



CONSTRUCTION PROCUREMENT BEST PRACTICE GUIDELINE #A2

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Applying the procurement prescripts of the CIDB in the Public Sector

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1. Introduction

The Construction Industry Development Board Act (Act 38 of 2000) defines the **construction industry** as:

“the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment.”

The Construction Industry Development Regulations issued in terms of this Act defines **construction procurement** as:

“procurement in the construction industry, including the invitation, award and management of contracts”.

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

The primary pieces of national legislation that govern procurement are as listed in Table 1 (see Annexures 1 and 2). Figure 1 presents an overview of the regulatory framework for procurement and supply chain management.¹

The basic philosophy underlying the approach to the Public Finance Management Act is to allow “managers to manage and be held accountable,” while politicians are provided with information necessary to set overall policy and priorities for service delivery. This Act, which is applicable to all organs of state other than municipalities and municipal entities, requires accounting officers (head of departments / chief executive officers) and accounting authorities (board / controlling body / chief executive officer) to have in place an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective; effective, efficient and transparent systems of financial and risk management and internal control; and a system for properly evaluating all major capital projects prior to a final decision on the project.

The approach to regulating supply chain management in municipalities and municipal entities through the Municipal Finance Management Act is similar to that contained in the Public Finance Management Act whereby accounting officers / authorities are tasked with the responsibility of establishing within their institutions a supply chain management system that is consistent with a broad framework and norms and standards established by National Treasury.

¹ Tender Board Acts at both the national and provincial level are in the process of being repealed. They are accordingly not shown in Table 1 or Figure 1.

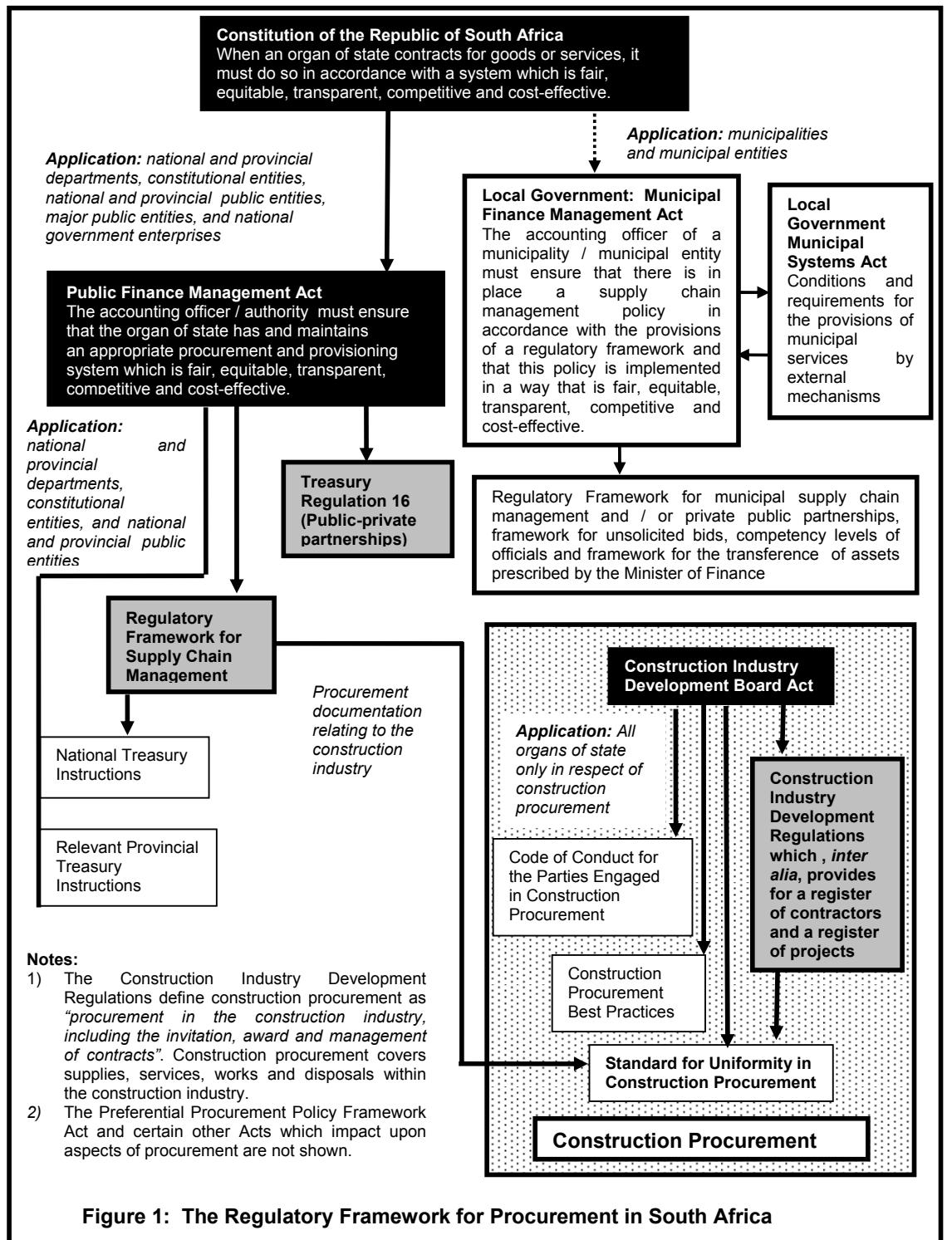
Table 1: Primary pieces of legislation that regulate procurement

Act	Applicability	What it does in respect of procurement / supply chain management
Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)	All organs of state	Provides procurement objectives and establishes government's policy for preferencing
Public Finance Management Act, 1999 (Act 1 of 1999)	All organs of state, except in the local sphere of government	Establishes broad framework within which accounting officers / authorities must establish their procurement and provisioning system (supply chain management)
Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000)	All organs of state (state owned enterprises) at discretion of Minister)	Establishes the manner in which preferential procurement policies are to be implemented
Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003)	Municipalities and municipal entities	Establishes a detailed regulatory framework for supply chain management.
Local Government Municipal Systems Act, 2000 (Act No 32 of 2000); and	Local sphere of government	Establishes a framework for the establishment of service delivery agreements involving competitive bidding processes
Construction Industry Development Board Act, 2000 (Act 38 of 2000)	All organs of state involved in procurement relating to the construction industry.	Establishes a means by which the Board can promote and implement policies, programmes and projects aimed at procurement reform, standardisation and uniformity in procurement documentation, practices and procedures within the framework of the procurement policy of government. Establishes a national register of contractors (and if required, consultants and suppliers) to manage public sector procurement risk
Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).	Procurement provisions apply to all organs of state.	Establishes a code of good practice to inform the: <ul style="list-style-type: none">• development of qualification criteria for the issuing of licenses or concessions, the sale of state owned enterprises and for entering into partnerships with the private sector; and• development and implementation of a preferential procurement policy.
Prevention and Combating of Corrupt Activities Act, 2004. (Act No. 12 of 2004).	Public and private sector	Makes corruption and related activities an offence. Establishes a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; and Places a duty on certain persons holding a position of authority to report certain corrupt transactions.

In the Municipal Finance Management Act, accounting officers are responsible to take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimize the likelihood of fraud, corruption, favoritism and unfair irregular practices and for implementing the supply chain management policy of the municipality or municipal entity in accordance with a prescribed regulatory framework for supply chain management, issued by the Minister of Finance that covers at least the following:

- The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding.
- When a municipality or municipal entity may or must use a particular type of process.
- Procedures and mechanisms for each type of process.
- Procedures and mechanisms for more flexible processes where the value of a procedure is below a prescribed amount.
- Open and transparent pre-qualification processes for tenders or other bids.
- Competitive bidding processes in which only pre-qualified persons may participate.
- Bid documentation, advertising of and invitations for contracts.
- Procedures and mechanisms for:
 - the opening, registering and recording of bids in the presence of interested persons;
 - the evaluation of bids to ensure best value for money;
 - negotiating the final terms of contracts; and
 - the approval of bids.
- Screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed
- Compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractor from those tenders or bids

- Participation in the supply chain management system of persons who are not officials of the municipality or municipal entity.



- The barring of persons from participating in tendering or other bidding processes, including persons:

- who were convicted for fraud or corruption during the past five years;
 - who willfully neglected, reneged on or failed to comply with a government contract during the past five years;
 - whose tax matters are not cleared by South African Revenue Service
- Measures for:
 - combating fraud, corruption, favouritism and unfair and irregular practices in supply chain management
 - promoting ethics of officials and other role players involved in municipal supply chain management
- The invalidation of recommendations or decisions that were unlawful, improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by-
 - councilors in contravention of item 5 or 6 of the Code of Conduct for Councilors set out in Schedule 1 to the Municipal Systems Act; or
 - municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act:
- The procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state.
- Contract management and dispute settling procedures.
- The delegation of municipal supply chain management powers and duties including to officials.

The Public Finance Management Act does not empower National Treasury to prescribe a framework to the level of detail called for in the Municipal Finance Management Act. It assumes that accounting offers / authorities will address these items in their supply chain management system.

Policy guidelines for the issuance of a Supply Chain Management Framework (see Annexure 1) and a Regulatory Framework for Supply Chain Management which has now been incorporated in the Treasury Regulations for departments, trading entities, constitutional institutions and public entities (See Annexure 3) have been issued in terms of the Public Finance Management Act. A Policy Strategy to guide uniformity in the Procurement Reform Processes in Government has also been published by National Treasury. The relationship between supply chain management and public sector delivery management is outlined in Annexure 4. Annexure 5 provides an example of an institution's supply chain management directives that is consistent with the requirements of the prescripts of the Public Finance Management Act.

Regulations regarding the procurement arrangements contained in the Local Government: Municipal Finance Management Act were published in May 2005. The implementation of some of the provisions of the Municipal Finance Management Act pertaining to supply chain management (sections 111, 112, 115(a) and 116(2)(c) have been delayed in medium and low capacity municipalities until 30 June 2006 and 2007, respectively. A Municipal Supply Chain Management Model Policy has been published for adoption of municipalities and municipal entities in terms of section 111 of the Act.

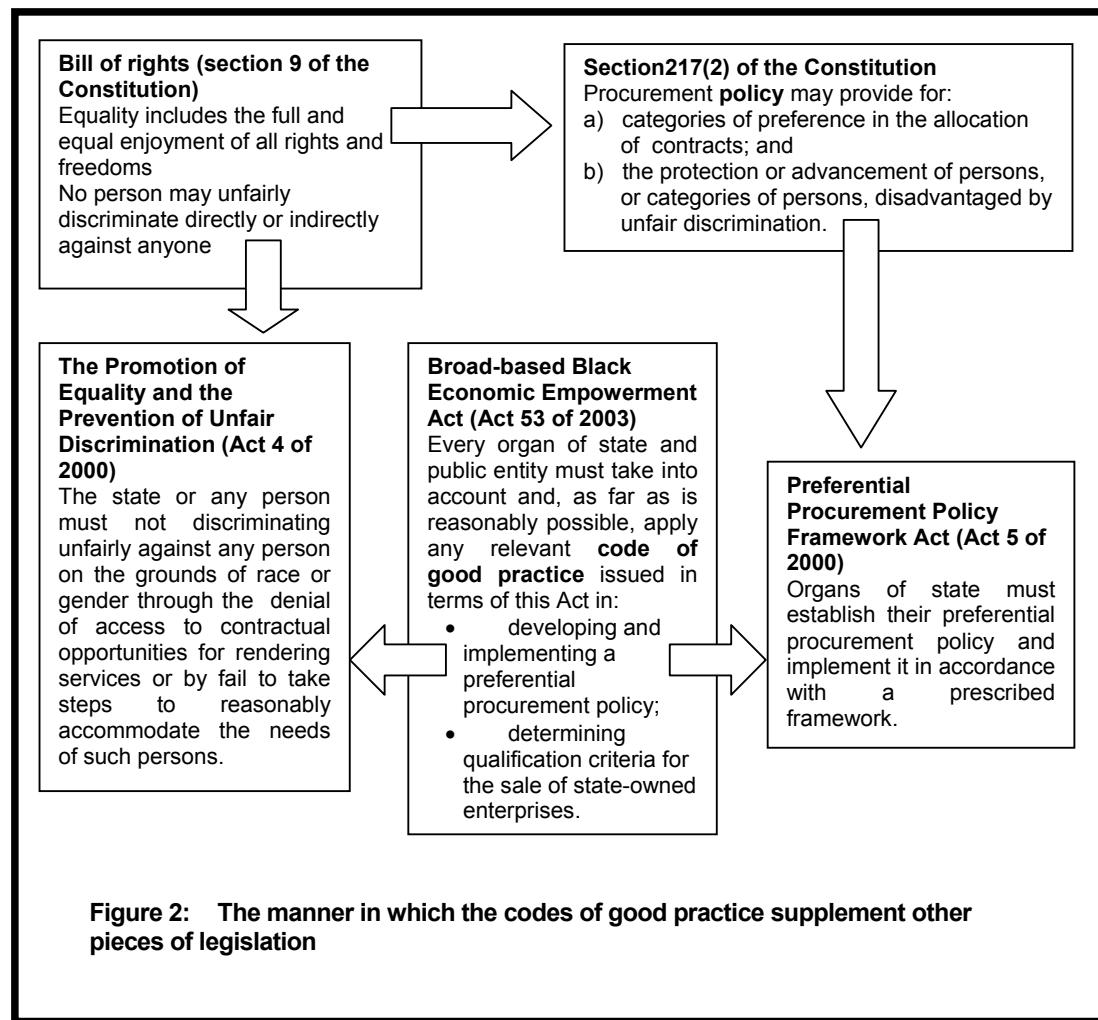
The Promotion of Equality and the Prevention of Unfair Discrimination Act of 2000 (Act 4 of 2000) expressly prohibits the state and all persons (natural and juristic) from discriminating unfairly against any person on the grounds of race or gender through the denial of access to contractual opportunities for rendering services or by failing to take steps to reasonably accommodate the needs of such persons.

The Preferential Procurement Policy Framework Act (Act 5 of 2000) gives effect to Section 217(2) of the Constitution and provides a framework within which procurement policies referred to therein must be implemented. This Act requires organs of State (those responsible for procurement and elected leaders, eg accounting officers and cabinet ministers / councilors) to determine their preferential procurement policy and to implement it within a framework. The Framework provided, by the Act requires that a preference point system must be followed. No preferencing outside of the points system provided for in the Act is permitted.

The Broad-based Black Economic Empowerment Act of 2003 (Act 53 of 2003) requires that organs of state and all public entities take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in developing and implementing a preferential procurement policy. No final Codes of Good Practice have to date been published by the Minister of

Trade and Industry (generic or construction sector) in terms of the Broad Based Black Economic Empowerment Act construction sector. As a result, it is not possible to implement this Act.

Figure 2 illustrates how the codes of good practice supplement other pieces of legislation.



2. Regulation of construction procurement

Construction procurement, apart from being regulated in terms of general legislation governing public procurement, is also regulated through the following prescripts of the Construction Industry Development Board which have been issued in terms of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000)):

- CIDB Code of Conduct for the Parties engaged in Construction Procurement published in terms of the Construction Industry Development Board Act (Act 38 of 2000)², and
- CIDB Standard for Uniformity in Construction Procurement published in terms of the Construction Industry Development Regulations of the Construction Industry Development Board Act (Act 38 of 2000)³.

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

The Board has also in terms of its mandate published a Library of Construction Procurement Best Practice. (See Annexure 6)

The **CIDB Code of Conduct for the Parties engaged in Construction Procurement** requires that the parties in any public or private construction-related procurement should in their dealings with each other:

- 1) Behave equitably, honestly and transparently.
- 2) Discharge duties and obligations timeously and with integrity.
- 3) Comply with all applicable legislation and associated regulations.
- 4) Satisfy all relevant requirements established in procurement documents.
- 5) Avoid conflicts of interest.
- 6) Not maliciously or recklessly injure or attempt to injure the reputation of another party.

The **CIDB Standard for Uniformity in Construction Procurement** establishes requirements for construction procurement which are aimed at bringing about standardisation and uniformity in procurement documentation, practices and procedures. It establishes minimum requirements for uniformity in construction procurement and is based on Construction Procurement Best Practices published by the Board. Annex A of this standard identifies documents (see Table 2) which provide guidance on how to comply with the various requirements of this standard.

The Standard for Uniformity in Construction Procurement contains the following clauses and annexes:

- 1 Scope
- 2 Normative References
- 3 Definitions
- 4 Requirements
 - General
 - Solicitation of tender offers
 - Quality
 - Procurement documents
 - Applying the register of contracts to public contracts

- Annex A: Best practice guidelines
Annex B: Standard Tender Notice and Invitation to Tender
Annex C: Form of offer and acceptance
Annex D: Sample preferencing schedule where direct preferences are granted in respect of targeted enterprise status
Annex E: Sample preferencing schedule where preferences are granted in respect of the direct participation of targeted enterprises and / or labour
Annex F: Standard Conditions of Tender
Annex G: Alpha-numerics associated with the Contractor Grading Designations
Annex H: Standard Conditions for the calling for Expressions of Interest
Annex I: Selection of subcontractors by employers and contractors
Annex J: Standard Notice and Invitation to submit an Expression of Interest
Annex K: Record of Addenda to tender documents

3 The Standard for Uniformity in Construction Procurement is published in terms of sections 4(c) and 5(4)(b) of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000) read with Regulation 24 of the Construction Industry Development Regulations, issued in terms of section 33 of this Act. Regulation 24(b) of the Construction Industry Regulations issued in terms of the Construction Industry Development Board Act of 2000 states that "Every client or employer (organ of state) who is soliciting tenders in the construction industry must do so in accordance with the Standard for Uniformity in Construction Procurement, published by the Board in the Gazette."

Annex L: Compulsory Enterprise Questionnaire

This standard establishes minimum requirements which are consistent with the provisions of the regulatory framework for public procurement. As such, it provides the overarching framework for the solicitation of tender offers and the compilation of procurement documents. Organs of state which engage in construction procurement need to align their construction procurement procedures and methods to comply with this standard.

It should be noted, however, that the procedures and methods embodied in the CIDB Standard for Uniformity in Construction Procurement are the same as those contained in the voluntary standard SANS 294, *Construction Procurement Processes, Methods and Procedures*, which in turn is compatible with South Africa's Regulatory requirements (See Annexure 7). It is therefore recommended that either compliance with the provisions of SANS 294 be made a requirement in an organization's procurement system or SANS 294 be used as a base document for the development of an organization's procurement system.

Table 2: Construction procurement best practices guidelines

Title	Synopsis
Best practice guidelines published by the Construction Industry Development Board	
CIDB Best Practice Guideline A1: The Procurement Cycle (1001)	This practice guide identifies six principal procurement activities that apply to all procurements irrespective of their categorization as supplies, services and engineering and construction works. It also identifies the generic steps (sub-activities) associated with such activities and the logical points in the process where controls should be introduced. The actions associated with these activities and sub-activities are documented as well as the inputs and outputs to each of the actions in a logical framework. The practice guide also presents the recommended approach to performing the various activities and sub-activities
CIDB Best Practice Guideline A2: Applying the procurement prescripts of the CIDB in the Public Sector (1002)	This practice guide provides guidelines on the application of the CIDB's Standard for Uniformity in Construction. It also establishes the relationship between this standard and National Treasury's Regulatory Framework for Supply Chain Management. Guidance is also provided on the establishment of a procurement policy within an institution and the manner in which procurement may be managed and controlled.
CIDB Best Practice Guideline A3: Evaluating tender offers (1003)	This practice guide provides guidance on the evaluation of tenders in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement respect of the seven steps identified in Practice Guide A1 associated with this activity. It also contains proforma forms to evaluate tender offers and an example of a tender evaluation report.
CIDB Best Practice Guideline A4: Evaluating Quality in Tender Submissions (1004)	This practice guide defines quality within the procurement context and reviews the requirements for evaluating quality in the accordance with regulatory requirements and the provisions of the CIDB Standard for Uniformity in Construction Procurement for the evaluation of quality. It furthermore provides practical guidelines on the awarding of preferences for quality, pre-qualification on the basis of quality and the scoring of tender submissions in terms of quality and price or quality, price or preference.
CIDB Best Practice Guideline A5: Managing Construction Procurement Risks (1005)	This practice guide outlines the main elements of the risk management process. It identifies the generic sources of construction related risks, presents a range of options for risk allocation between the employer and the contractor and discusses the question of insurances. It also provides guidelines for the management of risk.
CIDB Best Practice Guideline A6: Applying the Registers to Construction Procurement (1006)	This practice guide outlines the processes associated with the implementation of the register of contractors and the register of projects in accordance with the provisions of the Construction Industry Development Regulations. It provides guidelines to employers and their agents to comply with the requirements of these regulations in their procurements and describes the manner in which requirements relating to contractor grading designations may be incorporated in procurement documents.
CIDB Best Practice Guideline A7: The procurement of professional services (1035)	This practice guide provides an overview of government's policy regarding the appointment of consultants and the provisions made in the CIDB Standard for Uniformity for the procuring of professional services. It outlines procedures in respect of each of the methods contained in this standard and guidance on the compilation of procurement documentation associated with professional service contracts. It also establishes the relationship between the methodology advocated by the standard and that promoted by National Treasury in their Supply Chain Management Practice Notes.
CIDB Best Practice Guideline A8: Procurement measures to develop registered contractors. (1036)	This practice guide outlines the principles for sustainable growth and a number of strategies to promote the participation of smaller registered contractors in public contracts so that they can grow and develop. The strengths and weaknesses of each of these strategies are discussed.

Title	Synopsis
CIDB Best Practice Guideline B1: Formulating and Implementing Preferential Procurement Policies (1007)	This practice guide presents a range of policy options and implementation methodologies that may be pursued in the formulation of preferential procurement policies that are consistent with the provisions of the South African regulatory regime. The guide introduces the thinking behind preferential procurement policies, the manner in which such policies are implemented internationally and the constraints to implementation within South Africa. It interprets the Preferential Procurement Policy Framework Act and related regulations, identifies the methods by which preferences may be applied, provides guidelines as to how preferential procurement policies may be formulated to satisfy legislative requirements and contains examples of preferential procurement policies that are drafted in accordance with this practice guide.
CIDB Best Practice Guideline B2: Methods and Procedures for Implementing Preferential Procurement Policies (1008)	This practice guide provides a range of uniform methods and procedures for implementing a wide range of policy themes in a consistent manner. The guide presupposes that a preferential procurement policy is in place and focuses on the capturing of preferencing requirements in procurement documents. It contains sample preferencing schedules, clauses required to activate preferencing in the Tender Data where use is made of the CIDB Standard for Uniformity in Construction Procurement, and data capture forms.
CIDB Best Practice Guideline C1: Preparing Procurement Documents (1009)	This practice guide identifies the various types of procurement documents and provides a uniform format for the drafting and compilation of these documents. It also establishes a practical approach to uniformity and standardization of procurement documents within an organization and makes recommendations regarding the forms of contracts which should be used. It also contains a number of proforma component documents to facilitate a uniform approach.
CIDB Best Practice Guideline C2: Choosing an appropriate Form of Contract for Engineering and Construction Works (1010)	This practice guide presents the fundamental considerations in the selection of a form of contract for engineering and construction works. It presents an overview of three different series of forms of contracts and provides practical guidance of the selection of appropriate forms of contract for an organization or for use in selected pricing and contracting strategies.
CIDB Best Practice Guideline C3: Adjudication (1011)	This practice guide provides an overview of what adjudication is, presents the principles underpinning adjudication, reviews the provisions for adjudication in standard forms of contract (NEC, FIDIC and CIDB), outlines an approach for the selection and use of adjudicators, and provides sample clauses and proforma agreements to be included in procurement documents.
CIDB Best Practice Guideline D1: Subcontracting Arrangements (1012)	This practice guide establishes acceptable practices in respect conditions of subcontract. Features of forms of subcontract which are unacceptable to the Employer and the Contractor are identified and described. It also recommends forms of subcontract which have desirable features for use with the main contracts identified in Practice Guide C2 and reviews the legal considerations in the engagement of labour only subcontractors.
CIDB Best Practice Guideline D2: Joint Venture Arrangements (1013)	This practice guide identifies the reasons for forming joint ventures, reviews requirements for the formation of joint ventures in response to preferential procurement policies and presents an overview of the typical content of a joint venture agreement. It also identifies the standard joint venture agreements forms that are suitable for use or to serve as a basis for the development of an agreement.
Standards published by Standards South Africa	
SANS 294, Construction procurement processes, methods and procedures,	<p>This standard provides processes, methods and procedures for the establishment within an organization of a procurement system that is fair, equitable, transparent, competitive and cost effective. It:</p> <ul style="list-style-type: none"> a) describes generic procurement processes around which an organization may develop its procurement system; b) establishes minimum requirements for the conduct of an organization's employees, agents, board members and office bearers when engaging in procurement; c) establishes the framework for the development of an organization's procurement policy including any preferential procurement policy; d) establishes generic methods and procedures for procurements including those pertaining to disposals; and e) provides standard conditions of tender and conditions for the calling for expressions of interest.
SANS 10396, Implementing Preferential Procurement Policies Using Targeted Procurement Procedures	<p>This standard:</p> <ul style="list-style-type: none"> a) sets out the issues and principles which should be considered when formulating preferential procurement policies and developing associated implementation mechanisms; b) sets out the principles associated with the engagement of targeted enterprises and targeted labour; c) establishes a range of techniques and mechanisms which may be used to provide a framework within which access to markets for targeted enterprises and / or targeted labour can be provided and goals relating to the engagement of such enterprises and / or labour can be set, monitored and evaluated at both project and programme level; d) establishes targeting frameworks and strategies which can be used with a number of different procurement regimes; e) describes techniques for the monitoring and evaluation of the outcomes of a preferential procurement policy; f) provides guidance as to how targeted procurement procedures can be activated in procurement documents; and g) provides guidance on the design and implementation of programmes associated with the implementation of a preferential procurement policy.

SANS 10403, Formatting and Compilation of Construction Procurement Documents	<p>This standard establishes at both prime and subcontract level:</p> <ul style="list-style-type: none"> a) a uniform format for the compilation of procurement documents for supplies, services and engineering and construction works contracts; and b) the general principles for compiling procurement documents in respect of supplies, services and engineering and construction works.
Practice Manuals published by the South African Institution of Civil Engineering	
Practice Manual 1: The use of South African National Standards in Construction Procurement	<p>This practice manual provides insights into and guidance in the use of the following construction procurement South African National Standards:</p> <ul style="list-style-type: none"> • SANS 294, <i>Construction procurement processes, methods and systems</i>. • SANS 10403, <i>Formatting and compiling of construction procurement documents</i>. • SANS 10396, <i>Implementing preferential procurement policies using targeted procurement procedures</i>. • SANS 1914 family of standards for targeted procurement; • SANS 1921 family of standards for construction and management requirements for works contracts; and • SANS 2001 family of standards for construction works.
Practice Manual 2: Delivering construction projects using the design by employer contracting strategy	<p>This practice manual, which was developed in association with the CIDB, presents an overview of the different types of contracting strategies associated with engineering and construction contracts and the delivery of projects using the design by employer contracting strategy. It thereafter describes the principal actions associated with activities within the project initiation, project implementation and project completion processes and identifies the input and output to these actions and their dependencies.</p> <p>The manual also provides information on the administration of design by employer contracts in accordance with the provisions of GCC 2004, the JBCC 2000, FIDIC (1999) and NEC forms of contract and tools and techniques associated with project management.</p>

The CIDB Standard for Uniformity in Construction Procurement is generic in nature. Requirements for the solicitation of tenders in the various categories of contract (supplies, services, professional services and engineering and construction works) (see Table 3) are based on four standard tender evaluation methods (see Table 4) and ten standard procurement procedures (see Table 5).

