



Standard for a Construction Procurement System

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Western Cape Provincial Treasury

Preface

A system may be regarded as a set of interrelated or interacting elements. It is an established way of doing things that provides order and a platform for the methodical planning of a way of proceeding. Systems are underpinned by processes (a set of interrelated or interacting activities which transforms inputs into outputs), procedures (specified way to carry out an activity or a process) and methods.

Procurement may be regarded as the process that creates, manages and fulfils contracts. Procurement commences once a need for goods, services, or engineering and construction works has been identified and ends when the goods are received, the services or construction works are completed. Procurement processes and procedures need to be managed and controlled. Accordingly, governance activities need to be linked to the milestones in the procurement process. At the same time, policies are required to govern the usage and application of certain procurement procedures, requirements for recording, reporting and risk management, and procedures for dealing with specific procurement related issues, etc.

A procurement system comprises not only procurement processes but also:

- a) rules and guidelines governing **procedures and methods**
- b) **procurement documents** which include terms and conditions, procedures and requirements risk / quality oversight (governance and performance) controls
- c) **organisational policies** which deal with issues such as:
 - i) the usage and application of particular procurement procedures;
 - ii) requirements for recording, reporting and risk management;
 - iii) procedures for dealing with specific procurement issues;
 - iv) the usage of procurement to promote social and developmental objectives; and
 - v) the assignment of responsibilities for the performance of activities.

A public procurement system in South Africa needs to be developed around the South African constitutional imperatives for a public procurement system, namely that the system:

- a) must be fair, equitable, transparent, competitive and cost-effective; and
- b) may provide for categories of preference.

The Construction Industry Development Board (CIDB) has developed standards which provide procedures and methods which are required by law to be applied to certain key procurement processes, as well as a series of best practice guidelines, which have now been incorporated into the recently published ISO 10845 standards for construction procurement. These standards have been developed around the primary and secondary procurement system objectives embedded in the Constitution of the Republic of South Africa (Act 108 of 1996) for a **procurement system** which may be expressed in qualitative terms as follows:

- a) **Fair:** the process of offer and acceptance is conducted impartially without bias, and provides participating parties simultaneous and timely access to the same information.
- b) **Equitable:** the only grounds for not awarding a contract to a tenderer who complies with all requirements are restrictions from doing business with the organization, lack of capability or capacity, legal impediments and conflicts of interest.
- c) **Transparent:** the procurement process and criteria upon which decisions are to be made shall be publicized and made publicly available with reasons for those decisions, and with the possibility of verifying that criteria were applied.
- d) **Competitive:** the system provides for appropriate levels of competition to ensure cost-effective and best value outcomes.

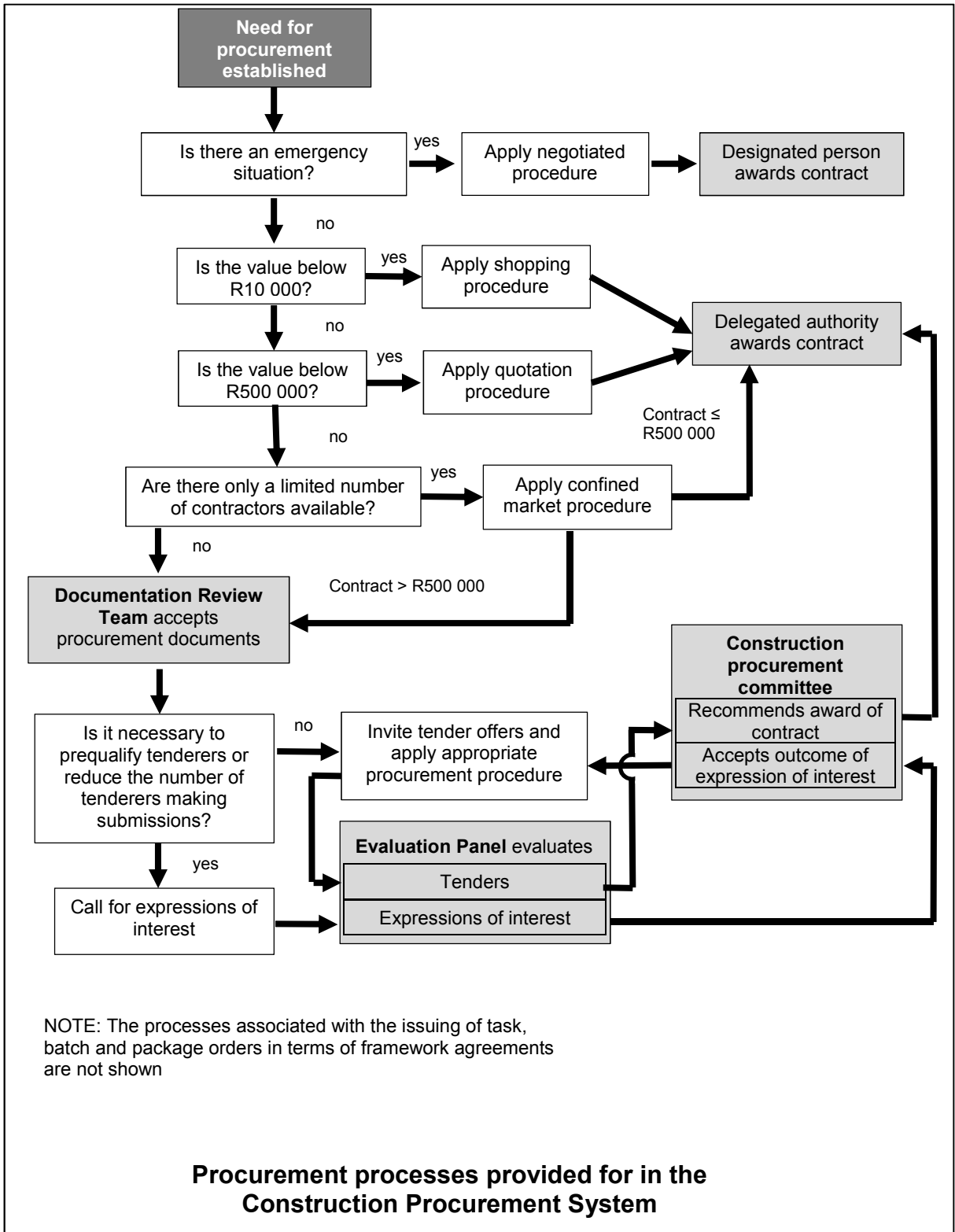
- e) **Cost-effective:** the processes, procedures and methods are standardized with sufficient flexibility to attain best value outcomes in respect of quality, timing and price, and the least resources to effectively manage and control procurement processes.
- f) **Promotion of other objectives:** the system may incorporate measures to promote objectives associated with a secondary procurement policy subject to qualified tenderers not being excluded and deliverables or evaluation criteria being measurable, quantifiable and monitored for compliance.

The primary purpose of this standard is to establish a construction procurement system for an institution to use in fulfilling its obligations in the procurement of goods, services and engineering and construction works within the construction industry in:

- a) compliance with requirements established in terms of the:
 - i) Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996);
 - ii) Public Finance Management Act or 1999 (Act 1 of 1999)
 - iii) Construction Industry Development Board (Act 38 of 2000); and
 - iv) other pertinent Acts; and
- b) a manner which:
 - i) embraces national and international best practice; and
 - ii) is auditable.

Institutions who are required to apply this standard need to complete Annexure B i.e. allocated designated persons to perform duties, provide delegations and set parameters associated with procurement procedures.

The ultimate objective of the Western Cape Cabinet is to ensure clean, efficient and effective construction procurement processes with clear delineation of accountability and responsibilities of the various role players within the process and the assurance of transparency. There is also a need to reach consensus upfront to the standards against which institutions have to be audited. This allows for proper goal setting and the setting of management standards. This standard responds to these imperatives.



NOTE: The processes associated with the issuing of task, batch and package orders in terms of framework agreements are not shown

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1 Scope

1.1 This standard establishes a construction procurement system within an institution for the procurement of:

- a) goods, services and engineering and construction works and disposals relating to the construction industry in a fair, equitable, transparent, competitive and cost effective manner;
- b) goods or services necessary for a new facility as delivered to be occupied and used as a functional entity; and
- c) temporary facilities.

1.2 The standard does not apply to:

- a) the storage of goods and equipment following their delivery to an institution which are stored and issued to contractors or to officials ;
- b) the procurement of non-construction industry related goods and services or land, except as provided for in 1.1;
- c) the sale, exchange, donation or letting of land; and
- d) the conclusion of any form of land availability agreement.

NOTE 1: This standard is consistent with legislation identified in Annexure A and embraces local and global construction procurement best practices.

NOTE 2: The Construction Industry Development Board Act, 2000 (Act 38 of 2000) defines the construction industry as *“the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment”*. The Construction Industry Development Regulations issued in terms of this Act defines construction procurement as *“procurement in the construction industry, including the invitation, award and management of contracts”*. Accordingly, construction procurement involves not only construction works contracts, but also supply contracts that involve the purchase of construction materials, plant and equipment and services contracts relating to any aspect of construction including professional services. It also involves demolitions and the disposal of materials, plant and equipment surplus to requirements or which are redundant.

NOTE 3: ISO 6707-1, *Building and civil engineering – vocabulary – Part 1: General Terms*, defines construction or construction works as *“everything that is constructed or results from construction operations”*

NOTE 4: A construction procurement system (CPS) is an essential component of the Infrastructure Delivery Management System (IDMS). The interactions between the CIDB infrastructure Gateway System and the CPMS within the IDMS is fully described in the Western Cape Standard for an Infrastructure Delivery Management System.

NOTE 5: Disposals within the construction industry typically relate to demolition or dismantling of infrastructure and buildings or parts thereof and the disposal of unwanted, redundant or surplus materials, plant and equipment.

2 Terms, definitions and abbreviations

2.1 Terms and definitions

For the purposes of this standard, the following terms and definitions apply:

agent: person or organization that is not an official of the institution that acts on the institution’s behalf in the application of this standard

batch: goods within the scope of a supply contract which may be ordered for delivery within a stated period of time

batch order: an instruction to supply goods in terms of a framework agreement

client: the institution which is ultimately responsible and accountable for the delivery of services and their organisational strategy, service and delivery plans and annual performance plans

conflict of interest: any situation in which:

- a) someone in a position of trust has competing professional or personal interests which make it difficult for him to fulfil his duties impartially,
- b) an individual or organization is in a position to exploit a professional or official capacity in some way for his personal or for corporate benefit, or
- c) incompatibility or contradictory interests exist between an employee and the organization which employs that employee

construction industry: the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment

construction procurement strategy: the documented delivery management strategy and contracting and procurement arrangements for the delivery or maintenance of infrastructure

contract data: document that identifies the applicable conditions of a contract and states the associated contract-specific data

contract manager: person appointed to administer a contract as the principal agent of the employer and, where relevant, to perform duties relating to the overall management of such contract from the employer's point of view

contractor: person or organization that contracts to provide the goods, services or engineering and construction works covered by the contract

contracting strategy: strategy that governs the nature of the relationship which the employer wishes to foster with the contractor, which in turn determines the risks and responsibilities between the parties to the contract and the methodology by which the contractor is to be paid

construction procurement: procurement in the construction industry, including the invitation, award and management of contracts

designated person: a person identified in this standard to perform an activity, make a determination or decide on a course of action or receive a report or disclosure (see Annexure B)

delegated authority: a person delegated to award a contract or a task, batch or package order in terms of the contract (see Annexure B)

engineering and construction works contract: contract for the provision of a combination of goods and services arranged for the development, extension, refurbishment, rehabilitation or demolition of a fixed asset, including building and engineering infrastructure

expression of interest: request for respondents to register their interest in undertaking a specific contract or to participate in a project or programme and to submit their credentials so they may, in terms of the institution's procurement procedures, be invited to submit a tender offer should they qualify or be selected to do so

framework agreement: agreement between an institution and one or more contractors, the purpose of which is to establish the terms governing task, batch or package orders to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged

NOTE: A framework agreement is a general term for contracts with contractors that set out terms and conditions under which specific procurements (call-offs) can be made throughout the term of the contract.

fruitless and wasteful expenditure: expenditure which was made in vain and would have been avoided had reasonable care been exercised

gate: a control point within a procurement process where a decision is required before proceeding from one activity or sub-activity to another

NOTE: A gate is frequently a strategic decision making point.

gratification: an inducement to perform an improper act

infrastructure: fixed assets that are constructed or result from construction operations including:

- a) buildings, structures and facilities;
- b) water supply, sanitation, electricity supply, transportation and storm water drainage systems; and
- c) the related permanent fixtures that cannot be readily or economically removed or reused

infrastructure gateway system: the system described for the delivery and maintenance of infrastructure in terms of stages and associated end of stage deliverables in the Standard for a Infrastructure Delivery Management System

institution: a provincial department, or public entity listed in Schedule 3C of the Public Finance Management Act, 1999 (Act 1 of 1999 as amended)

irregular conduct: conduct that is not in accordance with the provisions of this standard

irregular expenditure: expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation

maintenance combination of all technical and associated administrative actions during an item's service life with the aim of retaining it in a state in which it can perform its required functions

package: works which have been grouped together for delivery under a single contract or a package order

package order: the instruction to carry out construction works under a framework agreement

packaging strategy: organization of work packages into contracts

pricing strategy: strategy which is adopted to secure financial offers and to remunerate contractors in terms of the contract

procurement: process which creates, manages and fulfils contracts relating to the provision of goods, services and engineering and construction works or disposals, or any combination thereof

procurement document: documentation used to initiate or conclude (or both) a contract or a call off from a framework agreement

procurement procedure: selected procedure for a specific procurement

procurement strategy: selected packaging, contracting, pricing and targeting strategy and procurement procedure for a particular procurement

respondent: person or organization that submits an expression of interest in response to an invitation to do so

services contract: contract for the provision of labour or work, including knowledge-based expertise, carried out by hand, or with the assistance of equipment and plant

supply contract: contract for the provision of goods, including materials or commodities made available for purchase and, where relevant, associated services

target contract: a cost reimbursement contract in which a preliminary target cost is estimated and on completion of the work the difference between the target cost and the actual cost is apportioned between the institution and the contractor on an agreed basis.

targeting strategy: strategy which is adopted to promote secondary procurement policy objectives

task: work within the scope of a service contract which may be instructed to be carried within a stated period of time

task order: an instruction to carry out work within the services in terms of a framework agreement

tender data: document that establishes the tenderer's obligations in submitting a tender and the employer's undertakings in administering the tender process and evaluating tender offers

tenderer: person or organization that submits a tender offer

scope of work: document that specifies and describes the goods, services, or engineering and construction works which are to be provided, and any other requirements and constraints relating to the manner in which the contract work is to be performed

secondary procurement policy: procurement policy that promotes objectives additional to those associated with the immediate objective of the procurement itself

2.2 Abbreviations

For the purposes of this standard, the following abbreviations apply:

B-BBEE: Broad-based black economic empowerment

CIDB: Construction Industry Development Board

CPS: Construction Procurement System

IDMS: Infrastructure Delivery Management System

SCM: Supply Chain Management

3 Normative references

The following referenced documents are indispensable for the application of this standard. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

Broad-Based Black Economic Empowerment Codes of Good Practice, issued in terms of the section 9(1) of the Broad Based Black Economic Empowerment Act 53 of 2003

Code of Conduct for all parties engaged in Construction Procurement, Construction Industry Development Board

Construction Code: the Construction Sector Code issued in terms of Section 9(1) of the Broad Based Black Economic Empowerment Act 53 of 2003

CIDB General Conditions of Purchase as published by the Construction Industry Development Board

Construction Procurement System

CIDB General Conditions of Service as published by the Construction Industry Development Board

CIDB Standard Professional Services Contract as published by the Construction Industry Development Board

FIDIC Conditions of Contract for Construction for Building and Engineering Works designed by the Employer (“Red Book”) (1999) as published by the International Federation of Consulting Engineers

FIDIC Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works, designed by the Contractor (“Yellow Book”) (1999) as published by the International Federation of Consulting Engineers (FIDIC)

FIDIC Conditions of Contract for EPC Turnkey Projects (“Silver Book”) (1999) as published by the International Federation of Consulting Engineers (FIDIC)

FIDIC Conditions of Contract for Design, Build and Operate Projects (“Gold Book”) (2008) as published by the International Federation of Consulting Engineers (FIDIC)

FIDIC Short Form of Contract (“Green Book”) (1999) as published by the International Federation of Consulting Engineers (FIDIC)

Guidelines for the Implementation of Labour-Intensive Infrastructure Projects under the Expanded Public Works Programme (EPWP) issued by the Department of Public Works

Guidelines on Complex Structures and Transactions, and Fronting (Previously Statement 002) issued by the Department of Trade and Industry

ISO 10845 -1, Construction procurement - Part 1: Processes, methods and procedures

ISO 10845 -2, Construction procurement - Part 2: Formatting and compilation of procurement documentation

ISO 10845-3, Construction procurement - Part 3: Standard conditions of tender

ISO 10845-4, Construction procurement - Part 4: Standard conditions for the calling for expressions of interest

ISO 10845 -5, Construction procurement - Part 5: Participation of targeted enterprises

ISO 10845 -6, Construction procurement - Part 6: Participation of targeted partners in joint ventures in contracts

ISO 10845 -7, Construction procurement - Part 7: Participation of targeted enterprises and targeted labour (local resources) in contracts

ISO 10845 -8, Construction procurement - Part 8: Participation of targeted labour in contracts

JBCC Series 2000 Principal Building Agreement (Edition 5.0: July 2007) as published by the Joint Building Contracts Committee

JBCC Series 2000 Minor Works Agreement (Edition 4.0: August 2007) as published by the Joint Building Contracts Committee

NEC3 Engineering and Construction Contract as published by the Institution of Civil Engineers

NEC3 Engineering and Construction Short Contract as published by the Institution of Civil Engineers

NEC3 Professional Services Contract as published by the Institution of Civil Engineers

NEC3 Supply Contract as published by the Institution of Civil Engineers

NEC3 Supply Short Contract as published by the Institution of Civil Engineers

NEC3 Term Services Contract as published by the Institution of Civil Engineers

NEC3 Term Services Short Contract as published by the Institution of Civil Engineers

Practice Guide #2, Construction Procurement Strategy, Construction Industry Development Board / National Treasury

SAICE General Conditions of Contract for Construction Works (2010) as published by the South African Institution of Civil Engineering

Specification for Social and Economic Deliverables in Construction Works, Construction Industry Development Board

Standard for an Infrastructure Delivery Management System, Western Cape Provincial Treasury

Standard for Uniformity in Construction Procurement, Construction Industry Development Board

4 Requirements

4.1 General requirements

4.1.1 Procurement shall be undertaken in accordance with all legislative requirements and the relevant requirements of:

- a) ISO 10845-1 subject to the provisions of this standard;
- b) ISO 10845-2;
- c) the CIDB Standard for Uniformity in Construction Procurement; and
- d) the CIDB Code of Conduct for all parties engaged in Construction Procurement.

NOTE 1: The policies, procedures and methods that are contained in this standard are aligned with legislative requirements including, but not limited to, those identified in Annexure A.

NOTE 2: Comprehensive guidance on the implementation of the requirements of ISO 10845 and the CIDB Standard for Uniformity in Construction Procurement may be found in the annexes to ISO 10845 and the CIDB Construction Procurement Toolbox contained on the CIDB website www.cidb.org.za, respectively.

4.1.2 No departures shall be made from the provisions of this standard or any of the procedures contained in ISO 10845-1 without the approval of the Provincial Treasury.

4.1.3 Officials shall report irregular expenditure and fruitless and wasteful expenditure that they encounter to the **designated person** in a format specified by such person.

4.2 Conduct of those engaged in construction procurement processes or procedures

4.2.1 General requirements

4.2.1.1 All personnel and agents of the institution shall comply with the requirements of the CIDB Code of Conduct for all parties engaged in Construction Procurement. They shall:

- a) behave equitably, honestly and transparently;
- b) discharge duties and obligations timeously and with integrity;

- c) comply with all applicable legislation and associated regulations;
- d) satisfy all relevant requirements established in procurement documents;
- e) avoid conflicts of interest; and
- f) not maliciously or recklessly injure or attempt to injure the reputation of another party.

