the bid documents, including the formula and the time frames at which intervals such price adjustments should be considered. The following formula is recommended if adjustments of prices are allowed: $Pa = (1 - V)Pt \left(D1 \frac{R1t}{R1o} + D2 \frac{R2t}{R2o} + D3 \frac{R3t}{R3o} + D4 \frac{D4t}{D4o} \right) + VPt$ Where:

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

	The ideal would be to find a balanced approach between the above extremes, taking into account other contributing factors that will influence the final price. According to proposals by the World Bank, price increases based on ROE should not be allowed if the tenure of a contract is less than 18 months. Due to the recent fluctuations of the Rand, this might be a very long period when seen in the South African context and a period of twelve months may be more appropriate. The local and imported contents of the products under consideration will also have a vital impact on the determining of prices. Another aspect that will also impact on the determination of prices, will be the frequency of price adjustments. If the contract allows for a monthly adjustment of prices, the supplier hardly bears any risk in this regard. Prescribing that price adjustments will only be considered at prescribed intervals (say three monthly), will in a sense split the risk between the State and the supplier. It is therefor suggested that the accounting officer / authority, after thorough analysis of relevant information, determine on a case-by-case basis the optimum route to be followed for each commodity. It should, however, be emphasised that price adjustments based on ROE fluctuations, should be allowed only on the imported contents of the commodity and to meet only the suppliers' additional costs of the imported content.
Validity of bids	Bidders should be required to submit bids valid for a period specified in the bidding documents. This period should be sufficient to enable the institution to complete the comparison and evaluation of bids, review the recommendation and award the contract. An extension of bid validity, if justified in exceptional circumstances, should be requested in writing from all bidders before the expiration date. The extension should be for the minimum period required to complete the evaluation, obtain the necessary approvals and award the contract. In the case of fixed price contracts, requests for second and subsequent extensions should be permissible only if the request for extension provides for an appropriate adjustment mechanism of the quoted price to reflect changes of inputs for the contract over the period of extension. Bidders should have the right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid should be required to provide a suitable extension of bid security, if applicable.

Sureties	Bid securities are normally required from bidders in the construction and engineering disciplines, as well as from auctioneers. The accounting officer/authority may decide whether bidders should supply securities at the bidding phase. Bid security should not be set so high as to discourage bidders. Bid security should remain valid for a period of four weeks beyond the validity period for the bids, in order to provide reasonable time for the institution to act if the security is to be called. Should the recommended bidder or the contractor withdraw his/her bid prior to the award of the bid or commencement of the contract, the bidder/supplier may forfeit his security to the institution. Bid securities should be released to unsuccessful bidders once it is determined that they will not be awarded the contract. Risk management procedures should determine the need for and form of bid sureties. Subject to Section 12 of the Treasury Regulations, risk should be allocated in the best interest of the state by means of proper risk analyses and management. Each accounting officer/authority should decide whether the institution or the supplier should bear the risk. Whenever sureties are required, accounting officers/authorities should ensure that the contents meet with legal requirements. A guarantee may only be accepted from a banking institution registered in terms of the Banks Act, 1965 or from an insurer registered in terms of the Insurance Act, 1943. The Financial Services Board may be contacted on 0800110 443 to establish whether or not a company is a registered insurer. Accounting officers/authorities should ensure that the correct contract amount (both in amounts and in words) is quoted in any guarantee, together with the description of the goods/service to be delivered and details of the supplier/contractor. It is advisable to have guarantees perused by Legal Advisors and/or the State Attorney prior to acceptance to ensure that the contents are acceptable and not qualified.
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Refer to National Treasury's Instruction Note dated 3 September 2010 for amended guidelines in respect of bids that include functionality as a criterion for evaluation

4.9 Inviting bids

Prequalifying bidders (only when necessary)	Pre-qualification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition, such as custom designed equipment, industrial plant, specialized services and contracts to be let under turnkey, design and build, or management contracting. This also ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Pre-qualification may also be useful to determine eligibility for preference for domestic contractors, when appropriate. Pre-qualification should be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their: ▪ Capabilities with respect to personnel, equipment and construction or manufacturing facilities; and ▪ Financial position. The invitation to pre-qualify should contain, at a minimum, the information listed in 'Bid content', above. The scope of the contract and a clear statement of the criteria for qualification should be sent to those who responded to the invitation. All applicants that meet the specified criteria should be allowed to bid. Institutions should inform all applicants of the results of pre-qualification. As soon as pre-qualification is completed, the bidding documents should be made available to the qualified prospective bidders. For pre-qualification for groups of contracts to be awarded over a period of time, a limit for the number or total value of awards to any one bidder may be made on the basis of the bidder's resources. The list of pre-qualified firms in such instances should be updated periodically. Verification of the information provided in the submission for pre-qualification should be confirmed at the time of award of contract and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully execute the contract.
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Establishment of a list of approved suppliers	Where goods, services or works of a technical / specialized nature are required on a recurring basis, a list of approved suppliers for the supply of the goods, services or works may be established. These lists should be established through the competitive bidding process. The intention to establish a list of approved suppliers should be published in the Government Tender Bulletin and the closing time and date for inclusion in the list of approved suppliers should be indicated. For this purpose, a questionnaire should be made available and should make provision for the following: Among others, full details of the supplier's: ▪ Composition in terms of shareholding; ▪ Personnel complement; ▪ Financial position; and ▪ Ability to provide the goods, services or works required. Requirements for admission to the list and criteria should be linked to the numeric value in terms of which applicants will be measured, for example acceptability, capability, facilities, resources etc. A predetermined standard method of awarding points should be followed. The applications received should be evaluated and any rejection of applicants should be motivated and recorded. Once the list of suppliers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotations on a rotation basis or according to the bid procedure when the goods, services or works are required, with the exception that the requirement is not advertised in the Government Tender Bulletin again. This list should be updated regularly, at least once a year.
Two-stage bidding	Detailed design and engineering of the goods, services and works to be provided, including the preparation of technical specifications and other bidding documents, normally precede the invitation to bid for major contracts. However, in the case of turnkey contracts or contracts for large complex plants or works of a special nature, it may be undesirable or impractical to prepare complete technical specifications in advance. In such a case, a two-stage bidding procedure may be used, under which first unpriced technical proposals on the basis of a conceptual design or performance specifications are invited, subject to technical as well as commercial clarifications and adjustments, to be followed by amended bidding documents and the submission of final technical proposals and priced bids in the second stage. These procedures are also appropriate in the procurement of equipment, which is subject to rapid technological advances, such as major computer and communications systems.

	Subject to approval by the accounting officer / authority, the institution may engage in procurement by means of two-stage bidding, or request for proposals or competitive negotiation, in the following circumstances: ▪ if it is not feasible for the procuring entity to formulate detailed specifications for the goods or construction or, in the case of services, to identify their characteristics and, in order to obtain the most satisfactory solution to its procurement needs; ▪ if it seeks bids, proposals or offers as to various possible means of meeting its needs; or ▪ because of the technical character of the goods or construction, or because of the nature of the services, it is necessary for the procuring entity to negotiate with suppliers or contractors; and ▪ when the procuring entity seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities sufficient to establish their commercial viability or to recover research and development costs. The prescripts of the PPPFA and its Regulations must always be adhered to. The Regulations do allow that the points prescribed for price may be split into points for price and functionality. The method of evaluation, including the allocation of points, must be clearly specified in the bidding documents.
Advertising bids	Timely notification of bidding opportunities is essential in competitive bidding. Bids should be advertised for at least 30 days before closure in at least the Government Tender Bulletin and in other appropriate media should an accounting officer/authority deem it necessary to ensure greater exposure to potential bidders except in urgent cases when bids may be advertised for such shorter periods as the accounting officer/authority may determine. The responsibility for such advertisement costs will be that of the relevant accounting officer / authority. The institution should maintain a list of responses to the advertisement. The related pre-qualification or bidding document, as the case may be, should be available on the publication date of the advertisement.
Sale of documents	Accounting officers /authorities may decide to charge a refundable or non-refundable fee for bidding documents if and when necessary, provided that: ▪ The fee should be reasonable and reflect only the cost of their printing and delivery to prospective bidders; ▪ The fee should not be so high as to discourage prospective bidders; and ▪ That all monies received for the sale of bidding documents must be paid into the National Revenue Fund or Provincial Revenue Fund in terms of sections 11(3), 13(1), 21(2) and 22(1) of the Public Finance Management Act 1 of 1999 (as amended by Act 29 of 1999).

4.10 Receiving responses

Opening bids	of	The time for the bid opening should be the same as for the deadline for receipt of bids or promptly thereafter and should be announced, together with the place for bid opening, in the invitation to bid. The institution should open all bids at the stipulated time and place. Bids should be opened in public, that is, bidders or their representatives should be allowed to be present. If requested by any bidder, the name of the bidders and if practical the total amount of each bid and of any alternative bids, should be read aloud. The names of the bidders and their individual total prices should be recorded when bids are opened.
Late bids		Bids received after the time stipulated should not be considered.
Clarification or alterations of bids	or	Bidders should not be requested or permitted to alter their bids after the deadline for receipt of bids. The accounting officer/authority should only allow questions be asked to bidders for clarification needed to evaluate their bids but should not ask or permit bidders to change the substance or price of their bids after bid opening. Requests for clarification and the bidder's responses should be made in writing.
Confidentiality		After public opening of bids, information relating to the examination, clarification and evaluation of bids and recommendations concerning awards should not be disclosed to bidders or other persons not officially concerned with the process, until the successful bidder is notified of the award.
Completeness of documentation		Normally it should be ascertained whether bids: ▪ include original tax clearance certificates; ▪ have been properly signed; ▪ are accompanied by the required securities; ▪ are substantially responsive to the bidding documents; and ▪ are otherwise generally in order. If a bid is not substantially responsive, that is, it contains material deviations from or reservations to the terms, conditions and specifications in the bidding documents, it should not be considered further. The bidder should not be permitted to correct or withdraw material deviations or reservations once bids have been opened. Furthermore, the institution should ensure that a bidder's name (including the name of any member/partner) does not appear on the list of restricted bidders/persons, in which case the bid should not be considered.

