

Monitoring Public Procurement in South Africa:

A Reference Guide for Civil Society Organizations



Carlene van der Westhuizen

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FOREWORD & ACKNOWLEDGEMENTS

A large portion of government spending in South Africa goes towards buying goods and services from the private sector through the government procurement process. It is therefore of critical importance that the public understand and monitor government procurement. Procurement processes and documents can, however, be very technical, and make it hard for ordinary people to engage with these important transactions. In “Monitoring Public Procurement in South Africa: A Reference Guide for Civil Society Organizations”, Carlene van der Westhuizen makes public procurement accessible to the public through her painstaking research of national processes and international good practice examples.

The Guide was 12 months in the making. As she wrote this Guide, Carlene tested the ideas with civil society organizations such as the Social Justice Coalition, Ndifuna Ukwazi, Equal Education, Afesis Corplan, Corruption Watch, Right to Know, and Black Sash. At the time of writing, some of these organizations were already applying the tools and techniques in the Guide. This enthusiastic uptake by civil society, as well as the ongoing reforms being undertaken by the Office of the Chief Procurement Officer, makes us confident that public engagement in the procurement process is moving from theory to practice. We hope that this Guide will support this process.

The following people were interviewed to gather information for the Guide: Leonard Shnaps – Director of Supply Chain Management, City of Cape Town; Joy Aceron – Director, Government Watch, Ateneo School of Government, Ateneo de Manila University; Theresa Soetzenberg – Deputy Director, Provincial Government Supply Chain Management, Western Cape Provincial Government; Chantal Smith – Chief Director, Supply Chain Management, Transport and Public Works, Western Cape Provincial Government; and other officials from the City of Cape Town.

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Albert van Zyl
Manager – IBP South Africa
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INTRODUCTION

The government needs a variety of resources to deliver services. For example, officials working in offices need computers and stationary. Many government departments provide goods and services to the public and often these goods and services have to be brought in from outside of government. The term **public procurement** refers to the buying of goods and services by the government from the private sector.

When public procurement is not working as it should service delivery is compromised, resulting in goods and services that are of poor quality, delivered late, or not delivered at all. For example in Limpopo in 2012, many learners did not receive their textbooks until mid-way through the school year. A company was contracted to supply the textbooks. However, the government department responsible for the contract failed to monitor whether the books were actually delivered to schools. Thousands of textbooks were found dumped in the veld instead of being delivered to students who needed them.

In this way public procurement impacts directly on the lives of people throughout South Africa.

When working optimally to support government policy, public procurement should ensure the following:

- Hospitals and clinics have the equipment they ordered to take care of patients.
- Waste removal services have the trucks and machinery they need to remove garbage from where people live.
- School buildings are built according to specifications so that they provide a conducive environment for students to learn in.
- Police have the vehicles and forensic equipment that they need to prevent and investigate crimes.

When public procurement happens behind closed doors it is much easier for unscrupulous government officials to collude with private companies, accepting bribes and kickbacks in exchange for contracts. It is not difficult for opportunistic private companies to exploit understaffed and overworked government departments. A lack of transparency around public procurement can also make it difficult for the public and businesses to compete fairly for government contracts. The same suppliers may be contracted over and over, even when there are others who could deliver the same goods or services at a better price, or more effectively.

Public procurement is, therefore, something that the public has very good reason to keep an eye on. Yet it is also an area of government activity that is often obscured from public view and shrouded in technical jargon. So far, few civil society organizations (CSOs) have focused their attention on monitoring public procurement in South Africa. Admittedly there are challenges involved in doing so, not least of all gaining access to the necessary documentation. However, there is still considerable scope to expand and enhance the monitoring of public procurement by civil society organizations, parliamentarians, the media, and other **oversight** actors in South Africa. That is what this Guide aims to do.

Exercising Oversight

One of the cornerstones of democracy is that government leaders should be held accountable for how they use their power, including how they manage public funds. Through organizations and elected representatives, the public has a duty and a right to monitor government performance and draw attention to broken promises and mismanaged public resources.

DEFINING THE PUBLIC PROCUREMENT TERRAIN

Throughout this Guide, we refer to public procurement as a government activity. The box below carefully details what is meant by the term government. The South African government has many functions and responsibilities. These include: developing and upholding the laws of the country; making sure that people are safe and secure; and providing education, healthcare, water, and electricity. The government needs to procure goods and services to meet these commitments.

INSIDE GOVERNMENT

The South African government is made up of three spheres:



These spheres are meant to work cooperatively to implement the country's laws and policies. There are various **ministries and departments** within each sphere.

The government also includes a number of **independent institutions**, such as the Public Protector and Auditor-General of South Africa.

There are also several **state-owned enterprises** under the government umbrella that provide services on a commercial basis, like Eskom and Transnet.

The government also includes many other kinds of **public entities**, such as councils, funds, associations and agencies, for example, the Unemployment Insurance Fund and the National Youth Development Agency.

For the purposes of this Guide, the term **departments** is used broadly to refer to the various entities and institutions that exist within government.

Public procurement can generally be organized according to three categories:

- Public procurement can refer to buying **goods**. These goods may be for government officials to use themselves, for equipping government buildings or facilities, or to be passed on to the public. For example, provincial health departments have to buy beds, furniture, bedding, medicines, and other hospital equipment.
- Public procurement can also refer to buying **services**. The government often has to appoint companies to undertake work that it doesn't do itself. For example, a government department might contract a company to train their staff in a particular specialist area, or a provincial education department might contract a bus company to transport learners.
- Finally, public procurement can also refer to payment for certain public **works**. These are large infrastructure projects that involve a mixture of goods and services, usually over a long period of time. For example, the transport department might contract a company to manage the construction of a new bridge or highway system.

The Objects of Procurement

In this Guide, we generally use the term **goods or services** to refer to all the various things that could be procured by a government department or entity, including large infrastructure projects.

Suppliers and Bidders

Many different individuals, companies, and other organizations sell goods and services to government. These are sometimes called vendors, contractors, service providers, or suppliers. For ease of reference, the term **suppliers** is used throughout the Guide to refer to the external parties offering goods and services through public procurement. When these suppliers offer their goods or services as part of a competitive bidding process, they are referred to as **bidders**.

WHY THE PROCUREMENT PROCESS IS IMPORTANT

In South Africa, as in most other countries, government departments need to follow specific, legally defined procedures when buying goods and services. The procurement process is designed to be fair and ensure that the best value is achieved with public money.

All over the world, public procurement processes are regulated to make sure that governments spend money effectively and responsibly. The basic steps involved in procuring goods or services are more or less the same in most countries, as shown below.

The Basic Steps in a Public Procurement Process

- 1. A government department identifies goods or services that it needs in order to fulfil one or more of its functions.**
- 2. The department uses a fair and open process to choose the supplier that offers the right goods or services at the best price.**
- 3. The department makes sure that the goods or services are delivered at the right place and right time.**

Source: Adapted from OECD (2006)

From the box above, it is clear that poor decision making or a lack of transparency at any stage in the process can undermine the intended outcomes of procurement. There are frequently many stakeholders and large sums of money involved and each stage requires detailed coordination and management. Without effective oversight, it is possible to deviate from the prescribed procedures and open up opportunities for waste or corruption. Even more seriously, a lack of effective oversight could mean that much needed goods and services do not reach their intended beneficiaries.

Transparency

The government's *General Procurement Guidelines* (Republic of South Africa, undated) recognizes the need for transparency in public procurement. This means that all laws, policies, practices, and procedures should be accessible to everyone involved; competition for contracts must be conducted in the open; and there should be public scrutiny of procurement processes to ensure accountability.

Monitoring a procurement process often involves observing and assessing whether the prescribed procedures are being (or have been) followed by all the stakeholders involved. The more organizations and people that are involved in overseeing these processes, the more likely government is to follow the law, be fair, and provide good value for money. This is one way to help ensure that the checks and balances built into the procurement system can operate as they should, and that the right goods and services are delivered at the right place and time to the people that need them.

THE PURPOSE OF THE GUIDE

This Guide presents CSOs and other interested readers with information and tools to help monitor public procurement. The assumption is that robust oversight over public procurement in South Africa will ultimately improve service delivery, reduce corruption, and strengthen public participation.

Specifically, this Guide aims to provide the following:

1. A **sound overview** of public procurement processes and systems in South Africa. This includes mapping the various steps involved in procurement and how they differ at national, provincial, and local level. A clear indication of what information should be available to the public at each stage of the process is provided.
2. A **reference sourcebook** that you can consult from time to time, as the need arises, to delve more deeply into a particular aspect of public procurement. Some parts of the Guide may become relevant to monitoring procurement in a specific sector, or in a particular government department. It is not necessary to read the whole Guide all at once.
3. A **sense of what can be achieved** when civil society engages with public procurement processes. The Guide presents examples of monitoring initiatives from other countries to inspire South Africa CSOs.
4. **Information resources** that can be used and adapted to inform and train others, including civil society monitors, and to raise public awareness about procurement issues. Information from the Guide can be translated and shaped to suit different contexts and audiences.

Icons used in this Guide

Throughout the Guide various icons have been used:



Website icon indicates that a relevant [website link](#) can be found on the list of useful websites on pages 206 and 207.



Cross-reference icon indicates where more information on the specific topic can be found elsewhere in the Guide.



Red flag icon indicates warning signs CSOs should look out for, or questions they could ask, when monitoring public procurement.



International icon indicates information that has been sourced from international practice.

THE STRUCTURE OF THE GUIDE

The Guide is divided into five sections :

SECTION I sets out the basic legal framework governing public procurement in South Africa. It highlights the principles that all procurement processes should adhere to, and explains the main methods, or sourcing strategies, that government departments can use to procure goods and services.

SECTION II provides a detailed overview of the different phases of the public procurement process. This includes outlining which information and documents should be available at each phase and whether any of the proceedings are open to the public.

SECTION III presents some examples of procurement monitoring from other countries. It presents innovative tools for monitoring procurement and highlights various ways in which CSOs and governments have worked together to enhance oversight.

SECTION IV offers general guidelines on how to monitor public procurement in South Africa, given the current legislative framework.

SECTION V proposes a number of changes that could enhance the scope for monitoring public procurement in South Africa. These changes could facilitate greater civil society participation in the procurement process and contribute to more effective and efficient service delivery. Therefore, these are changes that civil society organizations could consider advocating.

REFERENCES & LINKS At the end of the guide, the References and Links section include links to relevant legislation and procurement regulations and a range of other resources for monitoring public procurement.

Source References in this Guide

The aim has been to make this Guide as user-friendly as possible. For clarity, some sources are referenced in the text. At other times the sources are cited at the end of boxes and chapters rather than in the narrative so as not to interrupt your reading. The full references for all sources appear in the reference list at the end of the Guide.

SECTION I:



**A framework for understanding
Public Procurement –
concepts, principles and methods**

Public Procurement: The Basics

This section provides an introduction to public procurement in South Africa. The purpose of this section is to cover the following:

- Outline the main laws that govern public procurement in the country.
- Highlight the principles that all public procurement processes must adhere to.
- Introduce the concept of supply chain management.
- Explain the main methods that can be used to procure goods and services in the public sector.
- Draw attention to special provisions that apply to public procurement in some sectors and circumstances.

CHAPTER 1

Principles and Laws Governing Public Procurement in South Africa

This chapter identifies the principles underpinning public procurement in South Africa. It considers the laws and policies that Guide public procurement and introduces the concept of **supply chain management** (SCM).

1.1 PRINCIPLES THAT PUBLIC PROCUREMENT MUST ADHERE TO

In terms of the law, public procurement processes are guided by key principles set out in Section 217 of the Constitution. This states that all public procurement processes should be:

FAIR**EQUITABLE****TRANSPARENT****COMPETITIVE****COST-EFFECTIVE**

Section 217 of the Constitution also states that the government is responsible for developing laws that regulate public procurement. Sub-section 1.2 provides an overview of the legislative framework.

Public procurement is also guided by the general values and principles that apply to public administration. Set out in Section 195 of the Constitution, these include the promotion of professional ethics, transparency, and accountability, and the responsible use of public resources.

Importantly, the Constitution states that the government, and public services in general, have to respond to the needs of the South African people. It calls on the government to create opportunities for the public to participate in making decisions and developing policies. Monitoring public procurement is one way that the public can participate in decisions affecting the country and hold government leaders to account.

Another important principle guiding public procurement in South Africa is that of economic transformation. Section 217 of the Constitution stipulates that government departments, when awarding contracts through public procurement, can give preference to people who faced discrimination under apartheid. Therefore, public procurement can be used by the South African government to address past social and economic imbalances.

1.2 LAWS AND POLICIES GOVERNING PUBLIC PROCUREMENT

According to the National Treasury, there are more than 80 laws, policies, and procedures relating to public procurement in South Africa. Two of the most important are the *Public Finance Management Act* (Act 1 of 1999) and the *Municipal Finance Management Act* (Act No 56 of 2003):

- The **Public Finance Management Act** (PFMA) is the main law regulating financial management in all national and provincial government departments, public entities, and other institutions. The PFMA states that all government departments have to set up and maintain public procurement processes. This involves establishing a SCM unit and putting SCM processes in place. In line with the Constitution, these processes have to be fair, equitable, transparent, competitive, and cost-effective.
- The **Municipal Finance Management Act** (MFMA) regulates financial management in local government. It also includes norms, standards, and requirements for SCM in local government (see Section 1.3 for more information on SCM).

Importantly, in line with Section 217 of the Constitution, South Africa has a preferential public procurement policy. Preference is given to previously disadvantaged groups in the awarding of government contracts. Two important laws give effect to this policy, namely the *Broad-Based Black Empowerment (B-BBEE) Act* (No 53 of 2003), and the *Preferential Procurement Policy Framework Act* (No 5 of 2000):

- The **B-BBEE Act** provides guidelines to promote **black economic empowerment** in South Africa. It calls on the relevant minister to issue a **code of good practice** for B-BBEE, which can include criteria for **preferential procurement**. This code sets out how a procuring department should assess the B-BBEE status of a potential supplier. Government departments are required to use this code of good practice when they develop or use preferential procurement policies.
- The **Preferential Procurement Policy Framework Act** (PPPFA) provides further guidance on implementing preferential procurement in line with the Constitution. The PPPFA introduces the preference point system. It also empowers the finance minister to issue regulations to guide departments on how they should meet the goals of preferential procurement.



See **sub-section 6.3** in **Chapter 6** for more detailed information about the preference point system and how it is applied in practice.

The Role of Accounting Officers

A department's **accounting officer** is responsible for setting up public procurement processes. In a provincial or national department or entity, the accounting officer is usually the head of department, director-general, or chief executive officer. The municipal manager is generally the accounting officer for a municipality. In the case of a public entity, the board may act as the accounting officer.



The PFMA and MFMA, as well as other documents related to public procurement, are available on the [website](#) of the [National Treasury](#). See the page of the Office of the Chief Procurement Officer, and the page focusing on the MFMA, which includes regulations and guidelines.

The implementation of public procurement in South Africa is also guided by the following:

- **Circulars, regulations, and practice notes from the National Treasury.** These are regularly produced to explain issues related to public procurement, and to highlight changes in document requirements or procedures. Separate circulars are issued for procurement at the national and provincial levels, and for procurement at the municipal level.
- **Court judgements involving public procurement.** The courts interpret the legal framework for public procurement in South Africa. When a judgement is made by the court, it helps to shed light on how procurement laws and regulations should be applied in practice.

In 2015, the National Treasury announced plans to draft a new law to guide public procurement processes in all three spheres of government. This new law will be consistent with the PFMA and the MFMA, but will replace all the various laws and policies that currently guide SCM and public procurement.

1.3 SUPPLY CHAIN MANAGEMENT

As already noted, public procurement refers to the general practice of government departments buying goods and services from suppliers. SCM (supply chain management) is a key term used in discussing and managing procurement. In South Africa, the government has set up a SCM system that all departments must use for public procurement.

What is Supply Chain Management?

SCM is used in both the business world and in the public sector. It refers to managing flows of raw materials, information, people, and goods, from their points of origin to where they are needed.

According to the National Treasury (2011c), the SCM system is in place to make sure that all goods and services procured by the government are delivered:

- to the right place;
- in the right quantity;
- with the right quality;
- at the right cost; and
- at the right time.

All national and provincial government departments in South Africa have their own SCM units that are responsible for implementing public procurement. These responsibilities can be found in guidelines released by the National Treasury (2004a and 2005a). At local government level each municipality has one SCM unit, usually located within its finance department.

CHAPTER 2

The Main Methods for Procuring Goods and Services in the Public Sector

The legal and policy framework outlined in Chapter 1 includes rules and regulations governing methods for procuring goods and services in South Africa. These are often referred to as **sourcing strategies**, as government departments need to investigate and decide how they will obtain, or **source**, what they need to buy.

Generally speaking, there are three broad methods that departments might consider in order to procure something:

- **External sourcing.** In these cases a department decides to purchase goods or services from a supplier, such as a company, NGO, or individual, from outside of government.
- **Transversal Contracts.** When goods and services are needed in large quantities, and by a number of national, provincial, and/or municipal departments, the National Treasury sometimes negotiates a transversal contract to purchase these collectively, usually after a competitive bidding process. Participating departments must purchase all related goods and services from the supplier contracted by the National Treasury.
- **Public-private partnership (PPP).** Some goods and services are procured through joint projects between government departments and private sector companies. There are specific laws that regulate partnerships of this kind.

In this chapter, we review the basic rules pertaining to each of these broad methods. There are also variations and exceptions to these three approaches, particularly pertaining to procurement in construction and information technology. These, amongst other exceptions, are presented in Chapter 3.

External sourcing is the most common method used for public procurement in South Africa. When goods or services are purchased from an outside source, the estimated value of the goods or services is used to determine the particular procurement method. If the estimated price of a good or service is above a certain threshold, a competitive bidding process must be followed. This competitive bidding process is most likely to be the subject of civil society monitoring. The different phases of this type of procurement process are explained in more depth in Section II of the Guide. The thresholds determining the specific method to be followed when purchasing from an external source are discussed in some detail in sub-section 2.1 below.

2.1 PUBLIC PROCUREMENT FROM EXTERNAL SOURCES

Most of the time public procurement involves sourcing goods and services from outside of government. There are a number of ways this can be done and the method that has to be followed depends on the estimated value of the goods or services being procured.


Departments therefore must start by assessing both the availability and price of the goods or services that they require.

Price estimates will determine:

- if the goods or services can be bought with **petty cash**;
- if it is necessary to obtain and compare a minimum of three **verbal or written** quotes; and
- whether a **competitive bidding process** must be undertaken.

Competitive Bidding

Using this procurement method, a department invites bids from competing suppliers before awarding the contract to the selected supplier. When competitive bidding is used, the department will publicly advertise the bid so that all interested suppliers can submit a response.

 **Section II** provides further details on competitive bidding, especially in **Chapters 6 to 11**. **Chapter 3** presents further information on limited bidding procedures, particularly **sub-section 3.1**.

The National Treasury has set specific price thresholds, or limits, for each external sourcing method:

PRICE THRESHOLDS FOR EXTERNAL SOURCING OF GOODS OR SERVICES

PRICE OF GOODS OR SERVICES <i>(including VAT)</i>	PROCUREMENT METHOD TO BE USED	DESCRIPTION
R1 – R2 000	Petty cash	Government departments can use petty cash when buying anything that costs less than R2 000. This is usually for day-to-day expenses. The accounting officer of each department is responsible for setting up a system to manage petty cash.
R2 001 – R10 000	Compare three quotes	Departments buying goods or services that cost between R2 001 and R10 000 have to get at least three quotes from their database of prospective suppliers. These quotes can be either written or verbal. Once the department selects the best supplier, it must retain a written quote from that supplier as a record.
R10 001 – R500 000 (national or provincial) R10, 001 – R 200 000 (local)	Compare three written quotes (national or provincial)	For purchases in this price range, national and provincial departments must compare as many written quotes as possible from their databases of possible suppliers. Quotes can also be requested from suppliers not on these databases. If for some reason the department cannot find at least three written quotations, the reasons have to be given in writing and approved by the accounting officer. The threshold for written quotes is lower for local government. These departments have to get as many written quotes as possible for goods and services between R10 001 and R200 000.
R500 001 + (national or provincial) R200 001 + (local)	Competitive bidding	When departments procure more expensive goods and services, a competitive bidding process has to be followed. For national and provincial departments, this applies when the goods or services cost more than R500 000. In local government, this applies for goods and services that cost more than R200 000.

Source: National Treasury (2007)

The accounting officer of a department, or in the provincial treasury, has the power to lower these price thresholds. However, none of these thresholds can be increased.

Supplier Databases

Many government departments need to procure the same types of goods and services every year. For this reason, government departments are expected to set up databases of suppliers to provide quotations for goods and services. This applies to both verbal and written quotes (*see the table on page 21*).

Most departments also require suppliers to register on the database if they wish to participate in the competitive bidding process. If bidders need to register on a department's supplier database in order to be considered, this requirement is usually included in the tender advertisement.

In line with the public procurement principles discussed in Chapter 1, it is important that any qualified individual, organization, or company has the chance to be added to these databases. At least once a year, government departments should therefore use the media to advertise opportunities to register on their supplier databases. Individuals or companies interested in becoming government suppliers can obtain a supplier registration form from the website of the National Treasury, the relevant provincial treasury, or municipality.

Prospective suppliers usually also have to submit:


- details about the company/organization, its finances, and its products;
- the company registration certificate;
- an original and valid tax clearance certificate; and
- the company's B-BBEE rating certificate.


These documents are then reviewed and verified, and a decision is made as to whether the supplier qualifies to be added to the database.

National departments usually have their own supplier databases. Provincial government departments have one supplier database for the whole province, and municipalities have a single supplier database for the whole municipality.

THE CENTRAL SUPPLIER DATABASE AND WEB-BASED PROCUREMENT

In April 2015 the National Treasury announced two important initiatives: a central supplier database (CSD), and an eTender publication portal.

 The **central supplier database** was launched on the 1 September 2015 as a single database of suppliers to be used for national, provincial, and local government procurement. It was introduced to make it easier and cheaper to be able to register to do business with all levels of government. All existing supplier databases will be transferred to the CSD. Eventually, the CSD will also be linked up with other institutions, such as the South African Revenue Services (SARS) and the Companies and Intellectual Property Commission (CIPC). This will help departments to more quickly verify the tax status or company registration of suppliers, for example. In future, the CSD may also be able to verify other types of information, such as bank details, identity numbers, previous employment in government, and any record of defaulting on tenders or other restrictions.

 The **eTender publication portal** is the first step in creating a web-based procurement system for the South African public sector. The idea is to make all tender information from national, provincial, and local government available on a single website.

In future, the portal may also be linked to the CSD, and will include:

- rules and guidelines related to public procurement;
- government tender notices and official tender documents;
- corrections to tender documents;
- information about contracts that have been awarded; and
- a search function that allows users to identify tenders according to category, type, status, region, and sector.

External Sourcing of Municipal Services

The thresholds set out in the table on page 21 apply to any instance in which a local government wishes to procure goods and services from an external supplier. However, when it comes specifically to municipal services, there are some additional requirements that municipalities have to meet when procuring from external sources.

According to the *Local Government Municipal Systems Act* (Act No 32 of 2000), municipalities are allowed to provide services through either 'internal' or 'external' mechanisms. Local government services are often provided through internal mechanisms, using the resources and capacity of departments. In some cases, however, services can be obtained elsewhere, for example from other municipalities or government departments, NGOs, or competent individuals or organizations.

The Act does not identify specific municipal services. However, it does define “basic municipal services” as those that are “necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.” This could include the provision of electricity, water and sanitation, and refuse removal.

Section 78 of the Act spells out the exact processes that a municipality must follow in order to procure municipal services from external sources.

Steps to be Followed Prior to Procuring Municipal Services from an External Source

- 1.** The municipality must inform the local community that it is exploring the option of using an external supplier to provide a municipal service.
- 2.** The municipality must conduct a cost-benefit analysis of the decision to use an external supplier. It also has to analyze the impact that using an external supplier will have on jobs and economic development in the area.
- 3.** The municipality must conduct a feasibility study (this requirement was added by an amendment to the Act in 2003).
- 4.** The municipality has to assess the supplier’s ability to deliver the services, both in the present and the future.
- 5.** The municipality must seek out the views of the local community and any relevant trade unions, and take these into account when deciding on the supplier.

Once these steps have been taken and the municipality decides to go ahead with the external appointment, it must then follow a competitive bidding process. The Act provides clear guidelines on the criteria that should be considered when a supplier is selected. It also provides guidelines on the contract negotiation and conclusion of a service level agreement (SLA). The municipality is required to make copies of this SLA available to the public.

If the municipality wants to use an external supplier to provide basic services, it must make sure that the community is informed and consulted before any agreement is finalized. The details of the agreement have to be advertised in the local media. This would be necessary, for example, if a municipality wanted to contract a company to manage the provision of sanitation, including the collection of user fees for services.

Importantly, even though a municipality might contract an external supplier, it is still responsible for making sure that the basic services are delivered. This remains the case even if there is a problem with the supplier. If the supplier was chosen through a competitive bidding process, the contract can only be changed if the community is informed about the change and the reasons behind it, and if the community is given a chance to provide feedback to the municipality on these changes.

MUNICIPAL CONTRACTS LONGER THAN THREE FINANCIAL YEARS

The government makes use of a Medium Term Expenditure Framework (MTEF) to plan its finances and budgets over a rolling three year period. This allows the people of South Africa a chance to look closely at the government's spending priorities three years in advance. In some cases, a municipality might want to procure goods or services from an external supplier for a period of more than three years. This is longer than the period of the MTEF.

In these cases, Section 33 of the MFMA states that the municipality has to:

- make the **bid specifications** and draft contract accessible to the public; and
- invite the local community, and anyone else who is interested, to comment on the contract.

Usually, municipalities advertise all of the relevant tender information on their websites and in the media. Hard copies of the draft contract, and other relevant information for people to review, should be available from the corresponding department at sub-council offices and in public libraries. Comments have to be submitted within 60 days. These comments have to be read and considered before the municipal council can approve the final contract.

2.2 TRANSVERSAL CONTRACTING

The second main method that government departments can use to procure goods and services is through **transversal contracts**. These contracts (also called transversal term contracts) are used when large amounts of particular goods or services are required by many different departments across national, provincial, and/or local government. Examples of such goods and services are vehicles, courier services, and furniture.

When departments enter into transversal contracts, they are not allowed to request other bids for the same goods or services during the contract period (National Treasury, 2005b).

Suppliers are chosen through a competitive bidding process facilitated by the Office of the Chief Procurement Officer (OCPO) in the National Treasury. While the OCPO manages the bidding process, departments are responsible for managing the contract, placing purchase orders, paying suppliers, and monitoring and receiving the goods and services.

Sourcing from other Government Departments

In some cases, a department may be able to find the goods or services it needs from within government. For example, a department could buy stationary from the government printers, or purchase unused office furniture or equipment from another department. Procurement of this kind usually happens through direct arrangements between the departments involved.

PARTICIPATION IN EXISTING CONTRACTS

Departments are allowed to participate in procurement contracts arranged by other departments through competitive bidding processes. In such cases, the supplier and the department with the original contract has to provide written approval. This arrangement means that departments can avoid having to go through a new bidding process if their needs can be met through participation in the existing contract. However, there is a danger that certain suppliers will then dominate the market, while others are excluded from opportunities to win contracts.

Sources: Republic of South Africa (2005); National Treasury (2005b)

2.3 PROCUREMENT THROUGH PUBLIC-PRIVATE PARTNERSHIPS

The third broad approach to public procurement is to source goods or services through a public-private partnership (PPP). The National Treasury defines a PPP as a contract between a public sector institution or municipality and a private party, where the private party assumes substantial financial, technical, and operational risk in the design, financing, building, and operation of a project.



More information can be found on the government's [PPP website](#).

A public-private partnership can take one of several forms. For example:

- a private body that performs a government function;
- a private body that uses government property for commercial purposes; or
- a combination of these two types.

There are specific rules in place to regulate PPPs, including Section 16 of the PFMA National Treasury Regulations. These regulations state that projects identified as possible PPPs have to receive approval from the national or provincial treasury at a number of key stages. These stages are set out below.

Stages in Using a Public-Private Partnership as a Procurement Sourcing Strategy

1. The PPP has to be registered with the relevant treasury.
2. The accounting officer of the relevant department has to conduct a feasibility study, which should demonstrate that the PPP is affordable and beneficial. It must be submitted to the relevant treasury and approved before procurement can start.
3. The relevant treasury has to approve all the procurement documents, including a draft PPP agreement between the different departments, companies, and other parties involved. After this, the procurement process can start, and follow all the necessary procedures and processes (*see Section 11 of the Guide for more details about these*).
4. Before a contract can be awarded to a preferred bidder, the department has to write a report explaining the process that was used to evaluate all of the bids that were received. This report has to be submitted to the relevant treasury and approved.
5. Finally, before the contract can be signed, the department has to develop a PPP agreement and management plan, to be approved by the relevant treasury. These will only be approved if the treasury is satisfied with the level of **due diligence**, meaning that all reasonable steps have been taken to make sure that the law has been followed.

