



**ACCOUNTING OFFICERS
CHIEF FINANCIAL OFFICERS
HEADS OF PROCUREMENT**

GUIDELINE FOR BID COMMITTEE MEMBERS

**Supply Chain Management Office
Practice Note Number SCM-03 of 2005**

1 Context

The Public Finance Management Act, 1999 (PFMA), Act 1 of 1999 as amended by Act 29 of 1999, was approved by National Parliament to regulate financial management in the National Government and Provincial Governments, to ensure all revenue, expenditure, assets and liabilities of those Governments are managed efficiently and effectively and to provide for the responsibilities of persons entrusted with financial management in those Governments.

In terms of section 76(4)(c) of the Act the National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies, concerning the determining of a framework for an appropriate supply chain management system which is fair, equitable, transparent, competitive and cost-effective. However, according to section 38(1)(a)(iii) of the Act it is the responsibility of the accounting officer/authority of a department, trading entity or constitutional institution to have and maintain an appropriate procurement and supply system which is fair, equitable, transparent, competitive and cost-effective.

Where applicable, Provincial Treasuries must set complementary standards within the parameters as set by National Government. These standards may not jeopardize national objectives. A provincial treasury must also submit to the National Treasury such SCM information as the National Treasury may require.

Within this context this practice note is issued by Provincial Treasury to provide guidance and support to Provincial departments in the implementation of supply chain management.

2 Introduction

This document is intended as a guide to all Bid Adjudication, Bid Evaluation and Bid Specification Committee members. It is intended to comprise a detailed synopsis of the procurement process, in order that those members with limited procurement experience may fully appreciate the requirements of the tendering process, when evaluating and awarding contracts. In addition, members are advised to read this document together with the SCM Procedure Guideline, in order to ensure absolute understanding of SCM processes.

2.1 Legislative Framework

Procurement, as an element of Supply Chain Management (SCM), in the KwaZulu-Natal Province is guided by the provisions of the Constitution, PFMA, the KwaZulu-Natal SCM Transition Act, the latter's Regulations and each department's Procurement Delegations. KwaZulu-Natal is unique in that it has thus far been the only province which has elected to promulgate its own legislation. It should however be borne in mind that the parameters of the provincial legislation encompass the purported spirit of National Legislation.

2.1.1 Constitutional Framework

Section 217 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) provides the basis for procurement and determiners that:

- (a) 'When an organ of state in the national, provincial or local sphere of Government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.'
- (b) 217 (2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –
 - categories of preference in the allocation of contracts, and
 - the protection or advancement of persons or categories of persons, disadvantaged by unfair discrimination.
- (c) 217(3) National Legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented"
- (d) Section 215 – 219 of the Constitution further imposes a responsibility on National Treasury to introduce norms and standards within Government, thereby ensuring transparency and expenditure control measures.

2.1.2 Public Finance Management Act, 1999 (PFMA)

The PFMA was promulgated during 1999 and was intended to regulate financial management in National and Provincial government. In terms of Section 76(4)(c) of the Act, National Treasury may make regulations or make instructions applicable to all institutions to which this Act applies, concerning the determination of a framework for an appropriate supply chain management system which is fair, equitable, transparent, competitive and cost effective. The Act also specifically refers to the responsibility of the accounting officer of a department to

have and to maintain an appropriate procurement and supply system which is fair, equitable, transparent, competitive and cost effective. This being in line with the five pillars of procurement namely, value for money, open and effective competition, ethics and fair dealing, equity and accountability and transparency.

2.1.3 Preferential Procurement Policy Framework Act No. 5 of 2000 (PPPFA)

The Constitution provides that National Legislation must prescribe a framework within which the preference policy may be implemented. The objectives of the PPPFA are as follows:

- to address the inequalities of the past;
- to allow for more flexibility; and
- to eliminate fronting and corruption.

The PPPFA and its Regulations provide for a preferential procurement system which incorporates the 80/20 and 90/10 preference point systems.

2.1.4 Regulations in Terms of Section 76(4) of the PFMA: Framework for Supply Chain Management

The framework serves as a formal requirement to accounting officers to ensure the implementation of the supply chain management process as an integral part of their financial systems. It requires accounting officers to develop and implement an effective and efficient supply chain management system and to establish a separate supply chain management unit within the office of the chief financial office.

2.2 Provincial Legislation

2.2.1 KwaZulu-Natal SCM Transition Act

The KwaZulu-Natal Procurement Act and The KwaZulu-Natal Procurement Regulations were issued during 2001. The aim of promulgating provincial specific legislation was to allow for the unique requirements of the Province to be addressed. The Provincial Legislation did not, however, contravene any provisions of national legislation, but did in fact encapsulate the provisions of national legislation.

The KwaZulu-Natal Procurement Regulations introduced the preference point system used to achieve the socio economic objectives envisaged by the PPPFA.

