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## GENERAL NOTICE

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### NOTICE 56 OF 2013

#### PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

##### DRAFT REGULATIONS ISSUED IN TERMS OF THE FINANCIAL MANAGEMENT OF PARLIAMENT ACT, 2009 (ACT 10 OF 2009)

The Executive Authority has in terms of section 40, read in conjunction with section 65 of the Act, issued the following Supply Chain Management Regulations.

Any person or organisation wishing to comment on these draft regulations may lodge written comments or representations on or before 1 March 2013 by posting, faxing, e-mailing or handing them in at the following address:

Attention: The Chief Operations Officer  
Mr T Lamani

Parliament of the Republic of South Africa  
National Assembly  
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Cape Town  
8000

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Draft Regulations issued in terms of the Financial Management of Parliament Act, 2009 (Act 10 of 2009)

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## 1. ABBREVIATIONS

FMPA	The Financial Management of Parliament Act, 2009 (Act No. 10 of 2009)
Parliament	Parliament of the Republic of South Africa
SCM	Supply Chain Management
The Act	FMPA

## 2. DEFINITIONS

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the same meaning; and –

applicable legislation	means the legislation referred to in section 40(e) of the Act, which includes the Preferential Procurement Policy Framework Act and the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003)
bid	means a written offer submitted by a prospective supplier to the Accounting Officer in response to an invitation to provide goods or services
bidder	means a prospective supplier who has submitted a bid or is considering or preparing a bid for submission
conflict of interest	A situation in which an employee's perceived or real interest and involvement in any matter, including but not limited to: <ul style="list-style-type: none"> <li>(a) shares and other financial interests;</li> <li>(b) remunerated work outside Parliament;</li> <li>(c) consultancies;</li> <li>(d) retainerships;</li> <li>(e) sponsorships;</li> </ul>

	<p>(f) hospitality industry ownership;</p> <p>(g) other interests in land and property; and</p> <p>(h) receiving of gifts would affect his/her objective judgement in the workplace or unfairly consume the time and effort he/she is expected to dedicate to his/her existing work or role in Parliament.</p>
competitive bidding process	means a competitive bid that is openly advertised
contract	means an agreement entered into by consent of the Secretary to Parliament and a preferred supplier or suppliers in terms of which the supplier(s) will perform a service or deliver certain goods, the content of which may be enabling, or set out service levels
days	means calendar days
demand management	is a process of ensuring that the resources required to fulfil the needs identified in the Strategic Plan of Parliament are delivered at the correct time, price and place and that the quantity and quality will satisfy those needs.
enabling contract	means a contract with a preferred supplier for a specific range of goods and/or services at a fixed or predetermined price, rate or fee. The contract may be utilized by all relevant officials of Parliament
list of prospective suppliers or Suppliers' Database	means the list of prospective suppliers who have been vetted by Parliament in accordance with the listing criteria and approved to be placed on the list or Database as suppliers from whom quotes or bids may be requested
listing criteria	means the minimum criteria required by Parliament for suppliers to be listed on the Suppliers' Database
local	means the area where Parliament is hosting the relevant events
National Treasury	means the National Treasury established by section 5 of the Public Finance Management Act ('PFMA')
non employee	means a person other than an official who:

	(a) performs functions within the precincts of Parliament; (b) occupies an office within the precincts of Parliament; (c) is a Member of Parliament; or (d) is a political party support employee
obtain	means must receive and be in possession of
petty cash	means a cash float to be used for incidental expenses
preferred supplier	means a supplier, vetted and approved by Parliament in accordance with the listing criteria, and who is included on the Suppliers' Database and (a) identified through a competitive petty cash, written quotation, formal written quotation or bidding process; or (b) providing goods and/or services which meet the criteria for exceptional circumstances as stated in 6.10.5
Preferential Procurement Policy Framework Act	Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
prospective supplier	one or more natural or legal persons intending to offer goods or services to Parliament or from whom quotes or bids may be requested and who is/are listed on the Suppliers' Database or intend(s) to so list
PP Regulations	The Preferential Procurement Regulations issued under the Preferential Procurement Policy Framework Act
risk	means factors that may negatively contribute to financial or reputational costs to Parliament, its administration, preferred suppliers or prospective suppliers during the implementation of the Supply Chain Management system
Supply Chain Management System	means the processes, procedures and matters contemplated in section 40 (d) of the Act
Delegation of Authority	means the framework document setting out the system of delegation contemplated in section 10 of the Act
unsolicited offer	means proposals received from interested parties outside the procurement process

### **3. DELEGATION OF SUPPLY CHAIN MANAGEMENT POWERS AND DUTIES**

- 3.1. The Accounting Officer may delegate Supply Chain Management powers and duties, including the authority to alienate, let or otherwise dispose of assets, conferred by the Act on him or her to an official in accordance with the system of delegation contemplated in section 10 of the FMPA.
- 3.2. Officials acting on delegated authority must exercise such authority in accordance with the FMPA and the Delegation of Authority and are accountable to the Accounting Officer for actions so performed and decisions so taken.