Source: National Treasury (2005b)

CHAPTER 3

Variations and Exceptions for Sourcing Goods and Services

The previous chapter set out the main methods that government departments and entities can use when they need to source goods and services to help them fulfil their functions. The focus of this Guide falls mainly on the first method, namely sourcing goods and services from external suppliers, specifically through the competitive bidding process. Section II of the Guide explains this process in detail.

When procuring goods and services from external sources, government departments are usually expected to follow the guidelines set out in the table on page 21. However, different rules and processes apply in some cases.

The following exceptions and variations are considered in this chapter:

- instances in which departments can apply **limited bidding procedures** instead of full competitive bidding;
- the procurement of goods and services related to **information technology** or the construction industry; and
- procedures relating to **unsolicited bids and proposals**.

Unsolicited Bids and Proposals

When an organization or supplier offers to provide a government department with goods or services in exchange for payment without any prompting, this is referred to as unsolicited. In other words, the goods or services were not formally requested. For example, an events company might suggest to a municipality that they could host a festival to promote local produce and attract tourism to the area, without the municipality having planned for such an event, and without requesting bids from companies to host the event.

3.1 LIMITED BIDDING PROCEDURES

When a government department is meant to use a competitive bidding process, it sometimes encounters certain obstacles. For example, it may discover that there are simply not enough suppliers in the market that are able to provide the goods or services it is looking for. This could happen when the goods or services are highly specialized or rare.

In such cases, departments can apply limited bidding procedures. This allows them to narrow their sourcing strategy down to a few, or even a single bidder, provided that they can justify this decision. There are three main forms that limited bidding can take, as set out in the table below.

THREE FORMS OF LIMITED BIDDING

LIMITED BIDDING METHOD	DESCRIPTION
Multiple source bidding	After the department conducts research, a few bidders are identified and allowed to submit proposals.
Single source bidding	After thorough research and an open and fair pre-selection process, one of several possible bidders is asked to submit a proposal.
Sole source bidding	When there is only one possible bidder, no competition can take place, and therefore a sole supplier is considered for the contract.

Sources: National Treasury (2004a); Republic of South Africa (2005)

When government departments use limited bidding procedures instead of full competitive bidding, the justification for doing so must be recorded and approved by the accounting officer of the procuring department.

Emergency Situations

There are some situations in which access to goods or services is so urgent that following a competitive bidding process would be impractical, or lead to a dangerous or risky situation. For example, during a flood the government may have to act quickly to save lives. Under these conditions, departments are allowed to procure urgent goods or services by requesting quotations rather than following the competitive bidding process. Preferably, departments should request quotes from the existing supplier database.


It is important to note that poor planning by a department is not grounds for an urgent or emergency purchase. This provision should not be used to circumvent a competitive bidding process. In cases that are true emergencies, the reasons behind the decision not to use competitive bidding have to be recorded and approved by the relevant accounting officer.

Sources: National Treasury (2004a); Republic of South Africa (2005)

3.2 PUBLIC PROCUREMENT OF INFORMATION TECHNOLOGY

South Africa's State Information Technology Agency (SITA) was established through the State Information Technology Act (Act No 88 of 1998). This law requires all national and provincial government departments to work through SITA when purchasing certain specified goods or services relating to information technology, including installations, networks, and data processing.

3.3 PUBLIC PROCUREMENT IN THE CONSTRUCTION INDUSTRY

 The **Construction Industry Development Board (CIDB)** was set up in 2000 after parliament passed an Act by the same name (Act No 38 of 2000). The CIDB was established with the specific goal of improving procurement in the construction industry. See the [website](#) for information.

The act introduced standard practices, documents, and procedures that apply to construction procurement across all three levels of government. The CIDB maintains a national register of contractors on its website that grades contractors according to financial capability and their ability to perform work. All government departments are required to use this register when they seek to procure contractors in the construction industry.

How Contractors are graded

The CIDB grades contractors using two letters and a numeric value:

- The **letters** describe the type or class of construction work the contractor can supply. For example, civil engineering, general building work, landscaping and horticulture.
- The **number** indicates the financial capability of the contractor according to the recorded value of previous contracts, company turnover, and accumulation of working capital. This value is used to set the maximum value of a project that the contractor can bid for.

Public procurement of goods and services related to construction are also governed by:

- The CIDB *Code of Conduct* for all construction-related procurement. This applies to all participants involved.
- The CIDB *Standard for Uniformity in Construction Procurement*. This prescribes the ways in which construction procurement happens and tenders are evaluated. It also gives guides on the methods that should be used for different categories of contracts and the documentation that is required.

3.4 UNSOLICITED BIDS AND PROPOSALS

Sometimes government departments receive proposals outside of the normal bidding or procurement processes. These are considered unsolicited because the government department did not request a quotation or advertise a bid invitation.

The accounting officer of a department or entity is not under any obligation to consider unsolicited bids. In fact, according to the National Treasury (2004c), they can only be considered if the good or service offered is a “unique innovative concept that will be exceptionally beneficial to, or have exceptional cost advantages for the institution.” The bidder has to be the only supplier of the specific good or service. Further, the need for that good or service should have been identified by the department in its own strategic planning and budgeting processes.

Similarly, departments sometimes receive **unsolicited proposals or concepts** that are outside of the formal procurement process. A government department has no obligation to consider any unsolicited proposals it receives. In fact, it can only consider such proposals when they meet certain requirements (National Treasury, 2008/09).

If the department does decide to respond to an unsolicited proposal, it has to follow the steps outlined below:

- 1.** The department is expected to negotiate an unsolicited proposal agreement with the individual or organization that submitted the proposal.
- 2.** The department is expected to publish bid documents to test the market and see whether or not other suppliers could provide the same good or service.
- 3.** If there is more than one possible supplier, the department must follow a competitive bidding process. This means that the successful bidder will not necessarily be the same entity that submitted the unsolicited proposal in the first place.

Source: National Treasury (2008/09)

The MFMA requires that municipalities put together frameworks to deal with unsolicited bids and that they also limit the power of departments to approve them.

According to SCM regulations, municipalities can only consider unsolicited bids in cases where:

- The good or service is unique and innovative.
- It will offer exceptional benefits or cost savings to the municipality.
- The bidder is the only supplier of the good or service in the market.
- The reasons for following normal bidding processes are found to be sound by the accounting officer.

If the above requirements are met, the public must be given an opportunity to submit comments on the bid before the municipality can offer the supplier a contract. These comments have to be considered when making a decision about awarding the bid. The national and provincial treasuries also have to be given the chance to comment before the bid is awarded.

SECTION II:



**The Phases of Public Procurement in
South Africa**

The Tender Process under the Spotlight


This section of the Guide provides a detailed overview of the public procurement process in South Africa, with a specific focus on the competitive bidding method. The purpose of this section is to:

- Map the various phases in the public procurement of goods and services through competitive bidding
- Explain the specific requirements that have to be met during each phase.
- Identify the main documents and official forms involved in the process
- Provide civil society organizations with a reference guide to each phase of the public procurement process

CHAPTER 4

Overview of the Public Procurement Process

This section of the Guide looks into the various phases of the public procurement process when the competitive bidding method is used. There are many ways to divide this procurement process into phases. For the purposes of this Guide we have identified seven main phases, starting with planning and ending with the implementation of the procurement contract. There are aspects of each phase that can be monitored by civil society groups and other oversight actors.

 See **Section IV** for more information about how to monitor each phase of the procurement process.

The seven main phases of the procurement process are illustrated in the chart overleaf. Most of the time, these processes and phases are the same in national, provincial, and local government. Where they differ will be highlighted in the discussions that follow.



Procurement Documents

The National Treasury has created a number of document templates for public procurement at the national, provincial, and municipal level. Individual departments add the relevant requirements to the templates before using them to procure goods or services. It should be noted that all the templates referred to in this section are available on the [National Treasury website](#) and can be found on the page of the Office of the Chief Procurement Officer. See also the appendices at the end of the Guide for examples.

PHASES IN THE PUBLIC PROCUREMENT PROCESS



The next eight chapters of this Guide we consider each of these seven phases more carefully (there are two chapters dedicated to Phase 2). Before delving into the details of each phase, the synopsis opposite provides an overview of how the public procurement process is meant to unfold.

Conflicts of Interests

A “conflict of interests” refers to a situation where an individual or organization, due to an existing relationship or alliance, stands to benefit unfairly or may be influenced to bend the rules. For example, if a competitor for a tender is married to one of the people evaluating the bids it would be a clear conflict of interest.

Phase 1: Procurement Planning


A government department or institution decides it needs to buy goods or services to meet the needs of the public. The department then has to determine how much they need to buy, what quality is required, and by when the goods or services are needed. Then the department can start making plans about how to find the goods and services they need.

Phase 2: Bid Specification and Compilation of Bid Documents

Once a government department has concluded its initial planning, it must then define its needs in a more specific and detailed way. In this phase, the department draws up a bid specification document. This includes a detailed description of the exact goods or services needed, the exact quality and quantity, and any technical requirements.

The department also has to decide how it will choose a person or company to provide the goods or services. This involves clarifying how it will evaluate the proposals and quotations it receives from individuals or companies interested in the contract. These proposals are called bids. Taking all of the above into account, the department then compiles the full set of bid, or tender documents.

Phase 3: Invitation to Bid

 In phase 3, the **tender** is advertised to the public so that any individual or company that chooses to, has an opportunity to submit a bid. Tenders are usually advertised online, in the newspaper, and in the official **Government Tender Bulletin**.

Phase 4: Submission and Opening of Bids

Potential suppliers respond to the tender by preparing a quote and submitting all the documentation requested by the procuring department. The advertisement for the bid or tender should include a clear deadline with a date and time for the closing of submissions. No further bids are accepted after the closing date. The bids are then opened by the procuring department.

Phase 5: Bid Evaluation and Adjudication

During this phase the committee responsible for evaluating the bids considers all the bids that were submitted on time and checks whether they meet the required criteria. Members of this committee usually make a recommendation to a second committee for final adjudication. Finally, the successful bidder is chosen.

Phase 6: Clearing the Bidder and Awarding the Contract

Once a bidder has been chosen, the procuring department verifies whether the winning bidder is in good standing. This generally involves checking their past track record and ensuring the information provided in the bid is correct.

PHASE 7: Contract Implementation

Now the project can go ahead. It is the responsibility of the procuring department to make sure that goods and services are delivered on time, in the right quantity, and of the agreed quality. If they are not, the department may have to take action to remedy the performance of the supplier. The department is also responsible for making sure that the successful bidder (or supplier) is paid on time.

CHAPTER 5

Planning for Procurement



When public officials decide to purchase goods or services from outside of government the first step in the procurement process is planning. In this phase, a government department decides which goods or services it needs to buy in order to fulfil its functions effectively. For example the education department has to decide exactly how many textbooks schools need for each grade and subject. Likewise, the health department might identify the need for the services of a private company to collect medical waste at a specific number of hospitals and clinics.

All national and provincial government departments and institutions are responsible for their own procurement planning. This must also be carried out by **line departments** in local government, some of which are responsible for direct service delivery within a municipality. A waste department, for example, might need to buy new trucks to collect garbage within the city.



The **National Treasury** has developed guidelines and rules for procurement planning which are published on its **website** in the form of guides or circulars.

The main goal of procurement planning is to ensure that government departments buy the goods and services they need in order to meet their responsibilities towards the people of South Africa. More specifically, procurement planning involves making sure that the correct quantity and quality of specific goods and services are bought at the right time and delivered to the right place.

5.1 PROCUREMENT PLANNING IN NATIONAL AND PROVINCIAL GOVERNMENT

Procurement planning should take place before the start of each financial year and should coincide with other important processes happening across government departments, such as strategic planning and annual performance planning. All national departments and institutions are required to submit a procurement plan to the National Treasury by the end of the first month of a new financial year, namely by 30 April. Provincial departments are also expected to submit their procurement plans to their respective provincial treasuries by 30 April of each year.

Government Planning Processes

Each national and provincial department and institution is expected to have:

- A **strategic plan** that sets out its policy priorities, programs, and planned projects within the scope of available resources. This plan focuses on strategic outcomes for the institution as a whole, and should cover a period of at least five years, ideally from the first planning cycle following an election.
- An **annual performance plan** that sets out what the department intends doing in the upcoming financial year (and the MTEF period) to implement its strategic plan. It should include performance indicators and targets for budget programs and sub-programs, and show how the department aims to realize its goals and objectives.
- A **procurement plan** that sets out all the goods and services that the department or institution will require to meet its performance targets and fulfill the objectives set out in the strategic plan. *(See Step 2 overleaf for more information.)*

Sources: National Treasury (2010c; 2011b)

National and provincial departments all have internal SCM Units that are responsible for procurement. If necessary these units can assist the departments with their procurement planning.

There are two steps involved in procurement planning at national and provincial level:

1. undertaking a needs assessment, and
2. developing a procurement plan.

Step 1: Needs Assessment

Before a department puts together a procurement plan it must undertake a needs assessment for the immediate future as well as over the medium term.

The needs assessment should address:

- how often goods/services are needed;
- how much of each good or service will be needed;
- time considerations – for example how long in advance an order should be placed, or how much time should be allowed for delivery;
- possible methods for obtaining the goods or services; and
- the method of procurement that will be used.

INDUSTRY OR COMMODITY ANALYSIS

As part of a needs analysis the procuring department should, when appropriate, undertake research into the goods or services they aim to procure. In the case of a specific product, this may be called a commodity analysis. This step is recommended (rather than required) by the National Treasury. However, the purpose of this step is to gain a better understanding of the different types of goods and services that are available and also to get a sense of a reasonable price range. This step could also involve contacting possible suppliers and looking at records of past departmental spending on the same goods and services.

Step 2: Developing a Procurement Plan

Once a department has completed the needs assessment (and possibly an industry or commodity analysis), officials prepare a procurement plan. For national departments, all planned procurements above R500 000 have to be included in the procurement plan. For provincial departments, this limit may be lower, depending on the provincial treasury. The National Treasury has designed a template that departments and entities can use when drawing up a procurement plan.

The following basic information should be included in the plan:

- the name of the national or provincial department or institution;
- the name, contact details, and signature of the accounting officer;
- a description of all the goods and/or services being procured;
- the estimated cost, including tax;
- the name of the responsible office; and
- the dates on which the bid will be advertised, the closing date for bids to be submitted, and the date by which the contract will be awarded.



A template for national and provincial procurement plans can be seen in **Appendix 1**.

Before a plan is submitted to the national or provincial treasury, it must be approved by the accounting officer of the department or entity (National Treasury, 2011c). The SCM Units of the various national and provincial departments are then responsible for implementing the plans.

Updating the Bid Registers

All SCM units in national and provincial departments are required by the National Treasury to use a bid register to manage any procurement of goods or services that cost more than R500 000. The bid register records all the information from the procurement plans. The SCM Unit can then monitor the procurement process and make sure that whatever happens is in line with the original procurement plan.

Source: National Treasury (2011c)

The Role of SCM Units in Procurement Planning

All national and provincial departments have their own SCM Units. In municipalities, there is one SCM Unit that is in charge of all purchases made by, or for all of the line departments in the municipality. This SCM Unit is usually located within the municipal finance or financial services directorate.

5.2 PROCUREMENT PLANNING IN LOCAL GOVERNMENT

Although many of the steps are the same for local government, there are a few differences in the procurement planning process. Section 5.1 above highlighted that a procurement plan in a national or provincial government department should be linked to its strategic plan and annual performance plans. Within local government procurement planning should be linked to a municipality's Integrated Development Plan (IDP). See the box below for more information on IDPs.

Integrated Development Plans

An IDP is a five-year strategic plan for a municipality. It includes information on all the programs and services that will be provided to people living in the area, in line with the municipality's vision for long-term development. Every municipality in South Africa is required by law to have an IDP that is linked to its budget, and that is reviewed and updated on a regular basis.

The IDP of a municipality includes its policy framework, which is the basis for its annual budget. Local government procurement planning should happen at the beginning of the municipal financial year. This is when the IDP and municipal budget are presented to the local council for approval. Just as at national and provincial level, it is important for procurement planning in the municipalities to link up with strategic and budget planning, so that the necessary quantity and quality of goods and services are procured at the right time and location.

In practice, unfortunately, municipalities often struggle to deliver many of the goods and services promised in their IDPs. Much still needs to be done to strengthen the links between the IDP, municipal budgets, and procurement plans in most local governments.

The steps in the procurement planning process at local level are similar to those of the provincial and national level:

Step 1: Needs Assessment

The local government department carries out a detailed **needs assessment**. It should clearly identify the goods and services that are needed, and will be needed in the future, the quantity of the goods/services, and their expected cost. This might include an analysis of past expenditure by the department to provide an indication of cost. The local government department may also choose to carry out an **industry or commodity analysis** to make sure that all options in terms of goods and services are explored. At this stage, the department also completes an initial specification of the goods or services that it plans to procure. At local government level, the threshold for competitive bidding is R200 000. Purchases below this amount can be made after comparing verbal or written quotations, or paid for with petty cash if under R2000.

Step 2: Developing a Procurement Plan

The department develops a **procurement plan**. This must be submitted to the municipality's SCM Unit. The relevant treasury can also ask the procuring department to submit a copy of the procurement plan.



A template for a municipal procurement plan appears in **Appendix 2**.

A local government procurement plan should include:

- the name of the municipality, municipal department, or entity;
- the name, contact details, and signature of the accounting officer;
- the project name;
- a brief description and estimated value of the required goods and services;
- the responsible office; and
- the dates on which the bid will be advertised, the closing date for the submission of bids, and the date by which the contract will be awarded.

Municipal Bid Registers

Like national and provincial SCM Units, municipal SCM Units keep bid registers of all procurements over the value of R200 000. These bid registers have to record all of the original information included in the procurement plan so that it is possible to track whether the procurement process is being implemented as planned.

Source: National Treasury (2013b)

PUBLIC PARTICIPATION IN PROCUREMENT PLANNING

There is currently no space for public participation when national and provincial departments prepare their procurement plans. According to the Municipal Systems Act there should be extensive community participation during the preparation, implementation, and review of a municipality's IDP. The municipality is meant to consult members of the local community about their development needs and priorities, and create opportunities for community members to participate in the drafting of the IDP. Mechanisms for the public to indicate their disapproval of policies and programs should also be in place, for example by submitting petitions and laying complaints, and the municipality has an obligation to take these perspectives into account when it does its planning. The municipality should also host public meetings and hearings, and report back to the community on issues of common concern.

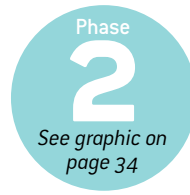
However, these public participation processes concerning the IDP are not really specific enough to include discussion and scrutiny of a municipality's procurement plans. Public consultations tend to focus on people's wish-lists for the future, rather than on the nuts and bolts of how particular goods and services will be procured. It is also questionable how much substance and impact can be attached to the public participation component of IDP processes. While there is a legal basis for public participation in the planning process at the local level, in practice this has not extended to the area of public procurement in any notable way.



See **Chapter 19** to find out more about how CSOs can go about monitoring the planning phase in public procurement.

CHAPTER 6

Bid Specification



A department's procurement plan gives a general description of the goods or services that it aims to procure. If the chosen procurement method involves competitive bidding, the next step in the procurement process is to finalize the exact specification of the goods or service to be procured, and compile the bid documents that will be made available to potential suppliers.



See **Chapters 2** and **3** to find out more about different procurement methods.

Before the full set of bid documents can be prepared however, the procuring department has to develop a detailed description of the goods or services it is looking for.

Developing the bid specifications requires the procuring department to be detailed and specific about:

- the exact **nature of the goods or services** to be purchased; and
- the **evaluation criteria** that will be used to select the successful bidder.

6.1 PREPARING A DRAFT BID SPECIFICATION DOCUMENT

The term **bid specification** usually refers to the document that contains all the details about the exact nature, technical specifications, and amount of the goods or services required, as well as the timing of the delivery of the goods or services. As the possible array of goods and services that can be procured varies so widely, no single template exists for this purpose. The procuring department is instead expected to draft a document setting out very clearly what it requires, using guidelines from the National Treasury.

In developing the bid specifications, the department also has to provide information about how the bids will be reviewed, and, ultimately, how the successful supplier will be chosen.

This includes the following information, which is explained in greater detail later in the chapter:

- The correct **preference point system** that will be used for the bid.
- Whether the bids will be evaluated according to **functionality**, which refers to things like quality, experience, and the reliability of the supplier.
- The system that will be used for allocating points if the bids are going to be evaluated according to functionality.
- Whether only locally produced goods, or goods with a certain minimum level of local content will be considered.
- Any other specific goals that will be taken into account in awarding the contract, and how these will be evaluated.

In developing the bid specifications, the department also needs to provide an **indicative price**. This is an early estimate of the expected cost of the goods or services. This is **not** included in the bid specification document itself. However, it is used to decide on the preference point system that will be used, which, in turn, is indicated in the specification document.

Once the **bid specification** document has been drafted and approved, it forms the basis for the bidding and bid evaluation processes.

Problems with Weak Bid Specification Documents

Sometimes departments develop poor bid specification documents. This includes bid specifications that are not detailed enough, or that are incomplete. This can result in a high number of unresponsive bids that do not contain the right information or are incomplete. Badly designed bid specification documents increase the chances that bids will be unresponsive or challenge the overall legality of the bidding process.

6.2 BID SPECIFICATION COMMITTEES

Once a department has developed a bid specification document, it has to be handed over to a **bid specification committee**. The committee is responsible for reviewing, approving, and finalizing all the detailed information and criteria included in the bid specification document.

COMPOSITION OF BID SPECIFICATION COMMITTEES

There are some differences in the membership of the bid specification committee depending on the sphere of government.

In national and provincial departments the committee can include:

- officials from the department that is procuring the goods or services;
 - one or more qualified SCM officials; and
 - experts or consultants from outside of the department to act as advisors.
- These experts are not allowed to participate in any decision making.

A department can choose to set up a “standing” bid specification committee to approve all competitive bids issued by that department. Alternatively it can set up a dedicated bid specification committee for each bid that is issued.

In local government, the accounting officer of a municipality is responsible for setting up the bid specification committee. The committee has to include at least one official employed by the municipality, preferably the manager of the department. Like at the national and provincial levels, expert advisers or consultants can also serve on the committee when specific skills are needed, and, once again, they may not participate in any decision-making.

Sources: National Treasury (2004a; 2004c); Republic of South Africa (2003a)

Duties of Bid Specification Committees

Once set up, the bid specification committee has a number of important responsibilities.

These include making sure that:

- there is enough money to procure the goods or services that are needed;
- the right preference point system has been identified;
- any other details or requirements have been clearly included in the bid specification document. For example whether the desired local content has been specified in enough detail; and
- all the functionality criteria are clearly specified.

The bid specification committee also has to approve:

- the functionality criteria themselves;
- the specific contract conditions; and
- all other goals besides those related to **preferential procurement**.

Other Goals

Preferential procurement is regarded as one of the goals of public procurement and applies broadly to all goods and services. However, departments may also have other goals that are specific to the procurement they are drafting specifications for. For example, in an infrastructure project, a department could specify that a certain percentage of the people hired to work on the project should be local inhabitants.

The bid specification committee must also ensure that the bid specifications are written in a way that gives all possible bidders a fair chance and does not favor a particular individual or company. For this reason the National Treasury recommends that all bid specifications should be read and approved by either the accounting officer or the **bid adjudication committee** that will later decide on the award of contract. Currently in South Africa, bid specification committee meetings are not open to the public. The minutes of the meetings are also not publicly available.


 See **Chapter 10** for more information on the bid adjudication committee.

6.3 CHOOSING A SYSTEM FOR PREFERENTIAL PROCUREMENT

One of the tasks of the bid specification committee is to make sure that the right method has been chosen for comparing bidders in terms of preferential procurement. The method that should be used depends on the estimated value of the goods and services being procured. As mentioned in Chapter 1, South Africa has a preferential procurement policy. This means that certain categories of suppliers are given some preference when government contracts are awarded. This preference is usually given to companies that show a track record of redressing the economic inequalities experienced under apartheid.

The Legal Basis for Preferential Procurement

Section 217 of the Constitution allows the government to use preferential procurement policies. Two important Acts help to regulate and give effect to preferential procurement: the Broad-Based Black Empowerment Act (No 53 of 2003); and the Preferential Procurement Policy Framework Act (No 5 of 2000).

 See **Chapter 1** for more information on each of the Acts.

The laws governing preferential procurement in South Africa state that the B-BBEE status of suppliers should be taken into account in public procurement processes and that a preference point system should be used.

The finance minister released the *Preferential Procurement Regulations in 2011*, which set out:

- how the preference point system should be applied; and
- how tenders should be evaluated, based on both points and the bidder's B-BBEE status.

THE PREFERENCE POINT SYSTEM

The preference point system is a way of evaluating the B-BBEE status of the various suppliers who submit bids for government contracts. It is used for all competitive bids advertised by government departments. It is also used when departments choose suppliers by comparing written quotes for purchases above R30 000, but less than R500 000 at national and provincial levels and less than R200 000 at local level. The accounting officer of a department or municipality can also decide to use the preference point system for goods or services that cost less than R30 000.

There are two different ways that **preference points** are calculated. Departments choose the calculation method based on the estimated price of the goods or services being procured.

6.3.1 Preference Point System for Tenders between R30 000 and R1 million

The first way of calculating preference points applies in cases when a government department intends to buy goods or services that cost between R30 000 and R1 million. This approach is also used if an accounting officer voluntarily decides to apply preference points to goods or services costing less than R30 000. In these circumstances, the **80/20** system applies.

The points system is a type of score. Each bidder can earn a maximum of 100 points. At the end of the bidding process, the person with the highest score (closest to 100) will usually win the bid.

In the **80/20 system**, each bidder can earn a maximum of:

- **80 points** based on proposed price; and
- **20 points** based on B-BBEE status.

When it comes to **price**, the bidder who offers the *lowest* price will be allocated 80 points automatically. All the other bidders with higher prices will earn less than 80 points.



See **Chapter 10** to find out more about how the procurement points are evaluated and what happens when bidders have equal points.

Formula for Calculating Points for Price in 80/20 Bids

The specific formula used for calculating points for price in an 80/20 bid is:

$$P_s = 80 [1 - (P_t - P_{min}) / P_{min}]$$

Where:

- **P_s** refers to the points scored for comparative price by the bidder.
- **P_t** is the actual price (in Rand) submitted by the bidder under consideration.
- **P_{min}** is the price (in Rand) of the lowest acceptable tender submitted.

The lowest acceptable bid will score 80 points for price. This is the case when **P_t** is the same as **P_{min}**. Bidders that quote higher prices will score points lower than 80 since their value for **P_t** will be higher than the value of **P_{min}**.

Points for **B-BBEE** are allocated according to the B-BBEE level of the bidder, which can range from one to eight. Companies that are at Level One have the *strongest* B-BBEE rating, and companies that are Level Eight have the *weakest* B-BBEE rating. In the **80/20** procurement points system, Level One B-BBEE companies are awarded 20 points. The table below indicates the number of points awarded to companies with lower B-BBEE levels.

Number of Procurement Points by B-BBEE Level in an 80/20 Bid

B-BBEE LEVEL	NUMBER OF POINTS
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

Verification of B-BBEE Level

The B-BBEE status of an organization is determined through a verification process. This involves analyzing the extent to which black South Africans are involved in different aspects of the company, such as ownership and management. B-BBEE verification is undertaken by accredited agencies or by auditors. On completion, the company will receive a B-BBEE level score and a **verification certificate**. Verification agencies need to be accredited by the South Africa National Accreditation System and auditors need to be approved by the Independent Regulatory Board of Auditors.

What about Bidders without B-BBEE Certificates?

Companies that do not comply with B-BBEE, or do not have this verification certificate, will not be allocated any preference points in this category. The only exception is in the case of small businesses that earn revenue of less than R10 million every year. These small businesses are called Exempted Micro Enterprises (EMEs). They do not have to have B-BBEE verification certificates and instead can submit either a sworn affidavit, or a certificate issued by the Companies and Intellectual Property Commission.

Source: Republic of South Africa (2015b)

After each bidder is awarded points for price and for B-BBEE status, the points are added together to give a total score out of 100. The contract must be awarded to the bidder with the highest total points.

6.3.2 Preference Point System for Tenders over R1 million

Preference points are calculated differently when the goods or services being procured are likely to cost more than R1 million. In these more expensive contracts, price is given a greater weighting and the **90/10** system applies.

In this system, each bidder can earn a maximum of:

- **90 points** based on proposed price; and
- **10 points** based on B-BBEE status.

Number of Procurement Points by B-BBEE Level in an 90/10 Bid

B-BBEE LEVEL	NUMBER OF POINTS
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

When allocating points for **price**, the bidder who offers the lowest price will be given 90 points and all the other bidders with higher prices will earn less than 90 points.

When allocating points for **B-BBEE** status, the score will depend on the B-BBEE level of the bidder. The table below indicated the number of points awarded to the various B-BBEE levels in the 90/10 system.

As in the 80/20 system, the total points earned by each bidder for price and B-BBEE status are added together for a total score out of 100. Again, the contract must be awarded to the bidder with the highest total number of points.

Formula for Calculating Points for Price in 90/10 Bids

A maximum of 90 points can be awarded to the lowest acceptable tender based on price.

The specific formula used for calculating points for price in a 90/10 bid is:

$$P_s = 90 [1 - (P_t - P_{min}) / P_{min}]$$

Where:

- **P_s** is the points scored for price by the bidder under consideration.
- **P_t** is the price (in Rand) for the tender submitted by the bidder.
- **P_{min}** is the price (in Rand) of the lowest acceptable tender submitted.