4.2.1.2 All personnel and agents of the institution shall:

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratification from any person for themselves or a related or interrelated person as defined in Companies Act of 2008 (Act No 71 of 2008);
- b) perform their duties efficiently, effectively and with integrity and may not use their position for private gain or to improperly benefit another person;
- c) strive to be familiar with and abide by all statutory and other instructions applicable to their duties;
- d) furnish information in the course of their duties that is complete, true and fair and not intended to mislead;
- e) ensure that the institution's resources are administered responsibly;
- f) be fair and impartial in the performance of their functions;
- g) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- h) not abuse the power vested in them;
- i) not place themselves under any financial or other obligation to external individuals or firms that might seek to influence them in the performance of their duties;
- j) assist the institution in combating corruption and fraud within the construction procurement system;
- k) not make false or misleading entries in reports or accounting systems; and
- l) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise.

NOTE: Section 2 of the Companies Act of 2008 (Act No 71 of 2008) defines related and inter-related persons to include natural persons with whom they are married, live in a similar relationship with or are closely related and juristic persons which they directly or indirectly control.

4.2.1.3 Officials of the institution shall comply with the Provincial Treasury SCM Instructions relating to compliance with ethical standards.

NOTE: No contract may be awarded to a contractor who has a principal (sole proprietor, partner, member or director), principal shareholder or stakeholder in the employ of the employee of the Provincial Government.

4.2.1.4 Officials or agents of the institution shall not arrange with a contractor to supply goods, services or works in one financial year and receive payment in another financial year unless the contract period straddles such financial years.

4.2.2 Conflicts of interest

4.2.2.1 Officials and agents of the institution who are connected in any way to procurement activities which are subject to this standard, shall disclose to a **designated person** if they or any person

identified in 4.2.1.2a) has any interest in any contract that is to be awarded and not participate in any activities that might lead to the disclosure of institution's proprietary information.

4.2.2.2 Officials and agents of the institution shall declare and address any perceived or known conflict of interest, indicating the nature of such conflict to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to a procurement process or as soon as they become aware of such conflict, and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

4.2.2.3 The report of the **Evaluation Panel** shall record that the members of such **Evaluation Panel** have declared any conflict of interest that they may have and the nature of such conflict.

4.2.2.4 Agents who prepare a procurement document or part thereof may in exceptional circumstances, where it is in the institution's interest to do so, submit a tender for work associated with such documents provided that:

- a) the institution states in the tender data that such an agent is a potential tenderer;
- b) all the information which was made available to, and the advice provided by, that agent which is relevant to the tender, will equally be made available to all potential tenderers upon request, if not already included in the scope of work; and
- c) the **designated person** is satisfied that the procurement document is objective and unbiased having regard to the role and recommendations of that agent.

NOTE 1 A conflict of interest might exist even if there are no improper acts. This might arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that might undermine confidence in the ability of that person to act properly in his position.

NOTE 2 Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.

NOTE 3 A direct interest in a tender includes being a shareholder, member or director or the spouse, sibling, parent, grandparent or brother or sister in law of a shareholder, member or director of the tenderer or the holding or subsidiary company of the tenderer. An indirect interest may include having a close personal relationship with a prospective tenderer.

4.2.3 Evaluation of submissions received from respondents and tenderers

4.2.3.1 The confidentiality of the outcome of the processes associated with the calling for expressions of interest, quotations or tenders shall be preserved. Those engaged in the evaluation process shall

- a) not have any conflict between their official duty and their private interest;
- b) may not be influenced by a gift or consideration (including acceptance of hospitality) to show favour or disfavour to any person;
- c) deal with respondents and tenderers in an equitable and even-handed manner at all times; and
- d) not use any confidential information obtained for personal gain and may not discuss with, or disclose to outsiders, prices which have been quoted or charged to the institution.

4.2.3.2 The evaluation process shall be free of conflicts of interest and any perception of bias. Any connections between the officials and agents of the institution and a tenderer or respondent shall be disclosed and recorded in the tender evaluation report.

4.2.3.3 The institution's personnel and their agents shall immediately withdraw from participating in any manner whatsoever in a procurement process in which they, or any close family member, partner or associate, has any private or business interest.

4.2.4 Non-disclosure agreements

Confidentiality agreements in the form of non-disclosure agreements shall, where appropriate, be entered into with agents and potential contractors to protect the institution's confidential information and interests.

NOTE: Tenderers may have to sign non-disclosure agreements prior to collecting procurement documents where confidential information needs to be disclosed in order to secure tenders.

4.2.5 Gratifications, hospitality and gifts

4.2.5.1 Officials and agents of the institution shall not, directly or indirectly, accept or agree or offer to accept any gratification from any other person including a commission, whether for the benefit of themselves or for the benefit of another person, as an inducement to improperly influence in any way a procurement process, procedure or decision.

NOTE: All decisions and business transactions should be made with uncompromised integrity, honesty and objectivity of judgement. Exchanging modest courtesies is a common business practice meant to create goodwill and to establish trust in the business relationship and not to improperly influence transaction outcomes.

4.2.5.2 Officials and agents of the institution shall not receive any of the following from any tenderer, respondent or contractor or any potential contractor:

- a) money, loans, equity, personal favours, benefits or services;
- b) overseas trips;
- c) any gifts or hospitality irrespective of value from tenderers or respondents prior to the conclusion of the processes associated with a call for an expression of interest or a tender;
- d) any seasonal, congratulatory or promotional gifts having a value in excess of the value stated in the institution's code of ethics, unless such gift is declared in terms of such code.

4.2.5.3 Officials and agents of the institution shall not purchase any items at artificially low prices from any tenderer, respondent or contractor or any potential contractor at artificially low prices which are not available to the public.

4.2.5.4 Officials and agents of the institution may for the purpose of fostering inter-personal business relations accept the following:

- a) meals and entertainment, but excluding the cost of transport and accommodation;
- b) advertising material of small intrinsic value such as pens, paper-knives, diaries, calendars, etc;
- c) incidental business hospitality such as business lunches or dinners, which the official or agent is prepared to reciprocate; and
- d) complimentary tickets to sports meetings and other public events, but excluding the cost of transport and accommodation.

4.2.5.5 Under no circumstances shall gifts be accepted from prospective contractors during the evaluation of calls for expressions of interest, quotations or tenders that could be perceived as undue and improper influence of such processes.

4.2.5.6 Officials and agents of the institution shall report to the **designated person** any incidences of a respondent, tenderer or contractor who directly or indirectly offers a gratification to them or any other person to improperly influence in any way a procurement process, procedure or decision.

NOTE 1 Corrupt activities giving rise to offences in terms of the Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004) include:

- a) improperly influencing in any way the promotion, execution, procurement or retention of any contract;
- b) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any contract;
- c) manipulating by any means the award of a tender;
- d) manipulating by any means the outcome of an auction; or
- e) public officers having a private interest in a contract connected with the public body that employs them except where the interest is in a stock exchange listed company or their conditions of employment do not prohibit such involvement in a contract.

NOTE 2 Gratification is defined in the Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004) as *an inducement to perform an improper act, which includes*

- a) *money, whether in cash or otherwise;*
- b) *any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage;*
- c) *the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;*
- d) *any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation,*
- e) *any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;*
- f) *any forbearance to demand any money or money's worth or valuable thing;*
- g) *any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty;*
- h) *any right or privilege;*
- i) *any real or pretended aid, vote, consent, influence or abstention from voting; or*
- j) *any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.*

4.2.6 Breaches

4.2.6.1 Officials and agents of the institution shall report to the **designated person** any alleged irregular conduct which they may become aware of, including any alleged fraud or corruption.

4.2.6.2 The **designated person** shall:

- a) in the case of a CIDB registered contractor institute action against contractors with the Construction Industry Development Board where breaches of the CIDB Code of Conduct for the Parties engaged in Construction Procurement are detected;
- b) In all other cases report alleged irregular conduct to in terms of the Provincial Treasury SCM Instructions relating to compliance with ethical standards.

4.2.7 Placing of contractors under restrictions

If any tenderer who has submitted a tender offer or a contractor which has concluded a contract has, as relevant:

- a) withdrawn such tender or quotation after the advertised closing date and time for the receipt of submissions;
- b) after having been notified of the acceptance of his tender, failed or refused to commence the contract;
- c) had their contract terminated for reasons within their control without reasonable cause;
- d) offered, promised or given a bribe in relation to the obtaining or the execution of such contract;
- e) acted in a fraudulent, collusive or anti-competitive or improper manner or in bad faith towards the institution; or

f) made any incorrect statement in any affidavit or declaration with regard to a preference claimed and is unable to prove to the satisfaction of the institution that the statement was made in good faith or reasonable steps were taken to confirm the correctness of the statements,

a **designated person** shall prepare a report on the matter and formulate a recommendation for consideration by the accounting officer or accounting authority. The accounting officer or accounting authority may after notifying the contractor of such intention in writing, giving written reasons for such action, request the Provincial Treasury to suspend the contractor from the Western Cape Supplier Data Base.

4.3 Procurement activities, key actions, responsibilities and gates

4.3.1 The activities, key actions and gates associated with the putting in place and finalisation of a contract above the threshold for the quotation procedure (see Annexure B) shall be in accordance with the provisions of Table 1 read together with Figures 1. **Designated persons** shall assume responsibilities for each identified activity or sub-activity, as relevant.

NOTE: It will not be necessary to undertake all the activities contained in 3, 4 and 5 in all instance. The selected procurement procedure will require all or some of the activities.

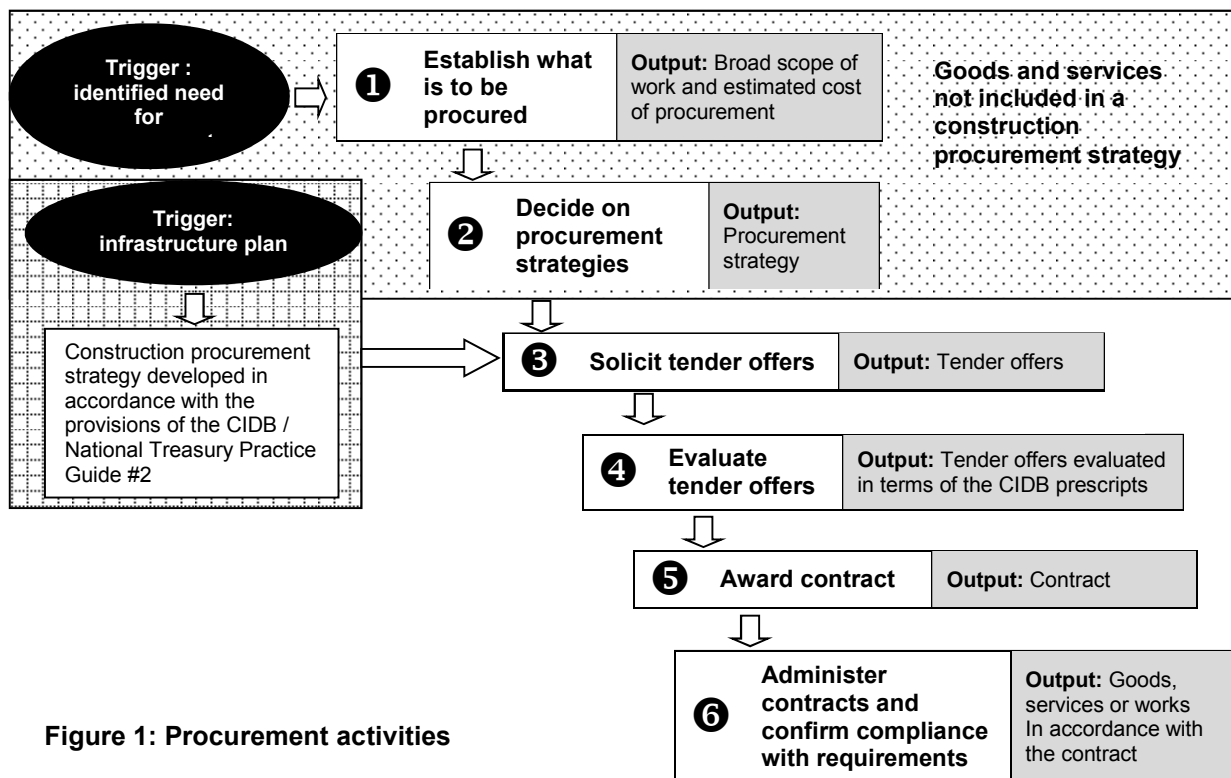


Table 1: Procurement activities, key actions and gates associated with the formation and conclusion of contracts above the threshold for the quotation procedure

Activity		Sub-Activity		Key action
1	Establish what is to be procured (Applies only to goods and services not addressed in a construction procurement strategy)	1.1	Prepare broad scope of work for procurement	Develop a title for the procurement for the purpose of project identification and a broad scope of work.
		1.2	Estimate financial value of proposed procurement	Estimate the financial value of the proposed contract for budgetary purposes, based on the broad scope of work
		1.3 PG1	Obtain permission to start with the procurement process	Designated person makes a decision to proceed/not to proceed with the procurement based on the broad scope of work and the financial estimates.
2	Decide on procurement strategy (Applies only to goods or services not included in a construction procurement strategy)	2.1	Establish opportunities for promoting secondary procurement policies, if any	Identify the specific goals which are to be pursued, if any, and establish quantitative targets and implementation procedures which are consistent with the employer's objectives.
		2.2	Establish contracting and pricing strategy	Decide on an appropriate allocation of responsibilities and risks, the methodology by which contractors are to be paid and the form of contract which is to be used.
		2.3	Establish targeting strategy	Decide on the methodology that is to be used to implement secondary procurement policy
		2.4	Establish procurement procedure	Identify the process that will be followed to solicit tender offers and to conclude a contract
		2.5 PG2	Obtain approval for procurement strategies that are to be adopted	Designated person confirms selection of strategies so that tender offers can be solicited

NOTE 1: Shaded cells indicate the presence of a procurement gate

NOTE 2: Works involving construction, refurbishment, rehabilitation, extension, alteration, scheduled maintenance, demolitions or the design, supply and installation of plant are invariably initiated during stage 1 (Infrastructure planning) of the Infrastructure Delivery Management System while a construction procurement strategy is developed during stage 2 (Procurement planning) at a portfolio level (see Provincial Treasury Standard for an Infrastructure Delivery Management System). As a result, activities 1 and 2 only take place where ad hoc procurements take place (see Figure 1).

Activity		Sub-Activity	Key action	
3	Solicit tender offers	3.1	Prepare procurement documents	Prepare procurement documents (pre-qualification or tender documents (or both), as appropriate, that are compatible with the approved procurement strategies
		3.2 PG3	Obtain approval for procurement documents	Designated person reviews the procurement document, identifies sections, if any, which require amendments or improvements, and grants the necessary approval
		3.3 PG4	Confirm that budgets are in place	Designated person ensures that finance is available for the procurement to take place
		3.4	Invite tenderers or respondents to submit tender offers or expressions of interest	Advertise tenders or calls or expressions of interest /identify contractor(s) that are to be invited to submit tender offers in accordance with the approved procurement procedure and issue procurement documents
				Respond to requests for clarification, conduct clarification meetings, issue attendees with minutes of such meetings, and issue addenda, as relevant.
				Advertise calls for tenders or expressions of interest relating to construction works on the CIDB website
		3.5	Receive tender offers or expressions of interest	Ensure that arrangements are in place to receive tender offers/expressions of interest and return unopened those that are received late, are not delivered in accordance with instructions given to respondents / tenderers or where only one tender is received and it is decided to call for fresh tenders
		3.6	Open and record expressions of interest received	Open expressions of interest and record data relating to the submission
		3.7	Evaluate expressions of interest	Evaluate in accordance with undertakings made to respondents in procurement documents
		3.8	Prepare evaluation report on short-listing process	Prepare evaluation report and make recommendations in respect of actions to be taken, depending upon the procurement procedure that is adopted
3.9 PG5	Confirm shortlist	Designated person reviews evaluation report and ratifies recommendations		
3.10	Invite tender offers from short-listed tenderers	Issue shortlisted respondents with procurement documents		
		Respond to requests for clarifications by tenderers, conduct clarification/site meetings, issue all attendees with the minutes of such meetings, and issue addenda to amend or amplify the procurement documents, as relevant		

NOTE 1: Shaded cells indicate the presence of a procurement gate

NOTE 2: Expressions of interest are only called for where the qualified procedure or restricted competitive negotiations procedure is followed (see Table 6). Where calls for expressions are not made, sub-activities 3.6 to 3.10 do not apply.

Activity		Sub-Activity		Key action
4	Evaluate tender offers	4.1	Open and record tender offers received	Open tender offers, either in public or in the presence of designated persons, and record pertinent details and notify interested parties of pertinent details if requested to do so
		4.2	Determine whether or not tender offers are complete	Examine tenders and determine whether or not they are complete, request tenderers to complete items that are required only for tender evaluation purposes and record what is incomplete in each tender submission
		4.3	Determine whether or not tender offers are responsive	Confirm compliance with all the requirements of the procurement documents, including eligibility criteria. If not, declare tender offers non-responsive and record reasons for declaring a tender to be non-responsive and disregard such tender offers from further consideration
		4.4	Evaluate tender submissions	Identify parameters included in the tender submission that have a bearing on the financial offer and reduce all tender offers to a common base. Judge the reasonableness of financial offers and reject all tender offers with unrealistic financial offers (see guidance provided in ISO 10845-1 for abnormally low tenders and Anex A of ISO 10845-3). Evaluate tender submissions in accordance with the tender evaluation method that is adopted
		4.5	Perform a risk analysis	Perform a risk analysis on the tenderer ranked highest in terms of the tender evaluation and, if found to be unsatisfactory, undertake an analysis on the next highest ranked tenderer and so on until such time as a tenderer satisfies the risk assessment, and recommend this tenderer for the award of the contract
		4.6	Prepare a tender evaluation report	Prepare a tender evaluation report which, as a minimum, contains the tender evaluation points awarded to each tenderer, the reasons for eliminating a tender offer and a recommendation for the award of the contract
		4.7 PG6	Confirm recommendation contained in the tender evaluation report where the transaction for a particular procedure is greater than the thresholds contained in Annexure B.	Review report and ratify recommendations or refer back to evaluation panel
5	Award contract	5.1	Notify successful tenderer and unsuccessful tenderers of outcome	Notify the successful tenderer and unsuccessful tenderers in writing
		5.2	Compile contract document	Assemble contract document from the relevant tender returnables and issue draft contract to tenderer, capturing all the changes that were agreed to between the offer and acceptance
		5.3	Audit tender process	Audit tender process where estimated tender value exceeds the threshold stated in Annexure B and certify that process was adhered to
		5.4 PG7	Formally accept tender offer	Confirm that the tenderer has provided evidence of complying with all requirements stated in the tender data and formally accept the tender offer in writing and issue the contractor with a signed copy of the contract
		5.5	Capture contract award data	Capture, into a database, essential contract data for record purposes, including where applicable, award of contract on the CIDB register of projects as well as supplier registration
		5.6	Register supplier database	Obtain, capture and register contractor on Western Cape Supplier Data base if not already registered

Activity		Sub-Activity	Key action	
6	Administer contracts and confirm compliance with requirements	6.1	Administer contract in accordance with the terms and provisions of the contract Administer the contract in accordance with its terms and conditions and pay contractors within the time periods provided for in the contract so as to avoid interest on late payments	
		6.2	Ensure compliance with requirements Monitor the contractor's performance to ensure that the requisite quality standards are attained and all requirements are complied with, and certify compliance upon completion	
		6.3	Capture contract completion/ termination data Record, in a database, key performance indicators relating to time, cost and the attainment of specific goals associated with a secondary procurement policy, or if the contract is terminated or cancelled, the reasons therefore	
		6.4 PG8A	Obtain approval to waive penalties or low performance damages.	Prepare motivation for waiving of penalties and low performance damages
				Approve waiver of penalties or low performance damages
		6.5 PG8B	Obtain approval to notify and refer a dispute to an adjudicator	Outline the essence of the dispute and the reasons for wishing to refer the dispute to an adjudicator
				Approve referral for a dispute to an adjudicator
		6.6 PG8C	Obtain approval for events which in terms of the contract increase the total of prices or the time for Completion by more than 1%.	Finalise submission for increases in the total of prices or time for completion in terms of the contract
				Grant permission to approve an increase in prices or time in terms of the contract if the total of prices does not exceed the total of prices at award by more than the amounts stated in Annexure B or the time for completion at award by more than 20%
		6.7 PG8D	Obtain approval to exceed the total of prices at award by an amounts stated in Annexure B or the time for completion at award by more than 20%.	Prepare motivation for exceeding the total of prices at award by more than the amounts stated in Annexure B or the time for completion at award by more than 20%, setting out the precise reasons for such increases
				Approve amount, subject to receipt of prior approval from the Provincial Treasury where or the amounts or percentages exceed that stated in Annexure B. Approve time overruns.
6.8 PG8E	Obtain approval to cancel or terminate a contract	Prepare motivation to terminate or cancel a contract and obtain advice as necessary		
		Approve termination or cancellation of contract		
6.9 PG8F	Obtain approval to amend a contract	Formulate a proposed amendment to the contract and prepare a motivation to do so Approve proposed amendment to contract		
6.10	Finalise contract	Finalise all outstanding issues		
		Oversee the rectification of parts of the work that are not in accordance with the contract Release bonds and retentions, where relevant.		
6.11	Capture contract completion / termination data for construction works contracts.	Record on CIDB website the required data for construction works contracts at practical completion		

NOTE: Shaded cells indicate the presence of a procurement gate

4.3.2 The activities, key actions, responsibilities and gates associated with the issuing of batch, task or package orders shall be in accordance with the provisions of Table 2 read together with Figure 2.

