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**[Name of department]**

**PRO FORMA ACCOUNTING OFFICER'S  
SYSTEM FOR  
SUPPLY CHAIN AND MOVABLE ASSET  
MANAGEMENT**

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## GLOSSARY

AO:	Accounting Officer
AOS:	Accounting Officer System for Supply Chain and Moveable Asset Management
BAC:	Bid Adjudication Committee
BAS:	Basic Accounting System
B-BBEE:	Broad-Based Black Economic Empowerment
B-BBEEA:	Broad-Based Black Economic Empowerment Act
BEC:	Bid Evaluation Committee
BOM:	Bill of Materials
BSC:	Bid Specification Committee
CA:	Competition Act
CFO:	Chief Financial Officer
CIDB:	Construction Industry Development Board
CIDBA:	Construction Industry Development Board Act
Constitution:	Constitution of the Republic of South Africa, 1996
CSD:	Central Supplier Database
DC:	Disposal Committee
ePS:	E-Procurement Solution
HOD:	Head of department
ISO:	International Standards Organisation
JIT:	Just In Time
LOGIS:	Logistical Information System
MRP:	Material Requirements Planning
MTEF:	Medium Term Expenditure Framework
NTI:	National Treasury Instructions, Circulars and Practice Notes
NTR:	National Treasury Regulations
PAJA:	Promotion of Administrative Justice Act
PCCAA:	Prevention and Combatting of Corrupt Activities Act
PDA:	Protected Disclosures Act



PFMA:	Public Finance Management Act
POPIA:	Protection of Personal Information Act
PPPFA:	Preferential Procurement Policy Framework Act
PPR 2017:	Preferential Procurement Regulations, 2017
PT:	Provincial Treasury
PTC:	Provincial Treasury Circulars
PTI 2009:	Provincial Treasury Instructions
PTI 2012:	Provincial Treasury Instructions Amendment
PTI 2019:	Provincial Treasury Instructions Amendment
QC:	Quotation Committee
RFI:	Request for Information
RFP:	Request for Proposal
SABS:	South African Bureau of Standards South Africa
SANAS:	South African National Accreditation System
SAPO:	South African Postal Service
SARB:	South African Reserve Bank
SARS:	South African Revenue Service
SCM:	Supply Chain Management
SCOA:	Standard Chart of Accounts
SITA:	State Information Technology Agency
The Agency:	State Information Technology Act
WCG:	Western Cape Government
WCBD:	Western Cape Bid Document

## FOREWORD

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

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

The introduction of this section revolutionised procurement. The old tender boards were phased out. In their place, the AO became the sole authority responsible for supply chain management for a department.

Hence, this document, called the Accounting Officer System for Supply Chain and Moveable Asset Management ("AOS"), was developed.<sup>1</sup> Its purpose is to:

- set out the day-to-day procedural and administrative arrangements within a department;
- address the bespoke business requirements within each department, tailoring the procurement and provisioning processes to meet the needs of departments;
- enable the AO both to use the initiative and creativity of their line functionaries and establish best practices within the prescripts that lead to excellent service delivery;
  - (a) effectively communicate supply chain management principles to everyone in the department;
  - (b) present a complete picture of the relevance of each core function and process within the AOS; and
  - (c) create a culture of responsibility, where powerful tools such as procurement not only generate savings, but, if used properly, can also enable the department to meet its socio-economic responsibilities.

Whilst the AOS focuses on the policy (decision tree) aspects of supply chain and movable asset management in a department, the Supply Chain Management ("SCM") delegations set out the decision-making power that gives effect to the processes in the AOS.<sup>2</sup> The delegations are aimed at creating a culture of ownership and accountability among decision-makers. This, in turn, breeds trust in the office holders by the public.

Together, these documents direct how this department conducts its business relating to supply chain and moveable asset management as a process, its contractors, service providers, and suppliers, and, most importantly, the public.

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<sup>1</sup> PT Circular 28/2019, Supplement 1, s. 2.3 and 2.4

<sup>2</sup> PT Circular 28/2019, Supplement 1, s. 4

It is the responsibility of every person involved in supply chain and movable asset management, together with the AO of the department, to ensure optimum efficiency in service delivery that is based on fairness, equitability, transparency, competitiveness, and cost-effectiveness. Proper use of this document will go a long way to allowing those goals to be met.

***The pro-forma accounting officer's system for supply chain and asset management (AOS)<sup>3</sup> was initially issued on 13 December 2013, but the issuing of new requirements for supply chain management by the National and Provincial Treasuries since the above-mentioned date has necessitated updating of the AOS.***

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<sup>3</sup> PT Circular 45/2013

## EXECUTIVE SUMMARY

SCM draws together the once-fragmented processes of procurement and provisioning. Its purpose is to create a single chain that renders a fast, efficient, and cost-effective service, whilst eliminating all steps that do not add value to the process. The function of this AOS is to assist the department to apply and adhere to this single chain. In so doing, the AOS gives effect to the spirit and purport of the PFMA by allowing the manager to manage and be accountable for that management.

The AOS calls for initiative, innovation, and the establishment of best practices by the AO and their SCM Unit. This will create a culture of responsibility by imposing a burden of care not only on the AO, but on every employee in the department. In the reading and execution of this document, employees are, therefore, to be mindful to apply the principles of *Batho Pele*, the Five Pillars of Procurement as outlined in Section 217 of the Constitution of the Republic of South Africa, 1996 ("Constitution") and the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) ("PPPPFA") and its Preferential Procurement Regulations, 2017 ("PPR 2017").

The AOS sets out the functions of the department and, in particular, the powers and functions vested, both explicitly and by implication, in an AO. It sets out all procedural, institutional, and administrative actions involved in the day-to-day supply chain and moveable asset management operations. The AOS, therefore, serves as the norm against which all the actions in the supply chain and movable asset management process of the department will be executed, measured, and justified.

To assist in achieving the purpose of creating a single procurement chain, the AOS:

- explains the legislative system within which the department functions;
- outlines a broad picture of where and how the department fits into public life; and
- identifies and explains the department's institutional design, particularly in respect of the following phases of SCM:
  - demand management;
  - acquisition management;
  - contract management;
  - logistics management;
  - asset management;
  - disposal management;
  - compliance monitoring, risk management, and control;
  - reporting of SCM information; and
  - regular assessment of SCM performance.

# **VOLUME 1:**

# **LEGISLATIVE FRAMEWORK**

## VOLUME 1: LEGISLATIVE FRAMEWORK

Public procurement is nested in a multitude of laws. These laws are intended both to guide effective purchasing and reduce poor outcomes for the purchaser and wider society. The laws most relevant to the AOS are listed below.

### **Constitution of the Republic of South Africa, 1996 (“Constitution”)**

The Constitution is the supreme law of South Africa. All law, and all conduct, must be consistent with the Constitution. All public sector powers flow from the Constitution and legislation enacted to give effect to the Constitution.

Section (“s”) 217 of the Constitution governs procurement, directing that:

“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.”

Each of the five pillars bears an important, individual meaning.

An action is **fair** when there is a moral reason for distinguishing between a legitimate choice and an illegitimate choice. Sometimes, fairness will require equal treatment for all.<sup>4</sup> At other times, fairness will require different treatment for different persons.<sup>5</sup> The moral character of fairness transforms into a legal character by requiring decisions in the public sphere to be made neutrally, impartially, and backed by sound reasoning.<sup>6</sup>

**Equitable** actions are those that seek public benefit beyond the narrow purpose of the purchase of goods or services. In simple terms, it seeks to allow all people the same opportunity. The uneven distribution of resources in South Africa threatens its cohesion and limits opportunities. By using public procurement not only as a means of acquisition, but as a driver for the economy by supporting and transforming business, the use of equity is intended to bring about social improvement and increase opportunity for all. To assist the state to be equitable in its purchasing, legislation such as the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) and the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) guides proper equitable procurement. Legislation of this type is specifically endorsed by the Constitution.<sup>7</sup>

**Transparent** actions are those where the process, outcome, purpose, and meaning of the action are capable of being known by all who enquire. Justice must not only be done but must be seen to be done. Public confidence in the state is built by oversight and observation paired with good performance. To some extent, those elements encourage one another.

A **competitive** action is one in which all eligible participants who wish to participate are given an opportunity to do.<sup>8</sup> This is done by applying and interpreting a set of common rules and information, designed to favour none, and equally empower all, from the outset.<sup>9</sup>

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<sup>4</sup> Harksen v Lane N.O. and Others [1997] ZACC 12; 1998 (1) SA 300 (CC) at [50]

<sup>5</sup> Prinsloo v Van Der Linde [1997] ZACC 5; 1997 (3) SA 1012 (CC) at [31]

<sup>6</sup> Tshabalala v S [1999] 1 All SA 677 (C)

<sup>7</sup> Constitution, s. 217(2) and (3)

<sup>8</sup> Premier of the Free State Provincial Government and Others v Firechem Free State (Pty) Ltd [2000] ZASCA 28; 2000 (4) SA 413 (SCA)

<sup>9</sup> Menzies Aviation South Africa (Pty) Ltd v South African Airways (Pty) Ltd and Others [2009] ZAGPJHC 65

A **cost-effective** action is one in which a decision-maker reasonably weighs the monetary and non-monetary aspects of a good or service against one another to decide which specific procurement to make.<sup>10</sup> This allows the state to achieve value for money. Most often, those aspects to weigh will include the price of an item, the value that it adds for the user, the extent to which it contributes to the substantial fulfilment of the purpose of the procurement, and whether there are less expensive means to achieve substantially the same outcome.

### **Public Finance Management Act, 1999 (Act No 1 of 1999) (“PFMA”)**

The purpose of the PFMA is to guarantee the transparency, accountability, and sound management of the revenue, expenditure and assets and liabilities of departments, constitutional institutions and public entities. To achieve this purpose, the PFMA adopts a dual system of both prescribing duties and permitting discretion, where appropriate.

Powers allocated in terms of the PFMA to AO's are set as duties, i.e. mandatory responsibilities that must be carried out. How that power is exercised is, in turn, somewhat discretionary.

S. 38(1)(a)(iii) of the PFMA imposes the core responsibility of the AO of the department, directing that:

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

(a) must ensure that that department, trading entity or constitutional institution has and maintains –

(iii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective...”

### **National Treasury Regulations, 2005 (“NTR”) issued in terms of the PFMA**

The NTR were intended to support the PFMA by creating detail and direction for its implementation. This extends to procurement. S. 76(4)(c) of the PFMA determines that:

“The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning-

(c) the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective...”

In turn, Regulation (“r”) 16A of the NTR regulates procurement through supply chain management.

In terms of r. 16A 3.1:

“The accounting officer or accounting authority of an institution .... must develop and implement an effective and efficient supply chain management system in his or her institution for –

a) the acquisition of goods and services; and

b) the disposal and letting of state assets, including the disposal of goods no longer required.”

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<sup>10</sup> *Rainbow Civils CC v Minister of Transport and Public Works, Western Cape* [2013] ZAWCHC 3 at paragraph [113]

r. 16A3.2 additionally reminds readers that it is rooted within a wider web of laws, and must be read contextually with those:

“A supply chain management system referred to in paragraph 16A3.1 must –

- (a) be fair, equitable, transparent, competitive and cost effective;
- (b) be consistent with the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000);
- (c) be consistent with the Broad Based Black Economic Empowerment Act, 2003 (Act 53 of 2003); and
- (d) provide for at least the following:
  - (i) demand management;
  - (ii) acquisition management;
  - (iii) logistics management;
  - (iv) disposal management;
  - (v) risk management; and
  - (vi) regular assessment of supply chain performance.”

### **Western Cape Provincial Treasury Instructions, 2009 (“PTI 2009”), partially amended in 2012 and 2019**

In terms of s. 18(2)(a) of the PFMA, the Provincial Treasury (“PT”) of the Western Cape Government (“WCG”) issued provincial treasury instructions on 2 November 2009. These were intended to guide the application of the PFMA and NTR for the needs of the WCG.

On 28 March 2012, Part 5: Chapter 10 and Part 6: Chapter 16A of PTI 2009 was replaced by two new chapters. These two chapters constituted PTI 2012. These were Chapter 16A: Supply Chain Management (Goods and Services) and Chapter 16B: Supply Chain Management for the delivery and maintenance of infrastructure. On 23 September 2019, Chapter 16A of PTI 2012 was replaced by a new chapter. This Chapter constituted PTI 2019. The new Chapter 16A is a vital part of the procurement ecosystem, and so PTI 2019 should be read in close conjunction with the AOS and the remaining financial management chapters of the PTIs, 2009 as a total suite of PTIs.

### **Treasury directions through National Treasury Instructions, Circulars, and Practice Notes (“NTI”) and Provincial Treasury Circulars (“PTC”)**

Legislation sets strategic rules, rights and responsibilities, principles and values. This is essential for promoting uniformity and certainty. Procurement legislation further ought to ensure that the administration effectively performs assigned tasks; ensures government accountability and fosters participation by interested parties in decision-making process.



To produce practical, day-to-day solutions to problems faced by departments, NTI's ought to be issued on a reasonably regular basis to help guide decision making<sup>11</sup>. More common are PTC, issued to meet the unique needs of the Western Cape.<sup>12</sup> These constantly update the SCM procurement landscape.

NTI's issued in terms of s.76 of the Act will only be applicable to departments in the WCG once an assessment, in consultation with relevant role-players, has been completed by the Provincial Treasury to determine<sup>13</sup>:

- whether or not there are similar or more improved ways of implementing the requirement that already exists in the Province;
- the practicality and rationality of the requirement;
- whether or not such requirements are in line with the powers and functions ascribed in law;
- the impact of the requirements from a process, resource, value for money, red tape and systems perspective, and
- the cost benefit perspective, where applicable.

In the event of unresolved implementation risks and other implications the matter must be referred to the Provincial Cabinet to obtain a provincial policy position<sup>14</sup>.

#### **Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (“PPPFA”)**

The PPPFA was introduced to give effect to the economic empowerment objectives of the Constitution and is closely allied with the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) (“B-BBEA”). S. 217(2) of the Constitution determines that:

- “(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for-
- a) categories of preferences in the allocation of a contract; or
  - b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.
- (3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.”

#### **Preferential Procurement Regulations, 2017 (“PPR 2017”)**

The PPR 2017 adds measurable, implementable procedures to give effect to the principles of the PPPFA.<sup>15</sup> It sets out the formulas for the preferential procurement point system and stipulates the rules and procedures governing the preference categories that might be claimed.

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<sup>11</sup> PFMA s. 6(2)(a) read with ss. 1 and 76. The WCG adopts the view that NTI are not binding upon it and serve as a guide only. This is supported by a Senior Counsel (O. Rogers) opinion on the matter, written in 2011. This has yet to be confirmed by national legislation or the courts.

<sup>12</sup> PFMA s.18(2)(a)

<sup>13</sup> WC PTI 2019, s.2.6.1

<sup>14</sup> WC PTI 2019, s.2.6.2

<sup>15</sup> PT Circular 12/2017 is a guide to its application in the Western Cape.

The preferential procurement point system is divisible into two categories. Each will be explained in turn. They are:

- 80/20 for tenders from R 30 000 and up to R 50 million; and
- 90/10 for tenders above R 50 million.

#### 80/20 Preference Point System

This system applies to all bids with a value equal to, or above, R30 000, and up to a value of R50 million (all applicable taxes included). A score out of 80 points is allocated for price and a score out of 20 points is allocated for Broad-Based Black Economic Empowerment (“B-BBEE”) status level. The points scored must be added together and the contract awarded to the tenderer who scores the highest number of points.

#### The 90/10 Preference Point System

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

#### **Preferential procurement points are allocated as follows:**

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

#### Exclusions

Not all parts of PPR 2017 apply in the Western Cape.<sup>16</sup> Regulation 4 offers a discretion to procurement authorities to apply pre-qualification criteria to advance certain groups. Cabinet has exercised this discretion and chosen not to apply Regulation 4 given that it is tantamount to a set-aside and not envisaged as a separate consideration outside of the preference point system as envisaged by the Act, bring in an unintended consequence of unfairness.

In addition, Treasury Regulations. 6(9) (a) – (c) and 7(9) (a) – (c) allows the state to award a tender to a bidder who did not score the highest number of points, if the price offered by the highest bidder is not market related. This, too, is not applied in the Western Cape. Regulation 9.1 stipulate that if feasible to subcontract above R30 million a department must apply subcontracting to

<sup>16</sup> PT Circular 12/2017, ss. 3.2(a), (b) and (c) read with WCG Cabinet Minute 87/2017 (5 April 2017).

advance designated groups. In the Western Cape this requirement is subject to the conducting of empowerment impact assessments for procurement above R10 million to determine the feasibility of subcontracting. If a department has not conducted a feasibility empowerment impact assessment the sub-contracting requirements should not be applied as the requirement is dependent on feasibility.

### **Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) (“PAJA”)**

The Constitution guarantees everyone the right to administrative action that is lawful, reasonable, and procedurally fair.<sup>17</sup> PAJA was created to give effect to that right in greater detail.<sup>18</sup> It does so by instructing how administrative powers allocated to administrators must be exercised. In short, parties subject to administrative action have the right to make representations before a decision is made. Thereafter, everyone whose rights have been adversely affected by such a decision has the right to be given written reasons for the decision. In addition, PAJA provides for the right to internal appeal, if applicable, as well as the right to take the decision to court on judicial review. Tender processes created by the department are “administrative actions” within the meaning of that term in PAJA, so entitling bidders to a lawful and procedurally fair process.<sup>19</sup>

The AO must ensure that when SCM practitioners execute an administrative action the following considerations are made:<sup>20</sup>

- all relevant and permissible facts and circumstances were taken into consideration;
- adherence to the regulatory framework;
- the administrative action falls within ambit of delegated or legislative power;
- the result of the administrative action must serve a legally permissible purpose; and
- the result of the administrative action falls within the ambit of that institution’s budget, budget description, and strategic objectives.

Cognisance should also be taken of the PAJA manual developed by the Department of the Premier, Directorate Legal Services. This manual makes provision for and is an overlay of the Common Law principles that govern the procurement processes for the Western Cape.

### **Promotion of Access to Information Act, 2000 (Act 2 of 2000) (“PAIA”)**

The Constitution further guarantees the right of everyone to access information held by the state. PAIA was created to give this right greater depth and detail. PAIA fosters a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information. In so doing, it promotes a society in which people have effective access to information to enable them to fully exercise and protect all other rights.

PAIA is of particular importance to the administrative decision-maker, as he or she may at any stage, either during the deliberative process or after the decision has been taken, be faced with a request for access to files. These might include, for example, contracts concluded through SCM processes. However, the right of access to information is not unlimited. When information is sought from a decision-maker, that decision-maker must distinguish between information that may be given and information that must be refused. In terms of PAIA there are certain categories of

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<sup>17</sup> Constitution, s. 33(1)

<sup>18</sup> Constitution, s. 33(3)

<sup>19</sup> *Logbro Properties CC v Bedderson N.O. and Others* [2002] ZASCA 135; 2003 (2) SA 460 (SCA)

<sup>20</sup> WC PTI 2019, s. 2.7

information that must be refused, and other categories which may be refused at the discretion of the decision maker.

PAIA is always relevant to the SCM process. A common example of its use may be a situation where a bidder loses a bid through a deliberative decision-making process by the department. Should the unsuccessful bidder wish to challenge the decision, they will seek access to the information that prompted the department to take the decision. PAIA will govern the bidder's efforts and the department's response.

### **Protection of Personal Information Act, 2013 (Act 4 of 2013) ("POPIA")**

Information must be processed lawfully and in a reasonable manner that does not infringe the privacy of the provider.<sup>21</sup> Any personal information provided may only be used for the specific purpose of completing the procurement process.<sup>22</sup> Any further use of the personal information must be consistent with the original purpose of collection.<sup>23</sup>

Cognisance should also be taken of the POPIA manual developed by the Department of the Premier: Legal Services.

### **Protected Disclosures Act, 2000 (Act 26 of 2000) ("PDA")**

The PDA assists in protecting employees, in both the public and private sector, who disclose information of unlawful or corrupt conduct by their employers or fellow employees.

South Africa is plagued by high levels of crime, including wide-spread corruption. To help stop this in the workplace, the PDA encourages honest employees to raise concerns and report wrongdoing within the workplace without fear of retribution. The PDA is both a crucial corporate governance tool to promote safe, accountable and responsive work environments, and a key element in promoting individual responsibility in the workplace.

### **Prevention and Combatting of Corrupt Activities Act, 2004 (Act 12 of 2004) ("PCCAA")**

The Constitution demands high ethical standards within the public sector. The PCCAA aims to prevent and combat corrupt activities that undermine those ethical standards and violate the rule of law.

### **State Information Technology Agency Act, 1998 (Act 88 of 1998) ("SITA" Act)**

The ever-present power of information technology has caused the state to regulate it with a dedicated body. The SITA Act establishes the State Information Technology Agency ("the Agency"). The Agency is responsible for the provision of information technology services to the public service administration.<sup>24</sup> The department must procure all information technology goods and services either from, or through, the Agency.<sup>25</sup>

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<sup>21</sup> POPIA s. 9(a) and (b)

<sup>22</sup> POPIA s. 13(1)

<sup>23</sup> POPIA s. 15(1) – (3)

<sup>24</sup> This assignment is consistent with the law. In terms of s. 238 of the Constitution:

"An executive organ of state in any sphere of government may- ...

(b) exercise any power or perform any function for any other executive organ of state on an agency or delegation basis."

<sup>25</sup> SITA s. 7(3) and (4)

### **Construction Industry Development Board Act, 2000 (Act 38 of 2000) (CIDBA)**

This paragraph is applicable only to the Department of Transport and Public Works, the Department of Human Settlements, the Department of Health and the Department of Education.

Certain government departments are mandated to deliver and maintain economic and social infrastructure, such as roads, school buildings, hospital buildings, and general office buildings. In the execution of its mandate, these departments will contract with services providers from the construction industry.

The CIDB is a national body responsible for developing the construction industry for the improved delivery of infrastructure to the South African public. To do so, it works with all stakeholders to allow for the sustainable growth of construction enterprises and the best practice of employers, contractors, and the professions. It identifies best practice and sets national standards and promoting common and ethical standards for construction contracts.

### **Competition Act, 1998 (Act 89 of 1998) ("CA")**

Competitive public procurement processes pit bidders against one another to ensure that all bids for public money are carefully thought-out, efficient, and deliver value for money. Collusion among bidders or within an industry hollows out those ideals. The CA promotes and maintains competition in order to:<sup>26</sup>

- promote the efficiency, adaptability and development of the economy;
- provide customers with competitive prices and product choices;
- promote employment and advance the social and economic welfare of South Africa;
- expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
- promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

### **Other sources of authority:**

SCM does not exist in a vacuum. Beyond its own policies and prescripts, it is linked to a whole corpus of laws that interrelate at the administrative, industry and commodity levels. Apart from the legislation mentioned above, there may be other pieces of legislation that may also be applicable in the SCM environment including the legislation, instructions and guidelines listed below:

- Departmental instructions issued in terms of the Provincial Treasury Instructions;
- Departmental standard operating procedures issued in terms of the Provincial Treasury Instructions;
- National Treasury Guide for the minimum training and deployment of SCM employees;
- Department of Trade and Industry clearance in respect of contracts subject to the National Industrial Participation Program of the Department;

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<sup>26</sup> Competition Act, s. 2

- National Treasury: Supply Chain Management – a Guide to Accounting Officers/Authorities;
- National policy to guide uniformity in procurement reform processes in government;
- The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000);
- The Conventional Penalties Act, 1962 (Act 15 of 1962);
- The Arbitration Act, 1965 (Act 42 of 1965);
- The Public Protector Act, 1994 (Act 23 of 1994);
- The Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);
- The Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act 51 of 2008);
- The Consumer Protection Act, 2008 (Act 68 of 2008);
- The State Liability Amendment Act, 2011 (Act 14 of 2011);
- The Public Audit Act, 2004 (Act 25 of 2004);
- The Companies Act, 2008 (Act 71 of 2008);
- The Interpretation Act, 1957 (Act 33 of 1957); and
- The South African Revenue Act, 1997 (Act 34 of 1997).

# **VOLUME 2:**

# **INSTITUTIONALISATION**

## CHAPTER 1: FUNCTIONAL ARRANGEMENTS

### 1.1 PURPOSE

- 1.1.1 Institutional design plays a substantial role in creating an effective department. A good design will integrate all rules, activities, structures, and values to create a sustainable, service-delivery focussed department. For activities involving supply chain and movable asset management activities, two design actions have particular importance. These are, one, to issue institutional instructions, both to ensure uniform application of national and provincial norms and standards and to enforce compliance.<sup>27</sup> Two, to issue standard operating procedures which constitute a manual of operation for a specific subject.<sup>28</sup> To cope with a changing environment, these will need to be updated from time to time.
- 1.1.2 The provincial supply chain management strategy as well as the department's strategic vision, core functions, service delivery obligations, and the role of SCM in fulfilling these tasks, are set out below.

### 1.2 PROVINCIAL SUPPLY CHAIN MANAGEMENT STRATEGY

- 1.2.1 Supply Chain Management (SCM) is the under girdle that enables government to implement policy. Emanating out of the SCM modernisation process in 2009, the Provincial Government of the Western Cape undertook to analyse current supply chain processes, identify weaknesses and identify remedial steps to improve transparency, accountability and value for money within the supply chain management system.

The key focus of the modernisation process to address the above was to identify a blueprint for the Province that would:

- Improve performance through the integration of policy and delivery;
  - Enhance departmental capability to address strategic issues;
  - Identify a more flexible deployment of resources to match priorities; and
  - Identify improved ways of working and more effective procedures for identifying and addressing skills gaps and training needs.
- 1.2.2 Key factors that were borne in mind in the SCM modernisation process:
- Non-divesture of financial accountability of the accounting officer in terms of sections 38 and 43 of the PFMA;
  - The unique financial management requirements and mandates of the various departments precludes a completely standardized approach which in terms of efficacy of service delivery may in any case not be prudent, and
  - The improving levels of compliance, better functioning departmental SCM structures and enhanced skill levels and capacity.

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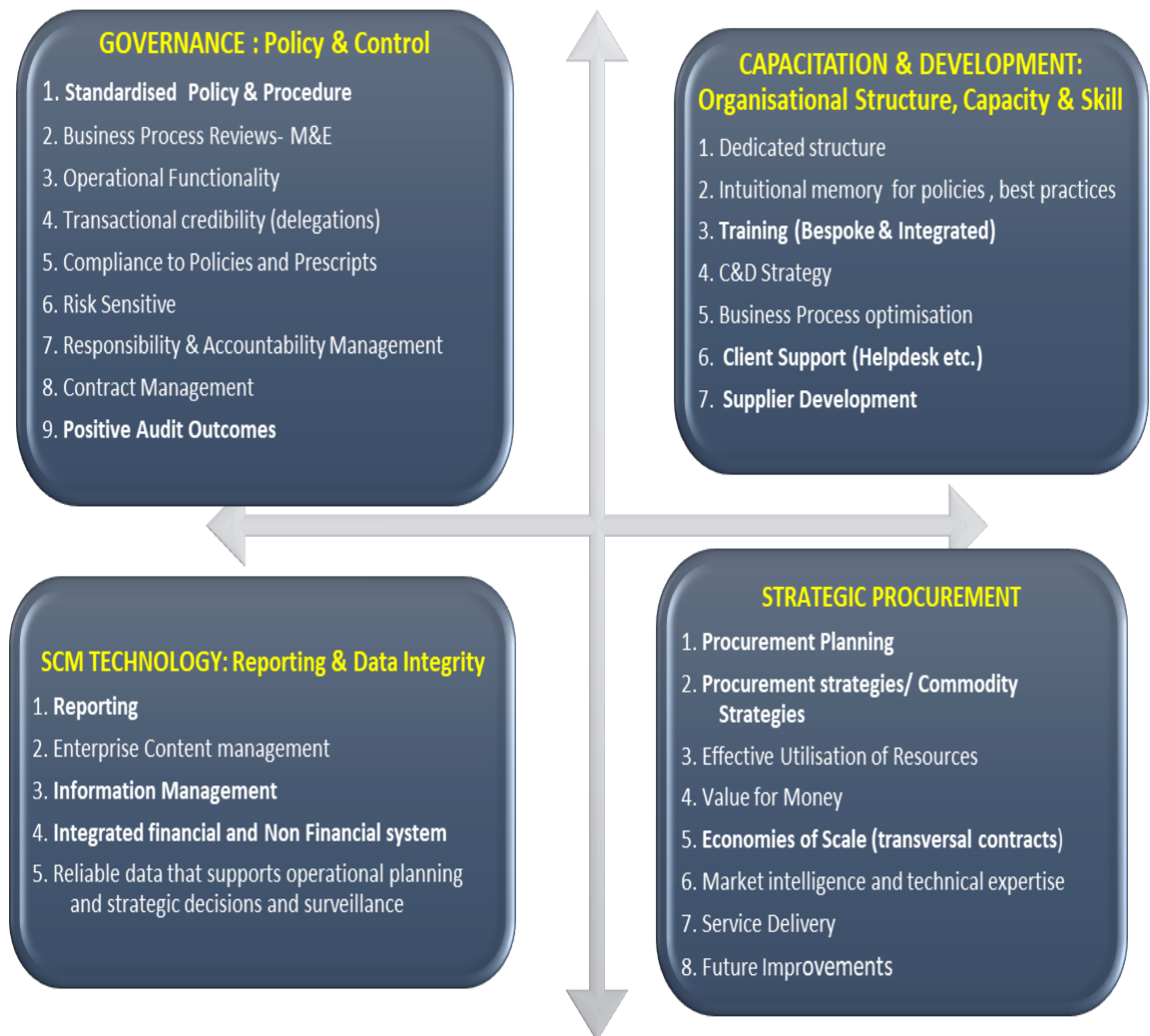
<sup>27</sup> WC PTI 2019, s. 2.4.1 (a) and (b)

<sup>28</sup> WC PTI 2019, s. 2.4.1(c)



1.2.3 Since Provincial Cabinet's approval of the SCM Blueprint, there has been key developmental focus in the SCM environment, which required refocus and further strategic alignment, which culminated in the Provincial SCM Strategy.

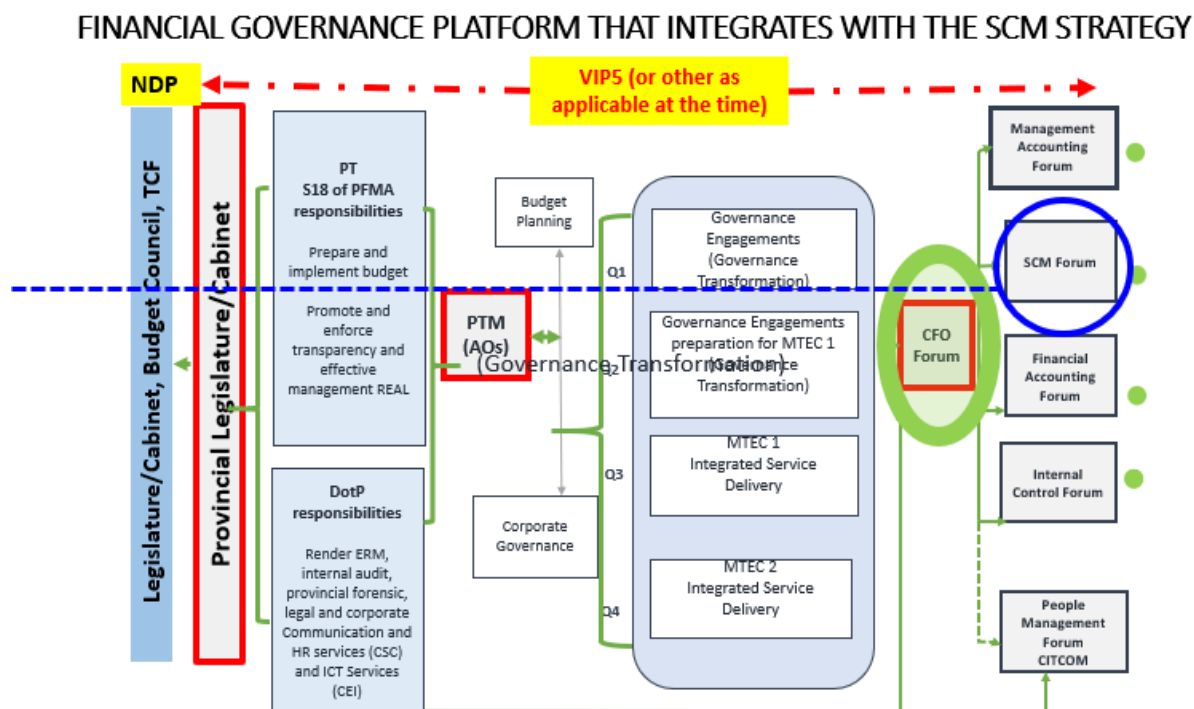
The SCM strategy is represented by a four-pronged approach that focuses on: SCM Governance, SCM Capacitation and training; strategic procurement and SCM technology:



The Strategy is the result of a process that identified weaknesses and implemented improvements within the Province's SCM. It is a strategy that is supported by Provincial Treasury Instructions and departmental Accounting Officers' Systems and which guides officials on what to do in respect of supply chain management decisions and how to do these identified activities and further provides for tools and templates to achieve the governance requirements.

The Province has experienced that during the COVID-19 pandemic, this strategy played a critical role in the Province's procurement response to Covid-19 in that it provided for the necessary flexibility, agility and partnerships that were required to facilitate quick and decisive procurement decisions and hence it is critical that the strategy be consistently refined over time. The impact that the pandemic has had on the economy and the fiscus requires that a post disaster recovery strategy is enabled to utilise procurement further as a lever for change that supports not only the creation of jobs but enables the priorities in respect of safety and dignity through purchasing.

The SCM strategic agenda is further managed via the below governance structure including Cabinet; PTM; CFO Forum, the SCM forum and sub-fora of the PT:



#### 1.2.4 SCM CABINET DECISIONS THAT INFORM SCM POLICY AND STRATEGY IN THE PROVINCE

The resolutions hereunder have been extracted from the Cabinet Decisions on SCM:

##### 1.2.4.1 Progress on Supply Chain Management Improvements for the province (Cabinet 82 of 2011)

- a) Cabinet noted the finalisation of the delivery model for supply chain management improvements in the Province; and
- b) The ultimate objective is to ensure clean, efficient and effective supply chain management processes, with clear delineation of accountability and responsibilities of the various role-players within the process and the assurance of transparency.

##### 1.2.4.2 Supply Chain Management (SCM): Proposed Reforms aimed at maximising impact [Cabinet memorandum 25 of 2014]

- a) The Cabinet:
  - i. noted the strategic importance of SCM in service delivery and in achieving South Africa's developmental and transformational objectives;
  - ii. approved that Executive Authorities (EAs) have an oversight responsibility over the efficiency and effectiveness of SCM performance;
  - iii. approved the positioning of the SCM as a strategic function and that the following actions be effected:
    - SCM performance criteria be included in the performance agreements of Accounting Officers from 1 April 2015;

- Accounting Officers conduct a capacity review of SCM staff and take remedial action where required; and
  - Accounting Officers brief EAs quarterly on SCM.
- iv. Approved that the Office of the Chief Procurement Officer (OCPO) accelerates SCM reforms by modernising the function in the Public Service by:
- Finalising the legal Framework governing the OCPO and SCM function aligned to the proposed reforms in government;
  - Simplifying, standardising and automating procurement activities across all spheres of government; and
  - Modernising SCM technology and upscaling the use thereof; and
  - Approved that the National Treasury further consults with the National School of Government with a view to developing the curriculum on training and standardisation of professional qualifications.

#### **1.2.4.3 Supply Chain Management (SCM) Improvements: Provincial Treasury (Cabinet Resolution 170 of 2016)**

- a) Cabinet resolved that:
- i. All Infrastructure Delivery Management System (IDMS) reforms be referred to the Inter-Ministerial Infrastructure Committee;
  - ii. Provincial Treasury approaches Cabinet for policy guidance on Preferential Procurement Regulation (PPR);
  - iii. Provincial Treasury obtains a mandate from Cabinet for policy position on the Draft Procurement Bill;
  - iv. Provincial Treasury continues with the Western Cape Supplier Database (WCSD) until 31 March 2017 or such time as governance concerns with the Central Supplier Database (CSD) are successfully resolved;
  - v. Provincial Treasury is mandated to consider the feasibility of “reverse auctions” as a procurement methodology in SCM in order to achieve price reductions; and
  - vi. The Western Cape Government will not consider itself obligated to participate in National Treasury contracts and will continue to exercise its discretion, and that the province will only participate in such contracts if due process was followed, the specifications meet our requirements, participation is economically viable and it makes sound financial sense.

#### **1.2.4.4 Feedback on compulsory implementation of purchasing via RT (Transversal) contracts entered into by National Treasury (Cabinet Resolution No. 265 of 2016)**

- a) Cabinet noted the response by Minister Gordhan on 17 August 2016 indicating that the National Treasury Instructions (NTIs) are binding on all organs of State and should be considered mandatory prescripts.
- b) The new Treasury Regulations will provide for mandatory participation in national transversal contracts but will allow for exemption on good cause shown.
- c) Cabinet resolved that Legal Services, relying on an earlier legal opinion, opined that National Treasury Instructions would be applicable to national departments and those public entities as listed in Schedules 2 and 3 of the Public Finance Management Act, 1999, as amended and not applicable to provincial government departments.
- d) The Proposed exemption methodology was under consideration, as Provincial Treasury favoured a general exemption as opposed to a case by case application. Furthermore, if the exemption methodology is introduced through NTIs, WCG will not be obligated to participate.

#### **1.2.4.5 Implementation of the preferential procurement policy framework regulations, 2017 (PPPRs) issued via government gazette 40553 on 20 January 2017 and applicable from 1 April 2017**

- a) Cabinet approved the issuance of an interim strategy to deal with the requirements of the PPPs, as well as supply chain management governance requirements via PTIs that makes provision for the WCG to:
  - i. Apply its discretion not to implement the implementation of the pre-qualification criteria (i.e. regulation 4);
  - ii. Apply its discretion not to implement regulation 6(9) (a) – (c) and 7(9) (a) – (c);
  - iii. Conduct empowerment assessments for all procurement above R10 million (EME threshold), and further enabling departments to lower the threshold should its analysis so dictate; and
  - iv. Implement regional indicators to target local suppliers using the e-procurement system and simultaneously consider the rotation of suppliers.
- b) The development and implementation of an economic procurement policy, in partnership with the Departments of Economic Development and Tourism and the Department of the Premier, that is aligned to Provincial Strategic Goal 1 (which covers job creation and infrastructure development) and is aligned to the Medium Term Budget Policy Statement.
- c) The development and implementation of a broader economic transformation policy that seeks to:
  - i. Promote private sector procurement towards targeted provincial economic growth areas: and

- ii. Further strengthen the partnership with the private sector by enabling access to the WCG supplier database.

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

1. Department may include any department specific Cabinet resolutions here/operations that affects the department's own SCM requirements

### **1.3 STRATEGIC VISION OF THE DEPARTMENT**

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

1. Define strategic vision of the department  
Each department to insert

### **1.4 DEPARTMENTAL CORE FUNCTIONS AND SERVICE DELIVERY OBLIGATIONS**

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

Define the department's core functions here:

1. Align core function to service delivery obligations for the Province
2. Define specific legislative and policy frameworks  
Each department to insert. This should align to, or at least closely be linked to the Annual Performance Plan and three-year strategic plan to depict strategy alignment.

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

1.5.1 For SCM to be an effective delivery model, the department must:

- (a) ensure adequate strategic planning for the whole life cycle has taken place before the procurement of goods and services;
- (b) ensure that procurement processes and projects are adequately funded or budgeted for;
- (c) define and develop clear, standardised SCM processes to ensure the satisfactory delivery of goods and services and the control and management thereof;
- (d) build a purchasing culture that is performance-orientated and flexible yet aligned to prescribed procurement policy and procedure.
- (e) create a purchasing system that is dually socio-economically responsive but driven by customer satisfaction;

- (f) compel value-for-money procurement, and inventory and moveable asset management;
- (g) employment of strategies to minimise procurement costs; and
- (h) introduce mechanisms to adequately address any public concerns over bid awards.
- (i) elevate contract management in order to mitigate contract management risks for the Department.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. Define how SCM will be utilised as a delivery model to give effect to the department's strategic vision and core mandate
2. Define the methodologies that the department will utilise  
Each department to insert here.

## 1.6 SCOPE OF THIS AOS

1.6.1 This AOS is to be read and used in a manner that gives maximum effect to:

- (a) S. 217 of the Constitution and the five pillars of procurement listed therein, ensuring that procurement is fair, equitable, transparent, competitive, and cost effective;
- (b) S. 38 (1)(a)(iii) and other applicable sections of the PFMA;
- (c) NTR;
- (d) PTI 2009 and PTI 2019;
- (e) other applicable legislation; and
- (f) the need for uniformity in SCM.

1.6.2 This AOS is of supports maximum application and utility when the department:

- (a) procures goods and services;
- (b) manages moveable assets; and
- (c) disposes of moveable assets.

1.6.3 The AOS further provides an enabling mechanism for every employee involved in the SCM process. This includes appropriately guiding departmental arrangements, administrative duties and delegated powers.

1.6.4 Finally, the AOS provides a library of information to help employees align and integrate the vital phases of asset management, those being:<sup>29</sup>

- (a) the planning phase, where the requirement for a new asset is planned for and established;

<sup>29</sup> WC PTI 2019, s. 9.1.2(a) – (d)

- (b) the acquisition phase, where the asset is purchased, constructed, or otherwise created;
- (c) the operation and maintenance phase, where the asset is used for its intended purpose; and
- (d) the disposal phase initiated when the economic life cycle of the asset has expired or when the asset has become redundant.

## 1.7 SUPPLY CHAIN MANAGEMENT UNIT

### 1.7.1 Establishment of the Unit

- (a) To implement the department's SCM system, the AO of the department must<sup>30</sup> establish a SCM Unit within the office of the departmental Chief Financial Officer ("CFO").<sup>31</sup> The CFO will serve on the management team of the SCM Unit and is directly accountable to the AO.<sup>32</sup>

### 1.7.2 Structure of the SCM Unit

- (a) The structure of the SCM unit within departments will differ from one another and will depend on the organisational structure and organisational arrangements within a specific department.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

Each department to insert the following:

1. Define the department's structure.
2. Include department unique requirements and whether there is a centralised/ decentralized SCM system in place.
3. Define the requirements and core functions of the SCM Unit within the department's control.
4. Define the chain of accountability and reporting line to the CFO.
5. Depict the structure diagrammatically.
6. Depict the linkages and responsibility of the line managers in the SCM process.

### 1.7.3 Overview of the SCM Unit

- (a) The SCM Unit exists in order to implement the department's SCM system.<sup>33</sup> In chief, that will require the SCM Unit to procure on behalf of the department. That procurement must be strategic, reaching beyond the narrow needs of the department and considering the broad implications of every procurement.
- (b) When exercising its power to procure, the SCM Unit must act in conformity with the rule-based environment in which it operates. In addition to the legislative framework discussed earlier, the SCM Unit is bound to follow the written delegations of power by

<sup>30</sup> WC PTI 2019, s. 3.3.1

<sup>31</sup> *Framework for Supply Chain Management* as published in GG. 25767 dated 5 December 2003, s. 4(1)

<sup>32</sup> NTR r. 2.1.2

<sup>33</sup> *Framework for Supply Chain Management* as published in GG. 25767 dated 5 December 2003, s. 4(1)

the AO.<sup>34</sup> These delegations will be structured in accordance with the minimum standards set by the Provincial Treasury.<sup>35</sup>

- (c) The SCM Unit will also, to a limited extent, regulate its own process. It will enforce the department's monitoring and evaluation process to ensure compliance with legislation, policy, and this AOS.<sup>36</sup> It will also issue best practice SCM guidelines for implementation within the department to ensure sound governance practices.<sup>37</sup>
- (d) The SCM Unit is required to prepare and submit, under the authority of the AO or their delegate, a SCM performance plan by 31 March Annually on the WCG Procurement Planning Toolkit.<sup>38</sup>

#### 1.7.4 Powers of the SCM Unit

- (a) The SCM Unit of the department will be responsible for the:<sup>39</sup>
  - (i) implementation of the approved SCM system through this AOS;
  - (ii) on-going maintenance of the SCM system to improve effectiveness and efficiencies of the SCM system;
  - (iii) regular reporting to the AO on performance of the SCM system and on compliance to reporting requirements for SCM as prescribed by regulations and policy;
  - (iv) enforcement of the regulatory framework for SCM within the department (i.e. prescribed national, provincial, and departmental SCM requirements aligned to legislation and policy and delegation frameworks within the department);
  - (v) rendering of assistance and administrative support to the line function managers and their delegates and other employees in the performance of their SCM responsibilities; and
  - (vi) capacity building and training of employees involved in SCM processes.
- (b) To fulfil the above duties, the SCM Unit should:
  - (i) procure goods and services for the department;
  - (ii) manage bid administration processes, which include but are not limited to the duty to:
    - (aa) check and arrange for the signing and approval of bid specifications;
    - (bb) compile bid documents;
    - (cc) advertise bids in the *Government Tender Bulletin* and e-Tender Publication Portal;

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<sup>34</sup> PFMA ss. 44 and 56; WC PTI 2019, s. 3.7.1

<sup>36</sup> WC PTI 2019, s. 3.3.2(d)

<sup>37</sup> WC PTI 2019, s. 3.3.2(e)

<sup>38</sup> PT Circular 3 of 2021

<sup>39</sup> WC PTI 2019 s. 3.3.2



- (dd) advertise quotations, competitive and limited bids for the prescribed threshold through the e-procurement solution;
  - (ee) receive and open bids;
  - (ff) check for compliance and signature on bid documents;
  - (gg) maintaining a bid register;
  - (hh) prepare procedures and bid documents for evaluation by the evaluation committee;
- (iii) record and monitor the award of bids;
  - (iv) adjudicating of quotations and bids and capturing the award on the e-procurement solution;
  - (v) administering and managing contracts within their delegated authority;
  - (vi) communicate and liaise with contractors;
  - (vii) execute allocated delegations in terms of financial and SCM delegations;
  - (viii) maintain and providing an efficient and effective logistical and movable asset management system for the department;
  - (ix) maintaining and keep a proper audit trail in respect of all transactions processed by the unit and on behalf of line function managers;
  - (x) develop departmental instructions and SOP's for implementation within the department to ensure sound governance practices within SCM; and
  - (xi) adhere to control measures and risk mitigation procedures defined by this AOS.

## **1.8 RESPONSIBILITIES OF SUB PROGRAMME, PROGRAMME, AND ELEMENT MANAGERS IN RESPECT OF SCM**

1.8.1 It is the responsibility of managers to help ensure that the department delivers in accordance with its strategic objectives. This includes the proper procurement of goods and services. It will, therefore, be the responsibility of managers to:

- (a) understand and plan for future needs;<sup>40</sup>
- (b) identify critical delivery dates;<sup>41</sup>
- (c) ensure that the necessary funds were budgeted, and are available, for goods and services to be procured;<sup>42</sup>
- (d) acquaint themselves with the SCM regulatory framework and policies and the requirements drawn up within this AOS, so as to be properly applied when they are involved in the procurement processes of the department;

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<sup>40</sup> PFMA s. 45(b)

<sup>41</sup> PFMA s. 45(b)

<sup>42</sup> PFMA s. 45(c)

- (e) develop draft specifications, including specifications for procurement areas that require the input of technical knowledge to achieve a programme deliverable;<sup>43</sup>
- (f) timeously provide the SCM Unit with all the necessary information to arrange for the procurement of goods and services;<sup>44</sup>
- (g) maintain a close and co-operative relationship with the SCM Unit so that the goals of the department are efficiently and effectively met when involved in SCM activity;
- (h) abide by the required codes of conduct as issued for particular areas of procurement, such as the *Code of Conduct for Public Servants*, the *Code of Conduct for Supply Chain Management Practitioners*, the *Code of Conduct for All Parties Engaged in Construction Procurement* and *Code of Ethics*;
- (i) provide technical advice on specifications, making presentations to the department's bid adjudication committee when requested to do so;
- (j) act as the custodian of assets under their control;<sup>45</sup> and
- (k) manage contracts and report on that management to SCM, where requested.<sup>46</sup>

## 1.9 SCM DELEGATIONS

- 1.9.1 Delegations are issued by the AO in order to distribute and assign powers conferred on the AO by legislation. Delegation provides employees with a job to do within basic parameters thereby giving them the authority to make their own decisions on what steps to take to achieve the objective. Delegation also distributes the burden of administering the work to another or among many.
- 1.9.2 Although the power and responsibility to use that power appropriately shifts to another office-holder, accountability for the exercise of that power remains with the AO.<sup>47</sup> The AO may confirm, vary or revoke any decision taken by an employee as a result of a delegation or instruction subject to any rights that may have become vested as a consequence of the decision.<sup>48</sup> The PFMA<sup>49</sup> and PTI 2019<sup>50</sup> both address delegations. The delegations are to be reviewed regularly.<sup>51</sup> The AO retains the power to retract all or any of the delegations if circumstances necessitate such a decision.<sup>52</sup> The minimum standards<sup>53</sup> for SCM delegation were issued to departments and public entities via PT Circular 28 of 2019 (Supplementary 1 of 2019).
- 1.9.3 The AO must ensure that all delegations are permitted by the empowering legislation and are made in a clear, unambiguous fashion. Moreover, delegates, for their part, must be familiar with their responsibilities, possess the necessary skills to fulfil those responsibilities, work within an effective performance management framework, and comply with an appropriate check-and-balance system to prevent abuse of delegated powers.<sup>54</sup>

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<sup>43</sup> PFMA s. 45(b)

<sup>44</sup> PFMA s. 45(b)

<sup>45</sup> PFMA s. 45(e)

<sup>46</sup> PFMA s. 45(e)

<sup>47</sup> PFMA s. 44(2)(d)

<sup>48</sup> PFMA s. 44(3)

<sup>49</sup> PFMA s. 44(1)

<sup>50</sup> WC PTI 2019, s. 3.7.1

<sup>51</sup> Provincial Treasury Circular 28/2019, Supplement 1, s. 4.

<sup>52</sup> PFMA s. 44(2)(b) read with s. 44(3)

<sup>53</sup> WC PTI 2019, s. 3.7.2 and Provincial Treasury Circular 28/2019, Supplement 1 of 2019, Annexure B

<sup>54</sup> Provincial Treasury Circular 28/2019, Supplement 1 of 2019

1.9.4 The following persons ("delegates") will perform specific powers or duties delegated or assigned to them<sup>55</sup>:

- (a) AO (Head of department ["HOD"])
- (b) CFO
- (c) SCM functionalities in the office of the CFO.
- (d) persons acting in a certain rank or role may exercise the delegations assigned to that rank or role unless powers or duties were delegated to a specific person.<sup>56</sup>
- (e) Other employees not in the Office of the CFO, and to whom powers were assigned or delegated within the permitted scope of the legislative framework, as indicated in the delegation's schedule.

#### 1.9.5 **Failure to Comply**

- (a) Should it be brought to the AO's attention that the conduct of a delegate resulted in irregular, unauthorized and/or fruitless and wasteful expenditure, or that a delegate contravened the PFMA, or that a delegate undermined the financial management and internal control system of the department, the AO must determine the appropriateness of disciplinary steps against an official in terms of section 38 (1)(g) of the Act<sup>57</sup>. Appropriate responses may extend to:
  - (i) recovery, from the delegate, all material losses the department has suffered.<sup>58</sup>
  - (ii) reporting the matter to the South African Police Service, when it appears that a possible criminal act or omission has occurred.<sup>59</sup>

### 1.10 **REQUIRED COMPETENCIES FOR SCM UNIT**

1.10.1 the CFO will ensure that the following competencies exist within the SCM Unit: <sup>60</sup>

- (a) financial acumen;
- (b) accounting;
- (c) cost and economic analysis;
- (d) legal awareness;
- (e) strategic sourcing;
- (f) contract management;
- (g) document writing and research;
- (h) warehouse asset management, where applicable; and
- (i) logistical and disposal management.

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<sup>55</sup> WC PTI 2019, s. 1.1.1: definition of "delegate"

<sup>56</sup> PFMA s. 44(2)(c)

<sup>57</sup> PFMA s. 38(1)(h) and NTR rr. 4; 9.1.2 and 9.1.3

<sup>58</sup> NTR r. 12.7.1

<sup>59</sup> NTR r. 12.5.1

<sup>60</sup> PTI, 2019, s. 3.5.1 and National Treasury technical competency dictionaries (competency framework) for SCM, 2015

### 1.10.2 Training of SCM employees and members of committees.

- (a) Proper training of employees is vital, if the strategic objectives of the department are to be met. All employees involved in the department's SCM system must be trained in accordance with the National Treasury requirements.<sup>61</sup> If delegated to the CFO by the AO, the CFO will:<sup>62</sup>
- (i) provide guidance, training, and use of SCM employees within a department;
  - (ii) develop employees for a career in SCM;
  - (iii) provide immediate training with the focus on intensive training on all elements of SCM; and
  - (iv) provide advance training that includes specialist skills within each element of SCM.
- (b) Training must be provided for:<sup>63</sup>
- (i) senior managers;
  - (ii) practitioners who are involved in the day to day operation of SCM; and
  - (iii) new entrants or new appointees, irrespective of the level at which they are appointed.
- (c) Training providers and the materials they use to teach, must be validated prior to training by the relevant authority.<sup>64</sup>
- (d) A phased-in, stepping-stone approach should guide any training strategy.<sup>65</sup> This would cover, in sequence, short term (basic SCM), medium term (training on all elements of SCM and training on specialist skills) and long term (formal diploma and degree courses by tertiary institutions) requirements.