6.4 IDENTIFYING FUNCTIONALITY CRITERIA

A procuring department can decide to include functionality criteria in a bid specification document. This is not a legal requirement. It depends very much on the type of goods or services in question. Functionality criteria could, for example, refer to the relative quality, reliability, viability, or durability of the goods and services being procured. Criteria may also apply to the bidders themselves, for example, ranking their technical competence, capacity, or past experience in providing the required goods or services.

When a bid will be evaluated based on functionality, the department must have clear and objective criteria to ensure that the tender process is fair.

These might include criteria like:

- verifiable records of past performance;
- formal qualifications of service providers; and
- the number of staff required to deliver a service.

The department also has to decide how much weight each of these functionality criteria should be given in the evaluation process. For example, in a highly technical or specialized bid, a company's past experience might be considered the most important criteria and therefore given the most weight. It is important that all the functionality criteria that apply in a procurement process are set out clearly in the bid specifications. The specifications must show how much weight will be given to each of the criteria during the bid evaluation.

In the bid specification document, the procuring department also has to indicate the minimum total score that all bidders need to reach in order to be considered for the contract. It is the task of the bid specification committee to make sure that the functionality criteria, weights, scores, and the minimum qualifying score, are indicated clearly and explained in the document.

6.5 SPECIFYING LOCAL CONTENT

The term **local content** refers to goods or services that are made in South Africa rather than imported from other countries. The Department of Trade and Industry (DTI) can decide that the procurement of goods and services in some industries or sectors should include a certain share of local content.



These minimum levels can be found on the [DTI website](#). Local content is presented as a share of the total contract value. For example, 85 percent of office furniture and 100 percent of school furniture must be bought from local suppliers.

When drawing up bid specifications, procuring departments are responsible for ensuring that they are aware of any local content requirements. The bid specification committee must ensure that these conditions are stated clearly in the document, when applicable.

Formula for Calculating Local Content

The following formula was approved by the South African Bureau of Standards to calculate local content:

$$LC = 1 - (x/y) \times 100$$

Where:

- **LC** is the share of the total bid price that should be local content
- **x** is the value of the imported content.
- **y** is the the total bid price excluding value added tax.

All prices must be provided in South African rand. If the department has to use an exchange rate to calculate the values of x and y, it has to be the rate published by the South African Reserve Bank at 12pm on the day one week before the closing date of the bid.

Sources: National Treasury (2011a); SABS technical specification number SATS 1286:201x



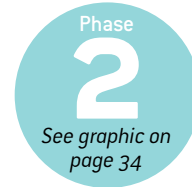
See **Chapter 19** to find out more about how CSOs can go about monitoring the bid specification phase in public procurement.

6.6 CLARIFYING WHETHER SAMPLE TESTING OR OTHER EVALUATIONS WILL BE REQUIRED

The bid specification document should set out any other information or evaluation reports that the bidders will be required to submit with their tenders. Typically, such additional information may require the testing of a product or an assessment of a bidder's capability to deliver.

For example, in some cases a procuring department might require that bidders seeking to supply a certain product submit reports or certificates from testing institutions. These reports or certificates would have to confirm that the product offered by a bidder meets the criteria included in the bid specifications. The institution responsible for testing goods has to be accredited by the South Africa National Accreditation System. Bidders have to pay for these tests themselves, and this requirement has to be stated clearly in the bid documents.

Procuring departments may also require of bidders to submit a **capability report**. This confirms that the bidder (or their supplier/manufacturer) is able to produce the goods that are required, in line with the specifications of the bid (including the right quantity and quality). A capability report submitted with a tender should not be more than 12 months old. As in the case of testing of products, the bid specification document should state clearly that the bidder will have to pay for both the capability report and any related evaluations. It should also indicate that the premises or work site of the bidder (or of their supplier/manufacturer) has to be open at all reasonable times for evaluations or tests, if this is required.



CHAPTER 7

The Compilation of Bid Documents

Drafting bid specifications is the first step towards compiling all the bid documents that will be required for the procurement process.

Overall, the bid documents define and convey:

- the rights, risks, and obligations of everyone involved in the proposed contract;
- the type, quality, and quantity of the goods or services being requested; and
- time frames for delivery.

It is therefore important for all of the bid documents to be drawn up correctly, including all legal and technical aspects. The documents should spell out clearly the contractual obligations and risks that accompany the tender for all stakeholders. They should also provide the detailed information that potential bidders will need to respond to.

The various official forms and types of information that have to be included in the bid documents are called **Standard Bid Documents** (for national and provincial procurements) and **Municipal Bid Documents** (for local government procurements). These are all forms that the bidders need to complete when they are part of a competitive bidding process. The list below gives an overview of these documents.

Standard Bid Documents (SBDs) and Municipal Bid Documents (MBDs)



SBD / MBD 1: Invitation to Bid

SBD / MBD 2: Tax Clearance Requirements

SBD / MBD 3: Pricing Schedule

SBD / MBD 4: Declaration of Interest

SBD 5: National Industrial Participation Program

MBD 5: Declaration of Procurement above R10 million

SBD / MBD 6.1: Preference Point Claim Form

SBD/MBD 6.2: Declaration Certificate for Local Production & Content

SBD/MBD 7.1 – 7.3: Contract Forms

SBD/MBD 8: Declaration of Past SCM Practices

SBD/MBD 9: Certificate of Independent Bid Determination



Examples of these standard forms and municipal forms appear in the appendices at the end of the Guide. These documents are also available to download from the [National Treasury website](#).

The Contract Form

The contract that will eventually be signed between the procuring department and the successful bidder is not included in the set of bid documents that is made available during this phase of the procurement process.



See **Chapter 11** for more information about the contract form.



Construction Bid Documents

For procurement in the construction industry, standard document templates are issued by the Construction Industry Development Board and are available on the [CIDB website](#).

LANGUAGE AND FORMATTING REQUIREMENTS

The National Treasury requires all bid documents to be made available in English. Other languages are optional. All procuring departments and institutions must use the various templates for the National Treasury, as set out opposite. However, when they prepare their own bid documents, the departments are expected to customize the templates by adding their own logos, organizational titles, and contact details. Other small changes to the templates are allowed, in order to match the specific needs of the procurement project or contract. However, for auditing purposes, these need to be recorded and approved in writing by the department's accounting officer.

7.1 INVITATION TO BID

The invitation to bid form is referred to as SBD 1 or MBD 1, depending on whether the department is national or provincial (SBD) or local (MBD).

The invitation to bid document includes:

- the name of the department or municipality;
- the bid number;
- the date and time when the invitation to bid closes;
- the address for delivering or posting the bid documents;
- times and days when the **bid box** is open; and
- the contact details of the person(s) in the procuring department that potential bidders may contact if they have general queries or technical queries.

The department requesting the bids should add its name, logo, and contact details to the SBD/MBD 1 form.

The bidder must provide:

- the bidder's name and contact details;
- the bidder's VAT registration number;
- the bidder's signature;
- the total price of the bid being submitted; and
- the total number of items being offered, if applicable.

The invitation to bid also asks bidders to confirm the following:

- That a tax clearance certificate and a B-BBEE verification certificate have both been submitted.
- The capacity of the signatory. For example, proof that the person who signed has the authority to do so, as in the case of a director of a company.
- That the bidder is the accredited representative in South Africa for goods or services offered.

The invitation to bid should further state that:

- The bid is subject to preferential procurement, which is regulated by the PPPFA and the Preferential Procurement Regulations.
- Some General Conditions of Contract (GCC) and other Special Conditions of Contract (SCC) that might apply. These are discussed in more detail later in this chapter.
- The bid will be disqualified if it is late or any information is missing.
- In the case of the local government, no bids will be considered from people employed in government.
- If the bidder is successful, they will have to complete and sign a written contract form.



The SBD 1 and MBD 1 document templates can be found in **Appendix 3** and **Appendix 4**.

7.2 BID INSTRUCTIONS, CONDITIONS, AND SPECIFICATIONS

Besides the invitation to bid template form, all bid documents must include bid instructions and specifications. Sometimes they must also include conditions to bid. There are no formal templates for presenting this information, and the bid instructions, conditions, and specifications can be written up as three separate documents, or in one single document.

The **Instruction to Bidder** sets out the details about how to submit a bid document. It also repeats some information already provided in the invitation to bid.

The instructions should clarify:

- the deadlines for submitting bids;
- how and where to submit bids;
- how late bids will be treated;
- any costs involved in submitting the bid;
- how long the bid will be valid for;
- an overview of all documents that need to be submitted.

Sometimes **Conditions to Bid** are also included.

For example:

- The minimum requirements for a bid to be considered by the procuring department.
- Information on any briefing sessions that will be held before the bid closes.

Pre-bid Briefing Sessions and Site Access

Departments often hold briefing sessions to provide information about a bid. The bid conditions should include clear details about when and where such meetings are to take place. This information is also sometimes provided in the invitation to bid. Not all tender processes include briefing sessions and, when they do, the sessions may be either optional or compulsory. If briefing sessions are compulsory it should be clearly indicated in the bid conditions. At the briefing meeting itself, the interested bidders should sign an attendance register. If a briefing meeting is compulsory, bids from bidders who did not attend, or attended the meeting but did not sign the register, will not be accepted.

In some cases, such as with infrastructure projects, bidders may need access to the relevant project sites in order to inform their bids. In such cases the briefing session often takes place at the site. These events give potential bidders the chance to meet officials from the procuring department and to ask questions. If such meetings or visits take place, the procuring department should take minutes and give copies to all potential bidders.

BID SPECIFICATIONS

As discussed in Chapter 6, the bid specifications provide the exact details of the goods or services being procured, as well as the criteria whereby bids will be evaluated. Specifications can be presented in a single document or multiple documents. For example, some bids might have one document about technical specifications and another document about service delivery specifications. In bids involving lots of different goods and services, departments can put the specifications for each item in a separate document.

In the cases of some bids, there are important quality standards that need to be followed. These might relate to the materials that are used, the quality of workmanship, or the types of equipment. In such cases, standards might be set by the South African Bureau of Standards, the International Standards Organization, or another authority recognized by the South Africa Accreditation System. These standards should be described in the bid specifications.

Bid specifications should generally not aim to describe the products or services of a single supplier, to avoid excluding similar or equivalent goods or services that may be provided by other suppliers. If illustrations are used to give examples of required products, these should be closely aligned with the text. The specification should also say whether the illustration or the text is more important.



See **Chapter 6** for a more detailed overview of the various issues and components to be covered in the bid specification document(s).

Additions and Changes to Bid Documents

It is very important that all potential bidders are provided with the same information. If any bidder asks for additional information, all the other bidders should have an opportunity to obtain the same from the department in a timely manner. Any additional information, clarification, correction of errors, or modifications to the bidding documents should be made available to each bidder well before the deadline for submission of tenders.

7.3 GENERAL CONDITIONS OF CONTRACT

The National Treasury has developed a standard document for General Conditions of Contract (GCC). It includes definitions of terms and lists all of the conditions that generally apply to government bids, contracts, and orders. The GCC has to be part of the package of documents in every procurement process. It tells suppliers their rights and obligations in relation to issues.

This includes:

- the disclosure of tender and contract information;
- the inspection of supplies;
- the packing of goods;
- patents, insurance and warranties; and
- what happens when the contract is breached.

Each one of these topics is dealt with in its own clause within the GCC. Appendix 5 contains a list of all these clauses. Departments are not allowed to change the wording of the clauses.



The GCC is available for download on the [website](#) of the **Office of the Chief Procurement Officer**.

7.4 SPECIAL CONDITIONS OF CONTRACT

The bid documents will also sometimes include Special Conditions of Contract (SCC). Such special conditions are required in cases when some aspect of the goods or services being procured is not covered by the GCC. For example, the SCC might indicate that a supplier has to take out insurance for a specific amount.

The special conditions could also cover issues like:

- details on price adjustments (and the formula for calculating these);
- the process for ordering goods, including amounts of goods and delivery methods;
- how goods will be paid for;
- reporting requirements; and
- arrangements regarding dispute resolution.

In some cases, the SCC document provides the information that generally appears in the instructions to bidders and bid conditions (*See Section 7.2 for more information on these documents*).

7.5 TAX CLEARANCE REQUIREMENTS

The full set of bid documents should also include instructions to interested bidders regarding tax clearance. When departments procure goods or services that cost more than R30 000, bidders must produce a tax clearance certificate to prove that they are in good standing with SARS and have paid all their taxes. Bidders who are not up to date with their taxes have to at least show that they have made arrangements with SARS to deal with any outstanding tax issues.

Tax Clearance Certificates

Companies or individuals have to apply to SARS for such a certificate. If they use the online e-filing system at SARS, they can apply for a tax clearance certificate when logged into their profile. However, the certificate still has to be collected from a SARS branch. Tax clearance certificates are valid for one year from the date of issue.

Two forms are included with the rest of the bid documents to facilitate the tax clearance of bidders:

- The Tax Clearance Certificate Requirements form for national and provincial government is called SBD 2; and for local government is called MBD 2. These forms instruct the bidder about the tax requirements that need to be met when submitting a bid, and how to apply for a Tax Clearance Certificate from SARS. The wording and format of SBD 2 and MBD 2 are exactly the same.
- An Application for a Tax Clearance Certificate (TCC 001) is a standard form that is attached to SBD 2/MBD 2.



It can also be downloaded from the [SARS website](#).



See **Appendix 6** to view the template of the SBD 2 form.

7.6 PRICE SCHEDULE

The next important document that should be included in the bid package is the price schedule. In this schedule, the procuring department has to list all of the goods and/or services for which the bidder has to provide a price.

When multiple goods are being purchased, the price schedule should include (if applicable):

- a description of each item;
- the name of a model, if a specific one is preferred;
- the units in which the item is measured (for example, milligrams); and
- the total number of goods needed.

In response to the schedule, the bidder has to indicate the price that their company is willing to accept for all the requested goods or services. There are three templates for this purpose, called SBD/MBD 3 forms. The nature of the goods or services, as well as the way they have to be priced, determine which form should be completed.

- **SBD / MBD 3.1** is used in cases when the procurement is based on “fixed” or firm prices. This means that prices cannot be changed at all during contract implementation. The only exception would be if the government changes the value-added tax (VAT) rate or changes customs or excise charges.
- **SBD / MBD 3.2** is used for procurements in which price changes will be allowed. This might happen, for example, if goods are being imported and price is subject to exchange rate fluctuations. The bid documents have to state clearly that the department will accept **non-fixed prices**. The Special Conditions of Contract should also reflect this and provide a formula to be used for these calculations.
- **SBD / MBD 3.3** is used when departments are looking for professional services, for example from specialist researchers or consultants. The form records the hourly pay rate and position of any person(s) involved in the project. The SBD/MBD 3.3 also requests information about the different phases of the project, how much each phase will cost, and the number of days each person will be involved. Any other costs, like travel and accommodation, should also be estimated.



The three SBD 3 template forms can be seen in **Appendix 7**.

When providing their prices, bidders have to give the price per unit, and the total price per item. Procuring medicine for a clinic might, for example, include the overall price per milligram and the cost of each individual dose.

7.7 DECLARATION OF INTEREST

The bid documents also include a form for a **declaration of interest** on the part of the bidder. This refers to any relationships that might exist between the bidder and the government or a government employee, including between individual bidders, companies, company directors, trustees, and shareholders.

The SBD 4 form is used for the declaration of interest for national and provincial procurement. To guard against any possible favoritism in the bid process, it asks very specific questions to ensure that all relationships pertinent to the bid are identified and recorded. The rules for national and provincial procurement are different from rules for municipal procurement. People who work for the government are allowed to submit bids in a competitive bidding process and provide quotes for goods or services if they have been given permission to do so. If a bidder is a government employee, he or she needs to give proof that they are allowed to take up paid employment outside their government position. Without this proof, the bid can be disqualified.

A very similar form, the MBD 4, is used to declare the interests of the bidder in local government procurements. For local government tenders, people who work for the government in any sphere are not allowed to submit bids.



The SBD 4 form appears in **Appendix 8**, and the MBD 4 form in **Appendix 9**.

SBD 4 and MBD 4 forms are also required when price quotations, limited bids, or proposals are submitted and when potential service providers apply to be registered on supplier databases.

7.8 NATIONAL INDUSTRIAL PARTICIPATION PROGRAM


In some national and provincial procurement processes, the bidder must also complete a bid document relating to the National Industrial Participation (NIP) program. This is relevant for all procurement contracts that have an import content value of USD 10 million or more. Suppliers who are awarded such contracts are obliged to participate in some form of economic activity to help build the South African economy. This could take the form of investment in specific projects, export sales, research and development, technology, or job creation.

The participation can take place in two ways:

- **Directly**, in which case the successful bidder will undertake activities in the same sector as the procurement itself.
- **Indirectly**, in which the successful supplier will make a contribution in another sector.

With procurement contracts that fall in this category, the NIP Standard Bidding Document (SBD 5) must be signed and submitted by the bidder along with all the other bid documents. This form provides information about the NIP program, and the steps that must be followed if the contract involves NIP obligations. By signing, the bidders show that they are aware of the NIP program and

that, in the event of winning the contract, they will contact the Department of Trade and Industry (DTI) to find out more about their obligations.

 The SBD 5 form can be found in **Appendix 10**

When a supplier is awarded a tender that has NIP obligations, it has to sign an agreement with the DTI within a month of signing the procurement contract.

This agreement sets out:

- the amount of money that the supplier will be obligated to spend on NIP activities;
- any specific requirements that need to be met;
- performance milestones for meeting their obligations and how these will be monitored; and
- the criteria for NIP credit allocation.

7.9 DECLARATION OF PROCUREMENT ABOVE R10 MILLION


The NIP program only applies to high value tenders at national and provincial levels, not the local government level. When a local government tender is valued at more than R10 million, bidders have to complete the MBD 5 form.

The declaration of procurement above R10 million asks bidders to provide:

- a range of financial information;
- details of previous government contracts;
- whether or not the bidding company is legally required to prepare annual audited financial statements; and
- if yes to the previous point, the bidding company is then required to include their audited financial statements for the previous three years.

By completing and signing the MBD 5, the bidder:

- confirms that it has no outstanding payments due for any municipal services that are more than three months old (unless any of these payments are disputed);
- confirms that it does not owe any other service provider any payments that have been overdue for more than 30 days (unless disputed);
- provides details of other government contracts it has been awarded over the previous five years. The bidder should also declare any disputes that arose during these contracts and any instances where they did not or could not comply with the contracts;
- informs the procuring department whether any portion of the goods or services will come from outside of South Africa (and if so, the size of this portion); and
- declares whether any share of the payment from the municipality will be transferred out of the country.

 See the MBD 5 form in **Appendix 11**.

7.10 PREFERENCE POINT CLAIM FORM

Every full set of bid documents should include a SBD/MBD 6.1 form. This form confirms the points that a bidder has been awarded for B-BBEE Status. The form explains which of the two preference points systems will apply in the procurement process, which in turn is dependent on the value of the bid. It includes definitions, and explains how points for price and B-BBEE Status will be calculated.

Preference Point Systems

When evaluating competing bidders, a preference point system is used to take a company's B-BBEE status into account alongside the price of their bids. One of two such systems may be used: The **80/20 system** applies to all tenders valued at **between R30 000 to R1 million** and the **90/10 system** applies to all tenders worth **more than R1 million**.



See **Section 6.3** for a detailed explanation of the preference point systems.

Bidders have to provide original or certified copies of their B-BBEE Verification Certificates as proof of their status when they submit their bid documents. Bidders that plan to sub-contract out any part of the tender also need to submit details about the sub-contracted company and its B-BBEE Status.



See the SBD/MBD 6.1 template in **Appendix 12**.

7.11 DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT

Some bid specifications prescribe that a percentage of the goods or services being procured have to be sourced from within South Africa. When this is the case, the set of bid documents should include a declaration certificate regarding the local production and content of the goods or services in question, also known as a SBD/MBD 6.2 form. This form shows the calculation that is used to reach the required percentage of local content. It also has instructions on which exchange rate to use and a list of definitions.



The template for SBD/MBD 6.2 can be seen in **Appendix 13**.



In addition, bidders are requested to visit the **DTI website** for further instructions on how to calculate local content.

They are also required to download and complete the following forms:

- **Declaration D** is a schedule in which the bidder declares the imported content of their goods and services.
- **Declaration E** is a schedule for the bidder to declare the local content of their goods or services.
- **Declaration C** is a summary of declarations D and E.


All three declarations have to be audited and certified. Declaration C has to be included in the bidder's tender submission. Bidders are not required to submit Declarations D and E, but are instructed to keep them for five years for verification purposes. When a bidder wins a contract, these declarations need to be kept up-to-date with actual values for the whole contract period.

7.12 DECLARATION OF PAST SCM PRACTICES

The bid documents also include a form in which the bidder is asked to declare any past incidents of abuse, fraud, or breach of contract. This is the SBD/MBD 8 form. It asks whether the bidder, or any directors of the bidder's company, have been listed on the National Treasury's **database of restricted suppliers**, or on the **register for tender defaulters**.

 See the template of the SBD/MBD 8 form in **Appendix 15**.

THE DATABASE OF RESTRICTED SUPPLIERS AND THE REGISTER OF TENDER DEFAULTERS

 The **database of restricted suppliers** can be found on the National Treasury **website**. It contains the names of all suppliers who have been restricted from doing business with the government.

It also includes:

- the period of restriction;
- the government department that placed the supplier under restriction; and
- the reason for the restriction which could include poor performance, non-performance, the submission of a false declaration of interest, or misrepresentation of facts in a procurement process.

The register of tender defaulters is also found on the National Treasury website. It includes information about suppliers who have been found guilty of corruption related to contracts. At the time of writing, few defaulters are listed on the register and it is not clear how often the register is updated. However, it is unlikely that the register in its current form accurately reflects everyone who has been convicted of corruption related to government contracts.

The declaration of past SCM practices also asks the bidder to declare whether he or she, or any of the directors of the company, have been convicted by a court of law (including outside the Republic of South Africa) for fraud or corruption during the previous five years. Finally, the bidder is asked to indicate whether a contract between him/her and the state has been terminated during the previous five years as a result of failure to perform or comply with the contract.

If a bidder answers affirmatively to any of the questions above, particulars have to be provided. By signing the form, the bidder indicates that the information provided on the form is true and correct, and that action can be taken against him/her if the declaration is found to be false.

7.13 CERTIFICATE OF INDEPENDENT BID DETERMINATION

This certificate is included in the set of bid documents for bidders to declare that they have not colluded with other bidders in the procurement process so as to affect the outcome. **Bid rigging** or **collusive bidding** is something that occurs when the bidders secretly work together in order to increase the prices or lower the quality of the goods or services being procured. In essence, this means that suppliers who usually compete against one another, agree not to compete for a given contract so that one of them has an advantage or the price is manipulated.

To try and avoid this, all bidders have to complete, sign, and submit a certificate of independent bid determination, also known as SBD/MBD g. They have to confirm that they have not consulted, communicated, come to an agreement, or made an arrangement with any competitor about any aspect of the tender.

This includes:

- the prices at which goods or services are being offered;
- the quality or quantity of goods or services being offered;
- purposefully submitting a bid that does not meet the tender requirements or specifications; and
- purposefully submitting a bid with no intention of winning the contract.

If a bidder does not submit the SBD/MBD g form, the individual or company can be asked to submit it within 7 days of being notified. If the form is still not submitted, the bid can be disqualified.



See **Appendix 16** for the SBD/MBD g form.

THE TOTAL PACKAGE OF DOCUMENTS FOR POTENTIAL BIDDERS

The procuring department should have compiled the full set of bid documents by the end of Phase 2 of the procurement process, as set out below. If the value of the tender is over R10 million, the procuring department must submit certain information to the relevant treasury before the procurement process can go ahead (see *Section 8.1 in the next chapter to read more about this*).


Altogether, the total package of all bid documents should include:

- **the bid specifications,**
which may be made up of one or more documents, including all the necessary details about the goods or services being procured, and the criteria for the evaluation of the bid
- **the instructions to bidders**
- **the bid conditions**
- **all the required SBD/MBD forms**
- **the GCC and**
- **the SCC, where applicable**

Simplifying the Bid Documents

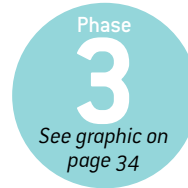
The procurement process is made more cumbersome by the need to issue and submit so many forms, many of which are repetitive and technical. The National Treasury is planning to revise the bid documents to make them more user-friendly and easier to understand. The number of required documents will also be reduced.

Source: National Treasury (2015a)

 **Chapter 20** provides suggestions and guidelines for CSOs on how to go about monitoring bid documents.

CHAPTER 8

The Invitation to Bid



The third phase of the procurement process is the release of the invitation to bid. For tenders over a certain value, approval is first required from the relevant treasury or chief financial officer. Government tenders are then advertised in the Government Tender Bulletin, the media, and on some websites.

8.1 APPROVAL FOR TENDERS OF R10 MILLION OR MORE

When a procuring department has compiled the full set of bid documents and is ready to advertise the bid, it must seek the necessary approval before the procurement process can go ahead. This applies to all tenders with a value over R10 million, including tax. The procuring department has to submit specific information to the national or provincial treasury, or in the case of local government tenders, to the Chief Financial Officer of the municipality:

- The procuring department must provide proof that there is enough money in its budget to go through with the procurement.
- The department also needs to indicate if the bid will lead to further spending. For example, if the department plans to build a school, it also needs to show that funds are available for all of the other goods and services that will be needed, such as furniture, books, and teacher's salaries.
- If the project is going to take more than one financial year to be completed, the department must also show that future spending has been taken into account in its MTEF.



The eTender Portal

From April 2015, national and provincial departments began making their advertisements to bid available on the government's new **eTender Publication Portal**. The aim is for all public sector tenders (including municipal tenders) to be advertised on the portal in the future (along with their full sets of bid documents).

8.2 ADVERTISING OF BIDS

At present, all national and provincial tenders are advertised in the Government Tender Bulletin. This bulletin is published every Friday and interested parties can subscribe to it for a nominal annual fee.

It is also available to read or download on several government websites, including those of:



- **National Treasury;**
- **the Government of South Africa;** and
- **the Government Printing Works.**

Many national and provincial departments also advertise tenders on their own websites. Some also advertise in other media, like local newspapers. The department itself is responsible for any advertising costs. Tenders for local government need to be advertised on both the municipal website and in local newspapers. The accounting officer of a municipality can also decide to advertise an invitation to bid in the Government Tender Bulletin.

INFORMATION TO BE INCLUDED IN A BID ADVERTISEMENT

The same categories of information should appear in all bid advertisements, whether they are for national, provincial, or municipal procurements.

This includes:

- the name of the procuring department;
- the bid number;
- a description of the goods or services being requested;
- the closing date and time for the submission of bids;
- how and where the full set of bid documents can be obtained;
- any costs associated with obtaining bid documents;
- the evaluation criteria that will apply in selecting a supplier (including which preference point system will be used and any functionality criteria);
- details of the pre-bid briefing session, if one is to be held, and whether or not it is compulsory;
- the contact details of the relevant persons in the department (for general as well as technical queries); and
- in the case of public procurement in the construction industry, the relevant CIDB Grade for the project.



See **Chapter 20** for suggestions on how CSOs might go about monitoring the bid advertisement.

8.3 ACCESSING BID DOCUMENTS

Once an invitation to tender has been advertised, the full set of bid documents should be available to potential bidders so that they can find out more about the specifications and consider whether to submit a bid. Bid documents are not always convenient to access. Potential bidders may need to pay a fee for the documents, and, in some cases, collect hard copies of the bid documents from a specific government office.

Accounting officers are allowed to charge a fee for bidding documents. According to National Treasury [2004c] this fee should be “reasonable,” meaning it should only cover the costs of printing the documents and making them available to interested bidders. In principle the fees should not be so high that they discourage people from bidding.

In practice many departments do not charge a fee for bid documents. Some departments make their bid documents available online and also invite bidders to collect a hard copy from their offices. Departments sometimes only charge for hard copies and make electronic copies available for free. When departments do charge fees for bid documents, the amount can vary greatly – from as low as around R50 up to thousands of rands. Usually these fees are non-refundable and have to be paid in cash or by electronic transfer. Sometimes the fee has to be paid at one venue, while the documents must be collected at a different venue with proof of payment.

8.4 CLOSING DATES FOR THE SUBMISSION OF BIDS

The closing date for the submission of bids must be specified on both the bid advertisement and on the invitation to bid (SBD/MBD 1), which forms part of the full set of bid documents. There are a number of general guidelines that apply to bid closing dates.

These include:

- Bidders must first be given enough time to prepare and submit bids. The general rule is to allow 30 days from the date when the invitation to bid was released, or from the date on which all the bid documents were made available (whichever date is later).
- If departments have a good reason, and bidders are not put at any disadvantage, the period before the closing date for bids can be shorter than 30 days (National Treasury, 2004a).
- For municipal contracts worth more than R10 million, the closing date is 30 days from the date of the first advertisement, while this can be shortened to 14 days for tenders less than R10 million (National Treasury, 2005a).
- When procuring for very complex projects, the timeframe for the preparation of bids is usually extended up to a minimum of 12 weeks. This allows potential bidders more time to address any complicated specifications or requirements. In these cases, departments are encouraged to organize pre-bid conferences and site visits (*see below*).
- Departments are not allowed to consider any bids that are received after the closing date.

