

**TO : ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS
AND CONSTITUTIONAL INSTITUTIONS**

**: ACCOUNTING AUTHORITIES OF ALL SCHEDULE 3A AND 3C
PUBLIC ENTITIES**

: HEAD OFFICIALS OF ALL PROVINCIAL TREASURIES

**NATIONAL TREASURY INSTRUCTION NOTE ON ENHANCING COMPLIANCE
MONITORING AND IMPROVING TRANSPARENCY AND ACCOUNTABILITY IN
SUPPLY CHAIN MANAGEMENT**

1 PURPOSE

- 1.1 This instruction note aims to improve accountability and provide supply chain management directives to accounting officers of departments and constitutional institutions and to accounting authorities of public entities listed in Schedules 3A and 3C to the Public Finance Management Act (PFMA), 1999 to ensure value for money in the procurement of goods, works and/or services. This instruction note also aims to improve transparency and combat fraud in institutions.
- 1.2 Departments, constitutional institutions and Schedule 3A and 3C public entities shall hereafter be referred to as institutions in this instruction note.

2 BACKGROUND

- 2.1 The Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) promotes economy, efficiency, effectiveness and transparency in the use of state resources and one of its key objectives is to eliminate waste and corruption in the use of public assets.
- 2.2 It has, however, come to light that improper supply chain management practices at institutions are seriously undermining sound financial management, weakening the

spirit and ethos of the PFMA and ultimately eroding scarce resources that are intended to improve service delivery. These improper practices include the circumvention of official competitive bidding processes in order to, among others, enter into contractual commitments or incur expenditure at the end of a financial year so that the surrender of unspent voted funds may be avoided.

- 2.3 It is therefore imperative that accounting officers and accounting authorities establish mechanisms to urgently identify the risks and weaknesses facing their respective institution's supply chain management environments with the aim of developing strategies to mitigate against these risks and weaknesses.
- 2.4 The identified risks and weaknesses also provide valuable information to the relevant treasuries to introduce support interventions and, if needed, to issue guidelines that would enhance supply chain management compliance.
- 2.5 It must be emphasized that the relevant treasuries are committed to assisting departments, constitutional institutions and public entities to improve the status of their financial management.
- 2.6 Government is unswerving in its stance to combat and prevent corruption to the extent that tackling corruption effectively has been elevated as an output in one of the twelve (12) outcomes that Government has agreed on as a key focus of work.
- 2.7 The Minister of Finance has therefore established a Multi-Agency Working Group (MAWG) to coordinate and investigate corruption related supply chain management practices.
- 2.8 The measures in paragraph 3 below are therefore intended to provide accounting officers and accounting authorities with directives to improve accountability and transparency and to ensure value for money in the procurement of goods, works and/or services.

3 MEASURES TO ENHANCE COMPLIANCE MONITORING AND IMPROVE ACCOUNTABILITY AND TRANSPARENCY

3.1 Submission of Procurement Plans in respect of advertised competitive bids (Demand Management)

- 3.1.1. Accounting officers of departments and constitutional institutions must submit to the relevant treasury by 30 April of each year, a procurement plan containing all planned procurement for the financial year in respect of the procurement of goods, works and/or services which exceed R500 000 (all applicable taxes included). This procurement plan must be approved by the accounting officer or his or her delegate prior to its submission. For the 2011/2012 financial year, the said plan must be submitted to the relevant treasury by not later than 31 August 2011.

- 3.1.2 Accounting Authorities of public entities listed in Schedules 3A and 3C to the Public Finance Management Act, 1999 (PFMA) must submit the procurement plans referred to in paragraphs 3.1.1 to the relevant treasury through their parent departments within the same timeline.
- 3.1.3 Accounting officers of national departments, constitutional institutions and Schedule 3A public entities are required to forward the procurement plans required in paragraph 3.1.1 to the National Treasury's Chief Directorate: Supply Chain Management: Norms and Standards for monitoring purposes.
- 3.1.4 A provincial treasury may issue directives regarding where provincial departments and Schedule 3C public entities should forward their procurement plans to, within the relevant treasury, for monitoring. In cases where the relevant treasury facilitates the arrangement of contracts, a clear segregation of duties must be established between the Unit within the relevant treasury that facilitates the arrangement of the contracts and the Unit that monitors the procurement plans.
- 3.1.5 The relevant information must be furnished in the format contained in the Procurement Plan Template enclosed as Annexure "A". The relevant treasury may customize and utilize the template with minimum changes that are necessary to address the province's specific issues. The template should, however, cover at least the fields reflected in Annexure "A".
- 3.2 **Publication of names of bidders in respect of advertised competitive bids [above the threshold value of R500 000 (all applicable taxes included)]**
- 3.2.1 Within ten (10) working days after the closure of any advertised competitive bid, institutions must publish on its website the names of all bidders that submitted bids in relation to that particular advertisement. Where practical, institutions must also publish the total price and the preferences claimed by the respective bidders. The information should remain on the website for at least thirty (30) days.
- 3.3 **Verifying the names and identity numbers of directors / trustees / shareholders of companies, enterprises, closed corporations and trusts against the relevant staff structure.**
- 3.3.1 The Standard Bid Document (SBD 4) "*Declaration of Interest*" has been augmented to compel bidders to submit the names of their directors / trustees / shareholders, their individual identity numbers, personal tax reference numbers and state¹ employee / persal numbers as part of their bid (includes written price quotations, advertised competitive bids, limited bids and proposals) submissions.