This unique legislation has been repealed by the KwaZulu-Natal SCM Transition Act, with effect from 1 April 2005, in order to ensure a smooth transition from the old semi-centralized dispensation to the new fully de-centralised, but integrated SCM system.

2.2.2 KwaZulu-Natal departmental Procurement Delegations

The KwaZulu-Natal Procurement Delegations introduced a three level mechanism for the awarding of government contracts. It imposed a maximum delegation on departments for the awarding of contracts. Accounting Officers were obliged to refer all bids over and above R1 million to the Central Procurement Committee, which committee was administered by Provincial Treasury.

From 1 April 2005, a practice note will come into force that will serve as a guideline to departments, as to how they may structure their internal procurement delegations, bearing in mind their authority to procure up to an unlimited monetary value. These new delegations are framed on the outgoing delegations, but with the necessary amendments for use within the SCM system.

The procurement limits are as follows:

- R1 to R1000 – at least one verbal quotation must be obtained,
- > R1000 to R200,000 – spending is effected by way of quotations. In this instance departments are required to obtain at least three competitive quotations, and to accept the one scoring the highest points (if the preference point system is being applied), which is to specification.
- > R200,000 to an unlimited monetary value – departments are required to follow a process of publicly inviting bids by means of newspaper advertisements. Bids received are to be evaluated and awarded by departmental bid committees.

3 Implementation of Supply Chain Management

The Supply Chain Management (SCM) system has been introduced to national and provincial departments and trading entities, constitutional institutions and schedule 3A and 3C public entities. To this end, the Policy to Guide Uniformity in Procurement reform Processes in Government, the Regulations in terms of section 76(4)(c) of the PFMA: Framework for Supply Chain Management and other supporting practice notes and documentation were issued during December 2003, with a view to assist institutions with the implementation of the SCM process.

The KwaZulu-Natal Province, as part of its implementation process, has elected the 1st April 2005 as date for implementation of Supply Chain Management. In terms of the implementation process, and the procedural requirements inherent in SCM, most provisions of the KwaZulu-Natal Procurement Act and Regulations have become obsolete, with the Procurement Delegations issued by the MEC for Finance, having no force or effect whatsoever

In terms of section 36 and 49 of the PFMA, accountability now vests with the accounting officer/authority. Only the accounting officer may award bids with financial implications for that department. Goods and/or services must accordingly be procured by means of a competitive bidding process, which includes the procurement or disposal of fixed assets and the sale of movable assets. The acquisition and sale of land must also comply with

the prescripts of the KwaZulu-Natal Land Administration Act, 2003 (Act No. 3 of 2003). The accounting officer/authority is empowered to delegate decision making to other departmental officials; however accountability in respect of such delegations cannot be delegated.

4 Appointment of Bid Committees

The accounting officer/authority should appoint bid committees as indicated below:

4.1 Bid Specification Committee

This is the committee responsible for compiling of bid specifications. The specifications committee must also consider whether all the required quality assurance standards have been met with regard to the type of goods that is requested. The specifications should be compiled in an unbiased manner to allow all potential bidders to offer their goods and or services. The specification committee may be comprised of:-

- officials of a department (.e. the procurement section of the department requiring the goods or services),
- one or more suitably qualified specialist officials,
- or an external consultant under the direction of the official or component concerned.

It is recommended that specifications should be approved by the accounting officer or his/her delegates (the adjudication committee), prior to advertisement. This is done in order to ensure that the evaluation criteria are consistent with criteria stipulated in the bid documentation, which must be in harmony with departmental service delivery and other strategic objectives.

4.2 Bid Evaluation Committee

This committee is responsible for the evaluation of bids received, which include verification of;

- The capability/ability of the bidder to execute the contract, from a technical, managerial and financial perspective
- Whether the bid is to specification in respect of quality, functionality, dimensions, design, customer support, guarantee, etc.
- Whether a bid offers value for money
- Number of contracts awarded to bidder/s in contention during the preceding twelve months
- Allocation of preference points
- Representivity in the composition of the bidder and the possibility of fronting
- Success/failure in executing contracts awarded to a bidder previously
- Tax Clearance certificate issued by the SARS
- Compulsory registration on Provincial Treasury's Suppliers Database.

- National Industrial Participation programme requirements (only applicable to contracts in excess of R 10 million)

Bids are evaluated in accordance with the criteria specified in the bid documentation. According to the prescripts of section 2 of the PPPFA, bids must be evaluated in accordance with a preference point system. Any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a bid.

The evaluation committee should be cross-functional and should be comprised of supply chain practitioners and suitably skilled officials from other relevant disciplines. An evaluation and adjudication committee should consist of a **minimum of five** members.

The evaluation committee should evaluate all bids received and submit a report and recommendations regarding the award of the bids to the adjudication committee.