8.5 PRE-BID MEETINGS

As discussed in previous sections, some departments organize pre-bid meetings, briefing sessions, site visits, and conferences. The purpose of these events is for interested bidders to have the chance to meet with officials from the procuring department, ask questions, and get any further information they might need in order to prepare their bids. In some cases, such as infrastructure or construction projects, meeting at the actual or proposed work site gives potential bidders the opportunity to inspect environmental or other factors that could influence their planning or costing. The bid advertisement needs to show the date, time, and venue for these meetings, and whether or not they are compulsory. Pre-bid meetings are open to the public. This implies that any interested party, including representatives from civil society organizations, can attend a pre-bid meeting.

Registration of Bidders

Most national, provincial, and municipal departments require prospective bidders to register on their supplier database before or during the process of submitting a bid.



See page 22 in **sub-section 2.1** in **Chapter 2** for more information about supplier databases.

CHAPTER 9

The Submission and Opening of the Bids



Once a tender has been advertised, interested individuals and companies prepare and submit their bids. After the closing date for the submission of bids, the bids are opened. This chapter gives an overview of the specific processes and guidelines that are in place for the opening of the bids and the publication of bid results.



See **Section 8.4** for more information about the closing date for the submission of bids.

9.1 THE OPENING OF THE BIDS

In most procurement processes, the procuring department will open the bids it has received either on, or very soon after the closing time and date for submissions. The bid documents should identify the time and place for the opening of the bids and all bids should be opened at the same time at the stated location.

All government procurement bids must be opened in public. This means that bidders and members of the public can attend the opening. The person who opens the bids can be asked to read aloud the names of all bidders and the amount of each (if it is practical to do so). However, no questions are allowed.

CREATING A BID REGISTER

While the bids are being opened, the procuring department must create a register of all of the bids it has received. The bid register has to be made available to any member of the public who wants to see it.

It usually includes:

- a description of the bid and the bid number;
- the closing date and time for the submission of bids;
- the name of each bidder;
- the B-BBEE status of each bidder;
- the total bid price submitted by each bidder; and
- the percentage of local content (if applicable) specified in each bid.

Source: National Treasury (2004a)

9.2 THE PUBLICATION OF BID SUBMISSIONS

For national and provincial procurements with a value of more than R500 000 (including tax), the procuring department has to publish the names of all the bidders within ten working days after the opening of the bids. They should also publish the B-BBEE status and the total price offered by each bidder, unless it is very impractical to do so. This information should appear on the website of the procuring department for at least 30 days.

The price threshold for publishing bid submissions is lower for local government. Municipalities need to publish the details of bidders for any tender worth more than R200 000. In addition to publishing this information online, hard copies should be made available at municipal offices and public libraries (National Treasury, 2013a). The requirements generally mean that this information has to be published for all bids submitted in a competitive bidding process for a government contract in South Africa.

9.3 COMMUNICATION WITH BIDDERS

In competitive bidding processes, the opening of the bids marks a change in the relationship between the procuring department and potential suppliers. After the bids have been opened, and until the successful bidder has been notified, no further information can be shared with the bidders or anyone else who is not officially involved in the bid process. This includes any information related to clarifications, evaluations, and/or recommendations from the department (National Treasury, 2004a; 2005a).

 Guidelines and ideas for monitoring the submission and opening of the bids can be found in **Chapter 21**.



CHAPTER 10

Bid Evaluation and Bid Adjudication

Once all the bids have been received and opened in public, the next phase of the public procurement process is to evaluate the bids. During bid evaluation, the criteria that were set out in the bid specifications have to be applied to each bid that was submitted. After doing so, the members of the bid *evaluation* committee recommend which supplier they think should be awarded the contract. The bid *adjudication* committee then decides whether to accept or reject the recommendation. If the recommendation is accepted, the bid is finalized. The various steps involved in this phase of the process are discussed in more detail in this chapter.

10.1 PREPARING FOR BID EVALUATION

Before the bid evaluation process can begin in earnest, a number of issues have to be verified and arranged.

These include:

- a preliminary assessment to see whether the bid documents are complete;
- making sure that none of the bidders have previous SCM practices that might disqualify them;
- checking whether any of the bidders have a conflict of interests with the procuring department; and
- establishing a bid evaluation committee

Assessing whether the Bid Documents are Complete

This assessment is conducted by an expert known as a SCM practitioner.

In its guidelines, the National Treasury (2004a) states that the SCM practitioner should verify:

- whether each bidder has submitted all the documents as required in the bid specifications; and
- whether the documents are “generally in order,” meaning that original documents have been submitted when required, copies have been certified, all the forms are signed as instructed, etc.

If the SCM practitioner finds that the documents do not meet the requirements defined in the bid specifications then the bid will be disqualified.

Verifying the Previous SCM Conduct of Bidders

The procuring department also has to make sure that none of the bidders, or their directors, trustees, or shareholders are listed on either the database of restricted suppliers or the register of the tender defaulters. These databases can be accessed through the National Treasury website, although it is unclear how often the registers are updated.



See **sub-section 7.12** in **Chapter 7** on the database of restricted suppliers and the register of tender defaulters.

Looking out for Conflicts of Interest

As discussed in Chapter 7, a form is included amongst the bid documents for bidders to declare if they have any pre-existing relationships with the government, or with a government employee. In the case of national and provincial tenders, this is the SBD 4 form; and for municipal tenders, the MBD 4 form. On these forms, the bidders should have provided their identity numbers and personal tax numbers, as well as those of all the directors, trustees, and shareholders of their companies.

It is the responsibility of the accounting officer of the procuring department to make sure that all the information included in these forms is accurate and complete.

In the case of national and provincial procurement processes, the following variables should, for example, be verified:

- If anyone associated with the bidding company works for the government, the SBD form should also show the state employee number(s) of this person or persons.
- Anyone state employee involved in the bid should have provided proof that they are authorized to take up paid work outside of their government job. If this information has not been included in the bidder's submission, the corresponding bid cannot be considered.
- If it is found that a bidder, or a director, trustee, or shareholder of the bidding company, works for the government but did not declare this in the bid documents, the bid will be disqualified and disciplinary action must be taken against that person (National Treasury, 2011b).

In the case of local government tenders, it is stated clearly on the MBD 4 form that no government employees are allowed to submit bids. The bid will automatically be disqualified if a bidder, director, trustee, or shareholder of the company bidding for a municipal contract is found to be a government employee. In some cases, however, this might be difficult to verify as municipalities do not always have access to databases of all government employees across the country.

What if a Conflict of Interest is only Discovered Later?

If it is discovered at a later stage that the successful bidder, or a director, trustee, or shareholder of the contracted company, works for the government after a municipal tender has been awarded, then the contract should be suspended immediately. All payments should be recovered, and the municipality should lay criminal charges against that person.

Source: National Treasury (2013a)

Convening a Bid Evaluation Committee

All bids that have been found to be complete and in good order, and without grounds for disqualification, are ready to be submitted to a bid evaluation committee. For each procurement process, the accounting officer of the procuring department is expected to establish such a committee to evaluate all the bids received during the competitive bidding process.

Bid evaluation committees have to be made up of at least three members, including a SCM practitioner and officials from the procuring department. Independent experts can sometimes be invited to join the committee, but only to provide advice to the other members. The composition of the committee can be adapted to suit the specific types of goods or services being procured.

Some specific rules apply when convening a bid evaluation committee at local government level. When a municipality lacks sufficient human resources to establish its own bid evaluation committee, it can use the committee structure of another municipality or local government entity. Councilors are strictly forbidden from serving on bid evaluation committees or attending their meetings (Republic of South Africa, 2003a).

10.2 EVALUATING THE BIDS

Accounting officers are expected to issue formal instructions to the members of the bid evaluation committee, setting out their specific duties. In general terms, the main job of the committee is to evaluate and score all of the bids, based only on the criteria included in the bid documentation. Meetings are not open to the public. Minutes of these meetings are also not publicly available.

Importantly, during the bid evaluation process, bidders are not allowed to change any parts of their bid; and the procuring department and/or bid evaluation committee cannot change any of the criteria used to evaluate the bids (National Treasury, 2004a; 2004c). However, the committee can ask for more information or clarification from bidders to be provided in writing.

Bids with Functionality Criteria

In some procurement processes, the bid specifications indicate that the competing suppliers' bids will be evaluated in terms of functionality. The criteria for evaluating functionality would have been clarified in the bid documents, and could range from something like the quality of goods to the past experience of the bidder.

Bids that use functionality criteria are evaluated in two stages:

In Stage 1: the functionality of all the bids is assessed.

In Stage 2: the price and preference points of the bids that met the minimum functionality score are assessed.

The committee has to apply the criteria exactly as stated in the bid documents.

This includes:

- giving the various criteria the same relative weighting as indicated;
- using the stated scale of numerical values to score each criterion; and
- assessing each bid in terms of the minimum qualifying criteria given in the bid documents.

Bid evaluation committees use score sheets to evaluate the bids. The score sheet shows the evaluation criteria, their weights, and the minimum qualification score. Each committee member is expected to look through all the bid documents and write down what they think is the correct score for each in relation to all the criteria. Members then sign their own score sheets. If a member of the committee has scores that differ significantly from the others, they may be asked for a written explanation or motivation.

How Functionality Scores are Calculated

The total score from each bid member is converted into a percentage. The formula for doing so is: **bid score / maximum possible score**. Then the committee calculates an average score across all members for each bid.

Source: National Treasury (2011a)

Bids Requiring Local Content

A similar two-stage process is used for bids that require a certain percentage of local content in the goods or services they are offering.

The evaluation is conducted as follows:

In Stage 1: the local content of all the bids is assessed.

In Stage 2: the price and preference points of the remaining bids are assessed.

The bid documents issued by the procuring department would have included details about the formula used to calculate the percentage of local content. They would also have explained how to apply exchange rates, if this is applicable to the bid.

At this stage of the evaluation process, all bids that do not meet the minimum requirements for local content or production are disqualified. They are also disqualified if the bidder did not provide a declaration certificate for local content (SBD/MBD 6) and the associated 'Declaration C' form. Bids that are seen to meet (or exceed) the minimum requirements for local content or production are then taken forward into the next stage of the evaluation.

Bids with Functionality and Local Content Requirements

In some cases, tenders for goods and services include evaluation criteria for both functionality and minimum local content or production.

In these cases, three stages are involved in the bid evaluation:

In Stage 1: the functionality of all the bids is assessed.

In Stage 2: the local content of the bids that met the minimum functionality score is assessed.

In Stage 3: the price and preference points of the remaining bids are assessed.

Assessing Price and Preference Points

After the functionality and local content of the competing bids have been assessed, the bid evaluation committee goes on to assess the remaining bids in terms of price and preference points. Depending on the overall value of the project, the committee will apply either the 80/20 preference point system or the 90/10 preference point system. The preference point system used in the bid evaluation is specified in the bid documents and cannot be changed after the closing date.



See **Section 6.3** for more information about preferential procurement and how preference points are assigned to different levels of B-BBEE status.

The evaluation of price and preference points is conducted as follows:

- **Firstly**, the bid evaluation committee looks at the total price offered by each bidder.
- **Secondly**, the committee looks at the B-BBEE status of each bidder and awards them the corresponding points. Bidders who did not provide a B-BBEE verification certificate, or do not qualify for any B-BBEE points, are not disqualified but are instead given a score of zero preference points. They therefore only receive points based on price.
- **Thirdly**, the committee adds together the points each bidder scored for price and for B-BBEE preference, leaving each with a total score out of 100.

RECOMMENDATIONS OF THE BID EVALUATION COMMITTEE

Once the bid evaluation committee has reviewed, verified, and scored all of the bids, it is in a position to make a recommendation about a preferred supplier. This should be the supplier with the highest score. The committee writes up a report to set out its recommendations on the preferred supplier and the awarding of the contract.

This report should typically include:

- an assessment of all of the tenders received;
- reasons for the disqualification of any tenders;
- the ranking of all the bids according to their scores; and
- a recommendation regarding the preferred bidder.

This report is signed by all committee members and sent to the bid adjudication committee. It is not made available to the public.

What about Bids With Equal Scores?

In some cases, two or more bids might score an equal number of points. If this happens the bidder with the most B-BBEE preference points should be chosen. If two bids have exactly the same score, and the same number of preference points, the bidder with the highest functionality score should be chosen (if functional criteria were used). When two bids are completely equal in all respects, the supplier should be chosen by the drawing of lots. In other words, the choice should be random and both bidders should have an equal chance of being picked.

10.3 CANCELLATION AND RE-INVITATION OF TENDERS

There are some circumstances in which tenders can be cancelled and a new invitation to bid may be released. These circumstances, and the processes that should be followed, are set out in the *Preferential Procurement Regulations* of the National Treasury (2011a). If a bid is cancelled, a notice has to be published in the Government Tender Bulletin and/or in the same media where the bid was originally advertised.

Cancellations Based on the Preference Point System

In every competitive bidding process, the choice of the preference point system to be applied when evaluating the bids is based on the anticipated value of the procurement contract as a whole. However, it can happen that all the bidders submit a price that is either higher or lower than was initially estimated. This in turn can affect which preference point system should be applied. Therefore, the preference point system specified in the bid documents may no longer match the value of the goods or services to be procured.

For example, if suppliers are invited to bid for the provision of goods or services that are estimated to be under R1 million in value, the bid documents would indicate that the 80/20 preference point system will be used. However, the tender must be cancelled if all of the bids received by the procuring department present a price of more than R1 million. If at least one bid offers a price under R1 million, all the bids have to be evaluated using the 80/20 preference point system.

Similarly, if bids were invited for the provision of goods or services expected to be over R1 million in value, the 90/10 preference point system would have been indicated in the bid documents. If all the submitted bids offer the goods or services at a value of R1 million or less, the tender has to be cancelled. In the same way, if at least one bid gives a price above the R1 million threshold, all bids have to be evaluated using the 90/10 preference point system.

If a tender is cancelled on the grounds described above, the procuring department should re-advertise the tender, making sure that the right preference point system is indicated clearly in the bid documents.

Rejecting all Bids

In some cases, all bids for the provision of the requested goods or services are rejected by the bid evaluation committee. It may be because none of the bids offer exactly the right goods or services needed, or they do not fully match the work to be performed. If all the bids are priced correctly (in terms of the preference point system) but none are acceptable, the reasons for rejecting the bids should be stated clearly in the evaluation report.

The procuring department should take these reasons into account if it aims to issue a new invitation to bid, and consider making changes to:

- the specific conditions of the contract and the project design;
- the bid specifications and the scope of the contract.

Cancelling a Tender and Requesting New Bids

There are some circumstances in which a procuring department might choose to cancel an existing tender process, and in some cases, start over again.

- **Lack of competition:** Sometimes very few bids are submitted in response to an invitation to bid. This means that there will not be much competition in the bidding process. In these cases, the department should consider cancelling the tender and requesting new bids. It should also advertise the tender more widely.
- **Higher than expected procurement costs:** In some cases, the prices offered by all the bidders are considerably higher than the department's own estimates. The department should look into the reasons behind this misalignment and consider cancelling the tender and requesting new bids.
- **Changing conditions:** A procuring department may also cancel a tender if the goods or services are no longer needed or when it no longer has the resources to cover the total expenditure.



See **Chapter 21** for ideas on how CSOs might consider monitoring the bid evaluation and adjudication phase.

10.4 ADJUDICATING THE BIDS

After the bid evaluation committee has finalized its report and recommendations in a public procurement process, these are handed over to a bid adjudication committee. The main task of the bid adjudication committee is to review the report and make a final recommendation on the chosen supplier.

Depending on the powers assigned to it (see *National Treasury, 2006a*), the committee members must choose between the following options:

- Make a final recommendation to the relevant accounting officer to make an award to a chosen supplier.
- Award the procurement contract to the chosen supplier themselves.
- Make another recommendation to the accounting officer on how to proceed with the tender.

COMPOSITION OF BID ADJUDICATION COMMITTEES

Bid adjudication committees are made up of at least four senior government officials who should have different positions and functions. The committee is appointed in writing by the accounting officer of the procuring department or the municipality. The accounting officer also decides how long the members are expected to serve on the committee.

The membership of the bid adjudication committee should generally be made up of:

- at least one SCM practitioner;
- a committee chairperson, ideally the chief financial officer of the procuring institution;
- a vice-chairperson of the committee, who should be a departmental director (for national and provincial procurements) or a senior manager (for municipal procurements);
- a committee secretary, who should be an official from the procuring department; and
- officials or advisors with specialized knowledge, who may serve as non-voting members.

Local Government Capacity

In a local government procurement process, if a municipality lacks the human resource capacity to establish a bid adjudication committee, it can share or use a committee structure set up by another municipality.

Members of the bid evaluation committee cannot be part of the bid adjudication committee. This is to make sure that a fair, transparent review of the evaluation process can take place. Members of the bid adjudication committee have to sign a confidentiality agreement at every meeting. They also need to declare their own financial interests once a year, and sign a code of conduct. The bid adjudication committee is only allowed to consider recommendations or reports if at least 60 percent of members are present (National Treasury, 2006a; 2006b).

Public Participation in Bid Adjudication

Bid adjudication committee meetings are not usually open to the public in South Africa. Notices and meeting minutes are also not publicly available.

Responsibilities of Bid Adjudication Committees

The bid adjudication committee is responsible for ensuring the following:

- All the required bid documents have been submitted.
- Valid reasons have been given for the disqualification of any bids.
- Valid reasons have been provided for recommending a specific supplier.
- The scoring process was fair and consistent.
- The scores for all the bidders have been calculated correctly.
- Conflicts of interest have been avoided.

The bid adjudication committee also makes recommendations about amending, changing, extending, cancelling, or transferring the contracts that have been awarded.

Adjudication Meeting Agendas and Minutes

An agenda is prepared for every meeting of the bid adjudication committee. It has to be sent to all members at least three working days before the meeting. Any submissions to the committee have to be in writing and can only come from either the bid specification committee or the bid evaluation committee. Minutes are taken at each meeting and need to be signed by all members as proof of the decisions of the committee.

If the Bid Adjudication Committee disagrees with the Prior Recommendation

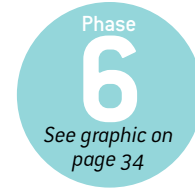
The bid adjudication committee will often agree with the recommendation of the bid evaluation committee. However, this is not always the case. The bid adjudication committee has the power to recommend a different bid.

If it decides to do so, the following procedures apply:

- The bid adjudication committee has to notify the accounting officer of the procuring department in advance that it plans to make an alternative recommendation.
- The accounting officer then has to review the reasons behind the new recommendation. They can either accept or reject the recommendation of the bid adjudication committee.
- If the accounting officer accepts a recommendation to make an award to a bidder other than the individual or company that received the highest score in the evaluation process, they must provide reasons for this decision to the Auditor-General of South Africa, the National Treasury, and the relevant provincial treasury.
- The accounting officer can also refer a recommendation made by the bid adjudication committee back to that committee for reconsideration at any time.

CHAPTER 11

Clearing Successful Bidders and Awarding Contracts



This chapter provides a brief overview of Phase 6 of the public procurement process. This phase involves a few preliminary steps to clear the way for the award of contract. It ultimately leads to the signing of a procurement contract between the successful supplier and the procuring department for the provision of identified goods and services.

11.1 PREPARING FOR THE AWARD OF CONTRACT

After the bid adjudication committee recommends a successful bidder, a few more steps have to be taken before the contract can be awarded.

Clearing the Successful Bidder

First, the successful bidder must be cleared in terms of their previous conduct and present capacity. The accounting officer of the procuring department has the duty to check, once again, that the bidder is not registered on the database of restricted suppliers, or on the register of tender defaulters. The same check should be applied to all directors, shareholders, or trustees of the company being awarded the procurement contract. The accounting officer must also once again assess whether the preferred bidder has the necessary facilities, capacity, capabilities, and financial resources to deliver the procured goods or services as promised (National Treasury, 2004a; 2013a).

Confirming the Available Budget

Before a contract of more than R10 million can be awarded to the successful bidder, the chief financial officer of the procuring department or municipality must confirm in writing that there is enough money available for the contract.

Negotiating With the Bidder

Some negotiations are allowed between the preferred bidder and the procuring department before the contract is awarded. However, these need to be approved by the accounting officer of the procuring department, and should not in any way give the preferred bidder an unfair advantage. For example, no conditions pertaining to the original bid specifications can be changed. Such changes would be unfair to the other bidders, as they, as well as the successful bidder, may have scored differently under these changed conditions.

Source: National Treasury (2004a); Republic of South Africa (2005)

11.2 AWARDING THE CONTRACT

Once the successful bidder has been cleared, the department and the bidder sign a contract or, in some cases, a service level agreement.

Depending on what is being procured, the following contract forms are used:

- **SBD/MBD 7.1** is used for the purchase of goods or works.
- **SBD/MBD 7.2** is used for the rendering of services.
- **SBD/MBD 7.3** is used when the tender involves disposing of goods or works.



An example of the contract form SBD/MBD 7.1 can be found in **Appendix 14**.



There are also contract templates available on the [website](#) of the **Office of the Chief Procurement Officer**.

The contract forms are relatively simple and include a brief description of the goods or services and the price. The bidder, the procuring department, and witnesses must sign the forms.

In doing so, the bidder:

- agrees to provide the goods or services described in the bid documents;
- confirms that the bid it submitted was valid and correct; and
- declares that they did not participate in any collusion.

In signing the contract, the department agrees to pay the bidder:

- in line with the terms and conditions of the contract; and
- within 30 days of receiving an invoice and delivery note.

All of the original bid documents are also considered to be part of the contract, including all the relevant SBD or MBD forms.



See **Chapter 22** for guidelines on monitoring this phase of the procurement process, including the publication of award information.

11.3 PUBLISHING DETAILS ABOUT THE AWARD

When a public procurement contract has been awarded, information about the successful bidder has to be made public. It should be published in the Government Tender Bulletin, in any media where the bid was advertised, and on the website of the procuring department.

The published information should include:

- the contract number and description;
- the name[s] of the successful bidder;
- details about the B-BBEE preference points of the successful bidder;
- the contract price;
- the date on which the contract ends; and
- when goods are being supplied and, if applicable, the brand name of these goods.

The National Treasury (2011b) instructs procuring departments to keep the details of where and how they published the contract information for auditing purposes.

Even though details of a procurement award are published, the contracts themselves are not open to the public. The only exception is in local government, when a municipality uses a competitive bidding process to find an outside supplier to provide a municipal service. In these cases, a SLA is signed and it has to be made available to the public. According to the Municipal Systems Act, copies of the agreement have to be available for view at municipal offices during working hours.

The information published about these SLAs must include:

- where members of the public can go to see copies of the service level agreement;
- how long these copies will be available for view;
- the name of the contracted service provider; and
- details of the service to be provided by the successful bidder.

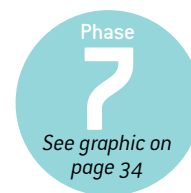
The law does not specify a minimum period of time that a SLA has to be available for public view. It also does not give details about how a member of the public could access past service level agreements. However, some municipalities do publish these details on their websites.

Unsuccessful Bidders

Bidders who were unsuccessful in any tender process can request a written explanation of the reasons why. However, the procuring department is not allowed to divulge any details about why other bidders were unsuccessful. In addition, the prices quoted by other unsuccessful bidders cannot be shared with the supplier making the enquiry unless the other bidders have given their consent.

CHAPTER 12

Contract Implementation



During this final stage of the public procurement process, the contracted supplier delivers the goods or services outlined in the contract. The procuring department is expected to manage the contract to make sure that the goods or services are delivered in the right quantity, quality, and timeframe.

Specifically, it is the accounting officer of the procuring department or institution that is ultimately responsible for managing and administering a procurement contract. The officer must ensure that the supplier submits any required reports on time and that all invoices are paid as specified in the contract. However, at national and provincial level, there do not seem to be specific guidelines in place on exactly how contract implementation should be monitored or reported on.

Within local government, the accounting officer of the municipality must monitor the performance of the supplier on a monthly basis. According to the MFMA, the accounting officer should also report “regularly” to the municipal council on the status of the contract and the performance of the supplier. However, the MFMA does not specify how often these reports should be made or what information should be included.

Contract Termination and Review

There are usually clauses in the general or specific conditions of a procurement contract that explain when and how the contract could be cancelled. This might happen, for example, if the supplier does not complete the job or performs badly. There should also be details about the preferred mechanism to settle disputes between the procuring department and the supplier. According to the MFMA, when a procurement contract at the local level spans more than three years, the contract should be reviewed from time to time.

12.1 MANAGING A PROCUREMENT CONTRACT

SCM often involves the coordination of important logistics.

In any procurement contract, these tasks may include:

- placing orders;
- receiving and distributing goods;
- managing stores or warehouses;
- managing transport schedules and arrangements; and
- evaluating vendor performance, including timeliness in meeting deadlines, as well as the quality and quantity of goods and services delivered.

Any problems identified by the procuring department should be followed up with the supplier and brought to the attention of the institution that arranged the procurement contract (National Treasury, 2004a).

Whatever specific requirements there are for the delivery of procured goods or services, these would be stated in the general and specific conditions of contract, as well as in the bid specifications. For example, such requirements might relate to the way the procured goods are meant to be packed and transported, to any insurance that is meant to cover certain goods or activities, or to documents that are meant to be prepared. The GCC also allows the procuring department, as the buyers of the goods or services, to request access to the supplier's records, or even to request an audit (National Treasury, July 2010a). The specific conditions of contract can also require that suppliers regularly report to the department on the value or amount of goods or services being provided.



See **Chapter 22** for suggestions on how CSOs might go about monitoring the implementation of procurement contracts.

CONSIGNMENT AND BATCH INSPECTIONS

During contract implementation, there could be requirements in place that help the procuring department to monitor the goods being supplied by the contractor. For example, the supplier may have an obligation to deliver a batch of goods (also known as a consignment) to the procuring department. Alternatively, it might be part of the conditions of the contract that the procuring department may inspect the goods at any stage during or after their production.

If a procuring department wishes to ask for consignments, or batch inspections, as part of the quality control process, these requirements should be stated in:

- the original bid documents which form part of the procurement contract;
- the letter of acceptance of the bid; and
- the contract or SLA between the procuring institution and the supplier.

If the goods are to be tested by an independent body, the procuring department must issue an official order and send it to the relevant testing institution. This might apply, for example, when a department is buying medicine to distribute at hospitals and clinics. The department is expected to pay for the testing unless the product/service fails the test, in which case the supplier has to pay.

Source: National Treasury (2005c)

12.2 MAKING CHANGES TO A PROCUREMENT CONTRACT

There are rare instances where accounting officers need to change or increase the amount of goods or services specified in a procurement contract. It is important to ensure that this practice is not abused. As a result, procurement contracts cannot be increased or changed by more than 15 percent or R15 million, based on the original value of the contract. In construction projects, the upper limit for changing or increasing the contract is 20 percent or R20 million.

In the case of national and provincial procurement contracts, only the National Treasury or relevant provincial treasury may adjust these thresholds. Any contractual changes above these thresholds must be approved in writing by the relevant treasury and will only be considered if the request is motivated by very good reasons.

In the sphere of local government, construction contracts cannot be changed by more than 20 percent of their total value. All other procurement contracts or service level agreements cannot be changed by more than 15 percent (National Treasury, 2013a). The reasons for any such changes must be presented to the local council. According to the MFMA, the local community must be informed when a municipality intends to amend a procurement contract and community members must be invited to submit their views on the planned changes.

12.3 THE MONITORING AND EVALUATION OF PROCUREMENT CONTRACTS

Overall, the government gives very little advice on how suppliers should be evaluated when a contract is over.

The National Treasury guidelines (2004a; 2005a) suggest the following:

- The supplier should be assessed.
- This assessment should be available for future reference.
- Negative assessments should help a procuring department to avoid future contracts with suppliers who have performed poorly in delivering on their contracts in the past.

The guidelines say that when monitoring SCM, departments should look at:

- whether or not the preferential procurement goals were achieved;
- whether norms and standards were successfully complied with;
- whether any savings were generated;
- the efficiency of stores and warehouses;
- any cost variance in the goods or services that were delivered;
- whether any breaches of contract took place; and
- the overall cost efficiency of the procurement process.

The guidelines do not state whether supplier assessments should be made public or not. It is also unclear whether or not SCM reviews happen in practice.

Improvements in SCM Reporting

The National Treasury plans to develop a standard SCM reporting framework.

All accounting officers will need to report on:

- the procurement plans of their departments or institutions;
- all tenders being advertised;
- all tenders that have been awarded;
- the price value of the tenders;
- progress in implementing all procurement contracts; and
- information about suppliers.

These SCM reports will be made public on either a monthly, quarterly, or annual basis depending on the type of information they contain.

Source: National Treasury (2015)


REPORTS BY OVERSIGHT BODIES

There are a number of institutions in South Africa that have the power to investigate public procurement. These include the Auditor-General of South Africa (AGSA) and the Public Protector. The reports from these oversight bodies can provide important information. The AGSA is responsible for auditing and reporting on the accounts, financial statements, and financial management of government departments.