NOTE: The process for putting in place a framework agreement is the same as that for any other contract. The principal difference between a framework and a non-framework contract is that the contract at the time of the award has no price attached to it as call offs will be made over a term in terms of the contract, and an assumption is made for preferencing purposes that the value of the contracts over the term will exceed 80/20 threshold i.e. a 90/10 price preference applies.

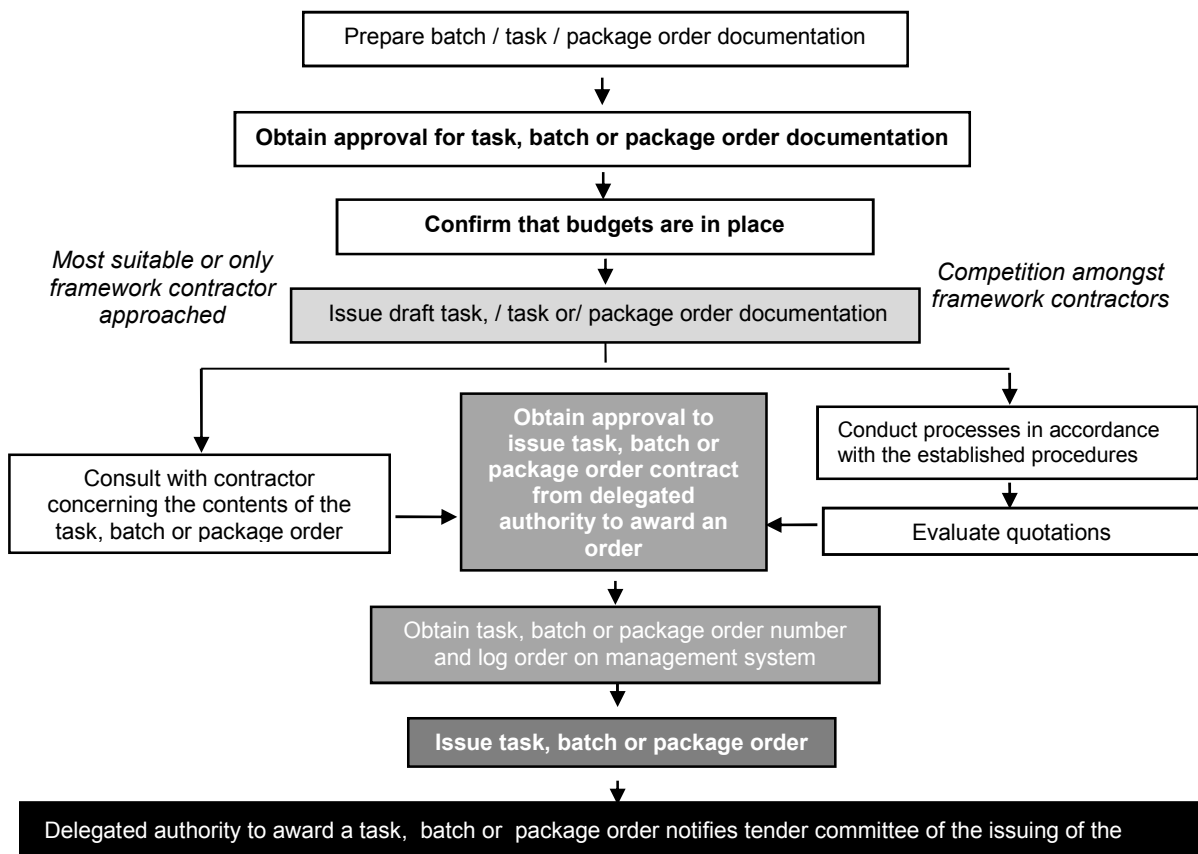


Figure 2: Activities associated with the issuing of a task, batch or package order within a framework agreement

4.3.3 The activities, key actions, responsibilities and gates associated with the contracts below the threshold for the quotation procedure are as follows (see Annexure B for the threshold associated with a quotation procedure):

- a) a **designated person** prepares the procurement documents using the standard templates;
- b) a **Documentation Review Team** reviews the procurement documents only where offers are evaluated in terms of financial offer, preference and quality;
- c) a **designated person** invites quotations; and
- d) a **designated person** or where offers are evaluated in terms of financial offer, preference and quality, an **Evaluation Panel**, evaluates the offers received and makes a recommendation to the **Delegated Authority** to award the contract.

Table 2: Procurement activities, key actions, responsibilities and gates associated with the issuing of task, batch or package orders

Activity		Key action
1	Prepare procurement documents	Prepare batch / task / package order and if necessary quotation document using the standard templates.
2 FG1	Obtain approval for procurement documents	Designated person reviews the procurement document other than those developed for quotations which are below the threshold for quotations (see Annexure B) which make use of the standard templates and are evaluated on the basis of the financial offer and preference only, identifies sections, if any, which require amendments or improvements, and grants the necessary approval
3 FG2	Confirm that budgets are in place	Designated person ensures that finance is available for the procurement to take place
4	Issue draft task, batch or package order documentation	Where competition amongst framework contractors is not re-opened, issue draft task, batch or/ package order to contractor and consult with contractor concerning the contents of the batch / package / task order Where competition amongst framework contractors is reopened, invite quotations from all framework contractors participating in the agreement and receive Ensure that arrangements are in place to receive submissions and return unopened those that are received late, are not delivered in accordance with instructions given to contractors
5	Evaluate quotations for task, batch or package orders	Where competition amongst framework contractors is reopened, identify parameters included in the tender submission that have a bearing on the financial offer and reduce all tender offers to a common base. Judge the reasonableness of financial offers and reject all tender offers with unrealistic financial offers (see guidance provided in ISO 10845-1 for abnormally low tenders and Annex A of ISO 10845-3). Evaluate tender submissions in accordance with the tender evaluation method adopted for the procurement. Prepare an evaluation report which, as a minimum, contains the tender evaluation points awarded to each tenderer, the reasons for eliminating a tender offer and a recommendation for the award of the task, batch or package order.
6 FG3	Confirm recommendations and authorise the issuing of the batch, task or package / order	Reviews report, as necessary, ratify recommendations, and signed task, batch or package order. In the case of a construction works contract,
7	Log task, batch or package order onto management system	Obtain batch / task / package order number and log task, batch or package order on management system
8	Issue task, batch or package order to contractor	Issue batch / task / package order to contractor
9	Notify issuing of task, batch or package order to oversight committee	Notify the Procurement Committee of the issuing of each task, batch or package order.
10	Administer task, batch or package orders in accordance with contract and confirm compliance with requirements	See sub-activities and key actions associated with Activity 6 (Activities 6.1 to 6.10) in Table 1. Note: task, batch and package orders are administered in the same way as contract are in terms of the activities listed for Activity 6 in Table 1.

NOTE: Shaded cells indicate the presence of a procurement gate

4.4 Roles and responsibilities in relation to the procurement processes, activities and controls

4.4.1 General

4.4.4.1 Where an institution acts as an implementer in terms of the Provincial Treasury Standard for an Infrastructure Delivery Management System and is also not the client, the client may nominate a suitably qualified representative and an alternative suitably qualified representative to serve as a team, panel or committee member on the **Documentation Review Team**, the **Evaluation Panel** and the **Construction Procurement Committee**.

4.4.4.2 The designated person who appoints a **Documentation Review Team** and an **Evaluation Panel** shall establish whether or not the client wishes to participate in these teams and panels and record if the client declines such an invitation.

4.4.4.3 Representatives of a client serving as team, panel or committee members who have any misgivings with respect to any intended decision of the **Documentation Review Team**, the **Evaluation Panel** or the **Construction Procurement Committee** may report such misgivings to the head of their institution who will then engage with the head of institution conducting such processes in order to seek consensus on the way forward.

NOTE: ISO/IEC Guide 2 defines consensus as the “general agreement characterised by the lack of sustained opposition to substantial issues ...” The principle of consensus has its origins in the desire to achieve the general acceptance of the members of the committee. Consensus need not imply unanimity. Trivial or vexatious objections are unlikely to gain support and may be over-ruled. However, where a member consistently maintains a fundamental objection and supports it with sound arguments, these concerns need to be taken seriously.

4.4.2 Documentation Review Team

4.4.2.1 The **designated person** shall appoint a **Documentation Review Team** comprising the persons identified in Annexure B in respect of each procurement or task, batch or package order.

4.4.2.2 The **Documentation Review Team** shall, as necessary, review the procurement documents with a view to confirming that:

- a) the procurement documents have been formatted and compiled in accordance with the requirements of ISO 10845-2 and the CIDB Standard for Uniformity in Construction Procurement and are aligned with the approved procurement strategy and the institution’s preferential procurement policy;
- b) appropriate prompts for the judgement are included in procurement documents in accordance with the requirements of ISO 10845-1 whenever quality is evaluated and scored in the evaluation of calls for expressions of interest or tender offers;
- c) the selected form of contract in the case of a tender that is solicited is in accordance with the requirements of 4.7 and the standard templates have been correctly applied;
- d) the **designated person’s** approval has been obtained for additional clauses or variations to the standard clauses in the conditions of contract, conditions of tender or conditions for the calling for expressions of interest, as relevant, not provided for in the institution’s approved templates;
- e) the selected submission data in the case of a call for an expression of interest or tender data and contract data options in the case of a tender are likely to yield best value outcomes;
- f) the scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided;
- g) the submission or returnable documents are necessary and will enable submissions to be evaluated fairly and efficiently; and

h) the risk allocations in the contract and pricing data are appropriate.

4.4.2.3 The **Documentation Review Team**, in the case of a task, batch or package order, shall confirm that:

- a) the standard templates have been correctly applied;
- b) approval from the **designated person** has been obtained for additional clauses or variations to the standard clauses in the conditions of contract not provided in the institution's approved templates or the contract;
- c) the scope of work adequately establishes what is required and the constraints to the manner in which the contract work is to be provided;
- d) the provisions for competition amongst framework contractors, if relevant, and the selected options are likely to yield best value outcomes; and
- e) the risk allocations are appropriate.

4.4.2.4 The **Documentation Review Team** shall identify sections, if any, which require amendments or improvements, and refer back to the originators of the document or grant the necessary approval to proceed. The originators of the documents shall resubmit revised documents for the approval of the Documentation Review Team.

4.4.2.5 The **Documentation Review Team** shall after granting the necessary approvals prepare a brief report which

- a) lists the names and qualifications of the team members;
- b) confirms that the documents are in accordance with the requirements of this standard; and
- c) captures any comments or opinions which the team may wish to express.

4.4.2.6 The Documentation Review Team shall forward a copy of their report and approval to proceed to the **designated person** for record keeping.

4.4.3 Evaluation panels

4.4.3.1 The **designated person** shall constitute an **Evaluation Panel** comprising the persons identified in Annexure B. Such panels shall:

- a) negotiate contracts where the negotiation procedure is applied and the value of the contract inclusive of VAT is above the threshold for quotations;
- b) evaluate submissions for calls for expressions of interest;
- c) evaluate tenders received where the competitive selection or competitive negotiation procedure is applied and the value of the contract inclusive of VAT is above the threshold for quotations; and
- d) evaluate quotations from contractors who compete for the award of a task, batch or package order.

4.4.3.2 Any person who is not an official of the institution shall confirm in writing that they will conduct themselves during the evaluation in accordance with the requirements of 4.2 and sign a confidentiality agreement before commencing with any evaluation of submissions.

4.4.3.3 All communications with respondents and tenderers during the procurement process to obtain information and clarifications shall be made in writing through the **designated person**. Records of all communications in this regard shall be made and retained by such persons for auditing purposes.

4.4.3.4 Quality shall be scored in terms of the prompts for judgement (see ISO 10845-1), either individually and averaged or collectively as appropriate.

4.4.3.5 The **Evaluation Panel** shall:

- a) require each of its members to declare their interest or confirm that they have no interest, prior to commencing with the evaluation; and
- b) evaluate submissions following a call for expressions of interest or tender offers in accordance with the provisions of the procurement documents (see Annex C of ISO 10845-3 and Annex C of ISO 10845-4, as relevant).
- c) confirm, where relevant, that respondents / tenderers are in possession of the required CIDB contractor grading designations by confirming their active status on the CIDB website and that they are in possession of the required contractor grading designation;
- d) confirm that respondents / tenderers tax matters are in order;
- e) confirm that tenderers or their principals are not prohibited from participation in the public procurement system by confirming that their names do not appear on National Treasury's List of Restricted Suppliers or the Register of Tender Defaulters; and
- f) confirm that tenderers are registered on the Western Cape Supplier Data base.

NOTE 1 The Register of Tender Defaulters and the Database of Restricted Suppliers are public document and can be viewed on National Treasury's website

- www.treasury.gov.za/publications/other/Register%20for%20Tender%20Defaulters.pdf
- www.treasury.gov.za/publications/other/Database%20of%20Restricted%20Suppliers.pdf

NOTE 2 A contract may not be awarded to a tenderer who is not on the Western Cape Supplier Data base.

4.4.3.6 Evaluation ratings and selections shall be made on the basis of the material requested and included in the submission and not on speculation, suspicion or personal knowledge of a panel member.

4.4.3.7 The **Evaluation Panel** shall record their scores for quality against each of the criteria during the process of evaluation, preferably with notes to substantiate the scores. Individuals shall record their own markings on a separate sheet. These documents shall be placed on file as an audit trail leading up to the decision and may form the basis of any debriefing that takes place.

4.4.3.8 The **Evaluation Panel** shall prepare evaluation reports in accordance with guidelines provided in Table 3 or Table 4 with modifications as necessary where a two envelope, two stage process or competitive negotiation procedure is followed.

4.4.4 Construction Procurement Committee

4.4.4.1 A **Construction Procurement Committee** shall be established to consider and approve certain actions relating to procurement and disposal transactions (see Table 5). Minutes of all the formal meetings of this committee shall be kept.

4.4.4.2 The membership of the **Construction Procurement Committee** shall comprise the persons identified in Annexure B.

4.4.4.3 The **Construction Procurement Committee** shall meet whenever the chairperson of the **Construction Procurement Committee** deems necessary. A quorum for a meeting shall be fifty percent plus one of the members.

4.4.4.4 All **Construction Procurement Committee** decisions shall be made on the basis of consensus (see note below 4.4.4.3)

Table 3: Typical content of an evaluation report relating to an expression of interest

Section	Typical content
<p>1 Summary</p>	<p>Provide an overview of the parameters associated with the expression of interest, preferably in tabular form, including the following:</p> <ul style="list-style-type: none"> • Contract / project no. • Contract / project description • Purpose of the Expression of interest (admission to a data base / prequalification / shortlisting) EOI • Media in which advertisement placed • Advertisement date • Estimated value of contract or task, batch or package orders which are likely to be awarded during the term of the contract, if applicable • Date from which documents were available • Number and title of addenda issued • Closing date • Details of clarification meeting including date and place, if any • Number of submissions made • Number of responsive submissions • Recommended outcomes of the process.
<p>2 An overview of the evaluation process</p>	<p>Provide an overview of the procurement process indicating the eligibility criteria that was applied. State points relating to evaluation criteria, prompts for judgement and weightings relating thereto. Reproduce the list of returnable documents. Provide an overview as to how the quality aspects of the submissions were scored. Record that those involved in the evaluation of tenders have no conflicts of interest or have declared any conflict of interest that they may have and the nature of such conflict.</p>
<p>3 Evaluation process</p>	<p>3.1 Submissions received List the submissions that were received. Describe any noteworthy events regarding the opening of tender submissions e.g. the returning of late tenders, the manner in which a single tender received was handled, the withdrawal of tenders and the declaring of tenders non-responsive on the grounds that they were not received in the prescribed manner.</p> <p>3.2 Completeness of submissions received Compare submissions received against list of returnable documents. State if any submissions were incomplete and outline how clarifications were obtained. Confirm if respondents took into account addenda, if any, in their submission</p> <p>3.3 Responsiveness of respondents Identify which of the submissions received were non-responsive and provide clear reasons for declaring respondents to be non-responsive.</p> <p>3.4 Evaluation of submissions Record the manner in which submissions were evaluated. Record, where relevant, and preferably in a tabular form the scores for each of the evaluation criteria. and the total score (excluding those who failed to score above a threshold, if any).</p> <p>3.5 Reasons for disqualification on the grounds of corrupt or fraudulent practice State reasons if applicable.</p> <p>3.6 Compliance with legal requirements Confirm that respondents are not barred from participation, tax matters are in order, is registered etc.,</p>
<p>4 Tender recommendation</p>	<p>Make a recommendation for the outcome of the process e.g. admit to a data base or prequalify / shortlist respondent to be invited to submit tender offers</p>
<p>5 Confirmation of recommendations</p>	<p>Make provision for the confirmation or amendment of the recommended action.</p>

4.4.4.5 The **Construction Procurement Committee** shall review the need for disposals and appoint a **Disposal Committee** to advise on how best to conduct a disposal.

4.4.4.6 The **Construction Procurement Committee** shall approve or refer back the items submitted for approval to the originator in accordance with the provisions of Table 5 and, where required, convey their decisions to the **Delegated Authority**. A copy of the **Construction Procurement Committee's** decisions shall promptly be forwarded to **designated persons**.

4.4.4.7 The **Construction Procurement Committee** shall review the reasons submitted for the use of the negotiated procedure in an emergency and either accept them or reject them and communicate their decision to the **designated persons**.