### 1.10.3 Training needs assessment

- (a) To keep employees, current in their awareness and use of SCM knowledge and skills, training needs assessments of all employees involved in SCM activities should be done on an annual basis by the SCM Unit of the department. Such assessment must cover all disciplines within SCM but should have a particular focus on procurement planning and procurement processes.
- (b) Based on the training needs assessment, the CFO may prescribe the appropriate training interventions to address the identified needs. The interventions may include, but is not limited to:
- (i) person-to-person training;

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<sup>61</sup> NTR r. 16A.5, read with the *Framework for SCM* as published in Gazette 25767 dated 5 December 2003 and NT Practice Note SCM 5 of 2004 issued on 27 October 2004;

<sup>62</sup> Remember that whilst the power may be delegated to the CFO, the AO remains accountable for the use of that power.

<sup>63</sup> NT Practice Note SCM 5 of 2004, s. 3.1

<sup>64</sup> NT Practice Note SCM 5 of 2004, s. 4.4

<sup>65</sup> NT Practice Note SCM 5 of 2004, s. 5

- (ii) training via short courses through bodies such as the Provincial Treasury, and/or outside service providers, where those providers and training material have been validated by the relevant authority;
- (iii) formal training via tertiary institutions; and
- (iv) online training courses and e-learning courses offered by the Provincial Training Institute (PTI) and/ or the Provincial Treasury.

## CHAPTER 2: SCM COMMITTEES

### 2.1 REQUIREMENTS

- 2.1.1 SCM committees play a critical role in the procurement process. Four committees are noteworthy, of which three are compulsory<sup>66</sup> committees. The bid specification committee ("BSC"), bid evaluation committee ("BEC"), and the bid adjudication committee ("BAC") whereas the quotation committee ("QC") is to be established at the discretion of the accounting officer. Each concern itself with a separate and sequential part of the procurement chain.
- 2.1.2 The effective functioning and performance of these committees is critical to the AO's mandate of ensuring a fair, equitable, transparent, competitive, and cost-effective procurement system. The establishment, composition and functioning of these necessary committees will be developed in this chapter.
- 2.1.3 The BSC, BEC and BAC are involved in the decision-making processes which lead to the award of departmental bids above a VAT-inclusive prescribed threshold of R1 million.<sup>67</sup> It is noted that the AO has the discretion to lower this threshold value depending on the needs of the department.
- 2.1.4 Given the significant sums involved, it is crucial the AO ensures that good governance principles are adhered to, that bias in the selection of committee members is avoided, and that sound institutional memory is applied. Committees should be as streamlined as possible and integrated within existing procurement structures.<sup>68</sup>

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. How many employees are required on the BSC/BEC must be included as defines the requirements for a quorum?
2. How many SCM practitioners are required on the BSC/BEC?  
Department to complete
3. Note that the current threshold for the Competitive Bidding Process has been revised to R1 million. It is the discretion of the AO whether/ not the Department's threshold for competitive bidding be now aligned or whether the Department lowers the R1million threshold to mitigate process risks.

### 2.2 BID SPECIFICATION COMMITTEE

- 2.2.1. A BSC must be established for each bid with an estimated value of more than, the prescribed amount, currently R1million, inclusive of VAT. Bids of lesser value may have a BSC established, but this is not mandatory and is at the discretion of the AO. The composition of the BSC is at the discretion of the department but must include an employee from the departmental component to benefit from the procurement and a SCM practitioner. At least **[50%+1]** of members must be present to constitute a quorum when the BSC executes its functions. The appointment of these members, their roles and responsibilities, and their period of appointment are specified in writing by the AO or their delegate.<sup>69</sup>

<sup>66</sup> NTR r. 16A6.2

<sup>67</sup> NT PFMA SCM Instruction No. 02 of 2021/22

<sup>68</sup> NT Supply Chain Management: A Guide for Accounting Officers/Authorities, 2004, s. 1.6.1.1

<sup>69</sup> WC PTI 2019 s. 3.4.4 read with s. 3.7.1

## 2.2.2 Functions of the BSC

- (a) A BSC is responsible to both draft unbiased bid / tender specifications and measurable bid / tender evaluation criteria for procurement undertaken by the department.
- (b) Specifications and evaluation criteria must:
  - (i) be drafted in a manner that allows all potential suppliers to offer their goods and services;<sup>70</sup>
  - (ii) take account of accepted standards with which the equipment, material or workmanship should comply with, such as those issued by South African Bureau of Standards South Africa ("SABS"), the International Standards Organisation ("ISO") or an authority accredited or recognised by the South African National Accreditation System ("SANAS");<sup>71</sup>
  - (iii) where possible, be described in terms of performance required, rather than in terms of descriptive characteristics for design;
  - (iv) not create trade barriers using specifications, plans, drawings, designs, test methods, packaging, and marking or labelling of conformity certification; and
  - (v) not refer to any particular trademark, name, patent, design, type, specific origin, or manufacturer, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods or services sought, in which case such reference must be accompanied by the words "or equivalent."<sup>72</sup>

## 2.3 BID EVALUATION COMMITTEE

2.3.1 A BEC must be established for each bid with an estimated value of more than, the prescribed amount, currently R1 million, inclusive of VAT. Bids of lesser value may have a BEC established, but this is not mandatory. The composition of the BEC is at the discretion of the department but must include an employee from the departmental component to benefit from the procurement and a SCM practitioner. At least **[50%+1]** of members must be present to constitute a quorum when the BEC executes its functions. The appointment of these members, their roles and responsibilities, and their period of appointment are specified in writing by the AO or their delegate.<sup>73</sup>

2.3.2 A BEC is responsible for the evaluation of bids received for a tender. The BEC must:

- (a) evaluate bids in accordance with the criteria stipulated in the bid tender document, checking for:
  - (i) compliance with conditions for bidding;
  - (ii) compliance with bid specifications;
  - (iii) external factors that might improperly influence the award of the bid;
  - (iv) completeness of bids;

<sup>70</sup> NT Supply Chain Management: A Guide for Accounting Officers/Authorities, 2004, s. 3.4.1

<sup>71</sup> NT Supply Chain Management: A Guide for Accounting Officers/Authorities, 2004, s. 3.4.1

<sup>72</sup> NT Supply Chain Management: A Guide for Accounting Officers/Authorities, 2004, s. 3.4.2

<sup>73</sup> WC PTI 2019 s. 3.4.4 read with s. 3.7.1

- (v) technical accuracy of bids; and
  - (vi) accuracy of supplier detail.
- (b) evaluate each bidder's ability to execute the contract by meeting the requirements set out in the bid evaluation criteria;<sup>74</sup>
- (c) allocate point scores in terms of both the price<sup>75</sup> and preferential point<sup>76</sup> claims;
- (d) submit a report to the BAC, recommending to whom the bid should be awarded;<sup>77</sup> and
- (e) re-evaluate bids in cases where bid recommendations have been referred to the BEC by the BAC.

## 2.4 BID ADJUDICATION COMMITTEE

2.4.1 The BAC differs in form from the BSC and BEC as it is a standing committee that exists independent of individual bids. The AO or their delegate must establish and appoint a BAC that will serve for a maximum period of 3 years. At least **[50% plus 1]** of members must be present when committees execute their functions. The BAC must consist of at least four senior employees and be constituted as follows.<sup>78</sup>

- (a) chairperson – where possible this should be the CFO;
- (b) vice-chairperson – of at least director level;
- (c) other members – should emphasise cross-functional teams comprising senior employees of whom at least one must be a SCM practitioner); and
- (d) secretariat – an employee from the department's SCM Unit shall perform this duty.

2.4.2 So as not to delay meetings and the orderly process of bid adjudications and awards, the AO or their delegate may appoint "secundi" to temporarily replace BAC members who are absent due to illness or leave, etc. The AO will also decide whether or not such "secundus" member will have the same powers as ordinary BAC members.<sup>79</sup>

2.4.3 The BAC is responsible for considering reports and recommendations made by the BEC and, in turn, making a recommendation to the AO or their delegate to make the final award. The BAC must ensure that:

- (a) all necessary bid documents have been submitted;
- (b) any prior disqualifications made by the BEC are justified and that valid reasons were furnished for the passing over of those bids;
- (c) point scoring has been fair, consistent, and correctly calculated and applied;

<sup>74</sup> Most commonly, functionality. See PPR 2017, r. 5. See also National Treasury Instruction Note on the Amended Guidelines in Respect of Bids that Include Functionality as a Criterion for Evaluation (3 September 2010), s. 3 in particular.

<sup>75</sup> PPR 2017, rr. 6 or 7, depending on the Rand value of the goods or services.

<sup>76</sup> PPFA s. 2(a), (d), and (e), read with PPR 2017, r. 3

<sup>77</sup> NTR 16A.6.2(e)

<sup>78</sup> NT Supply Chain Management Office Code of Conduct for Bid Adjudication Committees, Ref: 3/4/3/2/10, dated 24 March 2006, s. 3.2

<sup>79</sup> NT Supply Chain Management Office Code of Conduct for Bid Adjudication Committees, Ref: 3/4/3/2/10, dated 24 March 2006, s. 3.5



- (d) declarations of interest by bidders have been taken cognisance of;
- (e) verify, prior awarding of contracts, the status of the recommended bidder on the list of restricted suppliers<sup>80</sup> and the register for Tender Defaulters,<sup>81</sup> as maintained by National Treasury;<sup>82</sup>
- (f) it considers and rules on all reports recommending the amendment, variation, extension, expansion, cancellation, or transfer of contracts awarded;
- (g) it considers for approval, if and when requested to do so, the drafts of the tender specifications and evaluation criteria of the BSC in order to ensure that:
  - (i) proper terms of reference were drawn up for the goods or services required, clearly indicating the scope of the requirement, the evaluation criteria, and the points scoring weights and values;
  - (ii) strategic sourcing principles were applied and that the market was properly researched and analysed;
  - (iii) necessary funds are available for procurement;
  - (iv) special conditions of contract are specified when required, in addition to the general terms and conditions of contract appropriate; and
  - (v) the correct preference point system is prescribed.<sup>83</sup>

2.4.4 All members of the BAC should be cleared to the level of 'Confidential' by the AO and should be required to declare their financial interests in and for each specific bid they adjudicate. The National Treasury prescribed form which forms part of the Code of conduct for Bid Adjudication member is attached hereto marked **Annexure 1** must be utilised for this purpose.

2.4.5 Each BAC member, as well as all employees rendering administrative support to the BAC, must sign a declaration form at each BAC meeting. Members are to declare that they will:

- (a) accept and apply the confidentiality of the meeting;
- (b) not make known the contents of the meeting, unless authorised by the BAC during the evaluation/ adjudication process;
- (c) not purposefully favour or prejudice any person; and
- (d) not have any interest in the companies that have submitted bids for consideration, nor will their close family members, partners, or associates have any interest in companies that have submitted bids for consideration.<sup>84</sup>

<sup>80</sup> NTR 16A9.1(c). See also NT Supply Chain Management 'Checking the Prohibition Status of Recommended Bidders Prior to Awarding any Contract', Ref: 3/4/3/2/10, dated 19 February 2008, s. 2.1. The register containing the details of restricted suppliers is available on the National Treasury website. Also see PTI 2019 s.5.3.6

<sup>81</sup> PCCA ss. 12 and 13. See also NT Supply Chain Management 'Checking the Prohibition Status of Recommended Bidders Prior to Awarding any Contract', Ref: 3/4/3/2/10, dated 19 February 2008, s. 2.2. The register containing the details of tender defaulters is available on the National Treasury website.

<sup>82</sup> NTR 16A9.1(c)

<sup>83</sup> PPR 2017, rr. 6 and 7

<sup>84</sup> NTR 16A8.4

- 2.4.6 Neither a member of the BSC nor a member of the BEC may be a member<sup>85</sup> of the BAC. A line manager, who is both a member of a standing BAC and who also served on the BEC or BSC, in terms of their own programme procurement needs, or acts as an advisor to either committee, must recuse him- or herself when such a bid is being discussed. That member will have no voting rights when the bid is adjudicated. He or she, as a member of the BEC or BSC, may, however, be requested to present or clarify a BEC report or recommendation to the BAC. This presentation is permitted.<sup>86</sup> Members of the BEC may present their recommendations to the BAC and clarify any issues but shall not have any voting powers on the BAC.
- 2.4.7 If a bid other than the bid recommended by the BEC is recommended by the BAC, the AO, or their delegate, as well as the BEC, must first be notified and given the reasons for the deviation. The AO, or their delegate, may after consideration of the reasons for the deviation, ratify or reject the recommendation of the BAC.<sup>87</sup>
- 2.4.8 If the deviation by the BAC is ratified, the Auditor-General, the National Treasury, and the Provincial Treasury must be notified of the reasons for deviating from the BEC recommendation.<sup>88</sup>
- 2.4.9 The AO, or their delegate, may at any stage refer any recommendation made by the BEC or the BAC back to that committee for reconsideration.<sup>89</sup>

## 2.5 QUOTATION COMMITTEE

- 2.5.1 Procurement of a value up to R1 million, VAT inclusive, is not made through a competitive bidding process.<sup>90</sup> A quotation committee ("QC") may, if necessary, be established to handle all procurement valued between R2001 and R1million (VAT inclusive). Members of the committee must be appointed by the AO, or their delegate. The Department may increase the minimum threshold of R2001 in terms of when the committee will be applicable to its own department. At least **[50% plus 1]** of members must be present when committees execute their functions.

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. How many employees are required on the QC?
2. How many SCM practitioners are required on the QC?
3. What is the quorum required of the QC?
4. Threshold applicable for the QC?

Department to complete

<sup>85</sup> NT Supply Chain Management Office Code of Conduct for Bid Adjudication Committees, Ref: 3/4/3/2/10, dated 24 March 2006, s. 4

<sup>86</sup> NT Supply Chain Management Office Code of Conduct for Bid Adjudication Committees, Ref: 3/4/3/2/10, dated 24 March 2006, s. 4.5.2

<sup>87</sup> NT Supply Chain Management Office Code of Conduct for Bid Adjudication Committees, Ref: 3/4/3/2/10, dated 24 March 2006, s. 2.6

<sup>88</sup> NT Supply Chain Management Office Code of Conduct for Bid Adjudication Committees, Ref: 3/4/3/2/10, dated 24 March 2006, s. 4.5.6

<sup>89</sup> NT Supply Chain Management Office Code of Conduct for Bid Adjudication Committees, Ref: 3/4/3/2/10, dated 24 March 2006, s. 4.5.6

<sup>90</sup> NT PFMA SCM INSTRUCTION NO. 02 OF 2021/22

2.5.2 The function of the QC is to consider reports and recommendations made by the intended user of the goods or services to be procured, or the department's SCM Unit, to ensure that:

- (a) all necessary documentation has been submitted;
- (b) disqualifications are justified and that valid and accountable reasons were furnished for passing over bids;
- (c) point scoring has been fair, consistent and correctly calculated and applied;
- (d) evaluate each bidder's ability to execute the contract by meeting the requirements set out in the bid evaluation criteria;
- (e) the quotation offers value for money;
- (f) any previous failure or success of contracts between the department and the quoting supplier has been considered;
- (g) consideration of draft specifications;
- (h) evaluation criteria
- (i) the list of restricted suppliers and the Register of Tender Defaulters has been consulted to establish the status of the quoting supplier;<sup>91</sup> and
- (j) all discussions and decisions taken are recorded by means of minutes, signed by the chairperson.

## **2.6 STOCK-TAKE COMMITTEE**

2.6.1 The BSC, BEC, and BAC are not the only mandatory committees for SCM. Two others exist, those being the stock-take committee and the disposal committee. A stock-take committee ("STC") must be established by the AO or their delegate for, as the name suggests, stock-taking processes.<sup>92</sup> Members of the committee must be appointed by the AO, or their delegate. The functions of the STC are to:

- (a) ensure that all assets and inventories are subjected to stock-takes;
- (b) ensure that all assets and inventories are physically counted and verified with the asset register and LOGIS report respectively;
- (c) ensure that all deficiencies and surpluses are noted and investigated;
- (d) indicate the results of the stocktaking in the form of a written report;
- (e) be responsible for the administration of the annual stock-take; and
- (f) plan for any continuous stock-take program, which must be approved by the AO or their delegate.

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<sup>91</sup> NTR 16A9.1(c). See also NT Supply Chain Management 'Checking the Prohibition Status of Recommended Bidders Prior to Awarding any Contract', Ref: 3/4/3/2/10, dated 19 February 2008, s. 2.1. The register containing the details of restricted suppliers is available on the National Treasury website. The Register for Tender Defaulters should also be consulted, even though the service is not out for tender. Service providers seek work in myriad ways; myriad ways should be used to obstruct any attempt of theirs to avoid obligations. Also see PTI 2019, ss.5.3.5 and 5.3.6

<sup>92</sup> WC PTI 2019, ss. 3.4.1(d) and 8.4

## 2.7 DISPOSAL COMMITTEE

2.7.1 Assets are not kept in perpetuity. For a variety of reasons, they eventually do need to be disposed of. A disposal committee ("DC") must be established by the AO or their delegate for the disposal of assets.<sup>93</sup> Members of the committee must be appointed by the AO, or their delegate. The following principles guide the establishment of the DC:

- (a) members must be appointed in writing by the AO or their delegate;
- (b) if the chairperson is not already an employee of the SCM Unit, one of the other members of the committee must be an employee within the SCM Unit;
- (c) in addition to the above-mentioned appointed members, the AO or their delegate may appoint an additional member who has sound knowledge of the assets or stock where required;
- (d) the chairperson should be a senior employee. Senior employee is defined as an employee who has the required skill and competencies for asset management and disposal procedures; and
- (e) the DC may consider and exercise its duties only when at least **50% + 1** of its members are present to create a quorum.

2.7.2 An employee who is physically and directly in control of the movable asset being disposed of may not serve as a member of the DC. This is to guard against any conflict of interest over the fact, or manner, of disposal. However, that employee may act as an external advisor to the DC.

2.7.3 The DC must, when disposing of office furniture in which employee documents are normally kept, inspect the furniture with care, to ascertain that they do not contain any employee documents. A comment confirming this must be noted on the disposal schedule.

2.7.4 The functions of the DC are as follows:

- (a) the chairperson determines the date of inspection and, in writing, notifies members of the DC and the SCM Unit of the time and date of inspection, and of the items for disposal;
- (b) the DC collects evidence to establish if the asset is redundant, obsolete, damaged, or unserviceable;
- (c) the DC will note down recommendations for disposal on the disposal schedule;
- (d) the DC will decide on the disposal mechanism for obsolete, unserviceable and redundant items;
- (e) the DC will apply financial considerations such as depreciation to the assets intended for disposal and will quantify the expected returns on sale;
- (f) the DC will forward the disposal schedule to the AO or their delegate;

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<sup>93</sup> WC PTI 2019, ss. 3.4.1(e) and 10.2.1

- (g) the AO or their delegate receives and evaluates the recommendation on the disposal schedule. If the AO or their delegate disagrees with the recommendation, the disposal schedule will be referred to the Chairperson of the DC for reconsideration;
- (h) the DC will cancel the government mark on inventories/assets with a cross ("X") to indicate that it is no longer government property; and
- (i) the DC will keep detailed records of all its own activities and use them for financial statement reporting.

## **2.8 DUTIES AND POWERS OF THE MEMBERS OF THE VARIOUS COMMITTEES**

2.8.1 Certain roles and responsibilities are common across SCM committees. The rules listed below apply to all SCM committees.

### **2.8.2 Chairperson**

(a) The Chairperson:

- (i) has a casting vote as well as a deliberate vote;
- (ii) retains all their rights as a member;
- (iii) may adjourn a meeting;
- (iv) may rule on points of order, such ruling being final;
- (v) may appoint any co-opted members or advisors to a committee, such co-opted members and advisors not having any voting rights;
- (vi) may withdraw any proposal or other matters under discussion before it is put to the vote; and
- (vii) convene extraordinary committee meetings on request.

(b) The Chairperson must:

- (i) maintain order during a meeting and ensure that business is conducted in an orderly manner;
- (ii) before opening a meeting, ensure that it is properly constituted by quorum;
- (iii) protect the rights of every member;
- (iv) vacate his / her seat to the vice chairperson, should he/she wish to partake in a discussion in a partisan manner;
- (v) regulate participation in discussions;
- (vi) deal with items in the sequence that they appear on the agenda;
- (vii) ensure that members know exactly on what they are required to vote;
- (viii) ensure that only one member holds the floor at a time;
- (ix) provide guidance by directing the meeting, but shall not dominate;

- (x) conduct meetings in a formal manner; and
- (xi) verify the minutes of the meeting for correctness and sign the minutes after they have been approved of by the committee.

### **2.8.3 Vice-chairperson**

- (a) the vice-chairperson has the same powers and duties as other members. in addition, and where necessary, the vice-chairperson shall preside as chairperson in the absence of the chairperson. the vice chairperson shall also act as chairperson, should the chairperson wish to partake in partial discussions.
- (b) If both the chairperson and vice-chairperson are absent from a meeting, the members present may elect one of their members to preside at the meeting.

### **2.8.4 Members**

- (a) Members of the committee shall:
  - (i) be fully conversant with the powers and limitations of the committee as well as all directives pertaining to SCM, including the relevant sections of the Constitution, PFMA and accompanying NTR and PTI, PPPFA, all Directives, Instructions, Practice Notes and Circulars issued by the relevant statutory authority and any other legislation that can impact on decisions, as well as the delegated powers issued by the AO;
  - (ii) act in accordance with above-mentioned legislation, regulations and procedures;
  - (iii) apply their minds, in order to take meaningful and accountable decisions and, in the event of doubt or uncertainty, to propose that matters be referred for clarification;
  - (iv) in advance, furnish a written apology should he/she not be able to attend a meeting;
  - (v) strive to be punctual for meetings and to stay for the duration of a meeting;
  - (vi) prepare properly for each meeting by studying the agenda and reports submitted for consideration within the agenda;
  - (vii) be familiar with meeting procedures as per paragraph 5 of the Code of Conduct for BAC members in order to make a contribution in the correct manner; and
  - (viii) approve, where accurate, the minutes drafted by the secretary.
- (b) Members have the right to:
  - (i) know the agenda in advance;
  - (ii) submit proposals for the agenda and participate in proceedings;
  - (iii) vote; and
  - (iv) to have a dissenting voice and have the reasons for dissent recorded.

### **2.8.5 Co-opted members and advisors**

- (a) Co-opted members and advisors have the same powers and duties as members. However, they do not have the right to vote on any matter under discussion.

### **2.8.6 Observers**

- (a) The chairperson may, on request, allow officials to attend a meeting as observers. Observers have no right of participation in the proceedings, except to advise members of the committee or the committee as a whole, if permitted by the chairperson. When members of a committee are required to sign a declaration form binding them to confidentiality and/or compelling a disclosure of interests, observers are required to make the same declaration.

### **2.8.7 Secretariat and administrative support**

- (a) The vital function of due process in committees is maintained by the secretariat through reliable and predictable administrative support. The secretary must:
  - (i) in conjunction with the chairperson (or vice chairperson, when acting in the role of chairperson) compile an agenda for, and determine dates of, meetings;
  - (ii) give notice of proposed meetings to committee members;
  - (iii) process and distribute all submissions and reports together with the agenda to committee members at least three working days before the meeting takes place;
  - (iv) record the minutes and decisions of the meeting;
  - (v) ensure that the proceedings at meetings are recorded;
  - (vi) adhere strictly to the stipulations of the National Archives of South Africa Act, 1996 (Act 43 of 1996) and the Provincial Archives and Records Service of the Western Cape Act, 2005 (Act 3 of 2005);
  - (vii) If information is appropriately requested from the committee by the department, provide written feedback of all decisions taken by the committee; and
  - (viii) be responsible for all the administrative tasks of the committee.

### **2.8.8 General**

- (a) The work of all of these committees will be discussed throughout the AOS.

## CHAPTER 3: ETHICAL STANDARDS

### 3.1 COMPLIANCE WITH ETHICAL STANDARDS

3.1.1 Sound ethics allow for the possibility of effective service delivery. All employees involved in the procurement process must act with integrity.<sup>94</sup> Every employee is a guardian of the procurement process and is obliged to maintain a duty of care to ensure that the system is not abused, neither for his/herself, the sake of the department nor for any potential contractor or service provider.<sup>95</sup>

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. The code of ethics for supply chain management practitioners was issued to departments and public entities via PT Circular 28 of 2019 (Supplementary 1 of 2019)
2. The department is guided to adapt to its own bespoke needs

3.1.2 Steps may be taken against any employee reasonably suspected of acting contrary to the ethical standards of the department, WCG or general standards of professional behaviour. To avoid this, and maintain the required ethical standards,<sup>96</sup> all employees will:

- (a) Maintain open, honest, and co-operative business relations with colleagues and vendors to promote mutual trust and respect;<sup>97</sup>
- (b) adhere to the confidentiality of government, personal,<sup>98</sup> and commercial information;
- (c) avoid any conflict of interest or a perception of bias, and disclose any potential conflict of interest to the Head of the SCM Unit, who must in turn report it to the AO or their delegate;<sup>99</sup>
- (d) exercise impartial conduct in the evaluation of bids;
- (e) apply high standards of professionalism and competence as well as the encouragement of similar standards amongst colleagues;
- (f) promote mutual trust and respect;
- (g) ensure an environment where business can be conducted with integrity and in a fair and reasonable manner;
- (h) recognise and deal with conflicts or the potential thereof;
- (i) deal with suppliers even-handedly;
- (j) ensure that they do not compromise the good standing of the state through acts of impropriety, which may arise from the acceptance of gifts and hospitality;

<sup>94</sup> NTR 16A8.1(b)

<sup>95</sup> Framework for Supply Chain Management, GG. 25767, 5 December 2003, promulgated in terms of the PFMA. See s. 8, in particular.

<sup>96</sup> WC PTI 2019, s. 3.8.1

<sup>97</sup> NTR 16A8.1(a)

<sup>98</sup> In accordance with the Protection of Personal Information Act, 2013 (Act 4 of 2013)

<sup>99</sup> NTR 16A8.5



(k) see to the scrupulous use of public property, resources, and funds; and

(l) assist in the elimination of fraud and corruption.

3.1.3 The AO has the right to request that an appropriate security clearance be acquired for any serving or newly appointed employee involved in SCM.

## **3.2 CONFIDENTIALITY**

3.2.1 Confidentiality in public procurement, is an important issue used to uphold the integrity of competitive procurement. Procuring entities should at all times maintain appropriate confidentiality to protect information and to provide tender participants with the confidence to do business with them.

3.2.2 Companies or persons that challenge a bid often seek disclosure of the winning bidder's tender, together with all the department's associated evaluation and scoring information. These sets of documentation unavoidably contain commercially sensitive information that the winning bidder would want to keep confidential and concealed from its competitors. Government employees are issued with, and given access to, these and other departmental contracts on the understanding that contractual confidentiality is strictly observed.

3.2.2 The principle of open justice (a common law principle that proceedings and any related documents should be open to the public) normally requires disclosure of all documents relevant to the issues in the case. However, disclosure of commercially sensitive information to a competitor might result in commercial advantage and/or distortions in the market. Tension can occur between the need for open justice and the preservation of confidentiality.

3.2.3 Confidential information is that which is sensitive and meant to be kept secret or private. Commercially sensitive information can be protected, if it is confidential and has not been released into the public domain. Emphasis is on ensuring open justice through mechanisms that seek to protect trade secrets and prevent rival companies gaining a competitive edge on future tenders.

3.2.4 Under no circumstances should any contractual or pricing information be divulged to external sources or used as a "benchmark" for independent negotiation. This behaviour undermines the Department's reputation as an honest and responsible organisation and can affect the stability of professionally negotiated contracts.

3.2.3 Any personal information provided by any party as a result of the procurement process must be processed in terms of POPIA. At minimum, this means that the information must be processed lawfully and in a reasonable manner that does not infringe the privacy of the provider.<sup>100</sup> Any personal information provided may only be used for the specific purpose of completing the procurement process.<sup>101</sup> Any further use of the personal information must be consistent with the original purpose of collection.<sup>102</sup>

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<sup>100</sup> POPIA s. 9(a) and (b)

<sup>101</sup> POPIA s. 13(1)

<sup>102</sup> POPIA s. 15(1) – (3)

### 3.3 CODE OF CONDUCT FOR SCM PRACTITIONERS

- 3.3.1 SCM practitioners must ensure that they perform their duties effectively and with integrity. There are two principal guides to the ethical framework supporting their duties.<sup>103</sup> First, the Code of Conduct for Supply Chain Management Practitioners<sup>104</sup> and, second, Chapter 2 "Code of Conduct" of the Public Service Regulations, 2016.<sup>105</sup> The text of those documents should be regarded as being incorporated herein. Nevertheless, the vital points of those documents are set out below.
- 3.3.2 Practitioners should be fair and impartial in the performance of their functions. They should at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual.<sup>106</sup> Moreover, they should not abuse the power and authority vested in them.<sup>107</sup>
- 3.3.4 Practitioners should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to leverage that obligation to influence them in the performance of their employee duties.<sup>108</sup> Practitioners should declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest.<sup>109</sup> If undertaking such activities, permission for remunerative work outside of the public service may be required.<sup>110</sup>
- 3.3.5 Practitioners should not take improper advantage of their previous office after leaving their employee position.<sup>111</sup>
- 3.3.6 Practitioners are accountable to the public for their actions and should, therefore, use public property scrupulously.<sup>112</sup>
- 3.3.7 Only the AO or their delegate has the authority to commit the government to any transaction for the procurement of goods and services. All transactions conducted by a practitioner should be recorded and accounted for in an appropriate accounting system. Practitioners should not make false or misleading entries into such a system.<sup>113</sup>
- 3.3.8 Practitioners should be transparent about decisions and actions that they take, whilst respecting the necessary confidentiality rules.<sup>114</sup> They should maintain reasons for their decisions and, in the event that a PAIA request is brought to gain access to information under their control or within their knowledge, they should provide advice to the departmental information officer, or their delegate, who has a duty to consider and respond to the request for information.<sup>115</sup>

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<sup>103</sup> These put into practice the more general principles set forth in the Framework for Supply Chain Management, GG. 25767, 5 December 2003, promulgated in terms of the PFMA.

<sup>104</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, drafted in terms of PFMA s. 76(4)(c).

<sup>105</sup> Public Service Regulations 2016, Chapter 2 "Code of Conduct", rr. 11 – 24, in terms of the Public Service Act, 1994 (Proclamation 103 of 1994)

<sup>106</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s. 1.2

<sup>107</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s. 1.3

<sup>108</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s. 2.2

<sup>109</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s. 2.1

<sup>110</sup> See variously within the Public Service Regulations, 2016, including rr. 13, 17, 18, 19, and 21, read together with Public Service Act, s. 30.

<sup>111</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s. 2.3

<sup>112</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s. 3.2

<sup>113</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, ss. 3.3 – 3.4

<sup>114</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s 4.1

<sup>115</sup> PAIA, s. 17(1) – (2)

3.3.9 Matters of a confidential nature in the possession of SCM practitioners should be kept confidential unless legislation, a court order, or the performance of a duty requires otherwise. Such restrictions continue to apply after separation from service.<sup>116</sup>

### **3.4 CONFLICTS OF INTEREST**

3.4.1 Every employee must declare his or her interest, and that of any family member, in an entity conducting business with the WCG.

3.4.2 Every time an SCM practitioner is involved with a procurement-related matter, they must declare any business, commercial interest and financial interest or activities undertaken for financial gain that may raise a possible conflict of interest.<sup>117</sup> The declaration must be made to the Head of the SCM Unit, who must in turn report it to the AO or their delegate.<sup>118</sup>

3.4.2 If a SCM practitioner, or any close family member, partner, or associate has any private or business interest in any contract to be awarded, that practitioner must both disclose that interest and withdraw from participating in the procurement process for that contract.<sup>119</sup>

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

3.5.1 The provision of hospitality by suppliers may represent an attempt to circumvent the rules on acceptance of gifts. Any attempts by suppliers to undermine the honesty of the official by the offering gifts or other inducements must be reported to the Accounting Officer.

3.5.2 In the South African context bestowal of a gift may generate a negative public perception of corruption and due to the risk of generating a *quid pro quo* relationship. No provider or prospective provider of goods or services to the department, or a recipient or a prospective recipient of goods disposed, or to be disposed of, by the department, may either promise, offer or grant:

(a) any inducement or reward to an employee in connection with the award of a contract; or

(b) any reward, gift, favour or hospitality to:

(i) any employee of the department; or

(ii) any other role player involved in the SCM system of the department.<sup>120</sup>

3.5.2 These prohibitions do not apply to gifts and hospitality extended for less than R350 in value.<sup>121</sup> The details of any gift that has been accepted must be disclosed in a register administered by a relevant official of the department.

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<sup>116</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s. 5.2

<sup>117</sup> NT Practice Note SCM 4 of 2003 Code of Conduct for Supply Chain Management Practitioners, s. 2.1

<sup>118</sup> NTR 16A.8.4

<sup>119</sup> NTR 16A8.4

<sup>120</sup> WC PTI 2019, s. 3.8.4

<sup>121</sup> WC PTI 2019, s. 3.8.5

- 3.5.4 The AO must promptly report any alleged contraventions of the prohibition to the Provincial Treasury. Provincial Treasury will consider whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be suspended from the e-procurement solution.<sup>122</sup>
- 3.5.5 The AO must promptly disclose to the Provincial Treasury any gift, donation or sponsorship promised, offered, or granted in terms of NTR 21 to the department, whether directly or through a representative or intermediary, by any:
- (a) provider or prospective provider of goods or services to the department; or
  - (b) recipient or prospective recipient of goods disposed or to be disposed of by the department.<sup>123</sup>

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<sup>122</sup> WC PTI 2019, s. 3.8.6

<sup>123</sup> WC PTI, 2019, s. 3.8.7

## CHAPTER 4: SYSTEMS

### 4.1 INTRODUCTION

- 4.1.1 This chapter deals generically with provincially operated systems that are utilised in the supply chain management and asset management domain. Currently, all Provincial departments are utilising a combination of the Logistical Information System (LOGIS) and e-Procurement Solution (ePS) for their procurement and provisioning requirements.
- 4.1.2 The two systems work hand-in glove to help control the purchasing, retention and disposal of moveable assets in the WCG. First the e-Procurement Solution (ePS) assists procurement by providing an internet-based sourcing solution for obtaining quotations and bids.<sup>124</sup> Second, the Logistical Information System (LOGIS) facilitates provisioning.

### 4.2 LOGISTICAL INFORMATION SYSTEM (LOGIS)

- 4.2.1 LOGIS remains the provisioning system of the department which is operational in the financial environment and accompanying delegations. The process of ordering goods and/or services follows the departments procurement process, and both are part of the departments SCM process.
- 4.2.2 The department must ensure that institutional policies and standard operating procedures are developed, implemented and maintained for efficient and effective utilisation of LOGIS within the department.<sup>125</sup>
- 4.2.3 The policies and standard operating procedures referred to in paragraph 4.2.2 must provide for, amongst others, the following:
- (a) setting up of new users;
  - (b) amendments due to transfer or relocation of employees and termination of service;
  - (c) identification of inactive user accounts;
  - (d) regular verification of validity of access;
  - (e) access control to the system;
  - (f) responsibilities of individual users;
  - (g) investigation of suspicious transactions; and
  - (h) co-ordination of formal training of system users.
- 4.2.4 The department must furthermore ensure that appropriate access controls are in place to minimise the risks of confidentiality breaches, unauthorised access and changes to data (integrity) or loss of continuity of business (availability).<sup>126</sup> These access controls must include, amongst others, the following:

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<sup>124</sup> WC PTI 2019, s,5.3.1

<sup>125</sup> WC PTI 2019, s,8.5.1(a)

<sup>126</sup> WC PTI 2019, s,8.5.1(b)

- (a) standardised application forms for registration, modification and deregistration of system users that provide for adequate details of the users, supervisor or manager, type of access and required approvals;
- (b) processes for the safeguarding of the duly completed and approved application forms for inspection and audit purposes;
- (c) segregation of duties;
- (d) standardisation of user ID's to Persal numbers, except in instances where the system programmatically generates ID's and for interface purposes;
- (e) utilisation of the maximum password length provided for by the relevant system;
- (f) restriction of the password expiry date to a maximum of 30 days; and
- (g) implementation of additional access controls as prescribed by the Provincial Treasury from time to time.

4.2.5 The AO of the department must appoint a departmental system controller or administrator, in writing, whose responsibilities must include the following:<sup>127</sup>

- (a) ensure compliance to departmental policies and standard operating procedures;
- (b) orientation of system users;
- (c) identification of training needs and the roll-out of appropriate training or interventions;
- (d) evaluate and recommend system enhancements;
- (e) monitoring of effective utilisation of the system at departmental level;
- (f) the issuing of system notices, circulars and to emphasise issues that require attention;
- (g) compilation and maintenance of standard operating procedures;
- (h) liaison with Provincial Treasury, where applicable; and
- (i) render an institutional user support (helpdesk) function.

4.2.6 The department must also ensure that:<sup>128</sup>

- (a) all goods or services are procured and accounted for on the logistical information system, whether transversal or in-house, utilised by the department;
- (b) only the current years' projected expenditure in respect of a long-term contract is committed in the current financial year; and
- (c) the relevant system utilised provides for, in addition to an invoice date, for an invoice receipt date, which must be captured on the system.

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<sup>127</sup> WC PTI 2019, s.8.5.2

<sup>128</sup> WC PTI 2019, s.8.5.1(c), (d) and (e)

4.2.7 The system controller or administrator must ensure that new and current system users are subject to formal training in at least the system profile allocated to them to ensure the correct and optimal utilisation of the system.<sup>129</sup>

### **4.3 e-PROCUREMENT SOLUTION**

4.3.1 The e-Procurement Solution (ePS), is in line with government's overall strategy to achieve continuing improvement in value for money, enhance competitiveness of suppliers, and provide business communities with a convenient and effective medium, through which companies and individuals alike, could identify and exploit business opportunities, has been implemented since 1 April 2019.

4.3.2 The Provincial Treasury is responsible for the implementation and maintenance of the ePS, which provides for:

(a) a supplier evidence bank as a central repository of governance documentation;

4.3.3 The ePS referred to in paragraph 4.3.2 must be utilised by departments for invitation of price quotations (competitive and limited), the receipt thereof and the adjudication of bids submitted by suppliers.

4.3.4 All prospective suppliers intending to do business with the Western Cape Government via the ePS must complete a registration process on the ePS as determined from time to time by the Provincial Treasury.

4.3.5 Departments may only do business with suppliers that are registered on the ePS. This requirement does, however, not apply when procuring:

(a) through petty cash;

(b) from foreign suppliers with no local registered entity; and

(c) any other entity, as may be directed by National Treasury from time to time.

4.3.6 It is incumbent on institutions to advise their current or prospective suppliers to register on the ePS.

4.3.7 The value and benefits of the ePS for business and departments, includes the following:

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

(i) bringing business opportunities within the reach of a larger audience, inclusive of smaller and emerging businesses, thereby stimulating broader spectrum competition; automation of manual processes (streamlining of the procurement processes);

(ii) promotes greater understanding and responsiveness amongst buyers, suppliers and other partners in the supply chain process;

(iii) limits the risks of irregularities and fraud in the process as only bids received via the ePS are accepted;

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<sup>129</sup> WC PTI 2019, s.8.5.1(f)

- (iv) suppliers need only register once and maintain their profile whilst doing business with all departments;
- (v) suppliers are notified by automatic alerts when mandatory documents are about to expire; and
- (vi) helpdesk and support available on working days.

**(b) Departments**

- (i) automation of manual procurement processes (improved productivity, reduction in paperwork and telephone, fax costs, etc);
- (ii) allows easier compliance with section 217 of the Constitution;
- (iii) sustainable preferential procurement strategy in place to support SMME's;
- (iv) up to date and verified supplier information held centrally;
- (v) fair and transparent system that limits the possibility of irregularities and fraud and collusion between suppliers and departmental staff;
- (vi) facilitates and streamlines provincial internal control processes;
- (vii) bids are automatically scored in line with the PPPFA;
- (viii) provision of appropriate and accurate management information;
- (ix) audit trail of all transactions; and
- (x) user account management functionalities.

4.3.8 Access to the bid invitations is via a web-based application to suppliers who are registered on the ePS. Access to this is free to the supplier and all that is required is a duly registered status on the ePS.

**4.4 CENTRAL SUPPLIER DATABASE AND WESTERN CAPE SUPPLIER EVIDENCE BANK**

**4.4.1 Central Supplier Database (CSD)**

- (a) The National Treasury has implemented the Central Supplier Database (CSD) since 1 April 2016 to serve as the master data source for all supplier information for all spheres of Government.
- (b) The purpose of centralising Government's supplier database is to reduce duplications of effort and cost for both supplier and Government, whilst at the same time enabling electronic procurement processes.
- (c) The CSD currently has several interfaces and linkages with various government departments and agencies which serve as a source for supplier information that augment supplier profiles stored on the CSD.
- (d) It is currently a mandatory requirement for suppliers to register on the CSD. This requirement, however, does not apply when procuring through petty cash and from foreign suppliers with no local registered entity and any other entity, as may be directed by National Treasury from time to time.



#### **4.4.2 Western Cape Supplier Evidence Bank (WCSEB)**

- (a) The ePS provide for the integration of CSD information into the supplier evidence bank housed on the ePS.
- (b) The evidence bank serves as a central repository of governance documentation to support the WCG to comply with the regulatory framework for supply chain management.
- (c) As part of the maintenance process of the ePS, the Provincial Treasury will conduct regular verifications on compliance in relation to governance documentation housed on the supplier evidence bank. Suppliers must be notified a month before these documents expired on the e-procurement solution. This status must also be flagged on the ePS
- (d) The status of suppliers listed on the National Treasury's database of tender defaulters will be housed on the ePS. Departments may not under any circumstances procure from a supplier listed on the tender defaulter database.
- (e) The status of suppliers listed on the National Treasury's Register of Restricted Suppliers will be housed on the ePS, however, it remains incumbent on institutions to check the National Treasury register of restricted suppliers on the National Treasury's website before the conclusion of any procurement process. For suppliers listed as restricted, departments must apply due diligence and risk assessment before deciding to proceed with procurement from any such supplier.
- (f) For the purpose of checking the business interest of employees who are in the service of the state, in suppliers doing business with the Western Cape Government, employee information from CSD will be housed on the ePS.

#### **4.5 TAX MATTERS**

##### **4.5.1 Status of tax affairs**

- a) National Treasury Regulation 16A 9.1 (d) requires an accounting officer or accounting authority to reject any bid from a supplier who fails to provide written proof from SARS that a supplier either has no outstanding tax obligations or has made arrangements with SARS to meet outstanding tax obligations. This requirement has not been replaced or repealed.
- b) It must be noted that on 18 April 2016, SARS introduced an enhanced tax compliance status system on e-Filing making it easier for taxpayers to manage their tax affairs. It is essential to ensure that persons conducting business with the state are tax compliant at the time of the award of bids as no bids may be awarded to persons who are not tax compliant.
- c) Where a recommended bidder's tax compliance status cannot be verified or is non-compliant on the CSD, the bidder must be notified in writing of their non-compliant status and the bidder must be requested to submit written proof from SARS of their tax compliance status or proof that they have made an arrangement to meet their outstanding tax obligations within 7 working days. The bidder must thereafter provide the department with proof of its tax compliance status.<sup>130</sup> This must be verified by the

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<sup>130</sup> NT Instruction 9 of 2017/18, s 4.2 and PT Circular 29 of 2019

department prior to the award via the CSD and or e-Filing.<sup>131</sup> Any bidder failing to provide proof of tax compliance status on request must be regarded as non-compliant and their bid rejected.<sup>132</sup>

#### **4.5.2 Determining the status of tax affairs**

- (a) To assist the department to determine the status of a bidder's tax affairs, a bidder is required, as a bid condition, to register on the CSD and the ePS (if doing business via the ePS) and to provide a copy of their Master Registration Supplier Number (MAAA) on the CSD.<sup>133</sup>
- (b) The bidder may also be requested to include a copy of their tax compliance status personal identification number ("PIN") for use on the e-filing system operated by SARS.<sup>134</sup>
- (c) The tax compliance status of the recommended bidder must be verified either via the CSD or the tax compliance status PIN prior to the award of a bid. The institution must keep proof of this verification as it is critical for audit purposes.
- (d) The AO or their delegate must designate an employee, preferably from the department's SCM unit, to verify thereafter the tax compliance status of the bidder.<sup>135</sup>
- (e) At the time of checking, the employee must take a printed screen view of the tax compliance status, with the time and date clearly indicated or a copy of the CSD report indicating the time and date upon verification. This must be printed and filed with the bidder's documents for auditing purposes.<sup>136</sup>
- (f) If a bidder prints and files with its bid a tax clearance certificate issued by SARS on e-filing, the certificate will be accepted. However, it must be verified by the employee on the SARS e-filing system and the verification results filed by the employee with the bidder's documents as above.
- (g) There is no need to obtain proof of a supplier tax compliance status where goods and services are procured by institutions such as South African Embassies and Missions or any other South African office outside the borders of South Africa for use outside the country.

#### **4.5.3 Foreign suppliers**

- (a) Where goods and services are procured from foreign suppliers who, at the time of the award, had existing tax obligations in South Africa, proof of that tax compliance must be obtained from the supplier in the same manner as for local suppliers.
- (b) Foreign suppliers with neither South African tax obligations nor a history of doing business in South Africa must complete the 'Questionnaire to bidding for foreign suppliers' on WCBD 1.<sup>137</sup>

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<sup>136</sup> NT Instruction 9 of 2017/18, s 4.3

<sup>133</sup> PT Circular 29 of 2019, s 5.1.3

<sup>134</sup> PT Circular 29 of 2019, s 5.1.7

<sup>135</sup> PT Circular 29 of 2019

<sup>136</sup> PT Circular 29 of 2019, s 5.2.6

<sup>137</sup> NT Instruction 9 of 2017/18 and PT Circular 29 of 2019

- (c) Where a recommendation for the award of bid has been made to a foreign bidder, the AO or their delegate must submit the bidder's completed WCBD1 to SARS at the following email address: GovernmentInstitute@sars.gov.za SARS will issue a confirmation of tax obligations letter to the AO or their delegate confirming whether or not the foreign entity has tax obligations in South Africa.

#### **4.5.4 Payment**

- (a) If goods and services have been delivered to the satisfaction of the department, the service provider must be paid.<sup>138</sup> Payment must not be delayed as a result of outstanding tax matters. These do not constitute a reason to withhold payment, unless otherwise directed by SARS.<sup>139</sup>

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<sup>138</sup> NTR r. 8.2.3 National Treasury Instruction No. 9 of 2017/18, par. 4.4

**VOLUME 3:**

**DEMAND MANAGEMENT**

## CHAPTER 5: CONCEPT OF DEMAND MANAGEMENT

### 5.1 INTRODUCTION

- 5.1.1 Every procurement needs proper prior planning. That planning takes place under the auspices of “demand management”. In short, the strategic and operational commitments of the department are most likely to be met if the goods and services required have been planned for. Thereafter, the goods or services must be delivered to the right place, in the right quantity, with the right quality, at the right cost, at the right time and from the right source.<sup>140</sup>
- 5.1.2 Demand management is the first step of the SCM journey. The user – or customer – must have their needs defined in order for them to be met. Predictably, this not only requires planning, but cross-discipline and cross-functional relationships, so as to bring the user, SCM practitioner, and supplier together. If successful, the three principal goals of demand management will be met, namely: goods and services are delivered as originally envisaged, with a reliable standard of quality, and to the satisfaction of end-users.
- 5.1.3 Structurally, demand management ensures that controls exist for the SCM Unit to detect variance between need and supply early and rectify them in a planned and orderly manner.
- 5.1.4 All planners within the sphere of demand management should:
- (a) have a good understanding of the environment in which they operate;
  - (b) have a clear vision of why their office exists, what they need to achieve, and how much they are achieving;
  - (c) plan their work, keeping in mind a clear set of objectives, activities, outputs, outcomes and measures of success;
  - (d) deliver what they have planned, whilst meeting the allocated budget, standards of timeliness, quality, accuracy and ethical standards;
  - (e) take stock of progress by monitoring, measuring, reviewing, and evaluating as they go;
  - (f) learn from success and failure and modify what they do and how they do it;
  - (g) report publicly on results to promote transparency; and
  - (h) seek continuous improvement.
- 5.1.5 An example of demand management in the procurement process, including the development of product specification and terms of reference is contained in **Annexure 2**.

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<sup>140</sup> WC PTI 2019, s. 4.1.2

## 5.2 PROCUREMENT STRATEGY

5.2.1 The AO or their delegate must develop and implement a procurement strategy for the department.<sup>141</sup> To ensure its continued relevance, it must be reviewed every three years or earlier when changed circumstance requires it. The strategy must at a minimum, consider:

- (a) procurement vision of the department;
- (b) procurement goals and objectives linked to the department's strategic objectives;
- (c) commodity and market analysis in relation to the core functions of the department;
- (d) identified strategic and scarce commodities and procurement options for them;
- (e) strategic partners;
- (f) stakeholder involvement in the SCM cycle;
- (g) identified cost drivers;
- (h) empowerment impact assessments for procurement above an amount of R10 million (which amount may be lowered by institutions);
- (i) risk analysis and risk mitigation measures;
- (j) implementation of municipal regional indicators;
- (k) goods and services reasonably envisaged to be procured over a three-year period; and
- (l) where applicable, for planning in excess of the three-year period.

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. Department to attach or make reference to its procurement strategy here.
2. The PT has issued, via PT Circular 28 of 2019 (Supplementary 1 of 2019), a guide for the development of a departmental procurement strategy which may be utilise in preparing its own procurement strategy.
3. Departments must adapt and factor in its own requirements on the basis of its own vision, commodities procured, strategic partners and stakeholders, identified cost drivers, goals and objectives, risk profile and appetite, spend analysis and strategic sourcing requirements.

## 5.3 ANNUAL PROCUREMENT PLANNING

5.3.1 Procurement requirements are linked to the planning and budgeting process to ensure that these requirements are considered in the decision-making process when defining APP requirements and budgets associated with the delivery of such requirements.

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<sup>141</sup> WC PTI 2019, s. 4.2

5.3.2 The goal is to improve the management of supply chain and moveable assets through the promotion of enhanced procurement planning via strategic sourcing and to optimise the collating and extraction of data that can lead to improved decision making and thereby ensuring efficiencies in spending and ultimately value for money.

5.3.3 Departments are required to capture their Annual procurement plan on the automated procurement planning toolkit (hereafter referred to the system).

The automated procurement planning toolkit intends to:

- (a) streamline and standardise the procurement planning process within the province to ensure uniformity;
- (b) influence the budget process by linking procurement requirements to the budget process (draft budgets; final and adjustments budget);
- (c) digitalisation of the annual procurement plan, quarterly progress report and contract register as well as the ability to extract exception reports and monitor progress on the execution of the procurement plan;
- (d) utilisation of management performance information for improved decision-making;
- (e) the ability to link procurement information to expenditure information;
- (f) enable procurement efficiencies by providing information on spend patterns;
- (g) enable commodity categorisation and development of sourcing strategies; and
- (h) improve data integrity.

5.3.4 Closely allied to the procurement strategy for the department is the annual procurement plan for the department. The annual procurement plan should provide a stable link between the strategic priorities and objectives and the detailed operational budget allocations and performance indicators that track delivery over the medium to long term.<sup>142</sup>

5.3.5 The annual procurement plan will be based on the department's final budget submission. The system will provide a budget control sheet reflecting the budget allocations in the draft and final budgets, in order to link the budget to actual procurement and flag any variances where planned procurement is over budget allocations.

5.3.6 The department is required<sup>143</sup> to submit the Annual Procurement Plan to the Provincial Treasury by 31 March annually via the system,<sup>144</sup> reflecting the main areas of responsibility or service delivery within the department's mandate.<sup>145</sup> All planned procurement of goods and services greater than R100 000 (incl. VAT) must be reflected on it.<sup>146</sup> All planned procurement of capital items as well as maintenance work in excess of R1 million (incl. VAT) must also be included.<sup>147</sup>

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<sup>142</sup> PT Circular 1 of 2017, ss. 2.1 and 2.2 (procurement Planning Circulars issued on an annual basis).

<sup>143</sup> NTR 16A.11.1

<sup>144</sup> NT SCM Instruction 2 of 2016/2017, s. 3.1

<sup>145</sup> NTR 16A11.2 read with NT SCM Instruction 2 of 2016/2017, s. 1

<sup>146</sup> NT SCM Instruction 2 of 2016/2017, s. 3.1.3 read with PT Circular 4/2018, s. 4.1A(ii)(a)

<sup>147</sup> PT Circular 3 of 2021 is the latest however please refer to the Procurement Planning Circulars issued on an annual basis.