4.11 Evaluating responses

Evaluation and comparison of bids	Bids should only be evaluated in terms of the criteria stipulated in the bidding documents. Amending the evaluation criteria after closure of the bids should not be allowed, as this would jeopardize the fairness of the system. Points scored for price must be added to points scored for goals and the contract is usually awarded to the bidder who scores the highest points.
Rejection of all bids	Bidding documents should provide for the rejection of all bids if and when deemed necessary. This is justified when there is lack of effective competition, or bids are not substantially responsive. However, lack of competition should not be determined solely on the basis of the number of bidders. If all bids were rejected, the institution should review the causes justifying the rejection and consider making revisions to the specific conditions of contract, design and specifications, scope of the contract, or a combination of these, before inviting new bids. If rejection is due to lack of competition, wider advertising should be considered. If the rejection was due to most or all of the bids being non responsive, new bids may be invited from the initially pre-qualified firms, or with the agreement of the accounting officer/authority, from only those that submitted bids in the first instance. All bids should not be rejected solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the institution's pre-bid cost estimates by a substantial margin, the institution should investigate causes for the excessive cost and consider requesting new bids as described above. Alternatively, the institution may negotiate with the identified preferred bidder to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility that can be reflected in a reduction of the contract price. However, substantial reduction in the scope or modification to the contract documents may require re-bidding. The accounting officers'/authorities' prior agreement should be obtained before rejecting all bids, soliciting new bids, or entering into negotiations with the identified preferred bidder. This approval should be recorded for auditing purposes.

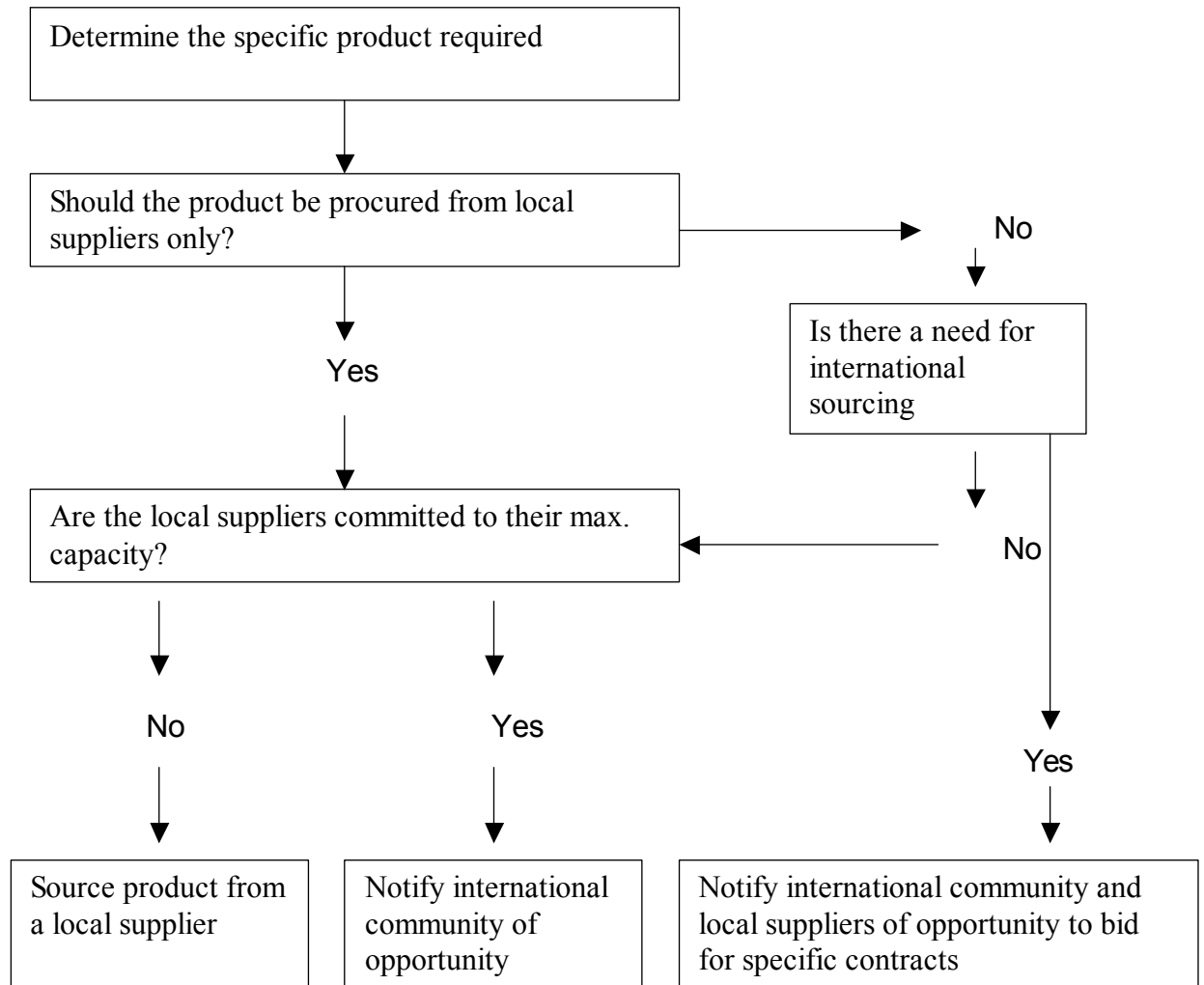
4.12 Clearing successful bidder and awarding contract

Vendor assessment	Suppliers should be assessed by SCM practitioners, for possible risks such as the availability of adequate facilities, financial standing, capacity and capability to deliver, previous performance in terms of quality and service delivery, as well as attainment of goals.
Clearance of bidders prior to the award of a contract: DTI: NIPP	Before a contract over R10 million is awarded, clearance should be obtained from the DTI regarding the National Industrial Participation Programme. Contact details are: Chief Director: Industrial Participation Secretariat, Department of Trade and Industry, Private Bag X84, Pretoria, 0001. Tel no 0861 843384 or (012) 310 9667.
Clearance of bidders prior to the award of a contract: Restricted persons	Prior to the award of any contract, accounting officers/authorities 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.
Negotiations	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/authority and such a process does not allow the bidder concerned a second (unfair) opportunity and is not to the detriment of any other supplier/bidder.
Contract Award	After approval of a bid, both parties should sign a written contract or, if necessary, a service level agreement. Original/legal copies of contracts should be kept in a secure place for judicial reference.
Contract administration	Contract administration, including monitoring of socio-economic objectives as undertaken by the supplier during the bidding stage, is the responsibility of the accounting officer/authority.

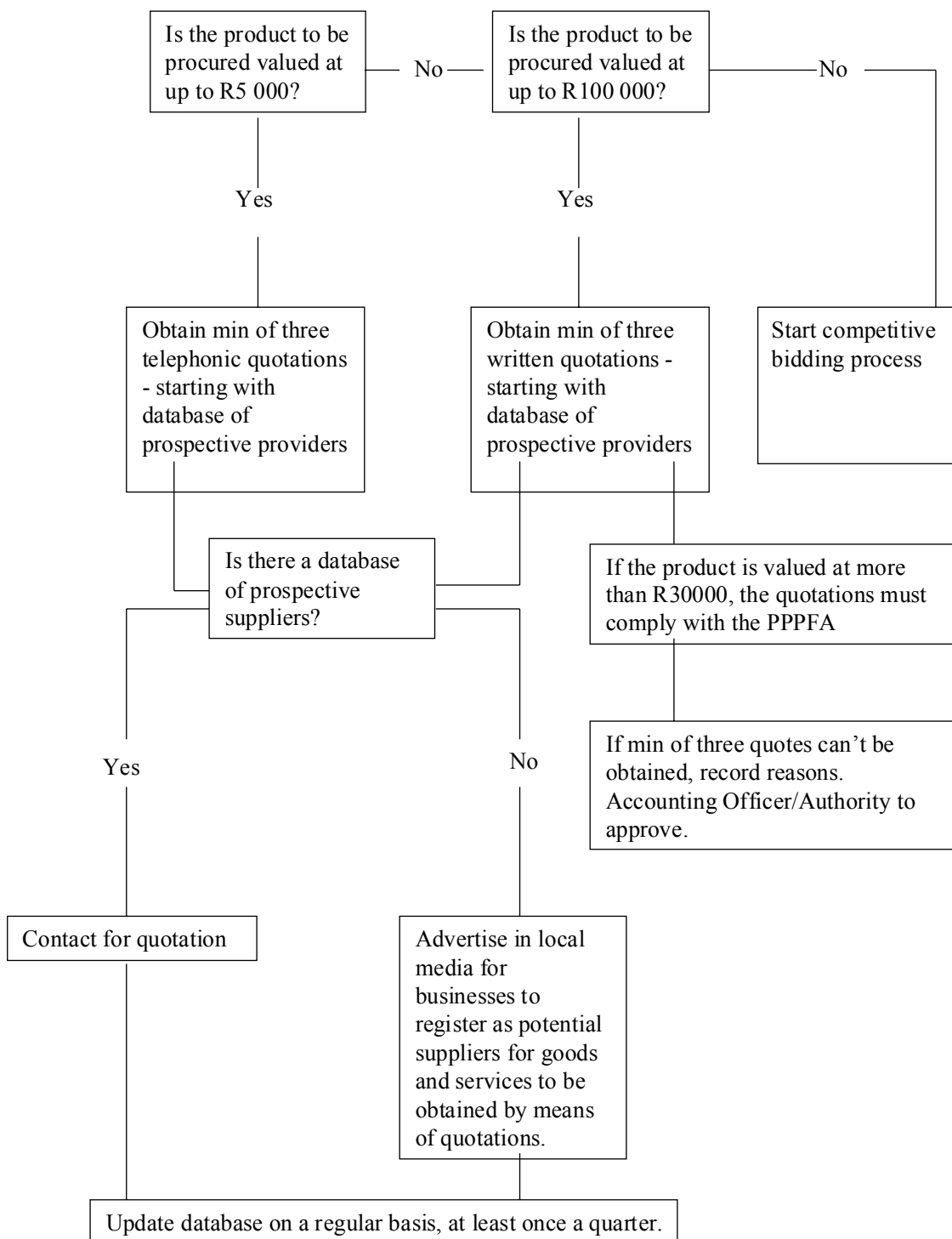
E –procurement	The accounting officer/authority must, prior to the request for information or any bids regarding the introduction of an e-procurement system, liaise and obtain permission from the relevant treasury to commence with the establishment and maintaining of such a system. This prerequisite is prescribed to ensure compatibility with other electronic systems utilised by Government.
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The following flowcharts depict the processes for acquisitioning management:

LOCAL VERSUS INTERNATIONAL SOURCING

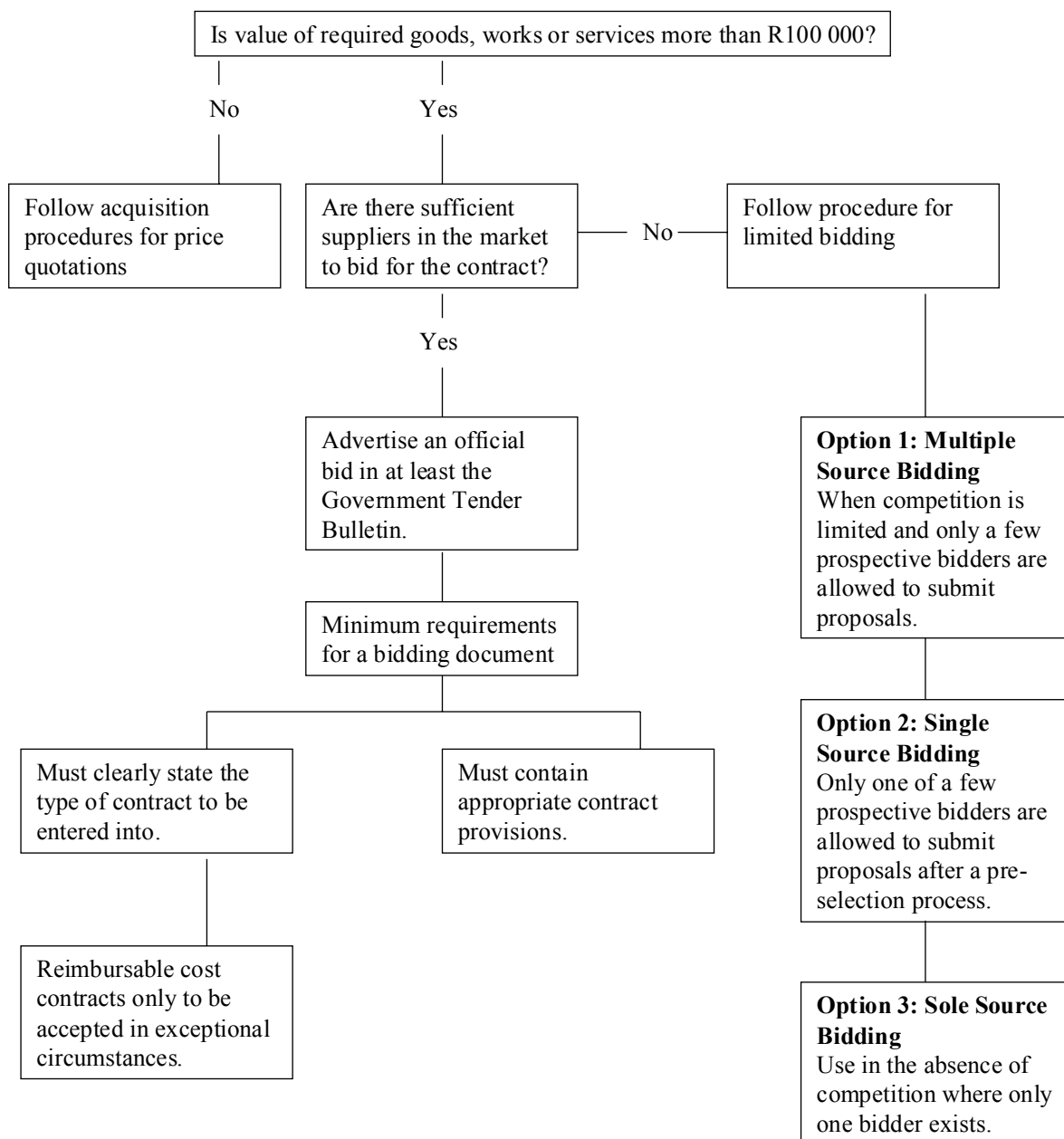


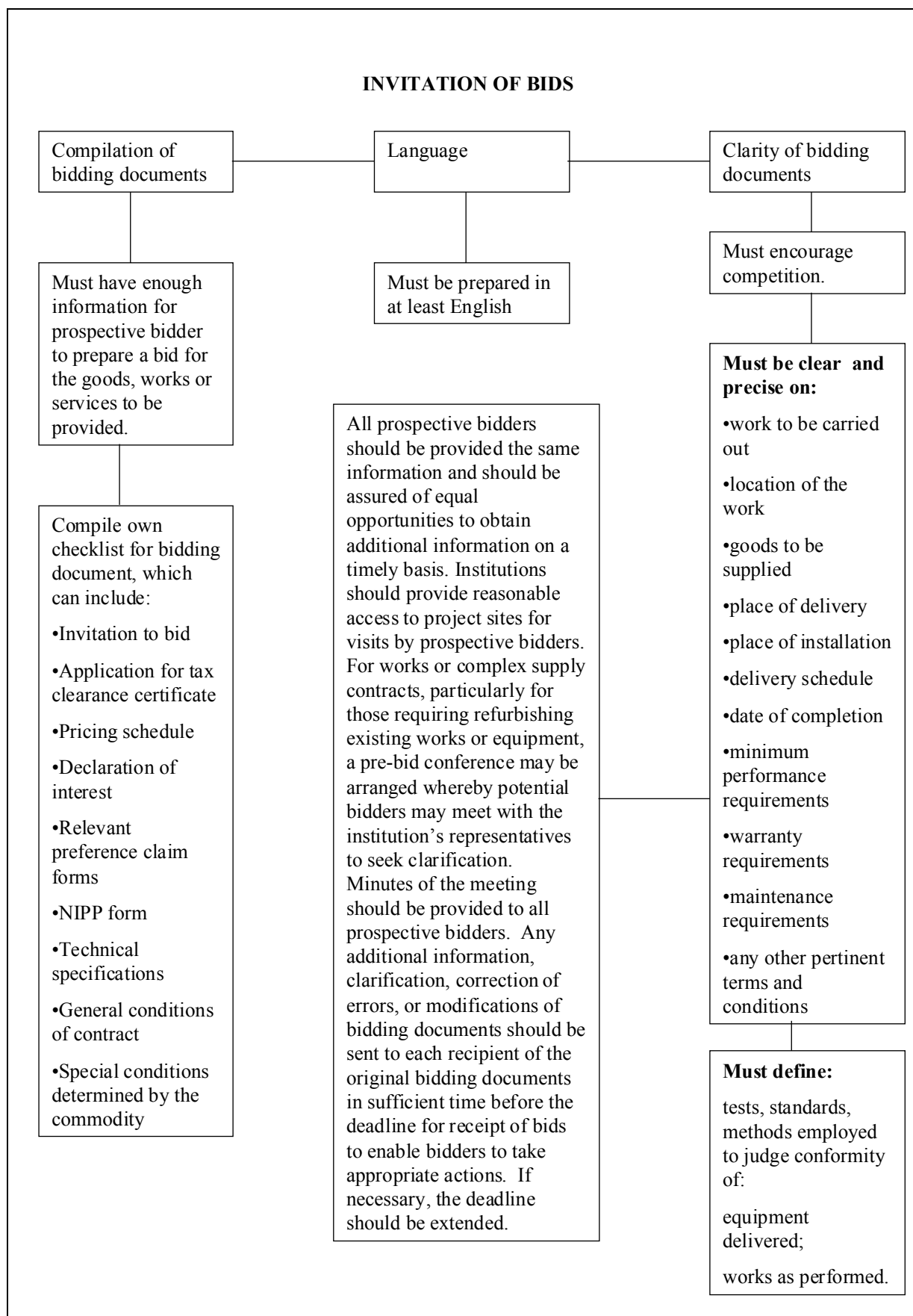
ACQUISITION PROCEDURES FOR PRICE QUOTATIONS