Table 4: Typical content of an evaluation report relating to the solicitation of tender offers

Section	Typical content
<p>1 Summary</p>	<p>Provide an overview of the parameters associated with the solicitation of the tender, preferably in tabular form, including the following:</p> <ul style="list-style-type: none"> • Contract / Project / Tender no. • Contract description • Contract duration • Purpose of tender • Contracting strategy • Pricing strategy • Form of contract • Targeting strategy • Procurement procedure • Method of tender evaluation • Tender validity expiry date • Alternative tenders (not permitted or state conditions under which permitted) • Media in which advertisement placed, if not a nominated or qualified competitive selection procedure or a restricted competitive negotiations procedure • Date of advertisement, if not a nominated or qualified competitive selection procedure or a restricted competitive negotiations procedure • Date from which documents were available • Details of clarification meeting including date and place, if any • Tender closing date • Number and title of addenda issued • Number of tenders received • Number of responsive tenders • Recommended tender(s) • Cost estimate (budget) or in the case of framework agreement, estimated value of all task , batch or package orders which are likely to be awarded during the term of the contract • Lowest responsive and realistic tender used for comparative purposes (tender price, specific goals etc.).
<p>2 An overview of the tender evaluation process</p>	<p>Provide an overview of the procurement process indicating the eligibility criteria that was applied and the evaluation criteria. State specific goals and points relating to preferences as well as any quality evaluation criteria, prompts for judgement and weightings relating thereto. Reproduce the list of returnable documents. Provide an overview as to how the quality aspects of the tender were scored. Record that those involved in the evaluation of tenders have no conflicts of interest or have declared any conflict of interest that they may have and the nature of such conflict.</p>
<p>3 Tender evaluation process</p>	<p>3.1 Tender offers received List the tender offers that were received. Describe any noteworthy events regarding the opening of submissions e.g. the returning of late tenders and the declaring of submissions non-responsive on the grounds that they were not received in the prescribed manner.</p> <p>3.2 Completeness of tenders received Compare tender submissions received against list of returnable documents. State if any tender submissions received were incomplete and indicate what was not complete. Indicate what steps were taken to make incomplete tenders complete only where this does not affect the competitive position of the tenderer in question. List communications with tenderers. Confirm if tenderers took into account addenda, if any, in their tender submission</p> <p>3.3 Responsiveness of tenderers Identify which of the tenders received were non-responsive and provide clear reasons for declaring such tenders to be non-responsive.</p> <p>3.4 Evaluation of tender offers Record the manner in which tenderers were reduced to a common basis. Record preferably in a tabular form:</p> <ul style="list-style-type: none"> • the scores for each of the evaluation criteria. • the total score (excluding those who failed to score above a threshold). • the fee percentages applied Defined Cost that were tendered if applicable <p>Provide reasons for not granting a preference or considering a financial offer to be unrealistically low.</p> <p>3.5 Reasons for disqualification on the grounds of corrupt or fraudulent practice State reasons if applicable.</p> <p>3.6 Compliance with legal requirements Confirm that tenderers are not barred from participation, tax matters are in order, is registered etc.</p> <p>3.6 Acceptability of preferred tenderer State any reasons why the tenderer with the highest points should not be considered for the award of the tender e.g. commercial risk, restrictions, lack of capability and capacity, legal impediments, etc. Also state any arithmetical corrections that have been made.</p>
<p>4 Outcome of the evaluation</p>	<p>Make a recommendation for the award of the tender and state any qualifications to such award.</p>
<p>5 Confirmation of recommendations</p>	<p>Make provision for the recommendations for the award of the tender to be confirmed or amended by the Construction Procurement Committee.</p>

Table 5: Action to be taken by a Construction Procurement Committee

Item for approval	Actions
Appointment of a disposal committee	Appoint a Disposal Committee to advise on how best to conduct a disposal.
Monitoring of task, batch or package orders	Review the issuing of task, batch or package orders to ensure that such orders remain within the scope of the agreements and where competition amongst framework contractors does not take place, the reasons given for not doing so are justifiable.
Monitoring quotation procedure transactions	Monitor the use of the quotation procedure.
Names of pre-qualified or short listed respondents or approved list of respondents.	Review evaluation report, verify compliance of the procurement process with the requirements of the CIDB Standard for Uniformity in Construction Procurement and the institution's policies, confirm the integrity of the process and the reasonableness and correctness of reasons provided for the elimination of respondents. Approve or refer back.
Recommendation to award a contract	Consider the report and recommendations (tender evaluation report) of the evaluation committee for all tenders and: <ul style="list-style-type: none"> • verify compliance of the procurement process with the requirements of this document; • confirm the integrity of the process; and • confirm the reasonableness and correctness of reasons provided for the elimination of tenderers Consider commercial risks and identify any risks that have been overlooked and warrant investigation prior to taking a final decision. Consider the approval amount submitted in the Tender Evaluation Report Refer back to evaluation panel or make a recommendation to award the contract (or not), with or without conditions, to the delegated authority.
Recommendation to amend the provisions of a contract	Consider a report recommending the amendment of a contract and make a recommendation to the designated person if the proposal is supported.
Removal of a name from a pre-approved list or electronic data base	Review motivation for removing a name and approve / not approve the removal of the name from the list or electronic data base other than the Western Cape Supplier Data base.
Unsolicited proposal	Review unsolicited proposals and make a recommendation to the designated person on how to proceed with the proposal.
Use of a disposal procedure	Review disposal procedure put forward by the disposal committee. Approve or refer back.
Use of a disposal strategy	Review disposal strategy put forward by the disposal committee. Approve or refer back.
Use of a negotiation procedure in an emergency	Ratify the use or not of the procedure in an emergency.
Use of proposal procedure or the approaching of a confined market	Approve a proposal procedure using the two-envelope system or the two-stage system or the approaching of a confined market if not already provided for in the construction procurement strategy developed in accordance with the CIDB Practice Guide 2.
Waiving of penalties	Consider the motivation for and the circumstances surrounding the waiver of penalties and low performance damages. Approve / not approve waiver.

4.4.4.8 The chairperson of the **Construction Procurement Committee** may, where urgent decisions are motivated and required by a **designated person** which cannot be held over to the next meeting, circulate the papers to members and request that written votes be submitted by a deadline. A unanimous approval by a quorum of members made by the stipulated deadline shall be deemed to be a resolution of the **Construction Procurement Committee**.

4.4.4.9 Decisions taken in terms of the procedure provided for in 4.4.4.8 shall be ratified at the next meeting of the **Construction Procurement Committee**.

4.4.5 Disposal Committee

4.4.5.1 A **Disposal Committee** shall decide how best to undertake disposals.

4.4.5.2 Disposal may be proceeded with only after the feasibility and desirability of using one or more of the following alternative disposal strategies have been considered:

- a) transfer to another organ of state, business unit or a charitable institution at market related value or free of charge;
- b) recycling or re-use of component materials; or
- c) dispose of by means of dumping at an authorised dump site, burning, demolition, etc.

4.4.5.3 The reasons for adopting a disposal strategy shall be recorded and forwarded to the **Construction Procurement Committee** for acceptance and auditing purposes prior to proceeding with such disposal.

NOTE: Disposals within the construction industry typically relate to demolition or dismantling of infrastructure and buildings or parts thereof and the disposal of unwanted, redundant or surplus materials, plant and equipment.

4.4.6 Delegated Authority

4.4.6.1 General

The permitted actions which may be taken by a **Delegated Authority** are listed in Annexure B.

NOTE: A Construction Procurement Committee can be a Delegated Authority.

4.4.6.2 Delegated Authority to award a contract

4.4.6.2.1 The **Delegated Authority** shall consider the report(s) and recommendations of the **Construction Committee**, or in the case of the quotation procedure, the **designated person** or the **Evaluation Panel**, and:

- a) verify compliance with the processes contained in this standard;
- b) confirm the integrity of the process;
- c) confirm the reasonableness and correctness of reasons provided for the elimination of tenderers; and
- d) approve the award of the contract subject to contracts having a value in excess of a threshold stated in Annexure B with the concurrence of the Provincial Treasury and being issued with an audit certificate.

4.4.6.2.2 The **Delegated Authority** shall award the contract in accordance with the relevant requirements of 4.10 only if the value of the transaction is within his or her delegations.

4.4.6.2.3 The **Delegated Authority** shall within 5 working days of the end of each month, in the interests of good governance, report to the **Construction Procurement Committee** on the nature, and value of contracts and the procedure that was used.

4.4.6.2.4 The **Delegated Authority** may not award a contract following a negotiated procedure exceeding a threshold stated in Annexure B without prior consultation with the Provincial Treasury. The **Delegated Authority** shall notify the **designated person** immediately of all awards made in terms of the notified procedure. The **designated person** shall notify Provincial Treasury and Auditor General of all appointments made in terms of the negotiation procedure where such value exceeds the threshold stated in Annexure B within 10 working days of such award.

4.4.6.3 Delegated Authority to award a package, batch or task order

4.4.6.3.1 The **Delegated Authority** shall confirm that the required goods, works or services are within the scope of work associated with the relevant framework contract.

4.4.6.3.2 The **Delegated Authority** shall confirm the validity of the reasons submitted by a **designated person** for not conducting a competition amongst framework contractors (see 4.7.2) and if found to be acceptable, sign the acceptance of the task, batch or package order, provided that in the case of a target contract, the total of prices contained in such order are certified as being fair and reasonable by a professional quantity surveyor registered in terms of the Quantity Surveying Profession Act, 2000 (Act 49 of 2000) or a professional engineer or professional engineering technologist registered in terms of the Engineering Profession Act, 2000 (Act 46 of 2000).

4.4.6.3.3 The **Delegated Authority** shall consider the report and recommendations of the **Evaluation Panel** and confirm the reasonableness of such recommendations and either refer the report and recommendation back to the **Evaluation Panel** or sign the acceptance of the task, batch or package order to the contractor.

4.4.6.3.4 The **Delegated Authority** shall within five working days of the end of each month, in the interests of good governance, report to the **Construction Procurement Committee** on any approvals given for task, batch or package orders during that month and provide a brief motivation as to why the batch / package / task order was issued to a particular contractor, using the proforma provided in Figure 4.

Proforma Report to Construction Procurement Committee				
Unit / Department:				
Month:		Year:		
I hereby declare that the following Batch / Task / Package Orders were awarded during the month covered by this report				
Framework contract details		Task order		Brief motivation for issuing task order
Number:	Service area:	Number	Total of Prices (Rand)	
Signature:				

Figure 4: Format of report on award of task, batch or package orders during a month

4.4.7 Compliance monitoring

4.4.7.1 Procurement plans

4.4.7.1.1 A **designated person** shall on an annual basis prepare a procurement plan which contains the following information in a tabular form for all proposed tenders or task, batch or package orders issued in terms of a framework agreement for the next financial year where the proposed procurement is estimated to equal or exceed a threshold stated in Annexure B.

- a) a description of the goods, services or works;
- b) the estimated value of such goods, services or works including all applicable taxes;
- c) the envisaged date of advertisement;
- d) envisaged closing date for tenders;
- e) envisaged date of award; and
- f) the responsible office / regional office.

4.4.7.1.2 The procurement plan shall be approved by a **designated person** and forwarded by those responsible for preparing such plan to the relevant Provincial Treasury before 30 April of each year.

4.4.7.2 Tenders or task, batch or package orders having a value in excess of a threshold

4.4.7.2.1 The **designated person** shall submit to the SCM unit for onward transmission to the Provincial Treasury the following information in respect of a tender having an estimated tender value equal to or in excess of the threshold stated in Annexure B prior to the advertisement of such tenders in the Government Tender Bulletin:

- a) proof that budgetary provision exists;
- b) any ancillary budget implications; and
- c) any multi-year budgetary implications i.e. the expenditure per year where the expenditure straddles more than one year.

NOTE: Ancillary budget implications include, for example, in the case of a school the remuneration of teachers, the transport of children and municipal taxes and services.

4.4.7.2.2 A **designated person** shall audit the procurement process of all contracts having a tender value equal to or in excess of the threshold stated in Annexure B for compliance with the following prior to the award of the contract and issue a certificate to the effect that:

- a) the proposed contract is listed on the procurement plan submitted to Provincial Treasury;
- b) advertisements have been made in accordance with requirements and the Provincial Treasury has responded to the submission made;
- c) the procurement documents (tender documents and, where applicable, calls for expressions of interest) were reviewed by a **Documentation Review Team** and found to comply with requirements;
- d) the evaluation reports (for the soliciting of tender offers and, where applicable, calls for expressions of interest) was prepared by an **Evaluation Panel** in accordance with requirements and are comprehensive and complete; and
- e) the minutes of the **Construction Procurement Committee** regarding the recommendations for award reflect that consensus was reached in arriving at the recommendation.

4.4.7.2.3 A **designated person** shall audit the issuing of all task, batch or package orders issued in terms of a framework agreement having an estimated value equal to or in excess of the threshold stated in Annexure B for compliance with the following prior to it being issued and issue a certificate to the effect that:

- a) the task, batch or package order is listed on the procurement plan submitted to the Provincial Treasury;
- c) the task, batch or package orders were reviewed by a **Documentation Review Team** and found to comply with requirements;
- d) the evaluation reports, where applicable, was prepared by an **Evaluation Panel** in accordance with requirements and are comprehensive and complete; and
- e) the justification for issuing a task, batch or package order to a particular framework contractor is reasonable.

4.4.7.2.4 The **designated person** shall provide the **delegated authority** with a copy of the certificate and forward a copy to the SCM Unit for record keeping.

4.4.7.3 Increases in the total of prices

4.4.7.3.1 Prior written approval shall be obtained from the Provincial Treasury to increase the total of prices exclusive of price adjustment for inflation for a contract or task, batch or package order from the total of prices excluding contingencies upon award the contract or issue of such order equals or exceeds the amounts stated in Annexure B.

4.4.7.3.2 A **designated person** shall prepare a motivation and submit such motivation to the Provincial Treasury.

4.5 Complaints and challenges

4.5.1 All complaints regarding the construction procurement system shall be addressed to the **designated person**.

4.5.2 The **designated person** shall investigate all complaints regarding the procurement system in accordance with the institution's complaints procedures.

4.5.3 Tenderers may, where an institution has established a panel of tender dispute adjudicators in accordance with the provisions of 4.5.5, dispute the evaluation of their tender offers after the award of the contract, within 10 working days of receipt of an unsuccessful tenderer notification, by requesting in writing that the **designated person** appoint a tender dispute adjudicator from the panel of tender dispute adjudicators established by the institution to adjudicate on the matter, subject to:

- a) the tender dispute adjudicator being appointed in terms of the agreement contained in Annexure C;
- b) the tenderer agreeing to pay half the tender dispute adjudicator's fee and lodging a deposit equal to half the estimated fee amount with the **designated person**;
- c) the tenderer accepting the standard terms and conditions for tender dispute adjudication (see Annexure C); and
- d) the tenderer disputing the evaluation waiving all rights to overturn the award of the tender to another party and to claim damages, and agreeing to limit any compensation to the greater of R 75 000 and 0,75 % of the price of the contract at the time of award or the estimated value of contract or task, batch or package orders which are likely to be awarded during the term of the contract, subject to a maximum amount of R5,0 million.

4.5.4 The tenderer disputing the evaluation shall be entitled to nominate a tender dispute adjudicator from the institution's panel of tender dispute adjudicators, provided that such an adjudicator confirms that he has no conflict of interest in adjudicating the dispute.

4.5.5 The panel of tender dispute adjudicators shall comprise suitably qualified persons who have at least 10 years of experience in the evaluation of tenders within the construction industry and have a suitable built environment qualification.

NOTE: The waiving of rights to overturn an award prevents this system from being used to inexpensively test whether or not there is a case for a court of law to overturn a decision or offer compensation. Aggrieved tenderers should make a choice at the outset to obtain relief through the courts or through a tender dispute adjudicator.

4.6 Secondary procurement policy

4.6.1 General

4.6.1.1 The institution shall utilise its procurement to promote Broad Based Black Economic Empowerment in accordance with the provisions of the Broad Based Black Economic Empowerment Act, (Act 53 of 2003) and, where appropriate, to promote:

- a) work and development opportunities for CIDB registered contractors in grades 4 to 7;

- b) work opportunities for CIDB registered contractors in grades 1 to 3;
- c) work opportunities for temporary workers in support of government's Expanded Public Works Programme or poverty alleviation objectives,
- d) the development of black owned consulting firms where skills shortages exist;
- e) experiential work opportunities towards a technical qualification or professional registration; and
- f) specific goals provided for in any Service Delivery Agreement entered into..

NOTE: Section 2(1) The Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000) requires an organ of state to determine its preferential procurement policy and to implement it in accordance with the framework provided in the Act. Section 10 of the Broad Based Black Economic Empowerment Act of 2003 (Act 53 of 2003) requires that account of any relevant code of good practice issued in terms of this Act be taken when developing and implementing a preferential procurement policy. These requirements are in accordance with these Acts and standardise the specific goals which can be pursued in terms of a preferential procurement policy.

4.6.1.2 Not less than 50% of the points allocated to preference in a points scoring system in the evaluation of tenders shall be allocated to broad-based black economic empowerment contributors.

4.6.1.3 An institution may put in place a targeted development programme to support potentially emerging contractors. The criteria for determining who is capable of being developed shall be as stated in the CIDB *Specification for social and economic deliverables in construction works* contracts. The measures for ensuring that financial, management or other support is provided to those contractors who qualify for development to enable them to successfully execute contracts shall be documented and made available to Provincial Treasury.

NOTE: The Construction Industry Development Regulations issued in terms of the Construction Industry Development Board Act permits an employer to accept for evaluation tender offers or expressions of interest by a contractor who is registered with the CIDB as a potentially emerging enterprise at a contractor grading designation, one level higher than the contractor's registered grading designation, within the framework of a targeted development programme (See Regulation 25(8)).

4.6.1.4 Minimum local content shall be included in contracts in accordance with the Preferential Procurement Regulations 2011 where required or deemed by the **Construction Procurement Committee** to be appropriate.

4.6.1.5 Work opportunities shall be provided to temporary workers in accordance with the provisions of the *Guidelines for the Implementation of Labour-Intensive Infrastructure Projects under the Expanded Public Works Programme (EPWP)*.

4.6.1.6 Management contracts may be entered into in accordance with the provisions of 4.6.4 to employ members of the communities to undertake simple works which do not require high levels of skill or sophisticated materials and equipment to construct where it is desirable to do.

4.6.2 Permitted targeted procurement procedures

The targeted procurement procedures that may be used to promote secondary policies shall include one or more of the following:

- a) the granting of preferences, using standard Preferencing Schedules;
- b) accelerated rotations on electronic data bases, where appropriate;
- c) the granting of up to 10% of the total number of evaluation points used to short listed tenderers following a call for expressions of interest using a standard Preferencing Schedule;
- d) financial incentives for the attainment of Key Performance Indicators in the performance of the contract; and

- e) the creation of contractual obligations to engage target groups in the performance of the contract using either the procedures for subcontracting contained in Annex I of the CIDB Standard for Uniformity in Construction Procurement or establishing obligations to attain contract participation goals in accordance with the relevant provisions of ISO 10845 or the equivalent South African national standards.

NOTE: The CIDB *Specification for Social and Economic Deliverables in Construction Works Contracts* provides guidance on the application of a range of targeted procurement procedures in the performance of a contract.

4.6.3 Broad Based Black Economic Empowerment

4.6.3.1 Preferences shall be offered for Broad Based Black Economic Empowerment on all tenders and quotations that exceed a value stated in the Preferential Procurement Regulations using, as applicable:

- a) the Construction Sector Code as published in Government Gazette No 32305 of 5 June 2009;
- b) the generic Broad-Based Black Economic Empowerment Codes of Good Practice as published in Government Gazette No 29617 of 9 February 2007; or
- c) any other Code of Good Practice published in terms of section 9 of the Broad Based Black Economic Empowerment Act of 2003 (Act No 53 of 2003).

4.6.3.2 Preferences may only be granted if sufficient evidence of qualification as a contributor is submitted in support of claims in the form required in the applicable standard Preferencing Schedules for Broad Based Black Economic Empowerment.

4.6.3.3 Preferences awarded to joint ventures shall, as applicable, be based on:

- a) the B-BBEE status of the joint venture as a group structure, established by a verification agency, in accordance with the *Guidelines on Complex Structures & Transactions, and Fronting (Previously Statement 002)* issued by the Department of Trade and Industry; or
- b) the B-BBEE status based on a weighting of the shareholder agreement relevant to the specific joint venture in accordance with section 8 of the Construction Sector Code; or
- c) the B-BBEE status of the joint venture partner with the lowest B-BBEE status.

4.6.3.4 The B-BBEE status of a framework contractor shall be confirmed, and where necessary updated, whenever a task, batch or package order is issued.

4.6.4 Engaging members of the community in construction works

4.6.4.1 Management contractors may, as necessary, be contracted to provide materials and construction management support to members of the communities or micro enterprises within close proximity to works as an alternative to requiring a contractor to engage unemployed persons in terms of the *Guidelines for the Implementation of Labour-Intensive Infrastructure Projects under the Expanded Public Works Programme (EPWP)*.

4.6.4.2 A management contractor may as an obligation of contract be required to employ members from the community and micro enterprises identified by project structures at open market or competitively tendered rates.

4.7 Usage of standard procurement procedures

4.7.1 General

4.7.1.1 Goods, services and works should generally be procured from the open market. Tenders may, however, be solicited from a confined market where it is established with reasonable certainty that:

- a) only a sole contractor is able to provide the goods, services or works; r
- b) only a very limited number of contractors are able to provide goods, services or works which are not freely available in the market, or which are provided solely for the institution in accordance with unique requirements; or
- c) there is a case for standardising goods or making use of manufacturer accredited service providers.

in which case, tender offers will only be solicited only from the identified confined market, irrespective of the estimated value of the contract.