- 5.3.7 The annual procurement plan is also the first step in the procurement planning process. Ideally, the relationship that procurement employees have with line function/stakeholder branches/institutions within the department should be so close that they are involved at an early stage of the budgeting round and consulted on the likely cost of given purchases to feed into the budget.
- 5.3.8 In addition to its annual drafting, the department is also required to submit quarterly reports to the Provincial Treasury, by the 15<sup>th</sup> of the month following the end of the quarter, reporting on the progress of the execution of their procurement plans quarter-to-quarter via system.<sup>148</sup> Monitoring of the procurement plan items is however an on-going process and not limited to end of the quarter and it is recommended that the procurement planning toolkit is updated as and when activities are completed within the procurement process.
- 5.3.9 Plans, however, change over a period of time. When government adopts a new policy that has a bearing on the department's objectives, the annual procurement plan may need to be modified. However, this should generally be done only in response to a specific change in the department's *mandate*, and not simply because the implementation of a particular government policy is now a priority. In many instances, new policy initiatives relate to existing activities that already are reflected, or can be accommodated, in the existing budget.
- 5.3.10 In order to change the annual procurement plan, proposed amendments (cancel, delay, adjust, remove or add items) must be captured on the system as and when required. The AO or their delegate must approve any amendments and then submit the approved amended annual procurement plan to the Provincial Treasury via the system with the quarterly progress report.<sup>149</sup> This structure will ensure that all reporting is streamlined into a single, automated quarterly submission.
- 5.3.11 **Developing the annual procurement plan through the stakeholder engagement plan**
- (a) The annual procurement plan should be developed by sub-programme or element managers in close consultation with the employees responsible for driving procurement in the department, namely, the SCM Unit. They should be involved at an early stage of the budgeting process and should be consulted on the likely cost of intended purchases.
- (b) The process of aligning the procurement planning process to the budget process is reflected hereunder:

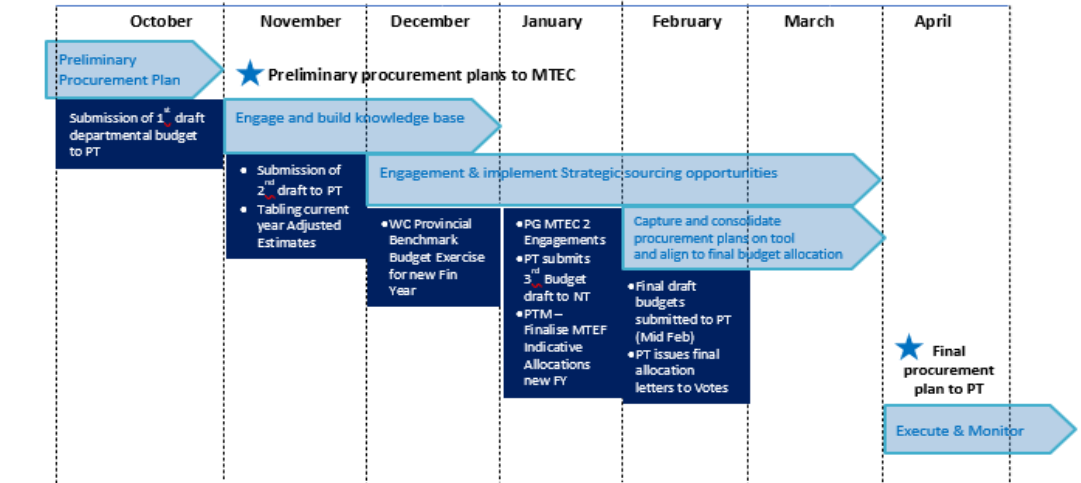
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<sup>148</sup> NT SCM instruction 2 of 2016/2017, s. 4 read with PT Circular 4/2018, s.4.1(B)(i)

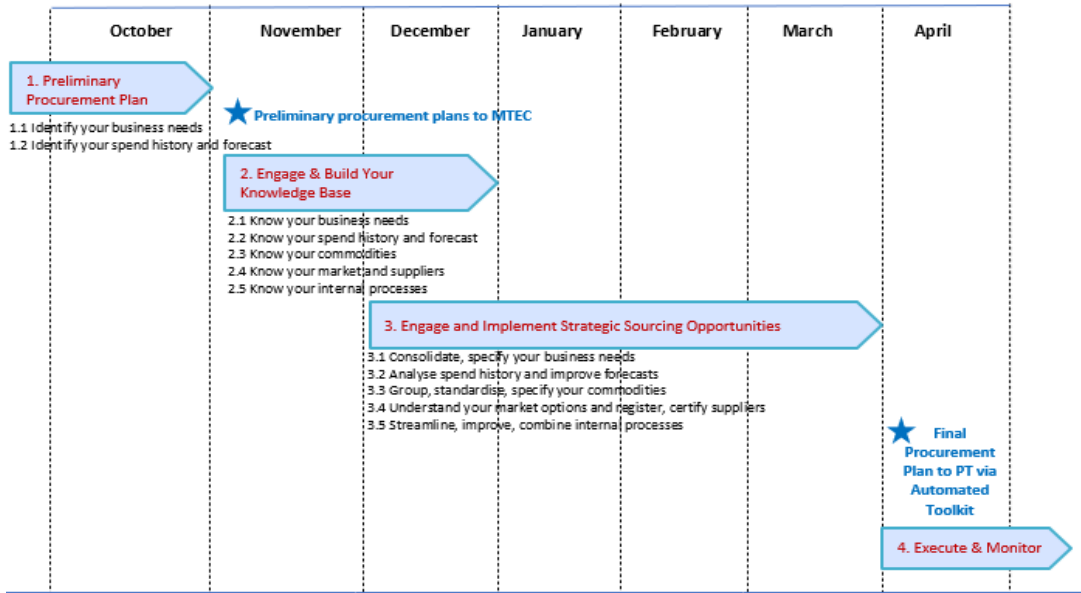
<sup>149</sup> NT SCM instruction 2 of 2016/2017, s. 5 read with PT Circular 24/2016, s. 4.1.1. Note that s. 3 of PT Circular 24/2016 was repealed by PT Circular 1/2017, but that s. 4 of PT Circular 24/2016 remains valid.



**Procurement Planning Process Timelines in tandem with budget process**



**Procurement Planning Process Overview**



(c) The users of goods or services to be procured must also be brought into the process.<sup>150</sup> The users' prime function is to carry out their normal line function duties, but they play a critical role in the demand management process by being closest to the service delivery that the department provides. Therefore, a stakeholder engagement plan must be developed to accompany the annual procurement plan.<sup>151</sup> The system makes provision for a stakeholder engagement plan, in order for the SCM unit to document activities required with line function and to track the progress thereof.<sup>152</sup> Working closely with stakeholders allows them to:

- (i) identify the requirements of the goods or services that they need to procure;
- (ii) develop requirement specifications;
- (iii) publish periodic indicative notices based on annual procurement plan, alerting potential suppliers of new bid opportunities;

<sup>150</sup> WC PTI, 2019, s. 4.3.3(a)

<sup>151</sup> PT Circular 4 of 2018, s. 4.1 (C)(i)

<sup>152</sup> PT Circular 4 of 2018, s. 4.1 (C)(i) read with Annexure B PT Circular 3 of 2021

- (iv) examine alternatives to the goods and services required;
- (v) work with other stakeholders and procurement officers to combine requirements and achieve economies of scale;
- (vi) consider packaging options for the requirements with procurement and other stakeholders;
- (vii) link the department's strategic objectives to the annual procurement plan;
- (viii) plan with certainty and without surprises;
- (ix) time their procurement to meet their needs; and
- (x) build effective partnerships with the SCM Unit and, in so doing, procure more effectively.

### 5.3.12 Developing of a SCM performance plan

- (a) PT provides departments with a SCM System Insight Report on a quarterly basis. <sup>153</sup>The intent of the aforesaid report is to provide performance information in terms of Supply Chain Management performance to departments in order to improve planning and decision-making processes as well as to measure results or outcomes that has been achieved. This report may be used to inform/assist with the development of the SCM performance plan.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. Department to insert their bespoke procurement planning process for the department and how this will be enabled via the system.

## 5.4 DEMAND MANAGEMENT FORUM

- 5.4.1 The Demand Management Forum ('DMF') facilitates the implementation, monitoring and reporting of annual procurement plans within the Western Cape.<sup>154</sup> Effective participation in the DMF will allow for the sharing of best practices between departments, provide a common place to explain challenges and the lessons learnt from those challenges, and allow departments to develop joint solutions to the issues that they face.<sup>155</sup>
- 5.4.2 The DMF is made up of SCM Unit members and others responsible for a department's annual procurement plan and reports to the SCM Focus Group.<sup>156</sup>

<sup>153</sup> PT Circular 3 of 2021 is the latest however please refer to the Procurement Planning Circulars issued on an annual basis.

<sup>154</sup> PT Circular 24/2016, s. 5 read with PT Circular 24/2016, Supplement 1, s. 2 and the Terms of Reference annexed as Annexure A.

<sup>155</sup> PT Circular 24/2016, s. 5 read with PT Circular 24/2016, Supplement 1, s. 2.1(a) – (d)

<sup>156</sup> PT Circular 24/2016, s. 5 read with PT Circular 24/2016, Supplement 1, s. 2.4

## 5.5 DEMAND MANAGEMENT AND THE LOCAL COMMUNITY

5.5.1 For all procurement above R10 million, the department is required to conduct empowerment impact assessments.<sup>157</sup> This threshold may be lowered, if, in the discretion of the AO or their delegate, it is warranted.<sup>158</sup> The empowerment impact assessment plan forms part of the automated procurement planning toolkit.

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. The empowerment impact assessment guideline is attached hereto marked **Annexure 3** to be utilised by departments.

5.5.2 Regional indicators, if approved by the AO or delegate, must be implemented to target local suppliers using the e-procurement solution. Rotation of suppliers must always be considered, to spread the benefits of local economic impact.<sup>159</sup>

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<sup>157</sup> For a step-by-step example of an empowerment impact assessment, see "Empowerment Impact Assessment Guideline, 2010", Expanded Public Works Programme, Western Cape department of Transport and Public Works. A copy should be available at <https://www.westerncape.gov.za/assets/departments/transport-public-works/Documents/revise empowerment impact assessment guideline.pdf>

<sup>158</sup> PT Circular 12 of 2017, s. 3.2(c)

<sup>159</sup> PT Circular 12 of 2017, s. 3.2(d)

## CHAPTER 6: PLANNING FOR THE APPOINTMENT OF CONSULTANTS

### 6.1 INTRODUCTION

6.1.1 Not all expertise required is to be found in government. Sometimes, external consultants need to be hired. For the purpose of this AOS, the term "consultant" includes consulting firms, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, multinational organisations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organisations, and individuals. Any external person or external entity having a skill required by government could, conceivably, be a consultant.<sup>160</sup>

### 6.2 PLANNING FOR CONSULTANTS

6.2.1 The department may use consultants to assist in a wide range of activities such as policy advice, reform management, engineering services, construction supervision, financial services, procurement services, social and environmental studies and identification, preparation, and implementation of projects.<sup>161</sup>

6.2.2 Consultants should only be engaged when the necessary skills or resources to perform a project are not available in-house and in-house people cannot reasonably be either recruited or trained in the time available.<sup>162</sup>

6.2.3 The relationship between the department and the consultant will be one of purchaser/provider and not employer/employee. The work undertaken by a consultant will be regulated by a contract. The end-user directorate will be responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets and should take remedial action if performance is below standard. Any mal performance must be reported to the SCM Unit.<sup>163</sup>

6.2.4 Should the department experience additional work demands that are not permanent and there are no suitable vacancies available for the recruiting and appointing of additional employees, the department will consider appointing persons on contract.<sup>164</sup> A person may only be appointed for a maximum period of 12 months on contract.<sup>165</sup> Under no circumstances should a person be appointed as a consultant merely to be granted higher remuneration packages.<sup>166</sup>

6.2.5 Accounting officers/accounting authorities must ensure that consultants are appointed only where this is a cost-effective alternative to the utilisation of staff employed by the institution.<sup>167</sup> The appointment of consultants must be supported by a motivated business case setting out the underlying skills gap and a diagnosis of requirements and specified deliverables as approved by the accounting officer/accounting authority.

6.2.6 The bid documentation for the appointment of consultants must indicate a clause that rates or remuneration will be subjected to negotiation, not exceeding the applicable rates as contained in the guidelines referred to in paragraph below.

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<sup>160</sup> NT SCM Practice Note 3 of 2003 s. 1.3

<sup>161</sup> NT SCM Practice Note 3 of 2003 s. 1.4

<sup>162</sup> NT SCM Practice Note 3 of 2003 s. 1.5

<sup>163</sup> NT SCM Practice Note 3 of 2003 s. 1.6

<sup>164</sup> Public Service Act, ss. 3(5)(a) and 8(1)(b)

<sup>165</sup> Public Service Regulations, 2016 in Government Gazette No. 40167, r. 57(4)

<sup>166</sup> NT SCM Practice Note 3 of 2003, s. 3.3

<sup>167</sup> NT Instruction Note 3 of 2017/18,s.4.1

- 6.2.7 The institution must adopt a fair and reasonable remuneration framework for consultants, taking the following into account:
- (a) Guide on fees for audits done on behalf of the AGSA as issued by the South African Institute of Chartered Accountants (SAICA);
  - (b) Guide on hourly fee rates for consultants as issued by the Department of public service and administration (DPSA); and/or
  - (c) Remuneration guidelines issued by professional service organisations or regulatory bodies, as may be relevant.
- 6.2.8 When negotiating cost effective consultancy rates for international consultants, accounting officers/accounting authorities may also consider the relevant international and market-determined reference rates.
- 6.2.9 Where possible consultants must be appointed on an output specified basis, subject to a clear specification of deliverables and associated remuneration. When consultants are appointed on a time and cost basis regular monitoring and reporting on activities, outputs and deliverables.
- 6.2.10 Consultants must specify whether contract price is inclusive or exclusive of travel and subsistence disbursements. Where possible the use technology must be advocated (teams, skype, zoom) for meetings instead of physical meetings. This can assist with the reduction of costs.
- 6.2.11 Alternative travel and subsistence arrangements for international consultants and expert advisors, considering relevant cost efficiency measures can be approved by the accounting officer/accounting authority.
- 6.2.12 Appropriate monitoring and reporting requirements must be set for all consultancy contracts and that penalty provisions are invoked when deemed necessary.

### **6.3 NEEDS ANALYSIS**

- 6.3.1 The appointment of consultants must be supported by a written motivation setting out an analysis of the underlying skills gap and a diagnosis of requirements and specified deliverables, as approved by the accounting officer of the department.<sup>167</sup>Needs-based issues that should specifically be identified are:
- (a) why the need for consultants;
  - (b) whether it is a once-off requirement or a recurring requirement;
  - (c) if it is a recurring requirement, whether provision will be made for this recurring requirement in the departmental establishment, or not; and
  - (d) whether if any transfer of skills is required.

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<sup>167</sup> WC PTI 2019, s.4.7.5

## **6.4 TERMS OF REFERENCE (“TOR”)**

- 6.4.1 “Terms of reference” is used to describe specifications of work for consultants. The end user/line function in consultation with the department’s SCM Unit should prepare the TOR. The TOR should define clearly the objectives, goals, and scope of the assignment and provide background information, including a list of existing relevant studies and basic data (if available), to facilitate the consultants’ preparation of their bids.
- 6.4.2 The scope of the services described should be aligned to the available budget. Time frames linked to various tasks should be specified, as well as the frequency of monitoring the actions. The respective responsibilities of the consultant should be clearly defined. When applicable 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 may include the following:
- (a) consultant’s experience relevant to the assignment;
  - (b) quality of the methodology;
  - (c) qualifications of key personnel;
  - (d) transfer of knowledge (where applicable); and
  - (e) pre-bid submission briefing sessions or presentations by consultant bidders as part of the evaluation process where needed.
- 6.4.3 If the assignment includes an important component for training or transfer of knowledge and skills, the 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.<sup>168</sup>

## **6.5 METHOD OF SELECTING CONSULTANTS**

- 6.5.1 When developing the TOR, the means of selection of consultants must be considered. In general, the ordinary requirements that apply to the acquisition of goods and services also apply to the appointment of consultants.<sup>169</sup> Consultants should, therefore, be appointed in accordance with the various forms of procurement applicable to the threshold values of the PTI.<sup>170</sup>
- 6.5.2 The need to evaluate bids or quotations based on functionality, depends on the nature of the required service.<sup>171</sup> When functionality is used as an evaluation ground, the department must make clear:
- (a) the evaluation criteria for functionality;
  - (b) the weight of each criterion; and
  - (c) the applicable point weighting values and minimum acceptable threshold for functionality.

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<sup>168</sup> WC PTI 2019, s. 4.7.8

<sup>169</sup> WC PTI 2019, s. 4.7.2

<sup>170</sup> WC PTI 2019, s. 4.7.3

<sup>171</sup> NT Instruction Note of 3 September 2010, s. 3. Note that this Instruction Note has entirely replaced s. 9 of NT SCM Practice Note 3 of 2003. The various categories of “consultant approach” contained in the latter are no longer applicable.

## 6.6 OTHER AREAS TO NOTE:

### 6.6.1 Conflict of Interest

- (a) Consultants should not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interests of the department.<sup>172</sup>
- (b) A firm, which has been engaged by the AO or their delegate to provide goods for a project and any of its affiliates, should be disqualified from providing consulting services for the same project.<sup>173</sup>
- (c) A consultant hired to provide consulting services for the preparation of the bid specifications of project, as well as any of the firm's affiliates, is not automatically prohibited from bidding for the implementation of that project or even being awarded that bid.<sup>174</sup> However, such a bid – and any possible award – would be unusual. Should such a scenario be encountered, the department is advised to seek advice from Legal Services on the propriety of the matter.
- (d) 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.<sup>175</sup> As an example, consultants hired to prepare an engineering design for an infrastructure project should not be engaged to prepare an independent environmental impact assessment for the same project. Similarly, consultants assisting a client in the privatisation of public assets should not purchase those assets, nor give advice to potential purchasers of such assets.

### 6.6.2 Associations between Consultants

- (a) Consultants may associate with each other to complement their respective areas of expertise. 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.<sup>176</sup>
- (b) In the 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 Request for Proposal ("RFP") 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 AO or their delegate.<sup>177</sup>

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<sup>172</sup> NT Instruction Note of 3 September 2010, s. 5

<sup>173</sup> NT Instruction Note of 3 September 2010, s. 5

<sup>174</sup> See *Aurecon South Africa (Pty) Ltd v City of Cape Town* [2015] ZASCA 209; 2016 (2) SA 199 (SCA) at paragraphs [42] – [44]. This judgment was appealed to the Constitutional Court, but not the question concerning consultants. However, the facts of *Aurecon* are unusual and the authority to use the same consultant for both bid preparation and project implementation should be used with considerable caution.

<sup>175</sup> NT Instruction Note of 3 September 2010, s. 5

<sup>176</sup> NT Instruction Note of 3 September 2010, s. 6

<sup>177</sup> NT Instruction Note of 3 September 2010, s. 6

# **VOLUME 4:**

# **ACQUISITION MANAGEMENT**



## CHAPTER 7: CONCEPT OF ACQUISITION MANAGEMENT

### 7.1 INTRODUCTION

7.1.1 The many stages of public procurement are ultimately aimed at acquiring goods or services that will meet the requirements of the department and assist it to fulfil its service delivery mandate. Like the other stages, acquisition has its own, controlled process. Acquisition management is the process of inviting, evaluating, and awarding bids. To ensure lawful and proper acquisition management, the AO or their delegate must direct that the SCM system of the department functions so that:<sup>178</sup>

- (a) goods and services are procured in accordance with authorised processes;
- (b) the threshold values for different procurement processes are adhered to;
- (c) bid documentation and special conditions of contract are in accordance with all applicable legislation; and
- (d) expenditure on goods and services are provided for in the approved procurement plan and budget of the department.

7.1.2 Acquisition management is a critical part of the SCM system. It necessitates direct contact between the department and private parties. Those parties have a legal, enforceable right to a lawful and structured acquisition management process.<sup>179</sup> To both protect this right and guide effective procurement, there are several issues to consider when embarking upon the acquisition process. These are:

- (a) the legislative framework that guides the procurement process;
- (b) all SCM prescripts issued by the National and Provincial Treasury; and
- (c) the financial and SCM delegations. These will indicate the precise powers held by a delegated employee, along with any conditions or limitations attached to such powers.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department may also prescribe its own internal requirements to augment the abovementioned prescripts through departmental instructions, standard operation procedures and guidelines.

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<sup>178</sup> WC PTI 2019, s. 5.1.1(a) – (d)

<sup>179</sup> Constitution, s. 217(1)

## 7.2 FORMS OF PROCUREMENT

7.2.1 The acquisition management process makes provision for different forms of procurement for different forms or types of purchase.<sup>180</sup> The forms are:

- (a) petty cash purchases;
- (b) invitation of price quotations;
- (c) competitive bidding;
- (d) limited bidding;
- (e) emergency procurement;
- (f) unsolicited bids;
- (g) provincial transversal contracts;
- (h) national transversal contracts; and
- (i) contracts procured by other organs of state.

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<sup>180</sup> WC PTI 2019, s. 5.5

## CHAPTER 8: PETTY CASH

### 8.1 PETTY CASH PURCHASES:

- 8.1.1 Low-value transactions are governed by simple procedures. The AO or their delegate may procure for departmental requirements without inviting quotations or competitive bids when using petty cash.<sup>181</sup> Petty cash may be used to purchase goods or services up to an estimated value of R2000 (inclusive of all taxes).<sup>182</sup> There is no need for a supplier of goods and services purchased through petty cash to be registered on the CSD and ePS.<sup>183</sup> The department will procure requirements through this method to the value of ..... [department to include its own threshold if lower than R2000, if applicable]
- 8.1.2 Although the procedures are simple, they are no less important than those for large procurements. Two requirements must be utilised as control measures when dealing with petty cash purchases:
- (a) the keeping of a petty cash register must be entrusted to a responsible person in writing by the head of the office or section concerned. The responsible person must enter all payments and replenishments in the petty cash register immediately on transaction; and
  - (b) a supporting voucher must be obtained for each payment.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department may insert its petty cash SOPs here or make reference thereto, in order to ensure sound financial management of funds when goods and/or services are obtained by means of petty cash.

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<sup>181</sup> WC PTI 2019, s. 5.4.1 (a)

<sup>182</sup> WC PTI 2019, s. 5.3.3 (a)

<sup>183</sup> WC PTI 2019, s. 5.4.1 (a)

## CHAPTER 9: INVITATION OF PRICE QUOTATIONS

- 9.1 As purchase prices rise, so do the complexity level of procedures. Goods or services between the value of R2 001 and up to R1 million, tax inclusive, must be invited from at least three or more service providers.<sup>184</sup>
- 9.1.1 The ePS must be utilised for procurement with an estimated value of between R10 000 and R1 million. The accounting officer may lower this threshold stipulated for use of the ePS if so required to manage its own risks.
- 9.1.2 The 80/20 preference points system will not apply to quotations advertised via the ePS between an estimated value below R30 000. Bidders will be evaluated based on price only.
- 9.1.3 Quotations between an estimated value of R30 000 up to R500 000 will be subject to the 80/20 preference point system.
- 9.2 The minimum period for advertising an RFQ on the ePS is 48 hours. This minimum advertising period may not be lowered unless emergency delegations are utilised. The Department may, adjust the period upward as required depending on the complexity and to allow potential suppliers the appropriate timeframe to prepare and produce a reasonable submission.
- 9.2.2 The prices obtained must be reasonable and rationally connected to the market value of the goods or services. Where prices are exorbitant, the process must be cancelled and re-advertised on ePS.
- 9.2.3 Where fewer than 3 quotations are received via ePS, the department must evaluate the responses received. The evaluation must be in terms of responsiveness to the quotation specification requirements and cost effectiveness and if an award is made, the department must record all reasoning for its decision. This includes noting the number of offers received on the procurement template.
- 9.2.4 Where the department is sure that sufficient exposure has been given to suppliers registered on the CSD and ePS and no responses were received, it must:
- (a) request quotations from suppliers known to the department but not yet registered on the CSD and ePS;
  - (b) ensure that selected suppliers are tax compliant; that WCBD 4 has been completed; that a B-BBEE certificate and WCDB 6.1 has been completed, where preference points are claimed;
  - (c) ensure that the selected supplier is registered on the CSD and ePS, at the time of awarding the contract;<sup>185</sup> and
  - (d) in cases where the selected supplier is suspended on the ePS due to the lapse of compulsory information, i.e. WCBD 4, the department must obtain such documents from the supplier and submit them to the Provincial Treasury for the update of the supplier on the ePS. Copies of such documentation must be kept for record purposes. The Department must proceed with the procurement process and not wait until the

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<sup>184</sup> WC PTI 2019, s. 5.4.1(b), read with WC PTI, s. 5.5.2(a) and (b)

<sup>185</sup> NT Instruction 4A of 2016/2017, s. 3.4

WCSEB has been updated. The Department must keep copies of the documentation submitted to the PT on file to support its decision and to note compliance to regulatory requirements.

- 9.2.5 Where the offer that scored the highest number of points is deemed non-compliant with the rules, that offer must be removed, the points for each offer recalculated, and a new highest scorer determined.
- 9.2.6 The award will be made to the compliant supplier that scored the highest number of preferential procurement points<sup>186</sup> (i.e. total points) A bid may be awarded to a tenderer that did not score the highest points only if additional objective criteria, advertised from the outset of the procurement process, are in use.<sup>187</sup> Objective criteria may include the degree to which a bidder satisfied the functionality standard of a bid.<sup>188</sup>
- 9.2.7 If the price offered by a bidder scoring the highest points is not market related, the organ of state may not award the contract to that bidder. The organs of state may negotiate a market-related price with the bidder scoring the highest points or cancel the tender. Although the PPPFR, 2017 requires that the bidder next in line may be approached, this is inconsistent with PPPF Act which is specific that the bid must be awarded to the highest total point scorer. The only legal reason not to award at this point to the highest scorer is if objective criteria in addition to those contemplated in paragraphs (d) and (e) of the PPPFA justify the award to another tenderer. In current circumstances the only other viable reasons as contemplated in PPPFR 13 is that funds are not available and that the tender is in turn not viable.
- 9.2.8 Awarded quotations sourced via the ePS must be captured on the system to ensure integrity of procurement information. <sup>189</sup>
- 9.2.9 The department must see to it that the recommended supplier is not listed on National Treasury's Register for Tender Defaulters or List of Restricted Suppliers.<sup>190</sup> Under no circumstances may the department be permitted to procure from suppliers listed on the Register for Tender Defaulters.<sup>191</sup> For suppliers listed on the List for Restricted Suppliers, the department must apply due diligence and assess the risk before deciding to proceed with procurement from the supplier.<sup>192</sup>
- 9.2.10 All employees involved in the obtaining of the quotations and appointing the service provider must declare their interest.
- 9.2.11 Where an employee is found to have an interest in the transaction, he/she must recuse themselves from the process."
- 9.2.12 The requirements of the following paragraphs of the AOS is also applicable on the invitation of price quotations:
- (a) paragraph 10.6 in relation to local production and content;

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<sup>186</sup> PPR 2017, Treasury Regulations. 6 and 7

<sup>187</sup> PPPFA, s. 2(1)(f), read with PPR 2017, s. 11(2)

<sup>188</sup> *Rainbow Civils CC v Minister of Transport and Public Works, Western Cape and Others* [2013] ZAWCHC 3

<sup>189</sup> WC PTI 2019, s. 5.3.8

<sup>190</sup> NTR 16A9.1(c). See also NT Supply Chain Management 'Checking the Prohibition Status of Recommended Bidders Prior to Awarding any Contract', Ref: 3/4/3/2/10, dated 19 February 2008, s. 2.1. The register containing the details of restricted suppliers is available on the National Treasury website.

<sup>191</sup> WC PTI 2019, s. 5.3.5

<sup>192</sup> WC PTI 2019, s. 5.3.6

- (b) paragraph 10.12 in relation to evaluation of bids based on functionality as criteria; and
- (c) paragraph 10.23 in relation to communication with bidders.

9.3 The department may only deviate from utilising the e-procurement solution in accordance with the requirements of paragraph 5.6 of the Provincial Treasury Instructions, 2019. Poor planning or wilful deviation from utilising the ePS is unacceptable.

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

1. Department must determine its own business requirements for sourcing of quotations below R10 000 to give effect to the relevant prescripts.
2. Department must define and indicate in terms of its own requirements where it would be impractical to utilise ePS
3. The Department must determine the process to be followed in respect of approval and recording of such deviations.

9.4 Where a sourcing process originates as a formal quotation and all resulting offers exceed R1 million (vat inclusive), the quotations should be rejected, and the process cancelled. The Department must assess the procurement process in terms of determining whether the offers received were exorbitant or not and whether it warrants a second formal quotation process to be followed. Should the Department determine that the market has adequately responded, and a formal competitive bidding process be followed, the matter should then be referred to the AO or the delegated authority to reclassify the matter as one suitable for formal competitive bidding. The ordinary competitive bidding process will, thereafter, be followed.

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

1. Department to adopt, implement and attach procurement templates for quotations as contained in **Annexure 4**.

## CHAPTER 10: COMPETITIVE (OPEN) BIDDING

### 10.1 COMPETITIVE BIDDING

Competitive bidding is organised by way of a formal tender advertisement-and-bidding process. This process is governed by the requirements of National Treasury regulations, 2005 r. 16A6.2 and r.16A6.3. All prospective bidders should be provided with timely and adequate notification of a department's requirements and an equal opportunity to bid for the required goods or services.<sup>193</sup>

### 10.2 PROCESS

10.2.1 For all procurement in excess of R1 million (including all applicable taxes), a process must be followed that allows for the invitation, receipt, and evaluation of bids, the awarding of contracts, as well as record keeping. Each of these steps and the procedures that govern them, must be documented.<sup>194</sup>

### 10.3 BID DOCUMENTATION FOR COMPETITIVE BIDS

10.3.1 To ensure uniformity, almost all bid processes<sup>195</sup> are based on the General Conditions of Contract ("GCC"), issued by the National Treasury.<sup>196</sup> The standard wording of the GCC must not be amended.<sup>197</sup> Any aspect not covered by the GCC should be dealt with in a Special Conditions of Contract ("SCC").<sup>198</sup>

10.3.2 The SCC regulates conditions relevant to a specific bid and should be considered by the BSC.<sup>199</sup> Where there is a conflict between the SCC and the GCC, the provisions of the SCC will prevail.<sup>200</sup> The SCC will typically include:<sup>201</sup>

- (a) a preamble explaining the reasons for concluding the contract;
- (b) governance protocols and rules for the contract;
- (c) requirements for reporting on performance;
- (d) period reviews of the contract if it extends over a lengthy period of time;
- (e) rights and responsibilities of the parties;
- (f) expected levels of service; and
- (g) incorporation of all other documents as annexures.

10.3.3 In addition to the GCC and the SCC, the mandatory WCBD documents are required. Three of these documents are highlighted below.

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<sup>193</sup> WC PTI 2019, s. 5.4.1(c)

<sup>194</sup> WC PTI 2019, s.5.5.3 (a) (i) – (iv) and (b)

<sup>195</sup> Tenders seeking the sale, hire, or letting of immovable property are not subject to the GCC.

<sup>196</sup> The latest version is NT Practice Note "Augmentation of General Conditions of Contract: Revised July 2010", dated 21 July 2010

<sup>197</sup> NT SCM Practice Note 1 of 2003, s. 1.1 read with GCC cover note

<sup>198</sup> NT SCM Practice Note 1 of 2003, s. 1.3 read with GCC cover note

<sup>199</sup> NT SCM Practice Note 1 of 2003, s. 1.3

<sup>200</sup> NT SCM Practice Note 1 of 2003, s. 1.3 read with GCC cover note

<sup>201</sup> WC PTI 2019, s. 7.1.5 (a)-(g)

10.3.4 Vital to every bid is the verification of the WCBD 4 bid document.<sup>202</sup> The WCBD 4 captures the declaration of the bidder's:

- (a) past performance in relation to state contracts;
- (b) admission or denial of any bid rigging and collusive practices; and
- (c) of any conflict of interest in the bid.

10.3.6 Should the Department opt to utilise the WCBD 4 housed on the ePS, the department is not required to request completion of the WCBD 4 for every bid process, if the supplier is duly registered. The information on the supplier evidence bank must be used for this purpose. The WCBD 4 must be downloaded from the supplier evidence bank and kept in the bid file, but only for the successful bidder. However, should the WCBD 4 be requested with the bid, then this must be completed for each and every bid process.

10.3.7 Suppliers are required to complete WCBD 4 annually. It is thereafter housed on the ePS (supplier evidence bank).<sup>203</sup> The onus is on suppliers to update their profile, should any information on the WCBD 4 change. Any suppliers who submit false information on the WCBD 4 will be suspended from the ePS. To give effect to the PPPFA and PPR 2017, the WCBD 6.1 bid document functions as the preferential procurement claim form.<sup>204</sup>

10.3.8 Should the Department opt to utilise the WCBD 6.1 housed on the evidence bank in the bidding process, suppliers are also required to complete the WCBD 6.1 annually, which is thereafter kept on the supplier evidence bank, The onus is on suppliers to update their profile, should any information on the WCBD 6.1 change. Any fronting will be dealt with in terms of the National department of Trade and Industry prescripts on fronting.<sup>205</sup> However should the WCBD 6.1 be requested with the bid, then this must be completed for every bid process.

10.3.9 WCBD 7.1 consolidates two separate National Treasury forms, and functions as the contract form for goods and services.<sup>206</sup>

10.3.10 A complete list of WCBD forms is as follows:

- WCBD 1: Invitation to bid and terms and conditions for bidding;
- WCBD 3.1: Pricing schedule – firm prices (purchases);
- WCBD 3.2: Pricing schedule – non-firm prices (purchases);
- WCBD 3.3: Pricing schedule (professional services);
- WCBD 4: Declaration of interest; Bidders Past SCM Practices and Independent Bid Determination;
- WCBD 5: National Industrial Participation Programme;
- WCBD 6.1: Preference Points Claim Form in terms of the PPR,2017 and Codes of Good Practice

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<sup>202</sup> PT Circular 29/2019 See also NT Standard Bidding Document ("SBD") 4, 8, and 9

<sup>203</sup> WC PTI 2019, s. 5.3.1 (b) and PT Circular 29/2019

<sup>204</sup> PT Circular 12/2017. WCBD 6.1 is used for both the 80/20 (between R30 000 and R50 million) system and for the 90/10 (above R50 million) system.

<sup>205</sup> B-BBEE Act, s. 1

<sup>206</sup> SBD 7.1 and 7.2



WCBD 6.2: Declaration Certificate for Local Production and Content for Designated Sectors

WCBD 7.1: Contract Form for Purchase of Goods and Services; and

WCBD 7.2: Sale of Goods

Note: WCBD 2 was repealed.<sup>207</sup>

## 10.4 PUBLIC INVITATION FOR COMPETITIVE BIDS

### 10.4.1 Bid Invitation

- (a) Bids must be advertised by the SCM Unit in the *Government Tender Bulletin* for a minimum period of 21 days before bid closure.<sup>208</sup>
- (b) In addition, bids must be advertised on the e-Tender Publication Portal.<sup>209</sup> The bid closure dates are the same as those for the *Government Tender Bulletin*.<sup>210</sup>
- (c) Whilst a minimum period of 21 days for advertisement is required, in general, time frame utilised more frequently in the Province for closing of bids is not less than 30 days after the date of publication of the tender.<sup>211</sup> The reason for this is to grant bidders sufficient time to acquire the relevant bid documentation, evaluate their resources to determine whether they are able to meet the bid requirements, to complete the bid documents, and submit the bid documents through the ePS.<sup>212</sup> Where a compulsory information session is required, a bid must preferably close at least 2 weeks after the compulsory information session.
- (d) In urgent cases, the closing date for bids may be shortened.<sup>213</sup> Such shortening should not prevent or put at a disadvantage any potential suppliers from bidding for the requirements. The decision to shorten an advertising period rests with the AO or their delegate.<sup>214</sup>
- (e) When deciding on the appropriate period for a shorter advertising period than normal, the monetary value, the complexity of the bid and the medium in which the bid is to be advertised, must be considered. Even a shortened period should remain fair and reasonable for the circumstances.
- (f) If this process does not require that the bid be advertised in the *Government Bulletin*, permission in this instance should only be granted by the relevant delegate on the provision of proper documented reasons/motivation.
- (g) Where large works or complex items of equipment are involved, the closing date for bids should generally be not less than 12 weeks from the date of the publication of the tender.<sup>215</sup>

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<sup>207</sup> PT Circular 28/2017, s. 3.3(j) read with NT SCM Instruction 7 of 2016/2017

<sup>208</sup> NTR 16A6.3(c)

<sup>209</sup> NTR 16A6.3 (c) read with NT Instruction 1 of 2015/2016, s.3.1, read with PT Circular 28/2015, s. 3.1. See also PT Circular 1/2016

<sup>210</sup> NT Instruction 1 of 2015/2016, s. 6.2

<sup>211</sup> National Treasury "Supply Chain Management: A Guide for Accounting Authorities / Officers", published February 2004. Pgs. 37 and 43

<sup>212</sup> *Menzies Aviation South Africa (Pty) Ltd v South African Airways (Pty) Ltd and Others* [2009] ZAGPJHC 65

<sup>213</sup> NTR 16A6.3(c)

<sup>214</sup> NTR 16A6.3(c)

<sup>215</sup> National Treasury "Supply Chain Management: A Guide for Accounting Authorities / Officers", published February 2004. Pgs. 37 and 43

- (h) In the interest of uniformity, fairness, and in order to maintain bidder's confidence in the impartiality of the system, it is essential that a definite cut-off time be set for submitting bids and that it is adhered to, in order to preserve the fairness of the process.<sup>216</sup> The cut-off time for closure of bids issued by the WCG is 11:00 on the day stipulated in the bid documents.
- (i) The department must include the following or similar notification within all formal bid documents:

**Supplier Database Registration**

All **prospective** Service Providers must be registered on:

a) Central Supplier Database

All prospective service providers intending to do business via the **ePS** must **additionally** be registered on the:

a) The Western Cape Supplier Evidence Bank (WCSEB)

All prospective service providers are invited to register online as a supplier on the Western Cape e-Procurement Solution. Enquiries regarding the registration process may be referred to [wcseb@westerncape.gov.za](mailto:wcseb@westerncape.gov.za).

All prospective service providers who are not registered on the Central Supplier Database are requested to self-register on [www.csd.gov.za](http://www.csd.gov.za). Should service providers require assistance with registration process it may contact ..... (fill in the name of department's official and contact detail.)

All service providers who are currently registered on the Western Cape ePS are also invited to update their status by contacting the Western Cape Supplier Helpdesk on [wcseb@westerncape.gov.za](mailto:wcseb@westerncape.gov.za).

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

1. Departments must include under this section its own control mechanisms when accepting and receiving bids to mitigate against fraud, corruption, collusion and bid tampering.

- (j) In the case of an advertised bid, the bid closing date may only be postponed if the new date is advertised in the *Government Tender Bulletin* and the e-Tender Publication Portal. This will ensure that all bidders intending to bid are made aware of the postponement. The AO or their delegate decides whether or not a bid closing date should be postponed. Bidders who have already collected bid documents may be informed of the postponement once approval has been granted by the accounting officer or delegated authority.

<sup>216</sup> *Azola Recruitment Solutions CC v National Energy Regulator of South Africa and Another* [2015] JOL 33980 (GNP)

- (k) Bidders must be informed of any amendment to the bid documents in writing before the closing date. The approval of the amendment to the bid documents is the responsibility of the AO or their delegate.
- (l) Bids may not be advertised too close to the period 15 December to 15 January, as most potential suppliers are closed during this period and a responsive bid may not be guaranteed. Similarly, bids for construction and related services must not be advertised or issued during the builders' holiday period. For bids that are reasonably close to these periods, the closing date for bids must be set for either no later than one week prior to the commencement of the holiday, or at least 3 weeks after the end of the holiday period.
- (m) However, urgent circumstances may dictate that it is necessary for the department to advertise a bid during this period. The AO or his delegate may authorise this advertisement for sound reasons.
- (n) Bidders are required to submit bids that remain valid for a period specified in the bidding documents. This period should be sufficient to enable the department to complete the comparison and evaluation of bids, review the recommendation and award the contract. This is usually set for a period between 60-90 days.
- (o) 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.

## **10.5 BIDS FEATURING FUNCTIONALITY AND/OR OBJECTIVE CRITERIA**

- 10.5.1 Not all bids should include functionality as a criterion for an award. The need to invite bids on the basis of functionality depends on the nature of the required good or service, taking into account the quality, reliability, viability, and durability required to fulfil the department's requirements and the bidder's technical capacity and ability to execute a contract.<sup>217</sup>
- 10.5.2 Should the department decide to evaluate bids on functionality, this must be included in the bid documents.<sup>218</sup> The functionality criteria must be objective. The following aspects must be clearly specified in the bid documents:
- (a) Evaluation criteria for measuring functionality.<sup>219</sup>The evaluation criteria may include criteria such as: relevant experience, quality, and qualifications of key personnel; reliability, quality, and durability of materials; other criteria as may be relevant for a particular function.
  - (b) Points for each criterion and, if any, each sub-criterion.<sup>220</sup> Points score for functionality must be rounded off to the nearest two decimal places.<sup>221</sup>
  - (c) Weight of each criterion.<sup>222</sup> The weight that is allocated to each criterion should not be generic but should be determined separately for each bid.

<sup>217</sup> NT Instruction Note of 3 September 2010, s. 3.

<sup>218</sup> PPR 2017, r. 5(1)

<sup>219</sup> PPR 2017, r. 5(3)(a)

<sup>220</sup> PPR 2017, r. 5(3)(b)

<sup>221</sup> PPR 2017, r. 5(5)

<sup>222</sup> NT Instruction Note of 3 September 2010, s. 3.3(iii)

- (d) The minimum qualifying score for functionality.
- (e) Applicable values.<sup>223</sup>The values that will be utilised when scoring each criterion should be objective. As a guide, values range from 1 being poor, 2 being average, 3 being good, 4 being very good and 5 being excellent.
- (f) Minimum qualifying score for functionality.<sup>224</sup> The minimum qualifying score that must be obtained for functionality in order for a bid to be considered further, should be determined separately for each bid.<sup>225</sup> The minimum qualifying score must not be so low as to jeopardise the quality of the service required,<sup>226</sup> nor so high that it jeopardises the fairness of the procurement or will result in all reasonable tenders being excluded.<sup>227</sup> A tender that fails to obtain the minimum qualifying score for functionality as required by the tender documents is an unacceptable tender.<sup>228</sup> Any tender that meets the minimum qualifying score must be further evaluated by price and preference points score, as well as any objective criteria that may be applied.<sup>229</sup>

10.5.3 The evaluation criteria for measuring functionality must be objective.<sup>230</sup>

10.5.4 The process of evaluating functionality is explained in paragraph 10.12, which follows in this Chapter.

### 10.5.5 Objective criteria

- (a) In addition to functionality, bids may also be adjudicated on the presence or absence of 'objective criteria'. Ordinarily, bids will be awarded to the highest points-scoring compliant bidder after being assessed on price, preferential procurement status and, where relevant, functionality. However, a contract may be awarded to the tenderer that did not score the highest number of points if objective criteria justify making the award to another tenderer.<sup>231</sup> If the department intends to apply objective criteria too, this must be included in the bid documents.<sup>232</sup> "Objective criteria" does not include advancing historically disadvantaged persons, nor does it include items already scored by points.<sup>233</sup> "Objective criteria" may, however, include the criteria used to assess functionality.
- (b) For example: when two bidders both achieve the minimum qualifying score in the initial functionality assessment; one achieves a very high score, while the other barely achieves the necessary score. However, in the second stage, where price and preferential procurement points are assessed, the latter bidder emerges with a higher score. It may seem unfair that the latter bidder be awarded the bid, as its bid was barely functional. It may well be unfair. To prevent this possibility, the department may stipulate that functionality will be reconsidered after price and preferential procurement were assessed to act as an "objective criterion" that can determine the award.<sup>234</sup>

<sup>223</sup> NT Instruction Note of 3 September 2010, s. 3.3(iv)

<sup>224</sup> PPR 2017, r. 5(3)(c)

<sup>225</sup> PPR 2017, r. 5(4)(a)

<sup>226</sup> PPR 2017, r. 5(4)(b)(i)

<sup>227</sup> PPR 2017, r. 5(4)(b)(ii)

<sup>228</sup> PPR 2017, r. 5(6)

<sup>229</sup> PPR 2017, r. 5(7)

<sup>230</sup> PPR 2017, r. 5(2)

<sup>231</sup> PPPFA s. 2(1)(f) read with PPR 2017, r. 11(1)

<sup>232</sup> PPR 2017, r. 11(2)

<sup>233</sup> PPPFA s. 2(1)(d)(i) read with (f)

<sup>234</sup> *Rainbow Civics CC v Minister of Transport and Public Works, Western Cape and Others* [2013] ZAWCHC 3

## 10.6 LOCAL PRODUCTION AND CONTENT

10.6.1 Procurement of goods made locally can greatly assist to build South Africa's work base and economy. To this end, the Department of Trade and Industry and Competition (dtic) has designated and determined the stipulated minimum threshold for local production and content in a number of sectors.<sup>235</sup> An organ of state must, in the case of designated sectors, advertise the invitation to tender with a specific tendering condition that only locally produced goods or locally manufactured goods, meeting the stipulated minimum threshold for local production and content, will be considered.<sup>236</sup> The % threshold required for local production and content must be stated in the bid advertisement.

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A documented process on the implementation of local production and content requirements is attached as **Annexure 5**.

### 10.6.2 Designated Sectors

- (a) Bid documents for goods or services that have been designated for local production and content must contain a specific bidding condition that only locally produced goods or services or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered.<sup>237</sup>
- (b) It must be stipulated in bid invitations that the exchange rate to be used for the calculation of local production and content must be the exchange rate published by the South African Reserve Bank ("SARB") on the date of advertisement of the bid.
- (c) The formula to calculate local production and content must be disclosed in the bid documentation.
- (d) The WCBD 6.2 and Annexure C must be duly completed, duly signed, and submitted by the bidder at the closing date and time of the bid.<sup>238</sup>
- (e) A tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender.<sup>239</sup>
- (f) Once bids in relation to designated sectors for local production and content are awarded, the department of Trade and Industry (the dti) must be:
  - (i) notified of all the successful bidders and the value of the contracts; and
  - (ii) provided with copies of the contracts, the WCBD 6.2 Certificates together with the Declaration C by the successful bidders

<sup>235</sup> PPR 2017, r. 8(1)(b) read with the periodically published NT Instruction Notes on the subject. See: <http://www.treasury.gov.za/divisions/ocpo/sc/PracticeNotes/default.aspx>

<sup>236</sup> PPR 2017, r. 8(1)(a)

<sup>237</sup> PPR 2017, r. 8(2)

<sup>238</sup> PT Circular 25/2015 "Annexure C". See also NT Instruction Note 4 of 2015/2016.

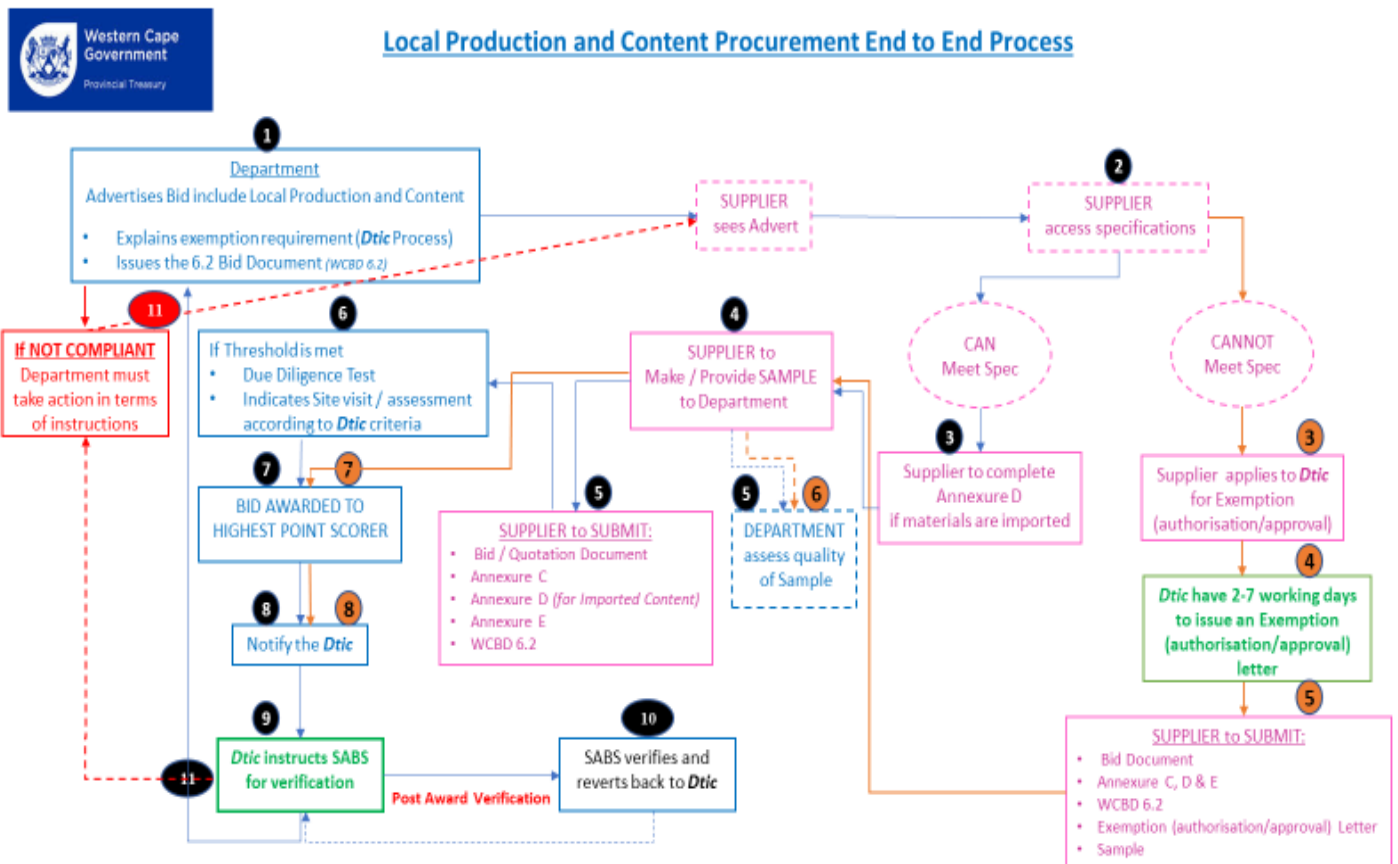
<sup>239</sup> PPR 2017, r. 8(5)

### 10.6.3 Non-Designated Sectors

(a) Where there is no designated sector, the department may make a specific condition of tender that only locally produced services or goods or locally manufactured goods with a stipulated minimum threshold for local production and content, will be considered.<sup>240</sup> This threshold must be in accordance with the standards determined by the department of Trade and Industry in consultation with the National Treasury.<sup>241</sup>

### 10.6.4 LOCAL PRODUCTION AND CONTENT END TO END PROCESS

The diagram below prescribes the end to end process for bids advertised with the local production and content requirements:



Processes that define the above-mentioned points:

#### **Point 1: Advertised bid includes local production and content:**

- 1.1 The department must assess whether the procurement process is subject to the local production and content requirements;
- 1.2 the bid advert must contain a specific bidding condition that only locally produced or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered;

<sup>240</sup> PPR 2017, r. 8(4)(a)

<sup>241</sup> PPR 2017, r. 8(4)(b)

- 1.3 potential bidders must be informed of the exemption process and requirements (the **dtic** process): [http://www.thedtic.gov.za/wp-content/uploads/IP\\_Exemption\\_letters.pdf](http://www.thedtic.gov.za/wp-content/uploads/IP_Exemption_letters.pdf);
- 1.4 paragraph 2 of the WCBD6.2 must be completed and issued together with Annexure C, D and E with the bid document;
- 1.5 bidders must be afforded ample time to respond to the request for quotation or bid (the **dtic** indicates a 2-7 workday turnaround time to respond to an exemption (authorisation/ approval request));
- 1.6 the department must request a sample if so required; and
- 1.7 the department advertises the bid with the local production and content requirements as stipulated above; and
- 1.8 a RFQ advertised via the ePS must be open for at least 2-4 weeks to allow the bidder enough time to meet the stipulated requirements and to obtain exemption letters/authorisation requests from the *dtic* if applicable.

**Point 2: supplier access specifications**

- 2.1 Supplier/bidder accesses the specification and determines whether it can or cannot meet the specification and local production and content requirements; and
- 2.2 the following guide and documents must be read and understood by the bidder/supplier in completing the requirements for LC:
  - \* the applicable local production and content designated sector circular
  - \* Guidance Document for the Calculation of Local Content
  - \* Process when requesting exemption letters/authorisation requests
  - \* SANS-1286-2017

**Point 3: supplier applies to dtic for exemption where applicable**

- 3.1 ***if the bidder can meet the specification:***
  - bidder must complete the WCBD6.2 Annexure C and E;
  - Annexure D must be completed if there is imported content;
  - Supplier/bidder must make/produce a sample to submit to Department if requested via the specification; and
  - Annexures D and E must be kept for audit purposes.
- 3.2 ***if the bidder cannot meet the specification:***
  - bidder applies to the **dtic** for exemption/authorisation/approval;
  - depending on the designated sector the **dtic** has 2- 7 working days to respond to the exemption request;
  - bidder must complete the WCBD6.2 Annexure C, D and E;

- bidder must make/produce a sample to provide to Department if requested via the specification; and
- Annexures D and E must be kept for audit purposes.