Table 3: Standard methods for procuring different categories of contracts provided for in the CIDB Standard for Uniformity in Construction Procurement

Category of contract	Type of procurement	Standard method*
Engineering and construction works	Design by employer (normal)**	PP2B Open Procedure with Method 1 or Method 2
	Design and build** / develop and construct**	PP2E Proposal Procedure using two-stage system with Method 1, 2, 3 or 4;
	Management contractor**/ Construction Management**	PP2C Qualified Procedure with Method 1 or 2 and eligibility criteria framed around the attainment of a minimum quality score or requirements; or PP2C Qualified Procedure with Method 3 or 4
	Works which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	PP3A Restricted Competitive Negotiation Procedure PP3B Open Competitive Negotiation Procedure
	Very low value works	PP1 Negotiation Procedure with Method 1
	Value below a threshold	PP2D Quotation Procedure with Method 1, 2, 3 or 4.
	The works are largely identical to works previously executed and it is not in the organization's interest to solicit other offers or cannot be technically or economically separated from a previous contract	PP1 Negotiation Procedure with Method 1
	Simple works designed by the employer where the value of the contract, inclusive of Value Added Tax is not more than R 500 000.	PP2A Nominated Procedure with Method 1 or Method 2
Supplies	Very low value below a threshold for the purchase of readily available supplies	PP2G Shopping Procedure with Method 1
	Value below a threshold	PP2D Quotation Procedure with Method 1 or 2
	Normal	PP2B Open Procedure with Method 1 or 2
	Supplies which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	PP2C Qualified Procedure with Method 1 or 2 and eligibility criteria framed around minimum quality requirements PP3A Restricted Competitive Negotiation Procedure PP3B Open Competitive Negotiation Procedure
	Only one supplier has the required product or the supplies cannot be separated from a previous contract	PP1 Negotiation Procedure with Method 1
	Relatively low value supplies which are readily available and which are frequently required where the value of the contract, inclusive of Value Added Tax is not more than R 500 000.	PP2A Nominated Procedure with Method 1 or Method 2

Services other than professional services	Value below a threshold	PP2D Quotation Procedure with Method 1 or 2
	Normal	PP2B Open Procedure with Method 1 or 2
	Services which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	PP2C Qualified Procedure with Method 1 or 2 and eligibility criteria framed around minimum quality requirements. PP3A Restricted Competitive Negotiation Procedure PP3B Open Competitive Negotiation Procedure
	Only one service provider has the required product or the supplies cannot be separated from another previous contract	P1 Negotiated Procedure with Method 1
	Relatively low value services which are readily available and which are frequently required where the value of the contract, inclusive of Value Added Tax is not more than R 500 000.	PP2A Nominated Procedure with Method 1 or Method 2
Professional services	In most cases, except in the case of complex or highly specialised assignments or those that invite innovations on the basis of quality alone.	PP2A Nominated Procedure which identifies a short list of not less than 5 tenderers to submit tenders, PP2B Open, PP2C Qualified or PP2D Quotation Procedure; or PP2E Proposal Procedure using the two envelope system with either: <ul style="list-style-type: none">• Methods 3 or 4; or• Methods 1 and 2 with eligibility criteria framed around the attainment of a minimum quality score or quality related requirements
	A complex or highly specialised assignment, for which it is difficult to define the precise scope of work and tenderers are expected to demonstrate innovation in their proposals or An assignment that has a high downstream impact and requires the best available experts or An assignment could be carried out in substantially different ways, hence proposals will not be comparable.	PP2B Open or PP2E Proposal Procedure using the two envelope system with either Method 3 or 4; PP2F Proposal Procedure using the two stage tendering system with Method 1 or 2 and eligibility criteria framed around the rejection of unacceptable proposals and quality related requirements; or PP2F Proposal Procedure using the two stage tendering system with Method 3 or 4. PP3A Restricted Competitive Negotiation Procedure PP3B Open Competitive Negotiation Procedure
	A standard or routine assignment where well established practices and standards exist and in which the contract amount is small.	PP2E Proposal Procedure using the two envelope system with Method 1 or 2 and eligibility criteria framed around minimum quality related requirements
	An assignment that represents a natural continuation of previous work carried out by the firm. A rapid selection is essential (eg in an emergency operation). A very small assignment. An assignment where only one firm is qualified or has the experience of exceptional worth for the assignment.	PP1 Negotiated Procedure with Method 1
	Value below a threshold	PP2D Quotation Procedure with Method 1 or Method 2. PP2A Nominated Procedure which identifies a short list of not less than 3 tenderers to submit tenders
	A relatively small assignment which does not justify the preparation and evaluation of competitive proposals .	PP2A Nominated Procedure to nominate a sole tenderer.
	A simple assignment which is precisely defined and the budget fixed.	PP2F Proposal Procedure using the two stage tendering system with Method 3 or 4 .

* Refer to Table 4 for descriptions of Procedures and Table 5 for descriptions of Methods.

** This contracting strategy is fully described in the SAICE Practice Manual 2, *Delivering construction projects using the design by employer contracting strategy* and the CIDB Best Practice Guideline A5 (1005), *Managing Construction Procurement Risks*.

3. The relationship between the prescripts of the CIDB and PFMA regulations

3.1 Introduction

The prescripts of Construction Industry Development Board which relate to construction procurement are:

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

Table 4: Standard tender evaluation methods provided in the CIDB Standard for Uniformity in Construction Procurement*

Method	Procedure
Method 1: Financial offer	<ol style="list-style-type: none"> 1) Rank tender offers from the most favourable to the least favourable comparative offer. 2) Recommend highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 2: Financial offer and preferences	<ol style="list-style-type: none"> 1) Score tender evaluation points for financial offer. 2) Confirm that tenderers are eligible for the preferences claimed and if so, score tender evaluation points for preferencing 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 3: Financial offer and quality	<ol style="list-style-type: none"> 1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data, if any. 2) Score tender evaluation points for financial offer. 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 4: Financial offer, quality and preferences	<ol style="list-style-type: none"> 1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data, if any. 2) Score tender evaluation points for financial offer. 3) Confirm that tenderers are eligible for the preferences claimed, and if so, score tender evaluation points for preferencing. 4) Calculate total tender evaluation points. 5) Rank tender offers from the highest number of tender evaluation points to the lowest. 6) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

*These procedures are identical to those provided in SANS 294, Construction procurement processes, procedures and methods

Table 5: Standard procurement procedures provided in the CIDB Standard for Uniformity in Construction Procurement*

Procedure		Description
PP1	Negotiation procedure*	A tender offer is solicited from a single tenderer.
PP2	Competitive selection procedure*	Any procurement procedure in which the contract is normally awarded to the contractor who submits the lowest financial offer or obtains the highest number of tender evaluation points.
PP2A	Nominated procedure	Tenderers that satisfy prescribed criteria are admitted to an electronic data base. Tenderers are invited to submit tender offers based on search criteria and their position on the data base. Tenderers are repositioned on the data base upon appointment or upon the submission of a tender offer.
PP2B	Open procedure	Tenderers may submit tender offers in response to an advertisement by the organization to do so.
PP2C	Qualified procedure	A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so.
PP2D	Quotation procedure	Tender offers are solicited from not less than three tenders in any manner the organization chooses, subject to the procedures being fair, equitable, transparent, competitive and cost-effective.
PP2E	Proposal procedure using the two-envelope system	Tenderers submit technical and financial proposals in two envelopes. The financial proposal is only opened should the technical proposal be found to be acceptable.
PP2F	Proposal procedure using the two-stage system	Non-financial proposals are called for. Tender offers are then invited from those tenderers that submit acceptable proposals based on revised procurement documents. Alternatively, a contract is negotiated with the tenderer scoring the highest number of evaluation points.

Procedure			Description
	PP2G	Shopping procedure	Written or verbal offers are solicited in respect of readily available supplies obtained from three sources. The supplies are purchased from the source providing the lowest price once it is confirmed in writing.
PP3	Competitive negotiation procedure		A procurement procedure which reduces the number of tenderers competing for the contract through a series of negotiations until the remaining tenderers are invited to submit final offers.
	PP3A	Restricted competitive negotiations	A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so. The employer evaluates the offers and determines who may enter into competitive negotiations.
	PP3B	Open competitive negotiations	Tenderers may submit tender offers in response to an advertisement by the organization to do so. The employer evaluates the offers and determines who may enter into competitive negotiations.

*These procedures are identical to those provided in SANS 294, Construction procurement processes, procedures and methods

National Treasury has issued a Regulatory Framework for Supply Chain Management which has now been incorporated as regulation 16A of the Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities (see Annexure 3) and the following Supply Chain Management Practice Notes in terms of the Public Finance Management Act, which are still current:

- SCM 1 of 2003: General Conditions of Contract (GCC) and Standardised Bidding Documents.
- SCM 3 of 2003: Appointment of Consultants.
- SCM 4 of 2003: Code of conduct for supply chain management practitioners.
- SCM 3 OF 2004: Checklist for the implementation of supply chain management and monthly reporting of supply chain management information
- SCM 4 OF 2004: Strategic Sourcing of Motor Vehicles: Request for Estimates to all national and provincial departments
- SCM 5 of 2004: Training of Supply Chain Management Officials
- SCM 1 of 2005: National Industrial Participation Programme
- SCM 3 of 2005: Projects/Services funded by grants in accordance with Technical Assistance Agreements. Appointment of Transaction Advisors to assist with Public Private Partnerships
- SCM 1 of 2006 - Tax Clearance Certificate: Revised Application Form: Tax Clearance Certificate for Price Quotations up to the value of R200 000: Threshold for obtaining Tax Clearance Certificate.
- SCM 2 of 2006: Prohibition of set-asides and the use of cost estimates as benchmarks: Measurables attached to specific goals for which preference points are awarded.
- SCM 3 of 2006 - Tax clearance certificates for price quotations and competitive bids.
- SCM 4 of 2006 - Standard bidding documents : Declaration of bidders past Supply Chain Management practices
- SCM 5 of 2006 - Restrictions of Suppliers and Augmentation of General Conditions of Contract
- SCM 6 of 2007/2008: Procurement of goods and services by means other than through the invitation of competitive bids
- SCM 8 of 2007/2008: Supply chain management: threshold values for the procurement of goods, works and services by means of petty cash, verbal / written price quotations or competitive bids

In addition, National Treasury has issued A Guide to Accounting Officers/ Authorities (February 2004), General Procurement Guidelines and the following circulars:

- Implementation of Supply Chain Management (October 2004)
- Inspections, tests, and analysis conducted by institutions accredited or recognized by SANAS (October 2005)
- Code of conduct for bid adjudication committees (March 2006)
- Circular: Implementation of Supply Chain Management (July 2005)

3.2 Requirements established in circulars

The various circulars establish the following:

- 1 Only the accounting officer / authority may award contracts. They are empowered to delegate decision making but are nevertheless held accountable.
- 2 The sale of land must be in accordance with the provisions of the State Land Disposal Act, No 48 of 1961.
- 3 Accounting officers / authorities are not obliged to consider unsolicited proposals but may do so only if:
 - a) the product or service offered is a unique innovative concept that will be exceptionally beneficial to, or have exceptional cost advantages;
 - b) the person who made the offer is the sole provider of the product or service; and
 - c) the need for the product or service has been established during the organisation's strategic planning and budgeting processes.
- 4 The following information on the successful tenders should be made available on websites and in the media that the tender was originally advertised:
 - a) contract number and description; and
 - b) name of successful tenderer, the contract price, brands, delivery basis and where applicable, preferences claimed.
- 5 All delegations must be in writing. Any thresholds attached to delegations must be stated.
- 6 No advisor may form part of the final decision-making process.
- 7 A tender is regarded as being acceptable if:
 - a) it complies in all respects with the specification and conditions of tender;
 - b) the tenderer completed and signed all the prescribed tender forms to enable the tender to be evaluated;
 - c) the tenderer has submitted the required original tax clearance certificate and other clearance / registration forms as prescribed by the various acts and / or in the tender documentation; and
 - d) the tenderer has the necessary capacity and ability to execute the contract.
- 8 Tenders may only be evaluated in accordance with the stated evaluation criteria. The reasons for declaring a tender as non-responsive must be defendable in court. Deviation by more than a predetermined percentage from the cost estimate of a project / commodity cannot be regarded as being a justifiable reason.
- 9 The price submitted by the lowest acceptable tenderer must be used when calculating points for price. Should the tenderer scoring the highest points also score the highest points for price be found to be unacceptable or non-responsive, the tender must not be awarded to the next in line tender as the points need to be recalculated with the lowest acceptable tender offer.

- 10 Preference points for HDI involvement must not be included in functionality. They must be included in the point's allocation for specific goals in terms of the Preferential Procurement Policy Framework Act.
- 11 Contractors must be paid within the prescribed contractual time limit provided for in the contract.

The Standard for Uniformity in Construction Procurement and SANS 294 are consistent with these circulars.

3.3 Procurement documentation (SCM 1 of 2003)

SCM 1 of 2003 deals exclusively with procurement documentation. It does not apply to construction procurement as Regulation 6(3) of the Treasury Regulations for Supply Chain Management states that:

"The accounting officer or accounting authority must ensure that bid documentation and the general conditions of a contract are in accordance with –

- (i) the instructions of the National Treasury; or*
- (ii) the prescripts of the Construction Industry Development Board, in the case of a bid relating to the construction industry;"*

and Regulation 24(b) of the Construction Industry Regulations require that:

"Every client or employer who (is an organ of state and) is soliciting tenders in the construction industry must do so in accordance with the Standard for Uniformity in Construction Procurement, published by the Board in the Gazette."

Accordingly, the requirements for procurement documentation contained in the CIDB's Standard for Uniformity in Construction Procurement must be adhered to in all construction procurement including the provision of supplies and professional services relating to the construction industry⁴.

3.4 Appointment of consultants (SCM 3 of 2003)

Regulation 6(3)(g) of the Treasury Regulations for Supply Chain Management states that:

"The accounting officer or accounting authority must ensure that instructions issued by the National Treasury in respect of the appointment of consultants are complied with."

SCM 3 of 2003 establishes requirements for the appointment of consultants i.e. consulting firms, procurement agents, inspection agents, auditors, other multinational organisations, investment and merchant banks, universities, research agencies, government agencies, non-governmental organisation, individuals etc. This practice note states that:

"Consultants should be appointed by means of competitive bidding processes whenever possible. All bids and contracts should be subject to the General Conditions of Contract (GCC) issued by National Treasury⁵."

The CIDB Standard for Uniformity in Construction Procurement provides a range of standard procedures for the procurement of professional services. (See Table 3). It also establishes requirements for the procurement documents relating to professional services.

SCM 3 suggests the following in order to align the South African public procurement system with international best practices:

- 1) the appointment of Transaction Advisors as defined in Treasury Regulation 16 to the Public Finance Management Act should be appointed in accordance with the practice note issued by National Treasury;

⁴ The CIDB Standard for Uniformity in Construction Procurement establishes minimum requirements for procurement documents. More comprehensive requirements may be found in SANS 294.

⁵ SCM 3 also provides guidelines relating to the amendment of Information to Consultants (ITC). The CIDB Standard for Uniformity in Construction Procurement addresses all requirements relating to professional service contracts in the construction industry.

- 2) consultants should only be engaged when the necessary skills and / or resources to perform a project / duty /study are not available and the accounting officer / authority cannot reasonably be expected to train or recruit people in the time available⁶;
- 3) the relationship between the accounting officer / authority is one of purchaser/ provider and not employer / employee;
- 4) the accounting officer / authority:
 - a) is responsible for monitoring and evaluating contractor performance and outputs against project specifications and targets;
 - b) should satisfy himself / herself that the procurement used in the selection of a consultant will result in the appointment of a consultant with the necessary professional qualifications and the scope of work is consistent with the needs of the project;
 - c) should not compel consultants to form associations with any specific firm or group of firms, but may encourage associations with the aim to enhance transfer of skills; and
 - d) may only negotiate the contract with the preferred tenderer identified by means of a competitive tendering process provided that the negotiations do not substantially change the original terms of reference unless they involve a scaling down of the scope of work to accommodate budgetary constraints;
 - e) will be justified in rejecting all tender submissions only if such submissions are non-responsive and are unsuitable either because they major deficiencies in satisfying requirements or involve costs substantially higher than the budget;
- 5) the guiding considerations for the selection of a procedure to appoint consultants are:
 - the need to high quality services
 - the need for economy and efficiency;
 - the need to give qualified consultants an opportunity to compete in providing the services; and
 - the importance of transparency in the selection process;
- 6) consultants should not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or place them in a position of not being able to carry out the assignment in the best interest of the state;
- 8) a firm and any of its affiliates that has been engaged:
 - a) by the accounting officer/ accounting authority to provide goods or works for a project should be disqualified from providing consulting services for the same project; or
 - b) for the preparation of or implementation of a project should be disqualified from subsequently providing goods, services or works relating to the initial assignment, other than a continuation of the firm's earlier consulting services for the same project, unless it performs the contractor's obligations under a design-and-build contract.
- 10) consultants may associate with each other, in the form of a joint venture of a sub-consultancy, to complement their respective areas of expertise or for any other reason;
- 11) in the case of a joint venture, all members should sign the contract and be jointly and severally responsible for the entire assignment;
- 12) the reasons for single source selection should be recorded and approved by the accounting officer / authority or his / her delegate prior to the conclusion of a contract;
- 13) the terms of reference (scope of work) of assignments which include a component for training or transfer of skill, should indicate the objectives, nature, scope and goals of the training programme, including details of trainers and trainees, skills to be transferred, time frames and monitoring and evaluation arrangements;
- 14) the percentage for price and the division between price and functionality (quality) should be determined and approved by the accounting officer / authority or his / her delegate, taking account of the complexity of the assignment and the relative importance of functionality (quality);
- 15) the evaluation criteria for functionality may include the consultant's relevant experience for the assignment, the quality of the methodology proposed, the qualifications of the key staff proposed and the transfer of knowledge;
- 16) more weight should be given in the evaluation of functionality to the methodology and key personnel in the case of complex assignments;
- 17) sufficient time should be allowed for consultants to prepare their proposals (normally not less than 4 weeks and more than 3 months);

6 Sometimes it is more appropriate to appoint consultants on contract in terms of the Public Service Act. Persons appointed for limited periods to perform duties to a post on the fixed establishment should be appointed in terms of section 8(c)(ii) of the PSA.

- 18) members of departmental tender evaluation committees should also not act as panel members for the evaluation of functionality (quality) in respect of tender submission;
- 19) score sheets, containing all the evaluation criteria and the weight in respect of each criteria, should be prepared and provided to panel members to evaluate the functionality (quality) of tender submission;
- 20) a minimum of three panel members should independently evaluate and score submissions, without discussing the evaluation with other members;
- 21) no additional criteria may be added to those indicated in tender documents and no criteria may be amended or omitted;
- 22) submissions should be scored using the following formula, where relevant:

functionality

$$Ps = \frac{So}{Ms} \times Ap$$

Where Ps = the percentage scored for functionality of the tender submission under consideration;
 So = total average score of tender submission under consideration
 Ms = maximum possible score
 Ap = percentage allocated for functionality (quality)

price

$$Ps = \frac{Pmin}{Pt} \times Ap$$

Where Ps = the percentage scored for price of the tender submission under consideration;
 Pmin = the lowest acceptable tender submission
 Pt = the price of the tender submission under consideration
 Ap = percentage allocated for price

price and functionality

80/20 preference points system: $Ps = \frac{80(1-(Hs-Rs))}{Rs}$

80/20 preference points system: $Ps = \frac{90(1-(Hs-Rs))}{Rs}$

Where Ps = the percentage scored for functionality and price of the tender submission under consideration;
 Hs = highest percentage scored by any acceptable tenderer for functionality and price;
 Rs = percentage allocated for functionality and price for tender submission under consideration.

- 23) all tender submissions that obtained the minimum score for functionality should be taken into consideration for the award of the tender;
- 24) points scored for specified goals in terms of the Preferential Procurement Policy Framework Act should be calculated separately and added to the scores obtained for price or price and functionality;
- 24) the "Guide for Hourly Fee Rates for Consultants" issued by the Department of Public Service and Administration⁷, accessible from the website www.dpsa.gov.za (Service Delivery Improvement / Consultant Frameworks) should be used as a benchmark to evaluate the offered tariffs or to determine the reasonableness thereof or, in exceptional circumstances where it is impractical to appoint the required consultant through a competitive tendering process, to establish the tariff;

⁷ This guide provides for standardised hourly fee rates of consultants appointed in the Public Service. These fees are only applicable to consulting categories for which no such standardised rates have already been determined by professional institutes or associations established in terms of legislation, e.g the fee rates for Auditors as determined by the South African Institute for Chartered Accountants or the fee rates for Engineers determined by the Engineering Council of South Africa constituted in terms of the Engineering Professions Act of 2002.

- 25) information relating to the evaluation of tender submissions and recommendations concerning awards should not be disclosed to the consultants who submitted tenders or to other persons not officially concerned with the process until after the successful consultant has been notified;
- 26) individual consultants should be selected on the basis of their qualifications, capabilities and knowledge of local conditions, and should normally only be appointed on assignments for which:
- a) teams of personnel are not required;
 - b) no additional outside (home office) professional support is required;
 - c) the experience and qualifications of the individual are the paramount requirement; and
 - d) the co-ordination, administration, or collective responsibility is not difficult owing to the number of individuals involved;
- 27) non-governmental organizations (NGOs) may be uniquely qualified to assist in the preparation, management and implementation of projects and may as such be included in short lists should they submit expressions of interest or be selected on a single-source basis;
- 28) inspection agents should be registered with the South African Accreditation System (SANAS) and should be appointed in terms of a competitive tendering process;
- 29) investment and commercial banks, financial firms and fund managers hired for the sale of assets, the issuance of financial instruments and other corporate financial transactions, should be appointed in terms of a quality and cost based selection process and should be remunerated on the basis of both a "retainer" and "success" fee;
- 30) auditors should be selected in accordance with quality and cost based selection process, with cost as a substantial selection factor (40-50), or by least cost selection;
- 31) a panel of consultants / list of approved service providers may be established through a competitive tendering process where services are required on a recurring basis and the services are of a routine or simple nature and the scope of work can be described in detail;
- 32) the intention to establish a panel / list of approved service providers should be published in the Government gazette;
- 33) admission to the panel should be based on the attainment of a score determined from responses to a questionnaire on issues such as composition of the firm in terms of shareholding, personnel complement, representation of expertise in relation to discipline, national / international acceptability in terms of experts in various professions; experience reflected in projects already dealt with and financial position;
- 34) approved service providers should be approached to provide quotes on a rotational basis or in accordance with a tendering procedure;
- 35) lists should be updated at least quarterly;
- 36) the consultant's performance should be evaluated in a fair and confidential process whereby firms that have repeated poor performance should be provided an opportunity to explain the reasons for their poor performance and to propose remedial actions;
- 37) no modifications should be made to final documents prepared by consultants, save by mutual agreement;
- 38) consultants should normally express their prices in Rands;
- 39) price adjustment should be made where the contract duration is expected to exceed 12 months, unless local or foreign inflation is expected to be high or unpredictable;
- 40) payment provisions and payment procedures should be agreed during negotiations;
- 41) payments should be made at regular intervals;
- 42) payment for advances, eg mobilization costs, exceeding 10% of the contract amount should normally be backed by payment securities;
- 43) payments should be made promptly in accordance with the provisions of the contract and only disputed amounts should be withheld;
- 44) the contract should make provision for finance charges if the payment is delayed due to the client's fault;
- 45) tender and performance securities should not be called for;
- 46) consultants should carry out assignments with due diligence and in accordance with prevailing professional standards;
- 47) where the parties wish to limit liability, they should ensure that:
- a) there should not be any limitation in the case of the consultant's gross negligence or willful misconduct;
 - b) the liability is not less than the greater of the total payments expected to be paid under the contract or the consultant is entitled to receive under its insurance; and

- 48) c) any such limitation is in respect of the client and not in respect of third parties; any substituted staff during an assignment should have the same level of qualifications as the original staff;
- 49) disputes not settled by mediations, should be settled in a South African court of law;
- 50) expressions of interest should be advertised in a General Procurement Notice in the Government Tender Bulletin, and where appropriate in other international newspapers or technical magazines;
- 51) calls for expressions of interest should be updated annually and respondents should be given not less than 30 days to respond;
- 52) accounting officers / authorities should approve changes that increase the aggregate value of the contract by more than 15%; and
- 53) consultants, after notification of the award of a contract, may in writing request the grounds upon which their proposals were not accepted and take the matter up with a relevant treasury, court of law or the public protector, should they not be satisfied with the response.

SCM 3 furthermore states that:

- there are four stages in the selection process, namely, “*identify the approach; invite bids/proposals; receive responses; and evaluate responses;*”
- “*other aspects of the appointment (such as advertising, opening of proposals) are no different from those that are for the acquisition of goods and services*”;
- in most instances “*quality and cost based selection (QCBS)*” is appropriate and other possibilities include “*quality based selection; selection under a fixed budget; least cost selection; and single source selection*” (see Table 6); and
- the types of contracts that may be encountered are as described in Table 7.

Columns 1 and 2 of Table 6 outline the methodology and recommended usage of the approaches described in SCM 3 in respect of different approaches that may be adopted in the selection of a consultant.

SCM 3 is based on the procurement procedures of the World Bank (see Guidelines: Selection and Employment of Consultants by World Bank Borrowers (January 1997, as revised)). The generic procedures contained in SANS 294, which are based on the United Nations Commission for International Trade Law's Model Law on Procurement of Goods, Construction and Services, the World Trade Organization's Agreement on Government Procurement (GPA) and various European Union procurement rules, can be used to simulate the World Bank procedures (see Annex B of SANS 294). Accordingly, utilising the provisions of SANS 294 in the manner set out in Table 6 will satisfy the provisions of both the CIDB Standard for Uniformity in Construction Procurement and the Treasury Regulations for Supply Chain Management.

It should also be noted that several of the topics covered in SCM 3 are dealt with in terms of the standard forms of contract for professional services stipulated in the CIDB Standard for Uniformity in Construction Procurement and the Standard Conditions of Tender embodied in the CIDB Standard / SANS 294.

Table 6: SCM 3 approaches to the appointment of consultants and the CIDB Standard / SANS 294 equivalent methods

SCM 3, Appointment of consultants		CIDB Standard for Uniformity in Construction Procurement / SANS 294, Construction procurement processes, methods and procedures		
Approach to appointment of consultants	Recommended usage of approach	Procurement procedure (see Table 1 of SANS 294)	Standard tender evaluation method (see Table 3 of SANS 294)	Tender Data (refer to Annex E of SANS 294)
Quality-based selection (QCBS) Tenderers are invited to submit tenders based on a well defined scope of work. Tenders are evaluated on the basis of both the quality of the services to be rendered and the cost of the services to be provided. Where a two envelope system is used, the evaluators of the technical proposals should not have access to the financial proposals. The final contract is negotiated with the tenderer scoring the highest number of points.	In most cases, except in the case of complex or highly specialised assignments or those that invite innovations on the basis of quality alone (i.e. QBS)	Nominated procedure or Open procedure or Qualified procedure or Quotation procedure or Proposal procedure using the two envelope system	Method 4 (Financial offer, quality and preferences) or Method 2 (Financial offer and preferences) if eligibility criteria in the form of the attainment of a minimum score is provided in the tender data	Tender Data must state which method is to be used. Eligibility criteria need to be included where Method 2 is used.
Quality based selection (QBS) Tenderers are requested to submit technical proposals only or to submit technical proposals and financial proposals in two envelopes. Where only technical proposals are called for, the tenderer with the highest ranked proposal is requested to submit a detailed financial proposal so that the contract can be negotiated. The final contract is thereafter negotiated. Tenderers may be provided with an indication of the expected input of key professionals (staff time).	A complex or highly specialised assignment, for which it is difficult to define the precise scope of work and consultants are expected to demonstrate innovation in their proposals. An assignment that has a high downstream impact and requires the best available experts. An assignment could be carried out in substantially different ways, hence proposals will not be comparable.	Proposal system using the two envelope system	Method 4 (Financial offer, quality and preferences)	Tender Data must state that method 4 is to be used.
		Proposal procedure using the two stage tendering system	Method 2 (Financial offer and preferences) if eligibility criteria is framed around the rejection of unacceptable proposals	Tender Data must state that method 2 is to be used and unacceptable proposals will be rejected.
		Proposal procedure using the two stage tendering system	Method 4 (Financial offer, quality and preferences) with weighting for price equal to zero.	Tender data must stipulate that contract price will be negotiated.
Least cost selection Tenderers are requested to submit technical proposals and financial proposals in two envelopes. The financial proposals of only those tenderers who obtain a quality score above a threshold are opened. The tenderer with the highest score based only on price and preference is selected.	A standard or routine assignment where well established practices and standards exist and in which the contract amount is small.	Proposal system using the two envelope system	Method 2 (Financial offer and preferences) where eligibility criteria in the form of the attainment of a minimum score is provided in the tender data	Tender Data must state that method 2 is to be used. Eligibility criteria need to be included.

SCM 3, Appointment of consultants		CIDB Standard for Uniformity in Construction Procurement / SANS 294, Construction procurement processes, methods and procedures		
Approach to appointment of consultants	Recommended usage of approach	Procurement procedure (see Table 1 of SANS 294)	Standard tender evaluation method (see Table 3 of SANS 294)	Tender Data (refer to Annex E of SANS 294)
Single source selection In this procedure, a suitable tenderer is identified and a contract is negotiated	A task that represents a natural continuation of previous work carried out by the firm. A rapid selection is essential (eg in an emergency operation). A very small assignment. An assignment where only one firm is qualified or has the experience of exceptional worth for the assignment.	Negotiated procedure	None	None
Appointment from list of approved service providers	A very small assignment which does not justify the preparation and evaluation of competitive proposals	Nominated procedure	Method 2 (Financial offer and preferences)	Tender Data must state that method 2 is to be used.
Selection based on consultant's qualifications The respondent, who has submitted an expressions of interest and possesses the most appropriate qualifications and references, is invited to submit a proposal so that the contract can be negotiated.	A very small assignment which does not justify the preparation and evaluation of competitive proposals	Select tenderer from electronic data base or form calls for expressions of interest. Negotiated procedure	None	None
Selection under a fixed budget Tenderers are provided with the available budget and are quested to provide their best technical and financial proposals in separate envelopes. Proposals that exceed the budget are excluded from consideration. A contract is negotiated with the tenderer submitting the highest ranked technical offer.	A simple assignment which is precisely defined and the budget fixed.	Proposal procedure using the two envelope system	Method 4 (Financial offer, quality and preferences) or Method 2 (Financial offer and preferences) if eligibility criteria in the form of the attainment of a minimum score is provided in the tender data	Tender Data must state which method is to be used. Eligibility criteria need to be included where Method 2 is used.

Table 7: Types of contracts contemplated in SCM 3

Type of contract	Recommended usage	Advantages / disadvantages
Lump sum (fixed price) contract Payment is linked to outputs (deliverables).	Use in assignments where the content and duration of the services and the required outputs are clearly defined.	Contracts are easy to administer as they are linked to deliverables.
Time-based contract Payment based on agreed hourly, weekly or monthly rates for staff named in the contract and on agreed rates and reimbursable items . Typically, a ceiling amount is provided.	When it is difficult to define the scope and length of services	Time-based payments need to be closely monitored and administered to ensure that the assignment is progressing satisfactorily and payments claimed are appropriate.
Retainer and / or contingency contract The retainer fees is fixed and the success fee is usually based on a percentage of the sale price or the assets.	Where banks or financial firms are preparing companies for sales and mergers	
Percentage contract Based on the estimated or actual project construction cost or the cost of goods inspected or procured.	For architectural or engineering services relating to the built environment or to services relating to procurement and inspection agents	Implicitly lacks incentives for economic design in architectural and engineering services.
Indefinite Delivery Contract (Price agreement) Unit rates are agreed. Payment based on time actually used.	Where consultants are required on call in respect of specialized services, the extent and timing of which cannot be defined in advance, normally for a period of a year	

3.5 Code of conduct (SCM 4 of 2003)

Regulation 8(2) of the Regulatory Framework for Supply Chain Management states that:

"The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management."