NOTE The confined market procedure can be used to procure components for the maintenance of items where a change in product or manufacturer requires modifications to plan and equipment e.g. a replacement pump requires costly changes to mountings, pipework or electrical connections, the replacement of circuit breakers requires costly changes to mounting frames, face panels, busbars, wiring etc or a a replacement model requires the holding of additional spares and / or maintenance personnel. Legislative, technological or safety requirements can also confine the market.

4.7.1.2 The standard procurement procedures identified in Table 6 shall be implemented under the stated conditions in that table in accordance with the provisions of ISO 10845-1.

4.7.1.3 Projects shall not be subdivided to reduce the estimated tender value to fall within a threshold applicable to a specific procurement procedure.

4.7.1.4 A **designated person** shall, except where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in Table 6 and which can be dealt with or the risks relating thereto arrested within 48 hour or such a procedure is included in the portfolio procurement strategy, fully motivate the reasons for pursuing the negotiation procedure or for approaching a confined market and submit an application to the **Construction Procurement Committee** for prior approval. The negotiation process or the soliciting of tender offers from a confined market in such circumstances may not commence until such time that the **Construction Procurement Committee's** approval is obtained. Approval for the use of a confined market shall only be valid for a period not exceeding 18 month.

4.7.1.5 Where a rapid response is required in the presence of, or the imminent risk of, an extreme or emergency situation arising from the conditions set out in Table 6 and the negotiation procedure is used, a **designated person** may pursue a negotiated procedure without prior approval. Such persons shall, however, fully describe the circumstances surrounding the extreme or emergency situation that gave rise to the use of the negotiation procedure and submit together with this report an explanation for acceptance by the **Construction Procurement Committee** within 10 working days of the finalisation of the procurement transaction.

NOTE: A rapid response required to address shortcomings in planning e.g. a failure to timeously initiate and conclude a procurement processes, is not sufficient on its own to warrant the use of the negotiated procedure.

4.7.1.6 The **designated person** shall, unless such a procedure is included in the portfolio procurement strategy or a procurement strategy associated with a Service Level Agreement, fully motivate the reasons for pursuing the proposal procedure using the two-envelope system or the proposal procedure using the two-stage system to the relevant procurement tender committee for prior approval. The procurement processes associated with such procedures may not commence until such time that the **Construction Procurement Committee** approval is obtained.

4.7.1.7 The qualified procedure shall be used to establish the CIDB contractor grading designation requirements where works or services require the application of the CIDB register of contractors and either tenderers are required to only tender cost parameters or framework contracts using a cost based contracting strategy are entered into. The estimated annual value of such work shall be used to establish the minimum contractor grading designation that is required.

4.7.1.8 Quotations should be invited from persons registered on the Western Cape Supplier Data base.

Table 6: Conditions under which procurement procedures may be utilised

Procedure	Conditions which need to be satisfied in order to utilise the procedure
Negotiated procedure	
	<p>Any procurement where:</p> <ol style="list-style-type: none"> 1) a rapid response is required due to the presence of, or the imminent risk of, an extreme or emergency situation arising from: <ol style="list-style-type: none"> a) human injury or death, b) human suffering or deprivation of human rights, c) serious damage to property or financial loss, d) livestock or animal injury, suffering or death, e) serious environmental damage or degradation, or f) interruption of essential services. 2) the required goods, services or construction works cannot technically or economically be separated from another contract previously performed by a specific contractor, 3) only one contractor has been identified as possessing the necessary experience and qualifications or product for providing the required service, goods or construction works, 4) the services, goods or works does not exceed the value stated in Annexure B, 5) the service or construction works being procured are largely identical to works previously executed by that contractor and it is not in the interest of the public or the institution to solicit other tender offers, 6) a professional service contract does not exceed the value stated in Annexure B, which can be based on time and proven cost, 7) the nature of the construction works, goods, or services or the risks attaching thereto do not permit prior overall pricing, or 8) only one responsive tender is received.
Competitive selection procedure	
Nominated procedure	Any procurement not exceeding the value stated in Annexure B .
Open procedure	Any procurement except where the cost of advertising or the evaluation of a large number of tender submissions is disproportionate to the value of the work.
Qualified procedure	<p>Any procurement where:</p> <ol style="list-style-type: none"> 1) a contractor requires a high degree of specialised input or requires skills and expertise that is not readily available, 2) a contractor requires exceptional management skills or quality, 3) a contractor requires significant tenderer inputs in order to respond appropriately to requirements so that a financial offer may be determined, 4) it is desirable, in a large programme, to link packages of work to tenderers who have the appropriate capacity and capability to compete against each other, 5) the time and cost required to examine and evaluate a large number of tender offers would be disproportionate to the procurement, 6) for practical reasons, it is necessary to limit the number of tender submissions that are received, or 7) the goods or services are not freely available in the market or which are manufactured solely for the institution in accordance with the institution's own specification.
Quotation procedure	Any procurement where the estimated value does not exceed the value stated in Annexure B .
Proposal procedure using the two-envelope system	Professional services where tenderers are required to develop and price proposals to satisfy a broad scope of work.
Proposal procedure using the two-stage system	<p>Option 1</p> <p>Any procurement in which tenders are required to submit technical proposals and, if required, cost parameters around which a contract may be negotiated. Professional services where the award of the contract is made to the winner of a design competition.</p>
	<p>Option 2</p> <p>Any procurement in which tenderers are invited to submit technical proposals in the first stage and to submit tender offers based on procurement documents issued during the second stage.</p>
Shopping procedure	Supplies contract which involves readily available goods does not exceed the value stated in Annexure B or less.

Procedure	Conditions which need to be satisfied in order to utilise the procedure
Competitive negotiation procedure	
Restricted competitive negotiations	As for open competitive negotiations but where: <ol style="list-style-type: none"> 1) a contractor requires a high degree of specialised input or requires skills and expertise that is not readily available, 2) a contractor requires exceptional management skills or quality, 3) a contractor requires significant tenderer inputs in order to respond appropriately to requirements so that a financial offer may be determined, 4) the time and cost required to examine and evaluate a large number of tender offers would be disproportionate to the procurement, 5) for practical reasons, it is necessary to limit the number of tender submissions that are received; and 6) a target cost is tendered and finalised prior to the award of the contract;
Open competitive negotiations	Any procurement where: <ol style="list-style-type: none"> 1) it is not feasible to formulate detailed specifications for the work or to identify the characteristics of goods or construction works to obtain the most satisfactory solution to procurement needs, 2) there are various possible means of satisfying procurement needs, 3) the technical character of the goods or construction works or nature of the services warrants the use of competitive negotiations to realise the most satisfactory solution to procurement needs, 4) the purpose of the contract is research, experiment, study or development; or 5) all the tenders received in a competitive selection procedure are non-responsive and the calling for fresh tenders is likely to result in a similar outcome.

NOTE: The electronic auction procedure is not to be used by the institution.

4.7.1.8 Where quality forms part of the tender evaluation criteria, the financial offer and preference shall be scored out of 100 points in accordance with the provisions of the Preferential Policy Framework Act, 2000 (Act No 5 of 2000) and points for quality scored out of maximum of 100 points . The points for the preference points system shall be added to the points for quality in terms of the weightings stipulated in the procurement documents.

NOTE: Section 2(1)f of the Preferential Procurement Policy Framework Act, 2000, permits an award to be made on the grounds of other objective criteria.

4.7.2 Framework agreements

4.7.2.1 Framework agreements may be entered into with contractors for a term not exceeding 4 years by:

- a) inviting tender offers to enter into a suitable contract for the term, using stringent eligibility and evaluation criteria to ensure that contracts are entered into with only those contractors who have the capability and capacity to provide the required services; and
- b) entering into a limited number of contracts based on the projected demand and geographic location for such services.

4.7.2.2 Framework agreements that are entered into shall not commit the institution to any quantum of work beyond the first task, batch or package order or bind the institution to make use of such agreements to meet its needs. The institution shall approach the market for goods, services and works whenever it considers that better value in terms of time, cost and quality may be obtained.

4.7.2.3 The cumulative value of batch orders, task orders and package orders shall not exceed in any one year following the start of contract a value stipulated in the contract by more than 10% unless prior approval has been obtained from the **designated person**.

4.7.2.5 The **Documentation Review Team, Evaluation Panel and Construction Procurement Committee** shall be informed of the likely annual value of work which may form part of the framework agreement prior to the commencement of any assigned activities.

4.7.2.6 Call-offs from framework agreements (issuing of task, batch or package orders) with a number of framework contractors covering the same scope of work may be made with or without requiring competition. Where competition is required amongst framework contractors, it shall be conducted in a non-discriminatory manner such that competition is not distorted.

4.7.2.7 Competition between framework contractors for call-offs shall take place where:

- a) there is no justifiable reason for issuing a task, batch or package order to a particular framework contractor;
- b) the terms in the framework agreement are insufficiently precise or complete to cover the particular requirement e.g. delivery time scales or time estimates to complete the task, batch or package order (productivity);
- c) a better quality of service can be obtained through a competitive process

NOTE: Justifiable reasons for issuing a task, batch or package order to a particular framework contractor include

- the framework contractor provided the most economically transaction when the financial parameters included in the contract are applied and has the capacity to deliver;
- the required goods, services or construction works cannot technically or economically be separated from another contract or task, batch, package order previously performed by a specific contractor;
- the service or construction works being instructed are largely identical to work previously executed by that contractor;
- the value of the task, batch or package order is less than the threshold for the quotation procedure (see Annexure B);
- the schedule for delivery necessitates that each of the framework contractors be issued with batch, task or package orders on a continuous basis; and
- capacity to execute the task, batch or package order.

4.7.2.8 The task, batch or package orders shall indicate who the **contract manager** is. The **contract manager** shall be fully empowered to act on behalf of the institution for the services covered by the task, batch or package order. The **contract manager** will accept, or not accept, the contractor's assessment of the amount due in terms of the contract and enter the particulars relating to the task, batch or package order and amounts due, using suitable software developed to track all task, batch or package orders issued.

4.7.2.9 Another organ of state may request to make use of one or more of the institution's framework contracts. Such a request shall be accompanied by an outline of the:

- a) the scope and anticipated quantum of work associated with the services and where such services are required;
- b) whether or not the services of only one framework contractor will be required, and if so, the motivation for requiring the services of such contractor; and
- c) the benefit to be derived from making use of the framework contract.

4.7.2.10 The **designated person** may approve a request from the accounting officer or accounting authority of an organ of state to make use of a framework contract entered into with the institution, conditionally or unconditionally, if:

- a) the framework agreement was put in place following a competitive tender process;
- b) confirmation is obtained that the framework contract is suitable for the intended use and the required goods, services and works fall within the scope of such contract;
- c) the framework contractor agrees in writing to accept a task, batch or package order from that organ of state; and
- d) the issuing of task, batch or package order by that organ of state will not compromise the performance of the contractor in executing work for the institution.

4.7.2.11 The approval granted in terms of 4.7.2.10 shall be conditional upon the organ of state notifying a **designated person** of the award and completion of task, batch or package orders together with the total of prices at the start and end of such orders.

4.7.2.12 A **designated person** shall provide any organ of state that is granted permission to make use of a institution framework contract with a copy of the contract and any templates for the issuing of quotations or task, batch or package order and any other relevant information pertaining to the use of the framework contract that may be required.

4.7.3 Lists of pre-approved contractors

4.7.3.1 Rotating electronic data bases

4.7.3.1.1 A call for an expression of interest for admission to the database of contractors who have the required capacity and capability in specified fields of services and goods shall be made at least once a year in a suitable newspaper that enables a wide spectrum of suitably qualified and eligible tenderers to access the opportunities that are presented.

4.7.3.1.2 Only those respondents who:

- a) are in possession of an original valid Tax Clearance Certificate issued by the South African Revenue Services or have made arrangements to meet outstanding tax obligations and are VAT registered;
- b) can demonstrate their capability and capacity to provide the services or manufacture or supply the goods in the specified fields in terms of the criteria stated in the submission data;
- c) have, if so required, submitted samples or delivered goods which have satisfactorily passed the institution's tests;
- d) are not subject to restrictions to do business with the public sector; and
- e) complete the standard Preferencing Schedule for Broad Based Black Economic Empowerment

may be admitted to an electronic data base for a period of three years, after which they may reapply for admission to the data base.

4.7.3.1.3 The electronic data base shall be in accordance with the provisions of ISO 10845-1. Accelerated tender opportunities will be provided to level 4 and level 3 and higher B-BBEE contributors.

4.7.3.1.4 New applicants for admission to the data base shall be admitted to the data base as soon as possible after their application has been evaluated and found to satisfy the required admission criteria.

4.7.3.1.5 The contractor's information on the data base including the level of B-BBEE contribution, shall be updated whenever a tender offer is evaluated.

4.7.3.2 Approved list

4.7.3.2.1 A list of pre-approved contractors may be established for a period of 18 months, for the supply of goods or services, irrespective of their value, which are in constant demand, following a call for expressions of interest advertised in the Government Tender Bulletin and where appropriate in a suitable national newspaper, subject to the approval of **Construction Procurement Committee**.

4.7.3.2.2 Contractors may only be admitted to the approved list should they satisfy the requirements of 4.7.3.1.2.

4.7.3.2.3 All contractors who are capable of supplying the required goods or providing the required services on the approved list shall be invited to submit tender offers.

4.7.3.3 Removal of a contractor from a pre-approved list or data base

4.7.3.3.1 The name of a contractor may be removed from an approved list or data base at any time if the contractor:

- a) is no longer in possession of a required registration or licence which is essential to the performance of a contract;
- b) is under restrictions preventing participating in public sector procurement;
- c) fails to discharge all contractual obligations timeously and in accordance with the provisions of the contract;
- d) ceases to continue to carry on business under that name or form of company the contractor was registered under on the list;
- e) repeatedly fails to submit tender offers; or
- f) fails to enter into a contract or execute a task, batch or package order when requested to do so.

4.7.3.3.2 The contractor shall, prior to being removed from a pre-approved list or data base, be notified of the reason for the institution's intention of removing his name from such list unless the contractor can provide sufficient reasons why the institution should not do so.

4.7.3.3.3 A contractor's name may only be removed from the list with the approval of the **Construction Procurement Committee**.

4.7.4 Disposals

Disposals shall be undertaken using one of the following disposal procedures in accordance with the provisions of ISO 10845:

- a) the negotiated procedure,
- b) the open procedure,
- c) the qualified procedure, or
- d) public auction.

4.7.5 Unsolicited proposals

4.7.5.1 Unsolicited proposals shall be handled in accordance with the provisions of ISO 10845-1. The official who receives an unsolicited proposals shall forward such proposal to the **designated person** who in turn shall forward such a proposal together with comments regarding the merits of the proposal or a motivation to implement such a proposal to the **Construction Procurement Committee**.

4.7.5.2 The **Construction Procurement Committee** shall review the submission for unsolicited proposal and make a report on or a recommendation to the **designated person** regarding such proposal.

4.8 Procurement documents

4.8.1 General

4.8.1.1 Procurement documents shall be developed in accordance with the provisions of ISO 10845-2 and the CIDB Standard for Uniformity in Construction Procurement.

4.8.1.2 The formation of a contract in the single volume approach (see ISO 10845-2) shall occur once the schedule of deviations has been completed to reflect each and every amendment to the tender documents:

- a) made in terms of addenda issued prior to the close of tenders; and
- b) permitted in terms of the conditions of tender and agreed to in the process of offer and acceptance; and

the acceptance portion of the Form of Offer and Acceptance has been signed by the person authorised to do so.

4.8.1.3 The formation of the contract in the three volume approach (see ISO 10845-2) shall take place after:

- a) each and every amendment to the tender documents made in terms of addenda issued prior to the close of tenders and those permitted in terms of the conditions of tender and agreed to in the process of offer and acceptance have been incorporated into the final contract; and
- b) a brief summary of the changes made in the final contract document is included in the schedule of deviations so as to allow the reader to understand the nature and extent of the changes; and
- c) the acceptance portion of the Form of Offer and Acceptance has been signed by the person authorised to do so.

NOTE 1: It is not necessary to provide the detail of the changes in the schedule of deviations as these are incorporated in the final contract documents.

NOTE 2: In the event that extensive deviations are made, it is preferable to use the three volume approach and to incorporate the changes in the final contract documents.

4.8.1.4 A tenderer's covering letter shall not be included in the final contract document or referenced in the schedule of deviations.

4.8.1.5 A contract that has been entered into may be amended by the parties only with the approval of the **designated person** upon the recommendation of the Construction Procurement Committee.

4.8.2 Standard forms of contract

4.8.2.1 The standard forms of contract shall be selected from and be suitable for use under the conditions described in Table 7. In the case of very low value contracts, the following contracts may be used under the stated conditions if deemed to be appropriate:

- a) goods without any incidental work or services on or before a specified date are required - CIDB General Conditions of Purchase; and
- b) low value services on or before a specified date are required - CIDB General Conditions of Service.

4.8.2.2 The standard forms of contract shall be used with minimal contract amendments which do not change their intended usage and shall only be amended when absolutely necessary to accommodate special needs.

4.8.2.3 Professional service providers shall as a general rule not be paid on the basis of a percentage of the cost of the construction works.

NOTE: It is better practice to require professional service providers to design works for a stated budget and to fix the fees on this amount. Should the budget change, the fees can then be adjusted in terms of the provisions of the contract.

Table 7: Approved forms of contract

Form of contract	Code	Usage
CIDB		
Standard professional service contract	SPSC	Professional services
FIDIC		
Short Form of Contract	Green Book	Building or engineering works of relatively small capital value or for relatively simple or repetitive work or work of short duration. Use for design by employer or contractor designed works.
Conditions of Contract for Construction for Building and Engineering Works designed by the Employer	Red Book	Building or engineering works designed by the employer. (The works may include some elements of contractor designed works)
Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works, designed by the Contractor	Yellow Book	The provision of electrical or mechanical plant and the design and construction of building or engineering works.
GCC		
General conditions of contract for construction contracts (2010)	GCC	Engineering and construction works, including any level of design responsibility.
JBCC Series 2000		
JBCC Principal Building Agreement (Edition 5)	PBA	Buildings and related site works designed by the employer
JBCC Minor Works Agreement (Edition 4)	MWA	Buildings and related site works of simple content designed by the employer
NEC3		
NEC3 Engineering and Construction Contract	ECC	Engineering and construction works, including any level of design responsibility.
NEC3 Engineering and Construction Short Contract	ECSC	Engineering and construction works which do not require sophisticated management techniques, comprise straightforward work and impose only low risks on both the employer and contractor.
NEC3 Professional Services Contract	PSC	Professional services, such as engineering, design or consultancy advice
NEC3 Term Service Contract	TSC	Manage and provide a service over a period of time
NEC3 Term Service Short Contract	TSSC	Manage and provide a service over a period of time or provide a service, which does not require sophisticated management techniques, comprises straightforward work and imposes only low risks on both the employer and contractor
NEC3 Supply Contract	SC	Local and international procurement of high value goods and related services including design
NEC3 Supply Short Contract	SSC	Local and international procurement of goods under a single order or on a batch order basis and is suitable for use with contracts which do not require sophisticated management techniques and impose only low risks on both the Purchaser and the Supplier.

4.8.2.4 Approval from the **designated person** shall be obtained for the inclusion of additional clauses or variations to the standard clauses in the contract data other than the standard clauses provided in the approved standardised documents.

4.8.3 Auction data

Auction data shall be based on the auction data contained in ISO 10845-1.

4.8.4 Standardised documents

All procurement documents including calls for expressions of interest shall be based on the standard institution approved templates which comply with the requirements of the CIDB Standard for Uniformity in Construction Procurement.

4.8.5 Tender assessment schedules

Tender assessment schedules shall be used to take account of the tendered financial parameters relating adjustments in prices for events for which the contractor is not at risk or defined cost in target cost contracts in the evaluation of tenders using standard templates.

4.8.6 Guarantees

4.8.6.1 Performance guarantees shall be provided by a recognised banking institution or a financial institution with insurance long term credit of "AAA" on all engineering and construction works contracts. Such guarantees shall be between 5 and 12,5 % of the contract or package order value, excluding VAT, and may be either a fixed or variable guarantee.

4.8.6.2 Guarantees, which guarantee performance with a stated financial benefit in the event of non-performance, should as a general rule not be required in service, professional service and supply contracts.