**Point 4: dtic has 2 to 7 working days to issue an exemption letter**

4.1 Depending on the designated sector the **dtic** has two to seven working days to respond to an exemption (authorisation/approval) request. The turnaround time for a response from the **dtic** to an exemption (authorisation/approval) request for all designated products is five working days except for rail and boats/vessels which is seven working days and textile, clothing, leather and footwear which is two working days;

4.2 It is the responsibility of the bidder to apply for an exemption from the **dtic**. The process to follow is indicated hereunder:

- the **dtic** will decide whether to grant an exemption (authorisation/approval) or not;
- the following information must be included in the official letter to the **dtic**:
  - Procuring entity/government department/state owned company;
  - tender/bid number;
  - closing date;
  - item(s) for which the exemption (authorisation/approval) is being requested;
  - description of the goods, services or works for which the requested exemption(authorisation/approval) item will be used and the local content requirements that can be met;
  - reason(s) for the request;
  - supporting letters from local manufacturers and suppliers.
- NB – Exemption (authorisation/approval) letters are tender specific and applications are not transferrable; and
- Request for exemption (authorisation/approval) letters are to be directed to:

Dr Tebogo Makube

Chief Director: Industrial Procurement

Tel: 012 394 3927

E-mail: [tmakube@thedti.gov.za](mailto:tmakube@thedti.gov.za)

- Requests for exemption(authorisation/approval) from the textile, clothing, leather and footwear are to be directed to:

Patricia Khumalo

Tel: 012 394 1390

E-mail: [khumaloP@thedti.gov.za](mailto:khumaloP@thedti.gov.za)



### **Point 5 and 6: supplier submission requirements and assessment of sample**

- 5.1 The bidder must submit the completed bid document or quotation, originally completed WCBD6.2, Annexure C, exemption letter (if applicable) and a sample (if applicable) to the Department with its bid submission; and
- 5.2 the Department must assess the quality of the sample (where applicable).

### **Point 6 and 7: assessment and award of bid to the highest point scorer:**

- 7.1 the Department must evaluate the bids/ quotations to determine if the local production and content threshold is met. The Department may perform site visits as indicated by the **dtic**;
- 7.2 bids must be assessed according to the **dtic** criteria;
- 7.3 In terms of regulation 8 (5), a tender that fails to meet the minimum stipulated threshold for local production and content is an unacceptable tender. If an Annexure C is not completed and submitted by the closing date and time the bid/quotation should not be accepted;
- 7.4 Bidders may not be allowed to sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the minimum threshold as stipulated in regulation 8 of the Preferential Procurement Regulations, 2017;
- 7.5 if the threshold is met bidders must proceed to the next phase of the evaluation phase;
- 7.6 quotation/bid must be awarded to the highest points scorer (after considering local production and content and functionality if applicable).

### **Point 8 and 9: post award and reporting requirements**

- 8.1 the **dtic** must be notified of the award; and
- 8.2 the **dtic** must be provided with copies of the contract, the WCBD6.2, Annexure C submitted by the successful bidder/supplier within 30 days of award.

### **Point 10 and 11: SABS verification**

- 10.1 The **dtic** will instruct the SABS to conduct a verification post award. Note that this is not done for each contract;
- 10.2 the SABS will revert to the **dtic** in terms of the results of the verification. Should the SABS find that the supplier is non-complaint the Department must act in terms of paragraph 14 of the Preferential Procurement Regulations, 2017 and the instruction notes/circulars issued by the National Treasury.

### **10.7 RECEIPT OF BIDS**

- 10.7.1 All bids received must be sealed in an envelope, and the bid number and closing date must be written on the envelope.
- 10.7.2 For security purposes all the pages of the bids received should be date stamped, and checked for any deletions, signature omissions (especially on the bid forms), alternative offers and document omissions. Where the employee who checks the bid finds deletions, the employee is required to initial next to it, and have it co-initialled by a second employee.

Where forms are unsigned, a note to that effect must be made on the bid cover and brought to the attention of the bid evaluation committee. The committee must consider whether there was a mandatory requirement to sign.<sup>242</sup> If so, the committee must further consider whether the purpose of the mandatory requirement has nonetheless been fulfilled, despite the absence of the signature. If so, the bid may be evaluated.

- 10.7.3 After this process, the bids, together with a cover letter should be forwarded to the BEC for evaluation. A copy of the cover letter should be placed on the bid register (the file that was opened for the bid).

## 10.8 UNSIGNED BIDS

- 10.8.1 The bid document should be structured and drafted so that it is clear when a bidder signs their bid, it is the intention of the bidder to be bound by their offer. WCBD 1 is the main document in this regard.
- 10.8.2 Before bid acceptance, it must be ensured that the bidder who signed the WCBD 1 has the authority to do so. For this purpose, documents such as company resolutions or references made to the company's memorandum of incorporation or articles of association should be obtained from the bidder to confirm such authority, if such authority has not already been provided.
- 10.8.3 For the same reason, it is important that signatures on supporting certificates, questionnaires and specification forms be validated. If the presence of a signature is both mandatory and integral to the bid, the BEC or BAC may deem the bid unacceptable.<sup>243</sup> In some circumstances,<sup>244</sup> if there is a missing signature, bidders should be approached to determine whether they would be willing to sign the particular documents. Such signature must take place before acceptance. It must be noted that this is only permissible in the instance of missing signatures. No other amendments to the documentation are permissible.

## 10.9 LATE BIDS

- 10.9.1 Bids are late if they are received at the address indicated in the bid documents after the closing time. The closing for the submission of bids is 11:00 a.m. on the date advertised as the closing date. The acceptance of late bids is a tricky issue. The principal consideration in accepting or rejecting a late bid is whether the lateness affects the fairness of the bid process. Court decisions suggest that the respect of a deadline is a fundamental part of ensuring fairness in a bid.<sup>245</sup> Should the late submission render the process unfair, that late bid should not be considered and, where feasible, must be returned to the bidder accompanied by an explanation. The onus will be on the bidder to submit *prima facie* proof that the bid was submitted timeously.
- 10.9.2 After the details of a late bid have been recorded in the register, it must be returned to the bidder.

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<sup>242</sup> *Loliwe CC 1/a Vusumzi Environmental Services v City of Cape Town and Others* [2012] ZAWCHC 162

<sup>243</sup> Relying on the purposive interpretation encouraged in *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2013] ZACC 42; 2014(1) SA 604 (CC) at paragraphs [30] – [43].

<sup>244</sup> *Millennium Waste Management (Pty) Ltd v Chairperson of the Tender Board: Limpopo Province and Others* [2007] ZASCA 165; 2008 (2) SA 481 (SCA)

<sup>245</sup> *Azola Recruitment Solutions CC v National Energy Regulator of South Africa and Another* [2015] JOL 33980 (GNP) at paragraph [20]. See, albeit in a somewhat different context, *Minister of Environmental Affairs and Tourism and Another v Pepper Bay Fishing (Pty) Ltd* [2003] ZASCA 77; 2003 (4) SA 1 (SCA).

## 10.10 CONTROL MEASURES FOR THE HANDLING OF BIDS

10.10.1 The following controls must be in place for the proper handling of bids:

- (a) A special lockable office preferably with a safe for the receipt and storing of bids, as information contained in the documents is privileged.
- (b) A bid box that is open and accessible 24 hours per day 7 days a week including weekends and public holidays to ensure free access at all times.
- (c) Where a bid box is not open and accessible 24/7, it should be brought to the bidders' attention and should be reflected as such on the cover of the bid documents that have been issued to the bidders.
- (d) Date stamps may be used to stamp the time and date of receipt of bids to indicate whether or not bids have been received on time.
- (e) At least two persons must be involved in performing the following functions, in order to provide a witness for all actions:
  - (i) advertisement of bid;
  - (ii) receiving of bids;
  - (iii) maintenance of bids;
  - (iv) processing and storing of bids.
- (f) All bids to be recorded on the register. In the interest of transparency, this information is available for the scrutiny of interested parties on request.
- (g) After the closing date and the receiving of bids, a lockable office preferably with a safe must house all bids received, as information contained in the bids is confidential.

## 10.11 EVALUATION OF BIDS

10.11.1 All acceptable bids submitted must be evaluated by the BEC. The department is not obliged to make an award to any bidder.<sup>246</sup> In considering bids the BEC shall check:

- (a) compliance with bid conditions;
- (b) compliance with bid specification(s);
- (c) consideration of any functionality criteria;
- (d) comparison of prices and the allocation of preference points; and
- (e) consideration of any objective criteria.

10.11.2 Sometimes, suppliers who are not registered on the CSD will submit bids. Bids are advertised widely through the *Government Tender Bulletin* and e-Tender Publication Portal. This wide footprint does not permit bidders who are not registered on the CSD to be considered. These bids are non-compliant and must be discarded.

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<sup>246</sup> *City of Tshwane Metropolitan Municipality and Others v Nambiti Technologies (Pty) Ltd* [2015] ZASCA 167; 2016(2) SA 494 (SCA) at paragraph [32]

10.11.3 Bids should be evaluated in the following phases:<sup>247</sup>

- (a) **Phase 1:** Checking of compliance with bid conditions and compulsory requirements of the bid (e.g. tax compliance, requested documents, attendance of a compulsory information session etc.). Only bids that complied with all requirements set out in Phase 1 of the evaluation process will proceed to the next phase.
- (b) **Phase 2:** where applicable, evaluate functionality compliance with bid specifications and the bidder's ability to perform. Only bids that complied with all requirements and met the minimum score set out in Phase 2 of the evaluation process will proceed to the next phase.
- (c) **Phase 3:** Application of the points scored for price and preferential procurement under the applicable (80:20 / 90:10) system. A bid should be awarded to the bidder that scored the highest number of points, unless objective criteria justify otherwise.

10.11.4 If businesses bid for the rendering of goods or services, it may be required that the names and relevant qualifications of the actual people who will be responsible for the goods or services be stated or the directors, trustees or members of such a legal person.

10.11.5 When evaluating against a technical specification, bidders are required to comply with all technical requirements. It is imperative that such specifications be drafted with great care in the bid drafting phase, to avoid the need to amend specifications at a later date. Amendments are dangerously risky as they are likely to attract legal liability.

10.11.6 As a general rule it is acceptable to allow the submission of alternative offers which are almost but not strictly to specification irrespective of whether the bidder also submits offers conforming strictly to the specification criteria. The exception to this rule is to stipulate that bidders may not submit such offers. In such cases, this decision must be stated unequivocally in the bid invitation in order to avoid a situation where different offers are submitted on one set of bid documents, thereby compromising and prejudicing the position of the bidder. Factors to be considered are:

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

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

- (a) consider in the first instance whether /not the best option would be cancellation;

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<sup>247</sup> PPR, 2017, r. 5(6) and (7)

- (b) ensure an open and fair process, affording equal opportunity to bid;
  - (c) determine whether/not a specification is inherently proprietary/unique to that bidder;
  - (d) stipulate the set cut-off date for offers to reach the department.
  - (e) late offers are unacceptable;
  - (f) care must be taken not to expose the bid price of the bidder who initiated the altered specification; and
  - (g) all these offers must be opened simultaneously after the closing.
- 10.11.8 The connection to original suppliers must always be known to the department. This is to ensure that the bidder can deliver what they promise to deliver. If the bidder is a supplier but not the actual manufacturer of goods or services and will be sourcing the product(s) from another company, a letter from that original supplier, confirming firm supply arrangements, must accompany the bid. Failure to submit such document may invalidate the bid. This requirement must be stated upfront in the bid documents.
- 10.11.9 Prior to the award of any contract, the department must see to it that the recommended supplier is not listed in National Treasury's Register for Tender Defaulters and List of Restricted Suppliers.<sup>248</sup> Under no circumstances may the department be permitted to procure from suppliers listed on the Register for Tender Defaulters. For suppliers listed on the List for Restricted Suppliers, the department must apply due diligence and assess the risks before deciding to proceed with procurement from the supplier.

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

- 10.12.1 Bids invited based on functionality as a criterion must be evaluated in the three phases listed earlier, namely:
- (a) Phase 1: compliance with bid conditions and compulsory requirements;
  - (b) Phase 2: evaluation of functionality; and
  - (c) Phase 3: application of 80/20 or 90/10 price and preference point system.
- 10.12.2 **Evaluation of functionality**
- (a) Bids must be evaluated in terms of the evaluation criteria indicated in the bid document.<sup>249</sup> The amendment of evaluation criteria, weights, applicable values and the minimum qualifying score for functionality is not allowed after the closure of the bid receiving process, as it may jeopardise the fairness of the whole tender process.<sup>250</sup>
  - (b) A bid will be considered further for price and preference points – under either the 80/20 or 90/10 systems – if it achieves the prescribed minimum qualifying score for

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<sup>248</sup> NTR 16A9.1(c). See also NT Supply Chain Management 'Checking the Prohibition Status of Recommended Bidders Prior to Awarding any Contract', Ref: 3/4/3/2/10, dated 19 February 2008, s. 2.1. The register containing the details of restricted suppliers is available on the National Treasury website.

<sup>249</sup> PPR 2017, r. 5(1)

<sup>250</sup> PPR 2017, r. 5(4)

functionality.<sup>251</sup> A bid that fails to achieve a minimum qualifying score must be disqualified and not evaluated further.<sup>252</sup>

- (c) Score sheets should be prepared and provided to BEC members to evaluate the bids. The score sheet should contain all the functionality criteria and the weighted value for each criterion as well as the values to be applied for functionality evaluation, as indicated in the bid documents.
- (d) Each BEC member should, after thorough evaluation, independently award their own value for each individual criterion. Score sheets should be signed by BEC members and, if necessary, written motivation may be requested from BEC members where vast discrepancies in the values awarded for each criterion exist. A consolidated and consensus sheet should be completed and signed by the Chairperson of the BEC only as it relates to functional criteria scoring.
- (e) If the minimum qualifying score for functionality is indicated as a percentage in the bid documents, the percentage scored for functionality may be calculated as follows:
  - (i) the value awarded for each criterion should be multiplied by the weight for the relevant criterion to obtain the score for the various criteria; and
  - (ii) the scores for each criterion should be tallied up to obtain the total score.

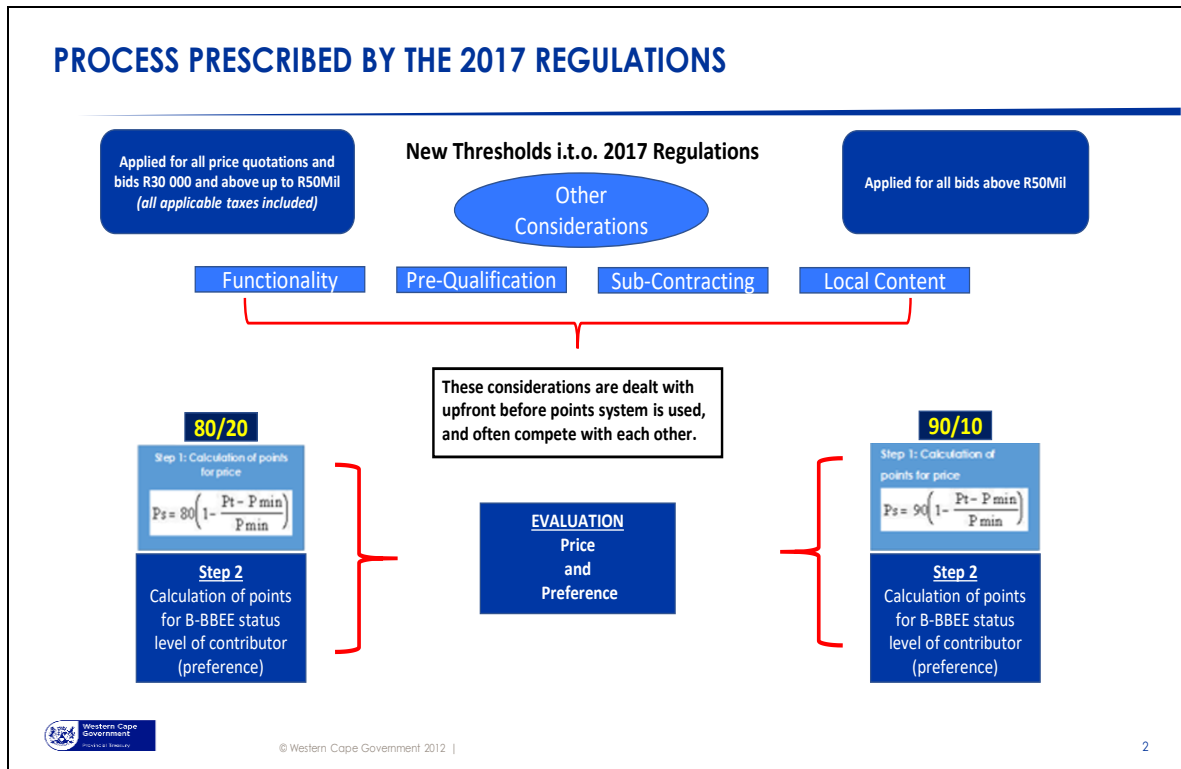
#### **10.13 EVALUATION OF BIDS BASED ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT**

The diagram below defines the process for the evaluation of bids based on a minimum threshold for local production and content as prescribed by the Preferential Procurement Regulations 2017:

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<sup>251</sup> PPR 2017, r. 5(7)

<sup>252</sup> PPR 2017, r. 5(6) and (7)



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

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

- (a) Bids must be evaluated for meeting the minimum threshold evaluation criteria stipulated in the bid documents and the periodically published NTI and PTC for each sector. Amendments to the evaluation criteria are not permitted.
- (b) Bids must first be evaluated for meeting the minimum threshold for local production and content, and thereafter, functionality if applicable;
- (c) A bid will be disqualified if:
  - (i) the bidder fails to achieve the stipulated threshold for local production and content;<sup>253</sup> and
  - (ii) the Declaration Certificate for Local Content (WCBD 6.2) and Annexure C is not submitted as part of the bid document.<sup>254</sup>

### Phase 2: Application of the 80/20 or 90/10 price and preference point systems

- (a) Only bids that achieve the minimum stipulated threshold for local production and content may be evaluated in this phase.

<sup>253</sup> PPR 2017, r. 8(5)

<sup>254</sup> WCBD 6.2, s. 1.6

## Awards

- (a) Contracts must be awarded at market related prices, considering benchmark prices. The department may approach the department of Trade and Industry and Competition(dtic) to assist with establishing benchmark prices, value for money and economies of scale.

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. The department must include requirements as cited in the policy document on the implementation of local production and content
2. Departments are also required to include their own bespoke operational requirements.

## 10.14 EVALUATION OF BIDS THAT SCORED EQUAL POINTS

- 10.14.1 On conclusion of the 80/20 or 90/10 price and preference points assessment, the bidder with the highest score will be awarded the contract.<sup>255</sup> In the event that two or more bids have scored equal points overall, the successful bid must be the one that scored the higher number of points for B-BBEE.<sup>256</sup>
- 10.14.2 If functionality is part of the evaluation process and two or more bids have scored equal points, including equal preference points for B-BBEE, the contract must be awarded to the bidder that scored the higher number of points for functionality.<sup>257</sup>
- 10.14.3 In the event that two or more bids score equal points in all respects, the award must be decided by the drawing of lots.<sup>258</sup> The process of drawing of lots should provide for an objective, fair and open procedure to determine the successful bidder. The process determined should ensure that there is no prejudice against any of the equal bids. The award must be made without interference and with impartiality.<sup>259</sup>
- 10.14.4 The following is the preferred procedure when drawing lots:
- (a) An opaque, non-transparent, container is used, with a hole sufficiently small so that a hand may be placed inside, but not large enough so that the contents of each lot may easily be seen.
  - (b) Pieces of paper may be used as lots, but it should be ensured that there are at least double the amount of lots than there are equal bids. The extra lots should be left blank.
  - (c) The lots should in all respects be equal. They must be the same colour, weight, size and texture. Before the lots are inserted into the container, the names of each of the equal bids are written or printed on a lot and all lots are inserted in the box.

<sup>255</sup> PPR 2017, r. 6(8) and 7 (8)

<sup>256</sup> PPR 2017, r. 10(1)

<sup>257</sup> PPR 2017, r. 10(2)

<sup>258</sup> PPR 2017, r. 10(3)

<sup>259</sup> The process of drawing lots might, in isolation, be an arbitrary means of arriving at an answer. However, if it is used to break a deadlock after all other avenues have been exhausted, it is consistent with s. 217 of the Constitution. The key to removing arbitrariness lies in the exhaustion of all other avenues.



(d) The container is then shuffled and a party entirely independent on the BEC and BAC process may draw one lot at a time in front of at least three witnesses, until the first lot with a name written or printed thereon is drawn.

(e) The first named lot to be drawn is the successful bidder for the award.

## 10.15 DISCOUNTS

10.15.1 When calculating comparative prices:

(a) unconditional discounts must be considered for evaluation purposes;<sup>260</sup> and

(b) conditional discounts must not be considered for evaluation purposes but considered only when payment is made.

## 10.16 SUB-CONTRACTING AS A CONDITION OF TENDER

### NOTE

- Subcontracting refers to the practice of bringing in an outside company or individual to perform specific parts of a contract or project.
- In most cases, a company subcontracts another business to perform a task that cannot be handled internally.
- In the construction industry, a general contractor typically organizes several subcontractors that specialize in specific trades. The CIDB include the following 3 types of sub-contractors (CIDB Practice Note 7):
  - Domestic subcontractor: subcontractor appointed by the main contractor at his discretion;
  - Nominated subcontractor: a subcontractor nominated by the employer which the contractor is obliged to appoint.
  - Selected subcontractor: a subcontractor selected by the contractor in consultation with the employer in terms of the requirements of the contract.

10.16.1 Regulation 9(1) of the Preferential Procurement Regulations, 2017 stipulates that “if feasible to subcontract above R30 million, an organ of state must apply subcontracting to advance designated groups”.

10.16.2 It is therefore evident that the requirement for deciding whether/not to subcontract is the question of “feasibility”. It is therefore important that the department question whether or/not sub-contracting is a feasible option within the intended procurement process and that feasibility testing must be done before the market has been engaged.

10.16.3 The responsibility to determine whether it is feasible or not rest within the department preparing the tender. In order to arrive at the decision for feasibility, the department is required in terms of Cabinet Minute 87/2017 to conduct empowerment assessments for procurement above R10 million to determine the feasibility of sub-contracting as well as other empowerment objectives such as local labour usage, skills identification and training and local supplier development, etc. as applicable.

<sup>260</sup> WCBD 6.1 (2017) at s. 1.16. The Preferential Procurement Regulations, 2011 at r. 3.2 directed that this be done. Those Regulations have since been replaced by PPR 2017. PPR 2017 is less explicit than its predecessor, but, when read together, PPR 2017 continues to give authority for the department to apply this rule.

10.16.4 Should other empowerment objectives such as local labour usage, skills identification, training and local supplier development be targeted by the department this must be included in the specification requirements of the bid as well as the evaluation criteria against which the requirements will be evaluated.

10.16.5 Should the department's own analysis indicate a feasibility for sub-contracting then the department must include the following clause under 5.11 of the WCBD 6.1:

"In terms of the institutions own empowerment impact assessment the institution requires that ...% of the contract MUST be sub-contracted to ..... (cite the category of designated grouping that the department wishes to sub-contract to).

The tenderer must select a supplier/s from the list of suppliers registered on the CSD and ePS for the required goods or services in respect of the applicable designated groups mentioned in 5.11 above."

10.16.6 The department may lower but not increase the R10 million threshold for empowerment impact assessment.

## **10.17 SUB-CONTRACTING AFTER AWARD OF TENDER**

10.17.1 A successful bidder may only enter into a subcontracting arrangement with the approval of the department.<sup>261</sup> If the award is within a sector designated for minimum thresholds for local production and content, the successful bidder may not subcontract in a manner that reduces the local production and content value of the contract below the minimum threshold.<sup>262</sup>

10.17.2 A successful bidder may not subcontract more than 25% of the value of the contract to another enterprise that has a lower B-BBEE status than itself.<sup>263</sup> However, if the subcontract is to an Exempted Micro Enterprise ("EME") that has the capacity and ability to execute the subcontract, then this rule does not apply.<sup>264</sup> An EME is an enterprise with an annual turnover of less than R10 million, or an enterprise that has been formed and in operation for less than one year.<sup>265</sup>

10.17.3 The subcontractors chosen by a service provider may be approved or rejected by the department. Rejection will not endanger the validity of the bid.

## **10.18 AWARD OF BIDS**

10.18.1 A bid must be awarded to the bidder who scored the highest total number of points under the price and the preference point systems.

10.18.2 A contract may be awarded to a bidder who did not score the highest total number of points, only in accordance with section 2 (1) (f) of the PPPPA (Act 5 of 2000). This may be done as highlighted earlier when objective criteria are contemplated in addition to specific goals as contemplated in subsections (d) and (e) of the PPPPA, which require that:

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<sup>261</sup> PPR 2017, r. 12(1)

<sup>262</sup> PPR 2017, r. 12(2)

<sup>263</sup> PPR 2017, r. 12(3)

<sup>264</sup> PPR 2017, r. 12(3) read with B-BBEEA s. 9(1)

<sup>265</sup> B-BBEEA "Issue of Codes of Good Practice", Government Gazette 36928, Notice 1019, issued 11 October 2013, ss. 4.1 and 6.1

- (a) specific goods may include:
  - (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination based on race, gender or disability;
  - (ii) implementing the programmes of the Reconstruction and Development Programme as published in *Government Gazette* 16085 dated 23 November 1994; and
- (b) any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender.

## 10.19 REJECTION OF BIDS

10.19.1 Awards need not necessarily be made for every tender advertised.<sup>266</sup> Departments have the authority to cancel a tender before it has been awarded. Regulation 13 of the Preferential Procurement Regulations, 2017 stipulates that a tender may be cancelled –

- (a) Due to a change in circumstances – for example there is no longer a need for the goods or services specified in the tender invitation;
- (b) There are no funds available to cover the cost of the expenditure;
- (c) No acceptable tender offerings have been received;
- (d) There is a material irregularity in the tender process

The decision to cancel a tender must be published in the same way the original tender invitation was advertised.

10.9.2 Rejecting all bids is justified when there is no longer a need for the goods or services in the tender specification,<sup>267</sup> a lack of effective competition, or if bids are not sufficiently responsive.<sup>268</sup>

10.19.2 The lack of competition should not be determined solely based on the number of bids received. If all bids were rejected, the department should review the reasons for the rejection and consider making revisions to the tender. It may be that the specific conditions of contract, the functionality specifications, the scope of the contract, or a combination of these areas, are too restrictive. If so, corrections should be made, and a new bid process initiated. If the rejection is due to lack of competition, wider advertising should be considered.

10.19.3 If the lowest-priced acceptable bid exceeds the department's estimated costs, that bid should not ordinarily be rejected for the purpose of starting over and attempting to obtain lower prices in a new bid process. However, if the lowest bid price exceeds the approved budget for the procurement process, then the department will be compelled, and permitted, to reject all bids and start again.<sup>269</sup> The Department may in terms of the paragraph 6 (9) (a) and 7 (9) (a) of Preferential Procurement Regulations, 2017 negotiate the price with the highest point scorer if the price is not market related. Should the bidder not agree to a market related price, the department may cancel the bid. Although the

<sup>266</sup> *City of Tshwane Metropolitan Municipality and Others v Nambiti Technologies (Pty) Ltd* [2015] ZASCA 167; 2016(2) SA 494 (SCA) at paragraph [32]

<sup>267</sup> PPR 2017, r. 13(1)(a)

<sup>268</sup> PPR 2017, r. 13(1)(c)

<sup>269</sup> PPR 2017, r. 13(1)(b)

PPPFR, 2017 requires that the bidder next in line may be approached, this is inconsistent with PPPF Act which is specific that the bid must be awarded to the highest total point scorer. The only legal reason not to award at this point to the highest scorer is if objective criteria in addition to those contemplated in paragraphs (d) and (e) of the PPPFA justify the award to another tenderer. In current circumstances the only other viable reasons as contemplated in PPPFR 13 is that funds are not available and that the tender is in turn not viable.

10.19.4 The rejection of individual bidders should be reasoned and recorded for audit purposes. Individual bids may be rejected in the following circumstances, amongst others:

- (a) where a bidder fails to comply with any of the mandatory and material bid conditions or compulsory requirements of the bid;<sup>270</sup>
- (b) where a bidder has withdrawn an offer;<sup>271</sup>
- (c) where a bid is late;<sup>272</sup>
- (d) where the bidder has amended an offer after the closing time for receipt of offers;<sup>273</sup>
- (e) if it is determined that the supplier recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question; and
- (f) there is a material irregularity in the tender process.<sup>274</sup>

## 10.20 CONCLUSION OF A CONTRACT

10.20.1 A valid contract is concluded and becomes binding when a bidder's bid is accepted by the department and a signed letter of acceptance by an authorised person has been sent before the bid validity period has expired.<sup>275</sup> Any decision regarding the awarding of a contract will be final and, on written request, reasons for the decision of the department will be provided, without revealing any information of any bidder that is afforded protection under PAIA or POPIA.<sup>276</sup>

10.20.2 The contract will consist, at a minimum, of:<sup>277</sup>

- (a) GCC;
- (b) SCC;
- (c) submitted bid documents;
- (d) documentation for the claiming of price and preferential procurement points;

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<sup>270</sup> *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2013] ZACC 42; 2014(1) SA 604 (CC)

<sup>271</sup> *Joubert Galpin Searle and Others v Road Accident Fund and Others* [2014] ZAECPHC 19; 2014 (4) SA 148 (ECP). See also *Telkom SA Limited v Merid Trading (Pty) Ltd and Others*; *Bihati Solutions (Pty) Ltd v Telkom SA Limited and Others* [2011] ZAGPPHC 1. Both of these cases dealt with a bid validity period that had expired, but the effect is the same as an active act of withdrawal of a bid.

<sup>272</sup> *Azola Recruitment Solutions CC v National Energy Regulator of South Africa and Another* [2015] JOL 33980 (GNP) at paragraph [20]

<sup>273</sup> This is, in effect, a late bid.

<sup>274</sup> PPR 2017, r. 13(1)(d)

<sup>275</sup> WC PTI 2019, s. 7.1.2

<sup>276</sup> *Tetra Mobile Radio (Pty) Ltd v MEC department of Works and Others* [2007] ZASCA 128; 2008 (1) SA 438 (SCA) and *Transnet and Another v SA Metal Machinery Company (Pty) Ltd* [2005] ZASCA 113; 2006 (6) SA 285 (SCA)

<sup>277</sup> WC PTI 2019, s. 7.1.3 (a) to (e)

- (e) proof of tax compliance status;
  - (f) letter of acceptance; and
  - (g) where applicable, a service level agreement.
- 10.20.2 The AO or their delegate of the department must, through the Provincial Treasury, publish all awards on the e-Tender Publication Portal<sup>278</sup> and in the *Government Tender Bulletin*.<sup>279</sup> The particulars to be published are as follows:<sup>280</sup>
- (a) contract description and bid number;
  - (b) names of the successful bidder(s) and preference points claimed;
  - (c) contract price(s), if possible;
  - (d) the brand name of the product or the name of the manufacturer, in the case of assets;
  - (e) contract period;
  - (f) where applicable, the B-BBEE status level of the successful bidder;
  - (g) names of directors; and
  - (h) date of award.
- 10.20.3 The application to advertise must preferably be lodged as soon as the letter of bid acceptance has been issued, as such letter constitutes a contract. Where no bids have been accepted, the particulars of the bids received are not made public.
- 10.20.4 All correspondence, including letters of acceptance, must be signed by the authorised representative of the department. Although the AO accepts and retains accountability for the contract that is concluded,<sup>281</sup> the signatory remains responsible for the contract and for the correctness of the data supplied. The letters of acceptance, as well as any Service Level Agreement ("SLA") that might be required and concluded between the department and the successful bidder, serve as the basis for placing orders and for the administration of the contract as well as for the settlement of disputes. The format and content of the letters of acceptance must be written to enable SCM personnel to carry out the above-mentioned actions in a meaningful and responsible fashion.

### **Letter of acceptance**

- 10.20.5 A valid contract is concluded and becomes binding when a bidder's bid is accepted by the department and a signed letter of acceptance by an authorised person has been sent before the validity period for the bid has expired.<sup>282</sup> A copy of this letter must be retained on file by the department. Successful bidders must be notified by registered post and or by email of the award of their bids. However, if goods and services valued at less than R10 000 are procured, the acceptance of such quotation may be affected by

<sup>278</sup> NT Instruction 1 of 2015/2016, s. 4.1.

<sup>279</sup> NTR 16A6.3 (c) and (d); NT Instruction 1 of 2015/2016, s. 6.1.

<sup>280</sup> NT Instruction 1 of 2015/2016, s. 4.2 (a) - (f).

<sup>281</sup> PFMA s. 38(1)(b)

<sup>282</sup> WC PTI 2019, s. 7.1.2

placing an order within the validity period of such offer, and there need not be notification of the service provider in writing, prior to the placement of the order.

- 10.20.6 All relevant information must be included in the letters of acceptance. It is essential that any conditions or stipulations, laid down by the department be clearly and unambiguously included in the bid documents or letters of acceptance.
- 10.20.7 Care must be taken that letters of acceptance and SLAs do not contain conditions, or do not even imply the approval of conditions, that were not part of the bid documents.
- 10.20.8 In the case of joint venture bids or bids on behalf of companies still to be incorporated, the department's rights must always be protected by binding all parties to the contracts both jointly and severally. The companies and/or persons concerned must, therefore, each receive a letter of acceptance and a copy of the SLA addressed to their own addresses and care must be taken that they all have signed the bid documents appropriately. In the case of a company still to be established, the contract must be ceded to the company as soon as it has been incorporated. In the case of period contracts, entered into for the supply of goods or services for a specified period of time and where a large number of items are at stake, the contract notice may be used as part of the letter of acceptance and the SLA.
- 10.20.9 Mistakes in the letters of acceptance must be reported to the AO immediately. Every effort must be made to recover the original letter of acceptance from the successful bidder. Where it is not possible to recover the letter of acceptance, the particulars of the incorrect acceptance letter must be reported to the BAC, together with a recommendation regarding the corrective steps to be taken.

### **Service Level agreement (SLA)**

- 10.20.10 The Service Level Agreement will be more frequently used when a service is provided to the Department, as opposed to when a product is supplied to the Department.
- 10.20.11 A SLA is an agreement that defines the service relationship between the department and the successful bidder (now the service provider). When a SLA is required, it must be concluded before the services or goods are provided by the service provider. The purpose of an SLA is to:
  - (a) identify and define the department's needs;
  - (b) provide a framework of understanding for the goods or service provision;
  - (c) reduce areas of uncertainty;
  - (d) encourage dialogue in the event of disputes; and
  - (e) eliminate unrealistic expectations.
- 10.20.12 To fulfil its purpose, a SLA must contain, at a minimum, clauses describing:
  - (a) the goods or services to be delivered, in line with the tender documents;
  - (b) performance, performance monitoring, and reporting;
  - (c) payment dates;
  - (d) problem management;

- (e) legal compliance and resolution of disputes;
- (f) service provider and department duties and responsibilities;
- (g) security;
- (h) intellectual property and confidential information; and
- (i) termination.

10.20.13 All SLAs must be done in consultation with Legal Services. On approval by Legal Services, an SLA is signed by the AO or their delegate and the service provider.

## **10.21 NEGOTIATIONS WITH PREFERRED BIDDERS**

10.21.1 At the end of the evaluation process, a preferred bidder is normally identified. This is the bidder who has scored the highest number of points, or to whom objective criteria justify the award of the contract. If approved by the AO or their delegate, the department may begin negotiating with the preferred bidder. Successful negotiations result in the award of the contract and the implementation of that contract.

10.21.2 The AO or their delegate may negotiate the contract only with the preferred bidder identified by means of the competitive bidding process. These discussions should not substantially change the original scope of work, the terms of the SCC, or the quality of the final product. The purpose of the negotiations is not to allow the preferred bidder a "second opportunity" to bid, but instead to establish certainty about the nature of the relationship between the department and the successful bidder. If the result of the negotiations is materially different from that which was specified in the bid specifications, unsuccessful bidders may have grounds to challenge the tender process and its subsequent award for lack of fairness.<sup>283</sup>

10.21.3 The preferred bidder should not be permitted 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 contract. The key staff proposed for substitution should have qualifications equal to or better than the key staff initially proposed.

10.21.4 After negotiations are successfully completed, the accounting officer should promptly notify other bidders that they were unsuccessful.

10.21.5 If the negotiations are unsuccessful, the tender is cancelled and advertised again.

### **10.21.6 Points to note:**

Successful negotiators are those having a clear strategy, a mandate to make decisions, and attempting in good faith to produce a win-win result for both parties. Common foundational principles of negotiation include:

- (i) focusing on common ground, rather than differences;
- (ii) trying to address needs and interests, not positions;
- (iii) being committed to meeting the needs of all parties involved;
- (iv) exchanging information and ideas;

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<sup>283</sup> PAJA, ss. 3 and 6



- (v) not going into meetings with “clenched fists”;
- (vi) inventing options for mutual gain;
- (vii) using objective criteria for standards of performance;
- (viii) being honest;
- (ix) displaying integrity;
- (x) being trustworthy;
- (xi) planning and preparing for meetings;
- (xii) setting clear objectives and targets;
- (xiii) knowing when to use certain strategies;
- (xiv) knowing and understanding suppliers and the supply market;
- (xv) knowing how to use financial knowledge to influence outcomes;
- (xvi) knowing how to influence and close the deal;
- (xvii) knowing how to turn a ‘no’ into ‘yes’; and
- (xviii) Understanding negotiation behaviours.

## 10.22 CANCELLATION AND RE-INVITATION OF BIDS

10.22.1 Bids may be cancelled by the AO or their delegate if:

- (a) due to changed circumstances, there is no longer a need for the goods or services specified in the tender documents;<sup>284</sup>
- (b) funds are no longer available to cover the total envisaged expenditure;<sup>285</sup>
- (c) if no acceptable bids are received;<sup>286</sup>
- (d) there is a material irregularity in the tender process;<sup>287</sup> or
- (e) the validity period for bids has expired.<sup>288</sup>

10.22.2 Should the department decide to cancel a bid, a reasoned, written submission must be drafted and submitted to the AO or their delegate explaining and motivating for the cancellation of the bid. Where the AO or their delegate decides to cancel the bid, the cancellation must be communicated to all bidders who collected bids.

10.22.3 The decision to cancel a tender invitation must be published in the same manner in which the original tender invitation was advertised.<sup>289</sup>

10.22.4 The department is free to issue a fresh bid process, provided that the obstacles that obstructed the first are considered and eliminated.

10.22.5 Whilst the Preferential Procurement Regulations, 2017 specific that a department may only cancel a tender invitation for a second time with the prior approval of Provincial

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<sup>284</sup> PPR 2017, s. 13(1)(a)

<sup>285</sup> PPR 2017, s. 13(1)(b)

<sup>286</sup> PPR 2017, s. 13(1)(c)

<sup>287</sup> PPR 2017, s. 13(1)(d)

<sup>288</sup> *Joubert Galpin Searle and Others v Road Accident Fund and Others* [2014] ZAECPHC 19; 2014 (4) SA 148 (ECP). See also *Telkom SA Limited v Merid Trading (Pty) Ltd and Others; Bihati Solutions (Pty) Ltd v Telkom SA Limited and Others* [2011] ZAGPPHC 1.

<sup>289</sup> PPR 2017, s. 13(2)



Treasury.<sup>290</sup> The Provincial Treasury does not have the mandate to provide approval as this mandate lies with the accounting officer of a department in terms of section 38 of the PFMA. The Provincial Treasury may however be consulted and provide comments and recommendations to the Accounting Officer for consideration when making its decision to cancel the tender invitation for the second time.

### **10.23 COMMUNICATION WITH BIDDERS**

10.23.1 Communication with bidders prior to an award is only allowed when there appears to be ambiguity in documentation provided, and there is a need to confirm prices where there is uncertainty. The extent and purpose of the communication must be documented. When the department communicates, it must do so equally with all bidders, and ensure that they all receive the same information.<sup>291</sup>

### **10.24 REPORTING**

10.24.1 All contracts valued at greater than R10 million must, within five days of the award, be reported by the AO or their delegate to the department of Trade and Industry.<sup>292</sup> The following information must be contained in the report:

- (a) bid number;
- (b) description of the goods or services;
- (c) date on which the contract was awarded;
- (d) name, address and contact details of contractor; and
- (e) imported content of contract, if present.

The report must be addressed to:

Mr Elias Malapane on e-mail at [Elias@thedti.gov.za](mailto:Elias@thedti.gov.za);

Telephone (012) 394 1401; and

Facsimile (012) 3942401.

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<sup>290</sup> PPR 2017, s. 13(3)

<sup>291</sup> *Menzies Aviation South Africa (Pty) Ltd v South African Airways (Pty) Ltd and Others* [2009] ZAGPJHC 65

<sup>292</sup> WC PTI 2019, s.11.1.2(d)(iii)

## CHAPTER 11: LIMITED BIDDING

### 11.1 GENERAL

11.1.1 To almost every rule there is an exception. Limited bidding is the exception to the rule in favour of competitive procurement. Limited bidding reserves the bid process for a specific group or category of possible suppliers/service providers/contractors. Again, it should be viewed as an **exception and not the rule** as it limits competitiveness and fairness, two of the Constitutional pillars of procurement.<sup>293</sup> The holding of limited bidding by the department will be permitted in instances where:

- (a) a written motivation is developed that clearly indicates a limited bidding process to be the appropriate form of procurement because there is confirmed, limited competition in the supplier field, or there is the confirmed presence of a sole source in the supplier field. The motivation must include a detailed market and expenditure analysis of the relevant goods or services. Given the exceptional nature of limited procurement, the motivation must, in addition to the findings, present and substantiate the methodology used for such analysis and determinations;
- (b) a competitive bidding process or invitation of quotations was initiated, but the bids received were all non-responsive or unaffordable and time is of the essence. In such cases re-invitation of bids can be limited to those service providers who initially submitted bids;
- (c) goods or services are designed or manufactured solely by an identified supplier or the supplier is the owner of the intellectual property necessary to create the goods or services. Written confirmation of such design, manufacturing or ownership of intellectual property must be obtained from the supplier and retained on the bid file;
- (d) there exist legislative, technological, or safety requirements or standards that reasonably permit only a limited number of suppliers or contractors to meet the requirements or standards. Invitations to bid may, if desired, be limited to those proven to meet said requirements or standards. The afore-mentioned requirements or standards must be recorded by the department and retained on the bid file; or
- (e) the department has a specific need and can procure for exceptionally low prices for a limited period of time from a specific supplier. Written confirmation of the offer and the reasons for it must be provided by the supplier and retained on the relevant bid file as well as an indication that other relevant suppliers could not match the offer.

11.2 When procuring goods or services through a limited bidding process, the accounting officer must ensure that:

- (a) the prescribed bidding documents have been completed;
- (b) the preferred bidder is duly registered on the CSD;
- (c) the preferred bidder's tax compliance is in order;
- (d) the bid is evaluated in terms of the preference point system;

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<sup>293</sup> Constitution, s. 217(1)

- (e) there has been compliance with the required demand management process;
  - (f) all goods or services above the threshold of R1 million be recommended through the bid adjudication process prior to an award being made by the relevant delegate;
  - (g) all limited bids over the value of R1 million (all applicable taxes included) must be reported to the Provincial Treasury and the Auditor General within 10 working days after finalisation of the procurement transaction;
  - (h) all limited bids over the value of R5 million (VAT inclusive) be executed in consultation with the Provincial Treasury prior to the award being made; and
  - (i) reasons for the decision are documented and readily available to give effect to the Promotion of Access to Information Act, 2000 (Act 2 of 2000) and the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).
- 11.3 Limited Bidding above the threshold of R1 million should follow the same procedure as competitive bidding for bid documentation, closing dates, opening of bids, bid evaluation, and tender awarding.
- 11.4 A Standard Operating Procedure Manual and checklist on limited bidding is attached as **Annexure 6**.

## CHAPTER 12: EMERGENCY PROCUREMENT

- 12.1 Emergency procurement is that which may be necessary in order to avoid, mitigate or resolve an urgent, unforeseen, and dangerous situation that, left unattended, may lead to death, injury or disease; damage to property, infrastructure or the environment; significant economic loss; or disruption of the life of a community.
- 12.2 The department may, in cases of emergency, dispense with the invitation for competitive bids, if competitive bidding would be impractical for a rapid response to the emergency, and may instead obtain goods or services in accordance with the emergency procurement policy referred to in paragraph 12.3.<sup>294</sup> All such departures from ordinary procedures are only permitted to the extent that the departure is actually warranted.
- 12.3 Registration is not fatal to a supplier. The emergency will supersede the lack of registration. The supplier will, instead, be requested to register on the CSD and ePS after the award, and to do so within 7 days of the award.<sup>295</sup> Along with petty cash purchases, this is the only exception to a bidder being required to be registered on both the CSD and ePS at the time of the award. The management of emergency procurement must be guided by departmental policy.<sup>296</sup>
- 12.4 In the event that goods and services above the value of R1 million (all applicable taxes included) are procured as an emergency procurement, the AO or their delegate must report the fact within 10 working days after the finalisation of the procurement transaction to Provincial Treasury and the Auditor General. The procurement may not be deliberately split into parts to avoid this reporting requirement. The report must include:<sup>297</sup>
- (a) a description of the goods and services;
  - (b) the names of the suppliers;
  - (c) the amount involved; and
  - (d) the reasons for dispensing with the prescribed competitive bidding process.

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

Emergency procurement must be done in terms of the Policy on Emergency Situations attached as **Annexure 7**. This Annexure should be considered and modelled to create the department's own Emergency Procurement Policy.

<sup>294</sup> NTR 16A6.4 read with WC PTI 2019, s.5.5.5(a)

<sup>295</sup> NT Instruction 4A of 2016/2017, s. 3.5, read with PT Circular 29/2019, s. 5.1.10

<sup>296</sup> WC PTI 2019, s. 5.5.5(b)

<sup>297</sup> WC PTI 2019, s. 5.5.5(c)

## CHAPTER 13: UNSOLICITED BIDS

### 13.1 INTRODUCTION

Sometimes, unsolicited contact with the department will be initiated by an external prospective supplier. An unsolicited proposal is any proposal received by the department outside of its normal procurement process.<sup>298</sup> The AO or their delegate is not required to consider any unsolicited proposal.<sup>299</sup> Within ten working days of receiving such a proposal, the AO or their delegate must inform Provincial Treasury of said receipt.<sup>300</sup>

### 13.2 CRITERIA FOR CONSIDERATION OF AN UNSOLICITED PROPOSAL

13.2.1 An unsolicited proposal may be considered if the proposal includes at least the following concepts:<sup>301</sup>

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

13.2.2 The following information must be provided for in the initial unsolicited proposal:<sup>302</sup>

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

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<sup>298</sup> See generally NT Practice Note 11 of 2008/2009 "Unsolicited proposals".

<sup>299</sup> NT Practice Note 11 of 2008/2009, s. 2.1; WC PTI 2019, s. 5.5.6 (a)

<sup>300</sup> WC PTI 2019, s. 5.5.6 (c)

<sup>301</sup> NT Practice Note 11 of 2008/2009, s. 2.1 (a) - (d); WC PTI 2019, s. 5.5.5 (a)(i) - (iii)

<sup>302</sup> NT Practice Note 11 of 2008/2009, s. 2.2

- (i) a statement showing how the proposed project supports the department's strategic growth and development plan and its other objectives; and
- (j) the period of time for which the proposal is valid for consideration, which may not be less than six months.

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

13.3.1 An unsolicited proposal must be rejected if the proposal:<sup>303</sup>

- (a) relates to known departmental requirements that may, within reasonable and practical limits, be acquired through conventional competitive bidding methods;
- (b) relates to goods or services that are generally and easily available;
- (c) does not fall within the department's powers and functions;
- (d) has not been submitted by an authorised representative of the proponent; and
- (e) does not comply with paragraph 13.2 above.

13.3.2 If the unsolicited proposal is rejected, the AO or their delegate must:<sup>304</sup>

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

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

13.4.1 If the decision by the AO or their delegate is to consider the unsolicited proposal, a registered letter must be sent to the proponent confirming the decision to consider the proposal.<sup>305</sup>

13.4.2 An unsolicited proposal is compliant if:<sup>306</sup>

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

13.4.3 If the above conditions are met, the AO or their delegate may enter into direct negotiation with the proponent, outside the normal competitive bidding process.<sup>307</sup>

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<sup>303</sup> NT Practice Note 11 of 2008/2009, s. 3.1 (a) - (f); WC PTI 2019, s. 5.5.6 (b)(i) - (iv)

<sup>304</sup> NT Practice Note 11 of 2008/2009, s. 3.2 (a) - (c)

<sup>305</sup> NT Practice Note 11 of 2008/2009, s. 4

<sup>306</sup> NT Practice Note 11 of 2008/2009, s. 4.2.1

<sup>307</sup> NT Practice Note 11 of 2008/2009, 4.2.1.1

- 13.4.3 When procuring goods or services as a result of an unsolicited bid an accounting officer or accounting authority must ensure that:
- (i) the supplier is registered on the CSD; and
  - (ii) a recommendation is made through the bid adjudication process prior to a final award being made by the accounting officer or accounting authority.

### **13.5 PUBLIC PRIVATE PARTNERSHIP (“PPP”) UNSOLICITED PROPOSALS**

- 13.5.1 If, however, the unsolicited proposal is a PPP, there must be compliance with the ordinary PPP procurement rules and the process outlined in the Treasury Regulations.<sup>308</sup>

### **13.6 NON-PPP UNSOLICITED PROPOSALS**

- 13.6.1 If the unsolicited proposal is not compliant with the requirements for a PPP, a comprehensive evaluation of the unsolicited proposal must be undertaken. This includes a feasibility study that evaluates the costs and benefits of procuring the good or service from the proponent including, as appropriate, an assessment of:<sup>309</sup>

- (a) any unique, innovative, researched or meritorious methods, approaches or concepts demonstrated in the unsolicited proposal;
- (b) the overall scientific, technical, or socio-economic merit of the unsolicited proposal;
- (c) the potential contribution of the unsolicited proposal to the department's strategic growth and development plan;
- (d) an assessment of whether the proposed cost of the project is realistic, affordable and justified; and
- (e) any other fact which, in the opinion of the department, is relevant to the particular unsolicited proposal.

- 13.6.2 If at the conclusion of the feasibility study, a clear business case for procurement has been established and the good or service involves an innovative design or involves an innovative approach to project development and management or presents a new and cost-effective method of service delivery, the department must proceed to develop and execute an unsolicited bid agreement as set out in paragraph 13.7.1 below. If the feasibility study does not reveal the above-mentioned merits, the department must reject the unsolicited proposal as prescribed in paragraph 13.3.2 above.<sup>310</sup>

### **13.7 UNSOLICITED PROPOSAL AGREEMENT**

- 13.7.1 If the department proceeds with the unsolicited proposal, the AO or their delegate must negotiate an unsolicited proposal agreement with the proponent, in order to establish:<sup>311</sup>
- (a) the methodology for determining any costs to be reimbursed to the proponent, should the procurement processes result in an award for the good or service being made to a party other than the proponent;

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<sup>308</sup> NTR r. 16

<sup>309</sup> NT Practice Note 11 of 2008/2009, s. 4.2.3

<sup>310</sup> NT Practice Note 11 of 2008/2009, 4.2.3 (b) - (c)

<sup>311</sup> NT Practice Note 11 of 2008/2009, 4.2.4

- (b) the procedure for further developing the project and responding to issues raised by the department;
- (c) the allocation of responsibility for developing bid documents in accordance with the department's SCM systems, provided that the development of the documentation must always be under the supervision of the department;
- (d) the information in the unsolicited proposal to be treated as confidential; and
- (e) the purchase of intellectual property rights, if any.

### **13.8 CALCULATION OF COSTS**

- 13.8.1 In calculating costs for the purposes of paragraph 13.7.1 (a) above, the department and the proponent must restrict their consideration to direct costs incurred by the proponent in developing technical and other materials in meeting paragraph 13.2 above.<sup>312</sup>
- 13.8.2 If the department and the proponent cannot reach consensus on cost calculation, the department will not be responsible for any costs which the proponent has incurred in preparing and submitting the unsolicited proposal. The department may not implement the project proposed in the unsolicited proposal for the current or next financial year and may not utilise at any time the proprietary information provided by the proponent as part of its unsolicited proposal.<sup>313</sup>

### **13.9 PROCUREMENT**

- 13.9.1 The authority to approve a final award as a result of an unsolicited bid may not be delegated by the AO.<sup>314</sup>
- 13.9.2 If the unsolicited proposal agreement is concluded, the department must prepare and issue the prescribed bidding documents for a public bidding process.<sup>315</sup>
- 13.9.3 The process to be followed when procuring a service provider shall include:<sup>316</sup>
- (a) the preparation of a Request for Quotation ("RFQ")<sup>317</sup> to test the market for the existence of other private entities capable of providing the good or service;<sup>318</sup>
  - (b) the preparation of a draft contract for the provision of the good or service, should there be no adequate response to the RFQ;<sup>319</sup>
  - (c) the preparation of a Request for Proposal ("RFP") with a draft contract should there be one or more adequate responses to the RFQ;<sup>320</sup>
  - (d) conducting a competitive bidding process among the firms qualified in the RFQ and the proponent and receiving all properly completed prescribed bidding documents;<sup>321</sup>

<sup>312</sup> NT Practice Note 11 of 2008/2009, s. 4.2.5

<sup>313</sup> NT Practice Note 11 of 2008/2009, s. 4.2.6

<sup>314</sup> WC PTI 2019, s. 5.5.6(e)

<sup>315</sup> NT Practice Note 11 of 2008/2009, s. 5

<sup>316</sup> NT Practice Note 11 of 2008/2009, s. 5.1.1

<sup>317</sup> The NT Practice Note 11 of 2008/2009 defines "RFQ" to be a Request for Qualification, which is almost certainly an erroneous translation. It should be a Request for Quotation. The latter is used in this AOS.

