

PROVINSIALE TESOURIE • PROVINCIAL TREASURY •  
UNONDYEBO WEPHONDO



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Name: N. Ebrahim / W Phaswane

**TREASURY PROCUREMENT CIRCULAR: PRACTICE NOTES NO. 15 /2007**

THE PREMIER

THE MINISTER OF AGRICULTURE  
THE MINISTER OF COMMUNITY SAFETY  
THE MINISTER OF CULTURAL AFFAIRS, SPORT AND RECREATION  
THE MINISTER OF EDUCATION  
THE MINISTER OF ENVIRONMENT, PLANNING AND ECONOMIC DEVELOPMENT  
THE MINISTER OF FINANCE AND TOURISM  
THE MINISTER OF HEALTH  
THE MINISTER OF LOCAL GOVERNMENT AND HOUSING  
THE MINISTER OF SOCIAL SERVICES AND POVERTY ALLEVIATION  
THE MINISTER OF TRANSPORT AND PUBLIC WORKS

For information

ALL MEMBERS OF PARLIAMENT (EXCLUDING PREMIER AND MINISTERS)

THE SPEAKER: PROVINCIAL PARLIAMENT  
THE DEPUTY SPEAKER: PROVINCIAL PARLIAMENT

THE ACCOUNTING OFFICER: VOTE 1: PREMIER (DR GA LAWRENCE)  
THE ACCOUNTING OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MR R HINDLEY) (ACTING)  
THE ACCOUNTING OFFICER: VOTE 3: PROVINCIAL TREASURY (DR JC STEGMANN)  
THE ACCOUNTING OFFICER: VOTE 4: COMMUNITY SAFETY (MR O VALLEY) (ACTING)  
THE ACCOUNTING OFFICER: VOTE 5: EDUCATION (MR RB SWARTZ)  
THE ACCOUNTING OFFICER: VOTE 6: HEALTH (PROF KG HOUSEHAM)  
THE ACCOUNTING OFFICER: VOTE 7: SOCIAL SERVICES AND POVERTY ALLEVIATION (MS VL PETERSEN)  
THE ACCOUNTING OFFICER: VOTE 8: LOCAL GOVERNMENT AND HOUSING (MS S MAJLET)  
THE ACCOUNTING OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR T TOLMAY)  
THE ACCOUNTING OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MR T MANYATHI)  
THE ACCOUNTING OFFICER: VOTE 11: AGRICULTURE (MS J ISAACS) (ACTING)  
THE ACCOUNTING OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MR B ROBERTS)  
THE ACCOUNTING OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (DR L PLATZKY) (ACTING)

THE CHIEF FINANCIAL OFFICER: VOTE 1: PREMIER (MR H ARENDSE)  
THE CHIEF FINANCIAL OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MS A SMIT) (ACTING)  
THE CHIEF FINANCIAL OFFICER: VOTE 3: PROVINCIAL TREASURY (MR A GILDENHUYS)  
THE CHIEF FINANCIAL OFFICER: VOTE 4: COMMUNITY SAFETY (MR D ODENDAAL)  
THE CHIEF FINANCIAL OFFICER: VOTE 5: EDUCATION (MR L ELY)  
THE CHIEF FINANCIAL OFFICER: VOTE 6: HEALTH (MR A VAN NIEKERK)  
THE CHIEF FINANCIAL OFFICER: VOTE 7: SOCIAL SERVICES AND POVERTY ALLEVIATION (MR JO SMITH)  
THE CHIEF FINANCIAL OFFICER: VOTE 8: LOCAL GOVERNMENT AND HOUSING (MR PAE BREDEKAMP)  
THE CHIEF FINANCIAL OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR AA GAFFOOR)  
THE CHIEF FINANCIAL OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MR CR ISMAY)  
THE CHIEF FINANCIAL OFFICER: VOTE 11: AGRICULTURE (MR F HUYSAMER)  
THE CHIEF FINANCIAL OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MS M ABRAHAMS)  
THE CHIEF FINANCIAL OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MR A ASSIM)