4.8.6.3 As a general rule, no advance payments shall be made to contractors. Where such payment is required, it shall be against the lodging of an advance payment guarantee of a recognised banking institution or a financial institution with insurance long term credit of "AAA". Permission to provide an advance guarantee shall be obtained from the **designated person** prior to agreeing to such provisions in terms of a contract.

4.8.7 Retention

Retention monies that are held shall not exceed 10,0% of any amount due to a contractor. The total amount of retention monies held shall not exceed 5% of the contract or package order price.

4.8.8 Delay damages

Delay damages shall not exceed a genuine and reasonable pre-estimate of the damage or harm which the institution or its client might suffer as a result of the contractor's failure to complete the works or services by the completion date or to deliver goods by the agreed date.

NOTE 1: Delay damages are a form of liquidated damages. The estimate of the damage should be based on losses sustained as a result of delayed completion, including increased finance charges, additional supervision costs, etc. The amount of the liquidated damages should not be unrealistic, punitive or excessive as this will expose the institution to the legal risk of non-enforcement of such damages

NOTE 2: The Penalties Act of 1962 (Act No 15 of 1962) provides for the enforceability of penalty stipulations, including stipulations based on pre-estimates of damage, and of forfeiture clauses. This Act empowers a court of law to reduce penalties where they are out of proportion to the prejudice suffered to make them equitable in the circumstances.

4.8.9 Price escalation

4.8.9.1 Price escalation shall as a general rule be based on appropriate indices published by Statistics South Africa or the contract price adjustment provisions contained in the JBCC form of contract.

4.8.9.2 Major material components in an engineering and construction contract may be increased or decreased by the net amount of any documented variation incurred after the base date on the basis set out in the contract data provided by the contractor.

4.8.9.3 The base date for indices shall be the month during which the closing date for tenders falls.

4.8.10 Insurances

4.8.10.1 Insurances for large, long term programmes of works involving the construction, rehabilitation, alteration or extension of construction works shall preferably be principal or employer controlled.

NOTE: Principal or employer controlled insurances for programmes of projects enables risks to insured on a more, systematic, scientific and cost-effective basis than is the case where insurances are effected on a piecemeal basis by contractors executing projects within a programme. It also removes duplication of cover, minimises delays in receiving compensation for claims and facilitates better control over claims and more effective administration of policies.

4.8.10.2 The insurances cover in engineering and construction contracts for loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract shall in general not be less than the value stated in Annexure B, unless otherwise directed by the **designated person**. Lateral earth support insurance in addition to such insurance shall be take out on a case by case basis.

4.8.10.3 The insurances cover in professional services and service contracts for damage to property or death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract shall not be less than the value stated in Annexure B for any one event unless otherwise directed by the **designated person**.

4.8.10.4 SASRIA Special Risk Insurance in respect of riot and associated risk of damage to the works, Plant and Materials shall be taken out on all engineering and construction works.

4.8.10.5 Professional service appointments shall as a general rule be subject to proof of current professional indemnity insurance being submitted by the contractor in an amount not less than the value stated in Annexure B in respect of each claim, without limit to the number of claims, unless otherwise directed by the **designated person** in relation to the nature of the service that they provide.

4.8.10.6 The institution shall take out professional indemnity insurance cover where it is deemed necessary to have such insurance at a level higher than the levels of insurance commonly carried by contractors.

4.8.10.7 Where payment is to be made in multiple currencies, either the contractor or institution should be required to take out forward cover.

4.8.11 Communications

All procurement documents and communications shall be in English.

4.8.12 Intellectual property rights

The institution shall as a general rule own the rights over the materials prepared by a contractor in relation to a contract. Approval of the **designated person** shall be obtained to allow the contractor to own such rights.

4.8.13 Disputes arising during the performance of a contract

4.8.13.1 Disputes arising during the performance of a contract may be referred to an adjudicator appointed in terms of the contract data associated with a contract only after consultation with and the permission of the **designated person** has been obtained, taking into account the time bar provided for in the contract.

4.8.13.2 Disputes raised by a contractor shall be referred to the institution's **designated person** to obtain advice on how to respond within the time period provided for in the contract.

4.8.13.3 Disputes may finally be resolved by arbitration on advice from the institution's **designated person**.

4.8.14 Quality standards

Those responsible for drafting or providing inputs to the scope of work of engineering and construction and service contracts shall:

- a) consider the inclusion of requirements for:
 - 1) a quality management system or a quality management plan; and
 - 2) a completion strategy which breaks the works down into subsystems, establishes the interdependencies between the various subsystems and maps out what needs to be done, inspected and tested to achieve satisfactory completion of each subsystem and the works as a whole.
- b) state the following, as necessary:
 - 1) the nature of the tests and inspections that are to be conducted;
 - 2) the timing of specified tests / inspections;
 - 3) where the tests are to be performed;
 - 4) who is responsible for performing the tests e.g. the contractor, an agent or an accredited organization;
 - 5) who is responsible for providing materials, facilities and samples for tests / inspections;
 - 6) the objectives of the tests / inspections, the testing procedures to be applied and the standards to be satisfied; and
- c) express quality standards in such a manner that compliance is capable of being objectively assessed.

4.8.15 Budgetary items

4.8.15.1 Budgetary items shall as far as possible be avoided. Assumptions should rather be stated in the pricing data and adjusted in terms of the contract should these assumptions be incorrect. Where unavoidable, estimates of the likely costs may be included in the contract to cover work or services to be performed by a subcontractor appointed in terms of the contract.

4.8.15.2 No provision for contingencies or price adjustment for inflation shall be made in the pricing data. The contract price shall be changed in accordance with the provisions of the contract where:

- a) quantities are different to that scheduled;
- b) the scope of work is changed;
- b) events occur which are not the contractor's risk; and
- c) price inflation occurs.

4.9 Calls for expressions of interest and invitations to submit tender offers

4.9.1 General

Calls for expressions of interest and the invitation to submit tender offers shall be conducted strictly in accordance with the provisions of the CIDB Standard Conditions for the Calling for Expressions of Interest and the Submission Data associated with a particular call or the CIDB Standard Conditions of Tender and the Tender Data associated with a particular tender, as relevant.

4.9.2 Advertising

4.9.2.1 Advertisements, where required, shall be published in English in the *Government Tender Bulletin* and where appropriate in a suitable newspaper. Advertisements in the *Government Tender Bulletin* shall appear for a minimum period of 21 days before closure, except in urgent cases when tenders may be advertised for such shorter period as the **delegated authority** may determine.

4.9.2.2 All engineering and construction works contracts shall be advertised on the CIDB website and where deemed appropriate in suitable media.

4.9.2.3 Copies of all advertisements placed on the CIDB website and Government Tender Bulletin shall be placed on file for record purposes.

4.9.3 Issuing of procurement documents

4.9.3.1 Procurement documents should be issued free of charge to tenderers and respondents, preferably via the institution's website.

4.9.3.2 Where tenderers are required to pay a non-refundable amount for procurement documents, all monies received for the sale of such documents shall be paid into the Provincial Revenue Fund in terms of the Public Finance Management Act 1, 1999 (Act No 1 of 1999).

4.9.3.2 A register shall be kept by either a **designated person** or the website from which procurement documents are downloaded which records the names and contact particulars (telephone, fax and email) of all those who obtained or were sent procurement documents.

4.9.4 Clarification meetings and issuing of addenda

4.9.4.1 Compulsory clarification meetings shall as a general rule be held in respect of all engineering and construction works contracts.

4.9.4.2 Attendance registers shall be taken at all clarification meetings. Such registers shall reflect the name of the respondent or tenderer, the name of the respondent's or tenderer's representative, and the contact particulars of such representative.

4.9.4.3 Clarification meetings should, as relevant, be structured such that they provide:

- a) an opportunity to respondents and tenderers to become fully aware of and to understand what is required in the procurement processes and in the execution of the proposed contract;
- b) an opportunity for respondents and tenderers to raise any specific queries they might have concerning incomplete information or ambiguities in the information;
- c) an opportunity for respondents and tenderers to raise questions about potential qualifications or alternative tenders; and
- d) an opportunity for the institution to issue any further information or addenda.

4.9.4.4 All requests for information provided in writing shall be consolidated and all answers provided to all respondents and tenderers via fax or email to ensure consistent and fair dealing. Where the question or request for clarification is considered to be of material significance, both the query and the response

shall be communicated, in a suitably anonymous form. Where queries result in the issuing of an addendum that makes significant changes to the documentation e.g. the amending of clauses, the issuing of additional drawings and information not included in the documentation or amendments to the pricing data, an extension of the tender period should be considered.

4.9.4.5 All respondents and tenderers shall be dealt with equitably and fairly. Additional information shall be provided in writing simultaneously to all respondents and tenderers.

4.9.5 Receipt and safeguarding of submissions

4.9.5.1 A dedicated and clearly marked tender box shall be made available to receive all submissions made in terms of this document.

4.9.5.2 A **designated persons** shall ensure that the procurement documents state the closing date and time for submissions and the physical location of the tender box.

4.9.5.3 A **designated persons** shall ensure that all tenderers and respondents who obtained procurement documents are timeously advised of any change in the closing time and date in accordance with the requirements of the CIDB Standard for Uniformity in Construction Procurement.

4.9.5.4 Any submission that is received by a means other than that required in terms of the procurement documents after the closing date and time for submissions shall be treated as a late submission and endorsed as such regardless of the date and time of posting, delivery to or by couriers, or transmission from the senders' fax or email.

4.9.5.5 The tender box shall be fitted with 2 (two) locks and the keys kept separately by two **designated persons**. Such personnel shall be present when the box is opened on the stipulated closing date for submissions.

4.9.5.6 Faxed or emailed tender offers or submissions, where permitted in terms of the submission data or tender data in terms of a quotation procedure, shall be received by a person who has not been involved in the development of the procurement documents or will be involved in the evaluation of submissions. The recipient of such submissions shall, in respect of each submission received or which was in the process of being transmitted before the closing time for submissions:

- a) place each submission in a separate envelope;
- b) seal the envelope;
- c) write on the envelope the name of the tenderer or respondent, the closing date and time for submission, the reference number, the title of the tender of call for expressions of interest, the name and contact particulars of the recipient, and the time of receipt; and
- d) place the envelope in the tender box as soon as possible.

4.9.6 Opening of submissions

4.9.6.1 An **Opening Panel** shall comprise the persons identified in Annexure B appointed by a **designated person** who have declared their interest or confirmed that they have no interest in the tenders that are to be opened.

4.9.6.2 The **Opening Panel** shall open the tender box at the stipulated closing time and:

- a) sort through the submissions and return those submissions to the box that are not yet due to be opened including those whose closing date has been extended;
- b) return submissions unopened and suitably annotated that were:
 - 1) received late, unless otherwise permitted in terms of the submission data;

- 2) submitted by a method other than the prescribed method;
 - 3) withdrawn in accordance with the procedures provided for in the CIDB Standard for Uniformity in Construction Procurement; and.
 - 4) where only one tender submission is received and it is decided not to open it and to call for fresh tender submissions;
- c) record in the register submissions that were returned unopened;
 - d) open submissions if received in sealed envelopes and annotated with the required particulars and read out the name of and record in the register the name of the tenderer or respondent and, if relevant, the total of Prices excluding VAT where this is possible;
 - e) record in the register the name of any submissions that is returned with the reasons for doing so;
 - f) record the names of the tenderer's representatives that attend the public opening;
 - g) sign the entries into the register; and
 - h) stamp each returnable document in each tender submission.

4.9.6.3 Each member of the **Opening Panel** shall initial the front cover of submission and all pages that are stamped in accordance with the requirements of 4.9.6.2h).

4.9.6.4 Respondents and tenderers whose submissions are to be returned shall be afforded the opportunity to collect their submissions.

4.9.6.5 The names of the respondents who made a submission in response to a call for an expression of interest shall be published on the institution's website within ten working days of the closing date for submissions and shall remain on the website for at least thirty days.

4.9.6.6 The names of all tenderers who submitted tender offers in terms of an open or proposal procedure where the value of such tenders exceeds R500 000 including VAT, shall be published on the institution's website within ten working days of the closing date for submissions and shall remain on the website for at least thirty days. Where practical or relevant, the total price and preference claimed shall, except in the case of a competitive negotiation procedure, be published together with the names on the website.

4.9.7 Evaluation of submissions

4.9.7.1 Submissions made following the calling for an expressions of interest and the invitation to tender shall be evaluated in accordance with the CIDB Standard Conditions for the Calling for Expressions of Interest and the CIDB Standard Conditions of Tender, respectively.

4.9.7.2 The CIDB register of contractors shall be applied in all construction works contracts.

4.9.7.3 All submissions and any information provided with a submission shall be kept confidential at all times and shall not be copied unless such copies are required for evaluation purposes. Copies shall be kept to the minimum required to effectively evaluate the submissions.

4.9.8 Notice to unsuccessful tenderers and respondents

4.9.8.1 After the award of a contract to a contractor, a written communication shall be made to all of the participants to the competition, thanking them for their interest and notifying them of the outcome. (See Annexure D).

4.9.8.2 Unsuccessful tenderers where the contract price excluding VAT shall, upon request, be promptly notified of the outcome of their submissions after the award of the contract.

4.9.8.3 Unsuccessful respondents to a call for an expression of interest shall be promptly notified that their submission is unsuccessful after the **Construction Procurement Committee** has approved the evaluation report.

4.9.8.4 The name of the successful tenderer shall be published on the institution's website together with the total price, where possible, and the preference claimed.

4.9.9 Debriefing of respondents and tenderers

4.9.9.1 Respondents, following the evaluation of submissions in terms of a call for expressions of interest, or tenderers, and tenderers following the award of a contract, may be debriefed should they request a debriefing in writing. All debrief requests shall be recorded on the contract file.

4.9.9.2 A prompt response should be made to such requests including information on the timing, venue and if possible those who will be representing the institution.

4.9.9.3 In some circumstances debriefing may occur by telephone, videoconference, or in writing. In the other cases debriefing sessions will be held at the premises of the institution. Where a participant is based at a distant location and requests a face-to-face debriefing, consideration should be given to meeting in a mutually convenient neutral venue.

4.9.9.4 Face-to-face meetings should strike a balance between informality and practicality as it is not a formal interview. At the beginning of the session the officials and agents of the institution should make it clear that:

- a) no formal record will be kept of the meeting, but parties may take informal notes for their own records;
- b) the process will not be used to change the selection decision or to reopen the award procedure;
- c) the participants are only present to discuss the details of their submission and not the performance of others; and
- d) the submission was evaluated against evaluation criteria which included weighting and scoring agreed before the submissions were opened.

4.9.9.5 The participants should, as relevant, be provided with:

- a) a tabulation which lists in respect of each of the quality criteria, the financial offer and the preference claimed, as relevant, the weighting, maximum score possible, the score obtained, the average score for all respondents or tenderers and the score of the successful tenderer (see Annexure D); and
- b) the reason for the tenderer or respondent being overlooked in the evaluation process.

4.9.9.6 Where the discussion relates to the scoring of quality, the background to the evaluation criteria, the evaluation approach and in broad terms the methodology used should be explained. Brief comments on the evaluation of each of the criteria should be made. The main criteria can then be taken in turn with the marks attributable to each, explaining how their submission was scored, giving a balanced view of their strengths and weakness. The average score will assist the participant and give a better understanding on how they have performed in each of the criteria. The aim is to assist participants to understand their scores and the weightings and how they can improve in future competitions.

4.9.9.7 In the cases of successful participants who have requested debriefing, it will also be to explain their strengths and weaknesses and how they may improve in future competitions.

4.9.10 Written reasons for actions taken

4.9.10.1 Written reasons for actions taken shall be provided by a **designated person**.

4.9.10.2 The written reasons for actions taken shall be as brief as possible and shall as far as is possible be framed around the clauses in the:

- a) the CIDB Standard Conditions for the Calling for Expressions of Interest giving rise to the reason why a respondent was not short listed, prequalified or admitted to a data base; or
- b) the CIDB Standard Conditions of Tender as to why a tenderer was not considered for the award of a contract or not awarded a contract.

NOTE: Tenderers and respondents have a constitutional right to request written reasons for any action taken during the processes associated with the calling for expressions of interest and the invitation of tenders. The Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) permits any person to institute proceedings in a court or a tribunal for the judicial review of such action taken.

4.9.10.3 Requests for written reasons for actions taken need to be brief and to the point and may not divulge information which is not in the public interest or any information which is considered to prejudice the legitimate commercial interests of others or might prejudice fair competition between tenderers.

4.9.11 Request for access to information

4.9.11.1 Should an application be received in terms of Promotion of Access to Information Act of 2000 (Act 2 of 2000), the “requestor” should be referred to the institution’s Information Manual which establishes the procedures to be followed and the criteria that have to be met for the “requester” to request access to records in the possession or under the control of the institution.

4.9.11.2 Access to technical and commercial information such as a comprehensive programme which links resources and prices to such programme should be refused as such information provides the order and timing of operations, provisions for time risk allowances and statements as to how the contractor plans to do the work which identifies principal equipment and other resources which he plans to use. Access to a bill of quantities and rates should be provided in terms of the Act.

NOTE 1: It is important to note that all requests received in terms of this Act must be dealt with immediately as there are deadlines within which to respond to the requestor.

NOTE 2: Section 36 of the Promotion of Access to Information Act states the following:

(36) A public body must refuse a request for access to a record of the body if the record contains—

- (a) trade secrets of a third party;*
- (b) financial, commercial, scientific or technical information, other than trade secrets, of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interests of that third party; or*
- (c) information supplied in confidence by a third party the disclosure of which could reasonably be expected—*
 - (i) to put that third party at a disadvantage in contractual or other negotiations; or*
 - (ii) to prejudice that third party in commercial competition*

In the Supreme court of appeal (Transnet versus Interwaste) the court ruled that “. . .once a requester has complied with the procedural requirements for access and overcome the refusal grounds in chapter 4, he or she must be given access”.

4.10 Award of contracts

4.10.1 General

4.10.1.1 The **Delegated Authority** shall not enter into a contract where the tenderer:

- a) is not in possession of an original tax clearance certificate;
- b) does not have the required CIDB contractor grading designation where the CIDB Register of Contractor applies;

- c) is under restrictions to do business with the institution or the public sector; or
- d) is not registered on the Western cape Supplier Database.

4.10.1.2 The **Delegated Authority** who may award the contract shall:

- a) ensure that all approval processes have been followed, and
- b) sign the Form of Offer and Acceptance.

4.10.1.3 The authority to award contracts shall be based on the Forecasted Final Cost developed in terms of 4.4 2.9.

4.10.1.4 The award of all engineering and construction works contracts and associated package orders where the total of prices exceeds the amount stated in the Construction Industry Development Regulations shall be notified on the CIDB website, based on the Contract Price contained in the Form of Offer and Acceptance i.e. the total of prices at the time of the award of the contract.

NOTE: In the case of a framework contract, each package order above the threshold of R 200 000 including VAT is notified on the website.

4.10.1.5 If a tenderer repudiates in any way the agreement entered into following the signing of the acceptance portion of the form of offer and acceptance, the **Delegated Authority** may either require the tender process to be restarted or enter into a contract with the next most competitive tenderer.

4.10.2 Registration on the Western Cape Supplier database

4.10.2.1 A successful tenderer shall be required to become registered on the Western Cape Supplier Data base at the time that an award is made by completing the relevant forms and submitting the relevant documentation.

4.10.2.2 The **designated person** shall ensure that these forms are fully completed as soon as possible and lodged with the service provider.

4.11 Administration of contracts

4.11.1 General

4.11.1.1 Routine communication between the institution and a contractor shall be in accordance with requirements established in contract or the scope of work of a contract.

4.11.1.2 The **contract manager** responsible for managing and administering the contract shall interact with the **designated persons** (see Activity 6 in Table 1) to obtain as necessary, approval to waive penalties, approval for events which increase the total of prices or the time for completion in terms of the contract and to terminate or cancel a contract and to communicate decisions to the relevant contractors within the contractual time limits.

4.11.1.3 Designated persons shall obtain in accordance with the requirements of the contract, all performance bonds, insurance certificates and the like, log and monitor the expiry date of each document and arrange for the originals to be stored in a fire proof safe.