SCM 4 of 2003 sets out the Code of Conduct for Supply Chain Management Practitioners. In essence, this code of conduct requires that:

1 Practitioners should:

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratuity from any person, or supplier/contractor for themselves or their family;
- b) perform their duties efficiently, effectively and with integrity, in accordance with relevant regulations;
- c) ensure that public resources are administered responsibly;
- d) be fair and impartial in the performance of their functions;
- e) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- f) should not abuse the power invested in them;
- g) comply with the code of conduct for the Public Service as contained in Chapter 2 of the Public Service Regulations, 2001 (see Annexure 8) ;
- h) declare, to the extent required by their position, any business, commercial and financial interest or activities undertaken for financial gain that may raise a possible conflict of interest;
- i) not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
- j) not take improper advantage of their previous office after leaving their official position;

- k) use public property scrupulously;
 - l) record and account for the transactions conducted in an appropriate accounting system;
 - l) not make false or misleading entries in accounting systems;
 - m) be open about their decisions and actions that they take, give reasons for the actions that they take and restrict information only if it is in the public interest to do so; and
 - o) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise, even after separation from the service.
- 2 Practitioners are accountable for their decisions and actions to the public.
- 3 Only accounting officers / authorities or their delegates have the authority to commit the government to any transaction for the procurement of goods and / or services.
- 4 No information regarding any tender, tenderer, contract or contractor may be revealed if such an action will infringe on the relevant tenderer's or contractor's personal rights.
- 5 Tender evaluation committees, in accordance with the accounting officer's / authority's delegated powers:
- a) should regulate supply chain management in an honest, fair, impartial, cost-effective and accountable manner;
 - b) may be authorised to deal with all supply chain management matters and finalise tender offers;
- 6 All members of a tender evaluation committee or team should be cleared at the level of "Confidential" and should be required to declare their financial interest annually.
- 7 No person should:
- a) interfere with the supply chain management system or an institution; or
 - b) amend or tamper with any submission.
- 8 Combative practices such as the following should be avoided at all costs:
- a) suggestions to fictitious lower quotations;
 - b) reference to non-existent competition;
 - c) exploiting errors in tender offers; and
 - d) soliciting tender offers from tenderers whose names appear on the list of restricted tenderers or persons.

The CIDB Code of Conduct for the Parties engaged in Construction Procurement requires that the parties in any public or private construction-related procurement should in their dealings with each other:

- 1) Behave equitably, honestly and transparently.
- 2) Discharge duties and obligations timeously and with integrity.
- 3) Comply with all applicable legislation and associated regulations.
- 4) Satisfy all relevant requirements established in procurement documents.
- 5) Avoid conflicts of interest.
- 6) Not maliciously or recklessly injure or attempt to injure the reputation of another party.

National Treasury's code of conduct is compatible with that of the CIDB. There are no conflicting requirements between the two. Both codes of conduct can be used alongside each other

3.6 SCM 5 of 2004: Training of Supply Chain Management Officials

This practice note provides guidance on the training and deployment of supply chain management officials.

3.7 SCM 1 of 2005: National Industrial Participation Programme

This practice note requires that the Industrial Participation Policy endorsed by National Cabinet be applied to all state and parastatal contracts where the imported content exceeds R10,0 million. This enables the Department of Trade and Industry to negotiate obligation agreements, such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing agreements and research and development collaboration agreements with service providers who are contracted to supply institutions with goods, services or works that have imported components.

The practice note requires that tenderers use standard procurement documents when calling for tenders. Form SBD 5 must be included in the Returnable Documents of all procurement documents which fall within the ambit of this programme.

3.8 Tax clearance certificates (SCM 1 and 3 of 2006)

The practice note suggests that tax clearance certificate that is submitted by a potential contractor should be verified at any SARS branch office nation wide before the award of a bid. (Enquires may be directed to SARS at 086121218). Records of verifications should be retained for audit purposes.

If the case of price quotations where the department or institution is in possession of a contractor's valid original tax clearance certificate, it is not necessary to require that a fresh certificate is submitted each time a quotation is sought, provided that the expiry date of the tax clearance certificate is valid prior to award. Whenever this ruling is applied, cross-reference must be made to the original tax clearance certificate for audit purposes.

Tax certificate requirements should only be applied where the transaction exceeds R30 000 including VAT.

3.9 Prohibition of set asides and the use of cost estimates as bench marks (SCM 2 of 2006)

Accounting officers and authorities are required to give all potential tenderers an opportunity to tender for government work. The practice of issuing tenders that contain conditions that promote set-asides or exclude certain categories of potential tenderers for tendering must be refrained from.

Deviation by more than a predetermined percentage from the cost estimates of a project or commodity cannot be regarded as a justifiable reasons for the rejection of a tender and has, therefore, not been approved by the National Treasury as an evaluation norm of criteria.

3.10 Procurement of goods and services by means other than through the invitation of competitive tenders (SCM 6 of 2007/2008):

Regulation 16A6.4 permits accounting officers and accounting authorities to dispense with competitive bidding processes in cases where immediate action is necessary or if goods or services are required from sole source providers. sole service providers. The reasons for such action must be recorded and approved by the accounting officer or accounting authority.

3.11 Threshold values (SCM 8 of 2007/2008)

Regulation 6(1) of the Treasury Regulations for Supply Chain Management states that:

"Procurement of goods and services, either by way of quotations or through a bidding process, must be within the threshold values as determined by the National Treasury from time to time."

SCM 8 of 2007/8 makes provision for the solicitation methods and associated thresholds set out in Table 8. Accounting officers and accounting authorities may lower but not increase the thresholds.

Table 8: Threshold values for the invitation of price quotations and competitive tenders

Estimated threshold value	National Treasury Procedure described in Practice Note SCM 2 of 2005	Equivalent procedures provided in CIDB Standard / SANS 294
Up to R 2 000 including VAT	Procure without inviting competitive tenders or price quotations by means of petty cash.	nil
Up to R 10 000 including VAT	Obtain three verbal quotations, where applicable, from a list of prospective suppliers and place order against written confirmation from the selected supplier.	Shopping procedure
Up to R 500 000 including VAT	Invite and accept price quotations for requirements from as many suppliers as possible that are registered on a list of prospective suppliers* or other possible suppliers. If it is not possible to obtain at least three quotations, the reasons therefore should be recorded and approved.	Quotation procedure Nominated procedure
Above R 500 000 including VAT	Invite competitive tenders. Place advertisements in the Government Tender Bulletin, and, if necessary, in any other appropriate media. Where competitive tenders are impractical (eg urgent or emergency cases or sole suppliers) procurement may be conducted by any other means such as quotations or negotiations. The reason for departing from the invitation of competitive tenders should be recorded and approved.	Open procedure Proposal procedure using the two envelope system Qualified procedure Negotiated procedure Nominated procedure Proposal procedure using the two stage system

* Prospective suppliers should be invited through local newspapers or any other means to apply for evaluation and listing. The list should be updated at least every quarter. Suppliers should be listed per commodity. The invitation of suppliers should be done on a rotational basis so that ongoing competition amongst suppliers is promoted.

Approved by the accounting office / authority or his / her delegate.

3.12 Pertinent issues raised in National Treasury's Guide for Accounting Officers / Authorities

The following recommendations are made in this guide:

Tender evaluation committees:

- Accounting officers / authorities should ensure that a formal set of delegations be issued to tender evaluation committees which should comprise three members, of whom at least one should be a Supply Chain Management Practitioner.
- Independent experts may be co-opted to a tender evaluation committee only in an advisory capacity;
- All members of the tender evaluation committee should be cleared at the level of "CONFIDENTIAL" and should be required to declare their financial interest annually.
- Tender evaluation committees should be delegated to evaluate tenders and make an award or make recommendations to the accounting officer / authority regarding an award.
- The principle should be that no individual official should be in a position to take a decision in isolation regarding the award of a contract.

Establishment of data bases

- Data bases should be established to stimulate the promotion of Black Economic Empowerment and the development of Historically Disadvantaged Individuals and Small Medium and Micro Enterprises.
- Institutions should advertise in the local media for businesses to register as suppliers for procurement by means of quotations.
- Quotations should be obtained from all potential suppliers / service providers in a specific category or on a rotation basis from various suppliers.
- Subdividing of requirements to avoid the invitation of formal competitive bids should not be allowed.

- A minimum of three quotations should be called for.
- Reasons for not obtaining three quotations should be recorded and approved by the accounting officer / authority.

Urgent and emergency cases

- In urgent and emergencies, institutions may dispense with the invitation of tenders and call only for quotations or any other manner in the best interest of the state.
- Lack of proper planning should not be viewed as an urgent case.
- The reasons for dispensing with competitive tenders should be clearly recorded and approved by the accounting officer / authority.

Accommodation and conferences

- Accommodation and/or facilities for conferences, seminars, workshops, "lekgotlas" etc. should, whenever possible, be obtained by means of competitive bidding.
- Should it not be possible or practical to follow the normal competitive bidding process, the accommodation and/or conference facilities should be obtained by means of written quotations, as is proposed under urgent and emergency cases above.

Direct negotiations with the contractor

- Direct negotiations with a supplier should only be undertaken subject to the accounting officer's/ authority's approval.

Use of brand names

- Specifications should be based on relevant characteristics and/or performance requirements.
- References to brand names, catalogue numbers, or similar classifications should be avoided.
- If it is necessary to quote a brand name or catalogue number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" should be added after such reference.

Pricing

- Tenderers should be required to quote unit prices or lump sum prices. Such prices should include all duties, taxes, percentage fees for cost reimbursable contracts and other levies.
- Tenderers should be allowed to obtain all inputs from any eligible sources in order to offer their most competitive bids.

Preparation time

- The time allowed for the preparation and submission of bids should be determined with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract.
- Generally, not less than 30 days from the date of the invitation to bid or the date of availability of tender documents, whichever is later, should be allowed for competitive bidding.
- In justifiable circumstances accounting officers/authorities may allow shortening of the closing date. Cognisance should also be taken of the fact that the shortening of the closing date should not disadvantage any potential suppliers from bidding for the requirements.

Advertising

- Tenders should be advertised for at least 30 days before closure in at least the Government Tender Bulletin and in other appropriate media should an accounting officer/authority deem it necessary to ensure greater exposure to potential bidders except in urgent cases when bids may be advertised for such shorter periods as the accounting officer/authority may determine.
- All procurement documents should be available on the publication date of the advertisement.

Disposals

- Assets may be disposed of by means of a:
 - Transfer to another institution in terms of section 42 of the PFMA;
 - Transfer to another institution at market related value;
 - Transfer to another institution free of charge (bearing in mind that the assets cannot be transferred to a sub-office, school, etc. without the approval of the Head Office of the institution under which jurisdiction such sub-office, school, etc. falls.);

- Selling per price quotation, competitive bid or auction, whichever is most advantageous to the State, unless determined otherwise by the relevant treasury
- Destroying such assets.
- Should the sale of the movable assets not be at market related value, by price quotation, competitive bid or auction the reasons for the disposal in such a manner should be motivated, certified and recorded for auditing purposes by the accounting officer/authority
- All assets transferred to another institution should be by means of an issue voucher.
- Where computer equipment is to be disposed of, the relevant Department of Education should be approached to make arrangements for free transfer of such assets to educational institutions.
- Firearms may not be sold or donated to any person or institution within or outside the RSA without the approval of the National Conventional Arms Control Committee.
- In cases where stores (inventory) items or assets are traded in for other stores items or assets, the highest possible trade-in price is to be negotiated.

The Guidelines permit accounting officers /authorities may decide to charge a refundable or nonrefundable fee for tender documents if and when necessary, provided:

- the fee should be reasonable and reflect only the cost of their printing and delivery to prospective tenderers.
- the fee should not be so high as to discourage prospective tenderers; and
- that all monies received for the sale of bidding documents must be paid into the National Revenue Fund or Provincial Revenue Fund in terms of sections 11(3), 13(1), 21(2) and 22(1) of the Public Finance Management Act 1 of 1999 (as amended by Act 29 of 1999).

The Guidelines require the accounting officer/authority, prior to the request for information or any tenders regarding the introduction of an e-procurement system, to liaise and obtain permission from the relevant treasury to commence with the establishment and maintaining of such a system. This prerequisite is prescribed to ensure compatibility with other electronic systems utilised by Government.

4. The relationship between the prescripts of the CIDB and the MFMA regulations

The Municipal Supply Chain Management Regulations (30 May, 2005) and the Municipal Supply Chain Management Model Policy⁸ has been issued in terms of the Local Government: Municipal Finance Management Act.

Regulation 2 requires each municipal entity in terms of section 111 of the Act to have and implement a supply chain management policy that is *consistent with other applicable legislation* (including the CIDB Act) and *does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres*.

Subregulation 3(3) requires that municipal entities in preparing or amending the supply chain policy *take account of the need for uniformity in supply chain management practices, procedures and forms between different organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses*.

Subregulation 11(1)(d) states that a supply chain management policy must *ensure that bid documentation, evaluation and adjudication criteria and general conditions of contract are in accordance with any applicable legislation*.

The range of processes provided for in the regulations and the equivalent CIDB processes are set out in Table 9. Goods and services may not be deliberately split into parts or items of a lesser value to avoid complying with the requirements relating to a particular process.

⁸ The Municipal Supply Chain Management Model Policy to a large extent simply rephrases the Regulations.

Table 9: Range of procurement processes provided for in the MFMA Regulations

Value range (maximum)	Process described in regulations	CIDB Standard Procurement Procedure (see Table 1 of the CIDB Standard for Uniformity in Construction Procurement)
Up to R 2000	Petty cash purchase (Regulations 12 and 15)	-
R 2000 to R10 000	Written or verbal quotation (Regulations 12, 14 and 16)	Shopping procedure; quotation procedure; nominated procedure
Over R 10 000 to R 200 000	Formal written price quotation (Regulations 12, 14 and 17)	Quotation procedure; nominated procedure
Above R 200 000	Competitive bidding process (Regulations 12, 19, 25 and 36)	Procurement other than the appointment of consultants: open procedure, proposal procedure using the two stage system. Appointment of consultants: nominated procedure; open procedure; qualified procedure; proposal procedure using the two stage system or the two envelope system Non-consulting services:
-	Direct negotiations (regulation 36 and 37)	Negotiated procedure

Regulation 13 requires that tenderers submit the following to permit municipalities and municipal entities consider their quotation or tender:

- a) name, identification number or company registration number or other registration number, and tax reference number and VAT registration number, if any;
- b) authority to permit the municipality or municipal entity to obtain a tax clearance certificate from SARS;
- c) a disclosure relating to individuals (sole proprietors, individuals, directors, principal shareholders or stakeholders) who are in the service of the state or have been in the service during the last 12 months; and
- d) a disclosure relating to individuals (sole proprietors, individuals, directors, principal shareholders or stakeholders) whose spouse, parent or child are in the service of the state or have been in the service during the last 12 months.

It should be noted that the Compulsory Enterprise Questionnaire contained in the CIDB Standard for Uniformity enables the abovementioned information to be submitted for evaluation purposes and reporting purposes. (See regulations 43 to 45).

Sub-regulation 21(a) and (b) states the bid documentation *must take into account the general conditions of contract; any Treasury guidelines on bid documentation; and the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings and infrastructure.*

The CIDB Standard Conditions of Tender address a number of issues covered in the Regulations as outlined in Table 10.

Sub-regulation 22(1)(b) requires the advertisement to state that tenders may only be submitted on the tender documentation that is issued. A clause to this effect is included in the Standard Tender Notice and Invitation to Tender contained in Annex B of the Standard for Uniformity in Construction Procurement and the i-Tender@cidb service.

The i-tender@cidb service allows municipalities and municipal entities to register and publish the award of a contract, thus facilitating compliance with aspects of sub-regulation 23(c).

Table 10: Manner in which regulatory requirements are addressed in the CIDB Standard Conditions of Tender

Requirement established in regulations	Sub-regulation	Clause in CIDB Standard Conditions of Tender	Manner in which regulatory requirements are addressed in the CIDB Standard Conditions of Tender
Seal tender documents prior to submission	22(3)	F.2.13.5	Covered in sub-clause
Supplement electronic submission with sealed hard copy	22(4)	F.2.13.3	Need to amend standard clause as it allows either electronic format or paper option but not both.
Open tenders only in public as soon as possible after the closing time for tenders	23(a)	F.3.4.1	Covered in sub-clause
Read out the names of tenderers and if practicable, the total of prices	23(a)	F.3.4.2	Covered in sub-clause
Make register of tenders received available for public inspection	23(c)	F.3.4.3	Covered in sub-clause
Negotiate final terms of a contract with tenderers identified through a competitive selection process	24(1)	F.2.17	Covered in sub-clause
Indicate each specific goal for which points may be awarded	27(2)(f)	F.3.11	Covered in Tender Data (see Standard for Uniformity in Construction Procurement for sample wording and sample schedules)
Check if the successful tenderer is in arrears with respect to municipal rates and taxes and municipal charges, prior to the award of the tender.	28(1)(c)	F.3.13.1	Covered in Tender Data
Not award a contract to a persons whose tax matters have not been declared to be in order by SARS	43(1)(c)	F.3.13.1	Covered in Tender Data
Not award a contract to a natural person in the service of the state, or a juristic person whose director, principal shareholder or stakeholder is a person in the service of the state.	44(a) and (b)	F.3.13.1	Covered in Tender Data
Not award a contract to an advisor or consultant contracted with the municipality or municipal entity	44(c)	F.3.13.1	Covered in Tender Data

Sub-regulation 27(1) establishes requirements for specifications which are consistent with the provisions of 4.4.7 (Scope of work) of the CIDB Standard for Uniformity in Construction Procurement.

Sub-regulation 35(4) requires that municipalities and municipal entities ensure that copyright in any document produced or the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of a consultancy service is vested in the municipality or entity. The forms of contracts prescribed in the CIDB Standard for Uniformity in Construction Procurement for professional services readily allow this requirement to be complied with.

5. Establishing a procurement system within an institution

Note: Institutions are not required to adopt SANS 294, Construction procurement processes, methods and procedures, as this standard is a voluntary standard. They are, in respect of construction procurement required to comply with certain provisions of SANS 294 as set out in the CIDB Standard for Uniformity in Construction Procurement.

These guidelines are based on the adoption of SANS 294 by an institution. Where institutions choose not to adopt SANS 294, they should develop and publish their own rules for procedures and methods.

5.1 Introduction

The constitution makes it very clear that the procurement system must be fair, equitable, transparent, competitive and cost effective, as does the Public Finance Management Act.

A transparent procurement system is seen to:

- a) improve provide best value for money though increased competition and good economic governance;
- b) have outcomes that are predictable and easily replicated;
- c) improve the performance of industry and local markets;
- d) improve the global competitiveness of local industries;
- e) improve access to markets for small and medium enterprises;
- f) provide a means for combating bribery and corruption;
- g) enhance accountability and public confidence;
- h) minimize covert discrimination at the invitation, evaluation and execution stage;
- i) assist conscientious officials to resist pressures from their political masters seeking to depart from their "own" policies for reasons of political expediency; and
- j) minimize the concealing of not just discriminatory behaviour but also other illegitimate conduct, including corruption and patronage.

A procurement system may be considered to be transparent if:

- a) the terms upon which the procurement process are to be conducted and the criteria upon which any decisions are to be made are properly documented and made widely available;
- b) the eventual procurement award decision, and where appropriate, any intermediate decisions, is made publicly available as are the reasons given for these decisions; and
- c) it is possible to verify that the documented procedures and criteria were indeed applied.

Transparency is maintained through:

- a) the publishing of rules that comprehensively define the procurement process;
- b) publicly announcing the provincial government's procurement requirements;
- c) articulating in procurement documents how submissions will be evaluated;
- d) notifying all of the unsuccessful tenderers (and members of the public who request the information) which tenderer received the award and for what amount;
- e) the debriefing of unsuccessful tenderers;
- f) the provision of protest procedures, where independent third parties can review all records; and
- g) the employment of appropriate oversight in order to audit all procurement-related actions.

From the foregoing, it is clear that a transparent procurement system is characterized by the documentation of clear rules and the means to verify that those rules were followed.

SANS 294, *Construction procurement processes, methods and procedures*, provides processes, methods and procedures for the establishment within an organization of a procurement system that is fair, equitable, transparent, competitive and cost-effective. This standard which is not inconsistent with the Treasury Regulations for Supply Chain Management (see Annexures 1 and 3):

- a) describes generic procurement processes around which an organization may develop its procurement system;
- b) establishes minimum requirements for the conduct of an organization's employees, agents, board members and office bearers when engaging in procurement;
- c) establishes the framework for the development of an organization's procurement policy including any preferential procurement policy;
- d) establishes generic methods and procedures for procurements including those pertaining to disposals; and
- e) provides standard conditions of tender and conditions for the calling for expressions of interest.

The adoption of SANS 294 to provide the procurement rules for the implementation of an institution's procurement policy (See Annexure 9) enables an institution to satisfy constitutional requirements for transparency.⁹

5.2 Allocating responsibilities for the management and control of an institution's procurement system

Clause 4.1 of SANS 294 requires that an institution:

- a) develops and documents its procurement system around a process which includes procedural milestones which enable the system to be controlled and managed.
- b) designate persons to undertake the actions associated with the attainment of procedural milestones.

Table 11 contains a generic procurement process around which an institution may document its procurement system. (Refer to Best Practice Guideline #A1, *The procurement cycle*, for a detailed explanation of each activity and step). Some of the activities may need to be omitted depending upon the procurement procedures that are selected.

Responsibilities can be allocated once the steps that need to be taken to proceed from one activity to another have been established and the internal controls (procedural milestones) have been identified and located within the steps that are necessary to proceed from one activity to another. Senior management, who have oversight for procurement within an institution and head up sections / divisions initiating the procurement, should usually be given the necessary permissions, approvals, and confirmations associated with the recommended procedural milestones.

⁹ Section 4 of SANS 294 sets out the manner in which an institution should establish its procurement system.

Table 11: Principal procurement activities and associated steps and internal controls

ACTIVITY #	DESCRIPTION	STEPS	
		Inputs	Procedural milestone (control point)
1	Establish what is to be procured	1. Prepare broad scope of work for procurement 2. Estimate financial value of proposed procurement	3 Obtain permission to start with the procurement process
2	Decide on procurement strategies	1. Establish applicable preferential procurement policy 2. Establish contract and pricing strategy 3. Establish targeting strategy 4. Establish procurement procedure	5. Obtain approval for procurement strategies that are to be adopted
3	Solicit tender offers*	1. Prepare procurement documents 4. Invite contractors to submit tender offers or expressions of interest# 5. Receive tender offers or expressions of interest# 6. Evaluate expressions of interests # 7. Prepare evaluation report on shortlisting process# 9. Invite tender offers from shortlist#	2. Obtain approval for procurement documents 3. Confirm that budgets are in place 8. Confirm shortlist #
4	Evaluate tender offers*	1. Open and record tender offers received 2. Determine whether or not tenders offers are complete 3. Determine whether or not tender offers are responsive 4. Evaluate tender submissions 5. Perform a risk analysis. 6. Prepare a tender evaluation report	7. Confirm recommendation contained in the tender evaluation report.
5	Award contract*	1. Notify successful tenderer and unsuccessful tenderers of outcome 2. Compile contract document	3. Formally accept tender offer
6	Administer contracts and confirm compliance with requirements	1. Administer contract in accordance with the terms and provisions of the contract 2. Ensure compliance with requirements	3. Capture contract completion / termination data

Expressions of interest are only called for where the Nominated, Qualified Procedure and Proposal (Two stage tendering) (See SANS 294, *Construction procurement processes, procedures and methods*, is used to populate electronic data bases, to pre-qualify tenderers or to submit technical proposals, respectively. Accordingly, Steps 6 to 9 in Activity 3 (Solicit tender offers) will be omitted where the Negotiated, Open, Quotation and Proposal (two stage tendering) procedures are used.

* Several of the steps within these activities will not be required where the Negotiated Procedure is used.

It should be noted that in terms of the Public Finance Management Act and the Municipal Finance Management Act the accounting officer / authority is responsible for procurement within an institution. Accounting officers and accounting authorities may delegate powers entrusted to them to one of their officials or instruct their officials to perform any of the duties assigned in terms of the Act. Such arrangements, however, do not relieve them of any of their responsibilities in terms of the Act.

The Treasury Regulations for Supply Chain Management assigns certain responsibilities in the management and control of the procurement system. These are indicated in Table 12.

Table 12: Responsibilities assigned to procedural milestones in the PFMA and MFMA Regulations for Supply Chain Management

Procedural milestone (control point)	Responsible person for exercising control (PFMA Regulations)	Responsible person for exercising control (PFMA Regulations)
Obtain permission to start with the procurement process	-	-
Obtain approval for procurement strategies that are to be adopted	-	-
Obtain approval for procurement documents	-	Accounting officer (Regulation 27(2)(g))
Confirm that budgets are in place	-	-
Confirm shortlist	Tender committee (Regulation 6 (2))	Tender adjudication committee (Regulation 29(1))
Confirm recommendation contained in the tender evaluation report.	Tender committee (Regulation 6 (2))	Tender adjudication committee (Regulation 29(1))
Formally accept tender offer	Accounting officer / authority or their delegates (typically the chief financial officer) (Regulation 8(2)) (See 3.3 of Practice Note Number SCM 4 of 2003 – Code of Conduct for Supply Chain Management Practitioners)	Accounting officer or, depending upon the value, his sub-delegate (Regulation 5(2))
Capture contract completion / termination data	Official within supply chain management unit within office of chief financial officer (Regulation 4 (1))	-

5.3 Conduct of employees, agents and contractors

Clause 4.2 of SANS 294 requires that organisations:

- a) establish a code of conduct to regulate the actions of its employees, agents, office bearers and board members which contains certain minimum provisions;
- b) discipline employees, agents, office bearers and board members who contravene such a code; and
- c) consider placing contractors or their principals (or both) who are found to have engaged in corrupt and fraudulent practices under restrictions from participating in the organization's procurement for periods of time.

Clause 4.2.1 of SANS 294 establishes minimum requirements for a code of practice. These requirement are identical to some of the requirements of the CIDB Code of Conduct for the Parties engaged in Construction Procurement, which are in terms of the Construction Industry Development Board Act, applicable to all parties engaged in construction procurement. As a result, it is not necessary to establish a code of conduct. Reference to the CIDB Code of Conduct is sufficient.

The conditions of tender govern the behaviour of tenderers and enforces compliance with aspects of the CIDB Code of Conduct relating to the invitation and award of tenders. As such, tenderers who are in breach of the code of conduct may have their tenders rejected. The Treasury Regulations for Supply Chain Management requires that accounting officers/ authorities must report on any actions taken in this regard to the relevant treasury and requires that all allegations of corruption, improper conduct and failure to comply with the supply chain management system be investigated and steps be taken against the perpetrators.

It should be noted that:

- the Construction Industry Development Regulations will in time contain provisions for the enforcement of the CIDB's Code of Conduct for the Parties engaged in Construction

- Procurement;
- the Treasury Regulations for Supply Chain Management require the National and Provincial Treasuries to establish a mechanism to receive and consider complaints relating to non-compliance with norms and standards;
 - accounting officers / authorities are required in national terms of the PFMA and MFMA Regulations for Supply Chain Management to confirm on National Treasury's data base, prior to awarding a contract, that companies or persons are not prohibited from doing business with the public sector;
 - any administrative action taken against any tenderer, contractor or agent must be in accordance with the provisions of the Promotion of Just Administration Act; and
 - officials can be disciplined in terms of the Public Service Act.

Procurement policy

Policy is defined in the New Oxford Dictionary as “*a course of action or principle adopted or proposed by a government, party, individual etc*”

Policy within government is often translated into laws and regulations. Government's procurement policy is established in a document entitled *Policy Guidelines for the Issuance of a Supply Chain Management Framework in terms of Section 76(4)(C) of the PFMA*. This policy has been translated into the Treasury Regulations for Supply Chain Management.

The New Shorter Oxford Dictionary also defines policy as “any course of action adopted as advantageous or expedient”. Policy as referred to in SANS 294 refers to the latter. Policy in SANS 294 relates as such to choices made in the use of generic procedures and methods and the circumstances under which a certain procedure should be used.

Clause 4.3 of SANS 294 requires that an organisation's executive develop and document a procurement policy which as a minimum addresses the issues listed in Table 13. SANS 294 cannot be used in the absence of a procurement policy. Procurement policy must in turn be consistent with the regulatory framework for procurement as illustrated in Figure 3.

Annexure 9 provides a model policy, based on an institution adopting SANS 294, which may serve as a base document for an organization's procurement policy.

