



**NATIONAL TREASURY
REPUBLIC OF SOUTH AFRICA**

Private Bag X115, Pretoria, 0001 Tel: +27 12 315 5111, Fax: +27 12 315 5234
Enquiries: J Soobramanian Ref: 3/4/3/2/10 Tel: 315-5336 Fax: 326-5445
e-mail: jeyrel.soobramanian@treasury.gov.za

TO ALL
ACCOUNTING OFFICERS: NATIONAL DEPARTMENTS
HEADS: PROVINCIAL TREASURIES
CHIEF FINANCIAL OFFICERS: PROVINCIAL DEPARTMENTS
CHIEF EXECUTIVE OFFICERS / CHIEF FINANCIAL OFFICERS: CONSTITUTIONAL
INSTITUTIONS / PUBLIC ENTITIES

Supply Chain Management Office

CODE OF CONDUCT FOR BID ADJUDICATION COMMITTEES

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

1 Introduction

- 1.1 The purpose of this circular is to provide guidelines on the mandate, role, function, composition, duties, meeting procedures and conduct of Supply Chain Management (SCM) Bid Adjudication Committees. These guidelines are supplementary to the Code of Conduct for the Public Service as contained in Chapter 2 of the Public Service Regulations, 2001 as well as the Code of Conduct for Supply Chain Management Practitioners issued on 5 December 2003 as practice note number SCM 4 of 2003.

2 Mandate, role and function of the Bid Adjudication Committee

- 2.1 Sections 44 and 56 of the Public Finance Management Act empower accounting officers / authorities to delegate powers or instruct any official in that department, trading entity, constitutional institution or public entity to perform any of the duties assigned to the accounting officer in terms of the Act.

- 2.2 Sections 38 (1)(a)(iii) and 51 (1) (a) (iii) of the Act, prescribes that accounting officers / authorities must ensure that the institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.
- 2.3 Treasury Regulation 16A6.2 stipulates that an institution's supply chain SCM system must, *inter alia*, provide for the adjudication of bids through a bid adjudication committee, the establishment, composition and functioning of bid specification, evaluation and adjudication committees and the selection of bid adjudication members.
- 2.4 The Bid Adjudication Committee must consider the recommendations/reports of the Bid Evaluation Committee and depending on the delegated powers make:
- a final award; or
 - a recommendation to the accounting officer / authority to make a final award; or
 - make another recommendation to the accounting officer / authority on how to proceed with the relevant procurement.
- 2.5 The Bid adjudication committee must ensure that:
- all necessary bid documents have been submitted;
 - disqualifications are justified and that valid and accountable reasons / motivations were furnished for passing over of bids;
 - scoring has been fair, consistent and correctly calculated and applied; and
 - bidders declarations of interest have been taken cognizance of.
- 2.6 If a bid other than the one recommended by the Bid Evaluation Committee is approved by the Bid Adjudication Committee, the accounting officer / authority or a senior official delegated by the accounting officer, must first be notified. The accounting officer / authority or the delegated official may after consideration of the reasons for the deviation, ratify or reject the decision of the Bid Adjudication Committee. If the decision of the Bid Adjudication Committee to approve a bid other than the one recommended by the Bid Evaluation Committee is ratified, the Auditor-General, the relevant provincial treasury and the National Treasury must be notified of the reasons for deviating from such recommendation.
- 2.7 The accounting officer / authority or his / her delegate may at any stage refer any recommendation made by the Bid Evaluation Committee or the Bid Adjudication Committee back to that committee for reconsideration.
- 2.8 The Bid Adjudication Committee must also consider and rule on all recommendations/reports regarding the amendment, variation, extension, cancellation or transfer of contracts awarded.
- 2.9 The Bid Adjudication Committee may also, if and when required to do so, consider for approval the recommendations of the Bid Specification Committee in order to ensure that:
- a proper and unbiased specification is compiled for the specific requirement;

- proper Terms of Reference are drawn up for the service required clearly indicating the scope of the requirement, the ratio between price and functionality, the evaluation criteria as well as their weights and values;
- strategic sourcing principles were applied and that the market was properly researched and analyzed;
- the necessary funds are available;
- if and when applicable, in addition to the General Conditions of Contract, appropriate Special Requirements and Conditions of Contract are specified;
- the preference point system prescribed and that appropriate goals are identified and points allocated for these goals are consistent with the requirements of the Preferential Procurement Regulations; and
- where appropriate, ranges have been set (indicating breakdown of the points / percentages as provided for in the relevant sliding scales for the selected specified goals).

2.10 In order to meet their obligations, committee members must be familiar with and adhere to all relevant SCM legislation, policy, guides, practice notes and circulars.

2.11 The integrity of supply chain practitioners must never be compromised and the highest level of professional competence must be maintained. Furthermore, courteous conduct is expected of all committee members.