### **4. IMPLEMENTATION OF THE SUPPLY CHAIN MANAGEMENT SYSTEM**

- 4.1 The Accounting Officer must establish a supply chain management function in the parliamentary service that must implement the supply chain management system, comprising the following management processes and procedures, including:
- 4.1.1 demand management;
  - 4.1.2 acquisition management;
  - 4.1.3 logistics management;
  - 4.1.4 disposal management;
  - 4.1.5 risk management; and
  - 4.1.6 regular assessment of SCM performance.
- 4.2 The Accounting Officer must establish different committees that will, in the case of procurement through a bidding process, consider the following:
- 4.2.1 bids specification;
  - 4.2.2 bids evaluation; and
  - 4.2.3 bids adjudication.
- 4.3 The Accounting Officer must ensure that:
- 4.3.1. a member(s) of the Evaluation Committee is/are not also a member(s) of the Bids Adjudication Committee;

4.3.2. Members of Parliament are not appointed as members of any of these committees or any other committee that may be established and that deals with approving tenders, quotations, contracts or other bids for Parliament as required by section 44 of the FMFA;

4.3.3. Members of Parliament are barred from attending any meeting of a committee referred to in item 4.3.2. as an observer, as well as being barred from participating in any manner in the evaluation or approval of tenders, quotations, contracts or other bids for Parliament as required by section 44 of the FMFA.

4.4 The Accounting Officer may establish other Committees deemed necessary for the effective processing of bids, quotations and other SCM processes, including those envisaged in items 6.1.5.6 and 6.6.6.

## **5. DEMAND MANAGEMENT**

5.1 The Accounting Officer must ensure that the demand management system:

5.1.1 includes timely planning and management processes to ensure that goods and services required by Parliament are quantified, budgeted for and delivered at the right locations and on the agreed delivery dates, and are of the appropriate quality and quantity at a fair cost;

5.1.2 takes into account any benefits of economies of scale that may be derived in the case of acquisitions of a repetitive nature; and

5.1.3 allows for reviewing spend analysis and costing of future procurement needs.

5.2 The Accounting Officer must ensure that demands for goods and services are informed by the existing strategic plan, annual performance plan, annual plan and business plan.

5.3 The Accounting Officer must determine the sources of supply and methods of procurement which are in line with relevant legislation in managing demand.

5.4 The Accounting Officer must maintain a Suppliers' Database with a list of prospective suppliers from which quotations for goods and/services may be sourced.

**5.5 The Accounting Officer must:**

- 5.5.1 specify the listing criteria, which must include proof that a prospective supplier's tax matters are cleared by the South African Revenue Services; and
- 5.5.2. disallow the listing or accreditation of any prospective supplier who is already listed by the National Treasury as a company or person prohibited from doing business with the public sector, for example listed in the List of Restricted Suppliers, or listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

**5.6 The Accounting Officer must ensure:**

- 5.6.1 that the list of prospective suppliers is updated at least quarterly to include any additional prospective suppliers and new commodities or types of services. The prospective suppliers must be allowed to submit an application for listing at any time; and
- 5.6.2 that prospective suppliers are invited to register on the Suppliers' Database as prospective suppliers through public advertisements at least annually.

**5.7 The Accounting Officer must ensure that there is a Parliamentary Demand Management Strategy in place in the year preceding each financial year.**

**5.8 The Demand Management system must provide for the compilation of the required specifications to ensure that Parliament's needs are met.**

**6. ACQUISITION MANAGEMENT**

**6.1 The Accounting Officer must implement a system of acquisition management whereby:**

- 6.1.1 goods and services are procured by Parliament in accordance with authorised processes only;
- 6.1.2 expenditure on goods and services is incurred in terms of an approved budget;
- 6.1.3 the threshold values for the different procurement processes are complied with;
- 6.1.4 bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with applicable legislation;

6.1.5 provision is made to allow enabling contracts to be concluded for the supply of regularly required goods or services for a period not exceeding three years; and

6.1.6 provision is made to allow contracts to be concluded for the supply of ad hoc goods and services for such period as may be prescribed in the Delegation of Authority in accordance with the nature of the goods and services procured.

6.2 Goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the SCM requirements. When determining transaction values, a requirement for goods or services consisting of different parts or items must, as far as possible, be treated and dealt with as a single transaction.

### 6.3 *Supply chain management processes*

6.3.1 The Accounting Officer must procure goods and services in accordance with the following criteria:

6.3.1.1 petty cash purchases up to the transaction value specified in the Delegation of Authority;

6.3.1.2 written quotations for the procurement of goods and services up to the transaction value specified in the Delegation of Authority;

6.3.1.3 formal written price quotations for the procurement of goods and services up to the transaction value specified in the Delegation of Authority; and

6.3.1.4 a competitive bidding process for the procurement of goods and services above the transaction value specified in the Delegation of Authority.

### 6.4 *Petty cash purchases*

6.4.1 Procurement of goods by means of petty cash must meet the following criteria:

6.4.1.1 It must include conditions limiting the number of petty cash purchases or the maximum amounts per month for delegated officials as outlined in the Delegation of Authority.

6.4.1.2 Officials responsible for petty cash purchases must provide detailed monthly reconciliation reports to the Chief Finance Officer, setting out at least:

- the total amount of petty cash purchases for that month where applicable;
- receipts and other appropriate documents for each purchase; and
- opening and closing balances that are appropriately signed off

6.4.1.3 No quotations are required for petty cash transactions.

### *6.5 Written quotation*

6.5.1 When procuring goods and services by way of written quotation, the Accounting Officer must:

6.5.1.1 obtain quotations from at least three different prospective suppliers;

6.5.1.2 ensure that where quotations are obtained from prospective suppliers who are not listed on the Suppliers' Database, such prospective suppliers must comply with the listing criteria and must request to be listed;

6.5.1.3 request prospective suppliers to submit quotations in writing;

6.5.1.4 ensure that requests for quotations are in writing; and

6.5.1.5 ensure that the responsible official reports in writing if it is not possible to obtain at least three quotations; in those cases the reasons must be furnished for the approval of the Accounting Officer or the delegated official in accordance with the Delegation of Authority.