Its responsibilities related to public procurement include:

- assessing whether departments comply with the laws governing SCM;
- investigating irregular expenditure;
- examining selected tenders to make sure that the correct procedures were followed during procurement and contract management; and
- assessing conflicts of interest involving tenders and government employees for those selected tenders.

The government can request special audits in cases where departments are not running their financial affairs properly. These special audits can also investigate general procurement practices and/or specific contracts. The AGSA also conducts performance audits which focus on specific departments and how well they spent their money. In relation to procurement, the AGSA considers whether goods or services were acquired economically, applied efficiently, and managed effectively, in meeting the goals of the department.


 Summary reports of annual audits as well as the reports of special and performance audits are available on the [AGSA website](#).

The Public Protector of South Africa was established by the Constitution to investigate complaints against government departments or officials. The Public Protector can be asked to investigate suspected irregularities or corruption in the award of government tenders. Any member of the public can lodge a complaint with the Public Protector.

Before doing so, it is recommended that the party concerned first:

- speaks directly to the official involved;
- writes to the head of the relevant department; and
- brings the matter to the attention of a member of the national or provincial legislature.

If these steps are not successful, a member of the public can lodge a complaint by contacting the Public Protector's office by telephone or email, or by completing an online form on its website. If the Public Protector finds that the complaint was justified, it will recommend how it should be addressed.

 Reports on past investigations are available on the [website](#).

SECTION III:



**How Civil Society Organizations in
other countries have monitored
Public Procurement**

International Best Practice

This section of the Guide presents examples of civil society initiatives to monitor public procurement, mainly from the Philippines and South America. Some CSOs monitor the whole procurement process, while others focus on specific phases. The aim of this section is to:

- Explore how CSOs in different contexts have translated their oversight role into action.
- Briefly discuss the models and tools that have been developed to monitor public procurement.
- Provide South African CSOs with ideas that could be adapted for the local context.

Please note: For the chapters in this section of the Guide, sources generally appear at the end of each chapter.

CHAPTER 13

Procurement Watch Inc. in the Philippines

Procurement Watch Inc. (PWI) is a civil society organization in the Philippines. PWI has developed three notable tools to monitor public procurement, which are discussed in this chapter. These are:

- the Differential Expenditure and Efficiency Measurement (DEEM) Tool;
- a public bidding checklist; and
- an observer's diagnostic report.

About PWI

Procurement Watch Inc. was established in 2001 specifically to combat corruption in public procurement. It undertakes monitoring and research and provides training to government officials and CSO volunteers, while also advocating for improvements in transparency, independent oversight, and accountability.

13.1 THE DIFFERENTIAL EXPENDITURE AND EFFICIENCY MEASUREMENT TOOL

The DEEM Tool allows users to record and compare information extracted from the documents produced at the different stages of the procurement process. The aim is to allow civil society monitors to gather objective evidence of irregularities or corruption in the procurement of a good or service.

WHICH PARTS OF THE PROCUREMENT PROCESS ARE UNDER SCRUTINY?

- **The bidding phase**
- **Contract implementation**

Forms used to Capture Information through the Procurement Process

The DEEM tool is made up of ten forms that have to be completed by the civil society monitor.

Each form corresponds to a specific step or document in the procurement process:

- The DEEM Tool project sample/disbursement voucher form: This form provides an overview of each transaction related to a particular contract, specifically recording information on the disbursement voucher and the cheque issued to pay the invoice.
- The DEEM Tool project purchase request information form: This form records the information from the purchase request form, including the details (description, cost, quantity, etc.) of the requested item and whether authorized signatures appear on the form.
- The DEEM Tool project contract information form: This form records the contract details, including the name of the supplier, and the details of the ordered item.
- The DEEM Tool project purchase order information form: This form is used to record details from the purchase order and indicates whether the information on the purchase order form is consistent with the information on the disbursement voucher and the purchase request form.
- The DEEM Tool project invoice information form: This form records the information provided on the invoice. It also captures whether details on the invoice are consistent with the information on the disbursement voucher and the information in the contract.
- The DEEM Tool project inspection and acceptance information form: This form records information from the inspection and acceptance report which is completed when goods have been delivered. The monitor also checks whether the details in the report (including the name of supplier, contract details, invoice details, and details about the item) are consistent with the information recorded in the preceding procurement documents.
- The DEEM Tool project abstract of bids information form: This form is used to record general bidding details including dates of bid submission and bid award, the number of bids, and details of the bids. It also specifically records whether an invited civil society observer attended the Bid and Award Committee meetings.

The DEEM Tool also includes a section where the civil society monitors are tasked to find market prices for the items under consideration from other suppliers within the region. The objective here is to compare these prices with the prices recorded in the DEEM forms, in order to assess whether the procuring agency paid more or less than market prices. If the prices paid by the agency are higher than the market prices then this can be considered a reasonably objective indication of corruption or inefficiency in the procurement process.

Analysis and Feedback to Government

Once the CSO monitors have completed all the forms, the information is analyzed to identify inconsistencies across the different phases of the procurement process, and to spot discrepancies in the information provided in the procurement documents. For example, the analysis will consider whether the details of the supplier, the price, and other item specifications remained consistent throughout the process. The analysis also assesses the efficiency of the procurement process in terms of time and cost; and whether the provisions of the Government Procurement Reform Act were followed. PWI presents the analysis to the procuring department.

Successes and Challenges of the DEEM Tool

It has been found that when the DEEM Tool has been used to monitor procurement in the Philippines, the goods or services in question were generally provided at lower prices. This is believed to be due to increased transparency and improved delivery performance because of community participation in the monitoring of the process.

The DEEM Tool relies on a degree of cooperation between civil society monitors and the government departments being monitored. For example, a Memorandum of Agreement was signed amongst the various government and civil society stakeholders when the tool was first tested in a public hospital, under the supervision of the health department. This agreement proved to be critical in ensuring support from health staff at all levels, and assisted PWI in navigating the government bureaucracy. Another key driver of the project's success was the support and cooperation of the director of the hospital.

However the DEEM Tool has certain limitations. If agencies or departments do not follow procurement rules and regulations strictly, it is meaningless to conduct detailed checks for compliance with these rules. Monitors also need access to most of the procurement documents of the department that is being monitored to use the tool effectively. If government departments do not willingly share their procurement documents with civil society monitors, a CSO could consider collaborating with the national audit agency to access audit documents that might contain relevant information.

Identifying comparable market prices for goods or services can also be a challenge. For example suppliers may be unwilling to disclose their prices in some instances, and some goods or services may have very particular technical specifications which make them unique and difficult to compare.

13.2 THE PUBLIC BIDDING CHECKLIST AND OBSERVER'S DIAGNOSTIC REPORT

The second tool developed by PWI is the public bidding checklist, which civil society monitors use to observe different stages of the procurement process and verify whether they are compliant with the provisions of the Government Procurement Reform Act, and its accompanying Implementing Rules and Regulations. PWI also developed a third tool, called the observer's diagnostic report, which is generally based on the information collected by the public bidding checklist.

WHICH PARTS OF THE PROCUREMENT PROCESS ARE UNDER SCRUTINY?

- **Pre-bidding**
- **Bid opening**
- **Bid evaluation**
- **Post-qualification**
- **Awarding of contract**

The checklist is made up of questions that have to be answered by a civil society monitor as they observe each procurement stage. Observers are asked to answer “yes” or “no” to indicate whether the standard processes were followed, and whether they were compliant with the relevant legislation and rules. The answers are then used by the civil society monitor to compile an observer's diagnostic report.

The diagnostic report is in the format of an open-ended questionnaire and covers the same stages of the procurement process as the checklist. The observer fills in various details such as the date, time, place, any deviations observed, as well any violations of the law, for each procurement stage attended. All relevant documents for each stage should be attached to the observer's diagnostic report. Any documents requested from the procuring agency, but not provided to the monitor, have to be listed in the report.

If the civil society monitor records any deviations from the law, the corresponding observer's report should be submitted to the head of the relevant procuring department, the Bids and Awards Committee, the Government Procurement Policy Board, and the Office of the Ombudsman. However, it is not mandatory for an observer's diagnostic report to be submitted. If no report is submitted it is taken to mean that the bidding process complied with the provisions of procurement legislation. The public bidding checklist and the observer's diagnostic report, or slightly modified versions of these tools, are used by various CSOs in the Philippines to monitor public procurement of different goods and services.

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: Affiliated Network for Social Accountability in East Asia and the Pacific [Undated]; La Salle Institute of Governance [2012]; Paredes [2008]; Procurement Watch Inc. [2010]; Ramkumar [2008]; The World Bank [2009c].

CHAPTER 14

Monitoring Textbooks and School Buildings in the Philippines

Government Watch (G-Watch) has been involved in numerous ground-breaking initiatives to monitor public procurement in the education sector in the Philippines. Two of these initiatives are discussed in this chapter: the Textbook Count project; and the Bayanihang Eskwela (School Building) Monitoring Project.

About G-Watch

G-Watch is an independent monitoring project housed at the Ateneo de Manila University's School of Government. It conducts research and advocacy relating to governance and public management, in particular focusing on contract implementation in government procurement.

14.1 THE TEXTBOOK COUNT PROJECT

The Textbook Count project was initiated in 2002 to address serious corruption in the procurement of school textbooks in the Philippines. It took the form of a partnership between G-Watch, the Philippine Department of Education, and a broad base of civil society organizations, including the National Movement for Free Elections (NAMFREL). The partners signed a formal Memorandum of Agreement as a basis for their cooperation.

The first Textbook Count took place in 2003, the year in which the Government Procurement Reform Act was passed, which institutionalized the participation of CSOs in the monitoring of public procurement. The initiative was repeated four more times, with the last Textbook Count conducted in 2007/08. Large numbers of volunteers were involved in the different years of Textbook Count. NAMFREL played a key role by providing a nationwide network of volunteers with experience in counting and monitoring elections. In the second year, more volunteers were needed, especially as NAMFREL was preparing for upcoming elections, and the Boy Scouts and Girl Scouts of the Philippines joined the initiative.

WHICH PARTS OF THE PROCUREMENT PROCESS ARE UNDER SCRUTINY?

- **The bidding phase**
- **Contract implementation, including:**
 - Contract management
 - Supplier evaluation

Tools used in the Textbook Count Process

During the **bidding phase**, CSO observers used the observer's diagnostic report to capture information. Any inconsistencies with the law were recorded. The diagnostic report was then submitted to the education department.

The majority of the monitoring took place during the **contract implementation phase** of the procurement process. While the procured textbooks were still being produced, CSO monitors accompanied officials from the education department on surprise visits to the printing presses and warehouses where books were being printed and stored. They inspected the quality of books, evaluating, for example, how well they had been printed and bound.

The volunteers used two tools to record the results of their monitoring of textbook deliveries to schools:

- A **volunteer monitoring report form** was used to indicate whether the delivery of the textbooks was in line with the requirements in the contract.
- An **inspection and acceptance report form** was used to record whether the books delivered at a school were in good condition, and if the correct quantity was delivered. This form was signed by the volunteers (in a specific box for third party inspectors), by representatives from the local community, and representatives of the parents-teachers association. If either the quantity or quality of the textbooks was not correct, the volunteers informed G-Watch, who would then alert the education department. The next step would be for the department to instruct the supplier to rectify the problem.

Successes and Results of the Textbook Count Project

The project was linked to significant savings in both time and costs relating to the procurement of textbooks. Due to the more transparent bidding process, it is estimated that the average cost of a textbook was reduced by 40 percent. As defective textbooks were identified and replaced early on, fewer textbooks needed repair during the school year. Textbooks were delivered more promptly and there were visible improvements in the actual quality of the textbooks.

The success of the Textbook Count project was also due to the political will of the Undersecretary of the Department of Education, and to the Memorandum of Agreement that provided CSOs with access to the procurement process. Relatively simple monitoring methods were used which meant that volunteers from the community could conduct the monitoring. A quick feedback system via G-Watch was in place to inform the education department of any problems identified.

The success of the project led the education department to formally institutionalize civil society and private sector participation in the department's procurement processes in 2007. Participation was extended beyond the monitoring of textbooks to include other items related to education.

While the Textbook Count project no longer exists, the signature of a civil society monitor is still required in the official documentation that is to be completed at every textbook delivery point. As G-Watch no longer coordinates the process, however, there is no guarantee that the signature really belongs to a legitimate civil society monitor. There is also no mechanism to verify that the correct textbooks were delivered at time and price specified in the contract.

14.2 THE SCHOOL BUILDING MONITORING PROJECT

In 2001, G-Watch published a report showing that more than half of the school buildings being constructed in the country were of poor quality. The Department of Public Works and Highways (DPWH) is responsible for the construction of school buildings in the Philippines. The main cause of the problem was that the correct building plans, standards, and specifications were not being followed.

To address the situation, the School Building Monitoring Project was initiated in 2005 as a partnership between G-Watch, the DPWH, the Department of Education, the Boys Scouts and the Girls Scouts of the Philippines, as well as the Office of the Ombudsman. The main objective was to make sure that school building projects would, in the future, be implemented to the correct specifications, at the correct time, and using the right procurement processes.

WHICH PARTS OF THE PROCUREMENT PROCESS ARE UNDER SCRUTINY?

- **The planning phase**
- **All the stages of the bidding process**
- **Contract implementation**

Community-based teams were created to monitor the school building sites. The teams consisted of the principal, the project engineer, Boy/Girl Scouts, and representatives from civil society or the parent teacher associations. In the first and second rounds of the project, the teams monitored whether the necessary building specifications were being followed, and if certain mandatory pre-and post-construction activities had taken place. In the third round, the project also verified whether schools had been built where there was an acute need, and whether the classrooms were conducive to learning. All three rounds were supported by external donor funding.

Tools used in the School Building Monitoring Process

A tool called the Monitoring Profile Form was used to monitor all the relevant procurement stages. Monitors were also encouraged to take photographs while monitoring.

The Monitoring Profile Form was made up of six separate forms:

- The **school profile form** was used to record general information about the school (name, address, etc.), the needs and conditions of the school (including teacher-student ratios), classroom-student ratios, and academic performance indicators. The objective of this form was to provide an overview of the needs and conditions of the school, and to flag where overcrowding or too many students per teacher might have contributed to a school's underperformance.

- The **pre-construction form** recorded information about the school building site identification, planning meetings, the presence of a pre-engineering survey, the preparation of the Program of Works (POW), site inspection, and the bidding process. The POW should have provided all the specifications of the school building project, including the components of the building, the materials to be used, and the amount and type of supplies that the contractor had to provide. The monitors observed the pre-bid conference, the bid opening, as well as the post-qualification process. During the post-qualification process, all the information submitted by the successful bidder was verified by the monitor.
- The **construction form** was used to monitor all the phases of the construction of the school building from the digging of the site to the painting of the building. In this phase, the quality and specifications of all materials were also verified and checked against the POW.
- The **post-construction form** first checked whether the correct processes were followed, specifically in terms of engagement and dialogue with all stakeholders. The second part of this form verified whether all the standard parts of a classroom or school building were built.
- The **conduciveness to learning form** checked whether the classrooms were built in a manner that supported learning by assessing safety, space, lighting, ventilation, etc.
- A **responsiveness to school need form** was used to verify whether the school building catered for the specific needs of the school, for example whether the student-classroom ratio was appropriate, or, in the case of areas prone to flooding, whether the elevation of the building was sufficient.

The forms all had a straightforward format that made them easy to complete. Only a few details (date, location, and some observations) had to be entered in writing by the monitor. Most of the forms consisted of columns where a simple “yes” or “no” answer needed to be selected in response to a question, with additional space to add details. Some of the additional details were also predetermined, with lists and boxes that had to be ticked, based on what the monitor had observed.

Consolidation of Findings and Feedback to Government

After completion of all six forms, the information gathered by the monitors was consolidated and evaluated. The results were then presented to the relevant government departments and made public. During the monitoring process, the volunteers could also flag problems and provided quick feedback to G-Watch. These messages were then forwarded to the relevant government departments for follow-up.

In 2011 the education department officially adopted the *Bayanihang Eskwela* project as the community-based monitoring component of its own School Building Program. Since then a broad base of community monitors have been mobilized and trained to use the Monitoring Profile Form to track building projects at their schools. The system also provides for the dissemination and consolidation of results from all over the country.

Strengths of the School Building Monitoring Project

A number of factors were critical to the success of *Bayanihang Eskwela*. The Memorandum of Agreement between all the partners clarified the expectations and roles of all the stakeholders. The agreement also ensured that the civil society monitors had access to the relevant information and officials. Civil society played a key role in mobilizing monitors and ensuring that they had the information they needed to monitor the school building projects.

The fact that the monitoring tool was relatively easy to use also contributed to the success of the initiative. Monitors were able to approach relevant government officials for clarification about the more technical aspects of the construction processes. The presence of a strong champion within each of the key departments was also critical in ensuring cooperation from all officials. In addition, the involvement of the Office of the Ombudsman ensured that the two national departments reacted quickly when they were informed of problems identified by the monitors. In this regard, it was also important that specific units in the government departments were identified as “point units” for the initiative. This has helped to ensure that the project could continue in spite of changes in departmental leadership.

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: Acheron (2013); Acheron, personal communication (24 April 2015); Affiliated Network for Social Accountability in East Asia and the Pacific (Undated); Arugay (2012); Esguerra (2008); Government Watch (2010); Ramkumar (2008); The World Bank (2009c).

CHAPTER 15

The Medicine Monitoring Project in the Philippines

Initiated in 2004 by NAMFREL, the Medicine Monitoring project set out to monitor the procurement of essential medicines by the health department in 71 public hospitals and by 16 regional health centers. The main objectives of the project were to increase transparency, address corruption, and ensure that essential medicines were procured at affordable prices and delivered on time.

About the National Citizens' Movement for Free Elections

NAMFREL was initially established in 1983 as an elections watchdog in the Philippines. It has a vast membership base made up of volunteers from different religious, civic, business, professional, labour, youth, and other organizations. Along with monitoring elections, NAMFREL also promotes active public participation more broadly, and works to strengthen democratic institutions and processes, including public procurement.

WHICH PARTS OF THE PROCUREMENT PROCESS ARE UNDER SCRUTINY?

- **Procurement planning** (to a limited extent)
- **The bidding phase**
- **Contract implementation**

The project was based on a cooperative agreement between NAMFREL and the health department. NAMFREL used its existing network of chapters across the country to mobilize volunteers and to identify CSOs to undertake the monitoring.

Tools used in the Medicine Monitoring Process

- During the procurement planning phase, the monitors exercised very limited oversight by verifying whether the medicines in the Annual Procurement Plan of a hospital or health center were prescribed by the Philippine National Drug Formulary. The latter serves as the basis for the procurement of medicines in the Philippines.
- During the bidding phase, the monitors used modified versions of PWI's **public bidding checklist** and **observer's diagnostic report**. These tools helped them to monitor whether all the bidding processes were compliant with the Government Procurement Reform Act. The diagnostic report was then submitted to the health department to follow up on any inconsistencies.



See **Chapter 13** for more information about these tools.

- The reports completed by the monitors were also used by NAMFREL to produce an **annual report** that provided an overview of inconsistencies and corrupt practices. This annual report was submitted to the health department, published on NAMFREL's website, and distributed to other CSOs.
- During the contract implementation phase, the monitors checked whether a notice to proceed with the contract had been issued. They also reviewed the notice of award for the list of drugs and the quantities that had to be delivered. The monitors reviewed the purchase orders for all deliveries, and then the actual delivery of the drugs and medicines, using an **inspection and acceptance report** to ensure that the correct drugs were delivered to the correct hospitals and health centers.
- The monitors also verified the inventory of medicines at hospitals and health centers by completing an **inventory monitoring report form**.

Strengths of the Medicine Monitoring Project

The success of this initiative was largely dependent on the agreement and cooperation between the main stakeholders. The civil society monitors would not have been able to gather the required information without the participation and support of the health department, as well as the heads of the individual hospitals.

The project resulted in essential medicines being more readily available in hospitals and procured at more competitive and realistic bidding prices. The staff in hospitals and health centers also came to accept and understand the role of the monitors during the procurement process.

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: Affiliated Network for Social Accountability in East Asia and the Pacific [Undated]; La Salle Institute of Governance (2012).

CHAPTER 16

The Program for Transparent Contracting in Argentina

This program was developed by Poder Ciudadano, the Argentine branch of Transparency International, to help municipalities in Argentina to improve transparency and accountability.

About Poder Ciudadano

Founded in 1989, Poder Ciudadano is as a non-partisan CSO that works to defend civil rights, promote public participation and access to public information, and strengthen democratic institutions through collective action. It became the Argentine chapter of Transparency International in 1993.

WHICH PARTS OF THE PROCUREMENT PROCESS ARE UNDER SCRUTINY?

- Bid specification
- The bidding phase
- Bid evaluation
- Awarding of contract
- Contract implementation

Tools used to Promote Transparency in Municipal Procurement

The program makes use of two main tools:

1. **public hearings**, and
 2. **the signing of Integrity Pacts**
- **Public hearings** are organized during the bid specification phase. The objective of a hearing is to discuss the draft bid documents before they are finalized and the bidding begins. Guidelines are drawn up to specify the conditions for the hearing, the documents involved, the form of participation, the dates for each stage of the process, how interested parties can register, and other procedural issues.
- Once these guidelines have been established the hearing should be widely advertised and all interested parties should be invited to participate. This should include the general public, bidders, officials, and, if possible, independent experts with technical, legal, and economic knowledge. The draft bid specifications should be made publicly available before the hearing, and participants should be able to discuss the draft documents and have an opportunity to propose amendments during the hearing. The municipality should then publish the final bid documents, and the reasons for including or rejecting any of the proposed amendments should be included in the final documents.
- The **Integrity Pact** is the second key component of the program. It is used from the bidding phase through to the contract implementation. The municipality and all interested bidders sign a pact in which they commit to not offer or accept bribes, and to guarantee full transparency of all documentation. They also agree to publicly disclose the award and the major elements of the bid evaluation, including the reasons for the selection of the successful bidder. The pact also allows civil society to monitor the evaluation of the bid, the selection of the successful bidder, and the implementation of the contract.

How the Program was applied in the Municipality of Morón

In December 1999, a new mayor took office in the Argentine municipality of Morón. In response to the city's history of corruption in its local government, the mayor chose government transparency as one of the main goals of his new administration. In March 2000 an agreement of cooperation was signed between Poder Ciudadano and the municipality of Morón, to implement the Program for Transparent Contracting in the procurement of municipal waste collection services.

The mayor launched the process by convening a public hearing in the form of a special session of the city council in Morón. Posters and local media were used to draw public attention to the hearing, and several independent experts from the local area were invited to participate. Before the hearing, draft bid documents for the procurement of the municipal waste collection services were made available on the website of the municipality and printed copies were available from Poder Ciudadano.

The aim of the hearing itself was to publicly discuss the draft bidding documents with potential bidders and others. Almost 500 people attended and more than 60 comments were submitted on the draft bidding documents. During the hearing, it was agreed that the bid documents lacked some important specifications, including objective criteria for deciding on the quality of the services and the prerequisites for participation in the bidding process. The bid documents were subsequently revised to address these concerns. The final revised documents were published ten days after the public hearing. The municipality also published the reasons for accepting or rejecting the changes proposed by experts and the general public.

Later in the procurement process, the municipality of Morón and all four pre-qualified bidders signed an Integrity Pact. Poder Ciudadano was given the opportunity to monitor the selection of the successful bidder. The municipality also published its reasons for choosing that specific supplier.



Read more about Integrity Pacts in **Chapter 18**.

Strengths and Results of the Program for Transparent Contracting in Morón

The implementation of this program with reference to waste collection services brought significant saving to the municipality, as the cost of the contract was much lower than had previously been the case. Another positive outcome of public participation in the procurement process was that transparency increased and service delivery improved.

Again, strong political will on the side of the municipality played a key role in the success of the program – the new mayor was willing and eager to cooperate. The fact that the public hearing was held early in the bidding process ensured that the public could influence the actual content of the bidding documents. This, in turn, added to people's enthusiasm to take part in the process. The size of the contract and the importance of the service also ensured a high level of interest from both contractors and the wider public.

The Program for Transparent Contracting has subsequently been implemented in other municipalities in Argentina, although the public hearing component is not always included.

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: Steets (2001); The World Bank (2009b).

CHAPTER 17

The Social Witness Program in Mexico

The Social Witness Program was first introduced in 2000 as an initiative of Transparencia Mexicana, the Mexican chapter of Transparency International. The aim of the program was to involve members of the public as independent observers in public procurement. It was initially voluntary, with professionals such as architects and engineers trained to act as “social witnesses” of public procurement. As such, the Social Witness Program does not necessarily engage civil society as monitors of public procurement; oversight is exercised by individuals with specific expertise. The program formed part of the implementation of various Integrity Pacts in Mexico, and is included here as an example of independent monitoring that may be of interest to South African civil society.

About Transparencia Mexicana

Transparencia Mexicana was established in 1999 to combat corruption, promote a strong civil society, and foster respect for the rule of law. It conducts research and works through alliances and networks to foster a culture of integrity, active citizenship, and accountability in Mexico.

WHICH PARTS OF THE PROCUREMENT PROCESS ARE UNDER SCRUTINY?

- **Bid specification**
- **Bid invitation**
- **Bid submission**
- **Bid evaluation**
- **Awarding of contract**

Institutionalization of the Program

The program was integrated into government policy in 2004. The Mexican federal government required social witnesses to oversee the public procurement of goods, services, and works above a certain value. The Ministry of Public Administration issued guidelines for the participation of social witnesses in public procurement, and created a registry of individuals and CSOs that could participate in the various stages of the procurement process. Social witnesses are usually respected, independent, and technical experts, although they may require training on the procurement process and how to prevent and detect collusion and irregularities.

In 2009 the Mexican Congress approved a number of legal reforms in an effort to streamline the procurement process and make it more efficient. The participation of social witnesses became mandatory in all major federal procurements above a certain value, as well as for proposed procurements that could be seen to have considerable impact. For the executive branch of the federal government, the program is publicly funded. The amount paid to social witnesses is intended to cover their expenses as well as an hourly wage, determined on a case-by-case basis.

Duties of Social Witnesses

A social witness should have no conflict of interest in the procurement being monitored. Their task is to observe the tender process from bid specification through to the award of the tender. The government is obliged to give social witnesses full access to all the information they need to perform their duties (*see below*). All bid documents are meant to be available for free on Compranet, the Mexican e-procurement portal.

The duties of social witnesses are to:

- Review the bid specifications and other bid documents, including the invitation to bid.
- Participate in all meetings with potential and actual bidders.
- Observe the presentation of bids and the session when the award decision is announced.
- Prepare a final report of all their observations. Where relevant, this should include recommendations on how to improve the integrity of the procurement process. This report is made publicly available on Compranet and added to the file of the tender.
- Communicate through the media about positive and negative developments of the process.
- Alert the relevant authorities if they observe any irregularities in the procurement process.

Results of the Social Witness Program

No comprehensive study has yet been conducted of the Social Witness Program, but research so far suggests that it has had a positive impact on procurements. Specifically, the program has contributed to reductions in the costs of procured goods and services, and increased the number of bidders that participate in public procurement in Mexico. The level of transparency and accountability in public procurement has also increased.

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: De Simone & Shah (2012); OECD (2015); Open Contracting (Undated); Transparency International USA (2011); Transparency International USA (2012); Transparency International USA (2014).

CHAPTER 18

The Integrity Pacts of Transparency International

The Integrity Pact was developed by Transparency International in the 1990s as a tool to address corruption in public procurement. An Integrity Pact is a written agreement between the government agency or department responsible for the procurement and all the bidders for the contract. As part of the Integrity Pact, the government and the bidders agree not to offer or accept bribes. The bidders also agree not to collude to win the contract. Sanctions apply if any of the parties break the agreement. These could include losing the contract, liability for damages, exclusion from bidding for any future contracts, and criminal or disciplinary action against the employees of the government.

About Transparency International

Transparency International is a global movement against corruption. First established in 1993, it has an international secretariat and works through a network of organizations in more than 100 countries. Its main aim is to tackle corruption in all its forms and to promote transparency in elections, public administration, and business.

WHICH PARTS OF THE PROCUREMENT PROCESS ARE UNDER SCRUTINY?

- **Bid specification**
- **Invitation to Bid**
- **Bid submission**
- **Bid evaluation**
- **Awarding of contract**
- **Contract implementation**

Civil Society Participation in Integrity Pacts

An important component of an Integrity Pact is that it allows independent observers to monitor the bidding process. In most cases this is undertaken by members of CSOs or experts appointed by the local Transparency International chapter or its partners. Monitors should have professional expertise in the area of the contract and not have any prior relationship with the government department or the bidders. Monitors are expected to verify that the Integrity Pact is implemented and that all parties fulfil their obligations. They report directly to Transparency International and its CSO partners.

Integrity Pact monitors are meant to have access to all the relevant government documents, meetings and officials, as well as all the documents submitted by the bidders. Their duties include reviewing the bid documents, evaluation reports, and the award decision. If they notice possible irregularities or risks of corruption, the monitors are expected to inform the relevant government department and suggest preventative or corrective measures. If these are not addressed by the government department in good time, the monitors have the right to inform the public as well as the country's public protector or equivalent. In such cases, the CSOs are allowed to withdraw from the pact and inform the public of their reasons for withdrawing.