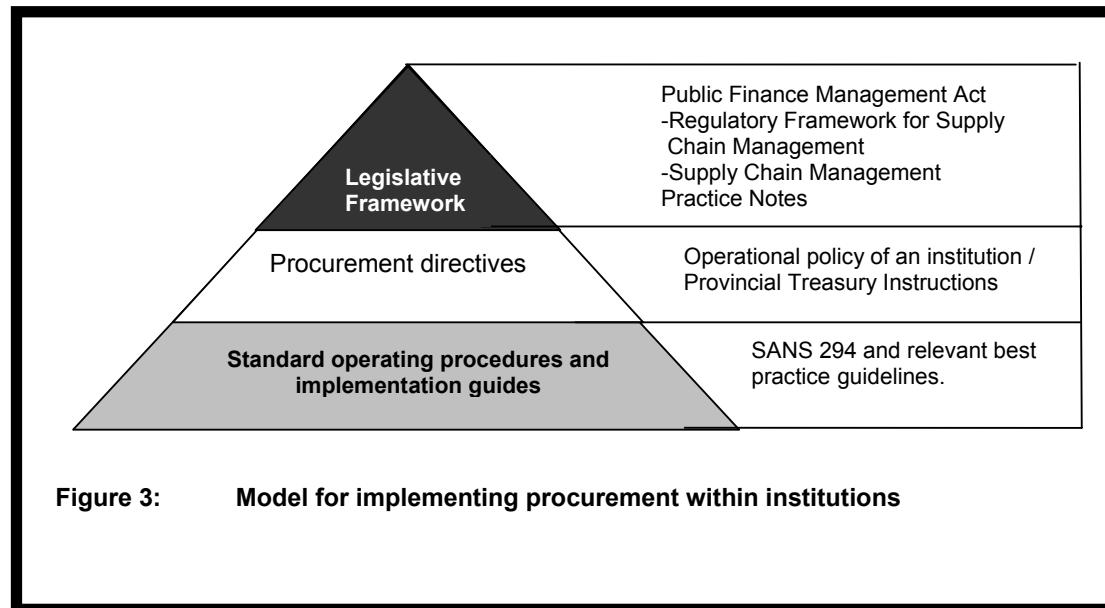


Table 13: Issues which need to be addressed in an institution's procurement policy to enable SANS 294 to be implemented.

Item	Guidance / Considerations
Procurement procedures in relation to different categories of works.	Identify which procedures apply and under what circumstances. It should be noted that the financial limits for shopping and quotations are governed by National Treasury's Practice Note SCM 2 (Threshold Values) and the Regulation 12 of the MFMA SCM Regulations and the appointment of professional service providers by National Treasury's Practice Note SCM 3 (Appointment of Consultants) (See Table 6). The CIDB Standard for Uniformity in Construction Procurement establishes the range of procedures that may be adopted in construction procurement. These, in the case of the appointment of "consultants" are compatible with those contained in SCM 3.
Management and control of the procurement process	The manner in which procurements, including disposals will be managed and controlled should be described as indicated in 4.2 above.
Preferential procurement policy	The preferential procurement policy should be developed and documented around the provisions of clause 4.4 of SANS 294 and CIDB Best Practice Guidelines #B1 (Formulating and Implementing Preferential Procurement Policies) and #B2 (Methods and procedures for Implementing Preferential Procurement Policies). It must be noted that the Preferential Procurement Policy Framework Act does not allow preferences at the short-listing stage in construction procurement
Recording and reporting requirements	SANS 294 suggests that records of decisions and determinations should be made when preparing for procurements (clause 5.2), the reason for pursuing the negotiated procedure (clause 6.3.2), details of every contract awarded (clause 6.7.6) and key performance indicators upon completion of the contact (clause 6.8.5). The Treasury Regulations for Supply Chain Management requires that accounting officers/ authorities provide relevant treasuries with information that they may require. The MFMA Supply Chain Regulations require that reports be presented to Council. The policy statements should allocate responsibility for the preparation of reports and recoding of data.
Risk management	The processes advocated by and the procedures contained in SANS 294 facilitate the management of risk. Special requirements should be stated.(See CIDB Best Practice Guideline # A5 (Managing Construction Procurement Risk)
Grounds for rejecting a tender offer	Rejection on the grounds of not having the necessary tax clearance certificate is contained in the CIDB Standard for Uniformity in Construction Procurement.
Tender committees	See Annexure 9
Procedures for placing contractors and persons under restrictions	See Annexure 5.
Advertising arrangements	See requirements of Treasury Regulations for Supply Chain Management
Applicable forms of contract	The forms of contract must be selected from the list contained in the CIDB Standard for Uniformity in Construction Procurement.
Levels of retention and bonds / securities	These must conform to the requirements of the CIDB Standard for Uniformity in Construction Procurement. Payment advances (eg mobilisation costs) exceeding 10% should be backed by securities (See National Treasury's SCM3 (Appointment of consultants))
Insurance arrangements	
Cost of procurement documents	Clause 6.5.1.3 of SANS 294 provides two options – non-refundable deposit approximately equal to the cost of reproducing the documents or free issue. Policy should indicate which option.
Authorised percentage increase in the final contract amount	Clause 6.8.3 of SANS 294 requires, as a control measure, that an organisation's executive approves increases in the cost of a contract above a certain amount. Typically, this figure should be between 15 and 25%, depending upon the category of contract.

Annexure 1: The South African Legislative Framework for procurement

1.1 Applicable legislation

Public sector procurement in South Africa has historically been regulated at national and provincial level through the State Tender Board Act, and at local authority level through the Local Government Ordinance (Ordinance 17 of 1939). The 1994 Interim Constitution made aspects of procurement a subject of the Constitution and made reference to Tender Boards. This led to the establishment of the Provincial Tender Boards.

Ordinance 17 of 1939 empowered councils to enter into contracts for the provision of goods, works and services (section 34) and obligated councils to accept the lowest tender or to accept any other tender which appeared to it to be the most advantageous if the lowest tender was considered not to be in the public interest or to reject all tenders.

Procurement reform commenced in 1995. A green paper on Public Sector Procurement Reform was released in 1997. Procurement reform focused on two issues (see Figure 1.1):

- good governance in procurement ; and
- the attainment of socio-economic objectives through procurement.

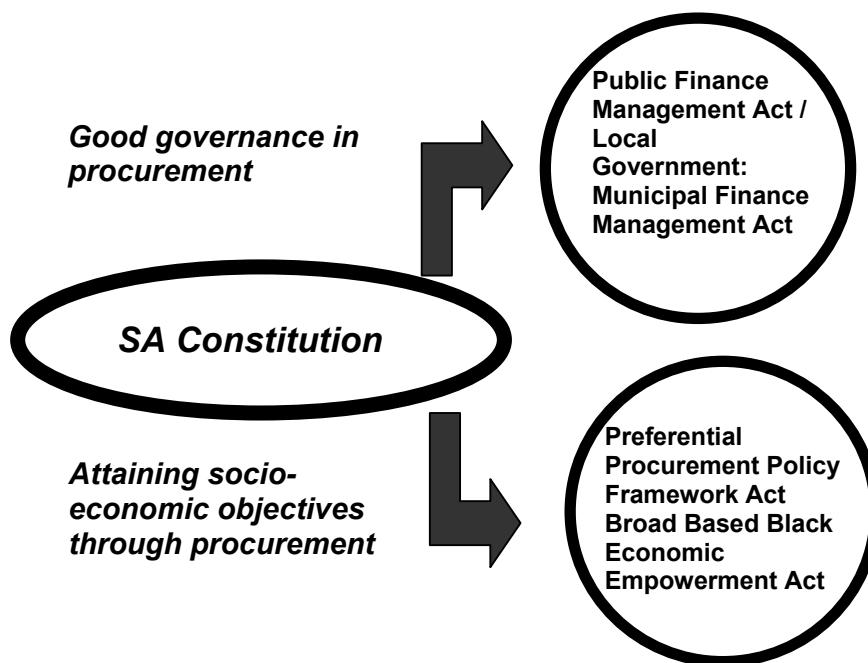


Figure 1.1:South African legislative procurement regime

The reform process has not yet been completed. Several pieces of legislation which either deal specifically with aspects of procurement or make reference to procurement have been promulgated in the absence of a white paper for procurement¹⁰. The White Paper on Creating an Enabling Environment for Reconstruction Growth and Development in the Construction Industry, however, addresses several aspects of procurement insofar as the construction industry is concerned, as policy on construction industry development cannot be divorced from procurement policy and the development of the emerging sector.

Reference to procurement and procurement related matters is currently made in the pieces of national legislation tabled in Table 1.1.

¹⁰ Nation Treasury has issued a document entitled "A policy strategy to guide uniformity in procurement reform processes in government" (7 April 2003) and "Policy guidelines for the issuance of a Supply Chain Management Framework in terms of Section 76(4)(c) of the PFMA" (15 October 2002).

Table 1.1: Principal references to procurement in South African Law

Specific Section	Reference to Procurement	Applicability	Comment
State Tender Board Act (Act 86 of 1968)			
	This Act provides for the regulation of the procurement of supplies and services for the disposal of moveable property of, and the hiring or letting of anything or the acquisition or granting of any right for or on behalf of, the state and to that end establishes a State Tender Board and provides for the establishment of a regional tender board.	National and provincial departments	Provincial procurement is governed by provincial legislation, which in the main, are modeled on the State Tender Board Act. The State Tender Board Act and associated provincial legislation is in the process of being repealed. Regulations issued in terms of the Public Finance Management Act allow institutions which are subject to the PFMA to continue to procure through the existing Tender Board Acts should they lack capacity to undertake their own procurement.
Local Government Transitional Act (Act 209 of 1993)			
10G (5)(a) to(c)	A municipality is required to award contracts for goods and services in accordance with Section 217 of Act 108 of 1996. The Act requires that the granting of preferences be made public and permits municipalities to dispense with the calling for tenders in the case of an emergency or of a sole supplier or within such limits as may be prescribed by national law.	Local sphere of government	The Local Government: Municipal Finance Management Act repeals this piece of legislation. Accordingly, once this Act is implemented, the provision of the Local Government Transitional Act will fall away.
Auditor – General Act (Act 12 of 1995)			
3(4)(d)	One of the functions of the Auditor General is to “reasonably satisfy himself or herself that satisfactory management measures have been taken to ensure that resources are procured economically and utilised efficiently and effectively.”	All organs of state	The Auditor General has wide powers to investigate and is obligated to report his findings either to parliament or a provincial legislative, as relevant.
Constitution of the Republic of South Africa (Act 108 of 1996)			
217	Procurement must be conducted in accordance with a “system which is fair, equitable, transparent, competitive and cost effective.” An organ of state must implement a procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination in accordance with a framework contained in national legislation	All organs of state	The constitution establishes procurement objectives and South Africa’s preferential procurement policy.
State Information Technology Agency Act (Act 88 of 1998)			
7(g)	The State Information Technology Agency is empowered to act as a procurement agency in respect of information technology requirements in accordance with state procurement policy.	The State Information Technology Agency	Contracts relating to information technology must be prepared in accordance with the provisions of this Act.
Competitions Act (89 of 1998)			
4	This Act prohibits between parties: a) restrictive horizontal practices which have the effect of substantially preventing or lessening competition in a market or involves directly or indirectly fixing a purchase or selling price or any other trading condition; dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or collusive tendering.		
5	b) restrictive vertical practices which have the effect of substantially preventing or lessening competition in a market or establish a minimum resale price.		

Specific Section	Reference to Procurement	Applicability	Comment
Public Finance Management Act (Act 1 of 1999)			
38(a) and 51(a) 76(4)	Accounting officers (head of departments / CEOs) and Accounting Authorities (boards / CEOs) are required to ensure that their organisations have in place an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective; effective, efficient and transparent systems of financial and risk management and internal control and a system for properly evaluating major capital projects prior to a final decision on a project. The National Treasury may make regulations or issue instruction concerning the determination of a framework for an appropriate procurement and provisioning system	All organs of state, except in the local sphere of government.	Treasury Regulations for Supply Chain Management has been issued in terms of this Act. This framework requires that certain aspects of procurement must be undertaken in accordance with the provisions of frameworks and instructions that are issued by National Treasury. Regulations for Public Private Partnerships have been issued.
Preferential Procurement Policy Framework Act (Act 5 of 2000)			
All sections	This Act gives effect to Section 217 of the Constitution by providing a framework for the implementation of the procurement policy embedded in the Constitution	All organs of state (SOEs at discretion of Minister)	
Construction Industry Development Board Act (Act 38 of 2000)			
5(1)(a) and 5(3) 5(2) 5(4) 16 and 18 18 and 22	The CIDB is empowered within the construction industry to promote and implement policies, programmes and projects aimed at procurement reform, standardisation and uniformity in procurement documentation, practices and procedures within the framework of the procurement policy of government; and best practices. The CIDB is charged with the establishment and maintenance of a national register of contractors which facilitates public sector procurement and a register of projects. It may also establish a register of suppliers, manufacturers or service providers in the construction industry. The CIDB must publish a code of conduct for all construction-related procurement and all participants in the procurement process and may implement programmes aimed at standardisation of procurement documentation, practices and procedures. The Minister of Public Works must prescribe the manner in which public sector contracts may be invited, awarded or managed within the framework of the register and policy on procurement. Only contractors who are registered with the CIDB are permitted to undertake, carry out or complete construction works or portion thereof. All construction contracts above a prescribed value must be recorded in the register and be subjected to a best practice project assessment.	All organs of state which engage in construction industry related procurement. (The register of projects and the code of conduct is applicable to both the public and private sectors)	The Construction Industry Development Regulations have been issued to enable the register of projects and the register of contractors to be operated. A Standard for Uniformity in Construction Procurement and a Code of Conduct for the Parties engaged in Construction Procurement has been issued by the board. These documents are mandatory. The Board has also issued a number of construction procurement best practices and best practice guidelines.
Local Government: Municipal Systems Act (Act 32 of 2000)			
83 and 84	Sections of the Act establish a framework for the establishment of service delivery agreements involving competitive bidding processes and make reference to the provisions of Act 108 of 1996 and Act 5 of 2000.	Local sphere of government	
Promotion of Equality and Unfair Discrimination Act (Act 4 of 2000)			
6,7 26	The Act prohibits the state or any other person from discriminating unfairly against any person and in particular on the grounds of race such as the denial of access to opportunities, including access to services or contractual opportunities for rendering services, or failing to take steps to reasonably accommodate the needs of such persons. The Act makes it the responsibility of any person directly or indirectly contracting with the State or exercising public power to promote equality by adopting appropriate equality plans, codes, regulatory mechanisms and other appropriate measures for the effective promotion of equality in the spheres of their operation; enforcing and monitoring the enforcement of the equality plans, codes and regulatory mechanisms developed by them; and making regular reports to the relevant monitoring authorities as may be provided in regulations, where appropriate.	The state and all persons.	This Act does not apply to any person to whom and to the extent to which the Employment Equity Act. 1998 (Act No. 55 of 1998), applies.

Specific Section	Reference to Procurement	Applicability	Comment
Electronic Communications and Transactions Act (Act No. 25 of 2002)			
11 to 26	These sections establish legal requirements for data messages and the communication of data messages.	All organs of state and the private sector	This Act facilitates the concluding of contracts using data generated, sent, received or stored by electronic means data generated, sent, received or stored by electronic means
Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003)			
9	The Act enables the Minister of Trade and Industry to issue codes of good practice on black economic empowerment that may include: <ul style="list-style-type: none"> the further interpretation and definition of broad-based black economic empowerment and the interpretation and definition of different categories of black empowerment entities; qualification criteria for preferential purposes for procurement; and indicators to measure broad-based black economic empowerment and the weighting attached to such indicators; 	Procurement provisions apply to all organs of state.	Preferencing arrangements must still comply with the provisions of the Preferential Procurement Policy Framework Act.
10	Every organ of state and public entity is required to take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in: <ul style="list-style-type: none"> determining qualification criteria for the issuing of licenses or concessions; developing and implementing a preferential procurement policy; determining qualification criteria for the sale of state-owned enterprises; and developing criteria for entering into partnerships with the private sector. 		
12	The Act also empowers the Minister to publish for general information and to promote a transformation charter for a particular sector of the economy.		
Local government: Municipal Finance Management Act (Act No. 56 of 2003)			
110-119	The accounting officer (the municipal manager of the municipality or the chief executive officer of a municipal entity) is responsible for implementing the supply chain management policy of the municipality or municipal entity and to take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair irregular practices. The accounting officer is also required to: <ul style="list-style-type: none"> take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced; monitor on a monthly basis the performance of the contractor under the contract or agreement; establish capacity in the administration of the municipality or municipal entity to assist the accounting officer in carrying out his duties and to oversee the day-to-day management of the contract or agreement; and regularly report to the council of the municipality or the board of director of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor. 	Municipalities and municipal entities	The Minister of Finance is required to prescribe a number of procurement related regulatory frameworks to enable the Act to be implemented.
117	No councilor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer.		
120	Conditions and processes for public private partnerships are also addressed.		

Specific Section	Reference to Procurement	Applicability	Comment
The Prevention and Combating of Corrupt Activities Act (Act No. 12 of 2004)			
Part 4	<p>Corrupt activities giving rise to offenses include:</p> <ul style="list-style-type: none"> a) improperly influencing in any way the promotion, execution, procurement or retention of any contract; b) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any contract; c) manipulating by any means the award of a tender; d) manipulating by any means the outcome of an auction; e) public officers having a private interest in a contract connected with the public body that employs them except where the interest is in a stock exchange listed company or their conditions of employment do not prohibit such involvement in a contract. <p>The direct or indirect offering or receiving of gratifications underlies the abovementioned corrupt activities. Gratification in terms of the Act includes:</p> <ul style="list-style-type: none"> a) money, whether in cash or otherwise; b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage; c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage; d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation; e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part; f) any forbearance to demand any money or money's worth or valuable thing; g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty; h) any right or privilege; i) any real or pretended aid, vote, consent, influence or abstention from voting; or j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage. <p>The Act also make it an offence to be an accessory to or after the abovementioned offences as well as to attempt, conspire or induce another person to commit such offences.</p> <p>Persons convicted of an offence may be fined or imprisoned. The Act also allows the courts to impose an additional fine equal to five times the value of the gratification, and in the case of offences in respect of corrupt activities relating to contracts and the procuring and withdrawal of tenders, to order that the particulars of the convicted person or firm be put on a register of tender defaulters which will be open to the public. In terms of the Act, National Treasury must determine the period of restriction (not less than 5 years and more than 10 years) and may in addition terminate any agreement with the person or enterprise concerned. Purchasing authority must disqualify and ignore all tenders received from such persons and enterprises</p> <p>The Act places a duty of care on accounting officers and accounting authorities to report known or suspected cases of corruption to a police officer, failing which, they are guilty of an offence. Police officer are required to issue notices of receipt of such reports.</p>		
26 to 28			

The Department of Trade and Industry established an Industrial Participation Programme (IPP) in 1996.¹¹ Cabinet fully endorsed the IPP Policy and its operating guidelines on 30 April 1997. In effect, this means that all government and parastatal purchases or lease contracts (goods, equipment or services) with an imported content in a single contract which exceeds US\$ 10 million, or multiple contracts for the same products or services each exceeding US\$ 3 million awarded to one seller over a 2-year period which in total exceeds US\$ 10 million, are subject to IPP obligations.

The seller / supplier / service provider who incurs an IPP obligation is required to participate in the South African economy to the extent that the sum total of all commercial / industrial activity (subject to the Department of Trade and Industry's crediting criteria) equals or exceeds 30% of the imported content within a period of 7 years from the effective date of the IPP Agreement. Excess credits can be banked for a period of 4 years after the obligation is discharged. 50% of such banked credits can be used to fulfill new obligations. A 5% performance guarantee is required.

IPP is a condition of tender and is not a factor in the adjudication of tenders, unless all submissions are relatively close to each other. It is usually conducted as a parallel process to the tendering process. The Department of Trade and Industries has an IPP secretariat that is tasked with the responsibility for negotiating and evaluating IPP proposals and administering the programme. Bankable business plans are called for to establish and monitor specific obligations. Receipts and audited statements are used to confirm compliance with obligations.

1.2 Anti-corruption measures

There are several anti-corruption measures in the South African legal system that applies to aspects of procurement. These are outlined in Table 1.2.

Table 1.2 Overview of laws which contain anti-corruption measures

Act	Description of Act
Public Protector Act (Act 23 of 1994)	This Act permits the public to raise issues and empowers the Public Protector, acting as an ombudsman, to investigate, report on and take the necessary remedial action on any conduct in state affairs or in the public administration, that is alleged, or suspected to be improper or to result in any impropriety or prejudice. (Sections 181 to 183 of the Constitution provide for the establishment of the office of the Public Protector.)
Protected Disclosure Act (Act 26 of 2000)	The Protected Disclosures Act (Act 26 of 2000) makes provision for the protection of employees in both the public and private sector who disclose information in good faith regarding unlawful or irregular conduct to the Public Protector, Auditor General or a person or body established for this purpose in terms of the Act.
Promotion of Administrative Justice Act (Act 3 of 2000)	The Act gives effect to the rights provided for the Bill of Rights in Section 33 of the Constitution (Act 108 of 1996), namely that everyone has the right to administrative action that is lawful, reasonable and fair and must be furnished with written reasons where their rights have been adversely affected by administrative action. The Constitution, also provides for the review of administration action by a court, or where appropriate, an impartial tribunal, and imposes a duty on the state to give effect to the rights provided for. The Act establishes fair administrative procedures, permits those affected by unfair administrative action to request reasons for such administrative action within 90 days of, or when they became aware of, such actions and requires administrators to respond within 90 days of receipt of such requests. Administrative actions are presumed to be have been taken without good cause where an administrator fails to respond within the prescribed period. The Act also provides for procedures for the judicial review of administrative actions and remedies in proceedings for judicial review including the prohibition of an administrator from acting in a particular manner, setting aside the administrative action, correcting the defective action and the ordering of the administrator to pay compensation.

11 Regulation 10. (1) of the Framework for Supply Chain Management issued in terms of the Public Finance Management Act states that "an accounting officer or accounting authority must obtain clearance for a recommended bidder from the Department of Trade and Industry, in respect of contracts which are subject to the National Industrial Participation Program of that Department."

Promotion of Access to Information Act, (Act 2 of 2000)	<p>This Act gives effect to the rights provided for in the Bill of Rights in Section 32 of the Constitution (Act 108 of 1996), namely that everyone has the right of access to information held by the state and any information that is held by another person that is required for the exercise or protection of any rights.</p> <p>This Act applies to records of both public and private bodies, regardless of when they came into effect, and sets out the procedures pertaining to the obtaining of records in both the public and private sector, the grounds for refusal of access to information, mandatory disclosures in the public interest, and appeals against decisions of information officers of certain public bodies. The Act places restrictions on the use of information obtained in civil and criminal proceedings and makes reference to the resolution of disputes relating to the operation or administration of the Act by the Public Protector, by means of mediation, conciliation or negotiation.</p>
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These laws allow organs of state to develop and implement “whistle blowing” schemes to curb corrupt practices. They also allow tenderers and contractors to request written reasons for administrative actions taken by officials and consultants and recourse to the courts should they be dissatisfied with reasons furnished. Tenderers and contractors may also raise matters with the office of the Public Protector.

1.3 Constitutional provisions

The Constitution of the Republic of South Africa (Act 108 of 1996) states that:

217. (1) *When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.*

(2) *Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for*

- a. *categories of preference in the allocation of contracts; and*
- b. *the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.*

(3) *National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.*

Section 217 of the Constitution of the Republic of South Africa (Act 108 of 1996) establishes the primary and secondary procurement objectives. (See Table 1.3). The policy for the “good governance” aspects of procurement which is captured in Section 217 (1) establishes a comprehensive framework for procurement that is consistent with international norms and standards. Section 217(2) establishes South Africa’s preferential procurement policy in that it provides for a preferencing scheme and measures to be taken to protect or advance persons disadvantaged by unfair discrimination. Section 217 (3) of the Second Amendment Act (Act 61 of 2001) requires that national legislation **must** prescribe a framework within which the preferential procurement policy **must** be implemented.

Table 1.3: South Africa’s procurement policy objectives

Objective		Reference
Primary	Procurement system is to be fair, equitable, transparent, competitive and cost effective.	Section 217 (1)
Secondary	Procurement policy may provide for: <ul style="list-style-type: none"> a) categories of preference in the allocation of contracts; and b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination. 	Section 217 (2)

The overarching constitutional requirement is for the procurement system to be fair, equitable, transparent, competitive and cost effective. These requirements shape the procedures and practices that are embodied in each of the activities in the procurement phase of delivery management. Every procurement procedure that is adopted must satisfy these requirements.

These requirements are designed to ensure that procurement does not expose government to the following risks:

- loss of economy and inefficiency in procurement;
- the exclusion of certain eligible tenderers from competing for tenders;
- reduction in competition;
- unfair and inequitable treatment of contractors;
- lack of integrity, fairness or public confidence; and
- lack of transparency in procurement procedures.

The Constitution also confers in the bill of rights the right to just administrative action, viz:

33. (1) *Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.*
- (2) *Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*

1.3 Public Finance Management Act (Act 1 of 1999)

The basic philosophy underlying the approach to the Public Finance Management Act is to allow “managers to manage and be held accountable,” while politicians are provided with information necessary to set overall policy and priorities for service delivery.

The Public Finance Management Act (Act 1 of 1999), which is applicable to all organs of state other than municipalities and municipal entities, requires accounting officers (head of departments / chief executive officers of constitutional institutions) and accounting authorities (board / controlling body / chief executive officer in an entity which has no board or controlling authority) to have:

- an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective;
- effective, efficient and transparent systems of financial and risk management and internal control; and
- a system for properly evaluating all major capital projects prior to a final decision on the project

Accounting officers in addition are required to fulfill all contractual obligations and pay all monies owing within the prescribed period and may not commit to any liability for which money has not been appropriated.

Accounting officers and accounting authorities may delegate powers entrusted to them to one of their officials or instruct one of their officials to perform any of the duties assigned in terms of the Act. Such arrangements, however, do not relieve them of any of their responsibilities in terms of the Act.

Failure by an accounting authority or an accounting officer in a grossly negligent way to put in place the above can, upon conviction, lead to a fine or imprisonment for a period not exceeding 5 years.

Section 76(4) permits the National Treasury to make regulations or issue instructions applicable to all institutions to which the Act applies concerning the *determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.*

Policy guidelines for the issuance of a Supply Chain Management Framework in terms of Section 76(4)(c) of the PMFA (15 October 2002) have been issued. These guidelines introduce uniform norms and standards within government to ensure transparency and expenditure control measures as required in sections 215 to 219 of the Constitution. In essence, these guidelines determine the underlying support structure that sets the parameters for the execution of supply chain management within government and consolidates supply chain policy in all spheres of government and for all organs of state.

The supply chain management system is required to address at least the following (see Figure 1.1):

- Demand management;
- Acquisitioning management;

- c) Logistics management;
 - d) Disposal Management ;
 - e) Risk Management; and
 - f) Supply Chain Performance.

All accounting officers / authorities are required to report management information to executive authorities and relevant treasuries. These instructions furthermore address the establishment of supply chain management units, training of supply chain management officials, the procurement of goods and services, the disposal and letting of state assets, compliance with ethical standards, avoiding abuse of the supply chain management system and national industry participation programmes.

National Treasury has in addition published a Policy Strategy to guide uniformity in the Procurement Reform Processes in Government (O7-04-2003). This document calls for the prescribing of minimum norms and standard for supply chain management practices in government and states that National Treasury will issue a limited number of practice notes in terms of the framework to guide uniformity in practices and procedures in the different spheres of government, whilst provincial treasuries will issue further practice notes in a cascading fashion to guide the more detailed implementation of supply chain management functions.

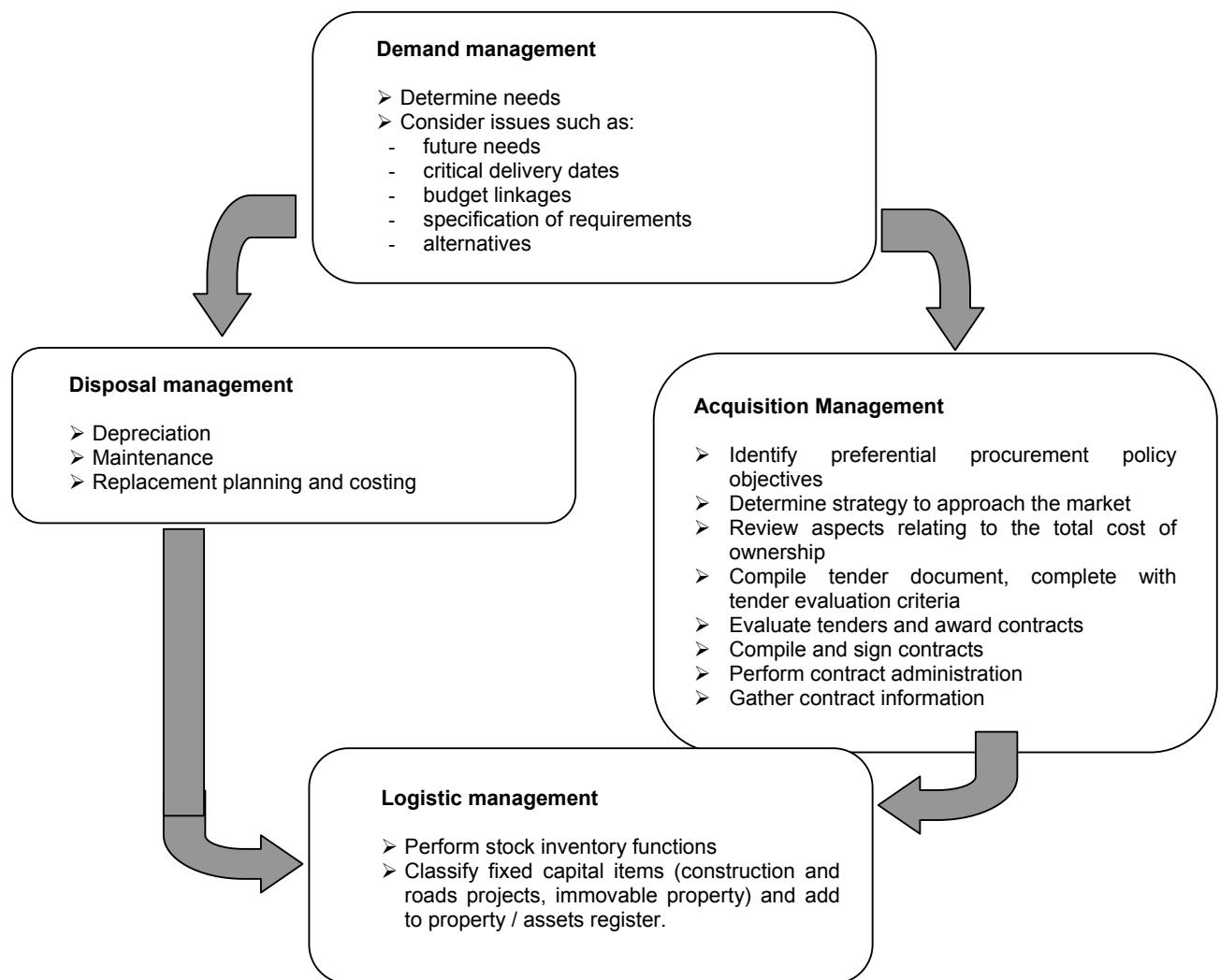


Figure 1.1: The concept of supply chain management provided for in the policy guidelines to section 76(4) (c) of the PFMA.