ACQUISITION PROCEDURES FOR COMPETITIVE BIDDING

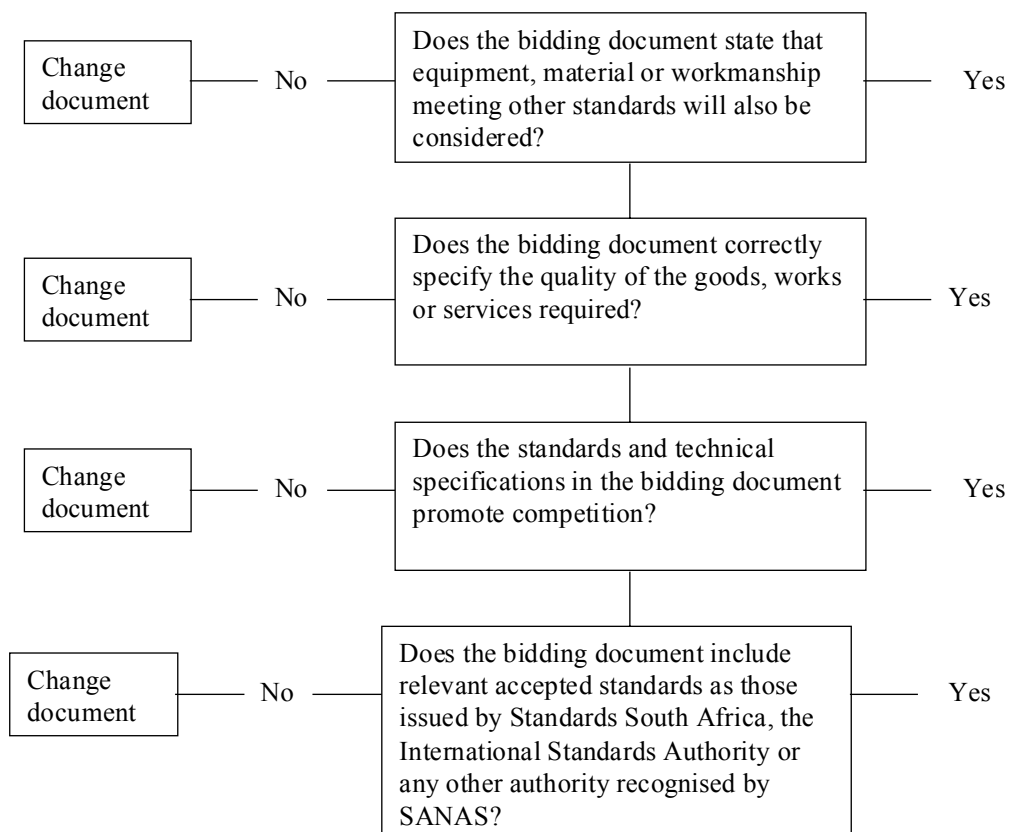
Objective: To provide all prospective bidders with timely and adequate notification of an institution's requirements and an equal opportunity to bid for the required goods, works or services.





STANDARD SETTING

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



CONDITIONS OF THE BID

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

PPFA

Bidding documents must be in compliance with the prescripts of the PPFA and the Regulations pertaining thereto.

Selling bid documents

Should documents be charged for it must be reasonable and reflect only the cost of their printing and delivery to prospective buyers.

Tax Clearance

Only accept original certificates with the bid document. Forward copies of acceptance of bids as well as tax clearance certificate to SARS.

Registration of Suppliers/Bidders

Where contractors/bidders are compelled to register with controlling authorities, should ensure that the registrations are in order prior to closure of the bids. Institutions should also ensure that registration requirements are in place prior to making such a requirement a condition of bid.

Contents of Guarantees:

- Ensure contract amount is correct;
- Ensure description of goods to be delivered is correct;
- Ensure details of supplier is correct;
- Ensure guarantee is not qualified;
- Refer to legal advisors or State Attorney if necessary.

Bid Security

The accounting officer/authority must decide whether the institution or supplier should bear the risk. Where sureties are required, accounting officers/authorities must ensure that the contents of these agreements meet with legal requirements. Accounting Officers/authorities can decide whether securities are required at the bidding phase. Securities should not discourage bidders.

Bid security should remain valid for a period of four weeks beyond the validity period for the bids. If contractor withdraws before bid is awarded or contract commences, the bid security may be forfeited in favour of the institution.

Release bid securities to unsuccessful bidders.

Refer Treasury Regulations, section 12

Bank must be registered i.t.o. the Banks Act, 1965

Insurer must be registered i.t.o. the Insurance Act, 1943

Inspections, tests and analyses

Where inspection is part of the process, bid documentation must specify that premises of bidder should be open at all reasonable hours for inspection by a representative of the institution.

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

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

Pricing - General

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

Pricing - Turnkey contracts

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

Price adjustment due to escalation and fluctuation in the ROE

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

Appointment of Consultants

5.1 Introduction

- 5.1.1 The purpose of this Chapter is to explain the procedures for selecting, contracting, and monitoring consultants required for projects. In general, the procedures described in the previous chapter apply. Only the peculiarities of appointing consultants are dealt with herein, as the services to which these procedures apply are of an intellectual and advisory nature. These procedures do not apply to general services such as construction works, manufacture of goods, operation and maintenance of facilities or plants, surveys, exploratory drilling, aerial photography, satellite imagery, catering, cleaning and security in which the physical aspects of the activity predominate.
- 5.1.2 It must be clearly pointed out 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, should be done in terms of the practice note issued by the National Treasury specifically for that purpose.
- 5.1.3 For the purpose of this Guide, the term *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 organizations (NGOs) and individuals.
- 5.1.4 Accounting officers/authorities may use these organizations as *consultants* to assist in a wide range of activities such as policy advice, accounting officer's/authority's reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and identification, preparation and implementation of projects to complement accounting officers'/authorities' capabilities in these areas.
- 5.1.5 Consultants should only be engaged when the necessary skills and/or resources to perform a project/duty/study are not available and the accounting officer/authority cannot be reasonably expected either to train or to recruit people in the time available.

- 5.1.6 The relationship between the accounting officer/authority and the consultant should be one of purchaser/provider and not employer/employee. The work undertaken by a consultant should be regulated by a contract. The accounting officer/authority is, however, responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets and should take remedial action if performance is below standard.

5.2 Applicability of procedures

- 5.2.1 The procedures outlined herein apply to all contracts for consulting services. In procuring consulting services, the accounting officer/authority should satisfy himself/herself that:
- the procedures to be used will result in the selection of consultants who have the necessary professional qualifications;
 - the selected consultant will carry out the assignment in accordance with the agreed schedule, and
 - the scope of the services is consistent with the needs of the project.

5.3 Appointment in terms of the Public Service Act, 1994 (Act No 103 of 1994)

- 5.3.1 Accounting officers/authorities sometimes consider appointing persons as consultants whilst it would be more appropriate to appoint the relevant individuals on contract in terms of the Public Service Act, 1994 (PSA).
- 5.3.2 If accounting officers /authorities wish to appoint a person for a limited period to perform duties to a post on the fixed establishment, the person should as a general rule be appointed on contract in terms of section 8(c)(ii) of the PSA.
- 5.3.3 Should accounting officers/authorities experience additional work demands which are not permanent and there are no suitable vacancies available, they may consider creating additions to the fixed establishment based on the specific nature of the activities to be undertaken as well as the level at which the activities are to be performed. This may include appointing persons on contract in terms of the Act. Under no circumstances should a person be appointed as a consultant merely to be granted higher remuneration packages than are prescribed by the Act.

5.4 General approach

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

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

5.4.2 In the majority of cases, these considerations can best be addressed through competition among firms in which the selection is based both on the quality of the services to be rendered and on the cost of the services to be provided (Quality- and Cost-Based Selection [QCBS]) as described in paragraph 5.9.3. However, there are cases when QCBS is not the most appropriate method of selection. For complex or highly specialized assignments or those that invite innovations, selection based on the quality of the proposal alone (Quality-Based Selection [QBS]), would be more appropriate. Other methods of selection and the circumstances in which they are appropriate are outlined in paragraph 5.10.

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

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

“A service provider may not recruit or shall not attempt to recruit an employee of the principal for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof”.

5.5 Conflict of interest

5.5.1 Consultants are required to provide professional, objective and impartial advice and at all times hold the client's interests paramount, without any consideration for future work and strictly avoid conflicts with other assignments or their own corporate interests. Consultants should not be hired for any assignment that

would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the State. Without limitation on the generality of this rule, consultants should not be hired under the following circumstances:

- A firm, which has been engaged by the accounting officer/authority to provide goods or works for a project and any of its affiliates, should be disqualified from providing consulting services for the same project. Similarly, a firm hired to provide consulting services for the preparation or implementation of a project and any of its affiliates, should be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier consulting services as described below) for the same project, unless the various firms (consultants, contractors, or suppliers) are performing the contractor's obligations under a turnkey or design-and-build contract;
- Consultants or any of their affiliates should not be hired for any assignment which, by its nature, may be in conflict with another assignment of the consultants. As an example, consultants hired to prepare an engineering design for an infrastructure project should not be engaged to prepare an independent environmental assessment for the same project, and consultants assisting a client in the privatization of public assets should not purchase, nor advise purchasers of such assets.

5.6 Associations between consultants

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

5.7 Promoting government's preferential policies

- 5.7.1 When consultants are appointed, the prescripts of the Preferential Procurement Regulations, 2001, must be adhered to. These relate to the compulsory involvement of HDIs and the promotion of the RDP goals.

5.8 Training or transfer of knowledge and skills

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

5.9 Steps to follow when selecting consultants

Refer to National Treasury's Instruction Note dated 3 September 2010 for amended guidelines in respect of bids that include functionality as a criterion for evaluation

5.9.1 The four stages of selection

- 5.9.1.1 There are essentially four distinct stages in the recommended selection process:
- Identify the approach;
 - Invite bids/proposals;
 - Receive responses; and
 - Evaluate responses.
- 5.9.1.2 Other aspects of appointment (such as advertising, opening of proposals) are no different from those set out in Chapter 4 of this guide.
- 5.9.1.3 Each of the four stages above is described in the sections below.