4.11.2 Records and reporting

4.11.2.1 General

4.11.2.1.1 All original documents generated during the life of the contract shall be retained in hard copy format on the contract file.

4.11.2.1.2 Filing, comprising electronic filing and hard copy filing, shall be in accordance with the institution's document management procedures.

4.11.2.2 Performance evaluation reports

4.11.2.2.1 Performance evaluation reports, unless otherwise directed by a **designated person** shall be completed in respect of contracts having a value equal to or exceeding a threshold contained in Annexure B.

4.11.2.2.2 A **designated person** shall develop a performance report along the lines of the example provided in Annexure E. Only those areas within a contractor's control may be evaluated.

4.11.2.2.3 A **designated person** shall issue a contractor within one month of the award of a contract with the performance criteria, weightings and scores which will form the basis of an assessment of performance.

4.11.2.2.4 A **designated person** responsible for a contract shall evaluate a contractor's performance by completing the evaluation form. The score derived for the evaluation form shall be used to categorise performance as follows:

poor	< -0,5
adequate	> 0,5 to 0,5
good	> 0,5 to 1,5
excellent	> 1,5

Reporting of performance against each contract shall be made using these performance descriptors.

4.11.2.2.5 In reviewing the contractor's performance consideration shall be given as to whether or not satisfactory progress was affected by matters outside or within the contractor's control. The assessment shall be made, after taking into account matters beyond the contractor's control.

4.11.2.2.6 A performance report must be completed by the relevant **designated person** within 10 working days of the submission of

- a) the final invoice for services associated with a service or task order the invoice; or
- b) the invoice immediately following the completion of the works and the commencement of the defects liability period associated with a contract or package order.

4.11.2.2.7 The contractor shall be given a copy of the performance report and be given 10 working days to respond to its content, if necessary. The designated person who evaluated the contractor's performance shall address any issues raised by the contractor and respond in writing within 10 working days of receipt of such response. The contractor may thereafter appeal the scoring to a **designated person** who shall delegate an independent official to review the score and correspondence and, if necessary communicate with the contractor and the person who undertook the evaluation, individually or separately. The score allocated by such an official shall be final and no further representations shall be entertained.

4.11.2.2.8 Performance reports shall be filed for record purposes and may be used to inform decisions made regarding task or package orders issued in terms of a framework contract.

4.11.3 Authorised increase in the final contract amount

4.11.3.1 A **designated person** shall prepare a motivation to authorise expenditure to exceed the total of prices excluding price adjustment for inflation by an amount in excess of that stated in Annexure B.. Such a motivation shall clearly indicate the reasons for cost overruns and the risk mitigation measures that have been applied and a detailed estimate of the final projected cost.

4.11.3.2 The **Delegated Authority** who awarded the contract shall approve any increase in the contract amount in excess of that described in 4.11.3.3 subject to the provisions of 4.4.7.3.

4.11.4 Invoicing

Invoicing shall be in accordance with the requirements of the contract and the procedures established within the institution.

4.12 Occupational health and safety

4.12.1 The institution shall not appoint a contractor to provide engineering and construction works contracts or service contracts who cannot demonstrate an ability to manage the occupational health and safety risks in accordance with the provisions as relevant of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993).

4.12.2 The scope of work shall specify the overarching framework within which contractors are required to demonstrate compliance with certain requirements for occupational health and safety in the Act identified in 4.12.1, manage the risk of health and safety incidents and interact with any institution health and safety agent.

4.12.3 The scope of work of contractors who provide design services shall specify their health and safety responsibilities and inputs into the scope of work of engineering and construction works and services contracts associated with their designs.

4.13 Departures from procedures

The Provincial Treasury shall approve all departures from the procedures contained in this standards.

Annexure A: Overview of applicable legislation

A1 Constitutional imperatives for procurement

The Constitution of the Republic of South Africa (Act 108 of 1996) requires that the public procurement system be fair, equitable, transparent, competitive and cost effective. These requirements establish societal goals or outcomes for the construction procurement system.

A2 Applicable pieces of legislation

The primary pieces of legislation that govern the institution's procurement system are outlined in Table A1. Other pieces of legislation that have an impact on procurement are outlined in Table A2.

Table A1: Primary pieces of legislation that regulate procurement

Act	What it does in respect of procurement
Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)	Provides procurement objectives and establishes government's policy for preferencing. Establishes requirements for the award of contracts to be lawful, reasonable and procedurally fair.
The Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)	Prohibits the state or any person from discriminating unfairly against any person on the grounds of race or gender through the denial of access to contractual opportunities for rendering services or by failing to take steps to reasonably accommodate the needs of such persons.
Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000)	Establishes the manner in which preferential procurement policies are to be implemented
Public Finance Management Act (Act 1 of 1999)	Establishes a regulatory framework for supply chain management which includes procurement within national and provincial departments and state owned enterprises.
MFMA	
Construction Industry Development Board Act, 2000 (Act 38 of 2000)	Establishes the means by which the Board can promote and implement policies, programmes and projects, including those aimed at procurement reform, standardisation and uniformity in procurement documentation, practices and procedures within the framework of the procurement policy of government, through the establishment of: <ul style="list-style-type: none"> • a national register of contractors (and if required, consultants and suppliers) to manage public sector procurement risk and facilitate public procurement; • a register of projects above a financial value with data relating to contracts awarded and completed and a best practice project assessment scheme; • best practices and uniform standards Establishes a code of conduct for the parties engaged in construction procurement.
Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)	Establishes a code of good practice to inform the: <ul style="list-style-type: none"> • development of qualification criteria for the issuing of licenses or concessions, the sale of state owned enterprises and for entering into partnerships with the private sector; and • development and implementation of a preferential procurement policy.
Prevention and Combating of Corrupt Activities Act, 2004. (Act No. 12 of 2004).	Makes corruption and related activities an offence, establishes a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; and places a duty on certain persons holding a position of authority to report certain corrupt transactions.

Table A2 Pieces of legislation that have an impact on procurement

Act	What it does in respect of procurement / supply chain management
The Conventional Penalties Act (Act 15 of 1962)	Provides for the enforceability of penalty stipulations, including stipulations based on pre-estimates of damage.
Arbitration Act (Act 42 of 1965)	Provides for the settlement of disputes by arbitration tribunals in terms of written arbitration agreements and for the reinforcement of the awards of such tribunals
Auditor – General Act (Act 12 of 1995)	Requires that the Auditor General reasonably satisfy himself or herself that satisfactory management measures have been taken to ensure that resources are procured economically and utilised efficiently and effectively. (The Auditor General has wide powers to investigate and enquire into procurement matters and related control. He is furthermore obligated to report his findings either to parliament or a provincial legislative, as relevant.)
Public Protector Act (Act 23 of 1994)	Permits the public to raise issues and empowers the Public Protector, acting as an ombudsman, to investigate, report on and take the necessary remedial action on any conduct in state affairs or in the public administration, that is alleged, or suspected to be improper or to result in any impropriety or prejudice. Information or evidence that suggests criminal activity is referred to the South African Police Services and the Director of Public Prosecutions. Non-compliance with tender procedures that render expenditure irregular or unauthorised is referred to the Auditor General.
Competitions Act (Act 89 of 1998)	Prohibits the following between parties: a) restrictive horizontal practices which have the effect of substantially preventing or lessening competition in a market or involves directly or indirectly fixing a purchase or selling price or any other trading condition; dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or collusive tendering. b) restrictive vertical practices which have the effect of substantially preventing or lessening competition in a market or establish a minimum resale price.
Protected Disclosure Act (Act 26 of 2000)	Makes provision for the protection of employees in both the public and private sector who disclose information in good faith regarding unlawful or irregular conduct to the Public Protector, Auditor General or a person or body established for this purpose in terms of the Act. Protects those employees who “blow the whistle” on corrupt practices
Promotion of Access to Information Act, (Act 2 of 2000)	Gives effect to the rights provided for in the Bill of Rights in Section 32 of the Constitution (Act 108 of 1996), namely that everyone has the right of access to information held by the state and any information that is held by another person that is required for the exercise or protection of any rights. Sets out the procedures pertaining to the obtaining of records in both the public and private sector, the grounds for refusal of access to information, mandatory disclosures in the public interest, and appeals against decisions of information officers of certain public bodies.
Promotion of Administrative Justice Act (Act 3 of 2000)	Establishes fair administrative procedures, permits those affected by unfair administrative action to request reasons for such administrative action within 90 days of, or when they became aware of, such actions and requires administrators to respond within 90 days of receipt of such requests. (Administrative actions are presumed to have been taken without good cause where an administrator fails to respond within the prescribed period). Provides for procedures for the judicial review of administrative actions and remedies in proceedings for judicial review including the prohibition of an administrator from acting in a particular manner, setting aside the administrative action, correcting the defective action and the ordering of the administrator to pay compensation.
Electronic Communications and Transactions Act (Act No. 25 of 2002)	Establish legal requirements for data messages and the communication of data messages.

A3 Public Finance Management Act

The Public Finance Management Act requires the accounting officer to:

- 1) ensure that *the public entity has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective* (Section 51(1) (a)(iii));
- 2) ensure that *the public entity has and maintains a system for properly evaluating all major capital projects prior to a final decision for a project* (Section 51 (1) (a)(iv)), and

- 3) take *effective and appropriate steps to avoid fruitless and wasteful expenditure and irregular expenditure* (Section 51(1)(b)(iii)).

Section 76 (4) (c) permits National Treasury to issue instructions concerning *the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective*.

The institution is an organ of state to which the Supply Chain Management Regulations of the Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities issued in terms of the Public Finance Management Act, 1999, applies.

A4 Construction Industry Development Board Act

The Construction Industry Development Board Act, 2000 (Act 38 of 2000) defines the construction industry as *the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment*. The Construction Industry Development Regulations issued in terms of this Act defines construction procurement as *procurement in the construction industry, including the invitation, award and management of contracts*.

Accordingly, construction procurement involves not only engineering and construction works contracts, but also supplies contracts that involve the purchase of construction materials and equipment, services relating to any aspect of construction including professional services, disposals of surplus materials and equipment and demolitions.

The Act establishes a means by which the Board can promote and implement policies, programmes and projects aimed at procurement reform, standardisation and uniformity in procurement documentation, practices and procedures within the framework of the procurement policy of government through the:

- establishment of a national register of contractors (and if required, consultants and suppliers);
- establishment of a register of projects;
- publication of a Code of Conduct for the Parties engaged in Construction Procurement;
- issuing of a Standard for Uniformity in Construction Procurement; and
- establishment and determination of best practice.

The Construction Industry Development Regulations issued in terms of the Construction Industry Development Board Act of 2000 require that all organs of state including public entities:

- 1) only award construction works contracts to contractors who are appropriately registered with the CIDB;
- 2) all competitively tendered construction works contracts are advertised on the CIDB's web based i-tender service which notifies registered contractors of tender opportunities via cell phones or emails and provides a searchable data base of tender opportunities; and
- 3) record the award of contracts and any cancellation or termination of a contract in the register of projects on the CIDB website.

The Board has issued the following prescripts in terms of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000):

- CIDB Code of Conduct for the Parties engaged in Construction Procurement; and
- CIDB Standard for Uniformity in Construction Procurement.

The institution needs to take account of these prescripts in the development of their supply chain management systems and procurement documentation.

NOTE 1 The Standard for Uniformity in Construction Procurement is published in terms of sections 4(c) and 5(4)(b) of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000) read with Regulation 24 of

the Construction Industry Development Regulations, issued in terms of section 33 of this Act. Regulation 24(b) of the Construction Industry Regulations issued in terms of the Construction Industry Development Board Act of 2000 states that “Every client or employer (organ of state) who is soliciting tenders in the construction industry must do so in accordance with the Standard for Uniformity in Construction Procurement, published by the Board in the Gazette.”

NOTE 2 Section 5(4) of the Construction Industry Development Board Act of 2000 requires the Board to publish a code of conduct for all construction-related procurement and all participants involved in the procurement process. Section 29 enables the Board to enforce this code of conduct.

Annexure B: Designated persons, delegated authorities, the composition of teams, panels and committees and thresholds associated with procurement procedures

B1 Designated persons

The persons designated to take specific actions in terms of this standard are identified in Table B1.

Table B1: Identification of designated persons to undertake specific actions

Clause	Action required of designated person	Designated person
4.1 General requirements		
4.1.3	Receive reports on irregular expenditure and fruitless and wasteful expenditure	Chief Financial Officer
4.2 Conduct of those engaged in construction procurement processes or procedures		
4.2.2.1	Receive disclosure of interest in any contract that is to be awarded	<i>To be determined by institution</i>
4.2.2.4c)	Grant permission for a person who prepares a procurement document or part thereof to submit a tender for work associated with such documents	Construction Procurement Committee
4.2.5.6	Receive reports of any incidences of a person who directly or indirectly offers a gratification to improperly influence in any way a procurement process, procedure or decision	<i>To be determined by institution</i>
4.2.6.1	Receive reports on any alleged irregular conduct including any alleged fraud or corruption.	<i>To be determined by institution</i>
4.2.6.2	Report breaches of the CIDB code of conduct or alleged irregular conduct to the appropriate authority	<i>To be determined by institution</i>
4.2.7	Preparation of report for placing a contractor under restrictions	<i>To be determined by institution</i>
4.3.3a)	Preparation of documents which have a value below the threshold for quotations	<i>To be determined by institution</i>
4.3.3c)	Invitation of quotations	<i>To be determined by institution</i>
4.3.3d)	Evaluation of quotations and the preparation of recommendations for award	<i>To be determined by institution</i>
4.3 Procurement activities, key actions, responsibilities and gates		
Table 1	See Table B2	See Table B2
Table 2	See Table B3	See Table B3
4.4 Roles and responsibilities in relation to the procurement processes, activities and controls		
4.4.2.1	Appoint a Documentation Review Team	<i>To be determined by institution</i>
4.4.2.2d) 4.4.2.3b)	Approve additional clauses or variations to the standard clauses in the conditions of contract, conditions of tender or conditions for the calling for expressions of interest not provided for in the Institution approved templates	<i>To be determined by institution</i>
4.4.2.6	Receive documentation from Documentation Review Panel for archiving	<i>To be determined by institution</i>
4.4.3.1	Appoint an Evaluation Panel	<i>To be determined by institution</i>
4.4.3.3	Communicate with tenderers and respondents during the procurement process.	Agent identified in submission data or tender data of procurement documents
4.4.4.6	Receive from the Construction Procurement Committee a copy of the Construction Procurement Committee's decisions	<i>To be determined by institution</i>
4.4.4.7	Receive from the Construction Procurement Committee a decision for the use of the negotiated procedure in an emergency.	<i>To be determined by institution</i>

Clause	Action required of designated person	Designated person
4.4.4.8	Submit a motivation for an urgent decision from the Construction Procurement Committee which cannot be held over to the next meeting.	<i>To be determined by institution</i>
4.4.6.3.2	Submit a motivation for not conducting a competition amongst framework contractors	<i>To be determined by institution</i>
4.4.6.3	Receive notification of an award of a contract through a negotiated procedure	<i>To be determined by institution</i>
4.4.7.1.1	Prepare a procurement plan for submission to the Provincial Treasury	<i>To be determined by institution</i>
4.4.7.1.2	Approval of procurement plan	Accounting officer
4.4.7.2.1	Preparation of submission to the Provincial Treasury of particulars before advertising a tender above a threshold	<i>To be determined by institution</i>
4.4.7.2.2	Audit tenders above a threshold	Official from internal audit
4.4.7.2.3	Audit task, batch or package orders above a threshold	Official from internal audit
4.4.7.2.4	Issue audit certificates	Official from internal audit
4.4.7.3.2	Prepare and submit motivation to the Provincial Treasury for increase in contract or task, batch or package order value above a threshold.	<i>To be determined by institution</i>
4.5 Complaints and challenges		
4.5.1	Receive complaints regarding the construction procurement system	<i>To be determined by institution</i>
4.5.2	Investigate all complaints regarding the procurement system	<i>To be determined by institution</i>
4.5.3	Receive request to appoint a tender dispute adjudicator	<i>To be determined by institution</i>
4.5.3b)	Receive deposit for tender adjudicator's fee	<i>To be determined by institution</i>
4.7 Usage of standard procurement procedures		
4.7.1.4	Motivate the reasons for pursuing the negotiation procedure or for approaching a confined market	<i>To be determined by institution</i>
4.7.1.5	Pursue a negotiated procedure in an emergency without prior approval	<i>To be determined by institution</i>
4.7.1.5	Describe the circumstances surrounding the extreme or emergency situation that gave rise to the use of the negotiation procedure and submit together with this report an explanation for acceptance by the Construction Procurement Committee	<i>To be determined by institution</i>
4.7.1.6	Motivate the reasons for pursuing the proposal procedure using the two-envelope system or the proposal procedure using the two-stage system for prior approval.	<i>To be determined by institution</i>
4.7.2.10	Approve conditionally or unconditionally a request from the accounting officer or accounting authority of an organ of state to make use of a framework contract entered into with the institution	Accounting officer upon the recommendation of the Construction Procurement Committee
4.7.2.11	Receive notification of the issuing by an organ of state of the award and completion of task, batch or package orders together with the total of prices at the start and end of such orders.	<i>To be determined by institution</i>
4.7.2.12	Provide any organ of state that is granted permission to make use of the institution's framework contract with a copy of the contract and any templates for the issuing of quotations or task, batch, or package order and any other relevant information pertaining to the use of the framework contract	<i>To be determined by institution</i>
4.7.5.1	Receive unsolicited proposals	<i>To be determined by institution</i>
4.7.5.2	Receive report or recommendations on unsolicited proposals	Accounting officer / authority
4.8 Procurement documents		
4.8.1.5	Approve the amendment to a contract	Accounting officer / authority
4.8.2.4	Approve the inclusion of additional clauses or variations to the standard clauses in the contract data other than the standard clauses provided in the approved standardised documents.	<i>To be determined by institution</i>

Clause	Action required of designated person	Designated person
4.8.6.3	Grant permission for the provision of advanced payments to contractors.	Chief Financial Officer
4.8.10.2 4.8.10.3 4.8.10.5	Determine minimum levels of insurance if the default values are insufficient	Chief Financial Officer
4.8.12	Waiving of the institution's intellectual property rights	<i>To be determined by institution</i>
4.8.13.1	Grant permission for the referral of a dispute to an adjudicator	<i>To be determined by institution</i>
4.8.13.2	Provide advice on how to respond to a dispute raised by a contractor	<i>To be determined by institution</i>
4.8.13.3	Provide advice on resolving a matter by arbitration	<i>To be determined by institution</i>
4.9 Calls for expressions of interest and invitations to submit tender offers		
4.9.2.1	Determine that a shorter period for advertising in the Government Tender Bulletin is warranted	Accounting officer
4.9.3.2	Maintain a register of procurement documents not issued via a website	<i>To be determined by institution</i>
4.9.5.2	Ensure that the procurement documents state the closing date and time for submissions and the physical location of the tender box .	<i>To be determined by institution</i>
4.9.5.3	Ensure that all tenderers and respondents who obtained procurement documents are timeously advised of any change in the closing time and date	Agent identified in submission data or tender data of procurement documents
4.9.5.5	Keep key for tender box and open box on stipulated closing date.	<i>To be determined by institution</i>
4.9.6.1	Appoint an Opening Panel	<i>To be determined by institution</i>
4.9.10.1	Provide written reasons for actions taken	<i>To be determined by institution</i>
4.10.2.2	Ensure that supplier database forms are fully completed as soon as possible	<i>To be determined by institution</i>
4.11 Administration of contracts		
4.11.1.3	Obtain in accordance with the requirements of the contract, all performance bonds, insurance certificates and the like, log and monitor the expiry date of each document and arrange for the originals to be stored in a fire proof safe.	<i>To be determined by institution</i>
4.11.2.2.1	Directing that performance reports are required where contract values are different to the standard values.	<i>To be determined by institution</i>
4.11.2.2.2	Develop a performance report	<i>To be determined by institution</i>
4.11.2.2.3	Issue the contractor with the performance criteria, weightings and scores	Assigned contract manager
4.11.2.2.4	Evaluate a contractor's performance	Assigned contract manager
4.11.2.2.6	Completion of an evaluation report	Assigned contract manager
4.11.2.2.7	Delegate an independent official to review a contractor's score	<i>To be determined by institution</i>
4.11.3.1	Prepare a motivation to authorise increases in the total of prices excluding price adjustment for inflation in excess of the amount stated in Annexure B.	<i>To be determined by institution</i>