6.5.1.6 All goods and services falling within a price bracket determined by the Accounting Officer must be considered by a committee consisting of parliamentary officials.

### *6.6 Formal written price quotation*

6.6.1 When procuring goods and services through formal written price quotations:

6.6.1.1 Quotations should be obtained from at least three different prospective suppliers that are listed on the Suppliers' Database;

- 6.6.1.2 if it is not possible to obtain at least three quotations, submissions should be made to the Accounting Officer to approve the lesser quotations, indicating that all means have been exhausted to obtain the relevant quotations; and
- 6.6.1.3 in cases where quotations are obtained from suppliers who are not listed on the Suppliers' Database, such suppliers must comply with the listing criteria and must request to be listed.
- 6.6.2 Requests for quotations must be in writing and should include:
  - 6.6.2.1 The closing date for submission of proposals/quotations
  - 6.6.2.2 The preference point systems to be utilised
  - 6.6.2.3 The evaluation criteria to be utilised
  - 6.6.2.4 A clear statement of all specifications for the required goods and/or services
  - 6.6.2.5 Whether the General Conditions of Contract will apply
  - 6.6.2.6 Whether a contract would be entered into
- 6.6.3 Formal written price quotations must not be considered unless the prospective supplier(s) has/have:
  - 6.6.3.1 duly completed the Request for Quotation form;
  - 6.6.3.2 complied with the specifications/requirements;
  - 6.6.3.3 provided the full registered name of the prospective supplier;
  - 6.6.3.4 provided an identity number, or a company or other registration number;
  - 6.6.3.5 provided a valid tax clearance certificate;
  - 6.6.3.6 provided business registration documents;
  - 6.6.3.7 provided identity copies of the owners of the entity; and
  - 6.6.3.8 signed a declaration of interest.
- 6.6.4 The Accounting Officer must ensure that the SCM system allows at least seven days for suppliers to respond to invitations for formal written quotations.
- 6.6.5 The allocation of preference points should be in accordance with the Preferential Procurement Policy Framework Act.
- 6.6.6 All goods and services falling within a price bracket determined by the Accounting Officer must be considered by a committee consisting of parliamentary officials.

## 6.7 *Competitive bidding process*

6.7.1 When procuring goods and services through a competitive bidding process, the Accounting Officer must:

- 6.7.1.1 invite bids from prospective suppliers in an open and transparent manner by advertising in a local and national newspapers, the official website of Parliament, and –
  - (a) the Government Tender Bulletin, where the invitation is for bids more than R1 million;
- 6.7.1.2 stipulate in the call for a bid–
  - (a) that by submitting a bid, all bidders bind themselves– should they be the successful bidder - to accept the award and enter into a contract setting out terms and conditions aligned to the request for tender as well as the bid;
  - (b) that the invitation for tender will not necessarily be awarded to the lowest bidder, or at all, and may be subject to negotiation prior to conclusion of the contract; and
  - (c) the list of documents and information required for the bid to be acceptable;
- 6.7.1.3 allow at least 21 days from the date of advertisement for bids before closing the invitation for submission of bids, and where no bids were received during the period provided, extend the period in the manner contemplated in item 6.7.1.1, for a further period of at least 21 days;
- 6.7.1.4 determine the date and time of the briefing sessions (where applicable) in respect of the invitation;
- 6.7.1.5 if there is a change in the scope of the competitive bid, retract the current invitation to tender; readvertise the corrected invitation in terms of item 6.7.1.2 and 6.7.1.3; and send the revised bid specification to all bidders who have already submitted bids;
- 6.7.1.6 require that all bids include details of the prospective supplier and bid number;
- 6.7.1.7 require that all bids provided in electronic format must be supplemented with hard copies;
- 6.7.1.8 stipulate that suppliers are to be vetted before the award;

- 6.7.1.9 invite all bidders to be present at the opening, registering and recording of the bids;
- 6.7.1.10 open the submitted bids immediately after the submission period has expired, and record in the register, where applicable, in the presence of interested persons all bids received in time;
- 6.7.1.11 make the register available for public inspection;
- 6.7.1.12 give effect to the Act and section 217 of the Constitution, 1996 and in doing so may, amongst other things, request further information or satisfactory documentary proof on any information provided by the tenderer, at any stage of the bid process - prior to a decision being made, including:
  - 6.7.1.12.1 explanation of an ambiguity in its tender documents;
  - 6.7.1.12.2. correcting an obvious mistake;
  - 6.7.1.12.3. clarification or better detail required for proper evaluation; and
- 6.7.1.13 publishing the bid results after the adjudication and award on the official website of Parliament.

6.7.2 Bids specifications should include:

- 6.7.2.1 The closing date for submission of proposals/quotations
- 6.7.2.2 The preference points system to be utilized
- 6.7.2.3 The evaluation criteria to be utilized
- 6.7.2.4 Clear specifications and additional requirements
- 6.7.2.5 Whether the General Conditions of Contract will apply
- 6.7.2.6 Whether a contract would be entered into

6.7.3 Bids specifications should be compiled by the Bids Specification Committee in terms of item 7 of these Regulations.