THE HEAD OFFICIAL: PROVINCIAL TREASURY (DR JC STEGMANN)  
THE HEAD: RESOURCE MANAGEMENT (MS SMA ROBINSON)  
THE HEAD: ASSET MANAGEMENT (MR TD PILLAY)  
THE HEAD: FINANCIAL GOVERNANCE (MR TC ARENDSE)  
THE HEAD: PUBLIC FINANCE (MR H MALILA)  
THE CHIEF FINANCIAL OFFICER (MR A GILDENHUYS)  
THE SENIOR MANAGER: HUMAN RESOURCE MANAGEMENT (MS C PAUL)  
THE SENIOR MANAGER: ACCOUNTING (MR A REDDY)  
THE SENIOR MANAGER: NORMATIVE FINANCIAL MANAGEMENT (MS L MTUNZI)  
THE SENIOR MANAGER: RISK MANAGEMENT AND GOVERNANCE SYSTEMS (MR L NENE)  
THE CHIEF AUDIT EXECUTIVE (MS R JAFTHA)  
THE SENIOR MANAGER: ECONOMIC ANALYSIS (MS B BOQWANA)  
THE SENIOR MANAGER: FISCAL POLICY (MR A PHILLIPS)  
THE SENIOR MANAGER: BUDGET OFFICE (MS AJ HICKEY) (ACTING)  
THE SENIOR MANAGER: PROVINCIAL GOVERNMENT FINANCE (MR DG BASSON)  
THE SENIOR MANAGER: LOCAL GOVERNMENT FINANCE (MR G PAULSE)  
THE SENIOR MANAGER: PHYSICAL (FIXED) ASSETS AND PPPs (MR NB LANGENHOVEN)  
THE SENIOR MANAGER: SUPPLY CHAIN MANAGEMENT (MR L MUNSAMY)  
THE SENIOR MANAGER: SUPPORTING AND INTERLINKED FINANCIAL SYSTEMS (MR A BASTIAANSE)  
THE HEAD: OFFICE OF THE MINISTRY (MS N MGAYIYA)

THE PROVINCIAL AUDITOR

MASTER RECORDS OFFICIAL: FINANCIAL MANAGEMENT

**PROHIBITION OF SET ASIDES, THE USE OF COST ESTIMATES AS BENCHMARKS AND MEASURABLES ATTACHED TO SPECIFIC GOALS FOR WHICH PREFERENCE POINTS ARE AWARDED**

**1. PURPOSE**

1.1 The purpose of this document is to request Accounting Officers / Authorities and Chief Financial Officers to note National Treasury's concerns as indicated in Practice Note Number SCM 2 Of 2006 (attached herewith as Appendix A) with regards to:

1.1.1 Set asides

-when certain categories of bidders are excluded from bidding for government contracts.

1.1.2 The use of cost estimates as benchmarks

-for example, incorrectly evaluating bids by using cost estimates as a benchmark to regard a bid as unacceptable or non-responsive.

1.1.3 Measurables attached to specific goals for which preference points are awarded

-any goals for which points are awarded must be measurable and clearly specified in the invitation to submit a bid.

**2. REQUEST**

2.1 Accounting Officers / Accounting Authorities are requested to note and adhere to the requirements of National Treasury Practice Note Number SCM 2 of 2006 and those indicated above. The above-mentioned requirements are effective with immediate effect.

2.2 Accounting Officers / Accounting Authorities are also requested to share this information with the Public Entities linked to their Departments.

  
**N. Ebrahim**

**Acting Senior Manager: Movable Asset Management**

**DATE:** 23/05/2007



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**TO ALL  
ACCOUNTING OFFICERS: NATIONAL DEPARTMENTS  
HEADS: PROVINCIAL TREASURIES  
CHIEF FINANCIAL OFFICERS: PROVINCIAL DEPARTMENTS  
CHIEF EXECUTIVE OFFICERS / CHIEF FINANCIAL OFFICERS:  
CONSTITUTIONAL INSTITUTIONS / SCHEDULE 3A AND 3C PUBLIC ENTITIES**

**Supply Chain Management Office  
Practice Note Number SCM 2 of 2006**

- 1 PROHIBITION OF SET-ASIDES AND THE USE OF COST ESTIMATES AS BENCHMARKS**
- 2 MEASURABLES ATTACHED TO SPECIFIC GOALS FOR WHICH PREFERENCE POINTS ARE AWARDED**

This practice note is applicable to all national and provincial departments, constitutional institutions and public entities as defined in schedule 3A and 3C of the Public Finance Management Act (PFMA). All accounting officers of national departments and heads of provincial treasuries are required to disseminate the contents of this practice note to all chief financial officers of departments and public entities that fall under their jurisdiction.

- 1 PROHIBITION OF SET-ASIDES AND THE USE OF COST ESTIMATES AS BENCHMARKS**

**1.1 Set-Asides**

- 1.1.1** The National Treasury has received several complaints that departments / institutions are inviting bids with specific conditions that promote set-asides or exclude certain categories of potential bidders from bidding for government contracts.
- 1.1.2** Section 217 (2) of the Constitution of the Republic of South Africa allows for organs of state or institutions to implement a procurement policy that provides for categories of preference in the allocation of contracts and the protection or advancement of persons or categories or persons, disadvantaged by unfair discrimination.