4.3 Bid Adjudication Committee

The adjudication committee must be cross-functional, of whom at least one member must be a supply chain practitioner. The chairperson of the committee should be the chief financial officer of the institution, or his/her delegate. The committee should be composed of at **least four members**, at appropriately senior level. The committee should consider the reports and recommendations made by the evaluation committee. The former committee must consider whether the recommendation made by the latter, sufficiently indicates that all relevant factors have been taken into account, and that the recommendation made represents a logical, justifiable conclusion, based on all relevant information at the evaluation committee's disposal. Each recommendation must be supported by clear, concise motivation of salient points. The accounting officer will determine the delegated powers exercised by the adjudication committee, which may be expected to make a recommendation to the accounting officer for final approval/ratification.

4.4 Co-Opted Members

An accounting officer may appoint any officer or employee or any person in the service of any organization represented on the Committee, as a co-opted member of the Committee to participate in committee deliberations on an ad-hoc basis, due to his/her expertise on a relevant topic related to a bid to be considered by the committee. A co-opted member has the same rights/powers/duties as committee members, excluding the right to vote on any matter under discussion. In addition, co-opted members are subject to the same rules of conduct as permanent committee members.

The evaluation and adjudication committees must be comprised of different members, to ensure that a transparent and objective review of the bid evaluation is undertaken. Members of the evaluation committee may present their reports/recommendations to the bid adjudication committee and clarify any uncertainties.

Such members may not have any voting power on the adjudication committee.

The bid specification, evaluation and adjudication processes must be within the ambit of section 217 of the Constitution, as well as the prescripts contained in the PPPFA and the Broad Based Black Economic Empowerment Act No. 53 of 2003 and their associated regulations.

An accounting officer may, by agreement of the relevant accounting officer/authority, utilize the services of any other institution's bid committees, if and when required.

An accounting officer may, where necessary, approve the formation of regional bid evaluation committees; however, such committees will be subject to the same rules and procedures applicable to head office committees. An accounting officer will determine the level of delegation to be awarded to the regional committees.

4.5 Quorum

A quorum is equal to 50% of the number of permanent (as opposed to co-opted) committee members, plus 1 member.

5 Delegations

Section 44 and 56 of the PFMA empower the accounting officer/authority of an institution to delegate decision making powers to officials. The following should apply to the acquisition of goods and/or services and the disposal and letting of assets:

- All delegations must be in writing to the individual officials concerned;
- The accounting officer should decide whether he/she delegates decision making powers regarding the final award of bids to the adjudication committee and what the threshold values in this regard should be;
- Should the accounting officer resolve that the adjudication committee award bids only up to a specified threshold value, bids above the threshold value should be referred to the accounting officer for finality;
- Should the accounting officer or the adjudication committee decide to award a bid to a bidder other than the one recommended by the evaluation or adjudication committee respectively, the accounting officer should, within seven days, in writing, notify the Auditor General and Provincial Treasury of the reasons for deviating from the recommendations.

The accounting officer may, where necessary, procure the services of advisors to assist in the drafting of appropriate tender specifications. These services should be obtained through a competitive bidding process. No advisor may, however, form part of the final decision-making process regarding the award of bids, as this will counter the principle of vesting accountability with the accounting officer. The accounting officer

cannot delegate decision making authority to a person other than an official.

It is the responsibility of the accounting officer to ensure that all committee members receive suitable training with respect to the procedural requirements for the successful execution of their functions.

6 Rules of Conduct for Members

Two factors determine the success of a meeting:

- Knowledge and application of the correct procedure; and
- Courteous behaviour of all members.

A member is obliged to observe the following:

- A member should promote the common goal of the committee;
- Outside of official meetings, there may be no lobbying of votes;
- Information and documentation are confidential;
- Loyalty of members;
- A decision is final and not open for discussion unless the member can produce additional information which was not available at the time a decision was taken;
- A register should be maintained of members attendance at meetings; and
- A member shall declare his/her interest before a meeting vis-à-vis a matter serving before the committee, and where necessary recuse him/herself during discussion of the submission, which process should be duly noted in the minutes. No discussion by the member concerned will be allowed prior to or after the serving of the memorandum and such a member may not retain that specific memorandum.

7 Procedural Requirements

- A meeting of the Committee is called by the Chairperson of the Committee, or his/her delegate.
- It must be ensured that a quorum of members (50%+1) is present, before proceedings commence, in order to ensure that valid decisions are taken.
- The agenda of a committee meeting is determined by the Chairperson and once determined, no deviation will be allowed without the consent of the Committee.
- The Chairperson must ensure that every meeting is minuted and that the minutes are an accurate reflection of the proceedings. Awards contrary to the information contained in the minutes, will require detailed written explanations.
- The Chairperson must, with the approval of the Committee, confirm all past minutes and attach his/her signature thereto.

- Minutes must be kept in a secure place, to facilitate future reference and auditing thereof.

8 Effective Date

This practice note takes effect from

9 Conclusion

Members of Committees should consider this document as a guide for the efficient execution of their functions. Since the implementation date for Supply Chain Management for the Province has been established as the 1st April 2005, it is imperative that members, in addition to this terms of reference, ensure that additional knowledge is acquired with respect to other theoretical aspects of SCM.

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