6.7.4 When procuring goods and services through a competitive bidding process, the Accounting Officer may cancel the bid if:

- 6.7.4.1 there is no longer a need for the goods, works or services offered;
- 6.7.4.2 funds are no longer available to cover the total envisaged expenditure;
- 6.7.4.3 there is a material flaw in the process;
- 6.7.4.4 no bids were received that represent value for money;
- 6.7.4.5 there is change in the scope of goods and services; or

- 6.7.4.6 there are other reasonable reasons to do so.
- 6.7.5 The reasons for cancellation of a bid must be recorded by the Accounting Officer and published.
- 6.7.6 Bids may not be considered unless the prospective supplier(s) has/have:
  - 6.7.6.1 duly completed the Bidding Document and complied with the specifications/requirements
  - 6.7.6.2 provided the registered name of the bidder;
  - 6.7.6.3 provided identity number, company or other registration number;
  - 6.7.6.4 provided a valid tax clearance certificate;
  - 6.7.6.5 provided business registration documents;
  - 6.7.6.6 provided identity copies of the owners of the entity;
  - 6.7.6.7 signed a declaration of interest; and
  - 6.7.6.8 not been listed in the list of restricted suppliers.
- 6.7.7 The evaluation of bids must be in terms of the criteria as published.
- 6.7.8 Bids must be evaluated and adjudicated by the Bids Evaluation Committee and Bids Adjudication Committee in terms of item 7.
- 6.7.9 The allocation of preference points and the award must be in terms of the Preferential Procurement Policy Framework Act.
- 6.7.10 The Accounting Officer may negotiate the final terms of a contract with a prospective supplier who submitted a bid and who was identified through a competitive bidding process as a preferred supplier, provided that such negotiation:
  - 6.7.10.1 does not allow any preferred supplier a second or unfair opportunity;
  - 6.7.10.2 is not to the detriment of any other prospective supplier;
  - 6.7.10.3 does not alter the competitive position of any bidder;
  - 6.7.10.4 is recorded in an appropriate form for reference purposes;
  - 6.7.10.5 does not alter the scope of the tender; and that
  - 6.7.10.6 the contract is signed off in terms of the Delegation of Authority.

## *6.8 Participation in transversal contracts secured by other Organs of State*

6.8.1 The Accounting Officer may procure goods or services under a contract secured by other Organs of State, only if:

6.8.1.1 the contract has been secured by means of a competitive bidding process applicable to that Organ of State;

6.8.1.2 there is no reason to believe that such a contract was not validly procured;

6.8.1.3 there are demonstrable discounts or benefits to do so; and

6.8.1.4 the other Organ of State and the supplier have consented to such procurement in writing.

## *6.9 Unsolicited offers*

6.9.1 The Accounting Officer may decide to consider an unsolicited offer, only if:

6.9.1.1 the product or service offered in terms of the offer is a demonstrably or proven unique innovative concept;

6.9.1.2 the product or service will be exceptionally beneficial, or have exceptional cost advantages;

6.9.1.3 the person who made the offer is the sole provider of the product or service; and

6.9.1.4 items 8 and 9 of these Regulations have been complied with.

6.9.2 If the Accounting Officer decides to consider an unsolicited offer, the decision must be made public and must:

6.9.2.1 provide reasons as to why the offer should not be open to other competitors;

6.9.2.2 provide an explanation of the potential benefits if the unsolicited offer were accepted; and

6.9.2.3 extend an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.

6.9.3 The Bids Adjudication Committee must consider the unsolicited offer and make a recommendation to accept or reject the offer to the Accounting Officer.

*6.10 Procurement processes relating to emergencies and exceptional circumstances*

6.10.1 The Accounting Officer may:

- 6.10.1.1 procure any required goods or services through any convenient process, which may include direct negotiations, but only:
  - 6.10.1.1.1 In an emergency as defined in 6.10.3 below;
  - 6.10.1.1.2 If such goods or services are produced or available from a limited supplier/sole provider only, as is defined in 6.10.4;
  - 6.10.1.1.3 For the acquisition of special works of art or historical objects where specifications are more complex in nature;
  - 6.10.1.1.4 In any other exceptional case as defined in 6.10.5 below, where it is impractical or impossible to follow the official procurement processes; or
  - 6.10.1.1.5 In terms of default contracts under licence where no other supplier can repair the machine/goods of another.

6.10.2 The Accounting Officer must record the reasons for all procurements in terms of item 6.10.1 and must ensure compliance with items 8 and 9 of these Regulations.

6.10.3 Where possible, in an emergency situation, three quotes should be obtained and a report submitted to the Accounting Officer for approval. However, when time is of the essence, the emergency shall be immediately addressed and the process formalised in respect of a report to the Executive Authority as soon as possible thereafter. The conditions warranting an emergency dispensation shall include the existence of one or more of the following (emergency dispensation shall not be granted in respect of circumstances other than those contemplated below):

- 6.10.3.1 The possibility of human injury or death;
- 6.10.3.2 The prevalence of human suffering or deprivation of rights; or
- 6.10.3.3 The possibility of damage to property;
- 6.10.3.4 The possibility of serious damage occurring to the natural environment;
- 6.10.3.5 The interruption of essential services critical to the effective functioning of Parliament as a whole;
- 6.10.3.6 The possibility of reputational damage to Parliament; or