5.9.2 Identify the approach

- 5.9.2.1 Various approaches may be followed in selecting consultants. As stated earlier, in most instances, 'Quality and cost based selection' (QCBS) is recommended. However, other possibilities are:
- Quality based selection;
 - Selection under a fixed budget;
 - Least cost selection; and
 - Single source selection.
- 5.9.2.2 In determining the most appropriate approach, it may be useful to ask: What sort of Consultancy do I require? Is it for:-

An assignment that is not complex or specialised	Use 'Quality and Cost Based Selection' (QCBS)
A complex or highly specialized assignment, for which consultants are expected to demonstrate innovation in their proposals (for example, financial sector reforms)	Use 'Quality-Based Selection' (QBS)
An assignment that has a high downstream impact and requires the best available experts (for example, management studies of large government agencies)	Use QBS
An assignment that could be carried out in substantially different ways, hence proposals will not be comparable (for example, sector and policy studies in which the value of the services depends on the quality of the analysis)	Use QBS
A simple assignment, which is precisely defined and the budget fixed	Use 'Selection under a fixed budget', but evaluate technical proposals first as in QCBS
A standard or routine assignment (e.g. an audit, engineering design of noncomplex works)	Use 'Least-cost selection' as detailed in 5.10.3. Potential suppliers may be obtained from the list of approved service providers.
A very small assignment which does not justify the preparation and evaluation of competitive proposals	Selection based on Consultants' qualifications as detailed in 5.10.4. Potential suppliers may be obtained from the list of approved service providers.
A task that represents a natural continuation of previous work carried out by the firm	Use 'Single-source selection
An emergency operation	You MAY use 'Single source selection.'
An assignment where only one firm is qualified or has experience of exceptional worth for the assignment	Use 'Single-source selection'
Any other situation	Use 'Quality and cost based selection', either by requesting a "BID" or a "PROPOSAL"

5.9.3 Invite bids/proposals, using QCBS

5.9.3.1 Request for bids

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

Preparation of the “Terms of Reference” (TOR)	The accounting officer/authority should prepare the TOR. The scope of the services described should be compatible with the available budget. The TOR should define clearly the task directive (methodology), objectives, goals and scope of the assignment and provide background information, including a list of existing relevant studies and basic data, to facilitate the consultants’ preparation of their bids. Time frames linked to various tasks should be specified, as well as the frequency of monitoring actions. The respective responsibilities of the accounting officer/authority and 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: Consultant’s experience relevant to assignment; The quality of the methodology; The qualifications of key personnel; and The transfer of knowledge (where applicable). In more complicated projects, provision may also be made for pre-bid briefing sessions or presentations by bidders as part of the evaluation process. A clear indication should be given of which preference point system in terms of the PPPFA and its associated Regulations will be applicable as well as the goals to be achieved and the points allocated for these goals.
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	Detailed information on the evaluation process should be provided by firstly indicating the ratio of percentage between functionality and price. The percentage for price should be determined taking into account the complexity of the assignment and the relative importance of functionality. The percentage for price should normally be determined and approved by the accounting officer/authority or his/her delegate prior to finalizing the TOR. If transfer of knowledge or training is an objective, it should be specifically outlined along with details of number of staff to be trained, etc., to enable consultants to estimate the required resources. The TOR should list the services and surveys necessary to carry out the assignment and the expected outputs (for example reports, data, maps, surveys, etc), where applicable. Evaluation criteria could be divided into sub-criteria. Preparation of a well-thought-through cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate should be based on the accounting officer's/authority's assessment of the resources needed to carry out the assignment such as staff time, logistical support and physical inputs (i.e. vehicles, laboratory equipment, etc). The cost of staff time should be estimated on a realistic basis for foreign and local personnel. The TOR should specify the validity period (normally 60 – 90 days). The TOR should form part of the standard bid documentation. At this stage the evaluation panel, consisting of at least three members who are demographically representative in terms of race, gender and expertise, should also be selected and finalized.
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5.9.3.2 Request for proposals

- 5.9.3.2.1 This method should be followed where selection is based both on the quality of a proposal and on the cost of the service through competition among firms. This method will be applicable on more

complex projects where consultants are requested and encouraged to propose their own methodology and to comment on the TOR in their proposals.

Preparation and issuance of 'Request for Proposals' (RFP)	Whenever possible, accounting officers / authorities should include at least the following documents in the RFP: (i) Letter of Invitation; (ii) Information to Consultants; (iii) the TOR; and (iv) the proposed contract.
Letter of invitation (LOI)	The LOI should state the intention to enter into a contract for the provision of consulting services, the details of the client and the date, time and address for submission of proposals.
Information to Consultants (ITC)	The ITC should contain all necessary information that would assist consultants to prepare responsive proposals. It should be transparent and provide information on the evaluation process by indicating the evaluation criteria and factors and their respective weights and the minimum qualifying score for functionality. A clear indication should be given of which preference points system will be applicable in terms of the PPPFA and its Regulations, as well as the goals to be targeted and the points allocated for each goal. The budget is not specified (since cost is a selection criterion), but should indicate the expected input of key professionals (staff time). Consultants, however, should be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC should specify the proposal validity period (normally 60–90 days). A detailed list of the information that should be included in the ITC is given in paragraph 5.16.
Terms of Reference	The TOR should be compiled by a specialist in the area of the assignment and the scope of services described should be compatible with the available budget. The TOR should define as clearly as possible the objectives, goals and scope of the assignment including background information to facilitate the consultant in the preparation of its proposal. The TOR should be compiled in such a manner that consultants are able to propose their own methodology and staffing and be encouraged to comment on the TOR in their proposals.

	Depending on the circumstances, it may be indicated that proposals should be submitted in two separate clearly marked envelopes, one containing the technical proposal and the other the cost for the assignment. In cases where pre-qualification/shortlisting is required, the TOR should indicate the basis of pre-qualification/shortlisting, for instance the number of minimum points to be scored to pre-qualify.
Contract	Accounting officers / authorities should use the appropriate Standard Form of Contract issued by the National Treasury. Any changes necessary to address specific project issues should be introduced through Contract Data Sheets or through Special Conditions of Contract and not by introducing changes in the wording of the General Conditions of Contract included in the Standard Form. When these forms are not appropriate (for example, for pre-shipment inspection, training of students in universities,), accounting officers / authorities should use other acceptable contract forms.

5.9.4 Receipt of proposals

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

5.9.5 Evaluation of bids/proposals

5.9.5.1 Within the ambit of the Preferential Procurement Regulations, 2001, bids/ proposals for the appointment of consultants should be evaluated on the basis of functionality and price as well as the achievement of specified RDP goals. The evaluation should be carried out in two phases – first the functionality and then the price. The combined percentages allocated for functionality and price should total to 100%. The ratio to be used for the division between functionality and price should be determined and approved by the accounting officer/authority and should be made known up-front in the bid documents. Score sheets should be prepared and provided to panel members to evaluate the bids on functionality. In view of impartiality, members of departmental bid committees should not also act as panel members.

5.9.5.2 The score sheet should contain all the criteria and the weight for each criterion as indicated in the TOR as well as the values to be applied for evaluation. Each panel member should after thorough evaluation award his/her own value to every criterion without discussing any aspect of any bid with any of the other members. Under no circumstances may additional evaluation criteria be added to those originally indicated in the bid documentation nor may the evaluation criteria be amended or omitted after closing of the bid. Score sheets should be signed by panel members and if required, written motivation could be requested from panel members in the event of vast discrepancies in the values awarded for each criterion.

5.9.5.3 Calculation of percentage for functionality

5.9.5.3.1 The percentage scored for functionality should be calculated as follows:

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

$$Ps = \frac{So}{Ms} \times Ap$$

where

Ps = percentage scored for functionality by bid/proposal under consideration

So = total score of bid/proposal under consideration

Ms = maximum possible score

Ap = percentage allocated for functionality

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

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

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

5.9.5.4 Calculation of percentage for price

The percentage scored for price should be calculated as follows:

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

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

where

Ps = percentage scored for price by bid/proposal under consideration

Pmin = lowest acceptable bid/proposal

Pt = price of bid/proposal under consideration

Ap = percentage allocated for price

The *“Guide on Hourly Fee Rates for Consultants”* issued by the Department of Public Service and Administration, accessible from the website www.dpsa.gov.za (click on "Service Delivery Improvement" and then click on "Consultant Frameworks") should be used as a benchmark to evaluate the offered tariffs or to determine the reasonableness thereof.

5.9.5.5 Calculation of points for functionality and price

The percentages obtained for functionality should be added to the percentage obtained for price to obtain a percentage out of 100 which in turn should be converted to points out of 80 or 90 in terms of Regulation 8 of the Preferential Procurement Regulations.

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

(i) The 80/20 preference point system

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

(ii) The 90/10 preference point system

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

where

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

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

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

Points scored for specified goals as contemplated by the PPPFA and its Regulations are then calculated separately and added to the points scored for price and functionality in order to obtain a final point. The contract should be awarded to the bidder scoring the highest points.