Table B2: Identification of designated persons in procurement activities associated with the formation and conclusion of contracts

NOTE – see Table 1 for key actions

#	Sub-Activity		Designated person
Activity 1: Establish what is to be procured (Applies only to goods and services not addressed in a construction procurement strategy)			
1.1	Prepare broad scope of work for procurement		Assigned procurement leader
1.2	Estimate financial value of proposed procurement		Assigned procurement leader
1.3 PG1	Obtain permission to start with the procurement process		<i>To be determined by institution</i>
Activity 2A: Decide on procurement strategy (Applies only to goods or services not included in a construction procurement strategy)			
2.1	Establish opportunities for promoting secondary procurement policies, if any		Assigned procurement leader
2.2	Establish contracting and pricing strategy		Assigned procurement leader
2.3	Establish targeting strategy		Assigned procurement leader
2.4	Establish procurement procedure		Assigned procurement leader
2.5 PG2	Obtain approval for procurement strategies that are to be adopted		<i>To be determined by institution</i>
Activity 3: Solicit tender offers			
3.1	Prepare procurement documents		Assigned procurement leader
3.2 PG3	Obtain approval for procurement documents		Documentation Review Team
3.3 PG4	Confirm that budgets are in place		<i>To be determined by institution</i>
3.4	Invite tenderers or respondents to submit tender offers or expressions of interest	Advertise tenders or calls for expressions of interest in media/ invite contractors to make submissions and issue procurement documents	<i>To be determined by institution</i>
		Conduct clarification meetings and develop addenda	Assigned procurement leader
		Communicate with tenderers or respondents up until closing time for submissions	Agent identified in submission data or tender data of procurement documents
		Advertise tenders or calls for expressions of interest on CIDB website	<i>To be determined by institution</i>
3.5	Receive tender offers or expressions of interest		<i>To be determined by institution</i>
3.6	Open and record expressions of interest received		Opening Panel
3.7	Evaluate expressions of interest		Evaluation Panel
3.8	Prepare evaluation report on short-listing process		Evaluation Panel
3.9 PG5	Confirm shortlist		Construction Procurement Committee
3.10	Invite tender offers from short-listed tenderers	Invite tender offers from shortlisted tenderers	<i>To be determined by institution</i>
		Communicate with tenderers up until closing time for submissions	Agent identified in submission data or tender data of procurement documents
Activity 4: Evaluate tender offers			
4.1	Open and record tender offers received		Opening Panel
4.2	Determine whether or not tender offers are complete		Evaluation Panel
4.3	Determine whether or not tender offers are responsive		Evaluation Panel
4.4	Evaluate tender submissions		Evaluation Panel
4.5	Perform a risk analysis		Evaluation Panel
4.6	Prepare a tender evaluation report		Evaluation Panel

#	Sub-Activity	Designated person	
4.7 PG 6	Confirm recommendation contained in the tender evaluation report where the transaction for a particular procedure is greater than the thresholds contained in Table B4.	Construction Procurement Committee	
Activity 5: Award contract			
5.1	Notify successful tenderer and unsuccessful tenderers of outcome	<i>To be determined by institution</i>	
5.2	Compile contract document	<i>To be determined by institution</i>	
5.3	Audit tender process	Internal audit	
5.4 PG7	Formally accept tender offer	Delegated Authority	
5.5	Capture contract award data	<i>To be determined by institution</i>	
5.6	Register on supplier database	Assigned contract manager	
Activity 6: Administer contracts and confirm compliance with requirements			
6.1	Administer contract in accordance with the terms and provisions of the contract	Assigned contract manager	
6.2	Ensure compliance with requirements	Assigned contract manager	
6.3	Capture contract completion/ termination data	Assigned contract manager	
6.4 PG8A	Obtain approval to waive penalties or low performance damages.	Prepare motivation for waiving of penalties and low performance damages.	<i>To be determined by institution</i>
		Approve waiver of penalties or low performance damages.	Construction Procurement Committee
6.5 PG8B	Obtain approval to notify and refer a dispute to an adjudicator	Outline the essence of the dispute and the reasons for wishing to refer the dispute to an adjudicator.	Assigned contract manager
		Approve referral for a dispute to an adjudicator.	<i>To be determined by institution</i>
6.6 PG8C	Obtain approval for events which in terms of the contract increase the total of prices or the time for Completion by more than 1%. (NOTE: Designated person may increase values in terms of the contract up to 1% but not beyond this value)	Finalise submission for increases in the total of prices or time for completion in terms of the contract	Assigned contract manager
		Grant permission to approve an increase in prices or time in terms of the contract if the total of prices does not exceed the total of prices at award by more than the amounts stated in Table B8 or the time for completion at award by more than 20%,	<i>To be determined by institution</i>
6.7 PG8D	Obtain approval to exceed the total of prices at award by the amounts stated in Annexure B or the time for completion at award by more than 20%	Prepare motivation for exceeding the total of prices at award by more than the amounts stated in Table B8 or the time for completion at award by more than 20%, setting out the precise reasons for the increase in the cost of goods, services or works.	<i>To be determined by institution</i>
		Approve amount or time overruns.	Delegated Authority
6.8 PG8E	Obtain approval to cancel or terminate a contract	Prepare motivation to terminate or cancel a contract and obtain advice as necessary from the Legal Advisor (National Mandates)	<i>To be determined by institution</i>
		Approve termination or cancellation of contract	<i>To be determined by institution</i>

#	Sub-Activity		Designated person
6.9 PG8F	Obtain approval to amend a contract	Formulate proposed amendment to the contract and formulate a motivation to do so	<i>To be determined by institution</i>
		Approve proposed amendment to the contract	Accounting officer / authority
6.9	Finalise contract		Assigned contract manager
6.10	Capture contract completion / termination data for construction works contracts.		<i>To be determined by institution</i>

Table B3: Identification of designated persons in procurement activities associated with the issuing of task, batch or package orders

NOTE – see Table 2 for key actions

#	Activity		Designated person
1	Prepare procurement documents		Assigned Project Manager
2PG	Obtain approval for procurement documents		Documentation Review Team
3PG	Confirm that budgets are in place		<i>To be determined by institution</i>
4	Issue draft task or package k order documentation	Issue draft task or package order to and consult with contractor where competition is not reopened	Assigned Contract Manager
		Invite quotations from all framework contractors	<i>To be determined by institution</i>
		Receive and open submissions	<i>To be determined by institution</i>
5	Evaluate quotations where competition occurs		Evaluation Panel
6PG	Confirm recommendations and authorise the issuing of the task, batch or package order		Delegated Authority
7	Log task, batch or package order onto management system		<i>To be determined by institution</i>
8	Issue task, batch or package order to contractor		Assigned Contract Manager
9	Notify issuing of task, batch or package order to oversight committee		Delegated Authority
10	Administer orders in accordance with contract and confirm compliance with requirements		See sub-activities and key actions associated with a Activity 6 in Table B2.

B2 Delegated authority to award a contract

The Delegated Authority who is empowered to award a contract or issue a task, batch, package order is as stated in Tables B4 and B5.

NOTE: Tables B4 and B5 need to be customised for use by an institution based on the principles embedded in the tabulations and this standard

Table B4: Delegations for the award of contracts

Category	Delegated authority	Total of prices at the time that a contract is awarded (including VAT)
Shopping procedure		
I	<i>To be determined by institution</i>	Below the limits set in Table B7
Negotiation procedure below a threshold set out in Table B7		
IIA	<i>To be determined by institution</i>	Goods and services below the limits set in Table B7
IIB	<i>To be determined by institution</i>	Works below the limits set in Table B7
IIC	<i>To be determined by institution</i>	Professional services below the limits set in Table B7
Quotation procedure		
III	<i>To be determined by institution</i>	Below the limits set in Table B7
Value of contract above the threshold for the quotation procedure		
IVA	<i>To be determined by institution</i>	Above a value of R.....
IVB	<i>To be determined by institution</i>	Up to a value of R.....
IVC	<i>To be determined by institution</i>	Up to a value of R.....
IVD	<i>To be determined by institution</i>	Up to a value of R.....

Table B5: Delegations for the issuing of a task, batch or package order

Category	Delegated authority	Total of prices at the time that an order is instructed (including VAT)
A	<i>To be determined by institution</i>	Package orders having a value greater than R. Batch and task orders having a value greater than R.
B	<i>To be determined by institution</i>	Package orders having a value up to R Batch and task orders having a value of up to R
C	<i>To be determined by institution</i>	Package orders having a value up to R Batch and task orders having a value of up to R

B3 Composition of control and governance committees

The composition of the control and governance committees shall be as stated in Table B6.

Table B6: Composition of control and governance committees

Committee	Composition
Documentation Review Team	The composition shall be as follows: <ul style="list-style-type: none"> • Two or more suitably qualified persons in respect of each procurement or task, batch or package order; and • Where required, the client's representative
Evaluation Panel	The composition shall be as follows: <ul style="list-style-type: none"> • Two or more suitably qualified persons, provided that the evaluation of quality is undertaken by at least three persons who are fully conversant with the technical aspects of the procurement; and • Where required, the client's representative
Construction Procurement Committee	The composition of the committee shall be as follows: <ul style="list-style-type: none"> • A minimum of two suitably qualified senior persons • Where required, the client's representative • Observers nominated by the SCM Unit
Opening panel	Two persons who have no interest in the tenders that are opened

B4 Thresholds relating to various procurement procedures

B4.1 The thresholds relating to various procurement procedures are as stated in Table B7

Table B7: Thresholds relating to various procedures

Procedure (see Table 6 and ISO 10845-1)	Conditions which need to be satisfied in order to utilise the procedure	Threshold (Rand including VAT) or lower value set by institution
Negotiated	The services, goods or works have a value not exceeding a threshold	R75 000-00
	A professional service contract has a value not exceeding a threshold	R250 000-00
Nominated procedure	Any procurement not exceeding a threshold	R 1 500 000-00
Quotation procedure	Any procurement where the estimated value does not exceed a threshold	R500 000-00
Shopping procedure	Supplies contract which involves readily available goods not exceeding a threshold	R 10 000-00

B4.2 The thresholds relating to compliance monitoring are as stated in Table B8.

B4.3 The thresholds relating to the negotiated procedure are as stated in Table B9.

B5 Insurance values

The insurance values stated in Table B10 apply.

Table B8: Thresholds relating to various procedures

Item	Reference	Threshold
Submissions to Provincial Treasury	Procurement plans (4.4.7.1)	R10 million including VAT
	(Permission to advertise (4.4.7.2))	
Audit of procurement process	4.4.7.2.2	
Increases in the total of prices excluding price adjustment for inflation	4.4.7.3	Goods and services 15% or R15 million including VAT, whichever is the lesser
		Engineering and construction works 20% or R20 million including VAT, whichever is the lesser
Performance evaluation reports	4.11.2.2.1	engineering and construction works contracts or package orders having a value in excess of R 40 000 000 including VAT service contracts or task orders having a value in excess of R 4 000 000 including VAT

Table B9: Thresholds associated with the negotiated process

Action	Threshold
Prior consultation with Provincial Treasury is required	Above R5 million including VAT
Report to Provincial Treasury and Auditor General	Above R1 million including VAT

Table B10: Minimum insurance cover

Type of insurance	Value
Engineering and construction contracts - loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the Contractor) caused by activity in connection with a contract	≥ R20 million
Professional services and service contracts - death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with a contract or damage to property	≥ R10 million
Professional indemnity insurance	geotechnical, civil and structural engineering: ≥ R5,0 million electrical and mechanical engineering: ≥ R3,0 million architectural: ≥ R5,0 million other: ≥ R3,0 million

Annexure C: Adjudication procedures to challenge decisions made during the tender process

C1 General principles

C1.1 The tender dispute adjudicator shall decide if the complainant should have, in terms of the procurement documents issued in respect of the contract in question, been awarded the contract, in which case the complainant shall be awarded the greater of R 75 000 and 0,75 % of the price of the contract at the time of award or the estimated value of contract for task, batch or package orders which are likely to be awarded during the term of the contract, subject to a maximum amount of R7,5 million.

C1.2 The tender dispute adjudicator shall act impartially and in accordance with the rules of natural justice.

C1.3 The tender dispute adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as tender dispute adjudicator, unless the act or omission was in bad faith, and any official or agent of the tender dispute adjudicator is similarly protected from liability.

C2 Notice of tender dispute adjudication

C2.1 A complainant shall, within 10 days of receiving a notice advising that the tenderer was unsuccessful, give notice to a **designated person** of his intention to refer the dispute to adjudication by giving a written notice of tender dispute adjudication.

C2.2 The notice of adjudication shall include

- a) the title of the contract, and the tender reference number,
- b) the name of the proposed tender dispute adjudicator, and
- c) a cash deposit equal to 50 % of the estimated tender dispute adjudicator's fee.

C3 Administrative procedures

C3.1 The **designated person** shall notify, in writing, the tender dispute adjudicator, the complainant and the head of the institution's supply chain management unit, within five working days of receipt of the notice of adjudication, of the dispute.

C3.2 The **designated persons** shall deliver to the tender dispute adjudicator the tender evaluation report together with a copy of the tender submissions of the complainant and the tenderer who was awarded the contract, within seven working days of being notified that adjudication will take place.

C3.3 The tender dispute adjudicator shall notify the **designated person** if the copy of the tender submission is not received within the stated period. Should the tender dispute adjudicator not receive the copy of the tender submissions from the responsible official or agent within 20 working days, the adjudication shall be abandoned and the complainant notified accordingly.

C4 Tender dispute adjudicator's decision

C4.1 In making a decision, the tender dispute adjudicator may take the initiative in ascertaining the facts and the correct procedure provided for in the employer's procurement policy and standard procedures. The tender dispute adjudication shall be neither an expert determination nor arbitration but the tender dispute adjudicator may rely on his own expert knowledge and experience.

C4.2 The tender dispute adjudicator shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable. He shall not be required to observe any rule of evidence, procedure or otherwise, of any court, except the rules of natural justice. Without

prejudice to the generality of these powers, he may ask for further information and meet and question the **Evaluation Panel** and any other person involved in the evaluation of the tender.

C4.3 The tender dispute adjudicator may obtain legal or technical advice having first notified the **designated person** of his intention.

C4.4 Wherever possible, the tender dispute adjudicator shall reach his decision without the process of a formal hearing.

C4.5 The tender dispute adjudicator shall reach his decision and notify both the **designated person** and the complainant within 21 days of the tender submissions having been handed to him for adjudication, unless the **designated person** agrees to extend this period.

C4.6 The tender dispute adjudicator's decision shall be binding on both the institution and the complainant.

C4.7 The institution shall pay the complainant the amount due in terms of this procedure without delay, should the tender dispute adjudicator find that the complainant should have been awarded the contract, but not before the complainant has paid the tender dispute adjudicator any outstanding fees not covered by the cash deposit.

Annexure D: Communications with unsuccessful respondents or tenderers

D.1 Letters to unsuccessful respondents or tenderers

A written communication should convey the following to unsuccessful respondents following a call for an expression of interest:

Tender number:

Title:

Your submission in response to the abovementioned call for an expression of interest refers.

The institution wishes to advise you that we have received and evaluated your submission. This letter regrettably serves to advise you that you have not been successful on this occasion and you will not be admitted to the data base / invited to submit tender offers.*

Your participation and interest in our business is highly appreciated.

* Delete that which does not apply.

A written communication should convey the following to unsuccessful tenderers following the evaluation of a round of competitive negotiations in a tender process:

Project number:

Title:

Your tender submitted to perform the above contract refers.

The institution wishes to advise you that we have received and evaluated your first round tender submission. This letter regrettably serves to advise you that on this occasion you have not been selected to proceed to the next round.*

Your participation in the tender process and our business is highly appreciated.

* Amend as necessary.

A written communication should convey the following to unsuccessful tenderers following the award of a contract:

Project number:

Title:

Your tender submitted to perform the above contract refers.

The institution wishes to advise you that we have received and evaluated your tender offer. This letter regrettably serves to advise you that on this occasion you have not been successful on this occasion. The contract has been awarded to

Your participation in the tender process and our business is highly appreciated.

D.2 Debriefing score sheet

A summary scoring sheet modelled along the following lines should be issued to the participants of a debriefing meeting:

Debriefing sheet

Name of tenderer:

**Title:
Project Number:**

Criteria	Weighting	Maximum score available	Tenderer's / respondent's score	Average score	Successful tenderer's / lowest successful respondent's score
Financial offer					
Preference					
Quality*					
Criteria 1					
Criteria 2					
Criteria 3					
Criteria 4					
Total for quality					
Total score					
Ranking			-	-	1
Comments**:					

* List only main criteria and aggregate sub criteria

** Provide brief comments to enable the participants to understand why they obtained the score that they did

Alternatively, a debriefing sheet which provides the abovementioned information without brief comments relating to the score may be included in correspondence with a participant.

Annexure E: Example of a performance report for an NEC3 Professional Service Contract

Consultant particulars:

Name:	Name of person employed by the Consultant for overseeing the services:	Tel:	email:
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Project manager's particulars:

Name:	Tel:	email:
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Performance area				Evaluation to arrive at a rating (tick or check appropriate box and fill in value in brackets in rating column)			
Description	Weighting (1)	Rating (2)	Score (1)x(2)	Unsatisfactory (-1)	Acceptable (0)	Good (1)	Superior (2)
Time management based on programme <i>NOTE: The requirements for, acceptance of and revisions to programmes are fully described in clause 31 and 32 of the NEC3 Professional Service Contract</i> A Key Date is the date by which work is to meet a condition.	0,1			<input type="checkbox"/> less than 60% of programme milestones / Key Dates are met	<input type="checkbox"/> at least 60% of programme milestones / Key Dates are met	<input type="checkbox"/> most programmed milestones / Key Dates met	<input type="checkbox"/> all programmed milestones / Key Dates met
	0,1			<input type="checkbox"/> programme repeatedly not adhered to	<input type="checkbox"/> few deliverables submitted later than 4 weeks after programmed dates	<input type="checkbox"/> most deliverables submitted not more than one week after programmed dates.	<input type="checkbox"/> timely submission of all deliverables
Standard of service <i>NOTE: A defect is defined in the NEC3 Professional Service Contract as a part of the services which is not in accordance with the Scope or the applicable law.</i>	0,1			<input type="checkbox"/> significant defects encountered	<input type="checkbox"/> some defects encountered	<input type="checkbox"/> very minor defects encountered	<input type="checkbox"/> no defects encountered or rework

Performance area				Evaluation to arrive at a rating (tick or check appropriate box and fill in value in brackets in rating column)			
Description	Weighting (1)	Rating (2)	Score (1)x(2)	Unsatisfactory (-1)	Acceptable (0)	Good (1)	Superior (2)
Deployment of staff	0,3			<input type="checkbox"/> staff had gaps in competence and experience	<input type="checkbox"/> balanced staff complement with suitable experience	<input type="checkbox"/> competent and experienced staff that improved outputs of the service	<input type="checkbox"/> competent and experienced staff that added significant value to the outputs of the service
Project budget control <i>NOTE: The project budget includes, as necessary, the cost of providing the service, specialist services and the construction works</i>	0,2			<input type="checkbox"/> unrealistic control budget put in place	<input type="checkbox"/> realistic control budget put in place	<input type="checkbox"/> realistic control budget put in place and regularly updated	<input type="checkbox"/> accurate control budget put in place and regularly updated
Co-operative relationships	0,1			<input type="checkbox"/> struggled to communicate	<input type="checkbox"/> communicated issues coherently and within reasonable time frames	<input type="checkbox"/> communicated issues promptly and succinctly	<input type="checkbox"/> communicated issues promptly and succinctly, focusing on the critical issues
	0,1			<input type="checkbox"/> struggled to resolve issues	<input type="checkbox"/> resolved issues with some difficulty	<input type="checkbox"/> resolved issues with little difficulty	<input type="checkbox"/> proactive in resolving issues through open and effective communication
Total score	-	-					

Performance descriptor (based on total score) (Check or tick appropriate box)

- poor < - 0,5
- adequate > - 0,5 to 0,5
- good > 0,5 to 1,5
- excellent > 1,5

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Signature