- 6.10.3.7 A prevailing situation or imminent danger of such a scale and nature that it could not readily be alleviated by interim measures in order to allow time for the formal procurement process.
- 6.10.4 The following circumstances shall serve as a guideline to assist in determining whether a supplier is a limited supplier/sole provider:
  - 6.10.4.1 The supplier is a manufacturer of the goods and has not given any distribution rights to anyone, and further to that, no other supplier provides the same or similar goods;
  - 6.10.4.2 The supplier has exclusive distribution rights of the goods in the Republic of South Africa;
  - 6.10.4.3 The supplier is a preferred supplier due to the nature of the goods and/or services they provide and has met the criteria for exceptional circumstances as stated in 6.10.5 below.
- 6.10.5 The following circumstances shall serve as a guideline to assist in determining whether exceptional circumstances exist. The Accounting Officer must determine whether any of the following circumstances are present and exceptional in that specific instance and if so, approve the procurement in terms of item 6.10.1.1:
  - 6.10.5.1 any purchase on behalf of Parliament at a public auction sale;
  - 6.10.5.2 procurement of the following services:
    - 6.10.5.2.1 Non-routine legal services
    - 6.10.5.2.2 Masters of ceremonies and motivational speakers
    - 6.10.5.2.3 Gifts for foreign dignitaries, guests of Presiding Officers at official Parliamentary events, and matters relating to State protocol;
    - 6.10.5.2.4 Where there are limited suppliers for goods and services within a specific location, and where the intention is to invest in that local community in addition to the allocation of points for locality in terms of the Preferential Procurement Policy Framework Act. This is limited to:
      - a) Committee hearings
      - b) Taking Parliament to the People
      - c) People's Assembly

**6.10.5.2.5 Praise singers****6.10.5.2.6 Venues for official events hosted by Parliament which are:**

- a) International and reflect on the reputation of Parliament within the international community, or
- b) Institutional public participation Parliamentary events, limited to:
  - i. People's Assembly
  - ii. Youth Parliament
  - iii. Women's Parliament
  - iv. State of the Nation Address
  - v. The establishment of a new Parliament

**6.10.5.2.7 Conferences and specialised training****6.10.5.2.8. Bursaries****6.10.5.2.9 Subscriptions for the following:**

- a) Where Parliament is a member of associations relating to the business of Parliament; or
- b) Professional bodies where staff are required to maintain their professional qualifications

**6.10.5.2.10 Specialist medical practitioners for the purposes of boarding staff**

**6.10.5.3** Quotations in writing are still required for the above listed services as if these were obtained through written quotations, as is set out in item 6.5.

**7. COMMITTEE SYSTEM FOR PROCESSING OF COMPETITIVE BIDS**

**7.1** Below in 7.5, 7.9 and 7.10 there is a list of functions of the various committees in the processing of competitive bids. The functions of the committees are not restricted to the list provided below. The Accounting Officer may add other functions deemed necessary for the effective processing of bids, but may not remove or cross allocate any of the functions listed below. Each committee must compile terms of reference setting out the nature of its composition, meetings, and meeting procedures.

**7.2** All members of the various Committees should be vetted with a security clearance of at least "Confidential".

7.3 Members of the various Committees are appointed by the Accounting Officer for a period of two years. Appointment of the members may be renewed for one two-year period and may further be staggered to promote efficiency in the handing over of functions.

7.4 Members of each Committee should be trained and should be familiar with the powers and limitations of the Committee, as well as these Regulations and the FMPA, prior to undertaking the functions of the Committee.

*Bids Specification Committee*

7.5 The Bids Specification Committee must:

- 7.5.1 compile specifications for each bid;
- 7.5.2 draft specifications in an unbiased manner to allow all prospective suppliers to offer their goods or services;
- 7.5.3 take account of accepted industry-related standards;
- 7.5.4 confirm that the estimated costs of the services, works or goods for which an invitation for tender is to be made are planned for by the division concerned;
- 7.5.5 determine and stipulate the appropriate preference point system to be utilised in the evaluation and adjudication of the tender;
- 7.5.6 determine whether the services, works or goods for which the invitation for tender is to be made have been designated for local production and content in terms of the PP Regulations and if so, draft the tender as stipulated in the PP Regulations;
- 7.5.7 clearly indicate if the bid will be evaluated on functionality and if so, clearly stipulate the criteria, as is required by the PP Regulations;
- 7.5.8 list the documents and information that must be submitted to constitute an acceptable bid; and
- 7.5.9 submit the draft specifications to the Bids Evaluation Committee and Bids

Adjudication Committee for comment prior to publication of the invitation for bids.

7.6 The standards and technical specifications quoted in bidding documents should promote the broadest possible competition, while assuring that critical elements of performance or other requirements for goods and/or services being procured are achieved.

7.7 Specifications must be based on relevant characteristics and/or performance requirements. Any reference to brand name or similar classifications should be followed by the word “or equivalent”.

7.8 The Bids Specification Committee consists of:

7.8.1. Permanent members, appointed in terms of items 7.1. to 7.4;

7.8.2. *Ad hoc* appointed members who are experts in the field in which a tender is prepared;

7.8.3. As an *ad hoc* member, the manager of the unit who is proposing the tender;

Provided that: Neither a member of the Bids Evaluation Committee, nor an advisor or person assisting such a committee, may be a member of the Bids Specification Committee.

#### *Bids Evaluation Committee*

7.9 The Bids Evaluation Committee must:

7.9.1 where the tender documents stipulated criteria for a functionality test, first and foremost, in so far as it is possible, evaluate each bidder's ability to execute the contract, in accordance with the criteria set out in the tender and accordingly disqualify any bidder who does not comply with the criteria;

7.9.2 evaluate bids in accordance with the specifications for a specific procurement and in accordance with the points system in the bid document, provided that:

7.9.2.1. the Committee may condone any non-compliance with peremptory requirements in cases where condonation is not incompatible with the public interest;

7.9.2.2. the Committee may condone any non-compliance with conditions that are immaterial, unreasonable or unconstitutional;

7.9.2.3. the points for price must be calculated and dealt with as is set out in the PP Regulations; and

7.9.2.4. the Committee must consider the factors, conditions and procedures stipulated by the PP Regulations as part of its evaluation;

7.9.3 consider the vetting reports on shortlisted prospective suppliers as supplied by the supply chain management unit; and

7.9.4 submit to the Bids Adjudication Committee a report regarding the evaluation, setting out:

7.9.4.1. the bidders that have been disqualified, with the reason(s) for such disqualification;

7.9.4.2. a recommendation as to the preferred supplier, and should that supplier – despite item 6.7.1.2.(a) - for any reason not accept the award, the second preferred supplier; and

7.9.4.3. any other facts that the committee deems relevant.