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

Evaluation of technical proposals (Functionality)	The evaluation of the proposals should be carried out in two stages: first the functionality (quality) and then the price. The evaluation should be carried out in full conformity with the provisions of the RFP. When the two-envelope system is used: Evaluators of technical proposals should not have access to the financial proposals until the technical evaluation is concluded. Financial proposals should be opened only after the technical evaluation and only in respect of those proposals that achieved the minimum qualifying score for functionality. In respect of functionality, the accounting officer/authority should evaluate each technical proposal (using an evaluation panel of three or
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	more specialists in that field of expertise) in terms of the specified evaluation criteria that may include the following: (i) The consultant's relevant experience for the assignment; (ii) The quality of the methodology proposed; (iii) The qualifications of the key staff proposed; and (iv) Transfer of knowledge. The accounting officer/authority should normally divide these criteria into sub-criteria, for example, the sub-criteria under methodology might be innovation and level of detail. More weight should be given to the methodology in the case of more complex assignments for example multidisciplinary feasibility or management studies. Evaluation of only "key" personnel is recommended as they ultimately determine the quality of performance. More weight should be assigned to this criterion if the proposed assignment is complex. The accounting officer/authority should review the qualifications and experience of proposed key personnel in their curricula vitae which should be accurate, complete and signed by an authorised official of the consultant and the individual proposed. When the assignment depends critically on the performance of key staff, such as a Project Manager in a large team of specified individuals, it may be desirable to conduct interviews. The individuals can be rated, among others, in the following sub-criteria as relevant to the assignment: General qualifications: general education and training, length of experience, positions held, time with the consulting firm staff, and experience in developing countries; Adequacy for the assignment: education, training and experience in that specific sector, field or subject relevant to the particular assignment; and Experience in the region: knowledge of the local language, culture, administrative system, government organization, etc. Accounting officers/authorities should evaluate each
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	proposal on the basis of its response to the TOR. A proposal should be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve the minimum qualifying score for functionality as specified in the RFP. At the end of the process, the accounting officer/authority should prepare an evaluation report on the quality of the proposals. The report should substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to the evaluation such as individual score sheets, should be retained until completion of the project and its audit.
Evaluation of financial proposal	For the purpose of evaluation, the price shall include all local taxes and other reimbursable expenses such as travel, translation, report printing or secretarial expenses. The proposal with the lowest price will obtain the maximum percentage for price as prescribed in the RFP. Proposals with higher prices will proportionately obtain lower percentages according to the method as prescribed in the RFP.
Negotiations and award of contract	The Accounting Officer/Authority may negotiate the contract only with the preferred bidder identified by means of the competitive bidding process. Negotiations should include discussions of the TOR, the methodology, staffing, accounting officer's / authority's inputs, and special conditions of the contract. These discussions should not substantially alter the original TOR or the terms of the contract, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology should be incorporated in "Description of Services," which should form part of the contract. The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm.

	The key staff proposed for substitution should have qualifications equal to or better than the key staff initially proposed. Financial negotiations should include clarification of the consultants' tax liability. Before the appointment is finalized, the consultant should submit an original tax clearance certificate to the accounting officer / authority. Proposed unit rates for staff-months and re-imbursables should not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons. Proposed unit rates for staff-months and re-imbursables should not be negotiated, since these have already been a factor of selection in the cost of the proposal, unless there are exceptional reasons. If the negotiations fail to result in an acceptable contract, the accounting officer / authority should terminate the negotiations and invite the next ranked firm for negotiations. The original preferred consultant should be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the accounting officer / authority should not reopen the earlier negotiations. After negotiations are successfully completed, the accounting officer / authority should promptly notify other firms that they were unsuccessful.
Contract award	According to the prescripts of the PPPFA and its Regulations, a contract may only be awarded to the bidder who scored the highest number of points, unless objective criteria justify the award to another bidder. Should this be the case, the accounting officer / authority should be able to defend the decision not to award the bid to the bidder who scored the highest number of points in any court of law. It should be emphasized that not offering any contributions to prescribed goals as contemplated in the Preferential Procurement Regulations, 2001, does not disqualify a bidder. Under these circumstances a bidder will score no points for the specified goals. The accounting officer / authority should award the contract, within the period of the validity of bids, to

	the bidder who meets the appropriate standards of capability and resources and whose bid has been determined: (i) to be substantially responsive to the bidding documents; and (ii) to be the highest on points. A bidder should not be required, as a condition of award, to undertake responsibilities for work not stipulated in the bidding documents or otherwise to modify the bid as originally submitted.
Rejection of all proposals and re-invitation	The accounting officer / authority will be justified in rejecting all proposals only if all proposals are non-responsive and unsuitable, either because they present major deficiencies in complying with the TOR, or because they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated. The new process may include revising the RFP and the budget.

5.10 Other methods of selection

5.10.1 Quality-Based Selection (QBS)

5.10.1.1 QBS is appropriate for the following types of assignments:

- complex or highly specialized assignments for which it is difficult to define precise TOR and the required input from the consultants and for which the client expects the consultants to demonstrate innovation in their proposals (for example, country economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms);
- assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructure as large dams, policy studies of national significance, management studies of large government agencies); and
- assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice and sector and policy studies in which the value of the services depends on the quality of the analysis).

- 5.10.1.2 In QBS, the RFP may request submission of a technical proposal only (without the financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). The RFP should not disclose the estimated budget, but it may provide the estimated number of key staff time, specifying that this information is given as an indication only and that consultants are free to propose their own estimates.
- 5.10.1.3 If technical proposals alone were invited, after evaluating the technical proposals using the same methodology as in QCBS, the accounting officer / authority should request the consultant with the highest ranked technical proposal to submit a detailed financial proposal. The accounting officer / authority and the consultant should then negotiate the financial proposal and the contract. All other aspects of the selection process should be identical to those of QCBS. If, however, consultants were requested to provide financial proposals initially together with the technical proposals, safeguards should be built in to ensure that the price envelope of only the selected proposal is opened and the rest returned unopened, after the negotiations are successfully concluded.

5.10.2 Selection under a fixed budget

- 5.10.2.1 This method is appropriate only when the assignment is simple and can be precisely defined and when the budget is fixed. The RFP should indicate the available budget and request the consultants to provide their best technical and financial proposals in separate envelopes, within the budget. The TOR should be particularly well prepared to ensure that the budget is sufficient for the consultants to perform the expected tasks. Evaluation of all technical proposals should be carried out first as in the QCBS method, where after the price envelopes should be opened in public. Proposals that exceed the indicated budget should be rejected. The consultant who has submitted the highest ranked technical proposal should be selected and invited to negotiate a contract.

5.10.3 Least-cost selection

- 5.10.3.1 This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist and in which the contract amount is small. Under this method, a “minimum” qualifying mark for the “functionality” is established. Proposals to be submitted in two envelopes are invited. Technical envelopes are opened first and evaluated. Those securing less than the minimum mark should

be rejected and the financial envelopes of the rest are opened in public. The firm with the highest points should then be selected. Under this method, the qualifying minimum mark should be established, keeping in view that all proposals above the minimum compete only on “cost” and promotion of HDIs and RDP objectives. The minimum mark to qualify should be stated in the RFP.

5.10.4 Selection based on consultants’ qualifications

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

5.10.5 Single-source selection

- 5.10.5.1 Single-source selection of consultants does not provide the benefits of competition in regard to quality and cost and lacks transparency in selection and could encourage unacceptable practices. Therefore, single-source selection should be used only in exceptional cases. The justification for single-source selection should be examined in the context of the overall interests of the client and the project.
- 5.10.5.2 Single-source selection may be appropriate only if it presents a clear advantage over competition:
- for tasks that represent a natural continuation of previous work carried out by the firm;
 - where a rapid selection is essential (for example, in an emergency operation);
 - for very small assignments; or
 - when only one firm is qualified or has experience of exceptional worth for the assignment.
- 5.10.5.3 The reasons for a single-source selection should be recorded and approved by the accounting officer / authority or his / her delegate prior to the conclusion of a contract.
- 5.10.5.4 When continuity for downstream work is essential, the initial RFP should outline this prospect and if practical, the factors used for the selection of the consultant should take the likelihood of continuation into account. Continuity in the technical approach, experience acquired and continued professional liability of the

same consultant may make continuation with the initial consultant preferable to a new competition, subject to satisfactory performance in the initial assignment. For such downstream assignments, the accounting officer / authority should ask the initially selected consultant to prepare technical and financial proposals on the basis of TOR furnished by the accounting officer / authority, which should then be negotiated.

- 5.10.5.5 If the initial assignment was not awarded on a competitive basis or was awarded under tied financing or reserved procurement or if the downstream assignment is substantially larger in value, a competitive process acceptable to the accounting officer / authority should normally be followed in which the consultant carrying out the initial work is not excluded from consideration if it expresses interest.
- 5.10.5.6 Where, in exceptional instances, it is impractical to appoint the required consultants through a competitive bidding process and a South African based consultant is used, the *Guidelines on Hourly Fee Rates for Consultants* issued by the Department of Public Service and Administration should be used as a benchmark to establish the appropriate tariffs, or to determine the reasonableness of the tariffs.

5.10.6 Selection of individual consultants

- 5.10.6.1 Individual consultants may normally be employed on assignments for which:
 - teams of personnel are not required;
 - no additional outside (home office) professional support is required; and
 - the experience and qualifications of the individual are the paramount requirement.
- 5.10.6.2 When coordination, administration, or collective responsibility may become difficult because of the number of individuals, it would be advisable to employ a firm.
- 5.10.6.3 Individual consultants should be selected on the basis of their qualifications for the assignment. They may be selected on the basis of references or through comparison of qualifications among those expressing interest in the assignment or approached directly by the accounting officer / authority. Individuals employed by the accounting officer / authority should meet all relevant qualifications and should be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience and as appropriate, knowledge of the local conditions, such as local language, culture, administrative system and government organization.