<sup>318</sup> NT Practice Note 11 of 2008/2009, s. 5.1.1(a)

<sup>319</sup> NT Practice Note 11 of 2008/2009, s. 5.1.1(b)

<sup>320</sup> NT Practice Note 11 of 2008/2009, s. 5.1.1(c)

<sup>321</sup> NT Practice Note 11 of 2008/2009, s. 5.1.1(d) read with WC PTI 2012 s. 5.2.1.7 (d)(i)



- (e) recommending, through the bid adjudication process, to whom the award should be made, prior to the final award being made by the AO;<sup>322</sup> and
- (f) reimbursement of the proponent should the proponent not be awarded the contract for the provision of the good or service at the conclusion of the competitive bidding process. The quantum of the reimbursement shall be those audited costs of the proponent from the point in time where the AO or their delegate was solicited by the proponent to the conclusion of the competitive process in terms of the unsolicited proposal agreement.<sup>323</sup>

13.9.4 The abovementioned bid processes must –

- (a) be developed by the department;
- (b) disclose that the bid originated from an unsolicited proposal; and
- (c) provide the agreed costs and terms of payment to the proponent, and require that all bidders, save for the proponent, make allowance for these costs and pay such costs to the proponent directly, if their bid is successful.

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

13.10.1 After receiving an unsolicited proposal and before accepting or rejecting the proposal, independent consultants or experts may be approached by the accounting officer to assist in evaluating such proposal.<sup>324</sup>

13.10.2 These consultants must, however, undertake that any confidential material or information provided by the proponent will not be disclosed to anyone other than an employee or agent of such a third party who will, in turn, treat the information or material as confidential and give an undertaking to do so.<sup>325</sup> The cost of obtaining independent advice must be covered by the department, unless the proponent withdraws the proposal prior to entering into an unsolicited proposal agreement, in which event the proponent will be liable to the department for these costs.<sup>326</sup>

### **13.11 USE OF UNSOLICITED PROPOSAL INFORMATION**

13.11.1 The department may not use any data, concept, idea, or other part of an unsolicited proposal as the basis for a solicitation or negotiation with any other firm unless the project proceeds to procurement and the proponent is notified and agrees to the intended use. However, this prohibition on the use of information does not apply to information that is available from another source without restriction. The department must not disclose any information identified in the unsolicited proposal agreement as confidential.<sup>327</sup>

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<sup>322</sup> WC PTI 2019, s. 5.5.6 (d)(iii)

<sup>323</sup> NT Practice Note 11 of 2008/2009, s. 5.1(e)

<sup>324</sup> NT Practice Note 11 of 2008/2009, s. 6.1

<sup>325</sup> NT Practice Note 11 of 2008/2009, s. 6.1(a)

<sup>326</sup> NT Practice Note 11 of 2008/2009, s. 6.1(b)

<sup>327</sup> NT Practice Note 11 of 2008/2009, s.7

## 13.12 REPORTING

- 13.12.1 The Provincial Treasury must be notified in writing, by the AO or their delegate, within ten working days of receipt of an unsolicited proposal.<sup>328</sup>
- 13.12.2 The Departments must report all concluded unsolicited proposal agreements in its annual report.<sup>329</sup>

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<sup>328</sup> NT Practice Note 11 of 2008/2009, s. 12.1; WC PTI, 2018 s. 5.5.6 (c)

<sup>329</sup> NT Practice Note 11 of 2008/2009, s. 13.1; WC PTI, 2018, s. 11.1.2(c)(i)

## CHAPTER 14: TRANSVERSAL CONTRACTS

- 14.1 A transversal contract is one centrally arranged to meet the need for goods or services required by more than one department.
- 14.2 *Provincial Transversal contracts*<sup>330</sup> will principally be arranged by the following three custodian departments:<sup>331</sup>
- a) Department of the Premier, Corporate Shared Services ("CSC") in respect of human resource, organisational development, provincial training, corporate communication, and information technology related goods or services where it has a financial or contractual impact on other departments.<sup>332</sup> Provincial Treasury will assist with the facilitation of any such contract.<sup>333</sup> Although the responsibility to arrange the bid process will fall on CSC, the department for this AOS will be responsible for negotiating and signing any SLA it requires with the service provider.<sup>334</sup>
  - b) Department of Transport and Public Works for accommodation requirements where such provision has a financial or contractual impact on other departments.<sup>335</sup> Provincial Treasury will assist with the facilitation of any such contract.<sup>336</sup> Although the responsibility to arrange the bid process will fall on the Department of Transport and Public Works, the department for this AOS will be responsible for negotiating and signing any SLA it requires with the service provider.<sup>337</sup>
  - c) Provincial Treasury for goods or services where no single department may be determined as the custodian for the provision of such goods or services.<sup>338</sup> Although the responsibility to arrange the bid process will fall on Provincial Treasury, the department for this AOS will be responsible for negotiating and signing any SLA it requires with the service provider.<sup>339</sup>
- 14.3 The three abovementioned departments will obtain written consent from the AO or their delegate of other departments to participate in the arrangement of the contemplated transversal contract. This must be done immediately after the conclusion of the business case. Approval from Provincial Treasury is also required in the event that it is the CSC or the Department of Transport and Public Works functioning as the principal department.<sup>340</sup>
- 14.4 Where the procurement or activities of one department substantially impact on another department's finances or contractual arrangements, Provincial Treasury may direct a cooperative procurement and provisioning process be followed.<sup>341</sup>
- 14.5 Where the department opts to participate in a transversal contract facilitated by the National Treasury or Provincial Treasury, the department may not solicit bids for the same or similar product or service during the tenure of the transversal term contract.<sup>342</sup>

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<sup>330</sup> NTR 16A6.5.

<sup>331</sup> WC PTI 2019, s. 5.5.7 (d)

<sup>332</sup> WC PTI 2019, s. 5.5.7 (d)(i)

<sup>333</sup> WC PTI 2019, s. 5.5.7 (h)

<sup>334</sup> WC PTI 2019, s. 5.5.7 (h)

<sup>335</sup> WC PTI 2019, s. 5.5.7 (d)(ii)

<sup>336</sup> WC PTI 2019, s. 5.5.7 (h)

<sup>337</sup> WC PTI 2019, s. 5.5.7 (h)

<sup>338</sup> WC PTI 2019, s. 5.5.7 (d)(iii)

<sup>339</sup> WC PTI 2019, s. 5.5.7(h)

<sup>340</sup> WC PTI 2019, s. 5.5.7(f)

<sup>341</sup> WC PTI 2019, s. 5.5.7(e)

<sup>342</sup> NTR 16A6.5, read with WC PTI 2019, s. 5.5.7(g) and s.5.5.8 (b)

- 14.6 If it is believed that a transversal contract will be relevant to the department, will result in either lower unit costs, or economies of scale, or other corporate advantages, then Provincial Treasury must investigate and facilitate a transversal contract.<sup>343</sup>

#### *National Transversal Contracts*

- 14.7 The Western Cape Government will not consider itself obligated to participate in National Treasury transversal contracts and will exercise its discretion and will only participate in such contracts if due process was followed, the specifications meet the Western Cape Government's requirements, participation is economically viable, and it makes sound financial sense.
- 14.8 When an accounting officer opts to participate in a transversal contract facilitated by the National Treasury, the accounting officer may not solicit bids for the same or similar product or service during the tenure of the transversal contract.
- 14.9 In instances where the Auditor-General wishes to peruse procurement documents relating to a transversal contract facilitated by the National Treasury, these must be requested from the other organ of state. If any non-compliance to the required prescripts is found, this must be dealt with by the other organ of state where the actual procurement process took place.

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<sup>343</sup> WC PTI 2019, s. 5.5.7(b)

## CHAPTER 15: CONTRACTS PROCURED BY OTHER ORGANS OF STATE

- 15.1 The AO or their delegate may purchase goods and services under a contract secured by another organ of state only if:<sup>344</sup>
- a) the use by the department of the contract secured by that other organ of state is supported by a business case, analysing the commodity, the market and the appropriate sourcing method;<sup>345</sup>
  - b) the department has no reason to believe that such contract was not validly procured;<sup>346</sup>
  - c) the other organ of state and relevant service provider has consented to such purchase in writing;<sup>347</sup>
  - d) the department purchases under either the same terms and conditions as provided for in the original contract or more beneficial terms or conditions;<sup>348</sup>
  - e) A separate agreement with the other organ of state or an addendum to the existing service level agreement is concluded.<sup>349</sup>
- 15.2 When seeking the consent required in (c) above, a written request should be submitted to the other organ of state, clearly:
- a) detailing reasons for the request;
  - b) demonstrating the benefits to the department from procuring from the contract;
  - c) demonstrating that the five pillars of procurement in section 217 of the Constitution, those being fairness, equity, transparency, competitiveness, and cost-effectiveness, will be served.
  - d) confirming, in writing, that the department will conform to the terms and conditions of the existing contract.
- 15.3 In instances where the department opted to purchase from contracts procured by other organs of state, it is deemed that the procurement process as required by National Treasury has been followed and is compliant. In these instances, the department is not procuring but purchasing off a contract already procured or in existence and for all intents and purposes may not procure outside of such contracts.<sup>350</sup>
- 15.4 In instances where the Auditor-General wishes to peruse procurement documents, these must be requested from the other organ of state. If any non-compliance to the required prescripts is found, this must be dealt with by the other organ of state where the actual procurements process took place.<sup>351</sup>

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<sup>344</sup> NTR 16A6.6; WC PTI 2019, s. 5.5.9(a)

<sup>345</sup> WC PTI 2019, s. 5.5.9(a)(i)

<sup>346</sup> WC PTI 2019, s. 5.5.9(a)(ii)

<sup>347</sup> WC PTI 2019, s. 5.5.9(a)(iii)

<sup>348</sup> WC PTI 2019, s. 5.5.9(a)(iv)

<sup>349</sup> WC PTI 2019, s. 5.5.9(a)(v)

<sup>350</sup> WC PTI 2019, s. 5.5.9(c)

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## CHAPTER 16: MANAGING CONTRACTS

### 16.1 INTRODUCTION

- 16.1.1 Contract management is the process of maintaining control over the contractual arrangement between the department and the other contracting party.<sup>352</sup> Such management enables contracting parties to meet their obligations to deliver on the objectives of the contract. It requires building good working relationships between department and service provider. It continues throughout the duration of a contract and involves both proactive management to anticipate future needs and prompt reaction to situations that may arise.
- 16.1.2 The tangible aims of contract management are both to obtain the goods or services as agreed in the contract and to achieve value for money. This means optimising the efficiency and effectiveness of the services described by the contract, balancing costs against risks, and actively managing the department/service provider relationship. Contract management may also involve aiming for continuous improvements in performance during the contract.
- 16.1.3 The practices and principles that shape contract management are set out in Contract Management Best Practice Guidelines, Chief Directorate: Legal Services, Corporate Services Centre, Western Cape Government, March 2013, which accompanies Provincial Treasury Circular 21/2013. That guide must be consulted and read in conjunction with this Volume.

### 16.2 CONTRACT MANAGEMENT ACTIVITIES

- 16.2.1 Contract management activities may broadly be grouped into three areas:
- (a) Service delivery management ensures that the service is being delivered to the required levels of performance and quality, as agreed.
  - (b) Relationship management: keeps the relationship between the two parties open and constructive, aiming to resolve or ease tensions and identify problems early.
  - (c) Contract administration: handles the formal governance of the contract and changes to the contract documentation.
- 16.2.2 All three activities must be managed optimally to ensure effective contract management.
- 16.2.3 Adequate preparation and conclusion of the correct type of contract are essential foundations for good contract management. The arrangement must be flexible to accommodate change, but sufficiently structured to promote certainty, confidence, and security. The best preparation is informed by knowledge. The department should strive to know its need, its service provider's business, the service being provided, and the contract itself.

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<sup>352</sup> Contract Management Best Practice Guidelines, Chief Directorate: Legal Services, Corporate Services Centre, Western Cape Government, March 2013, s. 2.2

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

16.3.1 The essential elements of contract management include the following:

- (a) ensuring that all relevant documentation setting out the rights and obligations of both parties are in place and signed;
- (b) ensuring change control, i.e. Managing changes to any part of the original agreement;
- (c) measuring performance against contract requirements or service level agreements;
- (d) implementing corrective action whenever significant or unacceptable deviations against the original agreement occurs; and
- (e) managing the payment system.

### **16.4 CONTENT OF CONTRACTS**

16.4.1 The contract will consist, at a minimum, of:<sup>353</sup>

- (a) GCC;
- (b) SCC;
- (c) submitted bid documents;
- (d) documentation for the claiming of price and preferential procurement points;
- (e) proof of tax compliance status;
- (f) letter of acceptance; and
- (g) where applicable, a service level agreement.

### **16.5 GCC, SCC, AND SLA**

16.5.1 The GCC, SCC, and SLA were discussed earlier in this AOS. Their management and maintenance form a particularly important part of contract management.

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

16.6.1 Contracts relating to information technology must be prepared in accordance with SITA and its regulations.<sup>354</sup>

16.6.2 National Treasury Practice Note 5 of 2009/10 provides guidance on the procedures to be followed when procuring ICT-related goods or services through SITA.

### **16.7 LEGAL VETTING OF CONTRACTS**

16.7.1 The AO or their delegate must ensure that all contracts entered into by the department are legally sound.<sup>355</sup>

16.7.2 Where an SLA is part of the contract, it should be vetted and approved by Legal Services.

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<sup>353</sup> WC PTI 2019, s. 7.1.3(a) to (f)

<sup>354</sup> WC PTI 2019, s. 7.1.4

<sup>355</sup> WC PTI, 2019 s. 7.1.1



## 16.8 ACCESS TO CONTRACTS/INFORMATION

- 16.8.1 Any decision regarding the awarding of a contract will be final and, on written request, reasons for the decision of the department will be provided, without revealing any information of any bidder that is afforded protection under PAIA or POPIA.<sup>356</sup>
- 16.8.2 Contracts must be recorded in a contract register and made available to all relevant employees in the department.<sup>357</sup>

## 16.9 MONITORING

- 16.9.1 Constant monitoring is essential to ensure that contractors meet their contractual obligations and that contracts run with as little disruption as possible.<sup>358</sup> There are several ways in which monitoring may be undertaken:
- (a) Regular site inspections: In respect of a service, whether the service is being rendered at a department site or at the service provider's own site, the department should visit the site regularly to ascertain whether the service is being rendered in accordance with the contract.
  - (b) Regular meetings: The department should have regular meetings with service providers to discuss contract issues e.g. progress, contract compliance problems, price variations etc.
  - (c) Regular reporting
    - (i) Regular reports from service providers as well as the SCM Unit are crucial for efficient contract management. Service providers must be informed via the SLA that reporting must take place on predetermined issues. The timeframes for this reporting must also be known to the service provider prior to the start of the contract.
    - (ii) For products, a service provider may be requested to report on the:
      - (aa) number of orders received;
      - (bb) date and source of orders;
      - (cc) quantities ordered on individual items; and
      - (dd) delivery date of orders.
    - (iii) The information must be scrutinised and matched with the department's records to ascertain whether there are any anomalies in the rendering of the service or delivery of the product.

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<sup>356</sup> *Tetra Mobile Radio (Pty) Ltd v MEC department of Works and Others* [2007] ZASCA 128; 2008 (1) SA 438 (SCA) and *Transnet and Another v SA Metal Machinery Company (Pty) Ltd* [2005] ZASCA 113; 2006 (6) SA 285 (SCA)

<sup>357</sup> WCPTI 2019 s.7.2.1 (a)

<sup>358</sup> NTR 16A3.2(d)(vi) read with WC PTI 2019, s. 7.2.1 (b)

- (iv) When the department renews an existing contract or enters into a new contract, these reports play a crucial role in the demand management phase as they provide crucial historical and current contract information. This in turn has a direct influence on the acquisition management phase as it influences the form of bidding used.
- (v) Requirements for service performance reports and management information should be defined before and during contract negotiations and confirmed during the transition period of the contract. It is likely that information requirements will change during the lifespan of the contract, which should be flexible enough to allow for this.

## CHAPTER 17: ENFORCEMENT AND ADMINISTRATION OF CONTRACTS

### 17.1 BREACH OF CONTRACT

- 17.1.1 Breach of contract occurs when one of the parties to the contract fails to perform its contractual obligations or indicates that it intends not comply with the terms of the contract.
- 17.1.2 Breach may be committed in several ways. Some of the more common ways include:
- (a) a party may fail to perform on or before the date fixed for performance and the party would then be said to be "*in mora*" (failure to comply in time) in respect of the obligation in question;
  - (b) where no definite time for performance is agreed upon in the contract, the department must demand performance within a reasonable, specified time. If the contractor or service provider fails to perform within that time, they are also regarded as being *in mora*;
  - (c) a party may render performance on time, but deviate from the standard of performance required by the contract by, for example, using materials of inferior quality; and
  - (d) a party may *repudiate* their obligation(s) by, before or after the due date for performance, making it plain by their words or actions that they do not intend to perform, or perform properly, their contractual obligation(s). The test for repudiation is to ask whether the words or conduct are such as to lead a reasonable person to the conclusion that the party does not intend carrying out his or her part of the contract either properly or at all.
- 17.1.3 If a service provider repeatedly does not perform, or under-performs, and their actions cause the department serious inconvenience, loss, or embarrassment, corrective steps should be taken. All substantiated complaints regarding the performance of service providers must be recorded.
- 17.1.4 Should breach occur, or if a breach is believed to have occurred, the department is advised to contact Legal Services. Where the department is considering a response or remedy to the breach, prior consultation with Legal Services should occur in order to minimise risk for the department and the WCG.<sup>359</sup>

### 17.2 REMEDIES FOR BREACH

The following remedies should be considered:

#### 17.2.1 Specific Performance (Enforcement)

- (a) The first remedy for breach of contract is to seek specific performance, i.e. compelling the defaulting party or party in breach to perform what they have contractually agreed to do or restraining them from what they have contractually agreed not to do. In general, the aggrieved party is entitled to keep the contract alive and seek an order for specific performance. However, if it is impossible for the service provider to perform, or it would produce an inequitable result, or would be

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<sup>359</sup> The department is strongly urged to contact Legal Services in the event of a suspected breach.

against public policy for the service provider to so perform, specific performance would not be an appropriate remedy. If specific performance is denied, it is possible to claim damages in place of specific performance from the service provider.

### **17.2.2 Damages**

- (a) An award for damages is an order to pay a sum of money as compensation for loss suffered. This would be sought through, and ordered by, a court. The principle guiding the award of damages is to place the party seeking damages in the position they would have occupied *if* the contract had been properly performed. The aim is to compensate the innocent party for its real monetary ("pecuniary") losses.
- (b) There is a duty on the innocent party (the party that has suffered loss and wishes to claim damages) to minimise its losses. The sufferer cannot recover damages for losses that could reasonably have been avoided. Departments must, as far as possible, minimise loss.
- (c) Where a party makes it clear, by their words or actions, that it will not perform its contractual obligations prior to the date for performance ("repudiation"), the innocent party may ignore the repudiation and claim specific performance or damages in place of the performance when the due date arrives.

### **17.2.3 Penalties**

- (a) The parties may include in the contract a section or clause regulating the amount of compensation to which the aggrieved party is entitled on breach. This is known as a penalty. These penalties are governed by the Conventional Penalties Act, 1962 (Act 15 of 1962). If a contract contains a penalty clause, damages may neither be claimed in addition to the penalty, nor in place of the penalty, unless the contract clearly and expressly permits it.
- (b) If the service provider does not deliver the goods or services within the contract period, the department may, after informing the service provider, either deduct an amount (equal to the percentage of the value of the contract amount) as a penalty for each day that the delay continues, or instead of such a penalty, claim compensation for any actual loss suffered, provided that if beneficial use of any completed portion is enjoyed by the department, the penalty shall be applied to the value of the outstanding portion only.

### **17.2.4 Cancellation**

- (a) Cancellation has legal consequences on the reciprocal rights and obligations of the parties. It is available only where the parties have incorporated a cancellation clause in the contract or where the breach is of a sufficiently serious nature that it goes to the root of the contract. For example, if the breach relates to a failure to perform obligations in a timely manner, the question is whether "time" could be said to be vital to the 'essence of the contract'.
- (b) Breach, no matter how serious, does not automatically cancel the contract. This is so even if the contract contains a provision that indicates that, on breach occurring, the contract will automatically become void. It is only where the aggrieved party takes active steps to cancel the contract on account of the breach that the contract comes to an end. In the absence of cancellation, each party remains liable to carry out or complete their respective contractual obligations. However, if

the aggrieved party chooses to claim damages in place of performance, the defaulter is, to that extent, relieved of their duty to perform.

- (c) Generally, cancellation operates retrospectively. This means that the parties are put in the positions they would have been in, had the contract never been concluded. Each party is relieved of the duty to perform further and is obliged to restore to the other party any performance(s) received in terms of the agreement. There are, however, exceptions to this general rule.
- (d) Cancellation clauses frequently contain a clause to the effect that the innocent party may only exercise their right to cancel on account of breach if they have given the defaulting party notice of the breach and the latter has failed to remedy the breach within a defined period. A clause of this sort is binding and, in general, the innocent party must bring itself strictly within its wording if it wishes to enforce its right to cancel.
- (e) Cancellation should be regarded as the remedy of last resort. Cancellation of a contract is usually prejudicial to the department. Therefore, serious thought must be given to the grounds for considering cancellation. Clarity must be reached beforehand on the question of whether the service provider will have a legal claim against the department for unwarranted cancellation, and if so, whether the cancellation may be justified. If a contract is cancelled, the matter must be fully documented, and the following be taken into account:
  - (i) the particular contractual term empowering cancellation;
  - (ii) what further arrangements will be made for completing the contract;
  - (iii) whether additional costs incurred in completing the contract will be recovered from the service provider;
  - (iv) if the additional costs cannot be accurately determined, a careful estimate thereof must be made; and
  - (v) any claim for the recovery of additional costs must be limited to the minimum actual amounts. The department cannot simply authorise new purchasing to the best advantage of the department, since this might prejudice the recovery of the additional costs from the original contractor. There may be other avenues of action that might result in lower additional costs. As an alternative, a fresh contract may be concluded through the normal bidding procedures. In this process, account must be taken of the time elapsed between the closing of bids and the cancellation of the contract and the effect of the cancellation on the department's schedules.
- (f) If a contract is cancelled, the service provider must be requested to indicate to the department, within a given time limit, how goods in possession of the department must be disposed of and warned that if they do not react to the request, the goods will be returned to the service provider at their own cost.
- (g) When a department has to buy out goods and services at the service provider's expense, the loss to the department must always be restricted to the minimum, since it is difficult to justify the recovery of unreasonable additional costs from the service provider.

### **17.3 ELECTION OF REMEDIES**

- 17.3.1 When goods or services do not comply with the clauses or requirements of the contract, or problems are experienced in the execution of the contract, the matter must be brought to the attention of the service provider in writing.
- 17.3.2 When correspondence is addressed to the service provider, reference must be made to the bid or contract number, and to the item number and number and date of any relevant invoice, statement, or letter received from the service provider.
- 17.3.3 Details of all cases where equipment, vehicles, implements, machinery, apparatus, etc. fail during the warranty period and have to be replaced or repaired, or where the provision of spares or service is unsatisfactory, must be recorded, irrespective of whether the department has satisfactorily finalised the matter with the service provider. The purpose of this requirement is for the department to keep a record of unsatisfactory performance of services and defective goods and products delivered.
- 17.3.4 In the written notice, the department must inform the service provider that action will be taken in accordance with the contract conditions, unless there is compliance with the contract conditions and satisfactory delivery of the goods or services within a specified, reasonable time. If the service provider does not perform satisfactorily despite the warning, the department may consider which remedy it shall employ to respond to the breach of contract.

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

- 17.4.1 A settlement is an agreement that resolves a dispute by way of a compromise. The purpose is to avoid extreme measures such as litigation. Should the department consider a settlement, it should consult with Legal Services.
- 17.4.2 To avoid disputes, the parties to the contract may, by agreement, amend the contract by permanently changing some of the terms thereof. Once again, should the department consider amending a contract, it should consult with Legal Services.
- 17.4.3 To protect the rights both parties to the contract, as well as for administrative oversight purposes of the Auditor-General, any settlement or amendment must be in writing and signed by the parties or an authorised representative of those parties.

### **17.5 MISREPRESENTATION AND REMEDIES THERETO**

- 17.5.1 Misrepresentation means that a bidder or service provider provided incorrect information of a nature vital to the contract, and with the intention of winning a bid or persuading the department to conclude a contract. If the party was aware that the information was false, that would amount to fraudulent misrepresentation. If the party was unaware that the information was false and made a *bona fide* mistake, that would constitute non-fraudulent misrepresentation.
- 17.5.2 The incorrect information, over which misrepresentation is claimed, must be sufficiently material so that a reasonable person would have regarded such information as important in deciding whether or not to enter into the contract. To be successful with a legal claim for misrepresentation, it will have to be shown that the particular information (or misrepresentation) persuaded the department to contract and, had the department known the misrepresented fact(s) it would either not have contracted or would have contracted on different terms.

17.5.3 Where the department would not have entered into the contract, were it not for the misrepresentation, it may cancel the contract. This right is subject to some restrictions. First, on becoming aware of the misrepresentation, the department must not do anything, prior to cancellation, which would lead the other party reasonably to believe that the department intends to abide by and persist with the contract. For example, the department must not exercise an act of ownership over goods purchased or services rendered to it. Second, the department must communicate its decision to cancel to the service provider within a reasonable time of becoming aware of the misrepresentation. Failure to follow these rules could be understood as the department having waived its right to cancel the contract. After cancellation, restitution (restoration to the position one would have been in, had the contract not taken place) must take place. If, however, the department *would* have contracted, regardless of the facts having been misrepresented, it will not be entitled to cancel the contract. However, if the department would have contracted but on *other, different terms* if it had known that the facts had been misrepresented, the department may be entitled to the remedy of damages in place of cancellation.

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

17.6.1 Set-off allows the department to hold back money owed to the service provider in the event of cancellation by the department, either as a result of a lack of performance by the service provider, or for any loss, damage, or additional cost the department incurred due to defective performance by the service provider. It enhances efficiency by promoting the speedy settlement of debts without the need for a costly and cumbersome duplication of performance.

17.6.2 In order to use this remedy:

- (a) the debt must be mutually owed between the parties, in most cases delivery of goods or services in return for monies;
- (b) the debts must be of the same kind. For example, a money debt cannot be set-off against a claim for delivery of property;
- (c) the debt must be due and enforceable. Set-off does not operate if the debt is subject to a suspensive condition or only enforceable at a future date;
- (d) the debt must be quickly and easily provable; and
- (e) the department must have suffered a loss as a result of the service provider's actions.

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

17.7.1 *Force majeure / Vis major* is the famous "Act of God". It is an unforeseen and significant act that prevents one or both parties from fulfilling their obligations under the contract. It occurs when performance of an obligation arising from the contract becomes objectively and permanently impossible through no fault of either of the parties.

17.7.2 The party responsible for performance must give written notice within 3 days (business days) of the date on which the Act of God occurred. Where reasonably possible, the party responsible for performance must do everything possible to deliver or comply with the terms of the contract. New dates and times allowed for the performance shall be agreed upon by both parties.

- 17.7.3 Failure to give notice of the Act of God allows the aggrieved party to the contract the right to refuse amendment of the date and time on which performance was due and allows the aggrieved party to exercise the remedies available for breach.
- 17.7.4 In practice, most Act of God clauses do not excuse a party's non-performance entirely, but only suspend it for the duration of the Act of God and its severe after-effects.
- 17.7.5 The department may cancel the contract without prejudice to any other rights it might have if the Act of God persists for a period longer than 21 days. If the department wishes to have these remedies at its disposal, it must ensure that the contract caters for these provisions.

## **17.8 INSOLVENCY**

- 17.8.1 The department has various rights which it may exercise in the case of liquidation, sequestration or judicial management of service providers.
- 17.8.2 When the estate of a service provider is liquidated, a choice must be made, preferably in consultation with Legal Services, whether to claim against the estate or not. The risk to the department is the determining factor and the choice with the smallest degree of risk is preferred.
- 17.8.3 Where an estate is involved, all claimants accept responsibility for both assets and liabilities. Therefore, if a claim is registered against an estate, the claimant must accept his share of any costs that have to be paid in the winding up of the estate.
- 17.8.4 There are three types of claims against an estate:
- (a) "protected creditors", e.g. SARS;
  - (b) "preference claims", e.g. a bank having a secured claim over the assets; and
  - (c) "concurrent claims", which are all claims that do not fall into the categories of (a) and (b).
- 17.8.5 The first two categories of claims are paid out in full before the third category is considered, which places the third category in a weak position if a service provider is sequestered, liquidated or placed under judicial management.
- 17.8.6 If a firm is liquidated or person sequestered, the liquidator or administrator is given the choice of continuing out the contract or not. In the majority of cases the liquidator or administrator will elect to cancel the contract and a provisional claim against the estate should be registered under the condition that a final claim will not be submitted if the department will have to make a financial contribution. The department may recover any of its property in the liquidated firm's / sequestered person's possession.
- 17.8.7 If the liquidator indicates that no dividend will be paid out to concurrent claimants the AO of the department may decide that it would be more economical to write off the relevant amount.

## **17.9 VARIATION AND WAIVER**

- 17.9.1 Variation is an alteration to the legal consequences of the contract. This may take place only by agreement of the parties and may entail either changing the effect of a term or removing a term from the contract. Waiver, by contrast, is a unilateral act meaning that



one party to the contract decides on his own to abandon a right or remedy of its own, which it may do without altering the terms of the contract. Should the department seek either action, they should obtain advice from Legal Services.

17.9.2 Any agreement to vary, or decision to waive, the terms of the contract must be in writing.

## **17.10 CESSION OF CONTRACTS**

17.10.1 Cession of a contract is the transfer of rights and obligations of a party to the contract to a party that was not an original contracting party. Cessions occur when the service provider might have merged with another service provider, or when a service provider may be in a position that it can no longer effectively render the service and may want to transfer it to another entity.

17.10.2 A cession is unlawful if it is prohibited by statute or by the common law, or if it is contrary to public policy or *boni mores* (i.e. good moral standards of society).

17.10.3 Prior to cession, the department should be mindful that the contract was originally awarded to a specific bidder for specific reasons, for example, because that bidder scored highest points and offered the lowest price. The identity of the contracting party is therefore of paramount importance to the department and care should be taken that the party to which the contract will be ceded complies as far as possible with the original requirements for the award of the contract, particularly if the contract is ceded in the early stages of the contract period.

17.10.4 Care should be taken if a request to cede a contract is received from a contractor within the first three months of conclusion of the contract. Firms are known to "front" for others, particularly on preferential procurement. It is recommended that approval to abandon, transfer, cede, delegate, assign or sublet contracts within three months after conclusion thereof shall only be granted in compelling circumstances, for example, in the event of death, sequestration, liquidation or merger.

17.10.5 If approval for cession is granted, the department must ensure that the necessary documentation is completed by the new service provider, so as to ensure that a complete understanding is reached and that the new service provider accepts the terms and conditions of the contract in writing.

17.10.5 The reasons for ceding the contract must be recorded and the new service provider's ability to carry out the contract must be established. The cession should not be approved if the department would suffer a loss as a result thereof or if there is an increased risk to the department.

17.10.6 The same conditions used for the award of the bids concerned must be made applicable to the cession of contracts. For example, if the original contract was subject to the provision of surety, the same degree of surety, or better, must be provided by the cessionary. If this is not possible the reasons for it should be fully documented and placed on file for audit purposes.

## **17.11 CONTRACT PRICE ADJUSTMENTS: FIRM AND NON-FIRM PRICES (WCBD 3.1 and 3.2)**

17.11.1 Price adjustments, in any form, are a vital part any contract. Longer contracts will be subject to constantly changing economic conditions. Hence, price adjustments may be required. There are 3 main circumstances for price adjustments:

- (a) price adjustments linked to inflationary and statutory adjustments;
  - (b) price adjustments as a result of rate of exchange rate variations; and
  - (c) price adjustments not provided for in a bid/contract. (Extra-contractual price adjustments.
- 17.11.2 Firm prices are those prices subject only to adjustments of customs or excise duty or any other duty, levy, or tax which has a demonstrable effect on the price of the supplies for the duration of the contract. If firm prices are quoted, form WCBD 3.1 must be used.
- 17.11.3 Non-firm prices are those prices that are subject to all other variations, such as exchange rate fluctuations, inflation, price indexes and so on that have a demonstrable effect on the price of the supplies for the duration of the contract. If firm prices are quoted, form WCBD 3.2 must be used.
- 17.11.4 For the sake of efficiency, the department should acquire a breakdown of the price submitted by bidders. This should enable the department to determine which part of the price would be subject to such increases or adjustments.
- 17.11.5 In order for proper contract management to take place in respect of Contract Price Adjustments (CPA), the following questions need to be asked from the bidder in the bid documents:
- (a) is the price offered firm for the duration of the contract;
  - (b) if not firm, indicate details as to non-firm price structures;
  - (c) are prices linked to proven cost increases or formula-based adjustments  
 (Formula-based price adjustments are Producer Price and Consumer Price indices ("PPI" & "CPI") together with the relevant Steel & Engineering Industry Federation of South Africa ("SEIFSA") adjustments); and
  - (d) if formula-based, what indices will be utilised to measure such price adjustment claim during the contract period.
- 17.11.6 Should bidders indicate that price adjustments would be subject to PPI, they must clearly and accurately indicate what tables in the PPI will be utilised for such price adjustment.
- 17.11.7 This submission on prices will form the basis of the price for the entire contract period and, if the service provider later submits a claim for increased prices, the above will be used as the basis for such a claim. It should be indicated to the bidder that the information is compulsory.
- 17.11.8 Once the contract is up and running, contractors are compensated for actual, proven additional expenses in connection with the aforesaid indices, provided that the relevant tables and base data of the CPI or PPI are used for the calculation of the bid price. PPI or CPI tables that were indicated at the bid stage will now be used in order to calculate the differences claimed for.
- 17.11.9 The failure to request the bidder to stipulate whether his price is firm or not, and the consequent failure to receive that information, may render the bid process unfair. It may lead to the bidder raising its price higher than other bidders who competed against them. Moreover, the department may not be able to afford such an increase.

- 17.11.10 Bidders may claim price adjustments on different methods and for different reasons. They may wish to claim adjustments on a combination of factors and methods. The department may spell out the rules on how and on what basis prices will be adjusted.
- 17.11.11 Where a formula is permitted in the bid documents, the structure of the formula has to be agreed upon. The bidder's attention must be drawn to the requirement that the values of the variable factors in the formula must be specified in their bids. The relationship between these factors must be reasonable.
- 17.11.12 Price adjustments in accordance with escalation formulae based on inflation indices are allowed on no more than 85% of the price, unless strong reasons to the contrary are provided. The risk attached to price increases in respect of the remaining 15% of the price must be accommodated in the supplier's price.
- 17.11.13 Where price adjustments based on escalation formulae are accepted, and irrespective of stipulations to the contrary elsewhere in the bid documents, variations in the actual costs for whatever reason are for the account of the service provider. This means that proven cost increases and formula-based adjustments cannot both be entertained and permitted at the same time.

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

- 17.12.1 In exceptional circumstances, the AO or their delegate may deem it necessary to expand or vary the original contract.
- 17.12.2 Contracts may be expanded or extended up to 20% of the original value of the contract or R20 million in respect of construction related goods and services; and 15% of the original value of the contract or R15 million in respect of all other goods and services, whichever is the lower amount without referral to the Provincial Treasury. All amounts are calculated inclusive of tax.<sup>360</sup>
- 17.12.3 In the case of expansions or extensions in excess of the thresholds mentioned in paragraph 17.12.2 above the accounting officer of a department must forward motivations (reports) to the Provincial Treasury and to the Auditor General with ten (10) working days after the AO has granted approval for the expansion or extension.<sup>361</sup>
- 17.12.4 Provincial Treasury will scrutinise such reports and only take appropriate action where deemed necessary.<sup>362</sup>
- 17.12.5 Such reports sent to Provincial Treasury will be assessed on a case-by-case basis. Provincial Treasury will only provide a written response if any findings of risk, non-compliance, and budgetary threat are noted.<sup>363</sup>
- 17.12.6 The department is required to submit cases of contract expansions and extensions through the minimum key criteria as reflected in **Annexure 8**<sup>364</sup>

<sup>360</sup> NT Instruction Note 32 of 2011 (also known as NT Instruction Note "Enhancing compliance monitoring and improving transparency and accountability in supply chain management", 31 May 2011), s. 3.9.3

<sup>361</sup> PT Circular 31/2012 s. 3.3. See also SCM Circular "Postponing implementation of sub-paragraph 3.9.4 in instruction note number 32 dated 31 May 2011, related to enhancing compliance monitoring and improving transparency and accountability in supply chain management", dated 24 April 2012.

<sup>362</sup> PT Circular 31/2012 s. 3.4

<sup>363</sup> PT Circular 31/2012 s. 3.5

<sup>364</sup> PT Circular 31/2012 s. 3.6 read with Annexure B thereto.

17.12.7 These rules on expansion and extension do not apply either to transversal term contracts facilitated by Provincial Treasury or to specific term contracts. In such contracts, orders are placed as and when commodities are required. At the time of awarding the contract, the required quantities are not known and need to be reviewed from time to time.<sup>365</sup>

17.12.8 In the case of fixed price contracts, the request 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, if necessary.

### **17.13 PLACING ORDERS NEAR THE END OF A CONTRACT**

17.13.1 There should be no over-ordering at the end of an existing contract, due to be followed by a new contract. Orders should instead be placed with the new service provider. Over-ordering unduly benefits the existing service provider and unfairly deprives the future service provider.

### **17.14 PAYMENT**

17.14.1 The department is required to pay creditors promptly. All amounts owing must be paid within 30 days of the receipt of invoice, or date of settlement or court judgment.<sup>366</sup> The period for payment of invoices may be negotiated, adjusted, and agreed by contract.

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<sup>365</sup> NT Instruction Note 32 of 2011 (also known as NT Instruction Note on Enhancing Compliance Monitoring and Improving Transparency and Accountability in Supply Chain Management, 31 May 2011), s. 3.9.5

<sup>366</sup> NTR r. 8.2.3 and National Treasury (NT) Instruction No. 9 of 2017/18, s. 4.5

**VOLUME 6:**

**LOGISTICS AND INVENTORY  
MANAGEMENT**

## CHAPTER 18: LOGISTICS MANAGEMENT

### 18.1 INTRODUCTION

- 18.1.1 Logistics management is integral to SCM.<sup>367</sup> It involves requisitioning, coding of items, setting inventory levels, placing orders, receiving and distribution, stores and warehouse management, expediting orders, and transport management.
- 18.1.2 An effective logistics management system is one which:
- Develops and maintains procedures dedicated to efficient, economical and transparent use of the department's resources;<sup>368</sup>
  - Keeps a proper record of all assets<sup>369</sup> and procurement transactions;<sup>370</sup>
  - Prevents waste, theft, misuse, and loss;<sup>371</sup>
  - Maintains stock levels at the optimum level;<sup>372</sup> and
  - Monitors the ability of suppliers to reliably meet agreed delivery periods, and quantity and quality of items.<sup>373</sup>
- 18.1.3 Logistics management is considered separately from inventory management for the purpose of this policy. The abovementioned processes, and this chapter, concern logistics management. Inventory management, which is the process followed after receipt of goods, is considered in the following chapter.

### 18.2 REQUISITIONING<sup>374</sup>

When a need arises for goods or services, the department must request the goods or services via the Requisition form (LOG 1) from the SCM Unit. The delegated official, an SCM official or a dedicated official within programmes, captures the request on LOGIS. The latter is referred to as an automated LOGIS requisition. Such requests must be authorised. The budget holder (programme manager) or their delegate initiating the request must authorize all requisitions originating from their programme. This authority serves both to confirm the requirement and the availability of funds.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

- department to include the LOGIS link where all relevant LOGIS forms can be accessed and downloaded.
- when using any other logistics management system, the relevant documents associated with that process should be included.
- Process maps or process flows to be included to depict department's own processes.

<sup>367</sup> NTR 16A3.2(d)(iii)

<sup>368</sup> WC PTI 2019, s. 8.1.1(a)

<sup>369</sup> WC PTI 2019, s. 8.1.1(b)

<sup>370</sup> WC PTI 2019, s. 8.1.1(e)

<sup>371</sup> WC PTI 2019, s. 8.1.1(c)(i)

<sup>372</sup> WC PTI 2019, s. 8.1.1(c)(ii)

<sup>373</sup> WC PTI 2019, s. 8.1.1(d)

<sup>374</sup> WC PTI 2019, s. 8.2.1(a)

### 18.3 ORDERING<sup>375</sup>

- 18.3.1 The SCM Unit is responsible for ordering goods and services based on authorized requisitions received from the different programmes. The order should be cross-referenced to the requisition and checked for validity, accuracy and completeness. Performance specifications, as determined by the budget holder (programme manager), should be communicated to the suppliers as part of the ordering process. Orders must be placed using the prescribed order form generated by LOGIS prior to the delivery of goods or services rendered. Should the need arise that an official LOGIS order form cannot be generated, reasons for issuing a manual order must be documented.
- 18.3.2 Where a contract exists, orders should be placed as detailed in the contract. Where there is no contract in place, the necessary standard procurement procedures must be followed before an order is placed.
- 18.3.3 It is the responsibility of the SCM Unit to inform the end-user, or store manager requiring the goods or services of the order and to send a copy of the approved order form to them. The end-user or store manager must check the copy of the approved order form against the delivery note for correctness and complete the goods received note. The term "end-user or store manager" refers to the programme manager or their delegate.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. department must include its own processes here, particularly where SCM functions are decentralised.
2. Departments having transit areas and stores need to indicate their relevant controls as applicable to themselves.

- 18.3.4 Effective supplier performance depends on the correctness of the requisitioning and ordering process. It is critical, therefore, that when an order is placed with a supplier the necessary checks are in place to ensure that the order reflects the correct specifications and specified delivery conditions (delivery period, quality and quantity). This is a shared responsibility between the SCM Unit and the end user or store manager. Ideally, the SCM Unit should monitor the performance of the supplier against predetermined delivery specifications. The end user or store manager should provide the SCM Unit with the necessary information to determine whether or not there is effective performance from the supplier.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. The department to make reference to its own SOPs, checklists and templates to give effect to this requirement.

### 18.4 RECEIVING<sup>376</sup>

- 18.4.1 Goods and services are deemed to be received from suppliers when delivery of the goods or services has been acknowledged and accepted. This is the responsibility of the end user requesting the goods or services for directly delivered items or the store manager in the case of stock items.<sup>377</sup>

<sup>375</sup> WC PTI 2019, s. 8.2.1(b)

<sup>376</sup> WC PTI 2019, s. 8.2.1(c)

<sup>377</sup> WC PTI 2019 s. 8.2.1 (c)

## PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. In larger departments this responsibility in respect of non-store items delivered to the transit area rests with both the store manager and the end-user (include where applicable).
2. department must include its own processes here, particularly where SCM functions are decentralised.

18.4.2 The end user or store manager should compare the goods delivered both to the delivery note/Invoice, the Purchase order and the Simultaneous Receipt and Issue ("SRI") voucher on LOGIS to ensure that only goods for which valid orders have been placed are accepted. The end user or store manager signs a Simultaneous Receipt form and the Delivery note/Invoice if they are satisfied with the delivered item. The signed Simultaneous Receipt voucher ultimately forms part of the payment package. Goods should be carefully examined before delivery is accepted:<sup>378</sup>

- (a) any evidence of damage or short delivery should be investigated immediately, and those details should be written on the delivery and goods received notes. Damaged goods should not be accepted;
- (b) if a complete check is not possible, the goods should at least be counted and a superficial check of the quality of goods performed. It may not always be practical to quality-check the contents of boxes, but obvious damages should be easily detected, and those goods rejected, e.g. if a box is wet or there is seepage; and
- (c) the end user and store manager acknowledge receipt of the goods through cross-referencing it, to the purchase order and signing the delivery note/ invoice and the Simultaneous Receipt and Issue voucher. The signed SRI and delivery note/ invoice should be sent to the SCM Unit to initiate payment.<sup>379</sup>

18.4.3 Purchasing Receipts <sup>380</sup>are proof of purchase of a good or service. Their use is closely regulated:

- (a) no shipments will be accepted into any warehouse or storeroom or by any department without a delivery note or invoice and a corresponding purchase order number reference;
- (b) all items being received must be confirmed against a valid purchase order;
- (c) no over-deliveries will be accepted into any warehouse or storeroom if the delivered quantity exceeds the Over Delivery Tolerance Limit of the purchase order;
- (d) no packaging or material that displays any visible damage or fault must be received into any warehouse or storeroom unless approved by the warehouse or storeroom manager. Should there be an emergency requirement, or the deliverer cannot remain, the item will be received but, on the delivery, note will be noted "received

<sup>378</sup> WC PTI 2019, s. 8.1.1 (d) read with s. 8.3

<sup>379</sup> WC PTI 2019, s. 8.2.1 (e).

<sup>380</sup> The following in terms of WC PTI, 2019 s. 8.3.1 (a) - (j) for both policies and standard operating procedures.



pending investigation" and the damage recorded, or a picture taken of the damages where possible;

- (e) the receiver must confirm the following information on the purchase order against the actual delivery:
  - (i) supplier name;
  - (ii) description of items being delivered;
  - (iii) quantity of items being delivered; and
  - (iv) corresponding order number on the delivery note/ invoice.
- (f) material that, on a visual inspection, does not conform to the specifications and description issued by the buyer on the purchase order must be neither accepted nor received;
- (g) the goods receipt procedure must be completed on the inventory management system within 24 hours and balanced, i.e. the quantity of goods marked on delivery notes must match the quantity of goods receipt slips;
- (h) all received material that must be quality inspected, must be stored in the designated inspection staging area pending the quality inspection ("qi") procedure;
- (i) the goods received note/ invoice received at the transit area must be signed by the warehouse clerk or store manager or their delegate as well as the person delivering the goods on behalf of the supplier;
- (j) the completed delivery note / invoice and signed delivery note must be sent to the SCM Unit;
- (k) all scheduled deliveries have their relevant order information located at the receiving area;
- (l) appropriate segregation of duties must exist between receiving/issuing, and approval of stock adjustments;
- (m) the transit area is not to be treated as a warehouse or storeroom. store items received in the transit area must not, if practical, be left there for longer than 48 hours;
- (n) stock items must be transferred from the transit area into the warehouse or storeroom and both the inventory system and the relevant bin cards updated; and
- (o) any delivery notes and invoices for goods delivered directly to locations other than warehouses or storerooms must be forwarded to and the SCM Unit to initiate payment.

#### 18.4.4 Recording of Receipts<sup>381</sup>

Both manual and computerised records for purchasing and receiving items must include at least the following:

- (i) order date;
- (ii) order number;
- (iii) supplier number and name;
- (iv) name of warehouse, storeroom, stockroom or other place of storage;
- (v) item code (unique identifiers for categories of items);
- (vi) item description (will be linked to the item code);
- (vii) item location (shelf, bin, etc.);
- (viii) quantity ordered;
- (ix) delivery date;
- (x) delivery note number;
- (xi) quantity delivered;
- (xii) quantity still to be delivered; and
- (xiii) note any comments regarding the status of the order where necessary.

#### 18.5 ISSUING AND DISTRIBUTION OF ITEMS<sup>382</sup>

- 18.5.1 Consumable items are considered consumed after having been issued to the end-user and the SCM Unit does not keep further record of it. Record should be kept of both minor assets and capital assets from receipt to disposal.
- 18.5.2 The relevant end user signs a Simultaneous Receipt and issue voucher if he is satisfied with the delivered items. The signed Simultaneous Receipt and issue voucher ultimately forms part of the payment batch.
- 18.5.3 The issuing and distribution of store items should be done in accordance with Chapter 19: Inventory Management.

#### 18.6 EXPENDITURE CONTROL

##### 18.6.1 Invoicing

Invoices must be certified by the employee who has actual knowledge of the goods supplied and the services rendered.<sup>383</sup> The certification must confirm that:

- (i) the invoice is correct and has not been paid previously;<sup>384</sup>

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<sup>381</sup> WC PTI 2019, s. 8.2.1(c)

<sup>382</sup> WC PTI 2019, s. 8.2.1(d)

<sup>383</sup> WC PTI 2009, s. 8.1.4

<sup>384</sup> WC PTI 2009, s. 8.1.6 read with s. 8.1.14

- (ii) all copies of invoices (including emailed invoices) must be certified to be an exact copy of the original invoice;<sup>385</sup>
- (iii) goods and services were rendered satisfactorily; and
- (iv) no information may be changed on invoices due for payment purposes. If information needs to be changed, the supplier must be requested to issue a revised invoice.<sup>386</sup>

#### 18.6.2 Credit notes

- (a) All copies of credit notes must be certified to be an exact copy of the original credit note.<sup>387</sup>
- (b) No information may be changed on credit notes due for payment purposes. If information needs to be changed the supplier must be requested to issue a revised credit note.<sup>388</sup>
- (c) In instances where no further payments will be made to a specific supplier; credit notes may not be accepted but must be replaced with cash, cheque or Electronic Funds Transfer ("EFT").

#### 18.6.3 Payments<sup>389</sup>

- (a) Invoices received must be verified for correctness against the order, as above, and thereafter the invoice must be certified and approved by the budget holder (programme manager) or their delegate and forwarded for payment. Any deviations from the order amount must be investigated and checked for correctness before payment is affected. Should justified reasons exist for a deviation, a proper audit trail must be maintained to support all decisions taken.

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1. The department to make reference to its own SOPs, checklists and templates to give effect to this requirement. A transaction checklist for ordering and payment was issued to departments and public entities via PT Circular 28 of 2019 (Supplementary 1 of 2019).
2. Department should develop a SOP for the management of 30-day payments, including internal control measures.