Challenges and Advantages of Integrity Pacts

Where the Integrity Pact model has been implemented successfully, it can enhance public participation in oversight, increase the variety of bidders in tender processes, and lead to better services and cost savings.



See for example how an Integrity Pact was used in combination with a public hearing in the Morón municipality in Argentina, as outlined in **Chapter 16**.

However, there are several challenges associated with the use of Integrity Pacts. If government actors are not really committed to the process, the pact can be nothing more than lip service to transparency. CSOs need to monitor the pact very closely to make sure that all stakeholders are complying with it. Existing pacts can also be compromised when there is a change in government. It is therefore important to involve multiple government actors in the implementation of a pact to ensure stability.

In some cases CSOs may not have the expertise to monitor the technical aspects of the procurement process, and it may be necessary to appoint international experts who may be unfamiliar with the local context. Access to all relevant information is critical for the monitoring process. As indicated above, the Integrity Pact should include a provision that allows the CSO monitors to withdraw if they are not given access to the required documentation in good time. Finally, it is important to include media partners in an Integrity Pact to ensure enough coverage of efforts to curb corruption.

According to Transparency International, the Integrity Pact has been applied in hundreds of procurement contracts in more than 15 countries. Several examples are documented on the organization's website (*see the sources listed below*).

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: Ramkumar (2008); Transparency International (Undated).



See also www.transparency.org/whatwedo/tools/integrity_pacts/4/

SECTION IV:



**How Civil Society can monitor Public
Procurement in South Africa**

What CSOs can do

This section of the Guide provides ideas and suggestions for keeping oversight over public procurement processes in South Africa. Working within the existing legal framework, each chapter in this section considers what CSOs can do to monitor the various phases of procurement. The purpose of this section is to:

- Clarify the current scope for monitoring public procurement in South Africa.
- Give practical guidelines on how to go about monitoring each phase in the process.
- Suggest some questions that CSO monitors can ask during each phase. These may help to flag problems and irregularities in the procurement process.
- Highlight which documents are relevant for monitoring each phase, and whether they should be available in the public domain.
- Discuss the challenges that curtail procurement monitoring at present, including inadequate access to information and limited opportunities for public participation.

Sources: This section draws particularly from the Procurement Monitoring Guide of Transparency International USA (2012).

Civil society monitoring of public procurement can be divided into two broad approaches, according to the guide from Transparency International USA (2012):

- **First**, CSOs can observe the results of a procurement to make sure that the goods or services are delivered as agreed in the contract.
- **Second**, CSOs can track the whole procurement process from planning to implementation, to assess whether any irregularities took place along the way, and whether the goods or services are being delivered as per the initial specifications.

The guidelines presented in this section combine elements from both approaches. The second approach requires much greater public access to procurement information. The current lack of transparency in public procurement in South Africa severely limits the extent to which CSOs can monitor certain phases of the procurement process. Where information is currently not publicly available, or processes are closed to the public, this section still presents the relevant red flags as an indication of the questions CSOs could ask, if the right information was available, or was accessed through informal channels.

CHAPTER 19

Monitoring Procurement Planning and the Bid Specification Phase

During the procurement planning phase, government departments or institutions decide which goods and services are needed to deliver public services and maintain the functions of government. This phase should include a needs assessment to determine exactly which goods or services they need to procure to meet current and future needs. The government also decides which procurement method will be used (for example, competitive bidding) during the procurement planning phase.



For more information about procurement planning, see **Chapter 5**. To learn more about different methods of procurement, see **Chapter 2**.

19.1 PARTICIPATION AND ACCESS TO INFORMATION DURING PROCUREMENT PLANNING

There is currently no space for public participation in this phase of the procurement process at any of the three levels of government. Government departments do not publish the results of their needs assessments or any market or commodity analysis they undertook to inform their procurement decisions. All national and provincial procurements above R500 000, and municipal procurements above R200 000, must be included in a department's procurement plan and submitted to the treasury that oversees their finances. These plans should contain a certain minimum level of information, including a description of the goods and services, their estimated value, and the envisaged date for advertising the invitation to bid. However, these procurement plans are not made available to the public.

Bid Opportunities Published on the eTender Publication Portal

In 2015 the eTender Publication Portal began publishing tender and bid opportunities online for a selection of public entities and national departments.

These indicate:

- the name of the department or institution;
- the contact name and details of an official in the institution;
- a description of the goods, services, or works to be procured;
- the envisaged date for advertising the tender;
- the envisaged closing date for submitting bids; and
- the envisaged date for awarding the tender.

If a CSO is planning to monitor procurement in a specific institution or department, or aims to track the procurement of specific goods or services, the portal provides an indication of when associated tenders will be advertised. Those interested in monitoring can then start scanning the Tender Bulletin, or other relevant websites, around the given dates in order to find tender advertisements.

The usefulness of the information varies. In some instances, the bid opportunities fail to give the full date of when the submission of bids will be closed, and when the tender is to be awarded, providing just the month and not the day (e.g. April 2015). Sometimes the description of the goods or services is very vague (e.g. "cleaning services"), making it difficult for a CSO to evaluate whether the procurement is appropriate and reasonable. The National Treasury has indicated that the bid opportunities for all government other departments and entities will be added over time. The aim is to have all opportunities at all three levels of government available on the portal by March 2016.



Questions and Warning Signs in Procurement Plans

The fact that CSOs and the public are not able to participate in the needs assessment that underpins procurement planning is a red flag in itself, particularly when public procurement relates to service delivery. If given the opportunity to participate in procurement needs assessments, CSOs and the public can help to ensure that the conditions and requirements of the community are taken into account. Without public participation, needs assessments run the risk of failing to accurately capture the needs of a specific community, resulting in tenders that fail to deliver what is needed.

If CSOs were able to gain access to a department or institution's procurement plan, it would be useful to ask the following questions:

- Are the items to be procured consistent with the needs identified in the needs assessment?
- Does the procurement plan clearly identify the goods or services to be procured?
- Have any unnecessary items been included in the procurement plan?
- Is the timing of the planned procurement reasonable to ensure that the goods or services will be delivered when and as often as they are needed?
- Is the procurement method appropriate? For example, is sole source bidding being proposed when competitive bidding is really required?



To find out more about the different methods that government departments can use to procure goods or services, see **Chapter 2**.

- In the case of an infrastructure project, is the planned project unnecessary or too big? If government intends to build a new hospital in a certain area, for example, is there a need for a new hospital, or such a big hospital?
- Would repairs or upgrades to infrastructure have been more appropriate than new infrastructure? For example, if a school building is structurally sound, would building additional classrooms, or maintenance to existing classrooms, have been more appropriate than building a new school?



Examples of CSO Monitoring of Procurement Planning

The Medicine Monitoring Project in the Philippines offers an example of limited participation in procurement planning. Monitors from the NAMFREL network verified whether the medicines in the procurement plans of specific hospitals and health centers were those prescribed by the Philippine National Drug Formulary. The Monitoring of School Building Projects (Bayanihang Eskwela) also included some monitoring of the planning phase. Community monitors recorded the needs and conditions at each school and this information was then used to verify whether the school building projects addressed these needs.




See **Chapters 14** and **15** to learn more about these initiatives.

19.2 PARTICIPATION AND ACCESS TO INFORMATION DURING THE BID SPECIFICATION PHASE

During the bid specification phase of the procurement process, government departments decide on the exact scope of the goods or services they plan to procure. This includes identifying the quantity and nature of the items or services, including technical requirements. This phase also sets out how the bids will be evaluated. The Bid Specification Committee approves and finalizes the specifications, evaluation criteria, and all the tender documents. Committee meetings are not open to the public, the minutes of the meetings are not published, nor are they otherwise made available to the public.

It is therefore not currently possible for CSOs in South Africa to participate in, or observe, bid specification processes. However, most tender documents, which include the bid specifications, are publicly available. This gives CSOs an opportunity to interrogate the bid specifications when they analyze the rest of the tender documents – even if this only becomes possible after specifications have been finalized.

 See **Chapter 20** for more information on monitoring bid documents, including bid specifications.

Formal requests for procurement information

CSOs do have the option of using the *Promotion of Access to Information Act* (2 of 2000) to make a formal request for the information that they need to monitor procurement. This is not specific to the bid specification phase. Requests can be made for documents generated throughout the procurement process, including planning documents, bid documents, minutes and reports from bid committee meetings, as well as contracts. A **guide** from the South African Human Rights Commission provides instructions on how to request information under the Act, as well as what to do when a request for information is denied.



See the link to the guide in the list of **useful websites** on **pages 206** and **207**.



Examples of CSO Monitoring of the Bid Specification Phase

There are not many international examples of civil society initiatives that extend to monitoring bid specification. None of the countries discussed in Section III have permanent institutional mechanisms that allow CSOs to routinely observe bid specification meetings, or participate in the finalization of specifications. It is usually only after the bid documents have been published that CSOs have a chance to scrutinize the corresponding bid specifications.

The international case studies reveal two exceptions. As a part of the Social Witness program in Mexico, an independent monitor has to review the bid specifications before the invitation to bid can be published. This process does not, however, allow for review specifically by CSOs. The Program for Transparent Contracting in Argentina provides the best example of public participation in the bid specification process. Under this program, a public hearing is arranged once draft specifications have been drawn up, where all interested parties have the opportunity to discuss the document and propose changes. The bid specifications are then revised based on the proposals made during the hearing.



See **Chapter 16** for more information on the Program for Transparent Contracting in Argentina and **Chapter 17** for more information on Mexico's Social Witness program.

CHAPTER 20

Monitoring Invitations to Bid and Bid Documents


This chapter focuses on the phase in the procurement process when an invitation to bid is advertised in the media and/or in the Government Tender Bulletin and posted on the relevant institution's website. During this phase, the procuring department also makes the bid documents available. The bid documents include the bid specifications, as well as any special conditions attached to the contract that will be awarded. They give a detailed description of the total scope of the goods, services, or works to be provided.

The bid documents give monitors an opportunity to assess whether the requested goods and services, as specified, are appropriate for service delivery to the relevant beneficiaries.

This chapter considers five areas that could be monitored during this phase of the procurement process, including:

- the tender advertisement;
- the accessibility of bid documents;
- the bid specifications contained in the documents;
- the comprehensiveness of the invitation to bid and bid documents; and
- the pre-bid briefing session (if one is held).


20.1 TRACKING TENDER ADVERTISEMENTS

 All national and provincial tenders in South Africa are currently advertised in the Government Tender Bulletin. The bulletin is published every Friday and is available on a number of [websites](#). Some of these tenders are also advertised on the National Treasury's [eTender Publication Portal](#). The National Treasury has indicated that by the end of March 2016, all national, provincial, and municipal public sector tenders will be advertised on the eTender Publication Portal. At present, municipal tenders are advertised on the relevant municipality's website and in the local media.


WHAT A TENDER ADVERTISEMENT SHOULD CONTAIN

At a minimum, a tender advertisement should include:

- the name of the department or institution requesting the tender;
- the bid number;
- a description of the goods and/or services to be procured;
- in the case of construction tenders, the relevant CIDB grade;

 To find out more about procurement regulations for the construction industry, including CIDB grades, see **sub-section 3.3** in **Chapter 3**.

- the closing time and date for the submission of bids;
- how and where to obtain the full set of bid documentation, as well as the cost involved;
- information about any pre-bid briefing session, if one is to be held, and whether attendance is compulsory;
- information about the evaluation criteria that will apply, specifically which preference point system will be used, and whether the bids will also be evaluated on functionality;

 **Sub-section 6.4** in **Chapter 6** offers an overview of what it means for a bid to be evaluated in terms of functionality.

- details of the relevant contact persons in the procuring department (for general queries and for technical queries).



Questions and Warning Signs in a Tender Advertisement

The tender advertisement provides CSOs with the first set of published information about an envisaged procurement process.

The following questions offer a good starting point for scrutinizing the advertisement:

- Does the tender advertisement contain the minimum amount of information as set out in the box opposite?
- If potential bidders have queries, is it clear who they can contact? Lack of contact information will make it hard for potential suppliers to ask questions of clarification, and might be an indication that the procuring department has already identified a preferred supplier and is trying to discourage competition.
- Is the description of the goods or services so vague that potential bidders would find it hard to know whether the bid is relevant to them?
- Is the description of the goods or services so narrow that it might exclude potentially qualified bidders? Both vague and narrow descriptions might be an indication that the relevant government department has already identified a preferred supplier and is trying to discourage other suppliers from submitting bids.
- Is there sufficient time between the publication of the advertisement and the deadline for the submission of bids?

This should be a minimum of:

- 30 days for national and provincial tenders;
- 14 days for municipal tenders valued at less than R10 million; and
- 30 days for municipal tenders of more than R10 million or long-term contracts.

20.2 ACCESS TO BID DOCUMENTS

It is not always easy or affordable to obtain bid documents. Different departments and institutions across all three spheres of government have different approaches. In some cases the full set of tender documents can simply be downloaded from the website of the relevant department or institution. In other cases, while no fee is charged for the documents, they must be collected from the offices of the procuring department. Some departments have the documents available for download on their websites but charge a fee when a hard copy is collected from their offices.

Payment options also vary. Some departments only accept cash, while others only accept direct payments into designated bank accounts. Some departments accept cash, cheque, or bank payments. In some instances, the process is even more cumbersome – for example a fee must be paid at one office and then proof of payment shown at another office in order to collect the documents.



Questions CSOs can ask about the Accessibility of Bid Documents

- Are the costs associated with obtaining bid documents unreasonably high? While the National Treasury does not provide set prices, it has instructed that the fee charged for bid documents should cover the cost of the printing and delivery of documents [if necessary].
- Are bid documents only sold in places that are hard to reach or inaccessible to the public?
- Are the bid documents meant to be accessed via websites that do not work or are under maintenance?
- Does the supply of bid documents run out?
- Do bid specifications remain available after the tender has been closed? This would be very helpful in order to monitor the eventual delivery of the relevant good or service.

20.3 MONITORING THE BID SPECIFICATIONS THAT APPEAR IN THE BID DOCUMENTS

Typically CSOs do not have the opportunity to monitor a procuring department while it is busy determining the specifications for a bid (*see sub-section 19.2 for more information*). However, once the bid documents have been released, it is possible to study the specifications and identify any areas of confusion or concern from a civil society perspective. If the bid specifications are not correctly and clearly articulated, the bids received in response may end up not matching the actual goods or services that are needed. It could also lead to the submission of bids that do not include all the information required.



Examples of CSOs Monitoring the Invitation to Bid

Internationally, most of the civil society initiatives to monitor procurement include observation of this phase. In the majority of cases, the emphasis during this phase falls on monitoring whether the tender processes and documents comply with the relevant procurement legislation and regulations. For example, Procurement Watch Inc. in the Philippines uses its public bidding checklist and observer's diagnostic report to monitor this phase of the procurement process [amongst others]. An important question for CSOs to ask when monitoring this phase is whether the bid documents are publicly available.



Questions and Warning Signs in the Bid Specifications

The following questions can be used to guide civil society monitoring of bid specifications:

- Are the specifications written in such a way that all potential bidders have an equal and fair chance to submit a bid for the goods or services? Is one potential bidder being favored? For example, if the specifications are not generic enough and look as if they describe a specific product or service provided by a single supplier.



Chapter 6 provides a detailed overview of bid specifications, the various considerations they are meant to include and address, and how they are drafted.

- If a brand name is mentioned in the specifications, have the words “or equivalent” been added? For example, if the tender is for the procurement of vehicles and a specific name of a brand and model is mentioned to illustrate the specifications more clearly, the words “or equivalent” should be added to clarify that the tender is not restricted to the stated brand.
- Do the specifications look as if they have been copied and pasted from the description of a certain product or service, for example from a brochure? This again may suggest that the specifications have been written to give one supplier the advantage in winning the contract.
- Are the specifications too vague? If so, potential bidders might decide not to submit bids out of concern that their goods or services will not qualify. This can again favor a supplier with inside knowledge about what the procuring department is actually looking for.
- Do the bid specifications call for too many of the same goods or services, or for unnecessary goods and services, given the function they are meant to fulfil?
- Do the documents indicate which preference point system will be used when evaluating the bids?



Sub-section 6.3 in **Chapter 6** explains South Africa’s preferential procurement policy, the two preference point systems, and how points are calculated.

- If a prescribed percentage of the goods or services is required to have local content, has this been clearly specified?



See **sub-section 6.6** in **Chapter 6** for an overview of procurement regulations about the local content of goods or services.

- Do the bid documents specify whether the bids will be evaluated on functionality, for example on quality, and on the experience and reliability of the supplier? Do they set out the evaluation criteria clearly, how the criteria are weighted, and the minimum qualifying score?



See **sub-section 6.4** in **Chapter 6** to find out more about what it means for a bid to be evaluated in terms of functionality.

20.4 MONITORING THE COMPREHENSIVENESS OF BID DOCUMENTS

As discussed in Section II of the Guide, the majority of the documents listed in the box below are standard templates issued by the National Treasury. Some of the documents, especially the invitation to bid, the instructions to bidders, the bid specifications, and the Special Conditions of Contract, should provide potential bidders with all the details they need to assess and respond to the procurement opportunity. The documents should also clarify all the conditions and requirements attached to submitting a bid.

What should be included in the Bid Documents?

The National Treasury prescribes that, at a minimum, the bid documents should include:

- the invitation to bid;
- bid instructions, conditions, and specifications;
- the general conditions of the contract to be awarded;
- the special conditions of the contract to be awarded;
- the relevant tax clearance certificate requirements;
- the pricing schedule that will apply;
- a declaration of interest;
- the National Industrial Participation program document (for national and provincial tenders);
- a declaration of procurement above R10 million (for municipal tenders);
- the preference point claim form citing the preferential procurement regulations;
- a declaration certificate for local production and content (if applicable);
- a declaration of the bidders' previous supply chain management practices; and
- a certificate of independent bid determination.



See **Chapter 7** for a detailed overview of all the documents above. For examples of the corresponding government templates, see the **appendices** at the end of the Guide.



Questions to consider when Monitoring the Invitation to Bid and Bid Instructions

Chapter 8 sets out what information is meant to be included in an invitation to bid.

To monitor whether the invitation to bid and bid instructions are clear and comprehensive, consider the following questions:

- Do the documents clearly indicate the closing date and time for the submission of bids?
- Do the documents give the addresses to which the bids have to be posted or delivered?
- Do the documents indicate which days of the week and times of day the bid box is open for the hand delivery of bids?



See **Chapter 9** for more information about the requirements for the submission and opening of bids.

- Do the documents state clearly that bids submitted after the closing time and date will not be taken into account?
- Do the documents indicate whether official forms should be used in the bid submissions, and whether the bids are to be submitted in sealed envelopes?
- Do the documents set out all the other requirements that bidders have to meet, for example, the number of bid proposals to be submitted?
- Does the invitation to bid clearly request certain basic contact and company information from bidders? Does it clarify that failure to supply this information may result in the bid being disqualified?

20.5 MONITORING PRE-BID BRIEFING SESSIONS

The invitation to bid or bid instructions will indicate if a pre-bid briefing session is to be held and whether attendance is compulsory or not. Not all tender processes include a briefing session. If one is to take place, the bid instructions should indicate the date, time, and venue of this meeting. If the meeting is compulsory, this should be made clear in the bid documents. An attendance register is usually signed by all prospective bidders attending the meeting. If the briefing meeting is compulsory, suppliers who did not attend the meeting, or who did not sign the register, should be disqualified from the tender.

Pre-bid briefing sessions are open to the public and any interested party should be able to attend. No rules or regulations stipulate who can or cannot ask questions at these meetings, which suggests that a CSO observer should be able to pose questions. If the meeting is not compulsory, the information shared during the meeting should be made available to all potential bidders, whether they attended the meeting or not.



See **sub-section 13.2 in Chapter 13** to learn more about the public bidding checklist and observer's diagnostic report developed by PWI in the Philippines.

CHAPTER 21

Monitoring the Opening, Evaluation and Adjudication of Bids

This chapter is divided into two parts. Firstly, it considers the submission and opening of the bids, and secondly, it takes a closer look at options for monitoring bid evaluation and adjudication.

21.1 THE SUBMISSION AND OPENING OF BIDS

A good starting point for monitoring the submission and opening of bids is to review the instructions provided in the bid documents. Most invitations to bid specify that only hand-delivered and/or posted bids will be accepted, and in some cases only hand-delivered bids are allowed. No bids may be accepted after the closing date and time indicated in the bid documents. Therefore, only the bids that are in the bid box at the closing time should be considered.


As per the National Treasury guidelines (2004a), the opening of the bids usually takes place directly or shortly after the deadline for the submission of bids. All the bids that were submitted should be opened at the time and the place indicated in the bid documents.

Opportunities for Civil Society Monitoring


In terms of procurement guidelines and regulations issued by the National Treasury (2004a; 2005a) all bids must be opened in public. This means that members of CSOs should be able to act as observers. In this way, it is possible for CSOs to monitor whether the bids are opened at the place and time specified in the bid documents.

CSOs can also monitor certain information related to the submissions by attending the opening of the bids. According to National Treasury guidelines and regulations (2004a, 2005b), any member of the public (and any of the bidders) can request the names of all the bidders, and the amount of each bid, to be read aloud (if it is practical to do so) during the opening of the bids. There should be a register of all the bids received which includes the names of all the bidders, a description of the bid, the bid number, as well as the closing date and time of the bid. It should also reflect the

B-BBEE status of each bidder, and, where applicable, the total bid price and percentage of local content of each submission. This register must be made available to any member of the public that asks to see it.


 See **sub-section 9.1** in **Chapter 9** for an overview of the requirements for the opening of the bids.

Importantly, the procuring department or institution must publish the information contained in the register on its website within ten days after the closure of the bid. Therefore, after the opening of the bids in any procurement process, CSOs should have access to the names of all the bidders, their B-BBEE status, local content, and sometimes their total bid prices. CSOs can also verify whether the names of all the bidders read out at the opening of the bids have been published on the website of the department or institution.

 To find out where the information from the bid register should be published, and which details should be made public, see **sub-section 9.2** in **Chapter 9**.

21.2 BID EVALUATION AND BID ADJUDICATION

After the bids have been opened, the next step is for them to be assessed and compared by a bid evaluation committee. This evaluation process should be strictly guided by the evaluation criteria set out in the bid specifications. In South Africa the meetings of bid evaluation committees are not open to the public and minutes of the meetings are not made available publicly.

 To find out more about the composition of bid evaluation committees, refer to **sub-section 10.1** in **Chapter 10**.

When the bid evaluation committee has evaluated all the bids, it submits a report with its recommendations to the bid adjudication committee. The adjudication committee will then consider the recommendations and either make a final award or make a recommendation regarding the award to the head of the procuring department. The report of the bid evaluation committee is not made public. Likewise, the bid adjudication committee meetings are generally not open to the public and the notices and minutes of their meetings are not made available publicly.

 Learn more about the duties of bid evaluation committees and bid adjudication committees in **Chapter 10**.




Examples of CSOs Monitoring the Opening and Evaluation of Bids

Most of the procurement monitoring initiatives discussed in Section III include observation of the opening of tenders. In most instances they focus on verifying whether all the procedures and documents are compliant with procurement legislation and regulations. In all the examples, bids are evaluated by a single committee and this phase is also monitored by civil society. Procurement law in the Philippines prescribes CSO monitoring of the evaluation of bids. Integrity Pacts also typically include a provision for CSO monitoring of the evaluation phase. In Mexico's Social Witness Program, an independent monitor sits in on the evaluation and adjudication of bids and has access to all relevant reports



Questions and Warning Signs during Bid Evaluation and Adjudication

If it were possible for civil society monitors in South Africa to attend and observe the meetings of bid evaluation and bid adjudication committees, the following questions could guide their oversight:

- Do any members of either committee have conflicts of interest in the award of the tender? Specifically, has frequent contact been observed between any of the potential bidders and any of the committee members?
 - Do the members of the committees all have the skills needed to perform their duties?
 - In evaluating the bids, has the committee adhered strictly to the evaluation criteria that were specified in the bid documents?
 - Have the evaluation criteria been correctly and fairly applied?
 - Did any bidder influence or attempt to influence the evaluation process?
 - Were any bidders disqualified without proper justification?
 - Are any of the bidders listed on the National Treasury's database of restricted suppliers or on the register of tender defaulters?
-  Find the **website** address for the **database of restricted suppliers** on **page 207**.
- Do the same bidders repeatedly win contracts from government departments in the same region or sector?
 - Is the contract price higher than the industry average?

Open Bid Adjudication Meetings in South Africa


Bid adjudication meetings of the City of Cape Town are open to the public. The meetings take place on the same day and time each week. However, no agenda is publically available in advance, making it difficult for CSO monitors to predict when a specific tender will be discussed. Members of the public may observe the proceedings but are not allowed to participate or ask questions.

In Gauteng Province, efforts are reportedly underway to improve transparency in the provincial government's tender processes. As part of a pilot project in 2015, a few bid adjudication committee meetings were opened to the public. According to reports, committee members explained the evaluation and scoring process to the public before endorsing the recommended bidder. It is unclear if and when this approach will be extended to all adjudication meetings in the province. Yet even when meetings are open, CSO monitors will not be able to engage substantively with the adjudication process until they have access to the relevant bid evaluation reports.

CHAPTER 22

Monitoring the Awarding and Implementation of Contracts

Before a procurement contract can be awarded, the successful bidder must be cleared of any possible restrictions due to their previous business conduct. This means making sure that the bidder and/or any stakeholders involved in the company are not registered on the database of restricted suppliers or the register of tender defaulters. It must also be verified that the successful bidder has the necessary facilities, capacity and resources to deliver the goods or services as required by the contract.

 Find out more about the requirements for implementing procurement contracts in **Chapter 12**.

22.1 ACCESS TO INFORMATION ABOUT THE AWARD OF CONTRACT

Once the successful bidder has been cleared, a contract or SLA (if applicable) is signed between the bidder and the procuring department. The standard form for the contract is relatively simple.

It includes:

- a description of the goods or services;
- an undertaking by the successful bidder to provide these goods or services; and
- an undertaking by the procuring department to make payments according to the terms and conditions of the contract.

The contract form states clearly that all the original bidding documents are part of the contract. This means that the original bid specifications, as well as the General and Specific Conditions of Contract, form part of the contract.

 See an example of a standard contract form in **Appendix 14**.

The National Treasury Regulations allow for “negotiations” with a preferred bidder, but such negotiations should not give that bidder an “unfair advantage or be to the detriment of the other bidders.” No record is published of such negotiations, or the extent to which they may have changed the initial specifications.

When the contract has been awarded, information about the successful bidder has to be published in the Government Tender Bulletin, in any other media where the tender was advertised, and on the website of the institution responsible for the procurement. In practice, this information is not always published in full or timeously by all government departments and institutions.

WHAT INFORMATION ABOUT BID AWARDS SHOULD BE PUBLISHED?

When successful national and provincial tenders are published in the Government Tender Bulletin, the information should include:

- the tender number;
- a description of the goods, services, or works that have been procured;
- the name of the successful bidder and value of contract;
- the B-BBEE status of the successful bidder; and
- the total number of points awarded to the successful bidder.



Questions and Warning Signs about the Award of Contract

If a CSO is able to access the relevant information during this phase of the procurement process, it may be useful to consider the following questions:

- Was all the required information about the successful bidder published in the Government Tender Bulletin, the relevant media, and on the website of the procuring department?
- Was there an unreasonable delay between the opening of the bids and the award of the bid?
- Is the amount of the contract much higher than cost estimates or industry averages?
- Is the same supplier repeatedly awarded contracts in the same sector or by the same department? If so, and if the successful bidder is not the only possible supplier, is there a reasonable way to justify their repeated success?
- Has a given department or institution awarded numerous contracts above the thresholds of R500 000 (national and provincial) and R200 000 (municipal) without a competitive bidding process?
- Is the CSO aware of a bidder protesting the outcome of the procurement process, and how did the procuring institution or department address the bidder’s objections?



See **Chapter 11** for a more detailed overview of the requirements that should be met during the award of contract.

22.2 ACCESS TO INFORMATION ABOUT CONTRACT IMPLEMENTATION

The implementation of the contract is the final phase in the procurement process. It should result in the actual delivery of all the goods or services according to all the conditions and specifications in the contract.

Procurement contracts between government departments and external suppliers are not published in South Africa. However, because CSOs have access to the bid specifications and other bid documents, these still provide a record of the specific goods or services that are meant to be delivered or performed. While the bid documents offer a foundation for monitoring contract implementation, they do not include the specific dates when delivery should take place. However, if services have to be delivered on specific days of the week or month this would have been stipulated in the bid specifications. The bid invitation often includes an indicative start and end date, or an indication of the time frame of the contract. Some government departments and institutions do publish the start and ending dates of contracts on their websites.

The Window for Collecting Bid Documents

Civil society monitors that plan to oversee a specific tender process should make sure they obtain the corresponding bid documents while they are still in the public domain. These documents provide much of the detail needed to inform monitoring efforts. Bid documents are generally no longer available after the closing date of the tender.

Publication of Transversal Contracts

While most public procurement contracts are not publicly available, transversal contracts are published on the website of the National Treasury. These are contracts for goods and services used in large quantities by multiple national, provincial, and municipal departments or institutions that have been awarded by the National Treasury after a competitive bidding process.