¹"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

3.3.2 Accounting officers and accounting authorities are required to utilize the attached revised SBD 4 when inviting bids and to verify the identity numbers of the directors / trustees / shareholders of the preferred bidder(s) against the institution's staff establishment in order to determine whether or not any of the directors / trustees / shareholders are in the service of the state or officials employed by the specific institution. Such verification must take place during the bid evaluation process. If a bidder / director / trustee / shareholder declares that he / she is an employee of the state and furnishes, where applicable, proof that appropriate authority exists for him or her to undertake remunerative work outside his or her employment in the public service, such a bid must be evaluated in accordance with normal procurement processes. If a bidder / director / trustee / shareholder is found to be an official who is in the service of the state and has failed to make such a declaration in the bid documents, the bidder may be disqualified and the matter must be dealt with as financial misconduct and the relevant accounting officer / authority must take the necessary disciplinary steps against the official concerned.

3.3.3 The revised SBD 4 attached to this instruction note replaces the SBD 4 issued in terms of Practice Note Number 7 of 2009/2010 dated 2 October 2009.

3.3.4 In addition to the above, accounting officers and accounting authorities must ensure that:

- (a) the preferred bidders tax matters are in order;
- (b) the names of the preferred bidders and their directors / trustees / shareholders are not listed on the Register for Tender Defaulters and the List of Restricted Suppliers; and
- (c) a due diligence process is conducted to determine whether the preferred bidders have the capability and ability to execute the contract.

3.4 **Information on bids in excess of R10 million (including all applicable taxes)**

3.4.1 The following information must be submitted to the relevant treasury **prior** to its advertisement in the Government Tender Bulletin of any bids in excess of R10 million (all applicable taxes included):

- (a) Proof that budgetary provision exists for procurement of the goods and/or services;
- (b) Any ancillary budgetary implications related to the bid, for example, if the project is for the building of a school, does budgetary provision exist for the

remuneration of teachers, the transport of children and municipal taxes and services.; and

- (c) Any multi-year budgetary implications, for example, if a project will take more than one financial year, the estimated expenditure per year.

3.4.2 The relevant treasury must perform the following for all Information Communication Technology (ICT) bids that exceed R 10 million (all applicable taxes included):

- (a) Confirm adherence to Treasury Regulation 17.3.1 which requires that departments and constitutional institutions may not amend or institute new computerized systems that will affect financial administration without the prior written approval of the National Treasury;
- (b) Confirm that sufficient funds are available on the institution's approved budget;
- (c) Determine whether the acquisition is through a finance or operating lease and whether the lease complies with the relevant prescripts; and
- (d) Confirm (in writing), after consulting with SITA, that there is no duplication of the same or any similar ICT and/or licencing contracts in order to prevent fruitless and wasteful expenditure.

3.4.3 Contracts above the value of R10 million (all applicable taxes included) may only be awarded with the concurrence of the relevant treasury. The relevant treasury must ensure that the contract is awarded within the budgetary provision and aligned with the targets/outputs indicated in the strategic plan of the institution.

3.4.4 Requirements may not be deliberately split into parts or items of lesser value merely to avoid the information being submitted to the relevant treasury prior to the publication of the bid invitation in the Government Tender Bulletin.

3.4.5 National departments, constitutional institutions and schedule 3 A public entities must forward the information prescribed in paragraph 3.4.1 to National Treasury's Budget Analyst responsible for their budgetary matters. Schedule 3A public entities must forward such information through their parent departments.

3.4.6 A provincial treasury may issue directives regarding where provincial departments and Schedule 3 C public entities should forward the information prescribed in paragraph 3.4.1 to, within the relevant treasury.

3.4.7 The relevant treasuries are empowered to decrease but not increase the threshold value of R10 million.

3.4.8 The relevant treasury must respond to the relevant accounting officer / authority within seven (7) working days after receipt of the information. In exceptional cases, the relevant treasury and the relevant accounting officer / authority may agree on a suitable period for the submission of responses after taking into

consideration among others service delivery. Such a period may, however, not exceed fifteen (15) working days.

3.5 Auditing of bidding processes for bids in excess of R 10 million (all applicable taxes included)

3.5.1 The competitive bidding process for all bids in excess of R10 million must be audited to ensure its compliance with the prescribed norms and standards. The auditing process may be performed by the internal or external auditors and the audit is aimed at minimizing the risk of possible fraud, corruption and/or litigation.

3.5.2 A certificate must be issued by the auditors to the effect that all prescribed requirements have been adhered to before the contract is awarded.