2.12 All members as well as the secretary of Bid Adjudication Committees should be cleared at the level of - "Confidential" by the accounting officer / authority and should be required to declare their financial interest annually.

2.13 Each member as well as all officials rendering administrative support must sign a declaration form at each Bid Adjudication Committee meeting. Members are to declare that they will:

- accept the confidentiality of the meeting;
- not make known anything regarding the meeting, unless officially authorized; and
- not purposefully favour or prejudice anybody.

An example of such a declaration is attached to this circular.

3 Composition of Bid Adjudication Committees and the appointment of members

3.1 Bid Adjudication Committees are appointed in writing by the accounting officer / authority and the accounting officer / authority will determine the term of office for members.

3.2 Such a committee must consist of at least four senior officials constituted as follows:

3.2.1 Chairperson

Where possible, the chairperson should be the Chief Financial Officer.

3.2.2 Vice chairperson

The vice-chairperson should be on at least director level.

3.2.3 Other Members

The Bid Adjudication should be composed of cross-functional teams comprising senior officials of whom at least one must be a supply chain practitioner.

Where considered necessary, additional officials or advisors may be co-opted on account of their specialized knowledge.

3.3 Secretariat

An official from the institution's bid administration section must be made available to act as secretary.

3.4 Quorum

The Bid Adjudication Committee should only consider recommendations / reports if at least sixty percent (60%) of its members are present.

3.5 Secundi

For the purpose of continuity and not to delay meetings, the accounting officer / authority may also appoint secundi to temporarily replace members that are absent from meetings due to illness, leave, etc. The accounting officer / authority will also decide whether or not such secundi will have the same powers as members.

4 Duties and powers of the various Committee Members

4.1 Chairperson

4.1.1 The Chairperson –

- has a casting vote as well as a deliberate vote;
- retains all his/her rights as a member;
- may adjourn a meeting;
- may rule on points of order which will be final;
- may withdraw any proposal or other matters under discussion before it is put to the vote; and
- convene extraordinary committee meetings on request.

4.1.2 The chairperson shall –

- maintain order during a meeting and ensure that business is conducted in an orderly manner;
- before opening a meeting, ensure that it is properly constituted;
- protect the rights of every member;

- vacate his / her seat to the vice chairperson, should he/she wish to partake in a discussion in a partial manner;
- regulate participation in discussions;
- deal with items in sequence of the agenda;
- ensure that members know exactly what they are required to vote on;
- ensure that only one member holds the floor at any one time;
- provide guidance by directing the meeting, but shall not dominate;
- conduct meetings in a formal manner; and
- formulate clearly the decisions to be minuted and sign and approve the minutes after they have been verified for correctness.

4.2 Vice-chairperson

The vice-chairperson has the same powers and duties as those of members and in addition, where necessary, shall –

- in the absence of the chairperson, preside as chairperson; and
- take the seat of and act as chairperson, should the chairperson wish to partake in partial discussions.

In the event that both the chairperson and vice-chairperson are absent from a meeting, the members present may elect one of their members to preside at such meeting.

4.3 Secretary

The Secretary shall –

- in conjunction with the chairperson/ vice chairperson compile an agenda and determine dates of meetings;
- give notice of proposed meetings to committee members;
- process and distribute all submissions/reports together with the agenda to committee members at least three working days before the actual meeting takes place;
- minute all decisions taken at meetings;
- adhere strictly to the stipulations of the National Archives of South Africa Act, No. 43 of 1996 and accompanying directives;
- ensure that the proceedings at meetings are recorded mechanically;
- give written feedback of all decisions taken by the committee; and
- be responsible for all the administrative tasks of the Committee.

4.4 Members

4.4.1 Members of the Committee shall –

- be fully conversant with the powers and limitations of the Committee as well as all directives pertaining to Supply Chain Management, including the relevant sections of the Constitution, Public Finance Management Act and accompanying Treasury Regulations, Preferential Procurement Policy Framework Act, Broad

Based Black Economic Empowerment Act and accompanying regulations, all directives issued by National Treasury / relevant provincial treasury as well as the delegated powers issued by the accounting officer / authority and at all times act in accordance with above-mentioned legislation, regulations and procedures;

- apply their minds to matters at hand in order to take meaningful and accountable decisions and in the event of doubt or uncertainty, to propose that matters be referred back for clarification;
- in advance, furnish a written apology should he/she not be able to attend a meeting;
- strive to be punctual for meetings and to stay for the duration of a meeting;
- prepare properly for each meeting by studying the agenda and submissions/reports;
- be familiar with meeting procedures in order to make a contribution in the correct manner; and
- refrain from repetition and duplication of contributions by other members.