During the contract implementation phase, the procuring department should also be paying invoices from the supplier as stipulated in the contract. The head of the procuring department is responsible for the management and administration of the contract. Specifically, the department carries the ongoing duty to monitor the performance of the supplier to ensure that the procured goods or services are delivered in line with the contract – particularly with regard to the agreed quality, quantity, and delivery dates.



Learn more about the requirements to be met during the contract implementation phase in **Chapter 12**.

The bid specifications and Special Conditions of Contract should state which documents or reports the supplier is meant to submit with their invoices for payment. These might include inspection certificates, proof of delivery, and/or labour reports. If the transportation of goods or workers is a critical part of the contract, vehicle tracking reports may be required. None of the bid documents reviewed for this Guide indicate whether or how the relevant department will physically inspect the delivery of a service.

Government departments do not make public any of the reports they receive from suppliers during contract implementation. They also don't publish their own contract implementation or monitoring reports. There are therefore no official reports available in the public domain for CSOs to monitor the implementation of a specific contract.

CSOs in different contexts have used different strategies to circumvent poor access to specifications, contracts, and contract implementation information. Monitors can still observe and inspect service delivery sites and facilities, and record (for example by taking photographs) the details of projects that are clearly incomplete or defective. This approach excludes any monitoring of the procurement planning, bidding, and evaluation phases. However, it does allow monitors to track whether goods or services of the right quality have reached the intended beneficiaries in the right quantity and at the right time.



Questions and Warning Signs during Contract Implementation

In the absence of official reports on the implementation of procurement contracts, CSOs can still monitor the delivery of the corresponding goods and services in a number of ways.

The following questions provide useful lines of enquiry:

- Have there been unreasonable delays in initiating the project or in delivering the procured goods or services?
- Has the supplier in any way failed to deliver the goods or services in the quantities specified in the bid documents?



See **Chapter 6** to learn more about the various kinds of specifications that may be included in bid documents.

- Has the supplier delivered goods or services of a substandard or inferior quality, or not according to the technical specifications?
- Are the procured goods or services being used in accordance with the bid specifications?
- Has the supplier failed to meet any deadlines (if these are available), or failed to complete a project by the contract end date?
- Is there any way to tell whether the procuring department has actively monitored the implementation of the contract? Have departmental officials, for example, visited relevant sites or areas where the corresponding services or projects are underway?
- Is there any way to tell whether the procuring department has verified the delivery of goods or services before making payments to the supplier?



Examples of CSO Monitoring of Contract Implementation

Many of the CSOs discussed in Section III focus the greatest part of their monitoring efforts on the contract implementation phase. They specifically monitor whether the contracted goods or services were delivered to the beneficiaries at the correct time, and whether the quality and quantity were in line with the specifications in the contract. CSOs sometimes work together with officials from procuring departments to monitor the delivery of goods or services. For example, in the Textbook Count project in the Philippines, the CSO G-Watch and the education department worked together to monitor contract implementation. This involved thousands of community monitors scrutinizing the production and distribution of textbooks to schools across the country.



Read more about the Textbook Count project in **Chapter 14**.

SECTION V:



**Improving the Scope to Monitor Public
Procurement in South Africa –
What Civil Society could Advocate**

What CSOs could advocate

Section III of this Guide presented some international examples of what can be achieved when CSOs are able to actively monitor public procurement. In South Africa, oversight of public procurement is currently curtailed by inadequate access to information and limited opportunities to participate in, or even observe, procurement procedures. The aim of this section is to:

- Highlight a number of policy and other changes that could strengthen oversight of public procurement in South Africa.
- Provide CSOs and other oversight actors with specific suggestions of what they could advocate to improve the current legislative framework governing public procurement.
- Identify ways in which civil society actors could advocate better access to procurement information.
- Consider a number of institutional arrangements that could be introduced in South Africa and which could provide a platform for more effective monitoring of public procurement.

Please note: For ease of reading, the sources used in this section are listed at the end of each chapter and cited in full in the reference list at the end of the Guide.

CHAPTER 23

Making the Monitoring of Public Procurement a Legal Requirement

The legal frameworks for public procurement in the Philippines and in Mexico call for external monitoring of the procurement process. According to the Government Procurement Reform Act in the Philippines, two observers must attend all the proceedings in all phases of the procurement process. One of these observers should be from a private sector organization and one from civil society. In Mexico, amendments to the procurement law in 2009 institutionalized the Social Witness Program. As a result, an independent technical expert must now oversee the federal government's procurement of all goods and services above a certain value.

23.1 THE GOVERNMENT PROCUREMENT REFORM ACT OF THE PHILIPPINES

The Government Procurement Reform Act was adopted in 2003, together with its Implementing Rules and Regulations, as the key piece of legislation to drive public procurement reform in the Philippines.

The civil society watchdog, Procurement Watch, was instrumental in the legal reform process. They identified political champions for the Act, provided them with technical assistance (both in the ruling party and the opposition), and participated in the technical working group that drafted the bill. They also worked to spread public awareness and understanding of the bill through a media and advocacy campaign.

The objective of the Act was, among other things, to improve transparency and accountability in the public procurement process. The Act provides for standard bidding documents and a generic procurement manual to make it easier for all parties to understand and participate in the procurement process.

An important aspect of the reform is the requirement that civil society representatives act as official observers in all committee meetings that evaluate and adjudicate public bids. The Act specifically requires that the bid and awards committee invite at least two observers to attend all proceedings at each stage of the procurement process. One of these observers should be from a recognized private company working in the sector that is relevant to the specific procurement being considered. This representative may be from a relevant chamber of commerce, engineering or construction company, or another business or professional organization. The other observer should be from a CSO or a non-governmental organization. Members of Procurement Watch have often been invited to act as the civil society observer. The observers should not have any direct or indirect interest in the tender being discussed.

The Act also prescribes that the observers have to be given access to all relevant documents, including the invitation to bid (or request for expression of interest), the bidding documents, any supplements to the documents, the bid bulletin, the notice of award, the approved contract, and the notice to the contractor to proceed.

The objective of these provisions is to allow outside observers to assess the procurement process independently. They are expected to verify whether the correct procedures were followed, whether the procurement process was in line with the rules and regulations of the Act, and that the contract was awarded on sound grounds.

After the award of the contract, the civil society observer has to submit a report to the head of the procuring department and to the Public Procurement Policy Board, either individually or together with the other observer. The report should give feedback about meetings attended and the corresponding procurement documents. It should also highlight any irregularities that might have occurred.

23.2 CONSIDERATIONS FOR LEGAL REFORM IN SOUTH AFRICA

A comprehensive new law that guarantees independent monitoring of the procurement process is not the only way to advance civil society oversight. Such a requirement would be beneficial, but even without it there are other legal provisions that could be used to improve CSO monitoring of the process. For example, if all the regulations, procedures, and guidelines that govern the public procurement process are well-defined and consistent it would be easier for CSO monitors to check for legal compliance during the various stages of the procurement process. Even more importantly, it would be much more feasible for CSOs in South Africa to monitor public procurement if the public was guaranteed access to some or all of the information produced during the different phases of

the procurement process. It is therefore not necessary to wait for a comprehensive legal reform process such as the one that took place in the Philippines. In the meantime, South African CSOs could consider advocating specific legislative provisions to be added to the existing legal framework.

Advocating Appropriate Reporting Mechanisms

When thinking about legal reforms that could enhance public procurement monitoring in South Africa, it would also be useful to consider mechanisms for CSO observers to raise issues of concern. These concerns might include irregularities in the procedures being followed, or they could be about the bid specifications themselves. The bid specifications provide the exact scope of the goods or services being procured, including technical specifications, the required quality and quantity, and delivery schedules (where applicable). The specifications also provide the criteria against which the bids will be evaluated. This is an opportunity for CSOs to evaluate whether the goods or services to be procured are adequately specified and appropriate to meet the needs for which they are intended.

In the Social Witness Program in Mexico, the independent monitors must alert the relevant authorities if they observe any irregularities in the procurement process. They also submit a report that is placed in the corresponding tender file and published on the country's e-procurement portal. In the Philippines, the CSO monitor submits a report to the procuring entity as well as the Public Procurement Policy Board.

Advocating Improved Access to Procurement Information

It would be a great deal easier for CSOs to monitor the procurement process if there was a legal requirement for the public to be given access to all relevant documents, from the procurement plan to the eventual contract. The next chapter takes a more detailed look at changes that could help to improve access to procurement information.

At the time of writing, the Office of the Chief Procurement Officer in South Africa is busy developing a unified framework for supply chain management. A new bill is being drafted to rationalize all the existing procurement legislation, regulations, guidelines, and instruction notes into a single law. CSOs would be able to comment on such a draft bill when it is published in the Government Gazette. The relevant parliamentary portfolio committee might organize public hearings on the bill and, if so, CSOs could make written or oral submissions. This would provide an ideal opportunity for CSOs to advocate provisions that would improve public access to procurement information (as well as other legal reforms).

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: Arugay (2012); De Simone & Shah (2012); Government of the Philippines, et.al. (2008); Jones (2010); National Treasury of South Africa (2015a); Pimentel (2005); The World Bank (2009).

CHAPTER 24

Improving Access to Procurement Information

The success of many of the international monitoring initiatives reviewed in Section III can be linked to access to information. CSO monitors were given access to the documents and information that they needed to exercise oversight over the procurement process.

24.1 ELECTRONIC PROCUREMENT PLATFORMS

Internationally, e-procurement platforms play an important role in providing access to procurement information. Most e-procurement platforms publish calls for tenders, the lists of bids submitted, and information on the successful bid. Other e-procurement platforms also include the bid specifications, the tender documents to be completed by prospective bidders, details of the actual bids received, as well as details of contracts awarded. On some sites, it is possible to access the minutes or records of all meetings, including those where bids were evaluated. In some countries, the whole procurement process is managed through the platform, with bidders submitting their bids online. Some e-procurement sites even extend to electronic financial transactions.

Online access to information makes it easier for CSOs, other members of the public, and suppliers to monitor the different stages of the procurement process. It provides a foundation for identifying irregularities during the procurement process. Having access to the bid specifications and contract information pertaining to a specific procurement allows CSOs to monitor the delivery of goods or services during the contract implementation phase. However, e-procurement systems differ from country to country, and vary in the extent to which they publish information that is useful for procurement monitoring.

EXAMPLES OF ONLINE PROCUREMENT PLATFORMS

Since the early 2000s, a number of Latin American countries have launched e-procurement platforms, including Chile, Mexico, Brazil, Panama, and Paraguay. Since then, evidence from these countries suggests that the pricing of procured goods and services has become more competitive. With the decline in personal interaction between suppliers and government officials, there may be fewer opportunities for corruption. There have also been reductions in what it costs governments to request bids, and what it costs suppliers to submit bids. The information on these sites is being used by both the public and specifically CSOs to monitor procurement in their countries. Both suppliers and government officials feel that the procurement process is perceived to be more transparent in their countries as a result of the e-procurement platforms.

The Philippine Government Electronic Procurement System (PhilGEPS) was introduced in 2007 to improve transparency and efficiency in the procurement process. PhilGEPS is a single centralized electronic portal used by all government agencies in the procurement of certain 'commonly-used' goods. Notices of bids for the procurement of these goods, bid documents, notices of bid amendments, and notices of bid awards are posted on PhilGEPS. It also provides access to regulations, notices, and award information for the procurement of other goods and services.

The existence of an e-procurement platform doesn't guarantee that CSOs will have access to all the information that they need to monitor procurement. For example, a government might limit access to some parts of the website to registered suppliers only. In the Philippines, this obstacle was overcome by giving CSOs special registration privileges, which allow them to access bid documents without having to register as suppliers.

It is also not compulsory in countries with e-platforms for all government departments to use the platform for their procurements. Some countries have multiple e-procurement portals, with different sites for different departments or levels of government. When faced with the challenge of monitoring numerous websites, national CSOs may have to partner with local or specialist CSOs to monitor procurement at different levels or in different sectors. CSOs may also consider developing relationships with government officials in particular departments who can alert them when invitations to bid are posted or advertised.

In South Africa, an eTender Procurement Portal has been established as a key initiative of OCPO in the National Treasury. The aim is to simplify, standardize, and automate the procurement process.

 See **Chapter 8** for more information about the eTender portal.

24.2 ADVOCATING BETTER ACCESS TO PROCUREMENT INFORMATION IN SOUTH AFRICA

In countries where there are Freedom of Information laws in place, CSOs can file official requests with the relevant institution to gain access to the documents that they need. Civil society monitors in some countries have also teamed up with the media to put pressure on government departments or institutions to make necessary information available to the public.



See the [guide](#) from the [SAHRC](#) for more information on how to make information requests in terms of the Promotion of Access to Information Act in South Africa.

In South Africa, the tender documents include all the relevant specifications for the goods or services being procured. However, accessing these documents can pose significant challenges. Some departments or institutions provide the full set of tender documents on their websites, where they can be downloaded free of charge. However, many departments or institutions only issue hard copies of the documents and may also charge a document fee.



See **Chapter 7** for an overview of the standard documents used in public procurements and **Chapter 20** for some ideas on how to monitor bid documents.

As a first step towards improving access to procurement information, it would therefore be useful to advocate free access to all bid documents for CSOs. These documents provide essential information on the exact nature of the goods or services to be procured. They also explain how the bids will be evaluated. They therefore represent a first building block in any civil society effort to monitor a specific tender.

Other Key Procurement Documents

Besides the bid documents, other important sources of information that CSOs could advocate rights of access to, include:

- procurement plans;
- minutes of bid specification committee meetings;
- minutes and reports of bid evaluation committee meetings;
- minutes and reports of bid adjudication committee meetings;
- the final procurement contracts;
- amendment notices; and
- progress and implementation reports on procurement contracts.

The OCPO has recognized the need to make procurement information more accessible to the public. In an effort to enhance transparency, a “public disclosure framework” is being developed, which will clarify what information all departments and institutions have to disclose. The OCPO has specifically promised that bid committee reports, minutes, and contracts will be made publicly available at some point in the future. This information is intended to be published on the e-Tender portal. Civil society monitors could therefore also look out for signs of progress in the development of the promised disclosure framework, and check whether new types of procurement information are appearing on the e-Tender platform as promised.

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: De Simone & Shah (2012); Fundar (2012); Government of the Philippines (2008); Jones (2010); National Treasury of South Africa (2015a); Transparency International (2006).

CHAPTER 25

Redesigning Relationships and Institutional Arrangements

This chapter looks at international examples of CSO procurement monitoring to identify institutional arrangements that could support such work in South Africa. The monitoring of procurement processes by civil society does not necessarily have to lead to conflict with government departments. Allowing independent monitors to keep an eye on procurement could benefit society in general, the targeted recipients of goods and services, and government itself. It means that government departments are actually assisted in monitoring their own procurements, which should allow them to fulfil their functions more economically and effectively. There are good grounds for government departments and institutions to welcome, rather than resist, more active procurement monitoring on the part of CSOs.

This chapter considers the following:

- How partnerships between CSOs and government departments could be mutually beneficial for the monitoring of procurement processes.
- How government could be called on to help build civil society capacity for procurement monitoring and create mechanisms to support CSO oversight.

25.1 PARTNERSHIPS BETWEEN CSOs AND GOVERNMENT DEPARTMENTS

Collaboration was one of the critical success factors in many of the civil society monitoring initiatives discussed in Section III. There was often active cooperation between the CSOs that were monitoring the procurement, and the government department or entity responsible for the procurement. In many cases, a memorandum of agreement or understanding was signed between the government entity and the relevant CSOs. These agreements made it easier for the CSOs to access the documents and information they needed. It also meant that decision makers within government understood civil society's role, and would be open to the results of the monitoring.

If CSOs are interested in monitoring a specific procurement process or tender they could consider approaching the corresponding national, provincial, or municipal department and propose a partnership. A memorandum of agreement could be drafted and signed to clarify the roles and responsibilities of both CSO monitors and public officials.



Partnerships in the Philippines

The majority of the procurement monitoring initiatives in the Philippines involved the signing of a memorandum of agreement between a lead CSO or network and the government department being monitored. An example of such a memorandum of agreement can be found on page 48 of the Bantay Eskuwela guide from Procurement Watch Inc. (2010). The link to this guide can be found in the list of references at the end of the guide. This particular memorandum relates to monitoring the implementation of procurement contracts for school buildings.

Such a partnership might entail civil society monitoring or observation of the entire procurement process, or focus only on the contract implementation phase. In the latter case, CSO monitors could, for example, work together with officials from the department to oversee the delivery of goods or services. This would mean verifying whether the quantity and quality of the goods or services being delivered are in line with the bid specifications and contract.

In the international examples in Section III, the successful monitoring of procurement often involved a strong champion inside the government department or entity being monitored. In the case of the Textbook Count initiative in the Philippines, the undersecretary of the Department of Education acted as such a champion. This is another factor for CSOs in South Africa to consider. As a step toward forging a partnership with a department or institution, it could be useful to first identify an internal champion who might be willing to catalyze support for the idea of procurement monitoring. At the same time, it will be important for CSOs to build other relationships within that department or institution, to ensure that the monitoring initiative does not slow down or even come to a halt if the champion is no longer there.

25.2 GOVERNMENT SUPPORT FOR CSO PROCUREMENT MONITORING

Lack of expertise can be a major obstacle to civil society monitoring activities. CSO monitors have to understand how the public procurement process works, know which types of corruption and irregularities can occur, and have the skills to obtain the information needed and analyze it in different ways. CSOs should also be aware of how and where to report any evidence of corruption and irregularities. For the monitoring of certain projects, specific technical expertise might also be needed, for example on the quality of materials used in construction work or infrastructure projects.

CSOs could advocate that government put dedicated initiatives in place to promote and facilitate procurement monitoring by civil society. Where government departments are willing to partner with CSOs, their officials could, for example, provide the technical expertise needed for monitoring. Such an arrangement could be formalized through a memorandum of agreement. CSOs could also call on government to help build their capacity to undertake procurement monitoring. The National Treasury (2015a) has specifically stated that it aims to empower CSOs and the public to monitor SCM.



CSO Training in the Philippines

In the Philippines, the Government Procurement Policy Board provides training to government officials and civil society observers on the procurement laws and regulations, as well as on the procurement process itself.

Many of the international examples discussed in Section III focused their monitoring initiatives on the bidding phase or on the contract implementation phase. The example from Morón, Argentina, included participation in the bid specification process. This is a critical point of intervention, as the bid specifications provide the exact scope of the goods or services that are being procured on behalf of the public. Civil society can enhance its impact on the outcomes of procurement when it is able to influence the bid specifications in a substantive way. South African CSOs might want to advocate that government provide such opportunities, particularly for tenders related to service delivery.



Mayor Invites Public Scrutiny of Bid Specifications in Argentina

In the municipality of Morón, the local government created an opportunity for community members to give input into the bid specifications before procuring waste removal services. It hosted a broadly inclusive public hearing and made the draft specifications available to the public beforehand. Community members and CSOs made comments and proposals about the specifications and their contributions led to actual changes in the final tender documents. The process resulted in more cost-effective waste removal services and strengthened the relationship between the local government and the community.

International experiences of procurement monitoring include instances where CSO observers felt under pressure to only report positively on the processes they were monitoring. In the Philippines, Procurement Watch developed a feedback mechanism whereby observers could submit their reports and complaints anonymously. It may be worth advocating a similar mechanism in South Africa, and request that the government create and maintain channels for anonymous reporting on procurement. CSOs could also call on the government to create and support appropriate vehicles or platforms to disseminate the findings flowing from procurement monitoring.

CSOs involved in procurement monitoring face the constant challenge of securing funding for their oversight activities. In the Philippines, where civil society observation is required by law, CSO monitors often do not have the funds to cover their transport costs to different bidding locations. They are also expected to take time off from their regular jobs to fulfil their monitoring duties. In order to address these issues, CSOs in the Philippines have been looking into various financing options, including the possibility of establishing a trust fund financed by international donors and managed by an independent party. Another possibility is to collect a fixed share from the sale of bid documents and use this to compensate procurement civil society monitors for their time.

Governments generally do not fund the procurement monitoring activities of CSOs. Civil society monitors are also not keen to accept funding from either government or the private sector, as this could compromise their impartiality and independence. However, the Social Witness Program in Mexico receives a budget from the federal government to fund the activities of independent procurement observers. This might be a solution to consider advocating, if not for all procurement monitoring activities, at least for some.

Sources: The content of this chapter is informed by contributions from the following sources, which are cited in full in the reference list at the end of the Guide: De Simone & Shah (2012); Government of the Philippines (2008); National Treasury of South Africa (2015a); The World Bank (2009c); World Bank Institute & Open Contracting Partnership (2013).

REFERENCES & LINKS



References & Links



REFERENCE LIST

The reference list on the following pages is divided into these five categories:

- **South African Legislation**
- **South African Public Procurement (and Related) Regulations, Guidelines, Practice Notes, and Circulars**
- **Civil Society Monitoring of Public Procurement: Online Guides, Manuals, and Tools**
- **Other South African References**
- **Other International References**

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References & Links



APPENDICES

The following procurement forms appear in the appendices in this section:

- **Appendix 1: Template for a Procurement Plan**
[National and Provincial Departments, Entities and Institutions]
- **Appendix 2: Municipal Template for a Procurement Plan**
[Municipalities and Municipal entities]
- **Appendix 3: Invitation to Bid** [SBD₁]
- **Appendix 4: Municipal Invitation to Bid** [MBD₁]
- **Appendix 5: Table of Clauses in the General Conditions of Contract**
- **Appendix 6: Tax Clearance Certificate Requirements** [SBD/MBD 2]
- **Appendix 7: Pricing Schedules** [SBD/MBD 1, SBD/MBD 2, and SBD/MBD 3]
- **Appendix 8: Declaration of Interest** [SBD 4]
- **Appendix 9: Municipal Declaration of Interest** [Municipal] [MBD 4]
- **Appendix 10: National Industrial Participation Program** [SBD 5]
- **Appendix 11: Declaration for Procurement above R10 million** [MBD 5]
- **Appendix 12: Preference Point Claim Form** [SBD/MBD 6.1]
- **Appendix 13: Declaration Certificate for Local Production & Content for Designated Sectors** [SBD/MBD 6.2]
- **Appendix 14: Contract Form** [SBD/MBD 7.1]
- **Appendix 15: Declaration of Bidder's Past SCM Practices** [SBD/MBD 8]
- **Appendix 16: Certificate of Independent Bid Determination** [SBD/MBD 9]

Please note: The forms presented here are for reference purposes only. While all the information is accurately represented, the format was adjusted in some cases to fit the Guide. The original forms can be downloaded from the website of the Office of the Chief Procurement Officer.

APPENDIX 1 **Template for a Procurement Plan**
[National and Provincial Departments, Entities, and Institutions]

ANNEXURE A

**SCHEDULE OF PROCUREMENT PLAN IN RESPECT OF ADVERTISED COMPETITIVE BIDS
(GOODS, WORKS OR SERVICES IN EXCESS OF R500 000 INCLUDING ALL APPLICABLE TAXES) FOR THE
..... FINANCIAL YEAR**

Name of National or Provincial Department / Public Entity / Constitutional Institution	
Name of Accounting Officer / Delegated Official	
Signature of Accounting Officer / Delegated Official	
Telephone Number and e.mail address	

Description of goods / works services	Estimated value (including all applicable taxes)	Envisaged date of advertisement	Envisaged closing date of bid	Envisaged date of award	Responsible office / regional Office

May 2011

APPENDIX 2 Municipal Template for a Procurement Plan

(Municipalities and Municipal Entities)

ANNEXURE B

**SCHEDULE OF PROCUREMENT PLAN IN RESPECT OF ADVERTISED COMPETITIVE BIDS
(GOODS, INFRASTRUCTURE PROJECTS OR SERVICES IN EXCESS OF R200 000 INCLUDING ALL APPLICABLE TAXES)
FOR THE FINANCIAL YEAR**

Name of Municipality or Municipal Entity	
Name of Accounting Officer / Delegated Official	
Signature of Accounting Officer / Delegated Official	
Telephone Number and e-mail address	

Description of goods / services / Infrastructure project	Estimated value (including all applicable taxes)	Envisaged date of advertisement in the website, newspapers or other media	Envisaged closing date of bid	Envisaged date of award	Responsible office

APPENDIX 3 Invitation to Bid (SBD1) page 1 of 2

SBD 1

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/PUBLIC ENTITY)

BID NUMBER: CLOSING DATE: CLOSING TIME: 11:00

DESCRIPTION.....

The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).

BID DOCUMENTS MAY BE POSTED TO:.....
OR

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)
.....
.....

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER
POSTAL ADDRESS
STREET ADDRESS
TELEPHONE NUMBER CODE.....NUMBER.....
CELLPHONE NUMBER
FACSIMILE NUMBER CODE NUMBER.....
E-MAIL ADDRESS
VAT REGISTRATION NUMBER

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1) YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).....
A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS);
OR.....
A REGISTERED AUDITOR
[TICK APPLICABLE BOX]

(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)

Invitation to Bid (SBD1) page 2 of 2

ARE YOU THE ACCREDITED REPRESENTATIVE
IN SOUTH AFRICA FOR THE GOODS / SERVICES / WORKS OFFERED?
NO

YES or

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER

DATE

CAPACITY UNDER WHICH THIS BID IS SIGNED

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

Department:

Contact Person:

Tel:

Fax:

E-mail address:.....

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact Person:

Tel:

Fax:

E-mail address:.....

APPENDIX 4 Municipal Invitation to Bid (MBD1) page 1 of 2

INVITATION TO BID

MBD 1

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF MUNICIPALITY/ENTITY)

BID NUMBER: CLOSING DATE: CLOSING TIME:
DESCRIPTION.....

The successful bidder will be required to fill in and sign a written Contract Form (MBD 7).

BID DOCUMENTS MAY BE POSTED TO:

.....
.....

OR

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

.....
.....

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

NB: NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE (as defined in Regulation 1 of the Local Government: Municipal Supply Chain Management Regulations)

Municipal Invitation to Bid (MBD1) page 2 of 2

THE FOLLOWING PARTICULARS MUST BE FURNISHED
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER

POSTAL ADDRESS

STREET ADDRESS

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER

FACSIMILE NUMBER CODENUMBER.....

E-MAIL ADDRESS

VAT REGISTRATION NUMBER

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN ATTACHED? (MBD 2) YES/NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (MBD 6.1) YES/NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) ☐

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL ACCREDITATION SYSTEM (SANAS) ☐

A REGISTERED AUDITOR ☐

(Tick applicable box)

(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)

ARE YOU THE ACCREDITED REPRESENTATIVE
IN SOUTH AFRICA FOR THE GOODS/SERVICES/WORKS OFFERED ?

YES/NO
(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER

DATE

CAPACITY UNDER WHICH THIS BID IS SIGNED

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

Municipality / Municipal Entity:

Department:

Contact Person:

Tel:

Fax:

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact Person:

Tel:

Fax:

APPENDIX 5 Table of Clauses for the General Conditions of Contract (GCC)

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontract
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

APPENDIX 6 Tax Clearance Certificate Requirements (SBD/MBD 2)

SBD 2

TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

APPENDIX 7 Pricing Schedules SBD 3.1

SBD 3.1

PRICING SCHEDULE – FIRM PRICES
(PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of bidder.....	Bid number.....
Closing Time 11:00	Closing date.....

OFFER TO BE VALID FOR.....DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY ** (ALL APPLICABLE TAXES INCLUDED)
----------	----------	-------------	---

- Required by:
- At:
.....
- Brand and model
- Country of origin
- Does the offer comply with the specification(s)? *YES/NO
- If not to specification, indicate deviation(s)
- Period required for delivery
*Delivery: Firm/not firm
- Delivery basis

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

** “all applicable taxes” includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

*Delete if not applicable

Pricing Schedules SBD 3.2 page 1 of 3

PRICING SCHEDULE – NON-FIRM PRICES
(PURCHASES)

SBD 3.2

NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder.....	Bid number.....
Closing Time 11:00	Closing date.....

OFFER TO BE VALID FOR.....DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
-	Required by:	.....
-	At:	.....
-	Brand and model	.....
-	Country of origin	.....
-	Does the offer comply with the specification(s)?		*YES/NO
-	If not to specification, indicate deviation(s)	.....
-	Period required for delivery	.....
-	Delivery:		*Firm/not firm

** "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

*Delete if not applicable



Pricing Schedules SBD 3.2 page 2 of 3

SBD 3.2

PRICE ADJUSTMENTS

A NON-FIRM PRICES SUBJECT TO ESCALATION

1. IN CASES OF PERIOD CONTRACTS, NON FIRM PRICES WILL BE ADJUSTED (LOADED) WITH THE ASSESSED CONTRACT PRICE ADJUSTMENTS IMPLICIT IN NON FIRM PRICES WHEN CALCULATING THE COMPARATIVE PRICES
2. IN THIS CATEGORY PRICE ESCALATIONS WILL ONLY BE CONSIDERED IN TERMS OF THE FOLLOWING FORMULA:

$$Pa = (1 - V)Pt \left(D1 \frac{R1t}{R1o} + D2 \frac{R2t}{R2o} + D3 \frac{R3t}{R3o} + D4 \frac{R4t}{R4o} \right) + VPt$$

Where:

- Pa = The new escalated price to be calculated.
(1-V)Pt = 85% of the original bid price. **Note that Pt must always be the original bid price and not an escalated price.**
D1, D2.. = Each factor of the bid price eg. labour, transport, clothing, footwear, etc. The total of the various factors D1, D2...etc. must add up to 100%.
R1t, R2t..... = Index figure obtained from new index (depends on the number of factors used).
R1o, R2o = Index figure at time of bidding.
VPt = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.