3.5.3 The relevant treasuries are empowered to decrease but not increase this threshold.

3.6 Legal vetting of formal contracts or service level agreements

3.6.1 Prior to signing a formal contract or service level agreement with a contractor, accounting officers and authorities must ensure that such contracts or agreements are legally sound to avoid potential litigation and to minimize possible fraud and corruption. This must include legal vetting by at least the Legal Services of the institution.

3.6.2 Such contracts or agreements must be actively managed in order to ensure that both the institutions and the contractors meet their respective obligations.

3.7 Publication of awards

3.7.1 Treasury Regulation 16A.6.3(d) prescribes that the award of bids must be published in the *Government Tender Bulletin* and other media by means of which the bids were advertised.

3.7.2 The following information on the successful bids must be made available on the institution's website and in the *Government Tender Bulletin* and also in the media where the bid was originally advertised:

- (a) Contract numbers and description;
- (b) Names of the successful bidder(s) and preferences claimed;
- (c) The contract price(s); and if possible
- (d) Brand names and dates for completion of contracts.

Records of such publications must be retained for audit purposes.

3.7.3 For bids relating to the construction industry, the prescripts of the Construction Industry Development Board (CIDB) require that:

- (a) Bids be advertised in the CIDB iTender System; and
- (b) Bids be registered on the CIDB Register of Projects (RoP) on award and progressively updated until project completion for the promotion, assessment and evaluation of best practices on construction projects.

3.8 Placing of orders for payment in another financial year

- 3.8.1 Accounting officers and accounting authorities are prohibited from placing orders for goods and/or services from suppliers, receiving such goods and/or services and arranging with suppliers for such goods and services to be invoiced and paid for in another financial year.
- 3.8.2 The prohibition in paragraph 3.8.1 does not apply to multi-year contracts.

3.9 Management of expansions or variation of orders against the original contract

- 3.9.1 It is recognized that, in exceptional cases, an accounting officer or accounting authority may deem it necessary to expand or vary orders against the original contract.
- 3.9.2 The absence of a prescribed threshold for the expansion or variation of orders against the original contract has, however, led to gross abuse of the current SCM system.
- 3.9.3 In order to mitigate against such practices, accounting officers and authorities are directed that, from the date of this instruction note taking effect, contracts may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services and 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. The relevant treasuries may, however, decrease these thresholds for institutions reporting to them.
- 3.9.4 Any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist.
- 3.9.5 The contents of paragraph 3.9.3 are not applicable to transversal term contracts facilitated by the relevant treasuries and specific term contracts as in such contracts, orders are placed as and when commodities are required and that at the time of awarding the contract, required quantities are not known.

3.10 **Payment within 30 days**

- 3.10.1 Accounting officers and authorities are once again reminded of the seriousness of late payments or non-payment of accounts. To this end, Cabinet resolved at its meeting on 2 December 2009 that institutions must put in place mechanisms to ensure that all amounts owing are paid within 30 days from the date of invoice, settlement or court judgment.
- 3.10.2 Treasury Regulation 8.2.3 states that unless otherwise determined in the contract or other agreement, all payments due to creditors must be settled within 30 days from receipt of an invoice or, in the case of civil claims, from the date of settlement or court judgment. This implies that amounts owing must be paid within 30 days from receipt of invoice if the goods, works or services were delivered to the satisfaction of the accounting officer / authority. Payment outside the prescribed period of 30 days from receipt of invoice is regarded as a violation of Treasury Regulation 8.2.3 and may be reported as such by the Auditor-General as part of its audit function.
- 3.10.3 Although sub-paragraph 3.10.2 above is not applicable to public entities listed in Schedules 3A and 3C to the PFMA, accounting authorities must ensure that all payments for goods, works or services due to creditors are settled in terms of the agreement entered into with service providers.

3.11 **Monitoring / assistance on the award of contracts by relevant treasuries**

- 3.11.1 The relevant treasuries may assist institutions with the invitation, evaluation and award of contracts and may attend the relevant institution's Bid Specification, Evaluation or Adjudication Committee meetings in an advisory capacity. Institutions are therefore required to timeously submit logistical details of at least all their Bid Adjudication Committee meetings to the relevant treasury, should they require assistance.

4. APPLICABILITY

- 4.1 This instruction note applies to all national and provincial departments, constitutional institutions and Schedule 3A and 3C public entities.

5. AUDITING OF TREASURY INSTRUCTION NOTE

- 5.1 A copy of this Treasury Instruction Note will be forwarded to the Auditor-General to ensure that its contents are included in their audit scope.

6. DISSEMINATION OF INFORMATION CONTAINED IN THIS TREASURY INSTRUCTION NOTE

- 6.1 Heads of provincial treasuries are requested to bring the contents of this instruction note to the attention of accounting officers of their provincial departments.
- 6.2 Accounting officers of national and provincial departments are requested to bring the contents of this instruction note to the attention of accounting authorities of schedule 3A and 3C public entities reporting to their respective executive authorities.

7. AUTHORITY FOR THIS INSTRUCTION NOTE AND EFFECTIVE DATE

- 7.1 This instruction note is issued in terms of section 76(4)(c) of the PFMA and takes effect from the date of issue.

8. CONTACT INFORMATION

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