Regulations have been issued to govern procurements in Public Private Partnerships. (Refer to regulation 16.6 of Treasury Regulations for Departments, Trading Entities, Constitutional Institutions and Public Entities). These regulations require prior treasury approval of the procurement documentation, the aspects of affordability, value for money and risk transfer prior to the issuing of procurement documents. The procurement procedure must include an open and transparent pre-qualification process; a competitive bidding process in which only pre-qualified organizations may participate; and criteria for the evaluation of bids to identify the bid that represents the best value for money.)

A Regulatory Framework for Supply Chain Management was promulgated on 5 December 2003 in terms of Section 76 (4) (c) of the Public Finance Management Act. Annexure 3 provides a comprehensive overview of these regulations. National Treasury has in addition published a number of practice guides.

1.4 Local Government: Municipal Finance Management Act (Act 56 of 2003)

The procurement provision of the Municipal Finance Management Act do not mirror the provisions of the Public Finance Management Act. Section 112 permits the Minister of Finance to issue a prescribed regulatory framework for supply chain management that covers at least the following:

- The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding.
- When a municipality or municipal entity may or must use a particular type of process.
- Procedures and mechanisms for each type of process.
- Procedures and mechanisms for more flexible processes where the value of a procedure is below a prescribed amount.
- Open and transparent pre-qualification processes for tenders or other bids.
- Competitive bidding processes in which only pre-qualified persons may participate.
- Bid documentation, advertising of and invitations for contracts.
- Procedures and mechanisms for:
 - the opening, registering and recording of bids in the presence of interested persons;
 - the evaluation of bids to ensure best value for money;
 - negotiating the final terms of contracts; and
 - the approval of bids.
- Screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed
- Compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractor from those tenders or bids
- Participation in the supply chain management system of persons who are not officials of the municipality or municipal entity.
- The barring of persons from participating in tendering or other bidding processes, including persons:
 - who were convicted for fraud or corruption during the past five years;
 - who willfully neglected, reneged on or failed to comply with a government contract during the past five years;
 - whose tax matters are not cleared by South African Revenue Service
- Measures for:
 - combating fraud, corruption, favouritism and unfair and irregular practices in supply chain management
 - promoting ethics of officials and other role players involved in municipal supply chain management
- The invalidation of recommendations or decisions that were unlawful, improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by-
 - councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or
 - municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act:

- The procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state.
- Contract management and dispute settling procedures.
- The delegation of municipal supply chain management powers and duties including to officials.

Chapter 11 of the Act which deals with goods and services comprises two parts. Part 1 deals with supply chain management while Part 2 deals with public-private partnerships.

The supply chain management provisions of the Act apply to:

- a) the procurement by a municipality or municipal entity of goods and services;
- b) the disposal by a municipality or municipal entity of goods no longer needed;
- c) the selection of contractors to provide assistance in the provision of municipal services other than in circumstances where Chapter 8 of the Local Government: Municipal Systems Act (Act 32 of 2000) applies¹²; and
- d) the selection of any institution or entity or any person, juristic or natural other than a municipal entity, another municipality or a national or provincial organ of state for the provision of municipal services in circumstances contemplated in section 83 of the Local Government: Municipal Systems Act (Act 32 of 2000)¹³.

Part 1 does not in general apply to municipality or municipal entity contracts with another organ of state for the provision of goods, services or municipal services or the assistance in the provision of municipal service, or to the procurement of goods and services under a contract secured by that other organ of state, provided that the relevant supplier has agreed to such procurement.

The accounting officer (the municipal manager of the municipality or the chief executive officer of a municipal entity) is responsible for implementing the supply chain management policy of the municipality or municipal entity and to take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair irregular practices.

The accounting officer is also required to:

- take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced;
- monitor on a monthly basis the performance of the contractor under the contract or agreement;
- establish capacity in the administration of the municipality or municipal entity to assist the accounting officer in carrying out his duties and to oversee the day-to-day management of the contract or agreement; and
- regularly report to the council of the municipality or the board of director of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.

12 Part 3 of Chapter 8 of the Local Government: Municipal Systems Act establishes requirements for service delivery agreements involving competitive bidding. This part establishes general requirements, requirements relating to preferences and requirements relating to negotiations.

13 Section 83 (1) requires that the contractor who provides services through a service delivery agreement must be selected through a selection processes which:

- a) is competitive, fair, transparent, equitable and cost-effective;
- b) allows all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;
- c) minimises the possibility of fraud and corruption;
- d) makes the municipality accountable to the local community about progress with selecting a service provider, and the reasons for any decision in this regard; and ,
- e) takes into account the need to promote the empowerment of small and emerging enterprises.

Section 83 (2) permits preferences to be exercised to advance the interest of persons disadvantaged by unfair discrimination, as long as the manner in which such preference is exercised does not compromise or limit the quality, coverage, cost and developmental impact of the services.

Section 78 sets out the selection criteria that must be applied. Section 84 establishes the procedures relating to the negotiation and reaching an agreement with a service provider.

The use of SANS 294 and the proposal procedure using the two stage system will enable these requirements of the Municipal Systems Act to be satisfied.

The Act further requires the accounting officer to notify in writing the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a municipal entity, the parent municipality, if a tender other than the one recommended in the normal course of implementing the supply chain management policy of a municipality or municipal entity is approved and to provide the reasons for deviating from such a recommendation, unless a different tender was approved in order to rectify an irregularity;

The Act requires that a contract or agreement procured through the supply chain management system of a municipality or municipal entity must:

- a) be in writing;
- b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for:
 - (i) the termination of the contract or agreement in the case of non- or under-performance;
 - (ii) dispute resolution mechanisms to settle disputes between the parties;
 - (iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
 - (iv) any other matters that may be prescribed.

Such a contract or agreement may only be amended by the parties if the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality, and the local community has been given reasonable notice of the intention to amend the contract or has been invited to submit representations.

The Act expressly excludes councilors of the municipality from participating in tender committees or in the evaluation of tenders and prohibits them from attending such meetings as an observer.

A municipality or municipal entity is not obliged to consider an unsolicited tender received outside its normal tendering process, but may do so in terms of a prescribed framework which regulates and limits their power to approve such tenders.

Conditions and processes for public private partnerships are also addressed.

1.5 Local Government: Municipal Systems Act (Act 32 of 2000)

Sections of this Act establish a framework for the establishment of service delivery agreements involving competitive bidding processes and make reference to the provisions of Act 108 of 1996 and Act 5 of 2000. In terms of the framework, municipalities who wish to provide municipal services through a service delivery agreement with any natural or juristic person other than a municipal entity, another municipality or national or provincial department, must select the service provider through a process that:

- is fair, equitable, transparent, competitive and cost effective;
- allows equal and simultaneous access to tender information;
- minimises the possibility of fraud and corruption;
- makes the municipality accountable to the local community regarding progress made in the selection of a service provider and for any decisions taken in this regard ; and
- takes account of the needs for small and emerging businesses.

Preferencing in terms of the Preferential Procurement Policy Framework Act (Act 5 of 2000) is permitted provided that the manner in which the preference is exercised does not compromise or limit the quantity, coverage, cost and development impact of the services.

The Act requires that the final terms and conditions of the contract be negotiated with a selected service provider provided that this does not affect the tender in a manner that compromises the integrity of the tender process.

1.6 Preferential Procurement Policy Framework Act (Act 5 of 2000)

The Preferential Procurement Policy Framework Act (Act 5 of 2000) is intended to give effect to Section 217(2) of the Constitution and to provide a framework within which procurement policies referred to therein must be implemented.

The Act requires organs of State (those responsible for procurement and elected leaders, eg accounting officers and cabinet ministers / councillors) to determine their preferential procurement policy and to implement it within a framework. The Framework provided, by the Act requires that a preference point system must be followed viz:

- for contracts with a Rand value above a prescribed amount, a maximum of 10 points may be allocated for specific goals provided that the lowest acceptable tender scores 90 points for price;
- for contracts with a Rand value equal to or below a prescribed amount, a maximum of 20 points may be allocated for specific goals provided that the lowest acceptable tender scores 80 points for price;
- any other acceptable tenders which are higher in price must score fewer points on a pro rata basis, calculated on their tender prices in relation to the lowest acceptable tender in accordance with a prescribed formula; and
- the contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to that pertaining to specific goals justify the award to another tenderer.

The framework states that specific goals may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability and implementing the programme of the Reconstruction and Development Programme as published in Government Gazette no. 16085 dated 23 November 1994.

The framework furthermore requires that:

- any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender;
- any goals contemplated must be measurable, quantifiable and monitored for compliance.

No preferencing outside of the points system provided for in the Act is permitted. (See Annexure 3). This in practice means that tenderers who obtain the highest number of points can only have their tenders rejected should they:

- have insufficient capacity or capability to deliver; or
- are under suspension from participating in public procurement for prior actions, eg withdrawing a tender after the closing date for tenders, failing to provide sureties, failing to execute the contract when instructed to do so, performing unsatisfactorily, offering bribes, or acting improperly.

Regulations have been issued in terms of the Act. These regulations in some instances turn the framework provided in the Act into a series of prescriptions. National Treasury is in the process of amending these regulations and to align them with the Broad-Based Black Empowerment Act.

1.7 Broad-Based Black Economic Empowerment Act

The Act enables the Minister of Trade and Industry to issue codes of good practice on black economic empowerment that may include:

- the further interpretation and definition of broad-based black economic empowerment and the interpretation and definition of different categories of black empowerment entities;
- qualification criteria for preferential purposes for procurement; and
- indicators to measure broad-based black economic empowerment and the weighting attached to such indicators;

Every organ of state and public entity is required to take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act in:

- determining qualification criteria for the issuing of licenses or concessions;
- developing and implementing a preferential procurement policy;
- determining qualification criteria for the sale of state-owned enterprises; and
- developing criteria for entering into partnerships with the private sector.

The Preferential Procurement Policy Framework Act requires organs of state to determine their preferential procurement policies within a framework. The Broad-Based Black Economic Empowerment Act expands the framework provided in the Preferential Procurement Policy Framework Act to take into account and to apply codes of good practice. It furthermore provides for the use of qualification criteria¹⁴ for the issuing of licenses, the sale of state owned assets and the entering into of public private partnerships.

1.8 Promotion of Equality and Unfair Discrimination Act (Act 4 of 2000)

The Promotion of Equality and the Prevention of Unfair Discrimination Act of 2000 (Act 4 of 2000) expressly prohibits the state from discriminating unfairly against any person on the grounds of race through the denial of access to contractual opportunities for rendering services or by failing to take steps to reasonably accommodate the needs of such persons. A schedule attached to the Act provides an illustrative list of unfair practices in certain sectors. This list cites "*unfairly limiting access to contractual opportunities for supplying goods and services*" as an unfair practice.

Preferencing strictly in accordance with the provisions of the Preferential Procurement Policy Framework Act, i.e. in terms of the points scoring system, is not considered to be unfair discrimination as no person is denied an opportunity to tender and a means is provided for promoting equality. The implementation of preferential procurement policies relating to the advancement of historically disadvantaged persons using one of the following mechanisms may constitute unfair discrimination:

- set asides i.e. allowing only enterprises that have prescribed characteristics to compete for the contracts or portions thereof, which have been reserved for their exclusive execution;
- contractual conditions i.e. making policy objectives a contractual condition e.g. a fixed percentage of work must be subcontracted out to enterprises that have prescribed characteristics or a joint venture must be entered into;
- qualification criteria i.e. the exclusion of firms that cannot meet a specified requirement, or norm, relating to the policy objective from participation in contracts other than those provided for in the law e.g. the Broad-Based Black Economic Empowerment Act; and
- offering back i.e. offering tenderers that satisfy criteria relating to policy objectives an opportunity to undertake the whole or part of the contract if that tenderer is prepared to match the price and quality of the best tender received.

The Act also makes it the responsibility of any person directly or indirectly contracting with the State or exercising public power to promote equality by:

- adopting appropriate equality plans, codes, regulatory mechanisms and other appropriate measures for the effective promotion of equality in the spheres of their operation;
- enforcing and monitoring the enforcement of the equality plans, codes and regulatory mechanisms developed by them; and
- making regular reports to relevant authorities as may be provided in regulations, where appropriate.

14 The Preferential Procurement Policy Framework Act provides only for the use of award criteria (i.e. the granting of a weighting to policy objectives along with the usual commercial criteria, such as price and quality, at the award stage) in the implementation of a preferential procurement policy. The Broad-Based Black Economic Empowerment Act makes provision for the use of the following additional mechanisms to implement a preferential procurement policy in concession contracts and the sale of state assets:

- preferences at the short listing stage i.e. the limiting of the number of suppliers / service providers who are invited to tender on the basis of qualifications and give a weighting to policy objectives along with the usual commercial criteria, such as quality, at the shortlisting stage.
- qualification criteria i.e. the exclusion of firms that cannot meet a specified requirement, or norm, relating to the policy objective from participation in contracts.

1.9 Construction Industry Development Board Act (Act 38 of 2000)

The Construction Industry Development Board Act has specific objectives that relate to procurement and delivery management. These include the determination and establishment of best practice that promotes procurement and delivery management reform and the promotion, establishment or endorsement of uniform standards and ethical standards that regulate the actions, practices and procedures of parties engaged in construction contracts. The Act requires that the Board do this within the framework of the procurement policy of Government.

In this regard, the Board has gazetted the following:

- a Code of Conduct for all Parties engaged in Construction Procurement;
- a Standard for Uniformity in Construction Procurement; and
- a Library of Construction Procurement Best Practice

1.10 Other Acts that have a direct bearing on procurement

The Auditor – General Act (Act 12 of 1995) requires the Auditor General to “*reasonably satisfy himself or herself that satisfactory management measures have been taken to ensure that resources are procured economically and utilized efficiently and effectively.*” The Act provides the Auditor General with wide powers to investigate and requires him to report his findings, as relevant, either to parliament or a provincial legislative.

The State Information Technology Agency Act (Act 88 of 1998) empowers the State Information Technology Agency to act as a procurement agency in respect of information technology requirements in accordance with state procurement policy. The Treasury Regulations for Supply Chain Management issued in terms of the Public Finance Management Act require that contracts relating to information technology are prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act.

The Electronic Communications and Transactions Act (Act No. 25 of 2002) facilitates electronic transactions in that it:

- i) gives legal recognition to data messages (i.e. data generated, sent, received or stored by electronic means including voice where the voice is used in an automated transaction; and a stored record);
- ii) recognizes information in the form of a data message as if it were in writing in terms of a law provided that it is accessible and in a manner usable for subsequent reference;
- iii) provides under certain circumstances for electronic signatures to be recognized;
- iv) establishes requirements for data messages to be considered to be equivalent to originals in law;
- v) establishes requirements for the retention of data messages should a law require the retention of documents; and
- vi) establishes how a number of topics in so far as data messages are concerned should be dealt with including admissibility and evidential weight of data messages; retention; production of document or information; notarization, acknowledgement and certification; etc.

The Act also makes provision for the forming of agreements where one or both parties make use of electronic agents (i.e. a computer program or an electronic or other automated means used independently to initiate an action or respond to data messages or performances in whole or in part, in an automated transaction).

Annexure 2: Some Court rulings regarding preferences

Case A: Extract of ruling from Grinaker-LTA Ltd Ulusha Projects (Pty) Ltd v The Tender Board Mpumalanga and others¹⁵

The following extracts from Judge de Villiers' judgement in terms the unreported case of Grinaker-LTA Ltd Ulusha Projects (Pty) Ltd v The Tender Board Mpumalanga and others (case No 18276/2001) in the High Court of South Africa provides some interesting insights into the interpretation of the Preferential Procurement Policy Framework Act.

- *It is common cause that the award of a tender is an administrative decision. Bidders in a tender process are entitled to fair administrative action and have the legitimate expectation that their tender will be evaluated fairly, properly, justly and without bias, in accordance with the Act and public interest. Section 33 of the Constitution provides that administrative action shall be lawful, reasonable and procedurally fair. A public power vested in a functionary must be exercised in an objectively rational manner (paragraph 32).*
- *In terms of Section 2(1) of the Act the first essential of a preferential procurement policy and the implementation thereof is that a preference point system must be followed.....Section 2(1)(f) provides that “the contract must be awarded to the tenderer who scores the highest points, unless the objective criteria in addition to those contemplated in paragraphs (d) and (e) justify the award to another tenderer”. It is important to note that this subsection is cast in peremptory terms. The first step in determining to whom the contract must be awarded would accordingly be to determine which tenderer has scored the highest pointsThe next step would be to determine whether there are objective criteria in addition to those contemplated in paragraphs (d) and (e) which justify the award to another tenderer. (paragraphs 38 to 41)*
- *It is clear that “specific goals” and “criteria” are differing concepts. Paragraph (f) refers to criteria in addition to those contemplated in paragraphs (d) and (e) which refer to specific goals contemplate criteria by which it may be judges whether the goal has been achieved or not. Paragraph (f), in my view, contemplates objective criteria over and above those contemplated in paragraphs (d) and (e). The criteria contemplated in paragraphs (d) and (e) would, if the specific goal is clearly specified in the invitation to submit a tender, be the basis for the award of a maximum of ten points. To my mind, the legislature therefore envisaged that over and above the objective criteria contemplated in paragraphs (d) and (e), there might be objective criteria justifying the award to another tenderer than the tenderer who had scored the highest points. To put it differently: the legislature did not intend that criteria contemplated in paragraphs (d) and (e), should be taken into account twice, firstly in determining what score was achieved out of ten in respect of criteria contemplated in these paragraphs and secondly, in taking into account those selfsame criteria to determine whether objective criteria justify the award of the contract to another tenderer than the one who had scored the highest points. (paragraphs 59 and 60)*
- *The government is not entitled to “pay a premium” for empowerment. Empowerment is specifically catered for in the points system. It is specifically excluded by s 2(1)(f). There is no basis in fact or in law for a “premium” to be paid for empowerment.(paragraph 66)*
- *“The task of the Tender Board has been and will always be primarily to ensure that government gets the best price and value for that which it pays. If that were not the prime purpose of the Tender Board and policy considerations were to override these considerations, the very purpose of the Tender Board is defeated and no Tender Board needs to exist.” (Cash Paymaster Services (Pty) Ltd, *supra*, at 351 G-H approved in SA Post Office Ltd v Chairperson of the Western Cape Provincial Tender board and Others 2001)(paragraph 67)*

Case B: Extract from Judgement in the matter between RHI Joint Venture and the Minister of Roads and Public Work, the Premier of the Eastern Cape, Basil Read (Pty Ltd) and the chairman of the Provincial Tender Board of the Eastern Cape¹⁶

The background to this case is that the Standing Tender Committee recommended that the tender be awarded to the tenderer with the highest number of points following a tender evaluation. (Coincidentally, this tenderer had also submitted the lowest price) The Department's consultants

15 Reported case (2002[3] All SA 336 .(case No 18276/2001 in the High Court of South Africa)

16 High Court (Bisho) Case No: 769/02

concurred with the Committee's recommendations. The report was reviewed and endorsed by a director in the Department. The report was signed off by the chairperson of the Procurement Committee. The Head of the Department (accounting officer) approved the report but added the rider that the tender be awarded to the tenderer with the second highest number of tender evaluation points. The rationale for this decision was that the individual JV partners had been given a number of contracts in the past which they will still be busy with and for a fair distribution of work amongst contractors, the contract should be awarded to another contractor.

Further rationales offered for overturning the Departmental Procurement Committee's recommendation was that:

- the tenderer with the second highest number of tender evaluation points offered a considerable advantage when it comes to the stimulation of the local economy in the region;
- the second lowest tenderer had never been awarded a contract as a sole contractor; and
- the Department had committed itself to spreading the work as widely as possible in order to accelerate service delivery.

The Tender Board accepted the recommendation as presented by the Department. The Tender Board in response to the plaintiff's request for written reasons or overlooking their tender, stated that this was based *"on the principle of fair distribution of work amongst the Province's Contractors"*, and substantiated their decision with reference to regulation 9 issued in terms of the Preferential Procurement Policy Framework Act.¹⁷

The fundamental question raised in the case was "are the factors which motivated the decision of the Provincial Tender Board objective criteria as specified in s 2(1)(f) of the Preferential Procurement Policy Framework Act 5 of 2000?". The following extracts provide some insight into the thinking of the judge:

23. *It is also common cause that the Tender Board's approach to these considerations was that they qualified as additional objective criteria as referred to in s 2(1)(f) of the PPPF Act.....*
27. *MrSC, who appeared for the applicant, submitted that the approach adopted by the Tender Board was incorrect. He pointed out that the fourth respondent, in his answering affidavit, confirmed that 'expenditure on local labour and economy is taken into account when the points are for meeting (sic) the specific foals' and that the 'extent of the expenditure can then be considered as an objective criteria'. This, Mr contended, resulted in weight being given twice to the same factor since points had already been awarded for this under the point system. It could, however, not be considered again as an objective criterion.*
28.*The argument advanced by Mr SC, who appeared for the third respondent, that the greater financial benefits that the tender of the third respondent would provide for local labour and resources was an objective criterion and was rightly taken into account by the Tender Board, is not sustainable. This consideration is provided for in the preference point system and was allocated due and proper weight in terms thereof. It was manifestly improper, therefore, to afford weight to this factor for a second time, and on the basis that it qualified as an additional criterion which justified that the contract be awarded to the third respondent.*
31. *The provisions of s 2(1)(f) of the PPPF Act are clear. The objective criteria referred to therein must be additional criteria, in other words these must be criteria over and above those which have already received consideration as specific goals in terms of ss 2(1)(d) and (e) of the PPPF Act. Since the specific goals cited in s 2(1)(d) are the same goals as those in respect of which a maximum of 10 points could be awarded, any further benefits*

¹⁷ Regulation 9 reads as follows:

Despite regulations 3.(4), 4.(4), 5.(4), 6.(4) and 8.(8), a contract may, on reasonable and justifiable grounds, be awarded to a tender that did not score the highest number of points.

deriving there from could not be considered as being additional criteria. See *Grinaker LTA Ltd and another v Tender Board (Mpumalanga) and Others (supra)*.

37. *The fact that tenders would be awarded on the basis of a policy that work would be fairly or equitably distributed amongst contractors, should have been brought to the attention of prospective tenderers in the invitation to tender. Every tenderer was entitled to know, prior to tendering for the contract, that preference would be given to tenderers who had not been awarded a contract previously. From a practical and financial point of view the necessity for this to have been disclosed is obvious. Those contractors who had previously been successful would then have been able to decide whether or not the expense of preparing and submitting a tender was warranted.*
40. *But, even if I accept that it was the policy of the Tender Board and the Department of Roads and Public Works that tenders should be awarded on the basis that contracts were spread fairly or equitably amongst contractors, it nevertheless cannot qualify as an objective criterion. The fact that it is a policy places it within the parameters of the preferential procurement policy determined by the particular department and it cannot then also qualify as an additional objective criterion in terms of s 2(1)(f) of the PPPF Act. On this aspect, too, I find that the Tender Board has misdirected itself.*
46. *It is clear that the only reason for the Tender Board deviating from the recommendation of the Standing Committee was that it concluded that the two 'objective criteria' justified the award to the third respondent instead of the applicant. If these 'criteria' justified the award to the third respondent instead of the applicant. If these 'criteria' had not been relied on the tender would have been awarded to the applicant.*
49. *In my view, on the basis of the information that was before it, and had the Tender Board applied the provisions of the PPPF Act in a proper manner, it was obliged to award the tender to the applicant. I can see no purpose, therefore, in referring this matter back to the Tender Board for reconsideration. The need for finalisation of the award as expeditiously as possible, and bearing in mind the escalation in costs that could result from a further delay, I consider it fair to those concerned and appropriate that this Court make the decision to award the tender to the applicant.*

Order

50. *In the result the order that I made is the following:*
 - (a) *The decision of the Provincial Tender Board to award Contract No. PTB5-02/03-1691 (Eastern Cape Department of Roads) to the third respondent is hereby set aside.*
 - (b) *The said Contract No. PTB5-02/03-1691 (Eastern Cape Department of Roads) is hereby awarded to the applicant, namely, RHI Joint Venture.*

The first, third and fourth respondents are ordered to pay the costs of the application jointly and severally, the one paying the other to be absolved.

Annexure 3: Regulatory Framework for Supply Chain Management (PFMA)

The Regulatory Framework for Supply Chain Management (published in the Government Gazette Number 25767 dated 5 December 2003 as Government Notice Number 7837 and now incorporated in Treasury Regulations for Departments Trading Entities, Constitutional Institutions and Public Entities as Regulation 16A) applies to national and provincial departments and trading entities, constitutional institutions and public entities listed in Schedules 3A and 3C of the Public Finance Management Act. These regulations impose obligations on accounting officers and accounting authorities, national and provincial treasuries, officials within supply chain management units, officials and other role players as set out in Table 3.1 and require that:

- 1 The procurement of goods and services, either by way of quotations or through a tendering process, must be within the threshold values as determined by the National Treasury.
- 2 The National Treasury's Code of Conduct for Supply Chain Management Practitioners must be adhered to by all officials and other role players involved in supply chain management.
- 3 A supply chain management system must, in the case of procurement through a tendering process, provide for:
 - a) the evaluation of tenders through a tender committee;
 - b) the establishment, composition and functioning of tender committees;
 - c) the selection of tender committee members;
 - d) tender procedures; and
 - e) the approval of tender committee recommendations;
- 4 Tenders are advertised in at least the *Government Tender Bulletin* for at least 30 days before closure, except in urgent cases when bids may be advertised for such shorter period as the accounting officer or accounting authority may determine;
- 5 Awards are published in the *Government Tender Bulletin* and other media by means of which the tenders were advertised.
- 6 Contracts relating to information technology are prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act.
- 7 Treasury Regulation 16 is complied with when goods or services are procured through public private partnerships or as part of a public private partnership.
- 8 Instructions issued by the National Treasury in respect of the appointment of consultants are complied with.

These regulations empower an accounting officer or accounting authority to:

- a) disregard the tender of any tenderer if that tenderer, or any of its principals:
 - i) has abused the institution's supply chain management system;
 - ii) has committed fraud or any other improper conduct in relation to such system; or
 - iii) has failed to perform on any previous contract; and
- b) procure the required goods or services where it is impractical to invite competitive tenders by other means, provided that the reasons for deviating from inviting competitive bids are recorded and approved by the accounting officer or accounting authority.