- (b) All payments must be authorised prior to sending the payment request through to the relevant office for actual payment.<sup>390</sup>
- (c) Before authorising payments, delegated employees must assure themselves that the:
  - (i) goods and services have been received or rendered according to requirements;<sup>391</sup> and

<sup>385</sup> WC PTI 2009, s. 8.1.7

<sup>386</sup> WC PTI 2009, s. 8.1.15 read with s. 8.1.17

<sup>387</sup> WC PTI 2009, s. 8.1.7

<sup>388</sup> WC PTI 2009, s. 8.1.15 read with s. 8.1.17

<sup>389</sup> WC PTI 2019, s. 8.2.1(e)

<sup>390</sup> WC PTI 2009, s. 8.1.13

<sup>391</sup> WC PTI 2009, s. 8.1.6

- (ii) that the invoice has not been paid previously.
- (d) Monthly accounts and statements of outstanding balances from suppliers to the department must be verified against the department's records. Any discrepancies must immediately be taken up in writing with the supplier concerned.<sup>392</sup>
- (e) Before payment is made, the employee verifying a voucher for payment must ensure that the certificate in support of the voucher is in order. If for any reason a certificate is found to be defective, or if there are reasonable grounds for doubting its accuracy, the certificate must be returned to the employee who issued it, who must amend the mistake and initial the correction. It remains the duty of employees who examine the certificates to institute the necessary enquiry, if in their opinion a certificate is inconsistent with the facts.<sup>393</sup>
- (f) The employee verifying the voucher for payment must be authorised to do so by a logistics management delegation. That employee must certify the voucher accordingly and make sure that the following requirements have been completed before proceeding with the payment:
  - (i) that the claim forms a proper charge against departmental funds and has not already been paid;
  - (ii) the payment is in accordance with a law, regulation, tariff or agreement or that it is fair and reasonable;
  - (iii) covered by competent authority;
  - (iv) correct in respect of the period covered by the claim;
  - (v) correct with regard to computations;
  - (vi) supported, where applicable, by the necessary documents or an explanation of absence of such documents; and
  - (vii) generally, in order.<sup>394</sup>
- (g) A partial payment must not be made unless it is supported by a certificate indicating that the amount of the payment requested is fully covered by, or equal to, the value of goods already delivered, or services already rendered.<sup>395</sup>
- (h) A pre-payment or partial payment in terms of a contract must be brought into account on a statement. A voucher for such payment must:
  - (i) show the total amount payable in terms of the written contract;
  - (ii) show the total amount of all previous payments under the written contract;
  - (iii) show the total payments to date, including the payment being made by the voucher;
  - (iv) show the balance due; and

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<sup>392</sup> WC PTI 2009, s. 8.1.3

<sup>393</sup> WC PTI 2009, s. 8.1.7

<sup>394</sup> WC PTI 2009, s. 8.1.8

<sup>395</sup> WC PTI 2009, s. 8.1.9

- (v) be supported by a certificate from a duly authorised person that the supplier is entitled to the payment in terms of the written contract.<sup>396</sup>
- (i) Payments for goods or services or for work done under a contractual agreement must be supported by certificates from duly authorised persons to the effect that such payments are in accordance with the terms of the written contractual agreement and, where applicable, that work to the value of the amount to be paid has been properly performed.<sup>397</sup>
- (j) Where consultants are contracted to perform work on behalf of the department, a certificate for a partial payment must first be obtained from duly authorised persons before any payment may be affected.<sup>398</sup>
- (k) A final payment upon completion of a contract must be supported by a certificate from a duly authorised person in the department stating that the terms of the contract have been properly complied with in every respect.<sup>399</sup>
- (l) Payments may only be made to persons to whom they are due to or their duly authorised representatives. The employees responsible for making the actual payment must satisfy themselves that the representatives concerned are duly authorised by means of a power of attorney or other proper authority to receive such payments.<sup>400</sup>
- (m) Where an error or overcharge is made in an invoice or claim, or where such invoice or claim contains an item which is not acceptable as a charge against departmental funds, and the payment voucher differs from the account submitted, the department must request that the supplier issues a revised invoice for payment. Payment must then be made against the revised invoice.<sup>401</sup>
- (n) Exact record must be kept of all negotiations with the supplier to ensure a proper audit trail to determine the commencement of the 30-day period to pay an invoice.<sup>402</sup>

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<sup>396</sup> WC PTI 2009, s. 8.1.10

<sup>397</sup> WC PTI 2009, s. 8.1.11

<sup>398</sup> WC PTI 2009, s. 8.1.12

<sup>399</sup> WC PTI 2009, s. 8.1.13

<sup>400</sup> WC PTI 2009, s. 8.1.14

<sup>401</sup> WC PTI 2009, s. 8.1.15

<sup>402</sup> NTR r. 8.2.3

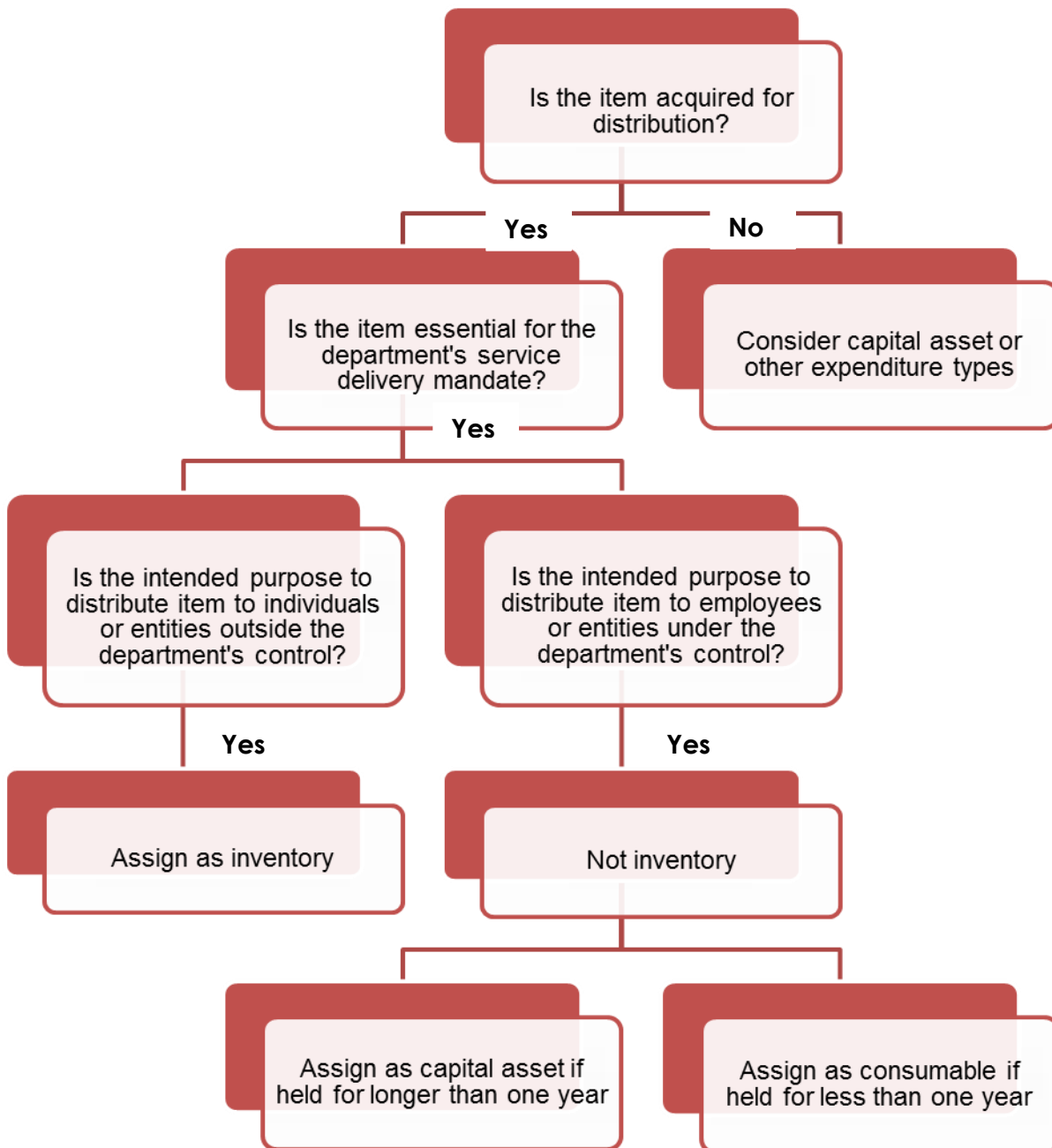
## CHAPTER 19: INVENTORY MANAGEMENT

### 19.1 INTRODUCTION

- 19.1.1 The goods and services ordered by the department help it to fulfil its service delivery mandate. Sometimes, these items may be ordered as needed and be applied immediately to their purpose. At other times, these items may need to be held for a period of time in a warehouse or storeroom or on the service delivery job site.
- 19.1.2 The following modified cash standard definitions<sup>403</sup> for “inventory” and “consumables” is strictly applied for accounting and financial reporting purpose:
- (a) “Inventories are assets:
    - (i) in the form of materials or supplies to be consumed in the production process;
    - (ii) in the form of materials or supplies to be consumed or distributed in the rendering of services;
    - (iii) held for sale or distribution in the ordinary course of operations; or
    - (iv) in the process of production for sale or distribution.”
  - (b) “Consumables are items:
    - (i) that are used and replaced on a regular basis;
    - (ii) capable of being consumed, destroyed, wasted; discarded or spent;
    - (iii) that are in contrast to durable items that can be used repeatedly over a substantial period; and
    - (iv) that are not directly linked to the service delivery needs of a department.”
- 19.1.3 In terms of SCOA Version 5, inventory has now been broken down into two main categories namely “inventory” and “consumables”. This split in classification will only have an effect on the budgeting and expense side of operations and not on the physical treatment of inventory.
- 19.1.4 All those goods within a department that do not meet the criteria of inventory or assets will be treated as consumables and accounted for as an expense.
- 19.1.5 **Classification of inventory and consumables:**
- (a) the following decision tree will be used to distinguish between inventory and consumables:

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<sup>403</sup> Modified Cash Standard, 2021 issued by the National Treasury



- (b) To further assist in this process, a list of assets in terms of the definitions and SCOA classification, which must be treated as consumable items within the department due to the nature, value and risk profile, will be drawn up and submitted for approval on an annual basis to the accounting officer of the department. All other items not listed and / or not meeting the definition of a consumable item will be treated as assets.
- (c) The department is required to define in its accounting policy whether it manages inventory and to develop accounting policies for the management of inventories.

19.1.6 Like any asset, inventory needs to be efficiently and effectively managed.<sup>404</sup> Decisions need to be made whether, and how much, inventory should be held. Keeping stock has both advantages and disadvantages. Some of the advantages and disadvantages of keeping inventory are discussed below.

19.1.7 **Advantages and disadvantages of keeping Inventory**

Advantages	Disadvantages
Keeping inventory may lessen risks to service delivery, as it allows operations to meet unexpected surges in demand.	Items can deteriorate while they are being kept. This is significant for items having a limited life. Moreover, any inventory could be accidentally damaged while stored.
When buying in bulk, the department may save costs associated with periodic purchase price increases, as well as receive discounts.	Holding inventory is expensive. It requires warehouses or containers and resources to manage and safeguard inventory.
Keeping inventory of critical items may also mitigate risks of an unexpected interruption in supply from either outside or within the operation.	Inventory can become obsolete while stored.
Inventory allows supply and demand operations to operate independently to suit their own constraints and conveniences while the stock of items absorbs short-term differences between supply and demand.	Inventory needs to be managed by continuous stock-taking.
On-hand allows customers to be served quickly and conveniently (as and when needed).	Stored inventory is vulnerable to theft.

19.1.8 Inventory policies must, in particular, address the disadvantages of keeping stock and provide strategies and techniques to prevent inventory from becoming too high, or dwindling to levels that could put the operations of the department at risk.

19.1.9 National Treasury's Inventory Management Framework directs that:<sup>405</sup>

- (a) Departments should manage inventory with the goal of delivering more services or a higher level of service to the communities they serve. The importance of inventory management in the public sector is therefore based on the need to:
  - (i) demonstrate accountability for public resources;
  - (ii) improve transparency and credibility of information used for making policy choices; and
  - (iii) improve efficiency.

<sup>404</sup> WC PTI 2019, s.8.3 lists the policies and standard operating procedures that must be followed by every department in inventory management practices. They are detailed below.

<sup>405</sup> "Inventory Management", National Treasury, July 2009



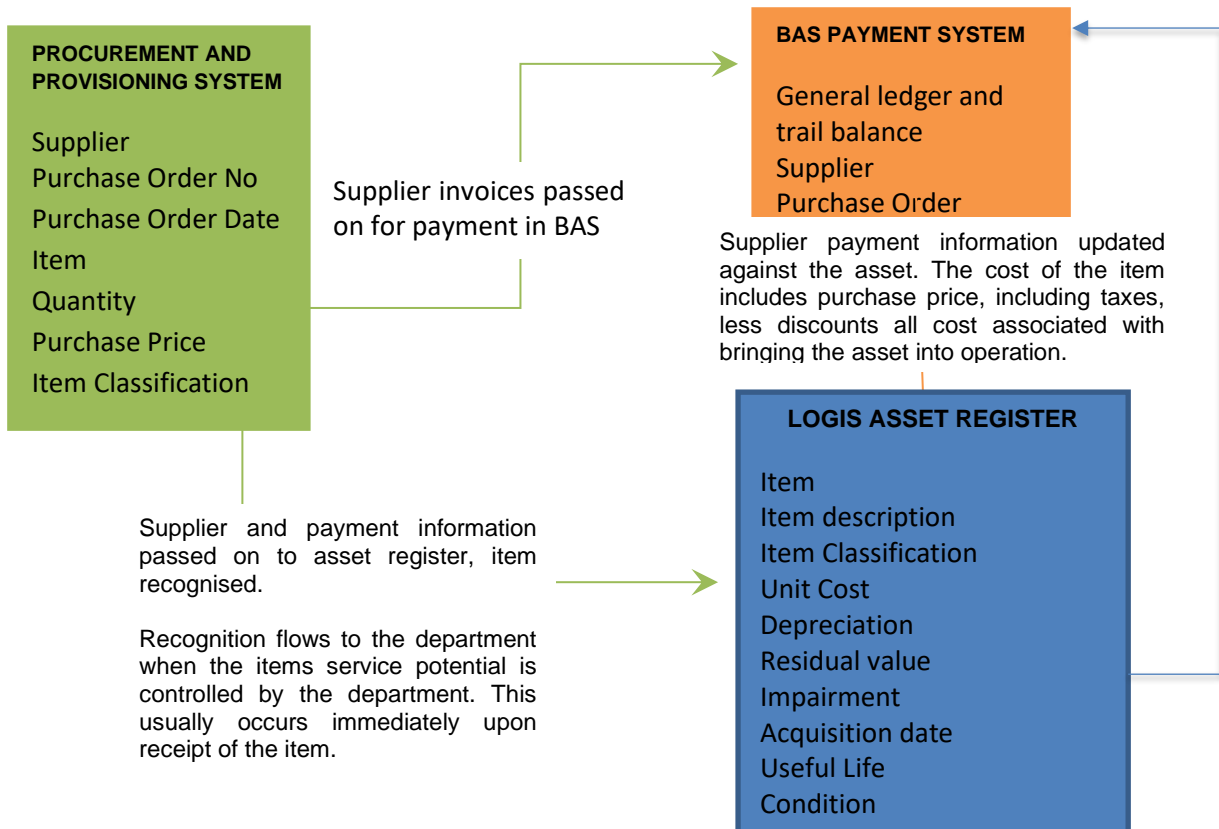
- (b) Improving inventory management can lead to:
- (i) increases in investment revenue or freeing up of resources to be used elsewhere due to a reduction in stock held in inventory; and
  - (ii) a reduction in losses due to theft, wastage, damage, spoilage or misuse.

19.1.10 The department will gain from sound Inventory Management practices. The rate and scale of delivery of basic services may be increased through lower purchasing and inventory holding costs, better quality of products, a reduction in losses, or otherwise freeing up resources to be utilised in other areas.

19.1.11 **The systems of Inventory Management**

(a) An integrated SCM system is at the heart of effective implementation of inventory management. The LOGIS system is currently used as the approved Logistics system by most Departments while the Basic Accounting System (BAS) system is used as the primary system for effecting payments to suppliers. It is however acknowledged that a number of disparate systems exist both within and between departments.

(b) A diagrammatic representation of dataflow within the SCM system is depicted below:



(c) The absence of an integrated financial management system may pose a challenge to efficient warehouse organisation and inventory control as information is contained in various systems.

## 19.2 PLANNING FOR INVENTORY

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. The requirements herein may not in all aspects be capable of implementation with immediate effect. Departments are required to put in place an implementation plan for inventory planning requirements.
2. These requirements are aimed at bringing departments to a state of readiness to meet inventory reporting requirements per financial year and strictly in terms of the MCS definition cited above.
3. Departments are required to review the requirements hereunder and adapt them to their own operational needs and aligned to their defined implementation plan.

19.2.1 To ensure proper demand planning for inventory,<sup>406</sup> the department must:

- (a) Prepare a multi-year operational plan (3-year period at a minimum) containing:
  - (i) an inventory demand schedule for goods and services required to fulfil the strategic objectives and service delivery goals of the department; and
  - (ii) a resource plan that breaks down operational requirements by materials and supplies required to deliver the schedule of services detailed in the demand schedule.
- (b) Establish an inventory operations and planning committee, where necessary, to review and determine inventory requirements and approve the inventory demand schedule. This committee may be incorporated into existing management committees and need not be a new committee;
- (c) The AO or their delegate must appoint the chairperson and members of the committee in writing. The committee appointed must consist of programme managers and representatives from logistics and operations; and
- (d) Institute procedures for regular reviews to confirm demand requirements from all programme managers.

### 19.2.2 The Inventory Demand Schedule

- (a) The inventory demand schedule of goods or services, aligned to the strategic objectives and service delivery goals of the department must indicate:
  - (i) what inventory must be delivered;
  - (ii) where the inventory must be delivered;
  - (iii) when the inventory must be delivered; and
  - (iv) how the inventory will be delivered?
- (b) Warehouse managers must undertake their own evaluation, in accordance with paragraph (a), of items kept in store on an annual basis.<sup>407</sup>

<sup>406</sup> WC PTI 2019, s. 8.3.1 Policy (c) and Standard Operating Procedure (a)

<sup>407</sup> WC PTI 2019, s.8.3.1 Policy (a)

- (c) The historical analysis and needs assessment performed during the demand management phase of SCM should inform the SCM Unit which items are required to be kept in stock. The SCM Unit is responsible for the compilation of a list, indicating which items should be kept in stock at the various stores.<sup>408</sup> This list should be reviewed annually and be approved by the Head of the SCM Unit.

### 19.2.3 Resource Planning

- (a) To ensure the correct item is procured to support programme delivery, for each item of inventory the:
  - (i) item specifications must be determined and aligned with the requirement; and
  - (ii) potential suppliers must be analysed to ensure that inventory is sourced at the best price and available at the right place and at the right time.
- (b) Programme managers must understand the need for demand planning during strategic planning and medium-term budgeting processes and be aware of resource planning techniques.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. The AO must define the departmental policy in respect of resource planning techniques and systems in use (whether manual or computerised)
2. Such resource techniques may include the following:
  - (a) Materials requirement planning;
  - (b) Bill of Materials (BOM);
  - (c) Demand forecasting; and
  - (d) The availability of systems to determine material requirements.

### 19.2.4 Budgeting

- (a) Budgets must be within the framework of the approved strategic plan and annual performance plan of the department.<sup>409</sup>
- (b) Budgets should be prepared in accordance with the following principles:
  - (i) **Realistic and Quantifiable:** Generally, in the public sector, demand is set when the budget is approved to deliver services in line with the strategic plan of the department. The public sector is compelled, however, to ration its resources by setting goals and objectives which are reasonably attainable. Strategic plans must evaluate each activity to determine those that will result in the most appropriate resource allocation.
  - (ii) **Historical:** The budget reflects a clear understanding of past results and a keen sense of expected future changes. While past results cannot be a perfect predictor, they flag important events and benchmarks.

<sup>408</sup> WC PTI 2019, s.8.3.1 Policies (e) and (g), Standard Operating Procedure (a) and (c)

<sup>409</sup> WC PTI 2019, s.8.3.1 Policy (c)

- (ii) **Period Specific:** The 3-year length of the Medium-Term Expenditure Framework ("MTEF") budget period dictates the time limitations for introducing effective modifications to the budget. Although plans and projects differ in length and scope, establishing the needs and planning for inventory demand is a key activity for budgeting and needs to be considered and aligned with the 5-year strategic plan of the department.
- (iii) **Standardised:** To facilitate the budget process, managers should use standardised forms, formulas, and research techniques. This increases the efficiency and consistency of the input and the quality of the planning.
- (iv) **Inclusive:** Those responsible for the results must take part in the development of their budgets. Programme managers from finance, logistics, and operations should meet to exchange ideas and objectives and to minimise redundancies and counterproductive programs. In this way, those accountable buy into the process, cooperate more, work with better direction, and therefore have more potential for success. During the budget preparation period, programme managers will prepare their operational plans based on the strategic direction of the department and inputs derived from the demand schedule described above.
- (v) **Successfully Reviewed:** Programme managers are responsible for the reviewing of their operational plans and inventory needs in line with the budget cycles.
- (vi) **Service Delivery Oriented:** Budgeting must maximize Constitutional and legislation-mandated service delivery duties to the community and other stakeholders, within the constraint of available resources and with a focus on sustainability.

### 19.3 INVENTORY CLASSIFICATION

- 19.3.1 All items that are procured, donated, or received as a result of transfers from other departments must be evaluated<sup>410</sup> against the Asset Tree described in paragraph 19.1.5. If the criteria are met, it should be classified as inventory and must be grouped in the appropriate inventory category.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department to identify inventory items that must be disclosed in the annual financial statements as aligned to the outcome of the 2017 Inventory readiness reports."

### 19.4

#### RECORDING AND MEASUREMENT OF INVENTORY

- 19.4.1 All items of inventory that are procured, produced, donated or received<sup>411</sup> must be recognised in the accounting records of the department in accordance with the Modified Cash Standard (2020-21) issued by National Treasury<sup>412</sup> as follows:

<sup>410</sup> WC PTI 2019, s.8.3.1 Policy (b)

<sup>411</sup> As a result of transfers from other departments.

<sup>412</sup> Modified Cash Standard. National Treasury, Issued April 2020, "Inventories", pgs. 96-102 ("Modified Cash Standard")

(a) "Inventories shall be recorded if, and only if, it is probable that future economic benefits or service potential associated with the item will flow to the department; and the cost or fair value of the inventories can be measured reliably."

19.4.2 The value of the inventory must be measured against the criteria defined by the Modified Cash Standard (2020-21) issued by NT as follows:

(a) Initial measurement: "Inventories that qualify for recording as an asset shall initially be measured at cost. Where inventories are acquired through a non-exchange transaction, their cost shall be measured at fair value as at the date of acquisition."

(b) Subsequent measurement: "Inventories shall be measured at the lower of cost and net realisable value, except where the paragraph below applies."

"Inventories shall be measured at the lower of cost and current replacement cost where they are held for: distribution through a non-exchange transaction; or consumption in the production process of goods to be distributed at no charge or for a nominal charge."

(c) Cost of inventories: "The cost of inventories shall comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition."

(d) Cost Formulas: "The cost of inventories of items that are not ordinarily interchangeable, and goods or services produced and segregated for specific projects shall be assigned by using specific identification of their individual costs". "The cost of inventories, other than transferred to the department by means of a non-exchange transaction (fair value), shall be assigned by using the weighted average cost formula".

(e) Disclosure: "A department shall disclose the following in its notes with regards to inventories:

The accounting policies adapted in measuring inventories, including the cost formula used;

The total carrying amount of inventories at the beginning and end of the reporting period in major classifications appropriate to the entity; and

A reconciliation of the movement in total inventory carrying value for the reporting period per major classification."

19.4.3 When an item of inventory has been included in the accounting records, it must be disclosed in the annual financial statements according to the appropriate accounting policies. The department must prepare a financial statement that complies with the guidance provided in both the Modified Cash Standard and the Accounting Manual for Departments.<sup>413</sup>

19.4.4 Any changes to the format for reporting of inventory in the Annual Financial Statement will be indicated in updates to both the Modified Cash Standard and the Accounting Manual for Departments.

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<sup>413</sup> WC PTI 2019, s. 8.3.1 Policy (a); Modified Cash Standard, 2020 -21 "Inventories", ss. 14-24

- 19.4.5 Inventory will be disclosed in the relevant annexure as prescribed in the Modified Cash Standard and the Accounting Manual for Departments.<sup>414</sup>
- 19.4.6 The opening balance for a reporting year must be represented by the closing balance as at 31 March of the previous reporting year.
- 19.4.7 Adjustments to prior year balances: This represents adjustments to prior year inventory which were only corrected in the current year. The following can give rise to adjustments:
- (a) Surpluses and shortages identified during the last stock take for the previous year which had not been corrected on the balances before the end of the previous year. The surpluses and shortages therefore represent the difference between recorded inventory amounts and actual inventory levels;
  - (b) Reclassification of inventory to assets after the previous year end. All assets previously classified as inventory need to be accounted for and transferred from Inventory to either the major or minor assets register; and
  - (c) Reclassification of Assets to Inventory after the previous year end. All inventory that were previously classified as assets need to be accounted for and transferred from the asset register to the inventory register.
- 19.4.8 Only unissued stock in bulk stores is to be counted and recognised, while stock issued to sub-stores e.g. offices, wards in hospitals, etc. must be considered issued stock and not disclosed.

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

The department must identify and list all locations considered as bulk stores

- 19.4.9 Additions or purchases made for cash: All cash additions for the financial year must be reflected. The cash additions, as per the inventory system, should reconcile with the amount reflected and allocated for inventories in goods and services in the financial statements.
- 19.4.10 Additions or purchases that are made non-cash: The fair value or cost price, if supplied, of inventory received in kind or as donations from sources outside of the government, or as transfers without cost from other departments, during the reporting year is disclosed here. Adequate supporting documentation of such receipts should be kept.
- 19.4.11 Disposals: All approved disposals of inventory must be disclosed. This would include obsolete, damaged, or lost inventory that is not available for distribution or production.
- 19.4.12 Issues: All inventory issued to cost centres or external stores for production, distribution, or consumption must be recorded.
- 19.4.13 Adjustments: This represents correction of errors that occurred in the current financial year that relate to inventory. It includes the difference between the initial recognition amount (cost of inventory purchased) and the weighted average.
- 19.4.14 Closing Balance: This will be the value of the inventory as at 31 March of the accounting year after a stocktake has been undertaken, the physical quantities compared to the

<sup>414</sup> Modified Cash Standard 2020-21, "Inventories", s. 27-28

system quantities, corrections made to the system, and any movements between the counting date and 31 March of the reporting year affected.

## 19.5 INVENTORY MANAGEMENT CATEGORIES

19.5.1 Irrespective of whether the department makes use of a computerised or manual modelling system, inventory must, at a minimum, be identified through the following categories<sup>415</sup> of inventory items:

(a) **Vital:** These are items the department cannot do without, as they are core to the department's mandate. No out-of-stock incidents are allowed and irrespective of the value or rate of consumption these items must be controlled, e.g. medical products in the Department of Health;

(b) **Essential:** Essential items are frequently used, supporting elements to the department's core mandate, e.g. printing paper. Controlling these items will ensure efficient utilisation of resources and improve efficiency; and

(c) **Nonessential:** Stock levels do not need to be managed.

19.5.2 Inventory control, whether manual or computerised, must be defined for all items/groups classified as either Vital or Essential.

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. The department must define policies on the use of analytical techniques applicable to all items/groups of inventories;
2. The department must develop policies on the use of mathematical models to assist in determining minimum, maximum, and safety stock levels, order size and order frequency;
3. The department must define policies for the use of coding systems including the standard nomenclature and barcoding of inventory.
4. Where an inventory barcoding system is used by a department, the department must:
  - (a) clearly define to which items/category of items coding applies;
  - (b) state which barcoding system is being used for the recording of inventories; and
  - (c) indicate whether the barcoding system is compatible with those of other government departments.

19.5.3 Where inventory coding, including barcoding, is changed, uniform and specified procedures must be instituted to manage these coding changes.

19.5.5 Prior to the modification or adjustment of any item code or description, the delegated official must review, agree, and approve the amendments.

19.5.6 The inventory management strategy defining the analytical techniques, mathematical models and item policies must be formally approved by the delegated official, before the strategy is communicated and implemented.

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<sup>415</sup> WC PTI 2019, s. 8.3.1 Policy (e)

- 19.5.7 The item policy variables must be loaded onto the system (whether electronic or manual) for all materials.
- 19.5.8 Uniform and specified procedures must be instituted for managing modifications and adjustments to item policy.
- 19.5.9 Prior to the modification and adjustment of any item policy the delegated employee must agree and sign-off on those changes.
- 19.5.10 Uniform and specified procedures must be instituted for managing Bill of Materials ("BOM") Master data changes when a BOM Master is identified for creation or amendment by a requestor (engineer, planner, logistics manager requesting BOM Master creation or amendment).

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

The department must evaluate all inventories to establish the need for lot traceability and define those items/groups that will be subject to lot traceability.

- 19.5.11 Items classified by the department must be capable of being traced at all stages of production, processing and distribution. This requires that:
  - (a) each batch produced or procured must be part of a single lot; and
  - (b) each product within a batch produced or procured must be marked with a code that indicates which batch it came from.
- 19.5.12 **Calculation of stock levels, safety stock, re-order quantities, and re-order points**
  - (a) The use of the **analytical technique** may be regarded as the "foundation" of the logistical system, as it determines what, and how many, stock items should be kept in stock.<sup>416</sup>
  - (b) The analytical technique focuses on the purchasing of stock, where practical and economical, for use and according to need. This includes A-, B- and D-items (see below). As a result, it seeks to prevent the unnecessary storing of items, to limit the risk of losses, to require the minimum amount of storage space, to save manpower on stock management, to promote effective control over the stock, and to allow the available capital for stock purchases to be used more effectively.
  - (c) Within the analytical technique, items are classified as follows:
    - (i) **A-Items:** Items that reflect a minimum consumption of six during the last two-to-three consecutive financial years, and in respect of which the average annual consumption value is equal to or greater than the classification sum.
    - (ii) **B-Items:** Items that reflect a minimum consumption of six during the last two-to-three consecutive financial years, and in respect of which the average annual consumption value is less than the classification sum.

<sup>416</sup> WC PTI 2019 s. 8.3.1 Policy (f) and Standard Operating Procedure (b)



- (iii) **C-Items:** Items that, during any of the last two consecutive financial years, had a consumption of less than six, as well as all new items that are purchased directly for a specific purpose.
  - (iv) **D-Items:** All items that comply with the definition of a C-item, but which are essential, and must be available immediately upon request.
  - (v) **E-Items:** All livestock and service dogs, irrespective of the consumption tendency, are divided under this class. The symbol "E" must be used on the item record.
  - (vi) **F-Items:** All containers, bags, scrap metals, scrap paper and textiles, that have sales value, irrespective of the consumption tendency, is divided into this class. The symbol "F" must be used on the item record.
- (d) Stock levels are only calculated with regard to A- and B-items, which are items that are constantly used (Livestock, revised tertiary products and uniforms are excluded). Proper stock levels ensure effective utilisation of available capital, preventing stock becoming obsolete, best utilisation of storage space, less likelihood of stock exhaustion and that demands can be satisfied immediately at all times. Two stock levels are determined, namely a **minimum** and a **maximum level**. The **minimum level** is the quantity that is required to provide for the demand during the delivery period, either in terms of a contract or from previous experience of items delivered or supplied by supply depots, which is the period between the date of order and the date of delivery. In all cases of A- and B-items, 20% of the minimum stock level on the item record is automatically calculated by the system and added to the minimum stock level. This is then displayed as a safety factor level on the item record in order to make provision for unforeseen factors such as delay per rail, strikes, etc. The **maximum level** is the maximum quantity which is **normally** purchased when the safety factor level on the item record has been reached.
- (e) In respect of A- and perishable B-items, the minimum days and quantity must always be the same as the maximum days and quantity. In respect of other B-items, the maximum days are always 182 (one hundred and eighty-two) and the maximum quantity always equal to 50% of the average annual consumption. Cases of D-items will occur where only a very small quantity (in many cases only one) of an item must be kept in stock and no consumption figure is available, or, if it is available, it cannot be accepted as representative. The minimum level must be stated as "nil" in such cases, and a supplement is only considered when the stock is completely depleted. Then, only the maximum must be ordered. In order to ensure that the maximum remains within limits with regard to D-items, the maximum must be set at six (6).

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. This restriction is not applicable to new departments, provisions, medicine, stationery, ammunition, workshop material and building stock with regard to the Department of Transport and Public Works.

## **19.6 MANAGEMENT REPORTS FOR INVENTORY**

19.6.1 Management reports may be generated through the logistical system and should be used for management of inventory. The following types of reports must<sup>417</sup> be available for this purpose:

- (a) daily reports that may be generated through report request;
- (b) weekly, monthly, quarterly and annual reports; and
- (c) management reports that are created on the mainframe and which are available for downloading from the National Treasury on a monthly basis. These reports must be used for BAS/LOGIS reconciliations and will also be used for the compilation of the Annual Financial Statement.

## **19.7 INVENTORY MOVEMENTS**

19.7.1 The following general principles apply to all inventory movements:<sup>418</sup>

- (a) the warehouse/stores function includes the physical safeguarding of stock, control over movements, keeping of stock records, stocktaking and storage of stock;
- (b) the receiving function accepts goods from suppliers and acknowledges receipt thereof. This is the responsibility of the budget holder (programme manager) of the program requesting the goods or services for directly delivered items or the warehouse or store manager in the case of stock items. The responsibility in respect of non-store items delivered to transit areas rests with both the warehouse or store manager and the end-user;
- (c) all goods not delivered directly to the end-user must be received at the various transit areas. The transit areas are responsible for accepting goods from suppliers, acknowledging receipt, confirming delivery against purchase order and physical inspection of goods delivered;
- (d) goods received at the stores are stored until requested by an end-user. The relevant unit is responsible for the management of the warehouse/stores function within the department;
- (e) no movement of stock may take place without documentation by an authorised employee. These documents are collectively known as transfer documents and include requisitions, goods received notes, and issue vouchers;
- (f) all transactions, including recording orders, receipts, issues, and returns must be recorded on an established computerised or manual system;
- (g) if a manual system is used, all signatures of authorised employees must be affixed to the source documentation;
- (h) the inventory recording system, whether manual or automated, must be reconciled with the financial records at the end of each month;

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<sup>417</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (i)

<sup>418</sup> WC PTI, 2019, s. 8.3.1 Policies (i) and (h) and Standard Operating Procedure (h)

- (i) store items required by end-users are to be requested (by requisition) from the relevant store. An issue voucher must be generated for all goods issued from the warehouse or storeroom;
- (j) wherever and whenever there is a movement of stock, both the deliverer and the receiver must sign the transfer document after having checked the description and quantity of the items being transferred against the source documents;
- (k) transfer documents must be pre-numbered and filed numerically;
- (l) documents must be regularly reviewed by an independent authority to ensure that proper authorisation procedures were followed;
- (m) documents must be sequence checked and missing documents investigated;
- (n) inventory items are considered consumed after having been issued to the end-user and the relevant unit does not keep further record [Department to amend as per their bespoke requirements]; and
- (o) all transfer documents must be kept on file in the warehouse or storeroom office in accordance with legislative requirements for the retention of information, including PAIA, PAJA, and POPIA.

#### 19.7.2 Transfers

- (a) Transfers refer to any movement of stock or asset from any store or location in the department to a store or location in another department.
- (b) Transfers between units or programmes/sub-programmes within the department are internal transfers whilst transfers from the department to another or to any department/store outside of the department are external transfers.
- (c) Internal stock transfers will only be completed between like storage facilities within the same operating division.

### 19.8 STOCKTAKING OF INVENTORY<sup>419</sup>

- 19.8.1 Frequent comparison and reconciliation of un-issued stock with stock as per approved records is required to identify discrepancies timeously and initiate investigations, should there be such a discrepancy. Preventative measures should be put in place to reduce the possibility of a re-occurrence of the problem that caused the discrepancy.
- 19.8.2 Stores shall be subjected to a complete stock take **at least once** in every financial year and as near as possible to financial year-end to minimize the amount of reconciliation between the stock counts at stock take and the stock counts at the end of the financial year.<sup>420</sup> The Auditor General must be provided with the scheduled dates of all stock takes at least one calendar month in advance to allow them to observe the stock take if necessary.<sup>421</sup> Written acknowledgement by the Auditor General should be kept for audit purposes.

<sup>419</sup> WC PTI 2019, s. 8.3.1 Policy (g) and (h) and Standard Operating Procedure (c) and (j).

<sup>420</sup> National Treasury "Inventory Management" July 2009 s. 6.12.4

<sup>421</sup> Public Audit Act, 2004 (Act 25 of 2004), s. 4(1)(a)

- 19.8.3 The AO is responsible for the administration of the department's annual stock take. Included in the responsibilities is the delegated authority to appoint, in writing, competent employees to take stock and to report their findings. To ensure proper separation of duties, the person appointed should not be directly in charge of the store being counted and the staff performing the task should be persons other than those who usually work in the store.<sup>422</sup>
- 19.8.4 Physical inventory counts must be completed and performed timeously as per the Physical Inventory Count Procedure and Physical Inventory Count Schedule, respectively, by the authorised employee. Reasons must be determined independently for all variances between the stock register and the stock found. The store system must be updated timeously and accurately on completion of the count.
- 19.8.5 Surpluses and deficits shall, as soon as they have been confirmed, be accounted for in a suspense register. All particulars and supporting documentation should be kept for audit purposes. Once all surpluses and deficits have been accounted for, the Disposal Committee should evaluate each individual case (storeroom) and recommend to the Accounting Officer any further steps to be taken. Steps may include the recovery of stock losses from employees.
- 19.8.6 Members of the department's stock take committee cannot serve on the DC for the disposal of items identified by them.
- 19.8.7 A stock take certificate should be issued for each store, and a copy thereof must be provided to the AG. The following employees must sign the stock take certificate:
- (a) the chairperson of stock take committee;
  - (b) the relevant store manager;
  - (c) the head of the SCM unit; and
  - (d) the AO or their delegate.
- 19.8.8 An overall stock take certificate for the department should be issued once all store stock take certificates have been received, reviewed and settled through the resolution of any discrepancies. The overall stock take certificate should be signed by the AO and contain at least the following information:
- (a) a statement to the effect that all vouchers series are up to date and vouchers have been correctly filed;
  - (b) inventory controllers (store managers) had been appointed in writing;
  - (c) a complete stock take of inventories has been carried out; and
  - (d) the information provided is a true reflection of the state of stores administration within the department.
- 19.8.9 A copy of the final annual stock take report must be submitted to Provincial Treasury for reporting purposes, before the close of the financial year.<sup>423</sup>

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<sup>422</sup> National Treasury "Inventory Management" July 2009 s. 6.12.4

<sup>423</sup> WC PTI 2019, s. 11.1.2(c)(ii)

#### 19.8.10 **Minimum requirements for stock take**

When conducting stock take, information about the stock take must be recorded either manually or electronically. At least the following must be recorded:

- (i) inventory operation (name of warehouse, stockroom or other);
- (ii) stock take name (e.g. quarterly count of "A" items for quarter ended June 2013);
- (iii) date and time of count;
- (iv) authorisation number and dated signature or electronic authorisation of counter;
- (v) authorisation number and dated signature or electronic authorisation of supervisor;
- (vi) item code (must be unique for the same category of items);
- (vii) item description (will be linked to the item code);
- (viii) item location (shelf, bin, etc.);
- (ix) quantity on hand as per inventory records (manual or computerised system);
- (x) quantity on hand as per count in good condition;
- (xi) quantity on hand as per count in poor condition (expired, obsolete, unserviceable etc.);
- (xii) variance (adjustment required to manual or computerised records);
- (xiii) second count carried out (indicate yes / no); and
- (xiv) variance reason.

#### 19.8.11 **Planning for stock take**

- (a) All employees concerned with the count should be informed well in advance of the date of the count.
- (b) The employees' responsibility for the work should be clearly defined.
- (c) Explicit instructions in writing should be given to all employees participating in the count and meetings of the appropriate management and employees should be held to answer employees' questions about these instructions.
- (d) The instructions should cover:
  - (i) the overall stocktaking plan;
  - (ii) preparation of stock prior to the count;
  - (iii) method of counting;
  - (iv) method of recording the counts;
  - (v) responsibility for issuing, collecting, and controlling records as well as and the employees' specific task;

- (vi) procedures for stocktaking to be adopted and each employee's part therein, thus providing a framework for an efficient and accurate stock count;
  - (vii) instructing that stock should be prepared for counting; and
  - (viii) how to take care to identify and separate slow moving, obsolete, and damaged stock.
- (e) Control must be maintained over the means used to record the count to ensure accountability for all stocktaking forms issued. Stock sheets or tags used should be pre-numbered and a record made of those issued. Those at the end of the count should be checked against the pre-count list.
  - (f) At financial year-end care should be taken to match goods received into stock with the booking of the relevant invoices, and *vice versa*, and similar matching according to goods invoiced to customers.
  - (g) At this point a "cut off" point should be established, i.e. the manager in charge of stocktaking should decide the time up to which goods received are to be included in stock, and issues of those goods treated as a reduction of the stock.
  - (h) After such time, goods received and issued are treated as having been received and issued in the following financial year.
  - (i) Where the stock count occupies several days during which goods are received and issued, care is required to identify the change in the stock position due to such receipts and issue of goods.
  - (j) The adjustments required depend on whether the stock count period ends at the close of the financial year or commences then. If the former, goods issues identified as occurring after the count of the relevant items should be deducted from the count figure while purchases after the count should be added. If the latter, items issued from the close of the financial year to the count should be added to the stock figures, goods received being deducted.
  - (k) The above arrangement regarding stock movement from supplier to store applies equally to movement of stock between stores and users.

#### 19.8.12 **Stock count**

The actual counting and recording should be done under proper supervision and the following instructions strictly adhered to:

- (a) provision should be made for the counting, the recording, and the checking to be distinct functions;
- (b) two employees to be associated with each item counted;
- (c) where differences between the stock record and the stock count arise, this should be reported to the supervisor who would then adjust the records, strictly adhering to the procedure laid down;

- (d) all counters, recorders, and checkers are to sign and initial the stock sheets, identifying their functions; and
- (e) the supervisor is to scrutinise the record for such signatures and to add his or her own.

## **19.9 REQUESTS TO STORES<sup>424</sup>**

- 19.9.1 All requestors must complete a requisition form to request items from a store. In particular:
- (a) end-user requests must be completed accurately and be authorised;
  - (b) no items will be issued to an end-user without an approved request form;
  - (c) the request form must contain at least the following information:
    - (i) cost centre code;
    - (ii) cost centre description;
    - (iii) item code;
    - (iv) item description;
    - (v) quantity requested;
    - (vi) date requested; and
  - (d) all requestors must sign for material received from the warehouse or storeroom.

## **19.10 ISSUING AND DISPATCH OF STORES<sup>425</sup>**

- 19.10.1 Only authorised employees may complete the issuing or dispatch function.
- 19.10.2 The system must be updated immediately upon the physical issue of inventory from the warehouse or storeroom and the relevant expense must be posted (where applicable).
- 19.10.3 All relevant issuing documentation must be generated and completed as required.
- 19.10.4 All requestors must sign for material received from the warehouse or storeroom.

## **19.11 RECORDING OF STORES ISSUING<sup>426</sup>**

- 19.11.1 Manual or computerised records for issues from store must include at least the following:
- (a) issue date;
  - (b) issue number;
  - (c) name of warehouse, storeroom, stockroom or another place of holding;
  - (d) item code (must be unique for each category of item);
  - (e) item description (will be linked to the item code);
  - (f) item location (shelf, bin, etc.);

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<sup>424</sup> WC PTI 2019, s. 8.3.1 Policy (h) and (j) and Standard Operating Procedure (c)

<sup>425</sup> WC PTI 2019, s. 8.3.1 Policy (j)

<sup>426</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (h)

- (g) quantity issued;
- (h) 'issued to' code (organisation, project, or job code); and
- (i) note any comments regarding the issuing of the item, where required.

#### **19.12 RETURNS TO STORE<sup>427</sup>**

- 19.12.1 All material returned to store must be correctly prepared and packaged by the end-user who received the material but yet chose to return it to the store.
- 19.12.2 A goods return transaction must be completed on the system within the allowable goods receipt processing time of 48 hours or immediately upon return from inspection.
- 19.12.3 All material returned to stock must be returned against the cost centre to which it was issued.

#### **19.13 RECORDING OF RETURNS TO STORE<sup>428</sup>**

- 19.13.1 Manual or computerised records for returns to store must include at least the following:
  - (a) return date;
  - (b) return number;
  - (c) name of warehouse, storeroom, stockroom or other;
  - (d) item code (must be unique for each category of item);
  - (e) item description (will be linked to the item code);
  - (f) item location (shelf, bin, etc.);
  - (g) quantity returned;
  - (h) 'returned from' code (cost centre, project, or job code);
  - (i) note any comments regarding the return;
  - (j) authorisation number and dated signature or electronic authorisation of receiving officer; and
  - (k) authorisation number and dated signature or electronic authorisation of issuing officer.

#### **19.14 STORES TO SUPPLIER<sup>429</sup>**

- 19.14.1 Materials destined to be returned to a supplier must be assessed and decided upon speedily.
- 19.14.2 Materials to be returned to a supplier will be coordinated and managed by the end user.
- 19.14.3 The end-user will be responsible for following-up with the supplier.

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<sup>427</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (h)

<sup>428</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (h)

<sup>429</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (h)



- 19.14.4 Returns generated as the result of some fault on the supplier's part, will be processed with associated fees assumed for the cost of the supplier.
- 19.14.5 The supplier will be responsible for uplifting the materials from the warehouse or storeroom.
- 19.14.6 The SCM Unit must compile a valid removal permit.
- 19.14.7 The removal permit will, at a minimum, contain the following information:<sup>430</sup>
- (a) description of item being removed;
  - (b) quantity of item being removed;
  - (c) copy of the returned delivery note;
  - (d) supplier name;
  - (e) signature of the authorised, delegated warehouse or storeroom employee; and
  - (f) date of removal.
- 19.14.8 No materials will be physically issued out of the warehouse or storeroom without all required documentation and systems transactions being completed and authorised.

### **19.15 STORES REGISTER**

- 19.15.1 Manual or computerised records for each item must include at least:
- (a) name of warehouse/storeroom/store;
  - (b) item code, unique for each category of item;
  - (c) item description linked to the item code;
  - (d) inventory control classification;
  - (e) item location (bin or shelf);
  - (f) authorised person responsible for the item;
  - (g) purchasing unit of measure;
  - (h) unit of issue;
  - (i) alternative units of measure;
  - (j) consumption history for each financial year, both quantity and value;
  - (k) supplier, both one-time vendors as well as contracted suppliers;
  - (l) lead time in days between order and delivery;
  - (m) safe stock level;
  - (n) minimum stock level;

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<sup>430</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (f)

- (o) maximum stock level;
- (p) re-order level;
- (q) economic re-order quantity;
- (r) quantity on hand;
- (s) unit price of quantity on hand;
- (t) quantity on order (purchased but not yet received);
- (u) quantity reserved (ordered by user but not issued);
- (v) status (item on hold, damaged, etc.); and
- (w) shelf-life and expiry indicator.

## **19.16 WAREHOUSE MANAGEMENT<sup>431</sup>**

**[This section is only applicable to departments who have warehousing facilities]**

19.16.1 The AO must ensure that the logistics management system of the department provides for the following:

### **(a) Systems for recording inventory transactions**

- (i) A system, whether manual or computerised, must be established for each warehouse or storeroom operation to record orders, receipts, issues, and returns; and
- (ii) Procedure manuals must be maintained for the system, whether manual or computerised.

### **(b) Warehouse organisation**

- (i) Adequate institutional arrangements for item holding must include the following:
  - (aa) a large enough space to ensure all required items can be received, stored, and issued efficiently but without leaving too much unused space;
  - (bb) a layout which supports efficient receipt, storage, and issues, including storing faster-moving items closer to access points;
  - (cc) shelving and other storage facilities suited to the layout and the storage requirements for inventory items; and
  - (dd) appropriate equipment for moving and lifting and otherwise storing and retrieving items.

### **(c) Safeguarding inventory:<sup>432</sup>**

- (i) Adequate preventive controls to safeguard inventory against theft and damage must exist, including:

<sup>431</sup> WC PTI 2019, s. 8.3.1 Policy (h) and (i)

<sup>432</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (f)

- (aa) physical safeguarding of inventory through controlling movements in storage areas or during daily operational activities; and
  - (bb) physical protection systems made up both of procedures and actual devices or equipment.
- (ii) To detect if any theft and damage occurred, inventory cycle counts of total inventory per quarter, and an annual complete stock take on year-end, must occur.
  - (iii) At least once a year, or, where circumstances require, an assessment by the head of the SCM Unit and the head of the facility is to be conducted on all physical access measures in operation. If required, physical access controls should be strengthened.
  - (iv) Warehouse staff are to accompany visitors to the store at all times and a register of visitors must be maintained.

19.16.2 The following **general rules** apply: -

- (a) no unauthorised person shall obtain entry to the premises, buildings or containers where goods are kept, unless accompanied by an authorised warehouse employee;
- (b) a key register must be instituted for effective control over keys for daily use by an authorised warehouse employee. the authorised warehouse employee must keep a duplicate key of all cabinets, cupboards, padlocks and other storage places, separately and in a secure place;
- (c) inventory items must be stored in appropriate facilities in accordance with the manufacturer's specifications as well as applicable legal requirements;
- (d) inventory items must be grouped in terms of the level of physical protection required, e.g. hazardous or perishable;
- (e) hazardous goods must be handled in a manner that conforms to internal policies, the manufacturer's instructions, and to legislative requirements as defined in the Occupational Health and Safety Act, 1993 (Act 85 of 1993) and the regulations thereto;
- (f) hazardous materials must only be handled or moved by a trained and authorised employee;
- (g) all hazardous materials must be stored in appropriate and clearly marked facilities or containers;
- (h) personal protective equipment ("PPE") must be used as required when handling or moving hazardous materials;
- (i) breakable items must be stored to limit breakages to the minimum;
- (j) fire extinguishing equipment must be available in all stores. such equipment shall be serviced regularly by reputable service providers and the date of service indicated thereon;

- (k) goods shall be suitably stored and arranged in a manner that will facilitate handling and checking. There shall be cross-references between the shelf or section in the stores where the items are kept, and the ledger card concerned.
- (l) access to warehouses where valuable articles are stored must be restricted to the minimum and the necessary safety measures must be taken with the receipts and issues;
- (m) the store manager or their delegate shall take steps to ensure the safe custody of goods under their supervision and shall take precautions against loss or theft;
- (n) the store manager or their delegate shall maintain a proper record of all goods;
- (o) precautions shall be taken for the prevention of damage of, or deterioration in, the condition of goods. the store manager or their delegate shall ensure that premises and containers, which contain such items, are effectively sealed or securely locked;
- (p) shelf utilisation must be effective, and shelves must not be overloaded, whilst high stacking exceeding the fire and safety regulations is forbidden;
- (q) smoking is forbidden inside any rooms where stock is kept. notices to this effect must be affixed at a conspicuous place at each such storage area. this notice must consist of a white background with red letters on it;
- (r) continuous attention must be paid to the possible presence of rodents and insects, which can damage inventory and storage facilities. warehouses must be rodent-proof; and
- (s) obsolete, redundant or damaged stock must be relocated to the disposal location, pending the physical disposal of the product from the storage facility.

### 19.16.3 Quality Inspection

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department must define categories of items that are subject to quality control.

- (a) Only authorised and knowledgeable employees may complete the inventory inspection function.
- (b) No unauthorised employees are allowed in the inspection area.
- (c) A quality control plan will define standards for quality control, including but not limited to:
  - (i) items subject to quality inspection;
  - (ii) inspection standard (all items, sample of items, etc.);
  - (iii) inspection officer; and
  - (iv) turn-around times.
- (d) The relevant unit must provide the authorised employee in the quality inspection unit with delivery schedules to facilitate planning for quality inspection.

- (e) Materials identified through inspection as not conforming to quality criteria and engineering specifications will be stored in the designated quarantine area of the store, pending return to the supplier.
- (f) The authorised employee will inspect materials utilising engineering drawings / specification documents and the contract, generated per material, as a reference at all times.
- (g) The correct sample of products per supplier must be assessed per shipment of product requiring inspection. This is determined per supplier and is specified by the authorised quality inspection employee.
- (h) Quality control plans must be updated with the results of the quality inspection to confirm that quality inspection takes place according to the required standard.

#### 19.16.4 **Binning**

- (a) All materials must be stored within a recognised bin within the warehouse, and this must be reflected on the corresponding system, whether manual or electronic.
- (b) The authorised employee completing the binning procedure must bin the material correctly, in the indicated bin location, as per the binning transfer order or Goods Receipt Slip presented per material.
- (c) Bin locations which are found to be full, or have a different material located therein, must be brought to the attention of the authorised employee who must suggest an alternative bin location.
- (d) Only authorised employees will determine and authorise changes of the binning location.
- (e) Under no circumstances will an alternate bin location for the material be allocated unless otherwise instructed by the system or authorised employee authorised to do so.
- (f) For any binning exceptions that occur, corrections must be authorised by the authorised employee.

#### 19.16.5 **Picking and Packing**

- (a) Picking and packing is the process of locating an item desired by an end-user and packing it and sending it to that end-user.
- (b) Only authorised employees may complete the picking and packing function.
- (c) Picking and packing activities must be planned and controlled by storage location.
- (d) Variances must be immediately escalated and audited and must lead to corrective action to ensure that the variances are not repeated.
- (e) The system must be updated immediately to reflect the successful completion of the picking and packing task.

#### 19.16.6 **Cycle Counts / Ad Hoc Counts**

- (a) Cycle counts must be performed timeously as per the cycle count schedule by an authorised employee.
- (b) A recount process must be initiated in terms of the stock verification process to facilitate the counting of materials that were flagged for recount due to inventory discrepancies or on instruction from the authorised employee.
- (c) Appropriate segregation of duties must exist between the initial count and the recount process.
- (d) Cycle counts must be completed as per the annual cycle count procedure document.
- (e) Reasons for variances must be determined independently for all variances; and
- (f) The system must be updated timeously and accurately on completion of the count. Failure to update inventory records and conclude the inventory count will negatively impact on the availability of goods for programme delivery.

#### 19.16.7 **Inventory loss control**

Lost items must not be included in the financial records of the department:

- (a) when discrepancies are identified in inventory holding records and subsequent investigation confirms the loss, the loss control procedure must be instituted as the continued recognition of the item in the inventory will distort both financial data and impact on inventory management procedures;
- (b) an item of inventory that cannot be verified or accounted for must be placed into a suspense register, allowing the item to be excluded from inventory valuation and future inventory counts and to prevent the item from being included in resource planning techniques such as materials requirement planning; and
- (c) the item must be removed from the inventory records when the loss control procedures is finalised.

#### 19.16.8 **Item Tolerance Levels**

##### **PT GUIDANCE FOR BESPOKE REQUIREMENTS**

The department must assess all categories of inventory and define policies for items for which tolerance limits may be suitable

- (a) It may be necessary to accumulate sufficient historical data to determine the acceptable tolerance limits.
- (b) Transactions above the tolerance limits naturally require further approval processing.
- (c) The department must ensure monitoring for necessary changes to these tolerance limits.

#### 19.16.9 **Stock verification adjustment**

- (a) Appropriate segregation of duties must exist between the counting of stock and the stock adjustment process.
- (b) Inventory adjustments may not be carried out unless the correct procedure has been followed and all the delegated powers of authority have been adhered to.
- (c) Reasons must be determined independently by the warehouse supervisor for all variances.
- (d) The following additional information must be recorded for each adjustment:
  - (i) date and time of adjustment;
  - (ii) authorisation number and signature or electronic authorisation of adjuster;
  - (iii) adjustment;
  - (iv) reason for adjustment; and
  - (v) action required to follow up on discrepancy.

#### 19.16.10 Organisation of responsibilities for stock taking

A trained, reliable, and experienced employee must be appointed as the Chairperson of the Stock Take Committee. The functions of the Chairperson-include:

- (i) determining a stock take programme;
  - (ii) ensuring that all accounting transactions have been finalised;
  - (iii) appointing stock take teams;
  - (iv) coordinating stock take activities at storerooms and inventories at all levels;
  - (v) dealing with discrepancies by ensuring investigation of the causes; and
  - (vi) submitting reports.
- (a) Teams must be appointed to do stock take at storerooms and on inventories. The functions of the stock take team include:
- (i) executing the stock take programme;
  - (ii) investigating discrepancies; and
  - (iii) preparing adjustment vouchers for authorisation.

### 19.17 PERFORMANCE MEASUREMENT

- 19.17.1 Inventory Key Performance Indicators ("KPI") must be identified and agreed upon by the relevant stakeholders.
- 19.17.2 These KPIs must be monitored periodically and compared to an agreed benchmark.
- 19.17.3 If any variations occur, a root cause analysis must be done, and action be implemented and followed up to prevent further variations.