4.4.2 Members have the right to –

- have advance knowledge of the agenda;
- submit proposals and participate in proceedings;
- vote; and
- have a dissenting voice and have the reasons therefore recorded.

4.5 Co-opted members/advisors

4.5.1 Co-opted members/advisors have the same powers and duties as members but excluding the right to vote on any matter under discussion.

4.5.2 Members of the Bid Evaluation Committee may present their recommendations / reports to the Bid Adjudication Committee and clarify any issues but shall not have any voting powers.

4.6 Observers

4.6.1 The chairperson may, on request, allow officials to attend a meeting as observers. Observers have no participation in the proceedings, except to advise the representative (member) or the committee if permitted by the chairperson. Observers should be cautioned to maintain the confidentiality of the discussions.

5. Meeting procedures

5.1 Notice of meetings

5.1.1 The agenda of a meeting serves as the program of the meeting and unless the Committee decides otherwise, the items and sequence may not be changed during the meeting.

5.1.2 In order to afford members the opportunity to prepare for the meeting, the agenda shall be made available to members at least three working days before the actual meeting.

- 5.2 Submissions/reports to the Committee
 - 5.2.1 All submissions/reports to the Committee must be in writing, substantiated and channeled through the Bid Specification Committee or Bid Evaluation Committee.
- 5.3 Minutes
 - 5.3.1 The minutes will be the written record reflecting in a brief, clear and impartial manner the decisions of the Committee. The signed minutes will serve as proof of the decisions of the Committee.
 - 5.3.2 Should a member wish to have a specific matter other than a decision recorded, it must be specifically requested. A member's reasons for a dissenting voice must also be recorded.
 - 5.3.3 Proceedings are also recorded mechanically to enable the secretary to prepare verbatim reports when required by a court of law.
- 5.4 Register
 - 5.4.1 Members shall sign a register at each meeting, serving as attendance register as well as an undertaking to confidentiality of that meeting.
 - 5.4.2 This register will also provide for the declaration of interest.
 - 5.4.3 Members must declare all gifts and invitations accepted to social events received from suppliers or potential suppliers, irrespective of the value of such a gift. Such declarations must be captured in the minutes of the meeting and must be reported to the chief financial officer. Any such gifts and / or invitations accepted by the chief financial officer must be reported to the accounting officer.
- 5.5 Chairperson
 - 5.5.1 Each meeting will be presided over by the chairperson. In the absence of the chairperson, the vice-chairperson will preside as chairperson, in which case he/she will occupy the chair for the duration of the meeting, even if the chairperson should arrive during the course of the meeting.
 - 5.5.2 Every member attending the meeting owes deference to the chairperson and may be removed if that person does not respect the authority of the chair.
- 5.6 Points of order
 - 5.6.1 A member may speak on a point of order only if he/she is of the opinion that there has been a departure from the rules of order, e.g. an objection against improper language used, that a speaker has transgressed, etc.

6. Conduct of Committee Members

6.1 Rights and responsibilities of committee members

6.1.1 General

6.1.1.1 A person as a member of the Committee obtains certain rights such as a share in the control of the matter for which the meeting is constituted and the member may exercise this right by making proposals, voting, etc. A member's conduct at the meeting must however not infringe on the rights of others. The rules of conduct are based on mutual respect for the rights of each other and respect for the purpose of the meeting.

6.1.1.2 Members must accept that –

- the chairperson must be respected;
- the chairperson has the right to interrupt and ask a member to stop speaking if the address is repetitive or irrelevant to the matter under discussion;
- a member must stop speaking if ruled out of order by the chairperson;
- decisions are taken by general consensus or by a show of hands when a matter is decided upon by voting;
- once a decision has been taken it is final and not open for discussion unless additional information which was not available at the time of decision making can be produced;
- information and documentation are confidential;
- a member (including the chairperson or vice-chairperson) shall beforehand declare his/her interest regarding any matter serving before the Committee and the member will then recuse her/himself during the discussion of that matter. No discussion by the member concerned will be allowed prior to the serving of that submission/report and such a member may not retain that specific submission/report. Any personal interest that may infringe, or might reasonably be deemed to infringe on a member's impartiality in any matter relevant to their duties must be recorded;
- outvoted members must abide by the majority decision of the Committee; and
- no communication should be made with a bidder/contractor by any member prior to or after any meeting.


JAN BREYTENBACH

CHIEF DIRECTOR: NORMS AND STANDARDS

DATE: 2006/03/24

js360bw

BID ADJUDICATION COMMITTEE

DECLARATION OF CONFIDENTIALITY AND IMPARTIALITY

MEETING NUMBER:

DATE:

I, the undersigned, accept that all information, documentation and decisions regarding any matter serving before the Committee are confidential. I, therefore, undertake not to make known anything in this regard.

I also declare that I will not purposefully favour or prejudice anybody.

[illegible]