*Bids Adjudication Committee*

7.10 The Bids Adjudication Committee must:

7.10.1 consider the report of the Bids Evaluation Committee;

7.10.2 assess the conclusions made by the Bids Evaluation Committee;

7.10.3 satisfy itself that all reasonable control measures have been taken into account to ensure that goods and services are procured in the most economical, effective and efficient manner;

7.10.4 ensure and declare in the report to the Accounting Officer whether the procurement process was competitive, fair, transparent, open, and whether it promoted responsible and accountable governance in the Parliamentary Service;

7.10.5 satisfy itself that its recommendation(s) is/are reasonable and made on the grounds of the information available to it and without prejudice; and

7.10.6 make a recommendation to the Accounting Officer to make the final award or on how to proceed with the relevant procurement in accordance with this Act, the Preferential Procurement Policy Framework Act and the PP Regulations.

7.11 The Accounting Officer may appoint persons other than officials or persons in the employ of the state to advise the Bids Adjudication and Evaluation Committees and must record such appointments in his or her award of the tender.

7.12 The Accounting Officer: -

7.12.1. may ratify or reject the recommendation of the Bids Adjudication Committee, or make a decision that differs from the recommendation of the Bids Adjudication Committee, provided that where the decision differs, the Accounting officer must report the decision and the reasons for the decision to the Executive Authority and the Auditor General as contemplated in section 43 of the FMPA;

7.12.2. may refer any recommendation back to that committee for reconsideration, clearly setting out the reasons for such referral;

- 7.12.3. may cancel a tender prior to an award in accordance with the PP Regulations, provided that the Accounting Officer must advertise the reason for cancellation;
- 7.12.4. must, where a decision that is disputed was made in terms of the Delegation of Authority, note all appeals against said decision, or a request for a review of any part of the bid process – whether submitted by an official, or a prospective or preferred supplier during or after the completion of the process - but not later than 14 days after the signing of a contract (unless good reasons for a delay can be provided) and refer such appeal or review to a person senior to the decision taker for consideration and action;
- 7.12.5. must, where the decision in dispute was made by the Accounting Officer, consider any request for review of the procedure followed during part of the bid process – whether submitted by an official, or a prospective or preferred supplier during or after the completion of the process - but not later than 14 days after the signing of a contract (unless good reasons for a delay can be provided) and determine whether to:
  - 7.12.5.1. start the bid process anew;
  - 7.12.5.2. revoke a decision to award a tender or offer a contract;
  - 7.12.5.3. correct obvious immaterial mistakes; and
  - 7.12.5.4. take such other steps as may be appropriate under the circumstances.
- 7.12.5. must implement the decision referred to in item 7.12.4, which decision may include:
  - 7.12.5.1. starting the bid process anew;
  - 7.12.5.2. correcting a procedural mistake;
  - 7.12.5.3. obtaining and considering additional relevant information;
  - 7.12.5.4. reviewing a recommendation or step in the process;
  - 7.12.5.5. revoking a decision to award a tender or offer a contract; and
  - 7.12.5.6. such other decision as may be appropriate under the circumstances.
- 7.12.6. must declare invalid any recommendation or decision made which was taken by or in any way influenced by:
  - 7.12.6.1. Members of Parliament in contravention of this Act or any applicable code of conduct for Members of Parliament;
  - 7.12.6.2. officials of Parliament in contravention of this Act or any applicable code of conduct for officials of Parliament;

7.13 Neither a member of the Bids Evaluation Committee, nor an advisor or person assisting such a committee, may be a member of the Bids Adjudication Committee.

## **8. COMPULSORY DISCLOSURE OF CONFLICT OF INTEREST OF PROSPECTIVE SUPPLIERS**

8.1 The Accounting Officer must require a prospective supplier, when submitting a bid, to disclose whether he or she or, in the case of a legal person, the entity, any of its members, directors, managers, or shareholders with interest:

8.1.1 is in the employ of the State, or has been in the employ of the State in the twelve months preceding the submission of the bid; and

8.1.2 is a member of Parliament, Cabinet, a provincial legislature, a provincial Executive Council or is a Municipal Councillor.

8.2 The Accounting Officer must reject a bid from a prospective supplier if he or she, or, in the case of a legal person, the entity, any of its members, directors, managers, or shareholders with a controlling or other substantial interest:

8.2.1 is in the employ of the State and his or her participation in the bidding process may result in a conflict of interest; and

8.2.2 is a member of Parliament, Cabinet, a provincial legislature, a provincial Executive Council or is a Municipal Councillor.

8.3 The Accounting Officer may reject a bid from a prospective supplier if he or she, or, in the case of a legal person, the entity, any of its members, directors, managers, or shareholders with a controlling or other substantial interest has been in the employ of the State in the twelve months preceding the submission of the bid and his or her participation in the bidding process may result in a conflict of interest.