3. The following index/indices must be used to calculate your bid price:

Index..... Dated..... Index..... Dated..... Index..... Dated.....
Index..... Dated..... Index..... Dated..... Index..... Dated.....

4. FURNISH A BREAKDOWN OF YOUR PRICE IN TERMS OF ABOVE-MENTIONED FORMULA. THE TOTAL OF THE VARIOUS FACTORS MUST ADD UP TO 100%.

FACTOR (D1, D2 etc. eg. Labour, transport etc.)	PERCENTAGE OF BID PRICE

Pricing Schedules SBD 3.2 page 3 of 3

SBD 3.2

B PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS

1. Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

2. Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE



Pricing Schedules SBD 3.3 page 1 of 2

SBD 3.3

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO.:
CLOSING TIME 11:00	CLOSING DATE.....

OFFER TO BE VALID FORDAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)	
1. The accompanying information must be used for the formulation of proposals.			
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.			
		R.....	
3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)			
4. PERSON AND POSITION	HOURLY RATE	DAILY RATE	
.....	R.....	.....
.....	R.....	.....
.....	R.....	.....
.....	R.....	.....
.....	R.....	.....
5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT			
.....	R.....	..... days	
.....	R.....	..... days	
.....	R.....	..... days	
.....	R.....	..... days	
5.1 Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.			
DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
TOTAL: R.....			

** "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance contributions and skills development levies.

Pricing Schedules SBD 3.3 page 2 of 2

-2-

Bid No.:

Name of Bidder:

- 5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	R.....
.....	R.....
.....	R.....
.....	R.....

TOTAL: R.....

6. Period required for commencement with project after acceptance of bid
 7. Estimated man-days for completion of project
 8. Are the rates quoted firm for the full period of contract? *YES/NO
 9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

(INSERT NAME AND ADDRESS OF DEPARTMENT/ENTITY)

Tel:

Or for technical information –

(INSERT NAME OF CONTACT PERSON)

Tel:

APPENDIX 8 Declaration of Interest (SBD 4) page 1 of 4

SBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
- the bidder is employed by the state; and/or
 - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

- 2.1 Full Name of bidder or his or her representative:
- 2.2 Identity Number:
- 2.3 Position occupied in the Company (director, trustee, shareholder²):
- 2.4 Company Registration Number:
- 2.5 Tax Reference Number:
- 2.6 VAT Registration Number:
- 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

¹"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

Declaration of Interest (SBD 4) page 2 of 4

- 2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**
- 2.7.1 If so, furnish the following particulars:
- Name of person / director / trustee / shareholder/ member:
- Name of state institution at which you or the person connected to the bidder is employed :
- Position occupied in the state institution:
- Any other particulars:
-
-
-
- 2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**
- 2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**
- (Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.
- 2.7.2.2 If no, furnish reasons for non-submission of such proof:
-
-
-
- 2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**
- 2.8.1 If so, furnish particulars:
-
-
-
- 2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**
- 2.9.1 If so, furnish particulars.
-
-
-



Declaration of Interest (SBD 4) page 3 of 4

2.10

Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

YES/NO

2.10.1

If so, furnish particulars.

.....

.....

.....

2.11

Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?

YES/NO

2.11.1

If so, furnish particulars:

.....

.....

.....

3 Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

Declaration of Interest (SBD 4) page 4 of 4**4 DECLARATION**

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF
PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION
PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

May 2011

APPENDIX 9 Declaration of Interest (Municipal) (MBD 4) page 1 of 3

MBD 4

DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority.
3. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
 - 3.1 Full Name of bidder or his or her representative:.....
 - 3.2 Identity Number:
 - 3.3 Position occupied in the Company (director, trustee, hareholder²):.....
 - 3.4 Company Registration Number:
 - 3.5 Tax Reference Number:.....
 - 3.6 VAT Registration Number:
 - 3.7 The names of all directors / trustees / shareholders members, their individual identity numbers and state employee numbers must be indicated in paragraph 4 below.
 - 3.8 Are you presently in the service of the state? **YES / NO**
 - 3.8.1 If yes, furnish particulars.

¹MSCM Regulations: "in the service of the state" means to be –
(a) a member of –
 (i) any municipal council;
 (ii) any provincial legislature; or
 (iii) the national Assembly or the national Council of provinces;
(b) a member of the board of directors of any municipal entity;
(c) an official of any municipality or municipal entity;
(d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
(e) a member of the accounting authority of any national or provincial public entity; or
(f) an employee of Parliament or a provincial legislature.

² Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.

- 3.9 Have you been in the service of the state for the past twelve months?**YES / NO**
 - 3.9.1 If yes, furnish particulars.....

Declaration of Interest (Municipal) (MBD 4) page 2 of 3

3.10 Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.10.1 If yes, furnish particulars.

.....
.....

3.11 Are you, aware of any relationship (family, friend, other) between any other bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

3.11.1 If yes, furnish particulars

.....
.....

3.12 Are any of the company's directors, trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.12.1 If yes, furnish particulars.

.....
.....

3.13 Are any spouse, child or parent of the company's directors trustees, managers, principle shareholders or stakeholders in service of the state? **YES / NO**

3.13.1 If yes, furnish particulars.

.....
.....

3.14 Do you or any of the directors, trustees, managers, principle shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract. **YES / NO**

3.14.1 If yes, furnish particulars:

.....
.....



Declaration of Interest (Municipal) (MBD 4) page 3 of 3

4. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	State Employee Number

.....
Signature

.....
Date

.....
Capacity

.....
Name of Bidder

APPENDIX 10 National Industrial Participation Program (SBD 5) page 1 of 3

SBD 5

This document must be signed and submitted together with your bid

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

INTRODUCTION

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1 PILLARS OF THE PROGRAMME

- 1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation. This threshold of US\$ 10 million can be reached as follows:
 - (a) Any single contract with imported content exceeding US\$10 million.
or
 - (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million.
or
 - (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$10 million.
or
 - (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.
- 1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a *pro-rata* basis.
- 1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.



National Industrial Participation Program (SBD 5) page 2 of 3

- 1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.

- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

3 BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.

- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:

- Bid / contract number.
- Description of the goods, works or services.
- Date on which the contract was accepted.
- Name, address and contact details of the government institution.
- Value of the contract.
- Imported content of the contract, if possible.

- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Elias Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at Elias@thedti.gov.za for further details about the programme.

National Industrial Participation Program (SBD 5) page 3 of 3

4 PROCESS TO SATISFY THE NIP OBLIGATION

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
- the contractor and the DTI will determine the NIP obligation;
 - the contractor and the DTI will sign the NIP obligation agreement;
 - the contractor will submit a performance guarantee to the DTI;
 - the contractor will submit a business concept for consideration and approval by the DTI;
 - upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
 - the contractor will implement the business plans; and
 - the contractor will submit bi-annual progress reports on approved plans to the DTI.
- 4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number	Closing date:.....
Name of bidder.....	
Postal address	
.....	
Signature.....	Name (in print).....
Date.....	

Js475wc

APPENDIX 11

Declaration for Procurement above R10 million (MBD 5)

page 1 of 2

MBD 5

DECLARATION FOR PROCUREMENT ABOVE R10 MILLION (ALL APPLICABLE TAXES INCLUDED)

For all procurement expected to exceed R10 million (all applicable taxes included), bidders must complete the following questionnaire:

1

Are you by law required to prepare annual financial statements for auditing?

1.1

If yes, submit audited annual financial statements for the past three years or since the date of establishment if established during the past three years.

*YES / NO

.....

.....

2

Do you have any outstanding undisputed commitments for municipal services towards any municipality for more than three months or any other service provider in respect of which payment is overdue for more than 30 days?

2.1

If no, this serves to certify that the bidder has no undisputed commitments for municipal services towards any municipality for more than three months or other service provider in respect of which payment is overdue for more than 30 days.

2.2

If yes, provide particulars.

.....

.....

.....

.....

3

Has any contract been awarded to you by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract?

* Delete if not applicable

*YES / NO

Declaration for Procurement above R10 million (MBD 5) page 2 of 2

2

.....

***YES / NO**

4. Will any portion of goods or services be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality / municipal entity is expected to be transferred out of the Republic?

***YES / NO**

- 4.1 If yes, furnish particulars

.....

CERTIFICATION

I, THE UNDERSIGNED (NAME)

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS CORRECT.

I ACCEPT THAT THE STATE MAY ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
 Signature

.....
 Date

.....
 Position

.....
 Name of Bidder

APPENDIX 12 Preference Point Claim Form (SBD/MBD 6.1) page 1 of 6

SBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2011

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).
- 1.2 The value of this bid is estimated to exceed/not exceed R1 000 000 (all applicable taxes included) and therefore the.....system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 1.3.1 The maximum points for this bid are allocated as follows:

	POINTS
1.3.1.1 PRICE	.....
1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION	.....
Total points for Price and B-BBEE must not exceed	100
1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.	
1.5. The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.	

2. DEFINITIONS

- 2..1 “all applicable taxes” includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 “B-BBEE” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 “B-BBEE status level of contributor” means the B-BBEE status received by a measured entity based

Preference Point Claim Form (SBD/MBD 6.1) page 2 of 6

2

on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

- 2.4 “**bid**” means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 “**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 “**comparative price**” means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 “**consortium or joint venture**” means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 2.8 “**contract**” means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 “**EME**” means any enterprise with an annual total revenue of R5 million or less .
- 2.10 “**Firm price**” means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 “**functionality**” means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 “**non-firm prices**” means all prices other than “firm” prices;
- 2.13 “**person**” includes a juristic person;
- 2.14 “**rand value**” means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 “**sub-contract**” means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 “**total revenue**” bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 “**trust**” means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 “**trustee**” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.



Preference Point Claim Form (SBD/MBD 6.1) page 3 of 6

3

- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20 or 90/10

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

- Ps = Points scored for comparative price of bid under consideration
- Pt = Comparative price of bid under consideration
- Pmin = Comparative price of lowest acceptable bid

5. Points awarded for B-BBEE Status Level of Contribution

- 5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

Preference Point Claim Form (SBD/MBD 6.1) page 4 of 6

4

- 5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.
- 5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

- 6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1

- 7.1 B-BBEE Status Level of Contribution: =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

8 SUB-CONTRACTING

- 8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

- 8.1.1 If yes, indicate:

- (i) what percentage of the contract will be subcontracted?%
- (ii) the name of the sub-contractor?
- (iii) the B-BBEE status level of the sub-contractor?
- (iv) whether the sub-contractor is an EME? YES / NO (delete which is not applicable)

9 DECLARATION WITH REGARD TO COMPANY/FIRM

- 9.1 Name of company/firm :



Preference Point Claim Form (SBD/MBD 6.1) page 5 of 6

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9.2 VAT registration number :

9.3 Company registration number :

9.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited
- [TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....
.....
.....

9.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

9.7 Total number of years the company/firm has been in business?

9.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct;
- (ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.
- (iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- (iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution

Preference Point Claim Form (SBD/MBD 6.1) page 6 of 6

6

WITNESSES:

1.

2.

SIGNATURE(S) OF BIDDER(S)

DATE:.....

ADDRESS:.....

.....

.....

APPENDIX 13 Declaration Certificate for Local Production and Content for Designated Sectors (SBD/MBD 6.2) page 1 of 4

SBD 6.2

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.
- 1.2. Regulation 9.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.

Declaration Certificate for Local Production and Content for Designated Sectors (SBD/MBD 6.2) page 2 of 4

- 1.6. A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

2. Definitions

- 2.1. **“bid”** includes written price quotations, advertised competitive bids or proposals;
- 2.2. **“bid price”** price offered by the bidder, excluding value added tax (VAT);
- 2.3. **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.4. **“designated sector”** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;
- 2.5. **“duly sign”** means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).
- 2.6. **“imported content”** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;
- 2.7. **“local content”** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
- 2.8. **“stipulated minimum threshold”** means that portion of local production and content as determined by the Department of Trade and Industry; and
- 2.9. **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.
3. **The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
_____	_____ %
_____	_____ %
_____	_____ %



Declaration Certificate for Local Production and Content for Designated Sectors (SBD/MBD 6.2) page 3 of 4

4. Does any portion of the services, works or goods offered have any imported content?

(Tick applicable box)

YES		NO	
-----	--	----	--

- 4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION (REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO.

ISSUED BY: (Procurement Authority / Name of Institution):

.....
NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on http://www.thdti.gov.za/industrial_development/ip.jsp. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

Declaration Certificate for Local Production and Content for Designated Sectors (SBD/MBD 6.2) page 4 of 4

I, the undersigned, (full names),
do hereby declare, in my capacity as
of(name of bidder
entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
- (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____

DATE: _____

WITNESS No. 1 _____

DATE: _____

WITNESS No. 2 _____

DATE: _____

APPENDIX 14 Contract Form (SBD/MBD 7.1) page 1 of 2

SBD 7.1

CONTRACT FORM - PURCHASE OF GOODS/WORKS

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE BIDDER)

1. I hereby undertake to supply all or any of the goods and/or works described in the attached bidding documents to (name of institution)..... in accordance with the requirements and specifications stipulated in bid number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the purchaser during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:

(i) Bidding documents, viz:

- Invitation to bid;

- Tax clearance certificate;

- Pricing schedule(s);

- Technical Specification(s);

- Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;

- Declaration of interest;

- Declaration of bidder’s past SCM practices;

- Certificate of Independent Bid Determination

- Special Conditions of Contract;

(ii) General Conditions of Contract; and

(iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES

1

2.

DATE:

Contract Form (SBD/MBD 7.1) page 2 of 2**SBD 7.1****CONTRACT FORM - PURCHASE OF GOODS/WORKS****PART 2 (TO BE FILLED IN BY THE PURCHASER)**

1. I..... in my capacity as..... accept your bid under reference numberdated.....for the supply of goods/works indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating delivery instructions is forthcoming.
3. I undertake to make payment for the goods/works delivered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice accompanied by the delivery note.

ITEM NO.	PRICE (ALL APPLICABLE TAXES INCLUDED)	BRAND	DELIVERY PERIOD	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED ATON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1.

2.

DATE

APPENDIX 15 Declaration of Bidder's Past SCM Practices (SBD/MBD 8)

page 1 of 2

SBD 8

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

Declaration of Bidder's Past SCM Practices (SBD/MBD 8) page 2 of 2**SBD 8****CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME).....
 CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION
 FORM IS TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,
 ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION
 PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js365bW

APPENDIX 16 Certificate of Independent Bid Determination (SBD/MBD 9)

page 1 of 4

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

Certificate of Independent Bid Determination (SBD/MBD g) page 2 of 4

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder



Certificate of Independent Bid Determination (SBD/MBD g) page 3 of 4**SBD 9**

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

Certificate of Independent Bid Determination (SBD/MBD g) page 4 of 4

SBD 9

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

- **Useful Websites**
- **Acronyms & Abbreviations**
- **Glossary of Terms**

USEFUL WEBSITES

Key Institutions

Auditor-General of South Africa

<http://www.agsa.co.za/Home.aspx>

National Treasury

<http://www.treasury.gov.za>

Office of the Chief Procurement Officer

<http://ocpo.treasury.gov.za>

Construction Industry Development Board

<http://www.cidb.org.za/Pages/default.aspx>

Public Protector of South Africa

<http://www.pprotect.org>

Key Legislation and Policies

Constitution of South Africa

www.constitutionalcourt.org.za/site/theconstitution/thetext.htm

Public Finance Management Act

<http://www.treasury.gov.za/legislation/PFMA/act.pdf>

Municipal Finance Management Act

<http://mfma.treasury.gov.za>

Broad-Based Black Economic Empowerment codes of good practice

www.dti.gov.za/economic_empowerment/bee_codes.jsp

Public-private partnerships

<http://www.ppp.gov.za>

Department of Trade and Industry local content guidelines

http://www.dti.gov.za/industrial_development/ip.jsp

National Industrial Participation program

https://www.thedti.gov.za/industrial_development/nipp.jsp

eTender Publication Portal

<http://www.etenders.gov.za>

Government Tender Bulletin

<http://www.treasury.gov.za/divisions/ocpo/ostb/bulletins/2015/default.aspx>

<http://www.gov.za/documents/tender>

<http://www.gpwnline.co.za/Gazettes/Pages/Published-Tender-Bulletin.aspx>

Bid Opportunities

http://ocpo.treasury.gov.za/Suppliers_Area/Pages/Scheduled-Bids.aspx

Central Supplier Database

<https://secure.csd.gov.za/>

Database of Restricted Suppliers

<http://www.treasury.gov.za/publications/other/Database%20of%20Restricted%20Suppliers.pdf>

Bidding Forms and Templates

Standard forms

http://ocpo.treasury.gov.za/Buyers_Area/Pages/Standard-Bidding-Forms.aspx

Municipal forms

www.treasury.gov.za/divisions/ocpo/sc/Circulars/MDB%20Bidding%20Documents.zip

Construction Industry Development Board bidding documents

<http://www.cidb.org.za/publications/Pages/Procurement-Documents-templates-and-Guidelines.aspx>

Publication of Transversal Contracts

<http://www.treasury.gov.za/divisions/ocpo/ostb/contracts/default.aspx>

Gauteng Provincial Treasury Open Tender Pilot

<http://www.treasury.gpg.gov.za/Pages/Open-Tender.aspx>

South African Human Rights Commission Online Guide on the Promotion of Access to Information

http://www.gov.za/sites/www.gov.za/files/gcis_documents/SAHRC-PAIA-guide2014.pdf

ACRONYMS & ABBREVIATIONS

AGSA	Auditor-General of South Africa
B-BBEE	Broad-Based Black Economic Empowerment
CIDB	Construction Industry Development Board
CIPC	Companies and Intellectual Property Commission
CSD	Central Supplier Database
CSO	Civil society organization
DEEM	Differential expenditure and efficiency measurement
DTI	Department of Trade and Industry
EME	Exempted micro-enterprises
GCC	General Conditions of Contract
IDP	Integrated Development Plan
IT	Information technology
MBD	Municipal bidding document
MFMA	Municipal Finance Management Act
MOA	Memorandum of Agreement
MTEF	Medium-Term Expenditure Framework
NAMFREL	National Movement for Free Elections (<i>of the Philippines</i>)
NGO	Nongovernmental organization
NIP	National Industrial Participation (<i>program of the DTI</i>)
OCPO	Office of the Chief Procurement Officer
PFMA	Public Finance Management Act
PPP	Public-Private Partnership
PPPFA	Preferential Procurement Policy Framework Act
PWI	Procurement Watch Inc. (<i>of the Philippines</i>)
SABS	South African Bureau of Standards
SANAS	South Africa National Accreditation System
SARS	South African Revenue Services
SBD	Standard bidding document
SCC	Special Conditions of Contract
SCM	Supply chain management
SITA	State Information Technology Agency
SLA	Service level agreement
TI	Transparency International
VAT	Value-added tax

GLOSSARY OF TERMS

Accountability: The obligation on public representatives and government officials to explain and justify their decisions and performance in implementing the country's laws and policies.

Accounting officer: The civil servant in a government department or institution who is responsible for the financial management of that department or institution and all its programs. At the national and provincial level, the accounting officer is usually a Director-General or Head of Department. At the local level, the accounting officer is usually the Municipal Manager.

Auditor-General of South Africa: The constitutional body that is responsible for auditing and reporting on the accounts, financial statements and financial management of all national and provincial government departments and administrations, all municipalities, and any other entity required by the legislatures. The Auditor-General of South Africa is politically independent and obliged to be impartial in the exercise of its powers.

Auditing: Conducting an official examination of an individual, organization or entity's financial accounts.

Bid: An offer to provide particular pre-determined goods or services at a certain price.

Bid box: The physical location, usually in the offices of the procuring department, where hard copies of bids from interested suppliers have to be submitted.

Bid register: In South Africa, a database and record of all the procurement processes underway in a government department or institution, managed by the corresponding department's SCM unit.

Bid rigging or collusive bidding: A form of fraud in which suppliers who are bidding in the same procurement process secretly agree to bid in such a way that one of them can secure the contract for goods or services at a certain price.

Bid specification: The description of goods or services being procured, including details about quantity, quality, frequency, size, dimensions, composition, and any other technical criteria that the goods or services must conform to. The bid specifications should also set out the criteria whereby the bid will be evaluated.

Bid specification committee: The committee in a government department or entity that reviews and approves the exact scope of goods or services to be procured (including quantity, quality, technical specifications, etc.) as well as the evaluation criteria that will be used to determine the award of contract.

Briefing session: In public procurement, a meeting hosted by a procuring government department or institution, usually after the release of the bid documents and before the bids have to be submitted. The aim is to field queries and clarifications related to the bid specifications or other conditions, and provide any additional information, if necessary. Pre-bid briefing sessions may be mandatory or voluntary, and may in some instances include site visits.

Black economic empowerment: In South Africa, according to law, the viable economic empowerment of all black people through diverse and integrated socio-economic strategies to increase the number of black people that manage, own, and control productive assets, and achieve equitable representation in all workforces and levels of the economy.

B-BBEE code of good practice: For public procurement, a document pertaining to B-BBEE that sets out the principles to be applied to determine the level of preferential procurement that should be applied to an enterprise.

B-BBEE verification certificate: A document issued by an accredited agency which reflects the B-BBEE status of an organization or entity, with scores allocated for various elements based on the B-BBEE Codes of Good Practice.

Capability report: In public procurement, a report showing that a bidder (or their supplier or manufacturer) is able to produce the goods that are being purchased, in line with the specifications of the bid (including to the right quantity and quality).

Competitive bidding: A procurement method in which bids are invited from multiple contractors, suppliers or vendors, to provide certain goods or services. The scope and conditions of the proposed contract are openly advertised, as well as the criteria by which the bids will be evaluated, so that any eligible company is free to compete for the contract. Each bidder offers to deliver the requested goods or services for a particular amount of money.

Conflict of interest: A situation where an individual or organization stands to benefit unduly or may be influenced to act unfairly as a result of an existing relationship or alliance.

Corruption: The dishonest or fraudulent conduct of those in power, typically involving bribery, extortion, coercion, fraud or collusion.

Cost-benefit analysis: A study that compares the costs in delivering particular goods and services with the benefits that the public or target recipients are likely to derive from these goods or services.

Database of restricted suppliers: A list of suppliers, managed by the National Treasury, that government departments and entities are not allowed to conclude procurement contracts with due to their previous conduct in the tender process or meeting their contractual obligations. The restriction is for a designated period, and may be due to poor performance, submitting false information, or non-compliance with aspects of the contract.

Declaration of interest: A formal requirement in a public procurement process, whereby a bidder is asked to declare any relationships that might exist between him- or herself and the government or a government employee. The relationships to be declared are those of the individual bidder, and in the case of a company, also those of the company's directors, trustees, and shareholders. There is a government template, SBD/MBD 4, for this purpose.

Due diligence: An assessment to ascertain the legal or financial standing of an individual or organization, especially to see whether all legal requirements have been met.

Economic transformation: Fundamental change in society, marked by significant shifts in economic power, ownership of productive assets, skills development opportunities, and income equality.

Excise duties: Taxes on the manufacture and sale of certain domestic or imported products.

Feasibility study: An analysis of the likelihood that a project can be completed successfully, taking into account practical, economic, technological, legal, time, and other factors.

Financial year: The 12 months on which budgets are based. In South Africa, the government's financial year – also referred to as the fiscal year - starts on 1 April and ends on 31 March of the next calendar year.

Functionality: In procurement specifications, evaluation criteria relating to the suitability of an item, service, or supplier for the purpose to be fulfilled. This may include considerations such as quality, durability, viability, reliability, and any other relevant considerations.

Indicative price: A nominal, quoted cost for goods or services, which is neither final nor binding.

Instruction to bidder: In public procurement, this is part of the full set of bid documents, and sets out primarily how the bidder is to submit a bid, for example, by when and where the bid should be handed in, how many copies etc.

Integrated Development Plans: Strategic plans drawn up by South African municipalities for a five-year period, setting out the local government's vision, policy priorities, and objectives in terms of programs and service delivery.

Invitation to bid: A form that is included in the full set of bid documents in a competitive bidding process, and that provides basic information about the tender. The government template for this purpose is known as SBD/MBD 1.

Levy: A compulsory statutory payment, usually made in exchange for indirect benefits.

Limited bidding procedure: In public procurement, when invitations to bid for a contract are extended to a limited number of potential vendors or suppliers, rather than openly advertising the invitation to all.

Line department: A department that is directly involved in the delivery of goods and/or services to the public, for example health and education departments. Line departments can be distinguished from departments that are responsible for the general operations of government, for example, departments of finance.

Local content and production: Goods or services that are made or offered in South Africa rather than imported from other countries.

Medium-Term Expenditure Framework (MTEF): The three-year revenue and expenditure plans of the national government, and provincial governments. The immediate year of the MTEF has to be approved by the legislatures on an annual basis, while the outer two years can be revised. Also known as a rolling budget framework, as every year the year immediately past falls away and a new third year is added.

Needs assessment: A process of identifying the needs that exist in a particular group or community, sector, geographical area, or organization. The assessment may be limited to the need for a particular good or service, for example, the need for access to safe drinking water or the need for economic opportunities. Such an assessment usually involves a comparison between the present situation and an ideal future situation, so as to highlight the gaps that exist between current conditions and desired conditions.

Oversight: In political terms, the practice of monitoring the decisions and performance of the executive branch of government and holding government leaders accountable for their actions or inactions. In South Africa, the national and provincial legislatures have the duty to exercise oversight over the executive in the national and provincial spheres, while municipal councils have the same duty in the local sphere. It is one of the cornerstones of democracy for the public and civil society organizations to exercise oversight over their elected leaders, as well the executive they have appointed.

Preference point system: In public procurement, the system used by bid evaluators to compare tenders in a way that takes both price and B-BBEE status into account. There are two preference points systems, the 80/20 system and the 90/10 system. Which one is used to evaluate the bids in a particular tender process, depends on the money value of the contract.

Preferential procurement: In South Africa, redressing the inequalities of apartheid by giving certain previously disadvantaged groups preference in the awarding of government contracts.

Price schedule: In public procurement, a list drawn up by the procuring department showing all of the goods and services for which the bidder has to provide a price.

Price threshold: A money level under or above which certain conditions or requirements apply.

Procurement planning: The phase in the procurement process when government departments or entities identify goods and services to be procured in the upcoming budget year, as well as the MTEF period.

Procuring: Purchasing goods, services or works.

Public entity: A business enterprise that is partially or fully state-owned, and fully or substantially funded either from the National Revenue Fund, or by way of a tax, levy or other money imposed in terms of national legislation.

Public funds: The money resources of government. In South Africa this includes the national, provincial and local spheres, public entities, constitutional bodies, and other state institutions.

Public-private partnership: An initiative, project or program that is undertaken jointly by one or more government departments and private sector organizations, usually with financing from both, or all stakeholders. CSOs may also be included as stakeholders in such initiatives.

Public procurement: The process whereby government departments or institutions purchase goods, services, or works from vendors, contractors, or suppliers.

Public sector: As opposed to the private sector and civil society, the public sector refers to all governmental institutions and bodies, including national, provincial and local departments, constitutional bodies, public entities and utilities, the judiciary, and the legislatures.

Service level agreements: In South Africa, a form of procurement contract between a government entity, usually a municipality, and a supplier for the provision of services, particularly those services that officially fall under the mandate of government itself.

Sourcing strategies: In public procurement, the methods that may be used to purchase goods and services. For example, goods and services may be sourced from external suppliers, from other government departments, or through public-private partnerships.

Supplier: In public procurement, an individual or organization that supplies goods, services, or works to a government department or institution.

Supplier database: An electronic record of individuals and organizations that may be considered as possible suppliers of goods and services in procurement processes. Such a database could, for example, include a broad range of businesses, consultancies, advisors, contractors, service providers, and suppliers of various kinds of equipment and goods.

Supply chain management: The system used to manage, coordinate, and monitor the flows of raw materials, information, people, and goods from points of origin to where they are needed.

State-owned enterprise: An entity or institution that is owned by the government and that exists to provide goods or services on a commercial basis.

Tender: In public procurement, an offer to carry out work or provide certain goods or services at a particular price, usually submitted in response to a request from a government department or institution. Used in the same way as “bid”.

Transparency: In government, openness especially as regards decision-making, procedures, criteria, use of funds, policy intentions, and outcomes. Transparency in public procurement requires that there be open public knowledge about which goods and services are being purchased, the criteria used for selecting suppliers of goods and services, as well as the outcomes of such procurements.

Transversal: In public procurement, between or amongst government departments and institutions.

Transversal contract: A contract negotiated by the National Treasury for goods and services needed by many departments.

Unresponsive bid: A bid that doesn’t contain the right information, or is incomplete.

Unsolicited bid: In public procurement, an offer made to a government department or institution to provide certain goods or services without that department or institution having issued an invitation to bid for such goods or services.

Unsolicited concept/proposal: In public procurement, an offer presented to a government department or institution to provide certain goods and services that may not already have been identified by the relevant department as necessary. Usually such a concept or proposal would have to illustrate how a decision to offer these goods or services would further the department’s strategic objectives.



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