19.17.4 KPIs must be aligned to the department's objectives. The following KPIs must be monitored:

- (a) **Monthly inventory value:** The value of inventory at the end of the month is a strong indicator of the department's ability to match its inventory levels to its operational needs. The department must adhere to strict limits on the value of inventory within a given month. This must be extended to analysing the inventory value over a quarter. This requires setting limits on inventory value relative to the fluctuating demands.
- (b) **Incidence of out of stock:** The incidence of "out-of-stock" is also a KPI. However, in this case, it is the measurement of the lack of finished product inventory needed for operations. This KPI is determined by measuring the length of time of the stock-out and its impact on costs and service delivery.
- (c) **The value of obsolete and damaged inventory:** This KPI measures the costs of keeping obsolete and damaged inventory. The department must ensure proper item specification and demand planning is defined to prevent obsolescence. The department must set goals for controlling the number of damaged inventory items caused by poor handling. Reducing the impact of obsolete and damaged inventory will allow the department to reduce inventory costs. In most cases, obsolete and damaged inventory can only be sold as scrap.
- (d) **Incidence of product returns:** This KPI measures the incidence of products returned to suppliers and the impact on costs and service delivery. These include:
  - a) the original cost to purchase parts and materials;
  - b) the cost to return these products; and
  - c) impact on service delivery (usually through delays).
- (e) **Early receipts to Material Requirements Planning ("MRP") date (required date):** Early receipts to MRP date is a measure of planning efficiencies. Some planners or warehouse personnel may request that the material be brought in long before the end-users need the parts. The reasons for doing so may include quality control, lead time variance, buffer stock etc. Early receipts to MRP produce higher levels of inventory that are not yet required. MRP is the opposite to the Just in Time ("JIT") planning model. Measure: MRP due date versus Receive to Dock (stores) date.
- (f) **Early purchase order receipts leading up to purchase order due date:** "Early receipts to purchase order date" measures a supplier's diligence at supplying as demanded on the contract date. Early receipts to purchase order result in unexpected deliveries turning up. This causes congestion in the stock receiving areas and higher-than-projected inventory levels. Measure: Purchase order due date vs Receive to Dock (stores) date.
- (g) **Inventory lead time:** Lead time is the length of time it takes to obtain inventory from suppliers.
- (h) **Average age of inventory:** This is simply the average age of each product in stock. Age is measured internal to the store. The average age estimates the average time from date of delivery of to the stock, to issue goods out to an end-user.



- (i) **Generally preferred inventory valuation method:** This method assumes inventory to be sold in the order that it is stocked, with the oldest goods sold first and the newest goods sold last. It uses the unit cost per batch of acquired/produced goods and counts the inventory backwards from the newest batch. Lead time is the length of time it takes to obtain inventory from suppliers.
- (j) **Inventory carrying cost:** This is measured by Inventory Carrying Rate X Average Inventory Value

**Inventory Carrying Rate can be explained by the example below.**

**1. Add up the annual Inventory Costs. Example:**

R8000 = Storage  
R4000 = Handling  
R6000 = Obsolescence  
R8000 = Damage  
R6000 = Administrative  
R2000 = Loss (pilferage, etc.)  
R34000 = Total

**2. Divide the Inventory Costs by the Average Inventory Value (assuming R34 000.00). Example:**

$R34000 / R3400 = 10\%$

**3. Add up other costs. Example:**

9% = Opportunity Cost of Capital (the return you could reasonably expect if you used the money elsewhere)  
4% = Insurance  
6% = Taxes  
19% = Total

**4. Add up percentages:**

$10\% + 19\% = 29\%$  which is your Inventory Carrying Rate

**5. Inventory Carrying Cost = Inventory Carrying Rate X Average Inventory Value**

$29\% \times R34000 = R9860$

- (k) **Stock cover:** Stock cover is the length of time that inventory will last if current usage continues.

**VOLUME 7:**

**MOVABLE ASSET MANAGEMENT  
AND  
DISPOSAL MANAGEMENT**

## CHAPTER 21: MOVABLE ASSET MANAGEMENT

### 20.1 DEFINITION OF ASSET

- 20.1.1 An asset is a resource controlled by the department as a result of past events, and from which future economic benefit or service potential is expected to flow to the department.<sup>433</sup>
- 20.1.2 The following recognition criteria must be met in order for an item to be regarded as an asset:
- (a) the asset has service potential or future economic benefit for the department, meaning that it will flow to the department;
  - (b) the department has the capacity to control the service potential or future economic benefit of the assets;
  - (c) the service potential or future economic benefit of the asset originated as a result of a past transaction, meaning it was either bought, received as a gift, transferred to the department or officially procured in any other way that would be reflected in the department's records; and
  - (d) the cost or fair value of the item can be measured reliably.

### 20.2 FUTURE ECONOMIC BENEFIT OR SERVICE POTENTIAL

- 20.2.1 Service potential is the capacity of an asset, singly or in conjunction with other assets, to contribute to the department achieving its strategic objectives.
- 20.2.2 In applying the definition of asset, the focus will largely be on service potential, rather than future economic benefit as the department's primary concern is service delivery for a variety of social and economic purposes.
- 20.2.3 Assets that are used to deliver goods and services in accordance with the strategic objectives of the department but do not directly generate net cash inflows are often described as embodying "service potential".<sup>434</sup>

### 20.3 CONTROL OVER ASSETS

- 20.3.1 Control over an asset is less about the "physical control" of the asset, and more about control of the economic benefit or service potential of the asset.<sup>435</sup> The department controls an asset if it is able to benefit from the asset when pursuing its objectives, if it is able to control the access of others to that benefit, and if use of the asset allows the department to secure service potential or future economic benefit. Legal title and physical possession are good indicators of control, but not essential.<sup>436</sup>

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<sup>433</sup> NT Modified Cash Standard, 2020 "Concept and Principles" s.31 (a)

<sup>434</sup> NT Modified Cash Standard, 2020 "Concepts and Principles", s. 34

<sup>435</sup> NT Modified Cash Standard, 2020 "Concepts and Principles", s. 38

<sup>436</sup> NT Modified Cash Standard, 2020 "Concepts and Principles", ss. 39 and 40 read with "Capital Assets", s. 11

## 20.4 PAST TRANSACTIONS OR EVENTS

20.4.1 Transactions or events expected to occur in the future do not give rise to assets.<sup>437</sup> Assets are recognised from the point where control over the asset is transferred to the department. This is normally represented by the action of making payment or taking of possession.

20.4.2 There is a close association between incurring expenditure and generating assets, but the two do not necessarily go hand in hand.<sup>438</sup> The incurring of expenditure may provide evidence that future economic benefit or service potential were sought but is not conclusive proof that an item satisfies the definition that an asset was obtained. Similarly, the absence of expenditure does not necessarily mean that no assets were obtained. Items that have been donated to the department may qualify as assets.

## 20.5 CLASSIFICATION OF ASSETS

20.5.1 Assets vary considerably by size and nature. It is useful to classify them into groupings for management control and financial treatment. These might include categorising assets as land and buildings, office furniture and equipment, or computer equipment. This classification is separate from financial treatment. Financial treatment refers to classifying assets as either current assets or capital assets. Assets for the purpose of this framework and policy will be divided into the following classes:

20.5.2 Current and Non-Current Assets

(a) Current assets are expected to have a short life (normally less than 12 months due either to an inherent life-limiting feature or because they will be converted into cash or another asset or consumed within the department within a short time. Raw materials and inventory are examples of this.<sup>439</sup>

(b) By contrast, non-current assets have an extended useful life greater than one year.<sup>440</sup> It is usually expected that these assets would be used during more than one reporting period. This may reflect their physical life (e.g. motor vehicle) in the case of tangible assets or their legal life (e.g. patent) in the case of intangible assets.

20.5.3 **Tangible assets**

(a) Tangible assets have physical properties, capable of being touched or seen. These can be either current or non-current. All tangible assets are also either movable or immovable.<sup>441</sup>

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<sup>437</sup> NT Modified Cash Standard, 2020 "Concepts and Principles", s. 42 read with "Capital Assets", s. 14

<sup>438</sup> NT Modified Cash Standard, 2020 "Concepts and Principles", s. 43 read with "Capital Assets", s. 15

<sup>439</sup> NT Modified Cash Standard, 2020 "Financial Statement Presentation", s. 38

<sup>440</sup> NT Modified Cash Standard, 2020 "Financial Statement Presentation", s. 38

<sup>441</sup> NT Modified Cash Standard, 2020 "Capital Assets", ss. 9 and 17

#### 20.5.4 Intangible assets

- (a) Intangible assets are those assets which do not have a physical form.<sup>442</sup> Examples of intangible assets include:
- (i) trademarks;
  - (ii) licences;
  - (iii) the legally enforceable rights associated with copyright and patents;
  - (iv) mineral exploration rights;
  - (v) computer software;
  - (vi) entertainment, literary, or artistic original creations; and
  - (vii) other assets (e.g. new information, specialised knowledge) that have not been classified elsewhere, whose use in production is restricted to the units that have established ownership rights over them or to other units licensed by the latter.

#### 20.5.5 Minor assets

- (a) Minor assets are those assets with a cost price of less than R5000.
- (b) In order to provide sufficient guidance to regulate the classification of assets with a monetary value of less than R5000, without unnecessarily forcing the department into controlling items that are worth less than the input needed to control them, the following broad guidelines should be followed:
- (i) to be categorised as minor assets, the goods must have the characteristics of capital assets with the exception of having a value of less than R5000;
  - (ii) items must have a normal lifespan of more than one year;
  - (iii) it must be possible to physically mark the item without damaging it;
  - (iv) items must be categorised as one of the broad categories prescribed;
  - (v) all computer software with a monetary value of less than R5000 will be regarded as an e-class consumable; and
  - (vi) all expenditure on minor assets will be classified as current expenditure.

#### 20.5.6 Major assets

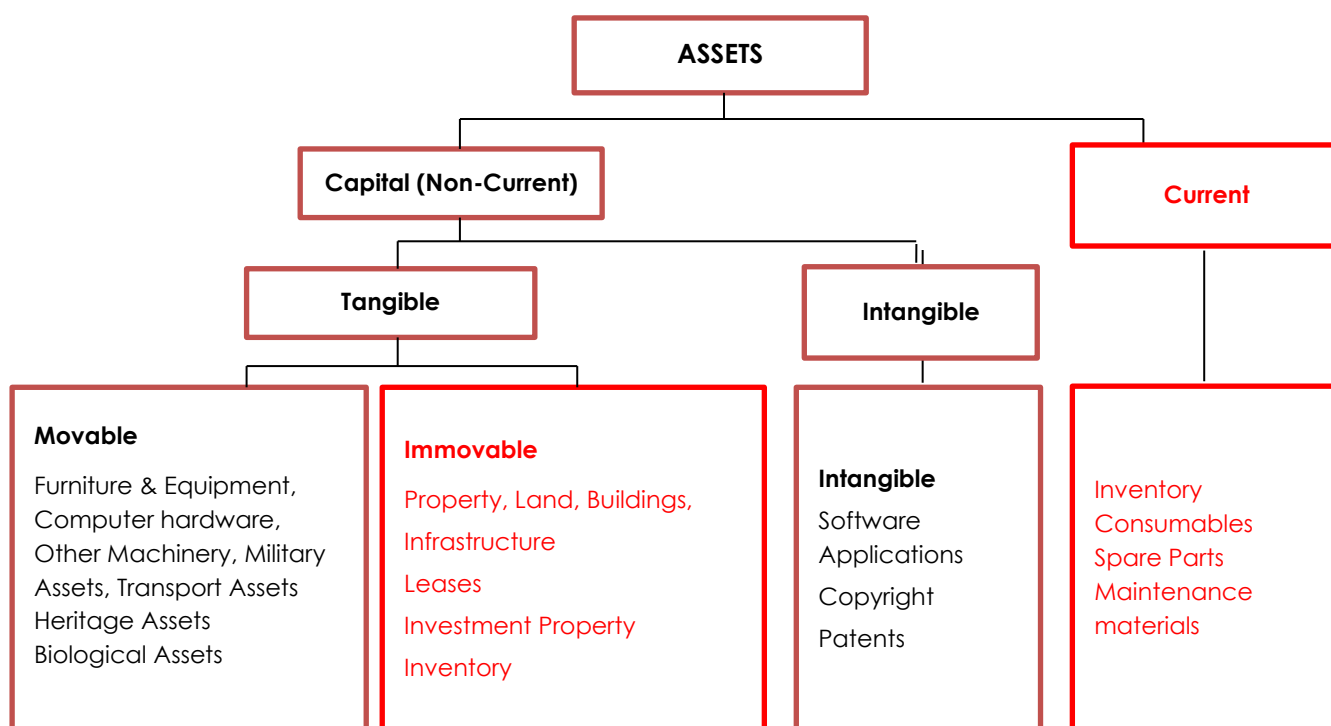
- (a) All assets with a cost price of more than R5000 are classified as major assets. All expenditure on major assets will be classified as capital expenditure.

20.5.7 The figure below describes the asset tree which is a useful tool to explain the hierarchy of asset classification:

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<sup>442</sup> NT Modified Cash Standard, 2020 "Capital Assets", s. 17

## The Asset Tree



## 20.6 CATEGORIES OF ASSETS

20.6.1 For the purposes of financial reporting, assets within the department will be classified as per the following categories:

- furniture and office equipment;
- computer equipment;
- other machinery and equipment;
- transport assets;
- heritage assets;
- biological or cultivated assets; and
- intangible assets.

## 20.7 EXCLUSION LIST OF ASSETS

20.7.1 The asset accounting policy guide, issued under Treasury Circular no 27/2016 dated 5 July 2016 provides for an exclusion list to enable the department to focus on strategic assets for reporting purposes in the annual financial statements (AFS) and to exclude non-strategic assets from disclosure in the AFS. However, the assets excluded from reporting in the AFS will still require safeguarding and control on the electronic system.

20.7.2 Should the department consider implementation of an asset exclusion list the requirements of paragraph 4.4 of Treasury Circular no 27 of 2016 should strictly be adhered to.

## **20.8 ESTABLISHMENT OF ASSET REGISTERS**

- 20.8.1 The AO or their delegate will establish and maintain an asset register for the department.<sup>443</sup>
- 20.8.2 This asset register will note all assets (both minor and major) of the department and will provide the detail to the figures disclosed in the Annual Financial Statement. An asset register contains information on each asset, including the cost price, date acquired, location, condition, and expected life span.

## **20.9 FEATURES OF AN ASSET REGISTER**

The asset register must, in addition:<sup>444</sup>

- a) be integrated with purchasing and payment systems and the general ledger;
- b) be structured to allow the different classifications of assets to be distinguished;
- c) detail financial data on assets maintained down to a level that is important to decision-makers;
- d) give a clear indication of the individual unit responsible for the asset; and
- e) provide asset data that is:
  - i. updated as transactions occur;
  - ii. regularly reconciled with acquisition, disposal and transfer data, as well as the general ledger; and
  - iii. readily available to asset managers, preferably online.

## **20.10 REQUIREMENTS FOR ASSET REGISTER**

- 20.10.1 The minimum fields required for the asset register is set out in paragraph 4.6 of the Asset Accounting Policy Guide issued under Treasury Circular 27 of 2016.

## **20.11 CONTINUOUS MAINTENANCE OF THE ASSET REGISTER**

- 20.11.1 The AO or their delegate must conduct a periodic review of the useful life of all assets. If the expectations are significantly different from previous estimates, the assets should be re-valued, and the asset register adapted using the balance adjustments function on the system.
- 20.11.2 The physical existence of assets should also annually be verified with the asset register via the annual asset count and verification process. The asset register should be updated after the variances (surpluses and shortages) have been investigated and identified during the process.

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<sup>443</sup> WC PTI 2019, s. 9.3.1

<sup>444</sup> WC PTI 2019, s. 9.3.1 (a) – (f)

### 20.11.3 Basic controls over assets

- (a) Control of assets is an essential element of good corporate governance. It is necessary for the effective implementation of asset management principles. Control is established by creating systems, processes and procedures within the department to ensure that the plans and intentions of management are implemented.
- (b) Recording and safe keeping of documentation relating to acquisition and additions of assets; barcoding of assets; disposal of assets; transfers; maintenance of assets; and performance of monthly reconciliations are crucial in keeping the asset register up to date and ensuring control over assets.<sup>445</sup>
- (c) Employees should be issued with inventory lists for all assets under their control, placing responsibility on employees for the management and safeguarding of the assets within their area of responsibility.<sup>446</sup>
- (d) Physical access to assets should be limited to only those persons that need access to the assets to perform their normal duties. Special authorisation must be provided for the use of assets in abnormal circumstances.
- (e) The removal of assets should be recorded, and the condition of the assets checked when received back.
- (f) All assets in the department must be counted and verified annually. This must be done in accordance with a program that should be compiled and approved during the last quarter of the previous financial year.
- (g) The appointed location managers (see below) must count and verify assets allocated to them on a quarterly basis.

## 20.12 REPORTING ON ASSETS

- 20.12.1 At the end of each financial year, or as soon as possible thereafter, the department must report to the Provincial Treasury that a complete count of all its assets has been completed and that steps were taken to address shortages and surpluses.
- 20.12.2 To this end, the AO or their delegate must appoint asset location managers and strategic asset location managers. They will bear the administrative burden of counting assets, recording asset movements, noting asset disposals, reporting and managing stolen or lost assets through loss control procedures, and maintaining a register of asset locations.

## 20.13 POLICIES ADOPTED

### 20.13.1 Asset thresholds

- (a) As indicated in paragraph 21.5, assets are divided into minor and major assets depending on their values.

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<sup>445</sup> WC PTI 2019, s. 8.2.1(f)

<sup>446</sup> PFMA s. 45(e)



### 20.13.2 Depreciation method

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

### 20.13.3 Accounting for assets in financial statements

- (a) The department has a duty of stewardship over assets under its control, irrespective of how such assets may be reported in its financial statements. The AO must ensure that the financial treatment and disclosure of assets is done in accordance with the requirements set out in Part 14 of the PTI 2019.<sup>447</sup>

### 20.13.4 Recognition of assets in financial statements

- (a) An asset item should be disclosed in the financial statements if it meets the:
- (i) probability criteria (it is probable that any future economic benefits or service potential associated with the asset will flow to the entity); and
  - (ii) measurement criteria (the asset has a cost or value that can be measured with reliability).
- (b) In assessing whether an item meets the definition of an asset, attention needs to be given to its underlying substance and economic reality and not only its legal form.

## 20.14 LEASING OF ASSETS (CLASSIFICATION OF LEASES)

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

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

20.14.3 Whether a lease is a finance lease, or an operating lease depends on the substance of the transaction rather than the form of the contract. Although the following are examples of situations which would normally lead to a lease being classified as a finance lease, a lease does not need to meet all these criteria in order to be classified as a finance lease:

- (a) the lease transfers ownership of the asset to the lessee by the end of the lease term;
- (b) the lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable;
- (c) the lease term is for the major part of the economic life of the asset even if title is not transferred;
- (d) at the beginning of the lease the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset;

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<sup>447</sup> WC PTI 2019, s. 14.2 and 14.3

- (e) the leased assets are of such a specialised nature that only the lessee can use them without major modifications; and
- (f) the leased assets cannot easily be replaced by another asset.

20.14.4 Other indicators that could classify a lease as a finance lease are:

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

20.14.5 The AO or their delegate may enter into finance leases without the prior approval of Provincial Treasury, provided that:<sup>448</sup>

- (a) the finance lease is more cost effective than an outright purchase;
- (b) the finance lease is more economical than an operating lease;
- (c) the period of the finance lease does not exceed 36 months or in the case of motor vehicles does not exceed 60 months; and
- (d) the finance lease is for the acquisition of goods required for day-to-day departmental operational requirements for which funds have been provided from the approved budget of the department.

20.14.6 Prior approval of Provincial Treasury is required for leases that do not meet these requirements.<sup>449</sup>

20.14.7 Where land or buildings are sought under a finance lease, the department requires prior written approval by Provincial Treasury and must have budgeted for the lease in its approved budget.<sup>450</sup> The department may permit the Department of Transport and Public Works to enter the finance lease on its behalf.<sup>451</sup>

#### 20.14.8 **Operating lease**

Where an asset is leased under an operating lease, it is necessary to record the details in an operating lease register. These details should include:

- (a) lease start and completion dates;
- (b) first instalment date;
- (c) asset fair value;
- (d) implicit interest rate; and
- (e) lease payments

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<sup>448</sup> WC PTI 2019, s. 4.8.2 (a) – (d)

<sup>449</sup> WC PTI 2019, s. 4.8.3

<sup>450</sup> WC PTI 2019, s. 4.8.5

<sup>451</sup> WC PTI 2019, s. 4.8.4

20.14.9 Operating leases have a built-in interest cost which should be considered when evaluating whether to lease or purchase an asset. Leases should be reviewed annually to confirm that the form of lease is still the most economical and beneficial option for the department.

## CHAPTER 21: ASSET PLANS

### 21.1 INTRODUCTION

- 21.1.1 Section 38 of the PFMA confers general responsibilities on the AO. The AO is responsible for the management, including the safe-guarding and maintenance of the assets, and for the management of the liabilities, of the department.<sup>452</sup>

**NOTE:** The policies outline in this chapter will have relevance for all departments, irrespective of the size of their asset base. For the majority of departments, however, their asset base will consist primarily of computing hardware and software and furniture and fittings, which facilitate their programme delivery responsibilities. The majority of departments will have asset portfolios which are relatively small in comparison to their operating budget. The policies below have been developed to provide for a level of generality that ensures that specific institutional needs can be accommodated on top of the general principles.

### 21.2 SYSTEMS UTILISED BY THE DEPARTMENT

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department must define the data sources and systems that must be utilised when producing asset strategic plans. Where information will be drawn from different systems to that utilised or prescribed by the WCG, the department must provide an adequate system of internal control to identify all potential risks associated with the access to information, data conversion, and data migration. The risks and control measures must be aligned with the requirements provided for in the System of Risk Management and Internal Control Framework in paragraphs 13.1 and 13.2 of the Provincial Treasury Instructions, 2019

### 21.3 ASSET STRATEGIC PLAN

- 21.3.1 To achieve its service delivery objectives, the department requires assets.<sup>453</sup> These must be arranged consistent with a strategic plan.<sup>454</sup> This strategic plan must provide for a 5 year,<sup>455</sup> long-term perspective, horizon for planning and costing asset needs. Contrast this with the 3-year, short-term perspective, of the MTEF.
- 21.3.2 The following should be noted when aligning the asset strategic plan with other planning periods:
- (a) Strategic plans are revised annually to adjust to budget estimates and, therefore, should provide input to the budgeting process and the annual performance plans.<sup>456</sup>
  - (b) Strategic plans identify strategically important, outcome-orientated goals against which the department's medium-term results can be measured. Although the department's strategic plan must indicate policies and plans to be achieved over a

<sup>452</sup> PFMA s. 38(1)(d)

<sup>453</sup> WC PTI 2019, s. 9.1.2(a)

<sup>454</sup> WC PTI 2019, s.9.2.1

<sup>455</sup> WC PTI 2019, s. 9.2.2 (a)

<sup>456</sup> WC PTI 2019, s. 9.2.2 (b)

minimum 5-year planning period, some plans, particularly those relating to infrastructure projects, may have a timing horizon that spans more than 5 years.

- (c) When preparing the funding plan, estimates are developed based on the assumption of a constant chain of replacement, calculated using the useful life of individual assets. The funding plan also considers all alternatives to asset ownership based on the cost of owning and controlling the asset over its expected useful life. Irrespective of whether the useful life of an asset is shorter than or extends beyond the 5-year planning period, the cost of owning the asset for its entire useful life must be determined.
- (d) Asset management decisions must be based on the evaluation of alternatives that take into account the full life cycle of costs, benefits, and risks of assets.<sup>457</sup>

21.3.3 The department's asset strategic plan will incorporate the following:<sup>458</sup>

- (a) Linking the requirement to service delivery;
- (b) Acquisition plan: this defines the assets to be acquired during the planning period and establishes the sources and monetary value of funding acquisitions;
- (c) Operational plan: this defines the use of existing assets and which should include matters such as access, security, accountability, performance monitoring, staff training in the use of assets, and estimates of operating costs;
- (d) Maintenance plan: this defines which assets are to be maintained, the level of maintenance, and the delivery of maintenance services, including an annual program of routine preventative maintenance and a long-term program for major repairs and maintenance;
- (e) Disposal plan: this identifies assets to be disposed of in the planning period, the expected proceeds of the disposal, and the treatment of the proceeds;
- (f) Funding plan: this defines the options available for funding capital and recurrent asset costs; and
- (g) Risk management plan: this describes the risk management strategies and control activities to be implemented for the asset categories.

#### 21.3.4 **Categories of movable assets to be included in asset strategic plan**

##### **PT GUIDANCE FOR BESPOKE REQUIREMENTS**

Departments must evaluate their moveable asset base and identify the categories of assets for which the asset strategic plan will be developed. The asset categories must be reviewed on an annual basis.

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<sup>457</sup> WC PTI 2019, s. 9.1.3 (c)

<sup>458</sup> WC PTI 2019, s. 9.2.3 (a) – (f)

## **21.4 LINKING THE REQUIREMENT TO SERVICE DELIVERY**

21.4.1 Proposals for new assets must be justified by a thorough evaluation of all service delivery options. Asset needs must be linked to the services to be delivered. Before embarking on a procurement process, it must be established which assets are available, and, if necessary, what refurbishment might be required in order to bring them up to the required standard.

## **21.5 ACQUISITION AND FUNDING PLAN**

21.5.1 An acquisition and funding plan must be drawn up for the department on an annual basis.<sup>459</sup> This should be done during the planning phase and should address:

- (a) the reason for acquiring assets and how the assets will serve and fit into the strategic objectives and service delivery goals of the department;
- (b) the programme delivery requirements, inclusive of the service strategies and standards;
- (c) the proposed method of acquisition; and
- (d) financing for the acquisition.

21.5.2 To ensure that programmes follow a budgeting norm of acquiring needs in terms of the budget allocated, and not budgeting according to the needs, only the following will be addressed in the acquisition and funding plan of the department:

- (a) capital asset needs;
- (b) non-asset solutions considered, inclusive of the utilisation of existing assets;
- (c) a complete analysis of the alternative methods of acquisition;
- (d) personnel involved in the acquisition process and their roles and responsibilities; and
- (e) the timeframe and budget for the acquisition process.

## **21.6 OPERATIONAL AND MAINTENANCE PLAN**

21.6.1 An Operational and Maintenance Plan must be drawn up, adjusted and reviewed on an annual basis to ensure that it serves its intended purpose and that it stays current in terms of the various programme needs and the strategic objectives of the department.<sup>460</sup>

### **21.6.2 Operational plan**

(a) The operational part of the plan should cover the level of use, conditions of use, and performance of assets. This part of the plan is to ensure that assets are being used effectively and efficiently. Under- and over-utilisation of assets may have a negative impact on service delivery and programme needs. The following aspects must be addressed in the plan of the department:

- (i) responsibility for the asset;
- (ii) arrangements for monitoring asset performance;
- (iii) operational training; and
- (iv) estimated operating costs.

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<sup>459</sup> WC PTI 2019, s. 9.2.3(a) and (e)

<sup>460</sup> WC PTI 2019, s. 9.2.3(b) and (c)

### 21.6.3 Maintenance Plan

- (a) The maintenance part of the plan defines the maintenance standards, describes how the work is to be carried out, and predicts the necessary expenditure for maintenance for the planning period. Modifications or enhancements are work performed due to a change in use of the asset, or a need to improve its functional performance. Maintenance should only be undertaken where it will preserve the asset's service delivery potential. All maintenance work is to be identified within one of the following categories:

#### Maintenance Works Program required per sub-category

Category	Sub-category	Definition
<b>Planned Maintenance</b>	<b>Preventative service maintenance</b>	The actions performed to prevent failure by providing systematic inspection and monitoring to detect and prevent new deterioration or failure and includes testing to confirm correct operation.
	<b>Condition based maintenance</b>	Corrective maintenance work performed as a result of significant deterioration or failure, in order to restore an asset to its required condition standard. The work may be scheduled as a result of a condition assessment or as a random addition to the program, based on priority.
	<b>Statutory maintenance</b>	Both preventative service maintenance and condition-based maintenance may contain elements of statutory maintenance, which is an action performed to provide the minimum level of maintenance to meet legal requirements.
<b>Unplanned Maintenance</b>	<b>Routine &amp; breakdown maintenance</b>	Unplanned and reactive maintenance actions performed to restore an asset to operational condition, as a result of an unforeseen failure.
	<b>Incident maintenance</b>	Unplanned maintenance actions to restore an asset to an operational or safe condition as a result of property damage resulting from storms, fire, forced entry and vandal damage

- (b) For each of the assets or groups of assets that are to be regularly maintained, the department must develop a maintenance plan consisting of the following:
- (i) defining the asset, the performance required of it, and the level to which it is to be maintained;
  - (ii) describing the system and procedures to be used to plan and manage the maintenance work;
  - (iii) specifying the types of maintenance to be carried out, and why;
  - (iv) nominating the means of resourcing and implementing maintenance; and
  - (v) outlining the projected cost of routine maintenance, as well as forecasting major replacements over the planning period.

#### 21.6.4 **Categories of assets to be included in asset maintenance plan**

- (a) Some assets may have low or little value and have a relatively short life expectancy; others may be of a type that normally requires little or no regular maintenance effort (e.g. furniture). These items should be excluded from the formal maintenance planning process. The department should instead rely on regular condition assessment or inspections (e.g. in conjunction with stock takes).

##### PT GUIDANCE FOR BESPOKE REQUIREMENTS

Departments must evaluate their own moveable asset base and identify the categories of assets for which an asset maintenance plan will be developed. This must be reviewed annually.

#### 21.6.5 **Asset performance standard ratings**

##### PT GUIDANCE FOR BESPOKE REQUIREMENTS

Departments must develop the standards to which their assets are to be maintained, taking account of physical condition, functional quality and operational performance.

- (a) Suitably qualified and knowledgeable employees must be appointed to assess the required asset performance standards. To assist them, and to ensure uniformity of interpretation, the required performance, extent of deterioration, and acceptable condition for the standard specified for each category of asset is defined in the Table below:



### Asset performance standard rating

Performance Standard	Condition Standard	Rating
Highly sensitive functions with critical results (e.g. Hospital operating theatre) or high-profile assets (e.g. Assets in Parliament building)	Assets to be in best possible condition. Only minimal deterioration will be tolerated.	<b>S5</b>
Business operations requiring good public presentation and high-quality working environment (e.g. Newly built school)	Assets to be in good condition operationally and aesthetically, benchmarked against industry standards for that particular class of asset.	<b>S4</b>
Functionally focussed asset at utility level (e.g. Photo copying machine)	Asset to be in reasonable condition, fully meeting operational requirements.	<b>S3</b>
Functions are ancillary only, with no critical operational role, or asset has limited life.	Condition needs to meet minimum operational requirements only.	<b>S2</b>
Functions have ceased and asset is dormant pending disposal, demolition, etc.	Condition can be allowed to deteriorate and marginally maintained to meet minimum statutory requirements only.	<b>S1</b>

#### 21.6.6 Asset condition assessment

- (a) A structured condition assessment process must be part of the condition-based maintenance strategy and must be undertaken as part of the maintenance planning process.
- (b) A condition assessment for each asset must comply with the condition scale defined in the table below:

#### Scale of asset condition and definitions

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

- (c) A suitably qualified and knowledgeable employee must perform asset condition assessments and allocate an appropriate maintenance work ranking. As part of the condition's assessment, the employee considering the conditions must ensure adequate prioritisation of asset maintenance plans as per the table below.

**The priority ranking to be used as part of the condition assessment process is as follows:**

<b>Priority</b>	<b>Definition</b>
<b>P1</b>	Works needed immediately or as soon as possible to meet legal requirements, and to ensure the health and safety of user, including work to prevent serious disruption of normal activities.
<b>P2</b>	Works that have an effect on the operational capacity of the asset and those which are likely to lead to serious deterioration and higher future costs of repair.
<b>P3</b>	Works that have minimal effect on the operational capacity of the asset but desirable to maintain the environmental quality of the asset and its surroundings.
<b>P4</b>	Works which can be deferred beyond one year and be re-assessed at a future date.

## **21.7 DISPOSAL PLAN**

- 21.7.1 The requirements for completion of the disposal plan is covered in Chapter 22: Disposal Management.

## **21.8 ASSET PLANS AND PLANNING PERIODS**

- 21.8.1 The various asset management plans must cover the same timeframe to ensure integration between them.

## CHAPTER 22: DISPOSAL MANAGEMENT

### 22.1 INTRODUCTION

- 22.1.1 Asset disposal is the final stage in the asset life cycle. The department will dispose of unserviceable, redundant, or obsolete movable assets and inventory items.<sup>461</sup> The relevant warehouse manager or cost centre manager or chief user (collectively, “the responsible person”) is responsible for the identification of unserviceable, redundant, or obsolete inventories and movable assets within their programmes. Once items for disposal have been identified, the responsible person must notify, in writing, the department’s SCM Unit.
- 22.1.2 The DC will make recommendations on disposals and handle the disposal process. Its formation was discussed in detail under paragraph 2.7 of the AOS.<sup>462</sup>
- 22.1.3 The departmental SOP on disposal of assets / disposal plans should be applied when items are disposed of, as it gives guidance on the procedure to be followed.

### 22.2 DISPOSAL PROCESS

#### 22.2.1 Identification of inventory for disposal

- (a) The department has its own methods to determine surplus stock.<sup>463</sup>

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department must design and apply methods to be used to determine surplus stock

- (b) Each store is responsible for the identification of items that are either:
- (i) unserviceable, meaning that the item is neither in working order, nor capable being repaired easily or cost effectively; or
  - (ii) obsolete, meaning that the item is either out-of-date or too old for effective use; or
  - (iii) redundant, meaning that the item is no longer needed or is excess to requirements.
- (c) Should an end-user find that issued items are unserviceable, redundant, or obsolete, the end-user must notify the store manager in writing of all issued items so identified.
- (d) The store must continuously assess all inventory items for necessity of disposal and determine both the appropriate quantity and timing for disposal. It should do so by analysing inventory holding, ordering cost and usage, so as to lower the likelihood of future items being disposed of.
- (e) Should the analysis performed above indicate a required change in item policy to prevent future surplus (e.g. changes to minimum and maximum stock levels), the relevant programme manager or unit must initiate a change control procedure to have the item policy in the inventory management system amended.

<sup>461</sup> NTR 16A3.2(d)(iv) read with WC PTI 2019, s.10.1.1

<sup>462</sup> WC PTI 2019, s. 10.2.1

<sup>463</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (e)

- (f) Where item codes are used, the codes of items identified as obsolete must be suspended in the inventory management system to prevent users from mistakenly selecting these item codes in future ordering requests.
- (g) All items of inventory identified for disposal must be physically removed to the disposal locations to prevent the items being mistakenly issued to users.
- (h) The inventory system must be updated to reflect the disposal storage bin number of items, as and when items are moved to the disposal location.
- (i) When items become due for disposal, the relevant unit must prepare a report explaining why the item had become due for disposal.
- (j) In the case of redundant or obsolete items, the unit must include in the report mentioned in (i) above all possible options for utilising such items to the best advantage of the state, in spite of their redundancy or obsolescence.
- (k) The unit must submit the report mentioned in (i) above to the DC.
- (l) The DC must physically verify and independently inspect the stock items submitted for disposal; and
- (m) Disposal must be done as soon as practically possible.

### **22.2.2 The DC in practice**

- (a) The formation and powers of the DC were discussed under paragraph 2.7 of the AOS. This section considers the workings of the DC.
- (b) The chairperson of the DC must issue a disposal schedule indicating predetermined dates for the financial year when the committee will meet and evaluate identified disposals. *Ad hoc* dates may be arranged should there be an urgent need for any *ad-hoc* disposal requests.
- (c) Disposals must be performed on a quarterly basis during the financial year. The exact dates must be communicated in terms of the disposal schedule:
  - (i) 1st Quarter (April – June)
  - (ii) 2nd Quarter (July – September)
  - (iii) 3rd Quarter (October – December)
  - (iv) 4th Quarter (January – March)
- (d) If the DC is of the opinion that the item(s) which have been earmarked for disposal have become unusable due to negligence, an indication must be made on the schedule that the incident shall be investigated and, if necessary, action be taken against the implicated employee. This incident should be isolated and noted in the minutes of the DC meeting and dealt with as part of the loss control procedure.<sup>464</sup>
- (e) The members of the DC will have a duty sheet and must be familiar with the policies and legislative prescripts for inventory management and disposal.

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<sup>464</sup> WC PTI 2019, s. 8.3.1 Standard Operating Procedure (f).

- (f) The DC must take into account the following before deciding on the method of disposal:
  - (i) the physical condition of the item;
  - (ii) the reasons why the item must be disposed of;
  - (iii) the most cost-effective method of disposal; and
  - (iv) possible environmental impact for the chosen method of disposal.
- (g) Detailed records must be kept of all the activities of the DC. These records should consist of at least the:
  - (i) agenda of the meeting;
  - (ii) minutes of the meeting;
  - (iii) appointment letters;
  - (iv) quarterly disposal schedules;
  - (v) attendance list;
  - (vi) declarations of interest; and
  - (vii) disposal certificate.
- (h) The Chairperson and all the members of the DC must agree on the method of disposal and sign the disposal report and forward it to the AO or their delegate for authorisation. Only once the report is authorised and signed by the AO may disposal begin.
- (i) In the case of specialised inventory (e.g. pharmaceutical supplies,<sup>465</sup> ammunition<sup>466</sup> or agricultural livestock), a technical expert mandated by law in the field must be co-opted in writing to advise in the disposal process.

### 22.2.3 Disposal plan and integration with asset management

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

Department must put in place a plan / SOP to detail the process of disposal which must be attached as an Annexure to this AOS

- a) Disposals should only commence after plans for replacements have been initiated. The disposal will be finalised after approval of funding for the acquisition of new, replacement assets have been identified on the acquisition plan. The effective planning of disposals is critical to the management of the department's assets and should be supported by competent and professional advice and the use of accurate and relevant information.

<sup>465</sup> For pharmaceutical substances, see Western Cape Health Care Waste Management Act, 2007 (Act 7 of 2007) and the Regulations of 2013 thereto.

<sup>466</sup> The AO or their delegate, when disposing of firearms, obtain approval from the National Conventional Arms Control Committee for any sale or donation of firearms to any person or institution within or outside of South Africa. See NTR 16A7.6

- b) The planning of asset disposal requires an analysis of the current stock of assets held by the department and mapping those assets to the department's needs. Any assets that are not suitable or necessary to fulfilling the mandate of the department will have to be disposed of. These are then included in the department's asset disposal plan.
- c) The disposal plan that results from the asset disposal process is part of the Asset Management Strategy and Framework and is aligned with other complementary processes such as the acquisition planning process and the operations and maintenance planning process. In particular, disposal planning and acquisition planning need to be very closely aligned and cover the same time period. Integration and coordination are essential. The disposal of one asset may require the acquisition of another asset to replace it or the acquisition of an alternate means of service delivery.

#### 22.2.4 Segregation of duties

- (a) There must be appropriate segregation of duties for disposal and scrapping for persons responsible for:
  - (i) the identification of goods to be disposed or scrapped;
  - (ii) assessing and approving the disposal and scrapping;
  - (iii) the receipt of the proceeds; and
  - (iv) the access to the accounting records.

#### 22.2.5 Disposal records

- (a) Both manual and computerised records for disposals must include at least the following:
  - (i) disposal date;
  - (ii) disposal number;
  - (iii) disposal method (sale, transfer etc);
  - (iv) inventory operation (name of warehouse, storeroom, stockroom or other);
  - (v) item code (must be unique for each category of items);
  - (vi) item description (will be linked to the item code);
  - (vii) item location (shelf, bin, etc);
  - (viii) quantity disposed;
  - (ix) value disposed;
  - (x) disposal cost (cost of arranging the disposal, where applicable);
  - (xi) disposal revenues;
  - (xii) disposal profit / loss where applicable;

- (xiii) disposal reason code (obsolete, expired, slow moving, transfer);
- (xiv) note any comments regarding the disposal where applicable;
- (xv) authorisation number and dated signature or electronic authorisation of disposal officer; and
- (xvi) authorisation number and dated signature or electronic authorisation of supervising higher authority.

#### 22.2.6 Reporting

- (a) The Disposal Report must be available listing all disposals reported and authorised. The report must contain the following information per disposed item:
  - (i) item code;
  - (ii) item description;
  - (iii) quantity;
  - (iv) reason for disposal;
  - (v) method of disposal;
  - (vi) submission date;
  - (vii) approval date;
  - (viii) authorisation number;
  - (ix) authorised signature name; and
  - (x) average price or value.
- (b) Both a monthly and an annual report listing all disposals for the current financial year should be available. The report must include the following for each item or category of items disposed of:
  - (i) item code;
  - (ii) item description;
  - (iii) quantity;
  - (iv) reason for disposal;
  - (v) method of disposal;
  - (vi) submission date;
  - (vii) approval date;
  - (viii) authorisation number;
  - (ix) authorised signature name;
  - (x) average price or value;

- (xi) total disposals for financial year; and
- (xii) revenue on disposal of inventory / scrap items.

### 22.3 DISPOSAL OPTIONS

22.3.1 If disposal of any asset is approved, one of the following disposal options must be followed. Disposal of items must always be at market-related value or by way of price quotations, competitive bids, or auction, whichever is most advantageous to the department.<sup>467</sup> Any other means of disposal must be considered as secondary to those means that allow for the necessary value or price to be realised, and are only to be used in the event that the first options fail.

- (a) Transfer to another department at market related value. Market related value is the Rand value received from a third party, were it to be made available for sale on the open market.<sup>468</sup>
- (b) Transfer to another department free of charge. Should this method be chosen, the reasons for disposing of the item free of charge must be recorded and motivated by the DC and specifically approved by the AO or their delegate. The best interests of the State should be the deciding factor determining free transfer.<sup>469</sup>
- (c) Destruction of inventory: Destruction of inventory is undertaken when it is considered uneconomical to proceed with disposal by any other means.<sup>470</sup> Destruction may only be resorted to if an item cannot feasibly be recycled. Destruction may be appropriate for items which no longer have a sale value. Anything that can be cost effectively removed and used as spare parts by the department should be removed from items to be destroyed. The SCM Unit is responsible for the destroying of scrapped moveable assets. Destruction can be by incineration, burying, dumping in an allocated dumpsite, or any other means that has been proven to not adversely affect the environment and is not contrary to any law, bylaw or regulation.<sup>471</sup> Moveable assets identified as hazardous should be disposed of in such a manner as to satisfy the requirements of the relevant acts, regulations and municipal by-laws. Factors to be considered when deciding whether to offer the goods for destruction include whether-
  - (i) the items are no longer fit for use;
  - (ii) the items are valued at less than the cost of disposing of it through bids or price quotations or auctioning;
  - (iii) neither the department nor any other department can use the item in its current form;
  - (iv) the department was unsuccessful in selling the items via price quotation or competitive bidding or auctioning;
  - (v) it is reasonable to believe the items will not attract bids;

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<sup>467</sup> NTR 16A7.1

<sup>468</sup> NTR 16A.7.1 read with WC PTI 2019, s. 10.1.2(c)

<sup>469</sup> NTR 16A.7.2 read with WC PTI 2019, s. 10.1.2(c)

<sup>470</sup> WC PTI 2019, s. 10.1.2(h)

<sup>471</sup> In particular, see the National Environmental Management Act, 1998 (Act 107 of 1998) and the National Environmental Management: Waste Act, 2008 (Act 59 of 2008) and the Regulations thereto.



- (d) Trade-in: If appropriate, inventory items may be traded in on purchase of new inventory items.<sup>472</sup> In such cases, the highest possible trade-in price is to be negotiated with the preferred supplier by the SCM Unit. Details of the trade-in should also be noted on the purchase requisition, which must be prepared for the new item to be purchased. 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 inventory system.
- (e) Recycling: If feasible, the disposed of items might be recycled and converted into new or different products. The department has a duty to examine recycling prior to initiating any destructive process.
- (f) Salvage: Some items identified for disposal may have reusable components. The department may arrange for removal of this prior to the application of another method of disposal. Alternatively, some items may no longer be functional and may be held for spare parts. In these cases, such assets must be correctly accounted for in the departmental asset register until being utilised.
- (g) Sale: Items are sold to other departments<sup>473</sup> or to external vendors<sup>474</sup> or to employees<sup>475</sup> in an attempt to recoup some or all of the cost or value of the material. When a sale is considered, the following principles where applicable, apply:
- (i) the SCM unit manages the sale of the inventory and issues the tender;
  - (ii) the selling of items must at all times be done in a fair and competitive manner;
  - (iii) items can be sold as a lot or individually;
  - (iv) in all cases, lot numbers must be allocated to each lot/item and a date and time must be stipulated on the notice of selling for when potential buyers can view the items;
  - (v) notice of the selling of items must be given at least 14 days prior to the actual selling date and all possible buyers must be informed); and
  - (vi) the notice of selling must contain the following information:
    - closing time and date for bids;
    - date, time, and place when and where the items can be viewed by potential buyers;
    - the conditions of sale; and
    - any other important information to protect the state against claims derived from the selling of state property.

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<sup>472</sup> WC PTI 2019, s. 10.1.2(g)

<sup>473</sup> WC PTI 2019, s. 10.1.2(d)

<sup>474</sup> WC PTI 2019, s. 10.1.2(b)

<sup>475</sup> WC PTI 2019, s. 10.1.2(f)

- (vii) sale by price quotation/competitive bid: Under this method advertisement are either placed in at least two local newspapers or the department may use the ePS as it would for an acquisition. Factors to be considered when deciding whether to offer the goods for quotations or competitive bids include:<sup>476</sup>
- (aa) the value of the item to be disposed of;
  - (bb) the age of the item;
  - (cc) the general attractiveness to the wider group of buyers; and
  - (dd) the prospect of increasing the net sale value compared to an alternate method of sale.
- (viii) Selling by auction: Sale by auction is an option when a contract for auctioneering services exists, and it is cost effective to use those services, both in terms of the auction process and the auction price.<sup>477</sup> The choice of whether to exercise the option to sell by auction should be made after considering the following:
- (aa) are the items valued at less than the cost of the disposing of them through bids;
  - (bb) has there previously been an unsuccessful price quotation or competitive bid process for the item;
  - (cc) will the item attract bids;
  - (dd) is the auction venue secure; and
  - (ee) if the public is aware of the auction and the lower prices for the items that it may attract, will it damage other disposal processes.
- (ix) Selling as scrap: In cases where inventory has no use or sales value in its original form but the material it is made of is of value, e.g. wood, metal, etc. such material should be offered for sale in accordance with the expected revenue to be made from the material. The sale of scrap must always be cost effective. Anything that can be cost effectively removed and used as spare parts by the department should be removed from items to be sold as scrap. If selling the items as scrap the correct SCOA item code should be used.

## 22.4 REVENUE FROM DISPOSAL OF STATE ASSETS

- 22.4.1 The AO or their delegate must ensure that the financial treatment and disclosure of assets disposed of is done in accordance with Part 14 of the PTI 2012.
- 22.4.2 When assets are sold as scrap the correct SCOA codes needs to be applied to ensure that the value of assets disposed of as scrap can be accurately accounted for in the Annual Financial Statement.<sup>478</sup>
- 22.4.3 All monies received from the sale of moveable assets must be paid into the Provincial Revenue Fund.<sup>479</sup>

<sup>476</sup> NTR 16A7.1

<sup>477</sup> NTR 16A7.1 read with WC PTI 2019, s. 10.1.2(a)

<sup>478</sup> NT "Accounting Manual for Departments: Inventories", 2015, pg. 6. See also NT "Accounting Manual for Departments: The Standard Chart of Accounts and Systems", November 2016.

<sup>479</sup> PFMA s. 22(1)

**VOLUME 8:**

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

## CHAPTER 23: COMPLIANCE MONITORING

### 23.1 INTRODUCTION

- 23.1.1 All actions described in the AOS must be carried out in accordance with the rules. Compliance monitoring is a fundamental part of SCM, as it helps ensure adherence to regulatory requirements and the attainment of good corporate governance.<sup>480</sup>
- 23.1.2 It is the duty of the AO or their delegate to see to it that internal procedures and internal control measures are in place to ensure compliance with financial and supply chain management prescripts.<sup>481</sup>

### 23.2 DEPARTMENTAL ARRANGEMENTS TO MEET COMPLIANCE REQUIREMENTS

The AO or their delegate must ensure that the department has the capacity to detect and prevent non-compliance.<sup>482</sup>

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department needs to indicate its own requirements in this section that specifically speaks to:

1. Who will be responsible for SCM / asset management compliance monitoring?
2. How it will be managed?
3. How will SCM abuse be managed? Will it be managed centrally or from a decentralised perspective? Clearly indicate how.
4. Process flow in accordance with WC PTI 2019 s. 6.4.2 (a) – (e)
5. Enforcement and reporting requirements
6. Assessment tools to be used
7. Training and capacity development

### 23.3 COMPLIANCE MANAGEMENT

- 23.3.1 Compliance monitoring is a combination of processes and monitoring tools implemented by management to inform, direct, manage and monitor SCM activities to ensure non-compliance to laws and regulations are detected and corrective action implemented and includes the following:
- (a) Adherence to this Accounting Officer's System for SCM.
  - (b) Transaction checklists as prescribed by Provincial Treasury (from the initiation of a request right through to payment authorisation)<sup>483</sup> to ensure that the required controls, checks, and balances are in place and monitored before the department commits itself to the issuing of orders and payment of invoices.<sup>484</sup>

<sup>480</sup> NTR 16A.9.1 read with WC PTI 2019, s. 6

<sup>481</sup> WC PTI 2019, s. 6.1.1

<sup>482</sup> WC PTI 2019, 6.4.1

<sup>483</sup> WC PTI 2019, s. 6.2.1

<sup>484</sup> WC PTI 2019, s. 6.2.4

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

1. Department to list and attach its checklists, templates and SOP's to this AOS.
2. The pro-forma transaction checklist for orders and payments was issued via PT Circular 28 of 2019 (Supplementary 1 of 2019).

- (c) Use of templates to support these transaction checklists and ensure that the minimum procurement requirements set by legislation and National and Provincial Treasury for the various procurement methods are met.<sup>485</sup>

These include templates for the following methods:

- (i) petty cash;
  - (ii) procurement between R2001- R10 000;
  - (iii) procurement between R10 001 – R1 million;
  - (iv) emergency procurement;
  - (v) limited bidding; and
  - (vi) unsolicited Bids
- (d) Frameworks, templates or checklists that assist in the identification, actions to be taken and reporting requirements for:
- (i) fruitless and wasteful expenditure;
  - (ii) unauthorized expenditure; and
  - (iii) irregular expenditure.

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<sup>485</sup> WC PTI 2019, s. 6.2.3 read with PT Circular 28 of 2019 (Supplementary 1 of 2019)

## CHAPTER 24: MONITORING SCM ABUSE

### 24.1 INTRODUCTION

24.1.1 Abuse of the SCM system represents a significant potential risk to the department's assets, service delivery efficiency, and reputation. Regrettably, as the procurement-to-disposal process involves both items and financial resources, the incentive for corruption or theft is ever-present. The department will not tolerate any abuse that may result in corrupt or fraudulent activities, whether internal or external. Instances of fraud or corruption will be reported for investigation and if applicable, will be reported to the law enforcement authorities.<sup>486</sup>

### 24.2 INTERNAL AND EXTERNAL ABUSE OF SCM SYSTEM

24.2.1 Although Provincial Treasury is the custodian of general SCM policy, it is the department's responsibility to ensure that its own SCM system is not abused by either employees or service providers.

24.2.2 In the event that the preferential procurement point system is abused, the department will follow the remedies available in terms of the PPPFA and also the South African Law of Contract (i.e. common law).

### 24.3 MONITORING SCM SYSTEM ABUSE

24.3.1 Monitoring SCM system abuse requires the department to:

- (a) follow a complaints management system;
- (b) assess the suppliers CSD profile to verify its listing on the List of Restricted Suppliers and the Register for Tender Defaulters or verify the List of Restricted Suppliers<sup>487</sup> and the Register for Tender Defaulters,<sup>488</sup> as maintained on National Treasury's website.<sup>489</sup>
- (c) confirm the tax-compliant status of bidders.<sup>490</sup>
- (d) assess the suppliers CSD profile to verify that none of the directors, owners, members or partners are employed by an organ of state unless the employee is a director (in an official capacity) of a company listed in schedules 2 and 3 of the Public Finance Management Act.
- (e) share information of non-compliance in respect of SCM with both internal and external role-players;
- (f) detect and prevent fraud and corruption;<sup>491</sup> and
- (g) detect abuse of PPR 2017 and B-BBEE requirements, including fronting.<sup>492</sup>

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<sup>486</sup> NTR 16A9.1(b)(i) and (ii)

<sup>487</sup> NTR 16A9.1(c). See also NT Supply Chain Management 'Checking the Prohibition Status of Recommended Bidders Prior to Awarding any Contract', Ref: 3/4/3/2/10, dated 19 February 2008, s. 2.1. The register containing the details of restricted suppliers is available on the National Treasury website.

<sup>488</sup> PCCA ss. 12 and 13. See also NT Supply Chain Management 'Checking the Prohibition Status of Recommended Bidders Prior to Awarding any Contract', Ref: 3/4/3/2/10, dated 19 February 2008, s. 2.2. The register containing the details of tender defaulters is available on the National Treasury website.