Table 3.1: Obligations placed on role players in the Treasury Regulations for Supply Chain Management

Role player	Obligations imposed by the Treasury Regulations for Supply Chain Management
Accounting officer or accounting authority.	<p>Must:</p> <ul style="list-style-type: none"> a) develop and implement for their institutions an effective and efficient supply chain management system for the acquisition of goods and services, and disposal and letting of state assets, including the disposal of goods that are no longer required which is: <ul style="list-style-type: none"> i) is fair, equitable, transparent, competitive and cost effective; ii) is consistent with the Preferential Procurement Policy Framework Act, 2000; and iii) provides for at least the following: <ul style="list-style-type: none"> • demand management; • acquisition management; • logistics management; • disposal management; • risk management; and • regular assessment of supply chain performance; b) establish a separate supply chain management unit within the office of their institution's chief financial officer to implement the institution's supply chain management system; c) ensure that officials implementing the institution's supply chain management system are trained and deployed in accordance with the requirements of the Framework for Minimum Training and Deployment issued by the National Treasury; d) ensure that procurement documentation is in accordance with the instructions of National Treasury or, in the case of construction procurement, the CIDB Standard for Uniformity in Construction Procurement, and includes the evaluation criteria, including the criteria prescribed in terms of the Preferential Procurement Policy Framework Act; e) ensure that in relation to the sale or other disposal of state assets: <ul style="list-style-type: none"> i) immovable property is sold at market related prices, unless the relevant treasury determines otherwise; ii) movable assets are sold either by way of tender process, auction or at market related prices, whichever is the most advantageous to the state; iii) in the case of the disposal of computer equipment, the relevant department of education must first be approached to indicate whether any educational institutions are interested in the equipment, and, if so, to arrange for the transport of such equipment at its own cost to any such interested educational institutions; iv) in the case of the disposal of firearms, the National Conventional Arms Control Committee approves of any sale or donation of firearms to any person or institution within or outside the Republic; f) in relation to the letting of state assets: <ul style="list-style-type: none"> i) ensure that all immovable property, excluding state housing for state officials and political office bearers, is let at market related rates, unless the relevant treasury determines otherwise or approves the letting of property free of charge; and ii) annually review all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of state property; g) take all reasonable steps to prevent abuse of the supply chain management system; h) investigate any allegations against an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system, and when justified: <ul style="list-style-type: none"> i) take steps against such official or other role player and inform the relevant treasury of such steps; and ii) report any conduct that may constitute an offence to the South African Police Service; i) check the National Treasury's database prior to awarding any contract to ensure that no recommended tenderer, nor any of its directors, are listed as companies or persons prohibited from doing business with the public sector; j) reject any tender from a tenderer who fails to provide written proof from the South African Revenue Service that that tenderer either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations; k) reject a proposal for the award of a contract if the recommended tenderer has committed a corrupt or fraudulent act in competing for the particular contract or cancel a contract awarded to a contractor: <ul style="list-style-type: none"> i) if the contractor committed any corrupt or fraudulent act during the tender process or the execution of that contract; or ii) if any official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of that contract that benefited that supplier. l) inform the relevant treasury of any action taken in respect of the disregarding of any tender on the grounds that that tenderer or its principals has abused the institution's supply chain management system, committed fraud or any other improper conduct or has failed to perform on any previous contract; m) obtain clearance for a recommended tenderer from the Department of Trade and Industry, in respect of contracts which are subject to the National Industrial Participation Program of that Department; and

	<p>n) submit to the relevant treasury such supply chain management information as that treasury may require.</p>
National Treasury and each provincial treasury	<p>Must establish a mechanism to:</p> <ul style="list-style-type: none"> a) receive and consider complaints regarding alleged non-compliance with the prescribed minimum norms and standards; and b) make recommendations for remedial actions to be taken if non-compliance of any norms and standards is established, including recommendations of criminal steps to be taken in the case of corruption, fraud or other criminal offences.
Officials in the supply chain management unit	<p>Must upon becoming aware of a breach of or failure to comply with any aspect of the supply chain management system immediately report the breach or failure to the accounting officer or accounting authority, in writing.</p>
All officials and other role players in a supply chain management system	<p>May not use their position for private gain or to improperly benefit another person and must</p> <ul style="list-style-type: none"> a) recognise and disclose any conflict of interest that may arise; b) treat all suppliers and potential suppliers equitably; c) ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act; d) be scrupulous in their use of public property; e) assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system; f) comply with the highest ethical standards in order to promote mutual trust and respect; and an environment where business can be conducted with integrity and in a fair and reasonable manner; and g) disclose any private or business interest that they or any close family member, partner or associate has in any contract; and withdraw from participating in any manner whatsoever in the process relating to that contract.
Provincial Treasury	<p>Must submit to the National Treasury such supply chain management information as the National Treasury may require.</p>

Annexure 4: The relationship between supply chain management and public sector delivery management

4.1 Supply chain management functions

4.1.1 Introduction

The supply chain revolves around the concept of supply and demand. The supply chain is driven by the demands of the institution. Supply chain management forms an integral part of an institution's financial management system and introduces commercial practices within an institution. Supply chain management should address at least the following:

- demand management;
- acquisitioning management;
- logistics management;
- disposal management.
- supply chain performance.

4.1.2 Demand management

Demand lies at the beginning of the supply chain. The major activities associated with identifying the demand are:

- establish requirements
- determine needs
- decide on procurement strategies (i.e. contracting, pricing and targeting strategy and procurement procedure)

Demand management accordingly embraces activities relating to the following:

- understanding future needs;
- identifying critical delivery dates;
- identifying the frequency of need;
- linking the requirement to the budget;
- expenditure analyses (based on past expenditures);
- the determination of requirements;
- commodity analyses (checking for alternatives); and
- industry analyses.

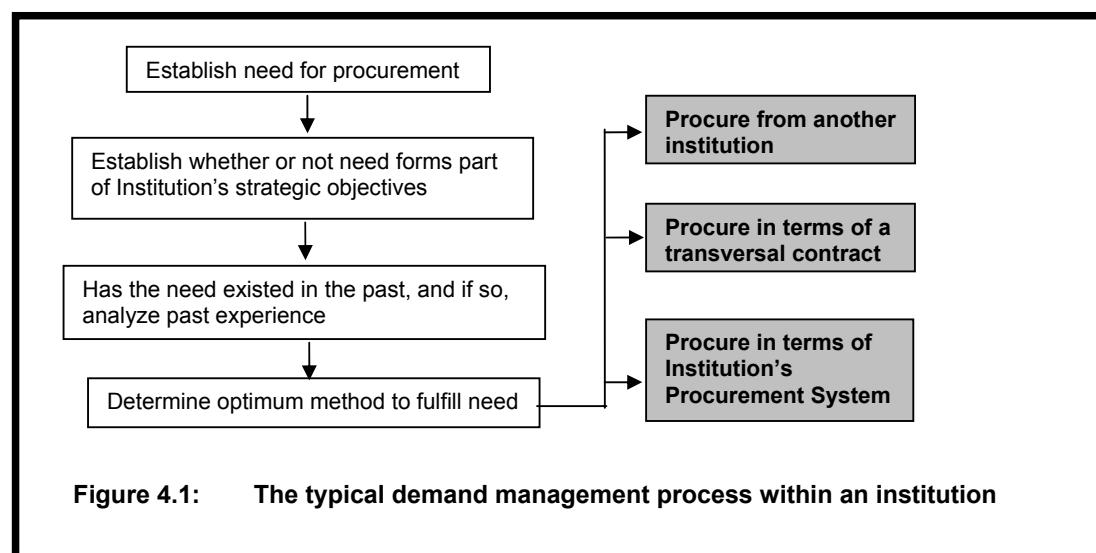


Figure 4.1: The typical demand management process within an institution

A comprehensive needs assessment is fundamental to identifying the demand, which includes amongst others an analysis of the needs, the frequency of need, linking the requirement with the medium term expenditure estimates and framework, an analysis of past expenditure as well as an analysis of the industry. Demand management should bring supply chain practitioners within the institution closer to the end user to ensure that value for money is achieved.

4.1.3 Acquisition management

The major activities associated with acquisition are:

- acquire supplies / services / engineering and construction works; and
- take delivery of supplies / project deliverables / engineering and construction works.

Supplies and services which are not available within an institution can be sourced from other institutions or procured. It should be noted that supplies are not acquired until such time as they have been delivered and paid for.

It is during this stage in the supply chain that secondary objectives identified in the institution's preferential procurement policy that can be met through the specific contract are identified, the strategy of how the market is to be approached is determined, the total cost of ownership (TCO) principle is applied, procurement documents are compiled, tender evaluation criteria is determined, tenders are evaluated and recommendations tabled, contracts are awarded, contract is compiled and compliance with the provision of the contract is confirmed.

Acquisition management within the provisioning process deals with the decisions that have to be made in order to manage the acquisition of the required goods or services from within the institution, or through procurement thereof from the market. There are a number of contracting strategies that can be pursued in provisioning, viz:

- transversal contracts (contracts that are common to a number of participating institutions);
- international sourcing whereby supplies or services are sourced from outside of South Africa;
- local sourcing whereby supplies or services are sourced from within South Africa; and
- Public Private Partnerships

4.1.4 Logistics management

Contract information kick-starts the logistics portion of the supply chain. The major activities associated with logistics are:

- codify items;
- establish stock levels;
- manage warehouse / stores;
- issue stores items;
- deliver / transport stores items; and
- take stock

Logistics management accordingly embraces activities relating to the following:

- coding of items;
- setting of inventory levels;
- stock taking;
- placing of orders;
- receiving and distribution of material;
- stores/warehouse management;
- expediting orders;
- transport management;
- vendor performance;
- etc.

Logistics as such involves activities such as the coding of items, setting of inventory levels, placing of orders, receiving and distribution, stores/warehouse management, expediting orders, transport management and supplier performance. This process integrates with the financial system to generate payments to suppliers. The accounting officer should ensure that processes (whether manual or electronic) and procedures are in place for the effective, efficient, economical and transparent use of the institution's resources, whilst maintaining effective financial and management controls.

4.1.5 Disposal management

The major activities associated with disposals are:

- establish requirements;
- establish market value;
- decide on procurement strategies

Disposal management focuses on:

- obsolescence planning;
- depreciation;
- identifying where all redundant material is kept or located;
- identification of appropriate strategies relating to the manner in which items are to be disposed of, viz:
 - transfer to another institution in terms of section 42 of the PFMA;
 - transfer to another institution at market related value;
 - transfer to another institution state free of charge (bearing in mind that the assets cannot be transferred to a sub-office, school, etc. without the approval of the Head Office of the Institution under which jurisdiction such sub-office, school, etc., falls.);
 - selling per tender or auction; or
 - destroying such assets.
 - inspection of materials with a view to their potential re-use; and
 - physical disposal of items.

4.1.6 Supply chain performance

Supply chain performance is characterised by:

- a monitoring process; and
- a retrospective analysis to determine whether or not the proper process was followed and the desired objectives achieved, i.e.
- has value for money been attained;
- has the proper process has been followed;
- have the desired objectives been achieved;
- is there room for improving the process;
- what is assessment of suppliers; and
- what are the reasons for deviating from procedures

Accordingly supply chain performance focuses on:

- achievement of goals;
- compliance to norms and standards;
- savings generated;
- stores efficiency;
- cost variance per item;
- non-compliance with contractual conditions and requirements; and
- cost efficiency of procurement process (i.e. the cost of the process itself).

4.2 The CIDB Model for Public Sector Delivery Management

4.2.1 Overview of model

The CIDB has developed a comprehensive model to describe the processes that make up public sector delivery management as it applies to the construction industry. (See Figure 4.2) The model reflects the diverse needs of the construction industry, in responding to the demands placed on it for the delivery of infrastructure and tangible assets for South Africa.

The CIDB model presents the distinctly different processes and sub-processes¹⁸ that are present in delivery management, namely:

- planning which comprises the iterative processes of identifying objectives, programmes and projects that are to be conducted by each organ of state;
- project delivery which comprises the undertaking of the projects identified in the planning processes; and
- programme completion where the programme objectives set are regularly evaluated and adjusted accordingly.

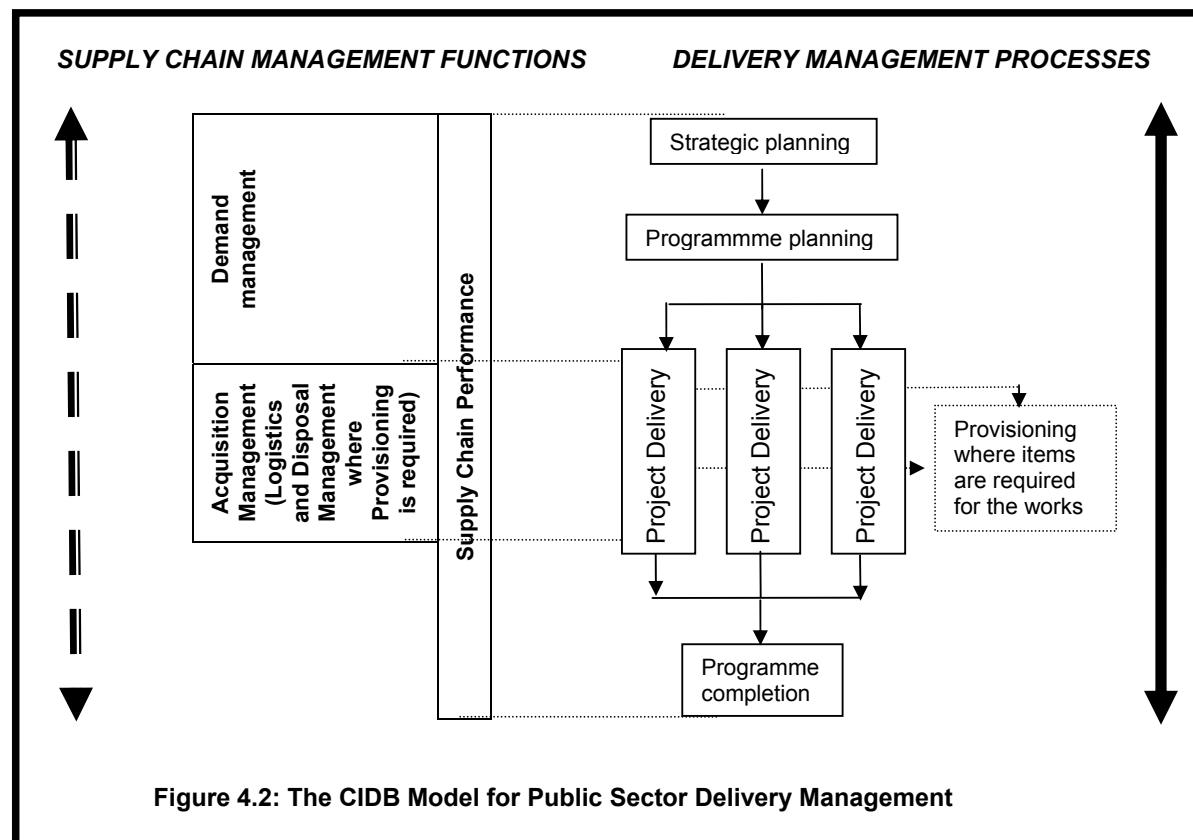


Figure 4.2: The CIDB Model for Public Sector Delivery Management

Each process is typically marked by the completion of one or more deliverables. The last activity in a process or sub-process, frequently requires a determination to be made as to whether or not the programme or project should continue to the next process or sub-process or allows refinements to be made in expected deliverables.

The model also indicates the principal strategic and supply chain functions associated with the processes.

¹⁸ The Project Management Institute uses the term phase in place of process.

Figure 4.3 outlines the core processes associated with the CIDB model for delivery management where the project delivery processes relate to the provision of engineering and construction works.

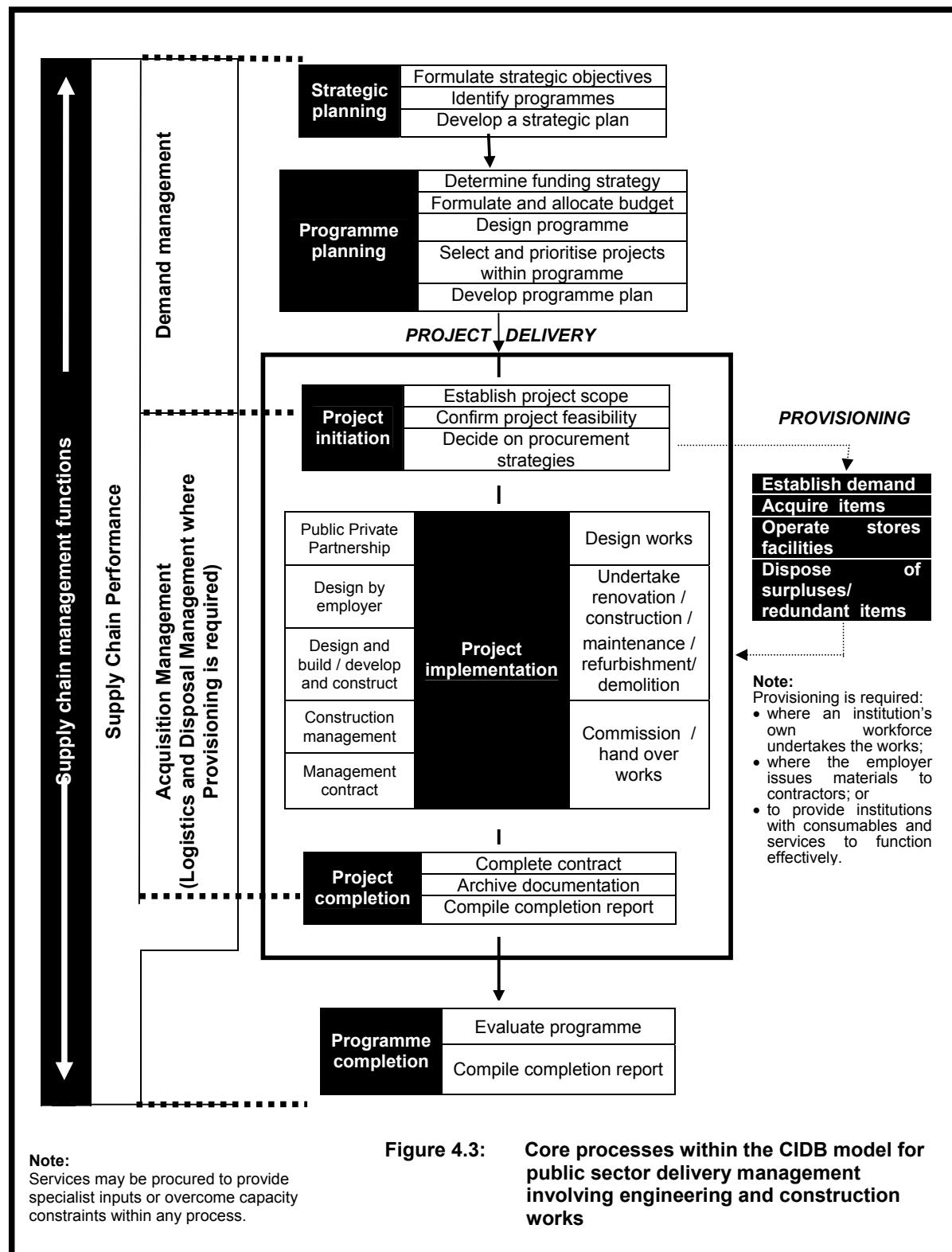
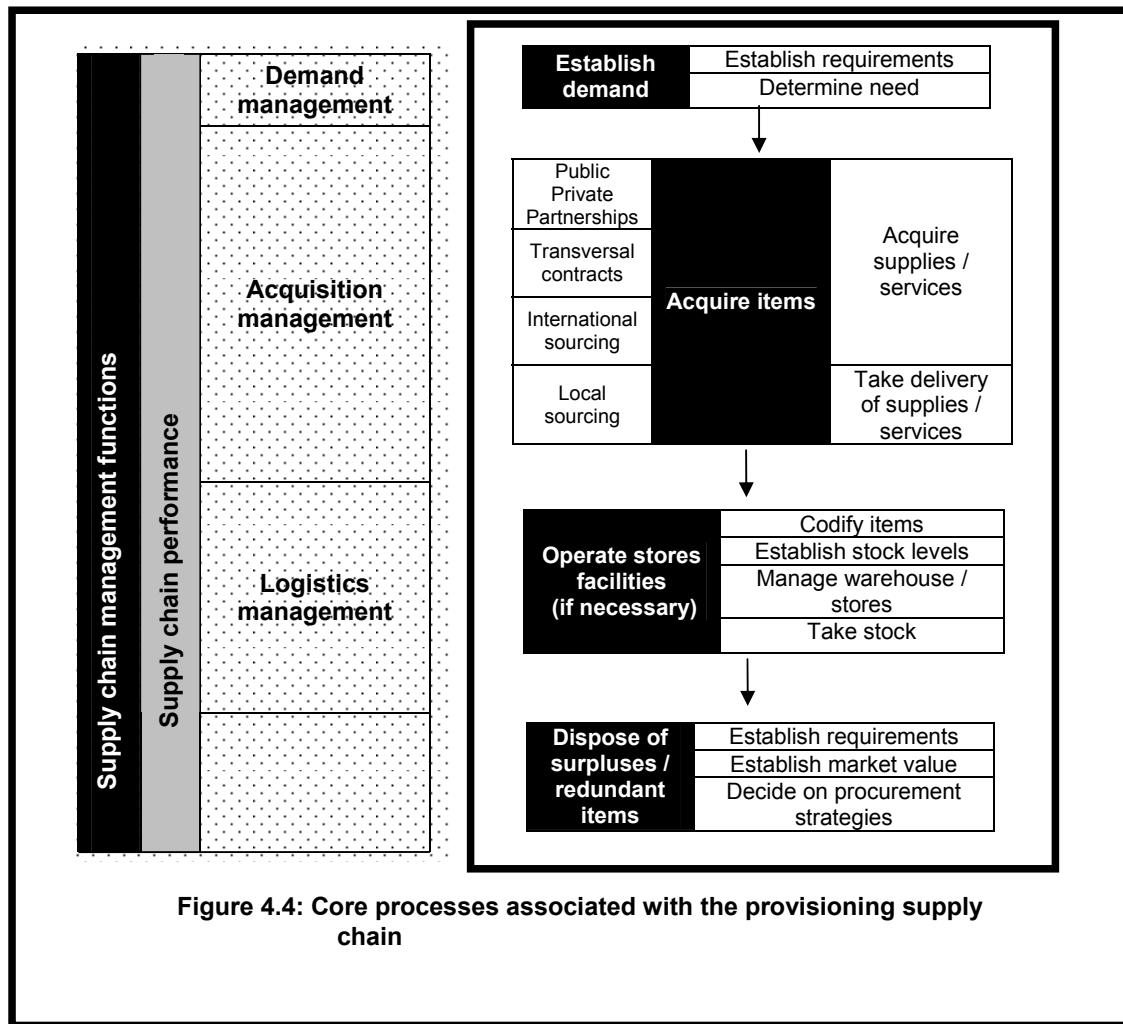


Figure 4.3: Core processes within the CIDB model for public sector delivery management involving engineering and construction works

Provisioning (see Figure 4.4) and procurement (see Figure 4.5) are activities which support delivery management processes (See Figure 4.2)¹⁹. It should be noted that procurement can take place in the model whenever resources external to the institution are required to deliver services. For example, if an institution does not have the internal resources to facilitate activities within the Strategic Planning process, a service provider needs to be procured to assist in this. Provisioning, on the other hand is required to provide the necessary day to day consumables and services to allow the institution to function or to provide works or components of the works with their own workforces.



Logistics forms an integral part of provisioning. Logistics in the CIDB model takes place within the Project Delivery process either as a provisioning activity or within the Project Implementation process. Where a contractor undertakes the renovation, construction, maintenance, refurbishment or demolition that constitutes the project, logistics management function is performed by the contractor, except where the institution issues materials to the contractor.

¹⁹ The Public Finance Management Act (Act 1 of 1999) draws a distinction between a procurement and a provisioning system. Both systems are required to be fair, equitable, transparent, competitive and cost effective.

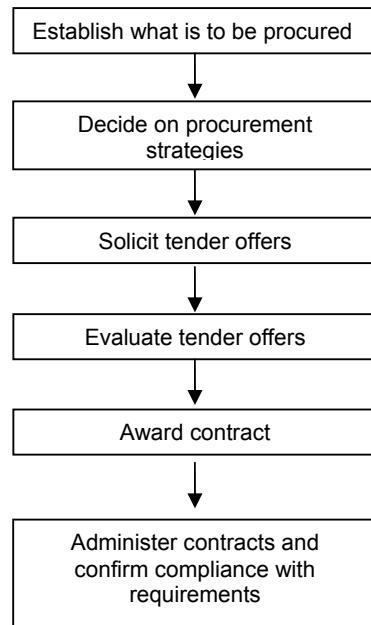


Figure 4.5: Principal procurement activities

4.2.2 Strategic and Programme Planning

The CIDB delivery management model presents the Strategic Planning and Programme Planning processes in Delivery Management as the initiators and the drivers for delivery. Without the proper preliminary planning and integration of strategy with the institution's objectives, the institution will not succeed in delivering the required services.

The Strategic and Programme Planning processes involve the formulation of the institution's strategic objectives, and the identification of the programmes that can be implemented to achieve those objectives. This is derived from the institution's business plans, and the original objectives that were identified for the institution in its formation. The programmes that are identified, for example under each year's Medium Term Expenditure Estimates (MTEE) procedures, may or may not be implemented at that point in time, depending on the evaluation of that particular programme's priority in delivering the service that the institution is responsible for.

The starting point is to develop a strategic plan, which prioritises those programmes that are deemed to be the core operations for the institution and those that will be most effective in supporting the delivery of services. Thereafter, budgets need to be determined as well as the time horizons and targets for delivery.

Once the overall framework has been established with programmes identified and prioritised, the next level of detail is defined, namely the individual programme planning. This involves aspects such as the identification of funding strategies, definition and allocation of budgets to the programme, detailed definition of the programme operations, including the nature and requirements of projects within that programme. Once these individual projects have been identified, they are likewise prioritised, and their budgets clearly defined. With the clear definition of the detail within the programme, a programme plan is set up to clearly indicate the relationships between each individual project and the timing associated with each project.

The Strategic and Programme planning processes sets the scene for the successful delivery of the services that the institution is responsible for, and establishes the platform for the processes that follow.

4.2.3 Project Delivery

The Project Delivery process, by definition, relates to undertakings planned by an institution in relation to the services that they are mandated to deliver. Projects can cover a wide spectrum of undertakings. Project Delivery does not relate to the provision of consumables or services relating to the day to day functioning of an institution, nor to the disposal of consumables and accommodation that are surplus to requirements or are redundant.

This process associated with the CIDB delivery management model relates to the implementation of each project that is defined in or flow out of the Programme Planning processes. It defines the manner in which the project is initiated, implemented and completed and is broken down into three main processes, namely the Project Initiation, the Project Implementation and the Project Completion processes. This is illustrated in Figure 4.3 for projects involving engineering and construction works.

Different delivery options exist, particularly in the provision of engineering and construction works, each of which offers alternative approaches to project delivery. Table 4.1 tabulates the activities for the design by employer contracting strategy in relation to the aforementioned core processes.

The Project Initiation process includes the detailed confirmation of the envisaged project scope and the feasibility of the project. With these parameters in place, the most appropriate procurement strategies, taking cognisance of available resources, can be decided on and approved so that authorisation for expenditure can be made. Any procurement required to overcome resource constraints is subject to the procurement policy as set up within the institution, and is performed according to the procurement strategy that is adopted.

Table 4.1: Project Delivery activities associated with the design by employer procurement strategy

PROJECT DELIVERY		ACTIVITIES ASSOCIATED WITH THE DESIGN BY EMPLOYER PROCUREMENT STRATEGY
Core processes	Generic activities	
Project initiation	Establish project scope	Formulate project scope Obtain approval of project scope
	Confirm Project Feasibility	Undertake a project feasibility study Obtain approval of project feasibility report
	Decide on procurement strategies	Formulate procurement strategy Obtain approval of the procurement strategies that are to be adopted.
Project implementation	Design works	Initiate design process Develop conceptual design Finalise and document design
	Undertake renovation / construction / maintenance / refurbishment/ demolition	Appoint a contractor Perform and complete the works
	Commission / hand over works	Commission works Rectify defects Hand project over to end user
Project completion	Complete contract	Complete contract
	Archive documentation	Archive documentation
	Compile completion report	Compile completion report

Project Implementation proceeds according to the project scope and the procurement strategy defined in the Project Initiation process. The procurement strategy that is adopted dictates the nature of the engineering and construction works contracts that are entered into and the sequencing and responsibilities for the principal activities. Once all the activities associated with the implementation process have been successfully performed, and the project objectives achieved, the project can be declared to be complete.

SAICE's Practice Manual 2, *Delivering construction projects using the design by employer contracting strategy*, comprehensively describes the project delivery processes associated with the design by employer contracting strategy.

4.2.4 Programme Completion

Programme objectives can only be declared as having been achieved if all the projects that have been defined within each programme have been implemented and declared as complete. At this stage, the programme should be evaluated and a completion report compiled indicating the successes and failures of the programme. Such a report could also incorporate lessons learnt from the implementation process of the programme, in order that the same problems are avoided, or at least anticipated in future Strategic and Programme Planning activities.

Programme monitoring is required at all times. Regular checkpoints are required to allow such monitoring to take place, especially at the critical milestones of individual projects. This provides the institution with a consistent and constant management tool for determining the likely outcomes of the programme. Where the outcomes of particular projects differ from their objectives, even slightly, this will affect the anticipated outcomes of the programme as a whole. It is important to constantly monitor individual projects, to ensure that the objectives are being achieved, and to forecast the possible outcomes at the end of each project, as this will guide the institution as to how to intervene to ensure that the objectives of the programme as well as the institution's objectives can be met.

Annexure 5: Sample supply chain management directives for an institution (PFMA)

- Note:**
- 1) The procurement regimes contained in the PFMA and the MFMA are very different. The PFMA establishes a very broad framework whereas the MFMA establishes a narrow framework and provides for the issuing by Treasury of a Municipal Supply Chain Model Policy for adoption by a municipality. As a result, this annexure addresses only those organs of state which fall under the Public Finance Management Act. It should be noted, however, that the model policy does not provide model operational procedures. SANS 294 may be used to provide such procedures.
 - 2) Delegations by accounting officers and accounting authorities made in terms of section 44 or 56 of the Public Finance Management Act should be made in a manner that promotes the principle of segregation of duties in order to ensure control and to officials either within the supply chain management unit or to those having program responsibility.
 - 2) These sample directives are based on the assumption that the accounting officer delegates supply chain management functions to the chief financial officer. Where duties are not delegated to the chief financial officer, the designation "chief financial officer" must be amended to reflect the designation of the designated official if a delegation is made, and if no such delegation is made, "accounting officer" must be replaced substituted with "chief financial officer". In the case of an accounting authority,

THE²⁰ S SUPPLY CHAIN MANAGEMENT DIRECTIVES

21
.....

Definitions

"adjudication" means an accelerated and cost-effective form of dispute resolution where, the outcome is a decision by a third party which is binding on the parties in dispute;

"corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process;

"fraudulent practice" means a misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels;

"risk" means the chance of something happening that will have an impact upon objectives, which is measured in terms of consequences and likelihood;

"risk management" means the culture, processes and structures that are directed towards the effective management of potential opportunities and adverse effects;

"risk management process" means the systematic application of management policies, procedures and practices to the tasks of establishing the context, identifying, analysing, evaluating, treating, monitoring and communicating risk;

Supply chain management directives

A General

- A.1 The accounting officer in terms of section 44 of the Public Finance Management Act, 1999 (Act 1 of 1999) delegates responsibility to the Chief Financial Officer (CFO) for ensuring that the²² has in place and maintains a supply chain management system that is consistent with these directives.
- A.2 The chief financial officer shall establish a supply chain management office within his office and implement a supply chain management system which as a minimum provides for demand management, acquisition management, logistics management, disposal management, risk management and the regular assessment of supply chain performance.