8.4 The Accounting Officer may condone a failure to disclose a conflict of interest timeously as required in terms of these Regulations, but must reject a bid from a prospective supplier if it failed to disclose the information required in terms of these Regulations at the time the Bids Adjudication Committee makes its recommendation to the Accounting Officer.

**9. BARRING OF PERSONS PARTICIPATING IN THE BIDDING PROCESS**

9.1 The Accounting Officer must require from a prospective supplier participating in a bidding process such information as is necessary to establish whether the prospective supplier, or, in the case of a legal person, the entity, any of its members, directors, managers, or shareholders with a controlling or other substantial interest:

9.1.1 has been convicted of fraud, corruption or any other crime involving dishonesty in the past five (5) years;

9.1.2 has wilfully breached a contract with an organ of state during the previous five (5) years; or

9.1.3 is not cleared by the South African Revenue Service in respect of their tax matters.

9.2 The Accounting Officer must exclude a prospective supplier from the bidding process if he or she, or, in the case of a legal person, the entity, any of its members, directors, managers, or shareholders with a controlling or other substantial interest:

9.2.1 has been convicted of fraud, corruption or any other crime involving dishonesty in the past five (5) years;

9.2.2 has wilfully breached a contract with an organ of state during the previous five years;

9.2.3 is listed in the Register for Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);

9.2.4 is not cleared by the South African Revenue Service in respect of tax matters;

9.2.5 has been found to be dishonest in its participation in the Supply Chain Management System of Parliament during the last five (5) years; or

9.2.6 fails to disclose the information required by the Accounting Officer in terms of these Regulations.

**10. COMBATING ABUSE OF THE SUPPLY CHAIN MANAGEMENT SYSTEM**

10.1 The Accounting Officer must prevent abuse of and combat corruptive practices in the Supply Chain Management System by requiring officials, non employees and other persons involved in the Supply Chain Management System:

10.1.1 to recognise and declare any conflict of interest that may occur;

10.1.2 to treat all prospective and preferred suppliers in accordance with the Act and applicable legislation;

- 10.1.3 not to use their position for personal gain or to improperly benefit themselves or any another person directly or indirectly;
- 10.1.4 not to compromise the credibility and integrity of the Supply Chain Management System through the acceptance of gifts or hospitality or any other act; and
- 10.1.5 to assist in combating fraud and corruption in the Supply Chain Management System.
- 10.2 The Accounting Officer must invalidate any recommendation or decision that was made, taken or in any way influenced by:
  - 10.2.1 Members of Parliament in contravention of this Act or any applicable code of conduct for Members of Parliament; or
  - 10.2.2 Officials of Parliament in contravention of this Act or any applicable code of conduct.
- 10.3 The Accounting Officer must investigate any reasonable suspicion of abuse of or corrupt practices in the SCM System and institute civil and/or disciplinary action and/or prosecution, if applicable.

## **11. CONTRACT MANAGEMENT**

### **11.1 General**

- 11.1.1 The Accounting Officer's decision in item 7.12.1. is subject to the preferred supplier entering into a written contract for all goods and services:
  - 11.1.1.1 Procured through a bidding process; and
  - 11.1.1.2 In accordance with the Delegation of Authority, with specific reference to:
    - 11.1.1.2.1 the period for delivery of the goods and services;
    - 11.1.1.2.2. the value of the goods and services procured; and
    - 11.1.1.2.3. the amounts of deposits required.
- 11.1.2 The Accounting Officer must ensure that a contract, including an enabling contract procured through the Supply Chain Management system, is consistent with the award and implemented in accordance with the requirements set out in the invitation for the bid.
- 11.1.3 If a contract period will exceed one year, an appropriate contract price adjustment formula must be specified in the bid documents where applicable.
- 11.1.4 If the contract period does not exceed one year, the bid shall be a fixed price bid and shall not be subject to a contract price adjustment.

## 11.2 Contract amendments

- 11.2.1 A contract for goods or services procured through the Supply Chain Management system, other than a contract procured through a competitive bidding system, may be amended by agreement between the parties, or as provided for in the contract.
- 11.2.2 A contract for goods or services procured through a competitive bidding process may be amended by agreement between the parties, or as provided for in the contract, provided that the amendment remains consistent with the invitation for the bid.
- 11.2.3 Any amendments to a contract must be in writing in accordance with the contract and signed in accordance with the Delegation of Authority.

## 11.3 Contract renewal

- 11.3.1 A contract may not be renewed without following a procurement process that will ensure that there is fairness and no prejudice in the renewal of such a contract.
- 11.3.2 Reasons for the renewal should be furnished and approved by the Accounting Officer.
- 11.3.3 A contract may only be renewed for a period determined by the Accounting Officer from time to time but may not exceed the initial contract period.

## 11.4. Contract management

- 11.4.1. The Accounting Officer must establish a contract management function, with the responsibility for, amongst other things:
- 11.4.1.1. Creating and maintaining a contracts database for all active contracts held by the Parliamentary Service, setting out:
- (a) the official responsible for management of the contract;
  - (b) the period of the contract;
  - (c) the deliverables and date for delivery;
  - (d) remedies in the event of non compliance;
  - (e) rand value of the contract;
  - (f) date or period of payment;
  - (g) date on which renewal notice must be given, if any; and

(h) any other information which may assist in the proper management of contracts;

11.4.1.2. Liaising with the officials responsible for management of contracts to ensure that:

- (a) the contracts database is kept up to date;
- (b) the vendor's performance is monitored and reviewed for compliance with specifications and contract conditions for particular goods or services;
- (c) deadlines for delivery and payment are adhered to; and
- (d) contracts are closed off and stored for safekeeping after completion;

11.4.1.3. Retaining copies of all contracts for safekeeping; and

11.4.1.4. Advising the Accounting Officer should any risk means be identified based on the statistics provided by the contracts database.