- 1.1.3 Section 217 (3) of the Constitution makes provision for national legislation to prescribe a framework within which this policy must be implemented.
- 1.1.4 The national legislation contemplated in section 217 (3) of the Constitution was adopted in the form of the Preferential Procurement Policy Framework Act (PPPFA), Act No. 5 of 2000.
- 1.1.5 The preferences contemplated in the Constitution and PPPFA provide for the protection or advancement of categories of persons, disadvantaged by unfair discrimination without prohibiting any category of bidders from bidding for government contracts.
- 1.1.6 The following is an abstract of the opinion given by the Office of the Chief State Law Adviser regarding the interpretation of the prescripts of the PPPFA *vis-à-vis* section 217 of the Constitution:

"In our view, there is nothing in the PPPFA that permits an organ of state to exclude any person or category of persons to bid for a tender contract. The preferential procurement policy is aimed thereat to give HDIs, according to a preferential points system, an advantage above other bidders to redress historical imbalances and increase opportunities for those previously prevented from participating in the country's mainstream economy. This is as far as the policy goes. Since the HDIs factor has already been taken into account as a specific goal, it could not be regarded as objective criteria, or threshold criteria, in awarding a tender. As explained above, this would mean that HDIs would compete against each other as a category bidders, with no need to award preferential points if there are no other categories of person (white bidders) bidding for the same tender. A specific condition in the tender contract disallowing a certain category (i.e. whites) of the public not to bid for such a contract appears to be contrary to the principles of fairness and equitability, as well as the principles of competitiveness and cost-effectiveness. We are therefore of the opinion that it will be unconstitutional to exclude "white tenders" to bid in a tender process."

- 1.1.7 Accounting officers / authorities are, therefore, required to give all potential suppliers an opportunity to bid for government contracts. The practice of issuing bid documents that contain conditions that promote set-asides or exclude certain categories of potential bidders from bidding for government contracts must be refrained from.

## 1.2 Use of Cost Estimates as Benchmarks

- 1.2.1 It has also come to the fore that departments / institutions are incorrectly evaluating bids by using cost estimates as a benchmark to regard bids as unacceptable or non-responsive.
- 1.2.2 The PPPFA prescribes that the lowest acceptable bid must receive 80 or 90 points for price. A bid is regarded as acceptable if:
- (a) it complies in all respect with the specification and conditions of the bid;

- (b) the bidder completed and signed all the prescribed bid forms to enable the principal to evaluate the submitted bid;
- (c) the bidder submitted the required tax clearance certificate and other clearance / registration forms as prescribed by various acts and / or in the bid documentation; and
- (d) the bidder has the necessary capacity and ability to execute the contract.

1.2.3 Bids should only be evaluated in accordance with the evaluation criteria stipulated in the bid documentation. When any bid is passed over or regarded as non-responsive, the reasons for passing over such bid must be defensible in a court of law. Examples in this regard may include negative banking reports, non-submission of tax clearance certificates, not having the necessary capacity and/or capability and being listed on the Register for Tender Defaulters.

1.2.4 Deviation by more than a predetermined percentage from the cost estimates of the project / commodity cannot be regarded as a justifiable reason for the rejection of a bid and has, therefore, not been approved by the National Treasury as an evaluation norm or criteria.

## 2 MEASURABLES ATTACHED TO SPECIFIC GOALS FOR WHICH PREFERENCE POINTS ARE AWARDED

2.1 It has also come to light that departments / institutions are inviting bids without clearly indicating in the bid documentation the goals to be promoted and the applicable measurables for the promotion of such goals.

2.2 The PPPFA prescribes that any goals for which points are awarded must be measurable and clearly specified in the invitation to submit a bid. Treasury Regulation 16A6.3 (b) furthermore prescribes that an accounting officer / authority must ensure that bid documentation include the evaluation and adjudication criteria, including the criteria prescribed in terms of the PPPFA and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

2.3 To this end, accounting officers / authorities are required to ensure that when bids are invited, the specific goals to be promoted, and the preference points allocated together with measurables for the promotion of each goal must form part of the bid documentation. These measurables must clearly indicate how the bidder will be awarded a score out of the maximum points allocated.

  
C C W KRUGER  
DEPUTY DIRECTOR-GENERAL: SPECIALIST FUNCTIONS

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