<sup>489</sup> NTR 16A9.1(c)

<sup>490</sup> NTR 16A9.1(d)

<sup>491</sup> NTR 16A9.1(e) and (f)

<sup>492</sup> PPR 2017, r. 14

## **24.4 COMPLAINTS MANAGEMENT**

- 24.4.1 The SCM Unit must allow persons aggrieved by procedural actions taken by the department during implementation of the SCM system, to lodge, within 14 days of the actions, a written objection or complaint to the department against the action.<sup>493</sup> The complaint must be resolved within 60 days and the decision communicated to the aggrieved party in writing.<sup>494</sup> If there is no resolution to the complaint, or no reply to the complaint, it may be further referred to the Provincial Treasury.<sup>495</sup>
- 24.4.2 Fair, equitable and non-discriminatory complaints handling procedures, well understood by both parties, are essential to the effective handling of complaints as well as in establishing and maintaining good relationships with bidders, which would, in turn, reduce the likelihood of complaints.
- 24.4.3 The AO or their delegate may appoint an independent and impartial person to deal with the objection or complaint received, as discussed in section 24.11 below.<sup>496</sup>

## **24.5 COMPLAINTS PREVENTION**

- 24.5.1 Well-planned and well-conducted procurement is less likely to attract complaints. Departmental actions in undertaking procurement processes should be planned to be robust and defensible. Even if the actions are sound, many complaints still arise due to poor communication between the department and its bidders.
- 24.5.2 The following strategies may assist to minimise or avoid supplier complaints:
- (a) proper planning of the procurement process;
  - (b) treating bidders ethically and impartially;
  - (c) encouraging competition;
  - (d) effective communication with bidders; and
  - (e) providing feedback to bidders.

Each of the above is detailed below.

### **24.5.3 Proper planning of the procurement process**

- (a) Careful planning and well-developed specifications and bid documentation can mitigate complaints. The department will benefit by undertaking market research and using this knowledge to construct appropriate specifications. This includes both understanding the market's capability to meet the technical specifications of the procurement and the effort that will be required to prepare a submission.
- (b) Bid documentation should clearly describe to the market what the department needs, as well as the procurement process that will be followed. A comprehensive, clear and concise, and unambiguous bid document is worth the effort of its creation. Any minimum content and format requirements, conditions for participation, specifications and evaluation criteria need to be carefully developed to avoid

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<sup>493</sup> WC PTI 2019, s. 3.9.1

<sup>494</sup> WC PTI 2019, s. 3.9.3

<sup>495</sup> WC PTI 2019, s. 3.9.3 (a) and (b)

<sup>496</sup> WC PTI 2019, s. 3.9.2

arbitrary discrimination against any bidder and should be clearly identified and justifiable.

- (c) Departments are bound by the process that they outline within their bid documentation. Deviation from this process may give rise to complaints and may result in litigation. It is important that the processes outlined in the evaluation plan are consistent with the bid documentation and that they are followed.
- (d) Departments should also plan the procurement process to provide sufficient time for bidders to prepare and lodge a response.<sup>497</sup>

#### 24.5.4 **Treating bidders ethically and impartially**

- (a) A conflict of interest may be a basis for complaints by bidders.<sup>498</sup> The department should ensure that they appropriately manage a potential conflict of interest and not allow employees with a conflict of interest to be involved in a procurement process. The department should ensure that a declaration of interest form is completed where required.
- (b) The department must take care to avoid practices which may lead to a bidder gaining an unfair advantage over other bidders. Clearly explained procedures for the receipt and opening of all submissions which guarantee fairness, impartiality and confidentiality can assist in avoiding complaints.
- (c) In terms of paragraph 13 (c) an employee shall not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act.

#### 24.5.5 **Encouraging competition**

- (a) All bidders should have the same opportunity to compete for government business. As with the other requirements, this demands that the department treat all bidders fairly, equitably, reasonably, and consistently throughout the process.<sup>499</sup>

#### 24.5.6 **Communicating effectively with bidders**

- (a) Many complaints arise due to poor communication between bidders and a department. Good communication helps to ensure that problems do not arise.
- (b) The department needs to respond promptly to requests from bidders to provide information which enables them to prepare responsive bid submissions. However, it is important that the department does not supply information that is confidential in terms of PAIA or POPIA, security-sensitive or may impede competition amongst the bidders.
- (c) When providing access to information during the submission period it is important to ensure that no supplier receives an unfair advantage. Where bidders ask for clarification of issues relating to the evaluation criteria, specifications or other elements of the bid documentation, the department should, unless there are

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<sup>497</sup> *Menzies Aviation South Africa (Pty) Ltd v South African Airways (Pty) Ltd and Others* [2009] ZAGPJHC 65

<sup>498</sup> PAJA s. 6(2)(a)(iii)

<sup>499</sup> *Sanyathi Civil Engineering & Construction and Another v eThekweni Municipality and Others; Group Five Construction (Pty) Ltd v eThekweni Municipality and Others* [2011] ZAKZPHC 45; [2012] 1 All SA 200 (KZP)



exceptional circumstances, make all responses available to all bidders at the same time and in the same form.<sup>500</sup>

- (d) Close attention to managing communication with bidders during the procurement process and any negotiations may assist in avoiding the circulation of unsubstantiated rumours about a bidding process.
- (e) It is good practice for the department to examine its procedures and systems at the end of each procurement process to ensure it was fair and equitable to all bidders and to see whether anything can be improved.
- (f) Finally, effective contract management and regular performance feedback to suppliers will help build and maintain a good working relationship within the department and with regular bidders.

#### 24.5.7 Providing feedback to bidders

- (a) The department may build good working relationships with both successful and unsuccessful bidders through feedback and debriefings.<sup>501</sup> Debriefing contributes to transparency and confidence in the fairness of the procurement process and will often alleviate bidders' concerns that may otherwise have been raised with the department as a complaint. The form of the feedback is nearly as important as the content: prompt, courteous and efficient feedback creates the right conditions for co-operation.
- (b) Feedback can facilitate better performance on future occasions by unsuccessful bidders, to the advantage of both the department and the bidders. Bidders can benefit from receiving feedback by having the opportunity to:
  - (i) understand how and why decisions were made in relation to their submission;
  - (ii) understand what they did well and what was lacking, as well as any areas of their submission that did not comply with the approach to the market;
  - (iii) understand better the department's expectations, thereby assisting them to prepare and submit a higher standard of bid in future procurement processes; and
  - (iv) establish or consolidate a fair, open and ethical relationship with the department in order to gain confidence in the procurement process.
- (c) Similarly, the department may benefit from providing feedback to bidders by having the opportunity to:
  - (i) be accountable and transparent in showing that their procurement process is robust and defensible;
  - (ii) establish or consolidate a fair, open and ethical relationship with bidders;
  - (iii) receive valuable information from bidders regarding the structure and content of the bid documentation, so that future bids may be better organised;

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<sup>500</sup> *Menzies Aviation South Africa (Pty) Ltd v South African Airways (Pty) Ltd and Others* [2009] ZAGPJHC 65

<sup>501</sup> NT "Supply Chain Management: A Guide for Accounting Officers / Authorities", February 2004, ss. 2.5.3 and 5.16.5

- (iv) encourage confidence in the procurement process, thereby keeping bidders in competition and improving value for money prospects;
- (v) educate bidders as to their expectations, thereby encouraging improved bid submissions for future procurement processes; and
- (vi) clear up any misconceptions and resolve any possible disputes with bidders, thereby minimising any possible complaints.

#### 24.5.8 When should the department provide feedback?

- (a) The department should provide feedback for all procurement processes. In any event, a bidder may request reasons for a decision in terms of PAJA,<sup>502</sup> and access to records in terms of PAIA.<sup>503</sup>
- (b) In sequence, the department should:
  - (i) promptly advise successful bidders by registered or certified mail of the acceptance of their bids;
  - (ii) publish all awards on the e-Tender Publication Portal<sup>504</sup> and in the *Government Tender Bulletin*.<sup>505</sup>
  - (iii) provide reasons when any bidder requests in writing to be provided with reasons why their own bid was unsuccessful; and
  - (iv) send a letter to unsuccessful bidders informing them that their bid was unsuccessful.
- (c) It is generally more effective for suppliers to receive feedback soon after the award has been made, and also easier for the employees in the department to recall a bidder's submission and be able to discuss its strengths, weaknesses and why it was unsuccessful.
- (d) Where feasible, the department may decide to offer to provide feedback to unsuccessful bidders (after finalisation of the process) when their submission was disqualified from a procurement process prior to the award. This could be particularly useful where all submissions received were of a low standard. The feedback could assist bidders for future work and allow the department to understand the reasons for the poor response.

#### 24.5.9 Preparing a feedback session

- (a) Where the department has arranged to meet with the unsuccessful bidder to conduct a debriefing session, it is good practice for the session to be planned. Two employees of the department should be present. Formal minutes should be taken of what is discussed in the meeting.
- (b) Debriefings can be tailored according to the nature, size, and complexity of the procurement and feedback.

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<sup>502</sup> PAJA s. 5(1)

<sup>503</sup> *Tetra Mobile Radio (Pty) Ltd v MEC department of Works and Others* [2007] ZASCA 128; 2008 (1) SA 438 (SCA) and *Transnet and Another v SA Metal Machinery Company (Pty) Ltd* [2005] ZASCA 113; 2006 (6) SA 285 (SCA)

<sup>504</sup> NT Instruction 1 of 2015/2016, s. 4.1.

<sup>505</sup> NTR 16A6.3 (c) and (d); NT Instruction 1 of 2015/2016, s. 6.1.

## 24.6 COMPLAINTS HANDLING PROCEDURES

24.6.1 In the event that a complaint is received, the department should aim to manage the process internally, attempting to reconcile with the complainant. A fair, equitable, and non-discriminatory complaint handling procedure is one that:

- (a) establishes a systematic process that is understood by the parties involved;
- (b) involves senior management, independent of the process that led to the complaint;
- (c) is conducted with a written record;
- (d) gives each party sufficient time to respond to developments;
- (e) if a matter has been referred to an independent and impartial person for review, that person will require the necessary documents; and
- (f) does not prejudice a bidder's participation in future procurement processes.

24.6.2 The AO or their delegate must ensure that the department has a communication strategy that effectively communicates the department's complaints handling procedures to all bidders.

24.6.3 Employees should receive appropriate training to ensure they understand and comply with complaint handling procedures.

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department needs to indicate its own requirements covering

1. Who will be responsible for managing complaints/ objections?
2. How it will be managed?
3. Procedures/ process flow for managing complaints

## 24.6.4 **Accessibility**

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

#### 24.6.5 Management of Information

##### (a) Complaints Register

- (i) The SCM Unit must establish and maintain a complaint register that effectively captures all information and evidence concerning complaints received by the department.
- (ii) The complaints register must include the following information:
  - (aa) reference number;
  - (bb) date received;
  - (cc) name of aggrieved party;
  - (dd) description of complaint;
  - (ee) type of complaint (formal or informal);
  - (ff) responsible employee;
  - (gg) due date;
  - (hh) outcome of the complaint; and
- (ii) date of response

#### 24.6.6 Recording of complaints

- (a) The complaint and action taken in response to the complaint should be recorded in the complaints register.

### 24.7 RESPONDING TO COMPLAINTS

- 24.7.1 The department has a legal obligation to deal with every complaint in a lawful, reasonable, and procedurally fair manner.<sup>506</sup> The complaint must be resolved within 60 days and the decision communicated to the aggrieved party in writing.<sup>507</sup> If there is no resolution to the complaint, or no reply to the complaint, within 60 days it may be further referred to the Provincial Treasury.<sup>508</sup> If there is no resolution or reply after referral to the Provincial Treasury, judicial review in court may follow.<sup>509</sup>

### 24.8 FUNCTUS OFFICIO

- 24.8.1 More often than not, complaints are raised after a decision has been taken by the AO or their delegate. When the decision is taken by the required authority and communicated to the public, the decision-maker is said to be *functus officio*, meaning that the decision-maker cannot return to and revise their decision, once taken.<sup>510</sup> Only a court may reverse their decision.

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<sup>506</sup> Constitution s. 33(1) read with PAJA s. 3(1)

<sup>507</sup> WC PTI 2019, s. 3.9.1

<sup>508</sup> WC PTI 2019, s. 3.9.3

<sup>509</sup> PAJA ss. 7(1)(b) and (2)

<sup>510</sup> *Functus officio* means "having performed his office" and is used to describe an office-bearer whose duties and functions have been completed.

24.8.2 The doctrine of *functus officio* applies only to a final decision. For a decision to qualify as final, it must have been published in the public domain.<sup>511</sup>

24.8.3 Therefore, the final decision of an AO or their delegate will stand, unless revoked by a court. Complaints against final awards do not permit the AO or their delegate to issue a new award.

## **24.9 APPLYING PAJA TO THE SCM SYSTEM**

24.9.1 Throughout this AOS, reference has been made to the impact of PAJA on SCM. This section will draw together all parts of PAJA and will, therefore, repeat some of the text that has gone before.

24.9.2 Complainants may only seek relief in terms of PAJA when the alleged action taken qualifies as administrative action. To establish that, such action must:<sup>512</sup>

(a) be a decision, or a failure to take a decision;

(b) be taken by an administrator exercising public power or performing a public function in terms of an empowering provision (i.e. legislation or regulation);

(c) have an effect on the rights of any person; and

(d) have a direct, external legal effect (meaning that it is final).

24.9.3 If the decision made by the department satisfies the above-mentioned requirements and the administrative action is lawful, reasonable, and procedurally fair, the allegation of unfair administrative action against the department should be groundless. However, should the converse be true, the department will be vulnerable in litigation. Regardless, the matter must be referred to the Directorate: Legal Services in the department of the Premier.

24.9.4 After an administrative decision has been taken, adequate notice must be given by the department to the complainant of their right to request written reasons for the administrative action within 90 days of the date that the party became aware of the action. <sup>513</sup> The administrator must, within 90 days after receiving the request, give adequate written reasons for the administrative action to the requester.<sup>514</sup>

24.9.5 When the department informs such complainant of their right to request reasons, the departments must indicate to such complainants the following:

(a) where the request can be made;

(b) to whom it must be made;

(c) when it must be made; and

(d) that the request must be made within 90 days.

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<sup>511</sup> *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1999] ZACC 11; 2000 (1) SA 1 (CC)

<sup>512</sup> PAJA s. 1 "administrative action"

<sup>513</sup> PAJA s. 5.1

<sup>514</sup> PAJA s. 5.2

- 24.9.6 If a department is required to give reasons to aggrieved bidders the following applies:
- (a) There are no standardized reasons to be provided hence a template would not be efficient;
  - (b) the department must provide a satisfactory explanation of the reasons substantiating the taking of a specific decision;
  - (c) the reasons need not convince the complainant that the decision was correct. instead, the reasons must have enough detail to explain why the decision (administrative action) was taken; and
  - (d) the reasons should include reference to the SCM process that had been followed in accordance with rules governing the SCM system and public procurement.
- 24.9.7 Should the department fail to submit adequate reasons for an administrative action, it must, subject to section (4) of PAJA and in the absence of contrary proof, be presumed that the administrative action was taken without good reason.<sup>515</sup>

## **24.10 COMPLAINTS REFERRED TO PROVINCIAL TREASURY**

- 24.10.1 A complaint may be referred to Provincial Treasury if the complaint is not resolved within 60 days of the department's receipt thereof.<sup>516</sup>
- 24.10.2 However, sometimes a complaint will be lodged directly with Provincial Treasury without first having been referred to the department. In this case, Provincial Treasury send a copy of the complaint to the department and request the department's written response along the ordinary timelines established by PAJA.

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

- 24.11.1 If the complaint is not resolved to the complainant's satisfaction, the complainant may subsequently lodge a request for further investigation of the matter by an independent and impartial person.<sup>517</sup>
- 24.11.2 To ensure bidders have confidence in the integrity of the complaint handling process, the investigator appointed by the AO should:
- a) not have been involved with the SCM processes of the department;
  - b) be independent of direction from anyone who was involved in the process; and
  - c) possess SCM experience at an organisational level, where they can communicate credibly and frankly to those stakeholders and affected parties within the process.
- 24.11.3 In order for the process to remain transparent and for the bidder to have confidence that their complaint is being handled effectively, the department must provide the investigator with all the necessary information and details to promptly contact the bidder in writing once they have been appointed. This also provides the opportunity for the investigator to ask the bidder to provide further information regarding their complaint and to answer any questions the investigator may have.

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<sup>515</sup> PAJA s. 5(3)

<sup>516</sup> WC PTI 2019, s. 3.9.3

<sup>517</sup> WC PTI 2019, s. 3.9.2

- 24.11.4 To ensure that the review is conducted fairly and comprehensively, the investigator should have access to all files and records relating to the bidding process and to any reports or communications by employees involved in the process, including written records of all communication related to the complaint.
- 24.11.5 If the investigator is not satisfied with the existing written records relating to the tender process in question, they may wish to interview those employees involved in the tender process to obtain the information they require.
- 24.11.6 To ensure the requirements above are met, the nominated investigator should sign a declaration of interest and confidentiality.
- 24.11.7 Approval for the appointment of an independent and impartial person must be obtained by the AO or their delegate.

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

Should the department envisage the need to appoint such a person, a defined process must be implemented.

**24.12 APPLICATION OF PAIA TO SCM**

- 24.12.1 Transparent governance is more likely to gain the confidence of its citizens. Transparency requires a considerable amount of information sharing. This is the work of PAIA. PAIA allows a requester (who may be an individual or an organisation) access to information held by the state,<sup>518</sup> provided that the requester both complies with all the procedural requirements for accessing the information,<sup>519</sup> and that access is not refused in terms of a valid ground for refusal.<sup>520</sup>
- 24.12.2 The department annually maintain the PAIA manual detailing the structure of the department, the nature of the records held by it, and the process by which a member of the public gains access to those records.<sup>521</sup> This manual must be updated annually.<sup>522</sup> When a request for information is received, the department must comply with the procedural requirements of both PAIA and its manual.

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

The department must attach its PAIA manual to this AOS.

For ease of reference, the PAIA manuals of all departments may be found on the WCG website at the address: <http://www.westerncape.gov.za/eng/pubs/guides/>

- 24.12.3 The general principles guiding record keeping are that:
- (a) proper record keeping ensures that all reasoning guiding the SCM procurement process is at the disposal of the department when a bidder requests it;

<sup>518</sup> PAIA s. 9(a)(i)

<sup>519</sup> PAIA s. 11(1)(a)

<sup>520</sup> PAIA s. 11(1)(b)

<sup>521</sup> PAIA s. 14(1)(a) – (i)

<sup>522</sup> PAIA s. 14(2)

- (b) proper record keeping extends to keeping minutes of all crucial meetings, clearly documenting all decisions taken and the reasons supporting those decisions. these meetings include bid specification, bid evaluation and bid adjudication; and
- (c) all records handed in during meetings as well as any consultations with external parties must be kept on file by the department.

24.12.4 No record under control of the department may be transferred to a library or archive, destroyed, erased, or otherwise disposed of without the written authorisation of the Head of the Provincial Archives and Records Service of the Western Cape.<sup>523</sup>

### **24.13 BUSINESS INTERESTS OF EMPLOYEES**

24.13.1 Public service employees may undertake Remunerative Work Outside of the employee's employment (referred to as RWOEE) provided that such forms are duly completed and approved by the delegated official.<sup>524</sup>

24.13.2 In terms of paragraph 13 (c) of the Public Service Regulations, an employee shall not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act.<sup>525 & 526</sup>

24.13.2 An employee is regarded as 'conducting business with an organ of state' when an employee or an employee acting as a director of a private or public company- <sup>558 & 559</sup>

- a) Concludes, or intends to conclude, a written or oral agreement, irrespective of the process followed with an organ of state;
- b) Such agreement is not associated with that employee's employment with his or her department; and
- c) Through such agreement provides goods and services to any organ of state for any benefit, financial or otherwise.

24.13.3 Annexure A of the directive on conducting business with an Organ of State issued in January 2017, depicts the activities by employees not constituting 'conducting business with an organ of state' .<sup>559</sup>

24.13.4 Details of persons (i.e. family members, partners or associates) connected to or employees of an organ of state should –

- a) be disclosed in Table B of the Western Cape Bidding Document (WCBD) 4;
- b) the department to conduct a due diligence process to assess whether a conflict of interest may exist;
- c) implement an outcome that is compliant to the Public Service Regulations, 2016 and
- d) document the outcome of the assessment.

<sup>523</sup> Provincial Archives and Records Service of the Western Cape Act, 2005 (Act 3 of 2005), s. 9(2)(a)

<sup>524</sup> See variously within the Public Service Regulations, 2016, including regulations 13, 17, 18, 19, and 21, read together with Public Service Act s. 30.

<sup>525</sup> Public Service Regulations, 2016, r. 13(c) and Annexure 1, r.2

<sup>526</sup> Public Service Regulations, 2016, Annexure 1, r. 2(b)(i) and (ii)



24.13.5 Information on the business interest of any employees who are in the service of the state in suppliers doing business with the Western Cape Government will be housed on the e-procurement solution. It remains the responsibility of institutions to check for such information before the conclusion of any procurement process.<sup>527</sup>

24.13.6 Before a contract is concluded or an award is made, the department must establish:

- (a) whether or not the bidder, either individually or as a director of a company, or as a member of a close corporation is employed within the state; or
- (b) whether an employee of the state has any business interest in the selected service provider.

24.13.7 A guideline document for investigating and reporting business conflict of interests is attached hereto marked **Annexure 9**

## **24.14 PREVENTION OF FRAUD AND CORRUPTION**

24.14.1 Fraud is the unlawful and intentional making of a misrepresentation which causes actual prejudice, or which is potentially prejudicial, to another person or entity. This definition has four vital elements:

- a) Unlawfulness: means "contrary to the good morals or the legal convictions of society"
- b) Intention: the perpetrator both knew that the information was false *and* knew that someone, not necessarily the actual victim, could suffer prejudice because of it.
- c) Misrepresentation: A misrepresentation is made when one person makes a representation to another person implying that a condition or set of conditions exist that, in reality, does not exist. A misrepresentation may be made directly, by way of behaviour, by way of an omission or by misrepresenting a fact.
- d) Prejudice: Actual prejudice or potential prejudice must have been suffered, and not necessarily by the complainant.

24.14.2 Corruption occurs when anybody -

- a) Accepts any gratification (which could consist of money, a loan or other benefit) from another, or
- b) gives any gratification to another, in order to influence the receiver thereof to conduct himself/ herself in a way which amounts to the unlawful exercises of any duties.<sup>563</sup>

## **24.15 FINANCIAL MISCONDUCT<sup>528</sup>**

24.15.1 **The role of the AO**

- (a) The AO must take all reasonable steps to prevent abuse of the SCM system.<sup>529</sup>

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<sup>527</sup> WC PTI 2019, s. 5.3.7

<sup>528</sup> PFMA s. 10 and NTR r. 4

<sup>529</sup> NTR 16A9.1(a)

- (b) This includes investigating allegations against an employee of corruption, improper conduct or failure to comply with the SCM system.<sup>530</sup>
- i. a charge of financial misconduct must be investigated within 30 days of the date of discovery of the alleged misconduct,<sup>531</sup> heard, and decided.<sup>532</sup> Provincial Treasury must be informed of such steps.<sup>533</sup> On completion of the proceedings, the AO must report the outcome to the Department of Public Service and Administration and the Public Service Commission.<sup>534</sup>
  - ii. any misconduct thought to constitute a criminal offence must be reported to the South African Police Service.<sup>535</sup> If so, the AO must inform both Provincial Treasury and the AG of the report. On completion of the proceedings, the AO must report the outcome to Provincial Treasury, the Department of Public Service and Administration and the Public Service Commission.<sup>536</sup>
    - (i) on an annual basis, the AO must report the outcome of all disciplinary proceedings or criminal charges to Provincial Treasury, National Treasury, and the AG. These reports must include the name and rank of employees involved, the charges against them, the outcome of proceedings, and the actions taken.<sup>537</sup>
- (c) Moreover, the AO must reject the award of a contract if the recommended bidder has previously not performed on a contract for the department, and thereafter inform Provincial Treasury.<sup>538</sup>
- (d) The AO must also reject the award of the contract if the recommended bidder committed a corrupt or fraudulent act, or abused the SCM system, in competing for the particular contract:<sup>539</sup>
- (i) if the service provider committed any corrupt or fraudulent act, or abused the SCM system during the bidding process or the execution of that contract; or
  - (ii) if any employee committed any corrupt or fraudulent act, or abused the SCM system during the bidding process or during the execution of that contract, that benefited that service provider; and
  - (iii) Provincial Treasury must be informed of any such action.<sup>540</sup>
- (e) The AO will commit an act of financial misconduct if they intentionally or negligently fail in their assigned responsibilities<sup>541</sup> or permit unauthorised, irregular, or fruitless and wasteful expenditure.<sup>542</sup>

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<sup>530</sup> NTR 16A9.1(b)

<sup>531</sup> NTR 4.1.2

<sup>532</sup> PFMA s. 84 read with s. 85 and read with NTR 4.1.1

<sup>533</sup> NTR 16A9.1(b)(i)

<sup>534</sup> NTR 4.3.1 and .2

<sup>535</sup> NTR 16A9.1(b)(ii)

<sup>536</sup> NTR 4.3.3

<sup>537</sup> NTR 4.3.4(a) – (c)

<sup>538</sup> NTR 16A9.2(a)(iii) read with NTR 16A9.2(b)

<sup>539</sup> NTR 16A9.2 (a) (i) – (ii)

<sup>540</sup> NTR 16A9.2(b)

<sup>541</sup> PFMA s. 81(1)(a) read with ss. 38 – 42

<sup>542</sup> PFMA s. 81(1)(b)

- (f) Any person to whom the AO has assigned, and delegated powers will commit an act of financial misconduct if they intentionally or negligently fail to exercise that power.<sup>543</sup> However, the assignment and delegation does not divest the AO of responsibility for the exercise of that power.<sup>544</sup> Therefore, the monitoring of compliance is crucial to maintaining good corporate governance.

24.15.2 The table below includes the provisions in the PFMA, NTR, and PTI 2009 related to unauthorised, irregular, and fruitless wasteful expenditure:

<b>PRESCRIPT</b>	<b>PROVISION</b>
<b>PFMA S38 (1)(c)(ii)</b>	The AO must take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct.
<b>PFMA S38 (1)(g)</b>	On discovery of any unauthorised, irregular, or fruitless and wasteful expenditure, the AO must immediately report, in writing, particulars of the expenditure to the Provincial Treasury and in the case of irregular expenditure also to the tender board. In circumstances where a tender board is no longer functional, such reports must be submitted to the department's SCM Unit.
<b>PFMA S38 (1)(h)</b>	The AO must take effective and appropriate disciplinary steps against any employee who contravenes or fails to comply with this Act or commits an act which undermines financial management or departmental internal control system or makes or permits unauthorised, irregular, or fruitless and wasteful expenditure.
<b>PFMA S40(3)(b)</b>	The annual report and audited financial statements must include particulars of material losses through criminal conduct and any unauthorised, irregular and fruitless and wasteful expenditure that occurred during the financial year and also which criminal/disciplinary actions were taken as well as any material losses recovered or written off together with any other prescribed matters
<b>PFMA S45(c)</b>	Each employee must take effective and appropriate steps to prevent any unauthorised, irregular, and fruitless and wasteful expenditure and any under collection of revenue due within their area of responsibility.
<b>NTR 9.1.2</b>	The delegated authority must, on discovery, immediately report the unauthorised, irregular or fruitless and wasteful expenditure to the AO and in the monthly report. When an irregular expenditure involves procurement, it must also be brought to the notice of the tender board. In circumstances where a tender board is not functional, such reports must be submitted to the department's SCM Unit.
<b>NTR 9.1.3</b>	The AO must determine the appropriateness of disciplinary steps, taking into account the: <ul style="list-style-type: none"> <li>(a) circumstances of transgression;</li> <li>(b) extent of expenditure involved; and</li> <li>(c) nature and seriousness of transgression.</li> </ul>

<sup>543</sup> PFMA s. 81(2) read with s. 44

<sup>544</sup> PFMA s. 44(2)(d)

PRESCRIPT	PROVISION
<b>NTR 9.1.4</b>	Recovery of losses or damages is done in terms of NTR 12.
<b>NTR 9.1.5</b>	The amount of the unauthorised, irregular, or fruitless and wasteful expenditure determined must be disclosed as a note in the annual financial statements.
<b>WC PTI 2009, Chapter 9</b>	Requires compliance with NT guidelines for the preparation of annual reports for national and provincial departments, issued annually.

### 24.15.3 Departmental requirements and arrangements

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department must indicate its own processes and procedures detailing

1. How cases of financial misconduct will be managed;
2. Process flow for managing such cases;
3. Roles and responsibilities of office bearers; and
4. Information management and audit requirements.

## 24.16 ABUSE OF THE PPR AND B-BBEE REQUIREMENTS

24.16.1 'Fronting, means conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the B-BBEEA and PPR, 2017. Instances of fronting include:<sup>545</sup>

- (a) when black persons<sup>546</sup> who are appointed to an enterprise are discouraged or inhibited from substantially participating in the core activities of that enterprise;
- (b) where the economic benefits received as a result of the B-BBEE status of an enterprise do not flow to black people in the ratio specified in the relevant legal documentation;
- (c) the conclusion of a legal relationship with a black person for the purpose of that enterprise achieving a certain level of B-BBEE compliance without granting that black person the economic benefits that would reasonably be expected to be associated with the status or position held by that black person;
- (d) the conclusion of an agreement with another enterprise in order to achieve or enhance B-BBEE status in circumstances in which:
  - (i) there are significant limitations, whether implicit or explicit, on the identity of suppliers, service providers, clients or customers;
  - (ii) the maintenance of business operations is reasonably considered to be improbable, having regard to the resources available;
  - (iii) the terms and conditions were not negotiated at arm's length and on a fair and reasonable basis.

<sup>545</sup> B-BBEEA s.1

<sup>546</sup> B-BBEEA s.1 "black people" is a generic term meaning Africans, Coloureds and Indians who are by birth, or were eligible for naturalisation prior to 1994, South African citizens.

- (e) Where a bidder claims a B-BBEE status level of contribution on a fraudulent basis as described in Section 13 O (1) of the B-BBEE Act.<sup>547</sup>

#### 24.16.2 The process of dealing with fronting

- (a) Remedies against fronting are contained in the B-BBEEA,<sup>548</sup> PPR 2017,<sup>549</sup> and PAJA.<sup>550</sup>
- (b) The department must inform the bidder of the suspected offence and request the bidder to make representations within 14 days as to why;<sup>587</sup>
  - (i) The bidder should not be disqualified or terminated if the contract was awarded;
  - (ii) If the successful bidder subcontracted a portion of the tender to another person without disclosing it, the bidder should not be penalized up to 10% of the value of the contract; and
  - (iii) The bidder should not be restricted by the National Treasury from conducting any business for a period not exceeding 10 years with any organ of state.
- (c) The department must follow the requirements for procedural fairness, including giving the person concerned:<sup>551</sup>
  - (i) adequate notice of the nature and purpose of the proposed administrative action;
  - (ii) a reasonable opportunity to make representations;
  - (iii) a clear statement of the administrative action;
  - (iv) adequate notice of any right of review or internal appeal, where applicable; and
  - (v) adequate notice of the right to request reasons.<sup>552</sup>

#### 24.16.3 Remedies for fronting

- (a) The department may:
  - (i) recover all costs, losses, or damages it has incurred or suffered as a result of that person's conduct;<sup>553</sup>
  - (ii) disqualify the tenderer from the bidding process;<sup>554</sup>
  - (iii) cancel the contract in whole or in part and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;<sup>555</sup>

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<sup>547</sup> B-BBEEA, s. 13 O (1)

<sup>548</sup> B-BBEEA, ss. 13 N, O, and P

<sup>549</sup> PPR 2017, r. 14

<sup>550</sup> PAJA, s. 8

<sup>551</sup> PAJA, s. 3

<sup>552</sup> PAJA, s. 5

<sup>553</sup> PPR 2017, r. 14(1)(c)(i)

<sup>554</sup> PPR 2017, r. 14(1)(c)(i)(aa)

<sup>555</sup> B-BBEEA s. 13 A

- (iv) if the tenderer subcontracted a portion of the tender to another without disclosing it, penalise the tenderer up to 10 percent of the value of the contract;<sup>556</sup>
  - (v) request National Treasury to restrict the bidder or contractor from obtaining business from any organ of state for a period not exceeding 10 years;<sup>557</sup> and
  - (vi) forward the matter for criminal prosecution.
- (b) The department must consult with Legal Services when any of the above remedies are sought to be applied.
- (c) The AO or their delegate must, within 5 working days, send written submissions to the National Treasury motivating why a tenderer should be considered for inclusion on the List of Restricted Suppliers.<sup>558</sup>

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<sup>556</sup> PPR 2017, r. 14(1)(c)(ii)

<sup>557</sup> PPR 2017, r. 14(2)(a)(iii)

<sup>558</sup> WC PTI, 2019 s. 11.1.2 (d)(i) read with PPR 2017, r. 14(2)

## CHAPTER 25: RISK MANAGEMENT AND INTERNAL CONTROL

### 25.1 INTRODUCTION

- 25.1.1 SCM is a systematic process. All systematic processes encounter risks to their completion and success. Risk management and control lessens the chance of failure.
- 25.1.2 In order to achieve service delivery goals effectively, efficiently and economically, managers must ensure that proper risk management and internal controls exist for the planning, procuring, managing, and disposing of goods.<sup>559</sup> It is vital that risk be managed at all stages in the cycle.

### 25.2 INSTITUTIONAL ARRANGEMENTS OR REQUIREMENTS

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department must indicate its own requirements in this section, detailing:

1. Who will be responsible for SCM / asset management internal control and risk management?
2. How it will be managed (centrally /decentralised)
3. How is the line management and SCM Unit interacting to manage operational risks and internal control?
4. Process flow
5. Enforcement and reporting requirements
6. Assessment tools to be used
7. Training and capacity development

### 25.3 INTERNAL CONTROL

- 25.3.1 A SCM internal control framework must be created<sup>560</sup> and continuously re-assessed for appropriateness, providing guidance for:<sup>561</sup>
- (a) the entire cycle of SCM;
  - (b) identified risks;
  - (c) control activities;
  - (d) preventative, directive, detective, and corrective control activities;
  - (e) responsible employees; and
  - (f) assessment by management.

<sup>559</sup> PFMA Regulations, 2005, as amended, S. 16A3.2(a) - (d) read with WC PTI 2019, s. 13.1.1

<sup>560</sup> PTC 14/2012, Supplement 2

<sup>561</sup> WC PTI 2019, ss. 13.2.2 and .3

25.3.2 The department's internal control framework<sup>562</sup> for SCM and moveable asset management was issued to departments and public entities via PT Circular 28 of 2019 (Supplementary 1 of 2019).

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

The department must attach the internal control framework and appendices as issued in terms of PT Circular 28 of 2019 (Supplementary 1 of 2019).

25.3.3 The appendices to the internal control framework addresses the transaction life cycles of the SCM and moveable asset management.

**PT GUIDANCE FOR BESPOKE REQUIREMENTS**

The department is required to adapt these appendices to address its requirements. These include:

1. Identification of department-specific risks to be included in appendices and classification thereof;
2. Completion of the first blank column on the appendices which allows for the identification of the 'delegated employee', i.e. the person (or possibly position) to whom the specific responsibility has been formally delegated;
3. Completion of the last blank column on the appendices where management must indicate the level at which they believe the control is functioning, in accordance with the maturity capability model.

## **25.4 RISK MANAGEMENT**

25.4.1 Risk management is a process used for identifying, assessing, and prioritising risks of different kinds within the SCM and asset management domain. Once the risks are identified, a risk manager will be required to create a plan to minimise or eliminate the impact of negative events.<sup>563</sup>

25.4.2 Risk management ensures that the department both identifies and understands the risks to which it is exposed. Risk management also seeks to guarantee that the department creates and implements an effective plan to prevent losses or reduce the impact if a loss occurs.

25.4.3 Throughout, risk management is held together by three central questions.

(a) what can go wrong?

(b) if something goes wrong, what will we do, both to prevent the harm from occurring and in response to the harm or loss?

(c) if harm or loss is suffered, how will we pay for it?

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<sup>562</sup> WC PTI 2019, s. 13.1.2(d)

<sup>563</sup> WC PTI 2019, s. 13.1.1



#### 25.4.4 Operational risks impacting on SCM

Operational risk is the exposure of an organisation to losses resulting from shortcomings of people, processes, and systems and from impacts by external factors.<sup>564</sup>

##### (a) People risk

- (i) People are fallible. The knowledge, experience, capability, and reliability of the purchasing and supply personnel in supply chain processes are critical risk factors.

##### (b) Process risk

- (i) Designs cannot be stress-tested to a fool proof state. Process risk is the risk of the SCM processes being insufficient to meet the demands made of it and, therefore, causing inefficiency and unexpected losses.
- (ii) Processes form part of the operations environment and, therefore, have a strong interactive relationship with people and systems. Any changes in processes affect people and systems. For example, changes in the supply chain processes may alter the way in which people perform their different activities and may also require the adaptation of the system that is used in these processes. Change increases risk.
- (iii) Similarly, the relationship works in the other direction, too. People and systems can also affect processes. For example, the introduction of e-commerce, due to peoples' desire for convenience may require that supply chain processes be changed to facilitate efficient operational performance.

##### (c) System risk

- (i) Systems risks are those resulting from system failures and are, therefore, primarily as a result of the dependency of SCM on technology. Inventory and supplier records are mostly kept in digital format on computer systems, accounting and reporting are done via electronic systems, and the bulk of orders and payments may take place electronically.
- (ii) This makes SCM vulnerable to any disruption in the efficient functioning of technological systems and to system obsolescence. New technologies often have implications of complexity and uncertainty. The newer the technology, the greater the risk that it may not perform as expected. New systems often require modifications in order for them to function smoothly. Although forming part of people risks, new skills are needed for the use of new technologies, which require effective training programmes.
- (iii) The following are examples of systems risks:
  - (aa) systems failure;
  - (bb) security breach;
  - (cc) implementation failure;

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<sup>564</sup> WC PTI 2019, ss. 13.1.2(a) and (b)

(dd) insufficient systems capacity; and

(ee) poor data integrity

(iv) Technology controls are required throughout the department to ensure that technology is protected against human error, data theft, equipment failure, fire, heat, water, smoke, corrosive fumes etc.

#### 25.4.5 External risk

(a) External events risks are external factors that could affect the department negatively, such as natural disasters, or a particular supply or supplier risk, of which the following are examples.

(i) external supplier that does not adhere to agreed delivery dates;

(ii) physical security risk at warehouses where supplies are stored;

(iii) the litigation risks connected to purchasing and supply contracts;

(iv) natural disaster risks delaying the delivery of purchased materials;

(v) labour actions; and

(vi) government regulations restricting the purchasing of materials.

(b) As the department's purchasing and supply management has no direct control over external factors, it is often difficult to manage risk proactively. Although it is difficult to quantify these factors, it is important for purchasing and supply management to try to anticipate these risks in order to reduce the factors' adverse effects.

#### 25.4.6 The risk management process

(a) The department requires the optimal trade-off between the perceived risks and the potential returns it desires. Therefore, the first step of risk management is to identify the risks.

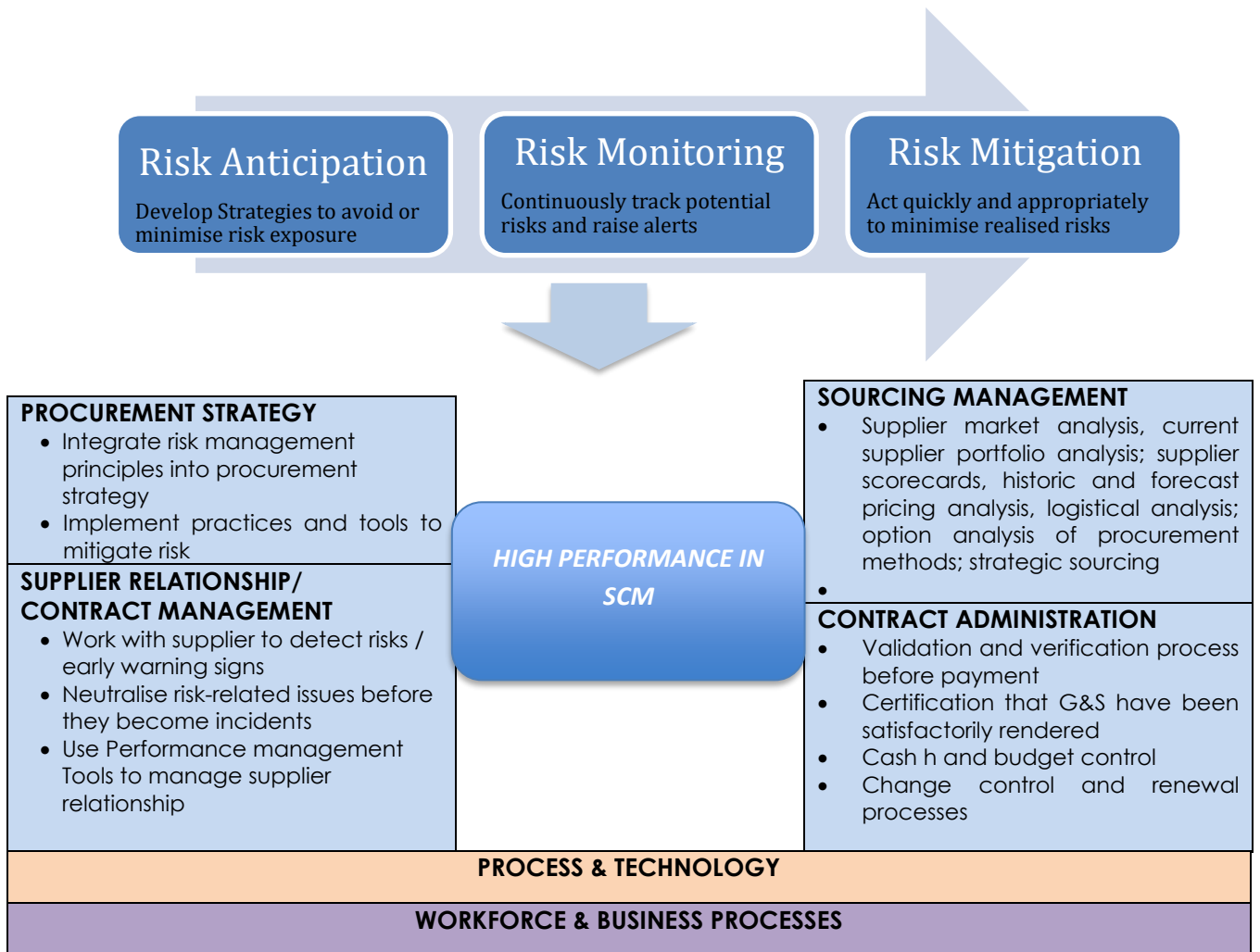
(b) The second step is to assess the likely impact of the risks on the department.

(c) The third step consists of determining a strategy to respond to or eliminate the risks. This strategy is then implemented, monitored and evaluated.

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

25.4.7 **SCM risk management model**

The following risk management model for SCM should be followed:



- (a) The risk management process shall be applied to all stages of SCM.
- (b) Appropriate risk management conditions should, therefore, be incorporated in contracts.
- (c) Where risks are perceived or anticipated, the department should retain the responsibility for the risk, a plan for how it can be minimised and how it will be managed, should it occur. The department will be aiming at business continuity in all possible circumstances, although it is unlikely to be cost-effective to plan for every possibility.

- (d) On-going, but at the very least annual, assessments are required to understand the changing nature and size of risks and any further management required as a result of the changes.<sup>565</sup>

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department may want to attach / insert its:

1. Risk management strategy for SCM and asset management;
2. Steps to conduct risk assessments (i.e. identification, quantification, minimisation and contingencies, mitigation procedures and actions);  
and
3. Risk assessment tool.

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<sup>565</sup> WC PTI 2019, s.13.1.2(c)

**VOLUME 9:**

**REPORTING OF SCM INFORMATION**

**AND**

**REGULAR ASSESSMENT OF**

**SCM PERFORMANCE**

## CHAPTER 26: SCM REPORTING

### 26.1 INTRODUCTION

26.1.1 The reporting of information on SCM assists in ensuring that individuals and organisations are answerable for their plans, actions, and outcomes. Openness and transparency in administration and external scrutiny through public reporting are essential elements of accountability. Within the supply chain management framework, a responsibility chain exists, and the links connect as follows:

- (a) The HOD is accountable to their MEC for the overall management of SCM activities;
- (b) The Head of the SCM Unit and senior SCM directors are accountable to the HOD for various high-level management and coordination activities;
- (c) Individual SCM officers are accountable to the Head of the SCM Unit, and to their clients, for the services they provide; and
- (d) all people exercising SCM functions must consider departmental requirements in this AOS and are accountable to management.

### 26.2 REPORTING FORMATS

26.2.2 The Head of the SCM Unit must, on a monthly basis submit a report to the department CFO, who will in turn submit the report to the AO or their delegate, containing information on procurement transactions for that month.<sup>566</sup> A copy of this report must also be forwarded to the Provincial Treasury.<sup>567</sup>

26.2.3 The report referred to must contain at least the following required information;

- (a) procurement transactions for each form of procurement;
- (b) compliance with the norms and standards prescribed for the various forms of procurement;
- (c) any patterns observed that could be construed as irregular in the responses received from the issuance, management, or handling of requests for quotations and bids via ePS;
- (d) any problems experienced with the inviting of quotations and bids through ePS;
- (e) information on payments outstanding after the prescribed 30-day period;
- (f) any problems experienced with the implementation of the AOS; and
- (g) any other information as prescribed by Provincial Treasury.

26.2.4 The department must include the format and process for submission of the report in its AOS.

26.2.5 Attached find a list of all the reporting requirements in terms of SCM and Moveable Asset Management (hereto attached marked **Annexure 10**).

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<sup>566</sup> WC PTI 2019, s. 6.3.1 and s. 11.1.2(a)(i)

<sup>567</sup> WC PTI 2019 s. 6.3.3 and s. 11.1.2(a)(ii)

## 26.3 PUBLIC DISCLOSURE REPORTING

- 26.3.1 All procurement transactions related to the COVID-19 expenditure as well as other goods, works and services that were procured to prevent an escalation of the national state of disaster or to alleviate, contain or minimise the effects of the Disaster must be reported to the Provincial Treasury as required by the National Treasury. This includes, inter alia, expenditure for quarantine and isolation services, humanitarian relief, amongst others.
- 26.3.2 The following key steps of the process must be highlighted (to note that this is only applicable to departments):
- (a) The PT will distribute a BAS report and a LOGIS RR102 report to departments on a weekly basis to analyse whether the correct SCOA allocations are reflected. As stipulated in paragraph 4 of National Treasury Classification Circular No. 30 issued on 07 May 2020, departments are requested to use the correct fund and project segment codes created centrally by the SCOA Technical Committee when incurring COVID-19 expenditure. Where such allocations are incorrect, departments are required to correct the allocations on LOGIS and provide weekly feedback to the PT;
  - (b) PT will pre-populate and provide a COVID-19 reporting template with LOGIS expenditure to departments monthly and departments will be required to complete the fields that have not been populated; department will be responsible to manually capture all payments made on BAS via the sundry payment functionality; amend/correct any pre-populated information. The accounting officer is required to confirm the correctness of the information submitted to the PT;
  - (c) PT will validate accuracy and completeness of the information and engage with departments on any discrepancies to be corrected/ amended before submitting to the NT. The same data set will be used to populate the PDR.

### PT GUIDANCE FOR BESPOKE REQUIREMENTS

The department must insert:

1. Its own arrangements for the reporting of SCM information;
2. Its reporting template;
3. Process flow; and
4. Roles and responsibilities

**NOTE:** This is disaster reporting and may change post Disaster recovery and must be revised according as and when required to any revised requirements issued by the National Treasury. Provincial will advise on this process from time to time via PT Circular.

## CHAPTER 27: SCM PERFORMANCE MONITORING

### 27.1 INTRODUCTION

- 27.1.1 The AO must ensure that the SCM system provides for an effective internal monitoring system in order to determine, on the basis of a retrospective analysis, whether the authorised processes are being followed and whether the desired objectives are being achieved.<sup>568</sup>
- 27.1.2 The performance monitoring and evaluation system referred to above must provide for:<sup>569</sup>
- (a) the key strategic and operational performance targets to be met in relation to the strategic and procurement planning processes referred to in Part 4 of the PTI
  - (b) a system of performance reporting which described the key reports to be produced, its contents and the frequency of distributing; and
  - (c) a process for identifying, approving and implementing improvement interventions.
- 27.1.3 The AO or their delegate must ensure that the following SCM objectives are met through the performance monitoring and evaluation system:<sup>570</sup>
- (a) the improvement of SCM as the primary objective;
  - (b) the provision of information in respect of SCM as a basis for rational decisions;
  - (c) continuous evaluation of the effectiveness of SCM;
  - (d) identification of potential efficiency gains;
  - (e) establishment of a rational basis for comparison or benchmarking with other departments;
  - (f) the analysis of past SCM performance against specific norms and standards set by Provincial Treasury; and
  - (g) the motivation and enhancement of personnel:
    - (i) through the setting of performance evaluation standards against which personnel and bid committees can be measured; and
    - (ii) which must serve as an incentive for enhancing personal and team performance.

#### PT GUIDANCE FOR BESPOKE REQUIREMENTS

Department must develop a departmental performance monitoring and evaluation system and attached it to the AOS.

<sup>568</sup> NTR 16A3.2(vi) read with WC PTI 2019, s. 12.1

<sup>569</sup> WC PTI 2019, s. 12.2

<sup>570</sup> WC PTI 2019, s. 12.3



## DEFINITIONS

In this AOS, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Public Finance Management Act, 1999 (Act 1 of 1999) and Treasury Regulations, has the same meaning, and –

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

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

“**arranging**” in relation to a transversal contract means drawing up the business case, obtaining formal approval with participating departments and Provincial Treasury to proceed with the planning, organising, logistical arrangements and bid administration requirements by the custodian department.

“**award**” means the final decision to accept a bid;

“**bid**” means a bidder's response to an institution's invitation to participate in a procurement process which may include a bid, price quotation or proposal;

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

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

“**business interest**” means –

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit, or
- (d) includes any interest contemplated in paragraph (a) to (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

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

“**conduct business**” means to conclude an agreement, not associated with an employees' employment, for the provision of goods and service to an organ of state, excluding those activities not constituting conducting business with an organ of state as directed by the Minister of Public Service and Administration;

“**contract management**” means the process of maintaining control over the implementation of a contract, thereby ensuring that the contracting parties comply with their obligations, including but not limited to their obligations to meet the required level of performance and quality, as set out in that contract;

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

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

**“delegate”** for purposes of these Instructions means a person authorised by the accounting officer or accounting authority to perform specific powers or duties as contemplated in terms of section 44 and 56 of the Act;

**“emergency”** means a situation where immediate action is necessary in order to avoid an urgent, unforeseen, and dangerous situation that, left unattended, may lead to death, injury or disease; damage to property, infrastructure or the environment; significant economic loss; or disruption of the life of a community.

**“employee”, in relation to –**

(a) a department, means a person contemplated in section 8 of the Public Service Act, 1994 but excludes a person appointed in terms of section 12A of that Act; and

(b) a public entity, means a person employed by the public entity;

**“employee in the service of the state”** means a person in the service of any organ of state;

**“end-user”** means the relevant unit requesting inventory items and to whom inventory items are issued by the warehouse/storeroom;

**“e-procurement solution (ePS)”** means a web-based system that:

(a) is utilised for the invitation of quotations, the receipt thereof and the adjudication of bids; and

(b) houses the Western Cape Supplier Evidence Bank.

**“family member” means a person’s-**

(a) spouse; or

(b) child, parent or sibling, whether such a relationship results from birth, marriage or adoption or some other legal arrangement (as the case may be);

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

**“goods or services:”** “Goods” means “the equipment, machinery and/or other material things to be supplied under a contract”. “Services” means “any services to be supplied under any contract”;

**“Inventory Issue”** means the inventory item has been expensed and removed from the inventory records of the warehouse/storeroom where after no further record of the item is kept;

**“inventory movement”** means all movement of inventory items that occur including, issue to end-user, receipt from supplier and transfers between warehouses/storerooms;

**“organ of state”** means an organ of state as defined in section 239 of the Constitution;

**“period contract”** means a contract entered into for the supply of goods or the rendering of services for a specified period of time.

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

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

**“sole source bidding”** means a form of bidding where there is no competition and only one potential supplier exist, as established through a detailed market analysis;

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

**“system”** refers to manual and or computerised systems;

**“transfer”** means the movement of inventory between warehouse/storerooms within a department e.g. from quality inspection into the bulk store; and

**“warehouse” or “storeroom”** means the physical location where inventory is kept before distribution to the end user.

## LIST OF ANNEXURES

NAME OF DOCUMENT	REFERENCE
Bid Adjudication Committee Declaration of Confidentiality and Impartiality	Annexure 1
Demand Management in the Procurement Process-An Example	Annexure 2
Empowerment Impact Assessment Guide	Annexure 3
Quotations (Procurement Template R2 001- R1 000 000)	Annexure 4
Documented process on the implementation of local production and content requirements	Annexure 5
Standard Operating Procedure for limited Bidding	Annexure 6
Policy and Standard Operating Procedure for Emergency Procurement	Annexure 7
Expansions and Extensions to the Original Contract Template	Annexure 8
Standard Operating Procedure for Business Conflict of Interest	Annexure 9
Reporting requirements	Annexure 10

## ADDITIONAL ANNEXURES

NAME OF DOCUMENT	REFERENCE
SCM Forum	Annexure 11
SCM Policy Focus Group (sub-forum)	Annexure 12
SCM Technology Focus Group (sub-forum)	Annexure 13
SCM capacitation and development Focus Group (sub-forum)	Annexure 14
Strategic Sourcing/Demand management Focus Group (sub-forum)	Annexure 15