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

5.10.7 Selection of particular types of consultants

- 5.10.7.1 *Use of Nongovernmental Organizations (NGOs).* NGOs are voluntary nonprofit organizations that may be uniquely qualified to assist in the preparation, management, and implementation of projects, essentially because of their involvement and knowledge of local issues, community needs, and/or participatory approaches. NGOs may be included in the short list if they express interest and provided that the accounting officer / authority is satisfied with their qualifications. For assignments that emphasize participation and considerable local knowledge, the short list entirely NGOs. If so, the QCBS procedure should be followed and the evaluation criteria should reflect the unique qualifications of NGOs, such as voluntarism, nonprofit status, local knowledge, scale of operation, and reputation. An accounting officer / authority may select the NGO on a single-source basis, provided the criteria outlined for single source selection are fulfilled.
- 5.10.7.2 *Inspection Agents.* Accounting officers / authorities may wish to employ inspection agencies to inspect and certify goods prior to shipment or on arrival in the country. The inspection by such agencies usually covers the quality and quantity of the goods concerned and reasonableness of price. Inspection agencies should be registered with the South African National Accreditation System (SANAS) and the services of these inspection agents should be obtained by means of competitive bidding.
- 5.10.7.3 *Banks.* Investment and commercial banks, financial firms, and fund managers hired by accounting officers / authorities for the sale of assets, issuance of financial instruments and other corporate financial transactions, notably in the context of privatization operations, should be selected under QCBS. The RFP should specify selection criteria relevant to the activity — for example, experience in similar assignments or network of potential purchasers — and the cost of the services. In addition to the conventional remuneration (called a “retainer fee”), the compensation includes a “success fee.” This fee can be fixed, but is usually expressed as a percentage of the value of the assets or other financial instruments to be sold. The RFP should indicate that the cost evaluation will take into account the success fee, either in combination with the retainer fee or alone. If alone, a standard retainer fee should be prescribed for all short-listed consultants and indicated in the RFP, and the financial scores

should be based on the success fee as a percentage of a pre-disclosed notional value of the assets. For the combined evaluation (notably for large contracts), cost may be accorded a weight higher or the selection may be based on cost alone among those who secure a minimum passing mark for the quality of the proposal. The RFP should specify clearly how proposals will be presented and how they will be compared.

5.10.7.4 *Auditors.* Auditors typically carry out auditing tasks under well-defined TOR and professional standards. They should be selected according to QCBS, with cost as a substantial selection factor (40–50 points), or by the “Least-Cost Selection.” When consultants are appointed to execute an audit function on behalf of the accounting officer / authority, the tariffs agreed by the Auditor-General and the South African Institute for Chartered Accountants (SAICA) may be used as a guideline to determine the appropriate tariff or to determine the reasonableness of the tariffs. These tariffs can be obtained from SAICA’s website under www.saica.co.za. The tariffs are captured in a circular issued by SAICA.

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

5.11 Establishment of a list of approved service providers

5.11.1 Where consultancy services are required on a recurring basis, a panel of consultants/list of approved service providers for the rendering of these services may be established. These panels/lists should be established through the competitive bidding process, usually for services that are of a routine or simple nature where the scope and content of the work to be done can be described in detail.

5.11.2 The intention to establish a panel/list of approved service providers is published in the Government Tender Bulletin and the closing time and date for inclusion in the panel/list of approved service providers should be indicated. For this purpose, a questionnaire should be made available and should make provision for the following:

Full details of the service provider, among others:

- composition of the firm in terms of shareholding;
- personnel complement;

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

Requirements for admission to the list and criteria should be linked to the numeric value in terms of which applicants will be measured, for example qualifications, experience, acceptability, facilities and resources, etc. A pre-determined standard method of awarding points should be followed.

- 5.11.3 The applications received should be evaluated and any rejection of applicants should be motivated and recorded.
- 5.11.4 Once the panel/list of service providers has been approved, only the successful applicants are approached, depending on the circumstances, either by obtaining quotes on a rotation basis, or according to the bid procedure when services are required, with the exception that the requirement is not advertised in the Government Tender Bulletin again.
- 5.11.5 This list should be updated continuously, at least quarterly.

5.12 Evaluation of the performance of consultants

- 5.12.1 Consultants should observe due diligence and prevailing standards in the performance of the assignment. The accounting officer/authority should evaluate the performance of consultants appointed in a fair and confidential process. In the case of repeated poor performance, the firm should be notified and provided an opportunity to explain the reasons for it and the remedial action proposed.
- 5.12.2 Consultants should be responsible for the accuracy and suitability of their work. Although accounting officers/authorities supervise and review the consultants' work, no modifications should be made in the final documents prepared by the consultants without mutual agreement. In the case of supervision of works, consultants may have more or less authority to supervise, from full responsibility as an independent engineer, to that of advisor to the client with little authority to make decisions, as determined by the accounting officer/authority and captured in the contract agreement between the accounting officer/authority and the consultant.

5.13 Types of contracts

- 5.13.1 *Lump Sum (Firm Fixed Price) Contract:* Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents and software programs. Lump sum contracts are easy to administer because payments are due on clearly specified outputs.
- 5.13.2 *Time-Based Contract:* This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (who are normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices. The rates for staff include salary, social costs, overheads, fees (or profit), and, where appropriate, special allowances. This type of contract should include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the client to ensure that the assignment is progressing satisfactorily and payments claimed by the consultants are appropriate. Again the Guidelines on fees for Consultants issued by the Department of Public Service and Administration should be used as a benchmark to establish the appropriate tariffs, or to determine the reasonableness of the tariffs.
- 5.13.3 *Retainer and/or Contingency (Success) Fee Contract:* Retainer and contingency fee contracts are widely used when consultants (banks or financial firms) are preparing companies for sales or mergers of firms, notably in privatization operations. The remuneration of the consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.
- 5.13.4 *Percentage Contract:* These contracts are commonly used for architectural services. They may be also used for procurement and inspection agents. Percentage contracts directly relate the

fees paid to the consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitive bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (for example, not works supervision).

- 5.13.5 *Indefinite Delivery Contract (Price Agreement)*: These contracts are used when accounting officers / authorities need to have “on call” specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain “advisers” for implementation of complex projects (for example, dam panel), expert adjudicators for dispute resolution panels, accounting officer / authority reforms, procurement advice, technical troubleshooting, and so forth, normally for a period of a year or more. The accounting officer / authority and the firm agree on the unit rates to be paid for the experts and payments are made on the basis of the time actually used.

5.14 Important provisions

- 5.14.1 *Currency*. RFPs should clearly state that firms must express the price for their services, in Rand. If the consultants wish to express the price as a sum of amounts in different foreign currencies, they may do so, provided that the accounting officer / authority concurs with this practice and that the proposal includes no more than three foreign currencies outside the borders of South Africa. The accounting officer / authority should require consultants to state the portion of the price representing local costs in Rand. Payment under the contract should be made in the currency or currencies expressed in the formal contract.
- 5.14.2 *Price Adjustment*. To adjust the remuneration for foreign and/or local inflation, a price adjustment provision should be included in the contract if its duration is expected to exceed 12 months. Exceptionally, contracts of shorter duration may include a provision for price adjustment when local or foreign inflation is expected to be high and unpredictable.
- 5.14.3 *Payment Provisions*. Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, should be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances

(for example, for mobilization costs) exceeding 10 percent of the contract amount should normally be backed by advance payment securities. Payments should be made promptly in accordance with the contract provisions. To that end,

- consultants can be paid directly by the accounting officer / authority;
- only disputed amounts should be withheld, with the remainder of the invoice paid in accordance with the contract; and
- the contract should provide for the payment of financing charges if payment is delayed due to the client's fault beyond the time allowed in the contract. The rate of charges should be specified in the contract.

5.14.4 *Bid and Performance Securities.* Bid and performance securities are not recommended for consultants' services. Their enforcement is often subject to judgment calls, they can be easily abused and they tend to increase the costs to the consulting industry without evident benefits, which are eventually passed on to the accounting officer / authority.

5.14.5 *Accounting officer / authority's contribution.* The accounting officer / authority normally assigns members of its own professional staff to the assignment in different capacities. The contract between the accounting officer / authority and the consultant should give the details governing such staff, known as counterpart staff, as well as facilities that should be provided by the accounting officer / authority, such as housing, office space, secretarial support, utilities, materials and vehicles. The contract should indicate measures the consultant can take if some of the items cannot be provided or have to be withdrawn during the assignment and the compensation the consultant will receive in such a case.

5.14.6 *Conflict of Interest.* The consultant should not receive any remuneration in connection with the assignment except as provided in the contract. The consultant and its affiliates should not engage in consulting activities that conflict with the interests of the client under the contract, and should be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the assignment other than a continuation of the "Services" under the ongoing contract.

5.14.7 *Professional Liability.* The consultant is expected to carry out its assignment with due diligence and in accordance with prevailing standards of the profession. As the consultant's liability to the accounting officer / authority will be governed by the applicable

law, the contract need not deal with this matter unless the parties wish to limit this liability. If they do so, they should ensure that:

- there should be no such limitation in case of the consultant's gross negligence or willful misconduct;
- the consultant's liability to the accounting officer / authority in no case be limited to less than the total payments expected to be made under the consultant's contract, or the proceeds the consultant is entitled to receive under its insurance, whichever is higher; and
- any such limitation may deal only with the consultant's liability toward the client and not with the consultant's liability toward third parties.

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

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

5.15 Advertising of expected and outstanding procurement

5.15.1 To obtain expressions of interest, the accounting officer / authority should include a list of expected consulting assignments in a General Procurement Notice, which should be updated annually for all outstanding procurement. This should be advertised in the Government Tender Bulletin. When appropriate, accounting officers / authorities may also advertise these contracts in an international newspaper or a technical magazine, seeking "expressions of interest." In such cases the accounting officer / authority may also contact embassies and professional organizations. The information requested should be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. Sufficient time (not less than 30 days) should be provided for responses, before preparation of the short list.