20 Insert name of institution

21 Insert date

22 Insert name of institution

A.3 An official in the supply chain management unit who becomes aware of a breach of or failure to comply with any aspect of the supply chain management system shall immediately report the breach or failure in writing to the accounting officer.

B Demand management

B.1 The supply chain management unit shall, as relevant:

- a) determine what resources are needed to delivery services in terms of the²³;
- b) perform detailed infrastructure planning for a 5 to 10 year horizon that is consistent with²⁴;
- c) establish current needs, priorities and infrastructure programmes;
- d) forecast future needs;
- e) link requirements associated with needs and programmes to budgets;
- f) identify the broad scope of work associated with projects;
- g) perform an analysis of past expenditure, in terms of cost, suppliers, service providers, contractors and other institutions, to understand the manner in which the²⁵ fulfilled needs in the past.
- h) establish the frequency of requirements associated with identified needs;
- i) examine the question of economies of scale, lead and delivery times;
- j) perform an industry analysis with a view to establishing capability and capacity to satisfy requirements; and
- k) perform a commodity analysis.

B.2 The supply chain management unit shall, in relation to assets, ensure that the²⁶ undertakes and periodically updates the following in order to determine the resources needed to support their strategic and operational plans:

- a) an analysis of the key issues that may influence the institution's requirements for assets in the medium term;
- b) an analysis of the appropriateness of existing assets in relation to the institution's strategic plan and the needs of its clients; and
- c) an identification of the need for new assets and the development of strategies to meet this need.

C Acquisition management

C.1 The supply chain management unit may authorize officials to proceed with the procuring of supplies, services and engineering and construction works only after the feasibility and desirability of satisfying these requirements by using one or more of the following alternative acquisition strategies has been considered:

- a) acquisition of redundant / obsolete material, goods and assets from other institutions;
- b) sourcing of expertise from other institutions;
- c) utilisation of transversal contracts administered by other institutions; or
- d) public private partnerships.

C.2 Procurement associated with Public Private Partnerships shall be conducted in accordance with the provisions of Treasury Regulation 16 issued in terms of the Public Finance Management Act, 1999 (Act No, 1 of 1999).

C.3 Persons appointed for a limited period to perform duties to a post on the fixed establishment, shall as a general rule not be appointed in terms of procurement procedures but in terms of section 8(c)(ii) of the Public Service Act.

23 Insert name of strategic plans, growth and development plans etc

24 Insert name of strategic plans, growth and development plans etc

25 Insert name of institution

26 Insert name of institution

C.4 The supply chain management unit shall prior to issuing any request for information or any tenders regarding the introduction of an e-procurement system, liaise and obtain permission from the²⁷ to commence with the establishment and maintaining of such a system.

D Logistics management

D.1 The chief financial officer shall:

- a) ensure that processes (whether manual or electronic) and procedures are in place for the effective, efficient, economical and transparent use of the's²⁸ resources, whilst maintaining effective financial and management controls;
- b) maintain a proper record of all the applicable assets, or groups of assets under the control of the²⁹; ensure that, amongst others, the preventative mechanisms are in place to eliminate theft, losses, wastage and misuse of assets;
- c) account for all damage to and losses of assets in accordance with Treasury Regulation 12 (Management of losses and claims) issued in terms of the Public Finance Management Act; and
- d) investigate all damages to and losses of resources and assets with a view of possible recovery.

D.2 The chief financial officer shall ensure that:

- a) strategies for maintaining the appropriate level of service for existing fixed assets are developed using a planned approach to maintenance that will ensure the delivery of maintenance services, such as:
 - i) routine inspections and servicing;
 - ii) corrective maintenance; or.
 - iii) preventive maintenance; and
- b) which items and what minimum or maximum levels are to be kept in stock is established, whilst allowing for a safety margin to be added to the minimum level and embracing the concept of just-in-time delivery, to lower the cost of storage and associated risks;
- c) the reliability of suppliers in terms of delivery periods, quantity, and quality is monitored and underperforming suppliers are reported to the supply chain management unit;
- d) systems are in place to verify all supplies received for quality and quantity against the ordering documentation;
- e) all legislative requirements including municipal by-laws and safety regulations when items are being stored are observed;
- f) stock and equipment are properly arranged and stored in a manner that the checking and handling thereof is facilitated and the possibility of damage, exposure, deterioration and perishing thereof is limited or eliminated;
- g) a stocktaking / asset verification of all assets in stock or on distribution is conducted at least once a year and differences are account for;
- h) mechanisms are in place to properly authorise and correctly utilize all trip authorities.

E Disposal management

E.1 The chief financial officer shall establish disposal committees as and when the need arises to decide on how best to undertake disposals. Such committees shall comprise not less than three officials, one of whom shall be a supply chain functionary.

E.2 The supply chain management unit may authorize officials to proceed with a disposal using a procurement procedure provided for in the's³⁰ Procurement Policy and Standing Procedures only after the feasibility and desirability of using one or more of the following alternative disposal strategies in the best interests of the state has been considered:

27 Insert name of appropriate treasury

28 Insert name of institution

29 Insert name of institution

30 Insert name of institution

- a) transfer to another institution in terms of section 42 of the Public Finance Management Act;
 - b) transfer to another institution at market related value;
 - c) transfer to another institution free of charge, bearing in mind that the assets cannot be transferred to a sub-office, school, etc, without the approval of the Head Office of the Institution under which jurisdiction such sub-office, school, etc., falls;
 - d) recycling or reuse of component materials;
 - e) dispose of by means of dumping at an authorised dump site, burning, demolition, etc.
- E.3 The reasons for adopting a disposal strategy shall be recorded and forwarded to the chief financial officer for acceptance and auditing purposes.
- E.4 Inventory items and assets may be traded in for other stores items or assets provided that the highest possible trade-in prices are negotiated.
- E.5 The chief financial officer shall ensure that:
- a) immovable property is sold at market related prices, unless otherwise permitted by theTreasury³¹ or such property is disposed of by means of a procurement procedure provided for in the³²'s Procurement Policy and Standard Procedures;
 - b) in the case of the disposal of firearms, the National Conventional Arms Control Committee approves of any sale or donation of firearms to any person or institution within or outside the Republic.
 - c) in relation to the letting of provincial assets:
 - (i) all immovable property, excluding provincial housing for provincial officials and political office bearers, is let at market related rates, unless the Treasury³³ determines otherwise or approves the letting of property free of charge; and
 - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of provincial property are reviewed annually; and
 - d) the³⁴ maintains a list of all redundant, obsolete materials, goods and assets and forwards a copy of such list to the supply chain management unit within Provincial Treasury within two months of the financial year end or whenever it is updated.
- E.6 The Provincial Department of Education shall be approached to make free transfers of any computer equipment to an educational institution. The³⁵ shall bear the cost of transporting such equipment to the educational institution accepting such transference.
- E.7 All assets transferred to another institution shall be by means of an issue voucher.

F Risk management

- F.1 The chief financial officer shall establish and implement risk management processes involving the establishment of the context and the identification, analysis, evaluation, treatment, communication and ongoing monitoring of risks in accordance with the guidance provided in AS/ NZS 4360: Risk Management obtainable from Standards South Africa or Australian Standards (see www.standards.au.com) or, if appropriate, the Code of Practice for Enterprise Risk Management published by the Institute of Risk Management.
- F.2 Risk shall be:
- a) identified on a case-by-case basis; and
 - b) allocated to the party best able to manage such risks.

³¹ Insert name of relevant treasury

³² Insert name of institution

³³ Insert name of relevant treasury

³⁴ Insert name of institution

³⁵ Insert name

F.3 The state should bear the cost of risks where the cost of transferring risk is greater than that of retaining such risk and transfer the risk where this is not the case.

G Regular assessment of supply chain performance.

The supply chain management unit shall regularly assess the performance of the supply chain focusing on:

- a) the achievement of goals within the supply chain management framework, particularly those associated with Broad Based Black Economic Empowerment;
- b) compliance with these directives;
- c) savings generated;
- d) stores efficiency;
- e) the quality of the end product / deliverable;
- f) cost variance per item;
- g) non-compliance with contractual conditions and requirements;
- h) whether supply chain objectives are consistent with Government's broader policy focus; and
- i) cost efficiency of the procurement process (i.e. the cost of the process itself)

H Ethical standards for officials

Officials in the discharge of their duties shall:

- a) not perform any duties to unlawfully gain any form of compensation, payment or gratuity from any person, or supplier/contractor for themselves or their family;
- b) perform their duties efficiently, effectively and with integrity;
- c) ensure that public resources are administered responsibly;
- d) be fair and impartial in the performance of their functions;
- e) at no time afford any undue preferential treatment to any group or individual or unfairly discriminate against any group or individual;
- f) not abuse the power invested in them;
- g) comply with the code of conduct for the Public Service as contained in Chapter 2 of the Public Service Regulations, 2001;
- h) declare in writing to the head of the supply chain management unit, to the extent required by their position, any business, commercial and financial interest or activities undertaken for financial gain that may raise a possible conflict of interest and withdraw from participating in any manner whatsoever in the process relating to that contract;
- i) not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
- j) not take improper advantage of their previous office after leaving their official position;
- k) ensure that they do not compromise the credibility or integrity of the supply chain management system through the acceptance of gifts or hospitality or any other act;
- l) assist accounting officers or accounting authorities in combating corruption and fraud in the supply chain management system;
- m) use public property scrupulously;
- n) record and account for the transactions conducted in an appropriate accounting system;
- o) not make false or misleading entries in accounting systems;
- p) be open about their decisions and actions that they take, give reasons for the actions that they take and restrict information only if it is in the public interest to do so; and
- q) keep matters of a confidential nature in their possession confidential unless legislation, the performance of duty or the provision of the law require otherwise, even after separation from the public service.

I Avoiding abuse of the supply chain management system

I.1 The chief financial officer shall:

- a) take all reasonable steps to prevent abuse of the supply chain management system;
 - b) investigate any allegations against the institution, an official or other role player of corruption, improper conduct or failure to comply with the supply chain management system or the procedures associated with the procurement system, and when justified:
 - i) take steps against such official or other role player and inform the³⁶ of such steps; and
 - ii) report any conduct that may constitute an offence to the South African Police Service.
- I.2 The chief financial officer, provided that they have conducted an investigation in accordance with the provisions of Annex A, may recommend to the³⁷ that persons be placed under restrictions from participating in public procurement for a finite period of time where they have been found to have:
- a) engaged in corrupt or fraudulent practice; or
 - b) willfully or negligently failed to comply with the provisions of the³⁸'s contract.

J Training of supply chain management officials

The chief financial officer shall ensure that officials implementing the institution's supply chain management system are appropriately trained and deployed.

K Mechanisms for dealing with complaints

- K.1 The³⁹ shall establish a panel of adjudicators to resolve disputes relating to the evaluation of tender offers and, where relevant, the award of tender preparation costs.
- K.2 Tenderers may dispute the evaluation of their tender offers after the award of the contract, within 10 days of receipt of an unsuccessful tenderer notification, by requesting in writing the accounting officer to appoint an adjudicator to adjudicate on the matter, subject to:
- a) the adjudicator being appointed in terms of the agreement contained in Annex B;
 - b) the tenderer agreeing to pay half the adjudicator's fee and lodging a deposit equal to half the estimated fee amount with the adjudicator; and
 - c) the tenderer accepting the⁴⁰ standard terms and conditions for adjudication.⁴¹
- K.3 The tenderer disputing the evaluation shall be entitled to nominate an adjudicator from the⁴²'s panel of adjudicators.

Annex A

Investigation procedures for placing natural and juristic persons under restrictions from participating in public procurement

A.1 Preliminary investigation

- A.1.1 The accounting officer may initiate an investigation to establish that any natural and juristic persons has engaged in corrupt or fraudulent practice or has willfully or negligently failed to comply with the provisions of the⁴³'s contract.

36 Insert name of relevant treasury

37 Insert name of relevant treasury

38 Insert the name of the institution

39 Insert the name of the institution

40 Insert name of institution

41 The conditions should require the tenderer to waive all rights to overturn the award of the tender to another party and to limit any compensation to the reasonable costs of preparing the tender. If this is not included in the agreement, the adjudication procedure may be used by tenderers to establish whether or not they have a court case to overturn an award in terms of the Promotion of Administrative Justice (Act 3 of 2000). Tenderers must at the outset either decide which route they are to pursue. They should not be allowed to "test" matters through the adjudication procedure.

42 Insert the name of the institution

43 Insert the name of the institution

- A1.2 An investigating officer must investigate any complaint brought against a person in terms of A1.1, hereafter referred to as “the accused”, to determine if reasonable grounds exist to suspect that the accused has engaged in corrupt or fraudulent practice or has willfully or negligently failed to comply with the provisions of a contract entered into with the.....⁴⁴.
- A1.3 If the investigating officer is satisfied that reasonable grounds as contemplated in A1.2 exist, he or she must:
- a) investigate the matter; and
 - b) obtain evidence to determine if in his or her opinion any action may be taken against the accused.
- A1.4 An investigating officer may not question the accused unless he or she informs that accused that he or she:
- a) has the right to be assisted or represented by another person; and
 - b) is not obliged to make any statement and that any statement so made may be used in evidence against him or her.
- A1.5 The investigating officer must, after the conclusion of the investigation, submit a report to the accounting officer or accounting authority, as relevant, making his or her recommendations regarding any matter referred to it in terms of A1.1.
- A2 Hearing of complaint**
- A2.1 The accounting officer shall after considering the report of the investigating officer, act in accordance with the recommendations of the investigating officer if he or she is convinced that sufficient grounds exist for such action.
- A2.2 The accounting officer shall notify the accused of the intended investigation by hand or registered mail and that notice shall inform the accused:
- a) of the details and nature of the action or omission by the accused under investigation that may constitute corrupt or fraudulent practice or willfully or negligently failed to comply with the provisions of a contract entered into with the institution and with which the accused is charged;
 - b) that he or she must, in writing, admit or deny responsibility for that action or omission;
 - c) that he or she may, together with the admission or denial, submit a written explanation regarding the action or omission under investigation;
 - d) of the period within which his or her plea in terms of paragraph (b) must be submitted to the accounting officer or accounting authority.
- A2.3 If an accused admits that he or she is guilty of the action or omission, he or she is considered to have performed a corrupt or fraudulent practice or to have willfully neglected to, reneged on or failed to comply with the provisions of an institution's contract, as the case may be, and after he or she has explained his or her action or omission and the accounting officer or accounting authority may recommend to the⁴⁵ that the accused be suspended from participating in public sector procurement for a period of time.
- A2.4 The acquittal or the conviction of the accused by a court of law on a criminal charge does not bar proceedings against him or her under these provincial treasury instructions even if the facts stated in the notice referred to in A2.2, would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

⁴⁴ Insert the name of the institution

⁴⁵ Insert the name of the relevant treasury

- A2.5 The accounting officer must appoint a committee to hear a case if the accused:
- a) denies the charge; or
 - b) fails to comply with A2.2(b).
- A2.6 The committee must consist of at least:
- a) two persons who have expertise in the fields relevant to the investigation; and
 - b) a person qualified in law, who must act as the chairperson of the committee.
- A2.7 The committee may, for the purposes of these instructions, appoint a person to assist it in the performance of its functions.
- A2.8 At a hearing the accused:
- a) may personally be present at the inquiry of the proceedings;
 - b) may be assisted or represented by another person in conducting the proceedings;
 - c) has the right to be heard;
 - d) may call witnesses;
 - e) may cross-examine any person called as a witness in support of the charge;
 - f) may have access to documents produced in evidence;
 - g) may admit at any time before conviction that he or she is guilty of the action or omission under investigation despite the fact that he or she denied responsibility or failed to react in terms of A2.2(b); and
 - h) may, in the case where he or she makes an admission in terms of subparagraph (g), be deemed to be guilty of the charge in relation to the action or omission under investigation.
- A2.9 The accused may during an inquiry:
- a) lead evidence and advance arguments in support of the charge and cross-examine witnesses; or
 - b) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which a witness suspects or believes to have a bearing on the subject of the inquiry.
- A2.10 The record of evidence which has a bearing on the charge before the committee and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if:
- a) the record is accompanied by a certificate from the chairperson of that commission; and
 - b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- A2.11 If the action or omission with which the accused is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the accused as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.
- A2.12 After the conclusion of the hearing, the committee must, within 30 days:
- a) decide whether or not the accused is guilty of the transgression charged with;
 - b) if the committee finds that the accused is guilty of that transgression, take cognizance of any aggravating or mitigating circumstances;
 - c) inform the accused and the accounting officer or accounting authority of the finding and the reasons for that finding;

- d) inform the accused of his or her right to judicial review of the finding in terms of section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- A2.13 An accused found guilty of a transgression in terms of these provincial treasury instructions may:
- a) address the committee in mitigation of sentence; and
 - b) call witnesses to give evidence on his or her behalf in mitigation of the finding.
- A2.14 If the accused is found guilty of the transgression charged with or, or if he or she admits that he or she is guilty of the charge, the committee must inform the accounting officer or accounting authority accordingly and recommend to accounting officer or accounting authority accordingly accounting officer or accounting authority accordingly the appropriate action to be taken.

Annex B

Adjudication of challenges relating to the evaluation of tender offers

B1 Definitions

- a) "Adjudicator" means the person named as such in the Contract or appointed in accordance with this Procedure.
- b) "Complainant" means the sole trader, partnership or legal entity that submitted a tender offer and who is disputing the correctness of the award of the contract.
- c) "Cost of tendering" means direct staff costs including reasonable office overheads, but excluding profits, copying costs, typing charges, courier and postage charges and travel costs;
- d) "Day" means calendar day;

B2 General principles

- B2.1 The adjudicator shall be appointed by the accounting officer to decide if the complainant should have scored more tender evaluation points than the tenderer who was awarded the contract and should have been awarded the contract, and if so, to determine the tenderer's reasonable cost of tendering. The accounting officer shall notify in writing the adjudicator, the complainant and the⁴⁶'s supply chain management unit simultaneously of the adjudication.
- B2.2 The object of adjudication is to reach a fair, rapid and inexpensive determination of a dispute arising from the evaluation of tender offers in respect of a particular tender and the Procedure shall be interpreted accordingly.
- B2.3 The adjudicator shall be an individual appointed by the accounting officer and shall act impartially and in accordance with the rules of natural justice.
- B2.4 The supply chain management unit shall deliver to the adjudicator the tender evaluation report together with a copy of the tender submissions of the complainant and the tenderer who was awarded the contract within 7 working days of being notified that an adjudication will take place. The adjudicator shall notify the accounting officer forthwith if the copy of the tender submission is not received within the stated period. Should the adjudicator not receive the copy of the tender submissions from the supply chain management unit within 20 working days, the adjudication shall be abandoned and the complainant shall be notified accordingly and be provided with written reasons therefore.
- B2.5 In making a decision, the adjudicator may take the initiative in ascertaining the facts and the correct procedure provided for in⁴⁷'s procurement policy and standard procedures.

⁴⁶ Insert the name of the institution

⁴⁷ Insert name of institution

The adjudication shall be neither an expert determination nor arbitration but the Adjudicator may rely on his own expert knowledge and experience.

- B2.6 The adjudicator's decision shall be binding.
- B2.7 The⁴⁸ shall pay the complainant his reasonable cost of tendering without delay, should the adjudicator find that the complainant should have been awarded more tender evaluation points than the tenderer who was awarded the contract, but not before the complainant has paid the adjudicator any outstanding fees not covered by the cash deposit.
- B2.8 The⁴⁹ shall pay the adjudicator fifty percent of his fees within 30 days of being invoiced, but not before the adjudicator has submitted his findings to the accounting officer.
- B2.9 The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected from liability.

B3 The Notice of Adjudication

A complainant shall give notice to the accounting officer within 10 days of receiving a notice advising that the tenderer was unsuccessful of its intention to refer the dispute to adjudication by giving a written Notice of Adjudication. The Notice of Adjudication shall include:

- a) the name of the proposed adjudicator
- b) the title of the contract, and the tender reference number;
- c) a breakdown of the tenderer's cost of tendering in relation to that tender; and
- d) a cash deposit equal to 50 % of the estimated adjudicator's fee.

B4 Conduct of the adjudication

- B4.1 The Adjudicator shall reach his decision within 28 days after the dispute has been referred to him for adjudication, unless the accounting officer agrees to extend this period.
- B4.2 The Adjudicator shall determine the matters set out in B2.1.
- B4.3 The Adjudicator shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable. He shall not be required to observe any rule of evidence, procedure or otherwise, of any court, except the rules of natural justice. Without prejudice to the generality of these powers, he may ask for further information and meet and question the⁵⁰'s tender committee and any other person involved in the evaluation of the tender.
- B4.4 The adjudicator may obtain legal or technical advice having first notified the accounting officer of his intention.
- B4.5 Wherever possible, the Adjudicator shall reach his decision without the process of a formal hearing.

B5 The Decision

The adjudicator shall reach his decision and so notify the complainant and the accounting officer together with his reasons within the time limits of B4.1.

48 Insert the name of the institution

49 Insert the name of the institution

50 Insert the name of the institution

Annexure 6: Construction Procurement Best Practice Library

The Board, by notice in government gazette, has deemed the standards, processes, procedures, methods and systems embodied in the following CIDB publications to be desirable and appropriate⁵¹:

Title	Synopsis
CIDB Best Practice Guideline A1: The Procurement Cycle (1001)	<p>This practice guide identifies six main procurement activities that apply to all construction procurements irrespective of their categorization as supplies, services and engineering and construction works. It also identifies the generic steps (sub-activities) associated with such activities and the logical points in the process where controls should be introduced. The actions associated with these activities and sub-activities are documented as well as the inputs and outputs to each of the actions in a logical framework. The practice guide also presents the recommended approach to performing the various activities and sub-activities</p>
CIDB Best Practice Guideline A2: Applying the procurement prescripts of the CIDB in the Public Sector (1002)	<p>This practice guide provides guidelines on the application of the CIDB's Standard for Uniformity in Construction. It also establishes the relationship between this standard and National Treasury's Regulatory Framework for Supply Chain Management. Guidance is also provided on the establishment of a procurement policy within an institution and the manner in which procurement may be managed and controlled.</p>
CIDB Best Practice Guideline A3: Evaluating tender offers (1003)	<p>This practice guide provides guidance on the evaluation of tenders in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement respect of the seven steps identified in Practice Guide A1 associated with this activity. It also contains proforma forms to evaluate tender offers and an example of a tender evaluation report.</p>
CIDB Best Practice Guideline A4: Evaluating Quality in Tender Submissions (1004)	<p>This practice guide defines quality within the procurement context and reviews the requirements for evaluating quality in the accordance with regulatory requirements and the provisions of the CIDB Standard for Uniformity in Construction Procurement for the evaluation of quality. It furthermore provides practical guidelines on the awarding of preferences for quality, pre-qualification on the basis of quality and the scoring of tender submissions in terms of quality and price or quality, price and preference.</p>
CIDB Best Practice Guideline A5: Managing Construction Procurement Risks (1005)	<p>This practice guide outlines the main elements of the risk management process. It identifies the generic sources of construction related risks, presents a range of options for risk allocation between the employer and the contractor and discusses the question of insurances. It also provides guidelines for the management of risk.</p>
CIDB Best Practice Guideline A6: Applying the Registers to Construction Procurement (1006)	<p>This practice guide outlines the processes associated with the implementation of the register of contractors and the register of projects in accordance with the provisions of the Construction Industry Development Regulations. It provides guidelines to employers and their agents to comply with the requirements of these regulations in their procurements and describes the manner in which requirements relating to contractor grading designations may be incorporated in procurement documents.</p>
CIDB Best Practice Guideline A7: The procurement of professional services (1035)	<p>This practice guide provides an overview of government's policy regarding the appointment of consultants and the provisions made in the CIDB Standard for Uniformity for the procuring of professional services. It outlines procedures in respect of each of the methods contained in this standard and guidance on the compilation of procurement documentation associated with professional service contracts. It also establishes the relationship between the methodology advocated by the standard and that promoted by National Treasury in their Supply Chain Management Practice Notes.</p>
CIDB Best Practice Guideline A8: Procurement measures to develop registered contractors. (1036)	<p>This practice guide outlines the principles for sustainable growth and a number of strategies to promote the participation of smaller registered contractors in public contracts so that they can grow and develop. The strengths and weaknesses of each of these strategies are discussed.</p>

51 All the CIDB documents may be downloaded from the CIDB website www.cidb.org.za. All other documents may be purchased from the organisation that is publishing / marketing them.

Title	Synopsis
CIDB Best Practice Guideline B1: Formulating and Implementing Preferential Procurement Policies (1007)	This practice guide presents a range of policy options and implementation methodologies that may be pursued in the formulation of preferential procurement policies that are consistent with the provisions of the South African regulatory regime. The guide introduces the thinking behind preferential procurement policies, the manner in which such policies are implemented internationally and the constraints to implementation within South Africa. It interprets the Preferential Procurement Policy Framework Act and related regulations, identifies the methods by which preferences may be applied, provides guidelines as to how preferential procurement policies may be formulated to satisfy legislative requirements and contains examples of preferential procurement policies that are drafted in accordance with this practice guide.
CIDB Best Practice Guideline B2: Methods and Procedures for Implementing Preferential Procurement Policies (1008)	This practice guide provides a range of uniform methods and procedures for implementing a wide range of policy themes in a consistent manner. The guide presupposes that a preferential procurement policy is in place and focuses on the capturing of preferencing requirements in procurement documents. It contains sample preferencing schedules, clauses required to activate preferencing in the Tender Data where use is made of the CIDB Standard for Uniformity in Construction Procurement , and data capture forms.
CIDB Best Practice Guideline C1: Preparing Procurement Documents (1009)	This practice guide identifies the various types of procurement documents and provides a uniform format for the drafting and compilation of these documents. It also establishes a practical approach to uniformity and standardization of procurement documents within an organization and makes recommendations regarding the forms of contracts which should be used. It also contains a number of proforma component documents to facilitate a uniform approach.
CIDB Best Practice Guideline C2: Choosing an appropriate Form of Contract for Engineering and Construction Works (1010)	This practice guide presents the fundamental considerations in the selection of a form of contract for engineering and construction works. It presents an overview of three different series of forms of contracts and provides practical guidance of the selection of appropriate forms of contract for an organization or for use in selected pricing and contracting strategies.
CIDB Best Practice Guideline C3: Adjudication (1011)	This practice guide provides an overview of what adjudication is, presents the principles underpinning adjudication, reviews the provisions for adjudication in standard forms of contract (NEC, FIDIC and CIDB), outlines an approach for the selection and use of adjudicators, and provides sample clauses and proforma agreements to be included in procurement documents.
CIDB Best Practice Guideline D1: Subcontracting Arrangements (1012)	This practice guide establishes acceptable practices in respect conditions of subcontract. Features of forms of subcontract which are unacceptable to the Employer and the Contractor are identified and described. It also recommends forms of subcontract which have desirable features for use with the main contracts identified in Practice Guide C2 and reviews the legal considerations in the engagement of labour only subcontractors.
CIDB Best Practice Guideline D2: Joint Venture Arrangements (1013)	This practice guide identifies the reasons for forming joint ventures, reviews requirements for the formation of joint ventures in response to preferential procurement policies and presents an overview of the typical content of a joint venture agreement. It also identifies the standard joint venture agreements forms that are suitable for use or to serve as a basis for the development of an agreement.

The following publications are referenced in the abovementioned CIDB publications and as such form an integral part of the provisions of these publications. They too contain desirable and appropriate standards, processes, procedures, methods and systems endorsed by the focus group - and as such also constitute best practice.

Documents	
Title	Synopsis
CIDB Adjudication Procedure (1014)	This document contains an adjudication procedure and an agreement for the appointment by the parties of an adjudicator. It may be used in any form of contract or subcontract.
CIDB Standard Professional Services Contract (1015)	This standard form of contract establishes the risks, liabilities and obligations of the parties to a professional service contract.
CIDB Subcontract For Labour Only Engineering and Construction Works (1016)	This standard form of contract establishes the risks, liabilities and obligations of the parties to a labour only subcontract involving engineering and construction works.
CIDB Joint Venture Agreement (1017)	This joint venture agreement establishes the basic agreement between the joint venture partners and outlines the content of the schedules that are necessary to make the agreement project specific.
CIDB General conditions of purchase (1018)	This standard form of contract establishes the risks, liabilities and obligations

Documents	
Title	Synopsis
CIDB Contract for the Supply and Delivery of Goods (1019)	of the parties to very basic supply contracts.
CIDB Supply of Goods (Short Contract) (1020)	This standard form of contract establishes the risks, liabilities and obligations of the parties to a simple supply contract.
CIDB The Supply Contract (1021)	This standard form of contract, based on the NEC system, establishes the risks, liabilities and obligations of the parties to a simple supply contract.
Practice Manuals published by the South African Institution of Civil Engineering	
SAICE Practice Manual #1. The use of South African National Standards in Construction Procurement	This practice manual provides comprehensive guidance on the use of SANS 294, SANS 10403, SANS 10396, and the SANS 1914, SANS 1921 and SANS 2001 families of standards in construction procurement. It also provides guidance on the use of SABS 1200 where procurement documents are compiled using in accordance with the provisions of SANS 10403.
SAICE Practice Manual #2: Delivering construction projects using the design by employer contracting strategy.	This practice manual presents an overview of a number of contracting strategies that are commonly encountered in engineering and construction works contracts and fully describes the processes and sub-processes associated with design by employer contracting strategy. It also outlines the administrative processes associated with FIDIC, GCC, NEC and JBCC forms of contract with this contracting strategy.
Standards published by Standards South Africa	
SANS 294, Construction Procurement processes, procedures and methods	<p>This standard provides processes, methods and procedures for the establishment within an organization of a procurement system that is fair, equitable, transparent, competitive and cost effective. It:</p> <ul style="list-style-type: none"> a) describes generic procurement processes around which an organization may develop its procurement system; b) establishes minimum requirements for the conduct of an organization's employees, agents, board members and office bearers when engaging in procurement; c) establishes the framework for the development of an organization's procurement policy including any preferential procurement policy; d) establishes generic methods and procedures for procurements including those pertaining to disposals; and e) provides standard conditions of tender and conditions for the calling for expressions of interest.
SANS 1914-1, Resource Standard for the Participation of targeted enterprises	<p>These six standard targeted construction procurement standards:</p> <ul style="list-style-type: none"> a) describe the general requirements for engaging targeted enterprises and / or targeted labour on a contract for the provision of supplies, services or works, as relevant; b) specify the contract participation goal (the value of a percentage of the value of the contract which represents the inputs of targeted enterprises and/or targeted labour in the performance of the contract); c) set out the methods by which the contract participation goal will be measured, quantified and verified in the performance of the contract; d) describe the means by which: <ul style="list-style-type: none"> i) progress towards the attainment of the contract participation goal is to be monitored; ii) compliance with requirements will be verified and monitored; and iii) the contract participation goal will be adjusted to accommodate variations to the scope of the contract.
SANS 1914-2, Resource Standard for Participation of targeted partners in joint ventures	
SANS 1914-3, Resource Standard for Participation of targeted enterprises and targeted partners in joint ventures	
SANS 1914-4, Resource Standard for Participation of targeted enterprises and targeted labour (local resources)	
SANS 1914-5, Resource Standard for Participation of targeted labour	
SANS 1914-6, Resource Standard for Participation of targeted enterprises in concession contracts	
SANS 1921-1, Construction and Management Requirements for Works Contracts:Part 1: General	This standard establishes general construction and management requirements, which are applicable in a wide range of engineering and construction works contracts
SANS 1921-3, Construction and management requirements for works contracts, Part 3: Structural steelwork	This specification contains requirements for managing the fabrication and erection of structural steelwork.
SANS 10403, Formatting and Compilation of Construction Procurement Documents	<p>This standard establishes at both prime and subcontract level:</p> <ul style="list-style-type: none"> c) a uniform format for the compilation of procurement documents for supplies, services and engineering and construction works contracts; and d) the general principles for compiling procurement documents in respect of supplies, services and engineering and construction works.