## 11.5. Termination of contracts

11.5.1. The Accounting Officer may terminate a contract:

- 11.5.1.1. in accordance with the contract where the preferred supplier is in breach of a material term or condition thereof;
- 11.5.1.2. in accordance with these regulations, where these regulations so allow;
- 11.5.1.3. where it was awarded on account of false information furnished by the tenderer in order to secure preference under the Preferential Procurement Policy Framework Act.

11.5.2. The process to terminate a contract:

- 11.5.2.1. must be in accordance with the terms of the contract;
- 11.5.2.2. must be preceded by consultation with the preferred supplier, provided that this requirement—
  - (a) shall not prevent temporary suspension of performance by either party; and
  - (b) shall be fulfilled if the reasons for cancellation were put to the preferred provider in writing and the preferred provider did not supply a

satisfactory response within such reasonable time as the notification may stipulate.

11.5.3. If an agreement has been concluded with any preferred supplier on the strength of information furnished by him or her in respect of which it is after the conclusion of such agreement proved that such information was incorrect, the Accounting Officer may, in addition to any other legal remedy he or she may have -

11.5.3.1. recover from the preferred supplier any costs, and any damages incurred or sustained, as the case may be, as a result of the conclusion of the agreement; or

11.5.3.2. terminate the agreement and recover from the preferred supplier damages suffered by having to make less favourable arrangements thereafter.

## **12. LOGISTICS MANAGEMENT**

The Accounting Officer must establish and implement an effective system of logistics management, which must include:

- 12.1 the coding of assets to ensure that each item has a unique reference number;
- 12.2 the setting of inventory levels that include minimum and maximum levels and lead times wherever goods are placed in stock;
- 12.3 the placing of manual or electronic orders for acquisitions;
- 12.4 before payment is approved, certification by the responsible officer that the goods and services are received or rendered on time and are in accordance with the order, the general conditions of contract and specifications where applicable and that the price charged is as quoted in terms of a contract;
- 12.5 appropriate standards of internal control and warehouse management to ensure that goods placed in stores are secure and only used for the purpose for which they were purchased;
- 12.6 regular checking to ensure that all assets are properly managed, appropriately maintained and only used for official purposes;
- 12.7 ensuring that a register of all applicable assets is maintained;
- 12.8 ensuring that preventative measures are in place to eliminate theft, losses, wastage and misuse of the assets or perishable goods; and

12.9 investigation of damages and losses with a view to possible recovery.

### **13. DISPOSAL MANAGEMENT**

The Accounting Officer may alienate, let or otherwise dispose assets of Parliament in accordance with the Delegation of Authority, provided that:

- 13.1 any transfer of assets to another organ of state must be at market-related value or, where appropriate, free of charge;
- 13.2 any selling of assets at market-related value must be by way of written quotations, a competitive bidding process or auction, whichever is the most efficient and effective, taking account of the costs of disposal;
- 13.3 the highest possible value is negotiated for any trade-in of an asset for another asset; and
- 13.4 any disposal of assets must take into account the public interest and be development-orientated.

### **14. RISK MANAGEMENT**

- 14.1 The Accounting Officer must proactively manage risks to Parliament and its administration by timeously and systematically identifying risks on a case-by-case basis, including risks related to the identification and combating of:
  - 14.1.1 fraud and corruption within the SCM system;
  - 14.1.2 other economic transgressions within the SCM system, such as theft and financial misconduct;
  - 14.1.3 crimes in terms of the FMPPA and other applicable legislation.
- 14.2 The Accounting Officer must analyse and assess risks, including conflicts of interest, and develop appropriate management plans in respect of these, including:
  - 14.2.1 avoiding risks where possible;
  - 14.2.2 allocating risks to the party best suited to manage them;
  - 14.2.3 obtaining adequate mitigating strategies for residual risks;
  - 14.2.4 assigning relative risks to the contracting parties through clear and unambiguous contract documentation;

14.2.5 accepting the cost of the risk where the cost of transferring the risk is greater than that of retaining it; and

14.2.6 ensuring that the costs incurred in managing risks are commensurate with the importance of the purchase and the risks to the operations of Parliament and its administration.

## **15. SUPPLY CHAIN MANAGEMENT SYSTEM PERFORMANCE**

The Accounting Officer must regularly assess the performance of the Supply Chain Management system in order to determine, on the basis of the retrospective analysis, whether the authorised and prescribed supply chain management processes were followed and whether the desired objectives were achieved.

## **16. DISPUTE SETTLING PROCEDURES**

16.1 The Accounting Officer must inform bidders and other prospective suppliers that persons disputing the legality of decisions taken or actions performed by the Accounting Officer or any official in the implementation of the Supply Chain Management system may lodge a written objection, where the decision taken or action performed was taken or performed:

16.1.1. in terms of the Delegation of Authority, to a senior person in accordance with the Delegation of Authority; and

16.1.2. by the Accounting Officer, to the Executive Authority within 14 days of the matter arising.

16.2 If the Accounting Officer or Executive Authority, respectively, is unable to resolve the dispute, he or she must appoint one or more independent and impartial persons to assist and make recommendations to the Accounting Officer or Executive Authority, respectively toward the resolution of the dispute.

## **17. COMMENCEMENT**

These Regulations take effect after publication or on a later date determined by the Executive Authority.

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