5.16 Information to consultants (ITC)

5.16.1 Scheduling the Selection Process

5.16.1.1 Modifications of Contract

- 5.16.1.1.1 Any granting of a substantial extension of the stipulated time for performance of a contract, agreeing to any substantial modification of the scope of the services, substituting key staff, waiving the conditions of a contract, or making any changes in the contract that would in aggregate increase the original amount of the contract by more than 15 percent, will be subject to the approval of the accounting officer / authority or his / her delegate.
- 5.16.1.1.2 Whenever possible, the accounting officer / authority should use RFPs, which include the ITC, covering the majority of assignments. If under exceptional circumstances, the accounting officer / authority needs to amend the standard ITC, it should do so through the technical data sheet and not by amending the main text. The ITC should include adequate information on the following aspects of the assignment:
- (i) a very brief description of the assignment;
 - (ii) standard formats for the technical and financial proposals;
 - (iii) the names and contact information of officials to whom clarifications should be addressed and with whom the consultants' representative should meet, if necessary;
 - (iv) details of the selection procedure to be followed, including:
 - (a) a description of the two-stage process, if appropriate;
 - (b) a listing of the technical evaluation criteria and weights given to each criterion;
 - (c) the details of the financial evaluation;
 - (d) the relative weights for quality and cost in the case of QCBS;
 - (e) the minimum pass score for quality; and
 - (f) the details on the public opening of financial proposals;
 - (v) an estimate of the level of key staff inputs (in staff-months) required of the consultants; and indication of minimum experience, academic achievement, and so forth, expected of key staff or the total budget, if a given figure cannot be exceeded;
 - (vi) information on negotiations; and financial and other information that should be required of the selected firm during negotiation of the contract;
 - (vii) the deadline for submission of proposals;

- (viii) a statement that the firm and any of its affiliates should be disqualified from providing downstream goods, works, or services under the project if, in the accounting officer's / authority's judgment, such activities constitute a conflict of interest with the services provided under the assignment;
- (ix) the method in which the proposal should be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that should ensure that the technical evaluation is not influenced by price;
- (x) request that the invited firm acknowledges receipt of the RFP and informs the accounting officer / authority whether or not it will be submitting a proposal;
- (xi) the short list of consultants being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
- (xii) the period for which the consultants' proposals should be held valid (normally 60–90 days) and during which the consultants should undertake to maintain, without change, the proposed key staff, and should hold to both the rates and total price proposed; in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
- (xiii) the anticipated date on which the selected consultant should be expected to commence the assignment;
- (xiv) a statement indicating all prices should be VAT inclusive;
- (xv) if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the accounting officer / authority;
- (xvi) phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- (xvii) the procedure to handle clarifications about the information given in the RFP; and
- (xviii) any conditions for subcontracting part of the assignment.

5.16.2 Disbursements

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

5.16.3 Consultants' role

- 5.16.3.1 When consultants receive the RFP, and if they can meet the requirements of the TOR, and the commercial and contractual conditions, they should make the arrangements necessary to prepare a responsive proposal (for example, visiting the principal of the assignment, seeking associations, collecting documentation, setting up the preparation team). If the

consultants find in the RFP documents — especially in the selection procedure and evaluation criteria — any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek clarification from the accounting officer / authority, in writing, within the period specified in the RFP for seeking clarifications.

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

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

5.16.4 Confidentiality

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

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

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

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

5.16.5 Debriefing

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

6

Logistics management

6.1 Introduction

- 6.1.1 This aspect pertains, among others, to coding of items, setting of inventory levels, placing of orders, receiving and distribution, stores/warehouse management, expediting orders, transport management and vendor performance. This process should also activate the financial system to generate payments.
- 6.1.2 The aspect of coding, levels of required stocks, etc. should not be dealt with in isolation by the accounting officer/authority. It is the objective that throughout government the same coding and other support systems should be used. The National Treasury is currently in the process of developing a master plan for the integration and replacement and/or enhancement of the financial management systems to support the implementation of the integrated SCM system and the PFMA in general. The National Treasury will in future issue further guidelines in this regard.
- 6.1.3 Accounting officers/authorities should therefore refrain from procuring or implementing new stock control systems, codification systems, etc. and should approach the National Treasury prior to making any final decision in this regard. It is, however, recommended that for the interim, the current codification procedures be maintained.

6.2 Stock levels

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

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

6.3 Placing of orders

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

6.4 Order processing

6.4.1 Contract purchase

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

6.4.2 Price quotation/competitive bidding method

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

6.5 Vendor performance

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

- delivery periods;
- quality; and
- quantity.

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

6.6 Stores/warehouse management

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

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

6.6.3 *Storage:* Municipal, legal stipulations and safety regulations should be complied with when items are being stored, e.g. flammables, poison, explosives, ammunition, weapons, etc. An effective item location system should be utilized. Shelf-life of stock should be taken into consideration.

6.6.4 Stock and equipment should be stored properly and arranged in such a manner that the checking and handling thereof are being

facilitated and the possibility of damage, exposure, deterioration and perishing thereof be limited or eliminated.

- 6.6.5 A proper record of all the applicable assets, or groups of assets of the institution should be maintained by the accounting officer/authority.

6.7 Issuing/distribution of items

An issue voucher should be generated for all goods issued.

Consumable items should not be recorded after issue.

Non-consumable items should be recorded from receipt to disposal.

Transit officials should ensure that goods are delivered promptly to the end-user.

6.8 Stocktaking

Stocktaking of all assets in stock or on distribution shall be conducted at least once a year. This procedure entails the comparison of stock counted with official records of what should be in stock. Differences should then be accounted for.

6.9 Transport management

Trip authority should be properly authorised and correctly utilised.

Proper records should be maintained.

6.10 Accounts payable

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

6.11. Losses/surpluses

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

- all damages to and losses of assets be accounted for in accordance with Treasury Regulation 12.
- damages and losses be investigated with a view to possible recovery; and
- surpluses be taken on record as assets immediately.

7

Disposal management

7.1 Introduction

- 7.1.1 Disposal is the final process when an institution needs to do away with unserviceable, redundant or obsolete movable assets. It is recommended that the accounting officer/authority appoints a specific committee to deal with disposals, (if necessary at each regional/sub-office) to make recommendations with regard to the disposal of any asset. It is the responsibility of the accounting officer/authority or his/her delegate to consider the recommendation of the appointed committee.
- 7.1.2 If disposal of any asset is approved, any of the methods indicated below may, among others, be followed:
- Transfer to another institution in terms of section 42 of the PFMA;
 - Transfer to another institution at market related value;
 - Transfer to another institution free of charge (bearing in mind that the assets cannot be transferred to a sub-office, school, etc. without the approval of the Head Office of the institution under which jurisdiction such sub-office, school, etc. falls.);
 - Selling per price quotation, competitive bid or auction, whichever is most advantageous to the State, unless determined otherwise by the relevant treasury (requirements as prescribed in Regulations 5 and 6 of the Preferential Procurement Regulations, 2001, should be adhered to); or
 - Destroying such assets.
- 7.1.3 Should the sale of the movable assets not be at market related value, by price quotation, competitive bid or auction the reasons for the disposal in such a manner should be motivated, certified and recorded for auditing purposes by the accounting officer/authority or his/her delegate.
- 7.1.4 All assets transferred to another institution should be by means of an issue voucher.
- 7.1.5 Where computer equipment is to be disposed of, the relevant Department of Education should be approached to make arrangements for free transfer of such assets to educational institutions.

- 7.1.6 Firearms may not be sold or donated to any person or institution within or outside the RSA without the approval of the National Conventional Arms Control Committee. The contact address is:

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

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

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

7.2 Assets accruing to the state by operation of any law

When any money, property or rights accrue to the state by operation of law (*bona vacantia*), the relevant treasury may exercise all powers, authority and prerogatives, and fulfil any obligations on behalf of the state.

Supply Chain Performance

Here a monitoring process takes place, undertaking a retrospective analysis to determine whether the proper process is being followed and whether the desired objectives are achieved.

Issues to be reviewed are:

- Achievement of goals;
- Compliance to norms and standards;
- Savings generated;
- Stores efficiency;
- Cost variance per item;
- Contract breach etc;
- Cost efficiency of procurement process (i.e. the cost of the process itself);
- Whether supply chain objectives are consistent with Government's broader policy focus;
- That the material construction standards become increasingly aligned with those standards that support international best practice;
- That the principles of co-operative governance as expounded in the Constitution are observed; and
- That the reduction of regional economic disparities is promoted.

It is recommended that at completion stage of each project, an assessment of the supplier/service provider (including consultants where applicable) be undertaken and that this assessment should be available for future reference. Accounting officers/authorities should take cognisance of the fact that when suppliers do not perform according to their contractual obligations and the accounting officer/authority does not address him/her in this regard during the execution of the contract, such non-performance cannot be deemed as sound reason for passing over the bid of such supplier when adjudicating future bids.

Annexure A***GOVERNMENT PROCUREMENT*****GENERAL CONDITIONS OF CONTRACT****NOTES**

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
 - 1.12 ”Force majeure” means an event beyond the control of the supplier and

not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Written" or "in writing" means handwritten in ink or any form of

electronic or mechanical writing.

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| 2. Application | <p>2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.</p> <p>2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.</p> <p>2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.</p> |
| 3. General | <p>3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.</p> <p>3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za</p> |
| 4. Standards | <p>4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.</p> |
| 5. Use of contract documents and information; inspection. | <p>5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.</p> <p>5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.</p> <p>5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.</p> <p>5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.</p> |
| 6. Patent rights | <p>6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.</p> |
| 7. Performance | <p>7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance</p> |

security

security of the amount specified in SCC.

- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them

immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

- 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

- 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any

- warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
 - 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
 - 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
 - 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
 - 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
 - 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
 - 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily

available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or

countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.
- 28.1 Except in cases of criminal negligence or willful misconduct, and in

- the case of infringement pursuant to Clause 6;
- 28. Limitation of liability**
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
 - (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language**
- 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law**
- 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices**
- 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties**
- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.