Documents	
Title	Synopsis
SANS 10396, Implementing Preferential Procurement Policies Using Targeted Procurement Procedures	<p>This standard:</p> <ul style="list-style-type: none"> a) sets out the issues and principles which should be considered when formulating preferential procurement policies and developing associated implementation mechanisms; b) sets out the principles associated with the engagement of targeted enterprises and targeted labour; c) establishes a range of techniques and mechanisms which may be used to provide a framework within which access to markets for targeted enterprises and / or targeted labour can be provided and goals relating to the engagement of such enterprises and / or labour can be set, monitored and evaluated at both project and programme level; d) establishes targeting frameworks and strategies which can be used with a number of different procurement regimes; e) describes techniques for the monitoring and evaluation of the outcomes of a preferential procurement policy; f) provides guidance as to how targeted procurement procedures can be activated in procurement documents; and g) provides guidance on the design and implementation of programmes associated with the implementation of a preferential procurement policy.
Forms of Contract and Agreements	
SAFCEC Joint venture agreement	This joint venture agreement comprises the agreement itself and the heads of agreement between the partners in a joint venture.
FIDIC Joint Venture Consortium Agreement	This joint venture agreement is intended only for joint ventures between professional service providers and is not suitable for use by contractors
BIFSA Non-Nominated Subcontract for use with the JBCC Series 2000 Principal Building Agreement	These forms of subcontract establish the risks, liabilities and obligations of the parties to a subcontract
BIFSA Standard Subcontract Agreement 1995 edition (Amended 2000), for use with Principal Building Agreements other than the JBCC Principal Building Agreement.	
BIFSA Labour-only sub-contract	
JBCC series 2000 Nominated / selected Subcontract Agreement	
JBCC series 2000 Engineering General Conditions	
NEC3 Engineering and Construction Subcontract	
NEC3 Engineering and Construction Short Subcontract	
SAFCEC General conditions of subcontract (2003 edition)	
FIDIC Conditions of Contract for Construction ("Red Book")	
FIDIC Conditions of Contract for Plant and Design-Build ("Yellow Book")	
FIDIC Conditions of Contract for FIDIC EPC/Turnkey Projects ("Silver Book")	These forms of contract establish the risks, liabilities and obligations of the parties to a contract
FIDIC Short Form of Contract ("Green Book")	
JBCC series 2000 Principal Building Agreement	
JBCC series 2000 Minor Works Agreement	
NEC3 Engineering and Construction Short Contract (ECSC)	This form of contract establish the risks, liabilities and obligations of the parties to a professional services contract
NEC3 Engineering and Construction Contract (ECC)	
NEC3 - The Professional Services Contract	
NEC3 Term services contract	This form of contract establish the risks, liabilities and obligations of the parties to a professional services contract
SAICE General Conditions of Contract for Construction Works (2004)	

Forms of Contract can be purchased from a number of organizations including:

Association of South African Quantity Surveyors (JBCC)

Howick Gardens, Waterfall Park
Bekker Street

Vorna Valley
MIDRAND
Tel 011-315 4140

Joint Building Contracts Committee

15 Darnaway Road
Forest Town
JOHANNESBURG
Tel 011-646-0174

South African Institutes of Architects (JBCC)

Santon VW
Conduit Street
Lime Park
RANDBURG
Tel 011 782-1315

South African Institution of Civil Engineering (NEC, FIDIC and GCC 1990)

East Wing
Howick Gardens, Waterfall Park
Bekker Street
Vorna Valley
MIDRAND
Tel 011- 805-5947/48/53

South African Association of Consulting Engineers (FIDIC and JBBC)

St James House
20 Georgian Crescent
Byanston
SANDTON
Tel 011-463- 2022

Annexure 7: Compatibility between SANS 294 and Regulatory Frameworks

7.1 Introduction

Procurement is by definition a process i.e. a succession of logically related actions occurring or performed in a definite manner which culminates in the completion of a contract for the provision of engineering and construction works, supplies or services or disposals. There are a finite range of methods and procedures associated with the various procurement sub-processes. These can be captured in a single standard for common and repeated use.

SANS 294, the contents of which are indicated in Figure 7.1, provides the generic processes around which an organization can develop its procurement system. (See Figure 7.1 and SAICE's Practice Manual 1, *The use of South African National Standards in Construction Procurement*). It provides standard generic methods and procedures which can by reference be adopted by organizations in their procurement system.

The processes, methods and procedures embodied in SANS 294 are based on an underlying requirement for the procurement system to be fair, equitable, transparent, competitive and cost effective. This necessitates that the following two important principles be adhered to:

- 1) All evaluation criteria must be made known to tenderers or respondents in the procurement documents.
- 2) The only grounds for not awarding a tender to a tenderer are:
 - a) The tenderer is under restrictions from participating in the organization's procurement for engaging in corrupt and fraudulent practice, or has principals who are under such restrictions.
 - b) The tenderer cannot demonstrate that he or she possesses the necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to perform the contract.
 - c) The tenderer does not have legal capacity to enter into the contract.
 - d) The tenderer is insolvent, in receivership, bankrupt or being wound up, has its affairs administered by a court or a judicial officer, has suspended its business activities, or is subject to legal proceedings in respect of any of the foregoing;
 - e) The tenderer does not satisfy the legal requirements, if any, stated in the organization's procurement policy.
 - f) The tenderer may not be able to perform the contract in the best interest of the organization owing to conflicts of interest.

SANS 294 is based on premise that, subject to prevailing legislation, preferential procurement policies are implemented using one of the following methods:

- a) preferences at the short-listing stage;
- b) accelerated rotation on an electronic data base where the nominated procedure is used;
- c) tender evaluation criteria; and
- d) breaking down (unbundling) of projects into smaller contracts to facilitate the participation of targeted enterprises.

Compliance with the requirements of SANS 294 will result in a procurement system that not only satisfies these requirements, but also one that is predictable and ensures equal treatment of tenderers.

7.2 Relationship between SANS 294 and the Regulatory Framework issued in terms of the PFMA

The Treasury Regulations for Supply Chain Management establishes a uniform procurement policy for the public sector with the exception of major public entities (Schedule 2) and national government business enterprises (Schedule 3B). SANS 294 as indicated in Table 7.2 is not inconsistent with the requirements of the Treasury Regulations for Supply Chain Management. It can be made compatible through an organization's procurement policy. (See Annexure 9)

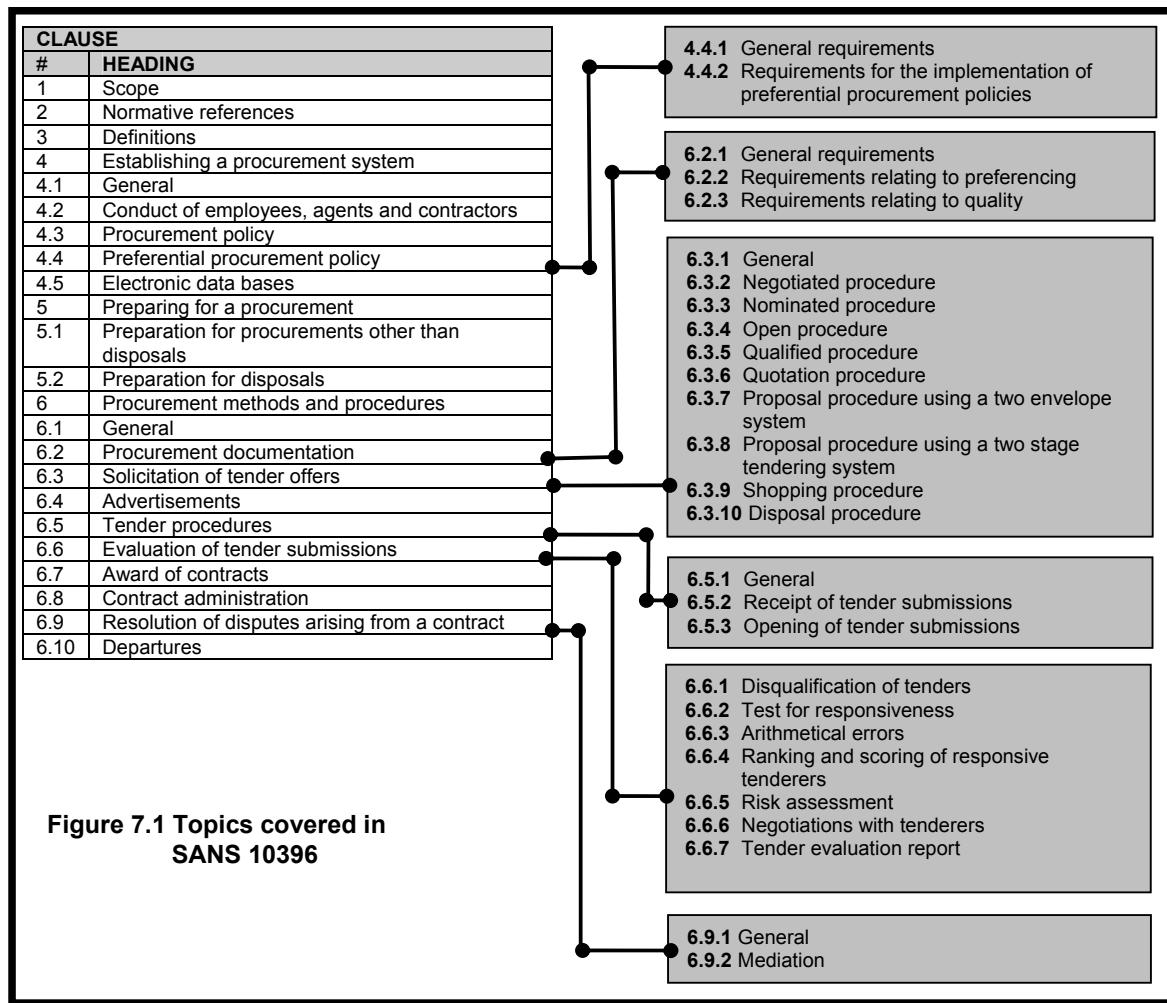


Table 7.1 The relationship between the Treasury Regulations and SANS 294

Treasury Regulation Provisions		SANS 294 Provisions	
Topic	No	Manner in which topic is addressed	Clause no
Develop and implement a supply chain management system	3(1) & (2)	Section 4, 5 and 6 and Annexes E to J establish a comprehensive procurement system	4 to 6 Annex E to J
Establishment of a separate supply chain management unit	4(1)	Describe in procurement policy the manner in which the procurement will be managed and controlled	4.3 (b)
Thresholds for quotations and tendering process	6(1)	Describe circumstances under which different procurement procedures may be used in procurement policy	4.3 (a)
Application of ethical standards and National Treasury's code of conduct to all officials and other role players	4(2) 8(1) and (2)	Requirement for organization to establish a code of conduct	4.2.1
Tender committee composition and functioning	6(2)	Describe functioning and composition tender committee in procurement policy	4.3 (g)
Tender procedures	6(2)d	Standard Conditions of Tender and Standard Conditions for the Calling for Expressions of Interest provided	6.1 to 6.10 Annexes F & H
Advertisement of tenders	6(3)c	Describe advertising arrangements in procurement policy	4.3 (i)
Notification of awards	6(3)c	Describe in procurement policy (optional) Requirements to do so established in section for standard procurement methods and procedures	4.3 6.7.5 to 6.7.7
Requirements relating to information technology and public private partnership	6(3)e & f	Describe in procurement policy (optional)	4.3
Procurement documentation	6(3)a	Requirements established in section for standard	6.2

Treasury Regulation Provisions		SANS 294 Provisions	
Topic	No	Manner in which topic is addressed	Clause no
		procurement methods and procedures Identify which standard forms of contract are to be used in the procurement policy	4.3 (j) Annex B
Appointment of consultants	6(3)g	Describe procurement procedures, eligibility criteria and method of evaluation using the standard procurement methods and procedures in procurement policy	4.3 (a) 6.1 to 6.10 Annex A
Abuse of tender system by tenderers	9(1)e & f 9(2)a	Measures to place tenderers under restriction described in procurement policy Rejection of tender offers provided for in the Standard Conditions of Tender and Standard Conditions for the Calling for Expressions of Interest Organisation required to discipline those in breach of the code of conduct	4.3 (h) 4.2.3 Annexes F & H 4.2.2
Disregard tender on basis of failing to perform on a previous contract	9(2)a	Dealt with in the award procedures provided in the section for procurement methods and procedures	6.7.1
Deviation from competitive tendering process	6(4)	Negotiation procedure provided. Conditions under which the departure is permitted must be described in the procurement policy	6.3.2 4.3 (a)
Gathering of procurement data and submission to treasury	9(1) 11(1)	Describe requirements for recording and reporting in the procurement policy	4.3 (d)
Minimum training requirements	5	Describe in procurement policy (optional)	4.3
Sale and disposal of state assets	7	Describe specific procedures, requirements and control measures in procurement policy (optional) Procedures for preparing for a disposal are established	4.3 5.2
Confirmation that tenderers are not under any restrictions	9(c)	General requirements included in section containing standard procurement methods and procedures	6.7.1
Proof of being in good standing with SARS	9(d)	Describe specifics in procurement policy	4.3 (f)
National Industrial Development Programme	10	Describe in policy (optional)	4.3

7.2 Relationship between SANS 294 and the Regulatory Framework issued in terms of the MFMA

Section 112 of the Municipal Finance Management Act permits the Minister of Finance to issue a prescribed regulatory framework for supply chain management which covers specific items that are listed in the Act. No details of this framework are available.

The manner in which SANS 294 addresses the issues raised in the Act are as indicated in Table 7.2.

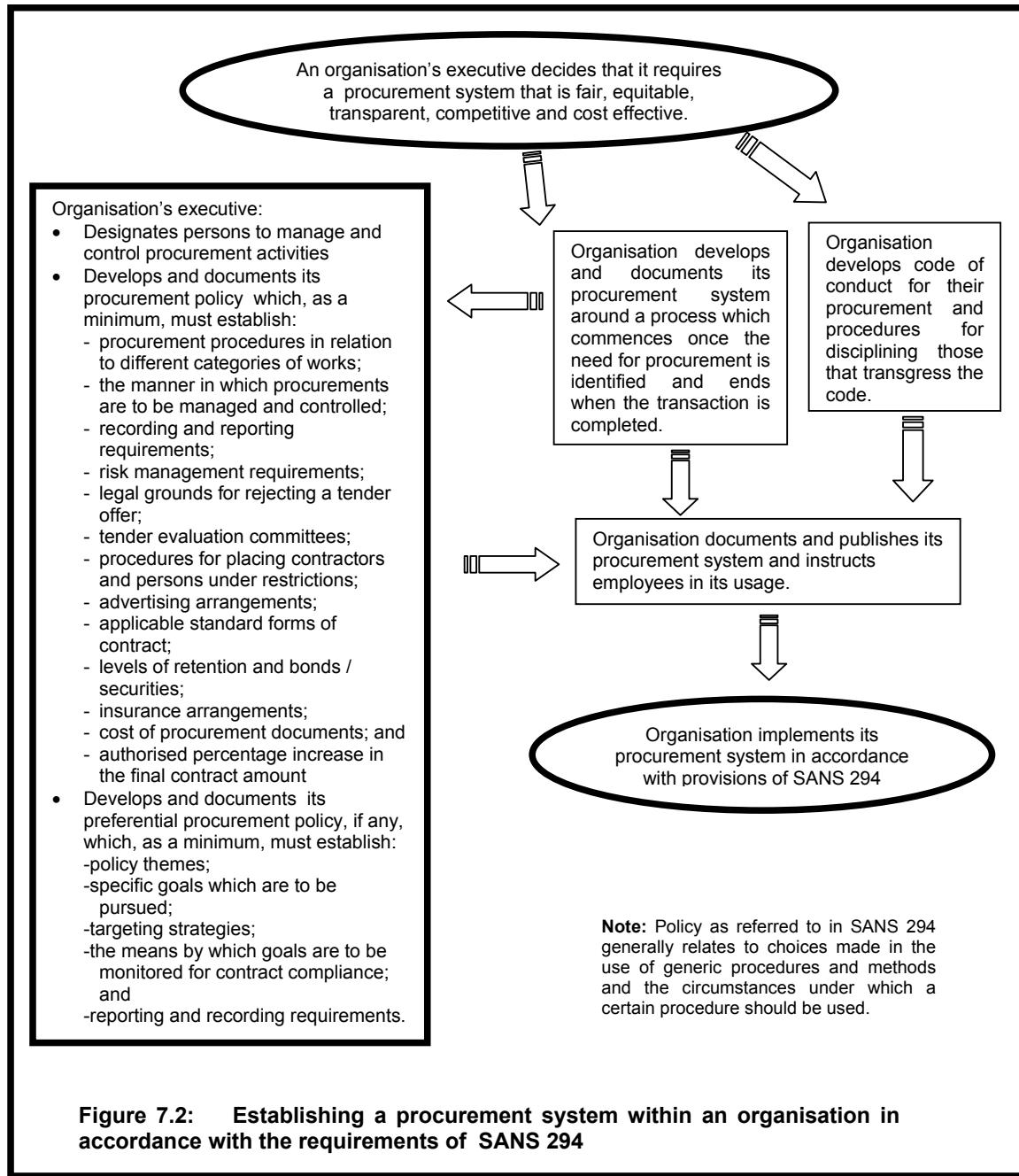


Table 7.2: The manner in which items listed in the Local Government: Municipal Finance Management Act are addressed in SANS 294

Aspects which the Municipal Finance Management Act must address.	Manner in which aspect is covered in SANS 294
The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding;	SANS 294 makes provision for a wide range of procurement procedures (see Table 1 and Clauses 6.3) including disposal procedures (See sub-clause 6.3.10).
When a municipality or municipal entity may or must use a particular type of process	SANS 294 requires choices and the circumstances under which choices may be exercised, to be established in organization's policy.
Procedures and mechanisms for each type of process	SANS 294 describes the procedures in detail in clause 6.3 (Solicitation of Tender Offers) and provides Standard Conditions of Tender

Aspects which the Municipal Finance Management Act must address.	Manner in which aspect is covered in SANS 294
Procedures and mechanisms for more flexible processes where the value of a procedure is below a prescribed amount	SANS 294 provides for a "quotation" and "shopping" procedure.
Open and transparent pre-qualification processes for tenders or other bids	SANS 294 provides a wide range of procurement procedures and fully describes them in Clause 6.3 (Solicitation of Tender Offers). SANS 294 also provides Standard Conditions of Tender (See Annex F) which make provision for the inclusion of eligibility criteria (see 6.2.1.1)
Competitive bidding processes in which only pre-qualified persons may participate	SANS 294 provides the "qualified procedure" (see sub-clause 6.3.5), Standard Conditions of Tender for the Calling for Expressions of Interest (see Annex H) and requirements for procurement documents involving the calling for expressions of interest.
Bid documentation, advertising of and invitations for contracts:	Clause 6.2 (Procurement Documentation) comprehensively establishes requirements for procurement documents. Clause 6.3 (Solicitation of Tender Offers) provides requirements for the solicitation of tender offers. Clause 6.4 (Advertisements) together with the organization's policy establishes requirements for advertisements.
Procedures and mechanisms for- <ul style="list-style-type: none"> (i) the opening, registering and recording of bids in the presence of interested persons; (ii) the evaluation of bids to ensure best value for money; (iii) negotiating the final terms of contracts; and (iv) the approval of bids. 	Clause 6.3 (Solicitation of Tender Offers), Clause 6.5 (Tender Procedures), Clause 6.6 (Evaluation of Tender Submissions) and Clause 6.7 (Award of Contract) comprehensively describe procedures and methods.
Screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed	SANS 294 requires this to be included in policy and provides for such processes in the Conditions of Tender.
Compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractor from those tenders or bids	SANS 294 requires this to be provided for in an organization's policy. It does provide for the rejection of tenders on the grounds of conflict of interest (see 6.7.1 (f)). The Conditions of Tender provide for such disclosures to be made.
Participation in the supply chain management system of persons who are not officials of the municipality or municipal entity.	SANS 294 requires matters such as these to be provided for in an organization's procurement policy (see Clause 4.3).
The barring of persons from participating in tendering or other bidding processes, including persons- <ul style="list-style-type: none"> (i) who were convicted for fraud or corruption during the past five years; (ii) who willfully neglected, reneged on or failed to comply with a government contract during the past five years; (iii) whose tax matters are not cleared by South African Revenue Service 	SANS 294 requires matters such as these to be provided for in an organization's procurement policy (see Clause 4.3).
Measures for- <ul style="list-style-type: none"> (i) combating fraud, corruption, favouritism and unfair and irregular practices in supply chain management (ii) promoting ethics of officials and other role players involved in municipal supply chain management 	SANS 294 contains comprehensively documented procedures and establishes minimum requirements for the conduct of employees, agents and contractors which are enforced through standard conditions of tender.
The invalidation of recommendations or decisions that were unlawful, improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by- <ul style="list-style-type: none"> (i) councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or (ii) municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act: 	SANS 294 requires organizations to establish codes of conduct, to discipline transgressors
The procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state.	This is not covered explicitly by SANS 294 and needs to be covered in the organization's procurement policy.
Contract management and dispute settling procedures.	Clause 6.8 (Contract Administration), Clause 6.9 (Resolution of Disputes arising from a Contract) and Annex J (Principles for adjudication) establish requirements for these issues.
The delegation of municipal supply chain management powers and duties including to officials.	SANS 294 requires that this be done in the organization's procurement policy. (Annex A: A general procurement process) provides guidance in this regard.

Annexure 8: Code of Conduct for the Public Service as contained in Chapter 2 of the Public Service Regulations, 2001

C.1 RELATIONSHIP WITH THE LEGISLATURE AND THE EXECUTIVE

An employee-

- C.1.1 is faithful to the Republic and honours the Constitution and abides thereby in the execution of her or his daily tasks;
- C.1.2 puts the public interest first in the execution of her or his duties;
- C.1.3 loyally executes the policies of the Government of the day in the performance of her or his official duties as contained in all statutory and other prescripts;
- C.1.4 strives to be familiar with and abides by all statutory and other instructions applicable to her or his conduct and duties; and
- C.1.5 co-operates with public institutions established under legislation and the Constitution in promoting the public interest.

C.2 RELATIONSHIP WITH THE PUBLIC

An employee-

- C.2.1 promotes the unity and well-being of the South African nation in performing her or his official duties;
- C.2.2 will serve the public in an unbiased and impartial manner in order to create confidence in the public service;
- C.2.3 is polite, helpful and reasonably accessible in her or his dealings with the public, at all times treating members of the public as customers who are entitled to receive high standards of service;
- C.2.4 has regard for the circumstances and concerns of the public in performing her or his official duties and in the making of decisions affecting them;
- C.2.5 is committed through timely service to the development and upliftment of all South Africans;
- C.2.6 does not unfairly discriminate against any member of the public on account of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language;
- C.2.7 does not abuse her or his position in the public service to promote or prejudice the interest of any political party or interest group;
- C.2.8 respects and protects every person's dignity and her or his rights as contained in the Constitution; and
- C.2.9 recognises the public's right of access to information, excluding information that is specifically protected by law.

C.3 RELATIONSHIPS AMONG EMPLOYEES

An employee-

- C.3.1 co-operates fully with other employees to advance the public interest;
- C.3.2 executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law;
- C.3.3 refrains from favouring relatives and friends in work-related activities and never abuses her or his authority or influences another employee, nor is influenced to abuse her or his authority;
- C.3.4 uses the appropriate channels to air her or his grievances or to direct representations;
- C.3.5 is committed to the optimal development, motivation and utilisation of her or his staff and the promotion of sound labour and interpersonal relations;
- C.3.6 deals fairly, professionally and equitably with other employees, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and

C.3.7 refrains from party political activities in the workplace.

C.4 PERFORMANCE OF DUTIES

An employee-

- C.4.1 strives to achieve the objectives of her or his institution cost-effectively and in the public's interest;
- C.4.2 is creative in thought and in the execution of her or his duties, seeks innovative ways to solve problems and enhances effectiveness and efficiency within the context of the law;
- C.4.3 is punctual in the execution of her or his duties;
- C.4.4 executes her or his duties in a professional and competent manner;
- C.4.5 does not engage in any transaction or action that is in conflict with or infringes on the execution of her or his official duties;
- C.4.6 will recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee;
- C.4.7 accepts the responsibility to avail herself or himself of ongoing training and self development throughout her or his career;
- C.4.8 is honest and accountable in dealing with public funds and uses the public service's property and other resources effectively, efficiently, and only for authorised official purposes;
- C.4.9 promotes sound, efficient, effective, transparent and accountable administration;
- C.4.10 in the course of her or his official duties, shall report to the appropriate authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes an offence, or which is prejudicial to the public interest;
- C.4.11 gives honest and impartial advice, based on all available relevant information, to higher authority when asked for assistance of this kind; and
- C.4.12 honours the confidentiality of matters, documents and discussions, classified or implied as being confidential or secret.

C.5 PERSONAL CONDUCT AND PRIVATE INTERESTS

An employee-

- C.5.1 during official duties, dresses and behaves in a manner that enhances the reputation of the public service;
- C.5.2 acts responsibly as far as the use of alcoholic beverages or any other substance with an intoxicating effect is concerned;
- C.5.3 does not use her or his official position to obtain private gifts or benefits for herself or himself during the performance of her or his official duties nor does she or he accept any gifts or benefits when offered as these may be construed as bribes.
- C.5.4 does not use or disclose any official information for personal gain or the gain of others; and
- C.5.5 does not, without approval, undertake remunerative work outside her or his official duties or use office equipment for such work.

Annexure 9: Sample construction procurement policy and standing procedures for an institution

Note:

- 1) The sample policy provides standard operating procedures and is designed to satisfy the requirements for construction procurement contained in:
 - i) in the Public Finance Management Act and the Regulatory Framework for Supply Chain Management issued in terms of the Public Finance Management Act; and
 - ii) the prescripts of the Construction Industry Development Board Act.
- 2) This policy assumes that the organ of state has in place Supply Chain Management Directives along the lines of those contained in annexure 5 and adopts SANS 294, *Construction procurement processes, methods and procedures*, as a standard to provide a set of operating procedures.
- 3) This sample construction procurement policy and standing procedures anticipates that the institution will issue a separate Preferential Procurement Policy (See Best Practice Guideline B1, Formulating and implementing Preferential Procurement Policies.) It should be noted that preferential procurement policies must be undertaken in accordance with the requirements of SANS 294, subject to preferential procurement policies being implemented using only one or more of the following methods:
 - a) accelerated rotation on an electronic database where the nominated procedure is used;
 - b) tender evaluation criteria; and
 - c) breaking down (unbundling) of projects into smaller contracts to facilitate the participation of targeted enterprises.
- 4) This sample procurement policy and standing procedures will have to be adapted / customised to suite the particular needs of an organization.

THE⁵²,**S PROCUREMENT POLICY AND STANDING PROCEDURES**

.....⁵³

1 Definitions

For the purposes of this policy and standing procedures the following definitions apply:

“construction management” means a contracting strategy similar to a management contract, the main difference being that the trade contracts are between the employer and the various trade contractors;

“construction procurement” means procurement in the construction industry, including the invitation, award and management of contracts;

“design and build” means a contracting strategy in terms of which the contractor undertakes most of the design and all construction in accordance with the employer's brief and his detailed tender submission, usually for a lump sum price.

52 Insert name of institution

53 Insert date

“develop and construct” means a contracting strategy similar to design and build, except that the employer issues a concept design on which tenders are based;

“disposal” means the divestiture of assets, including intellectual property, and other rights and goodwill by any means, including sale, rental, lease, license, tenancy, franchise, auction or any combination thereof;

“engineering and construction works” contract means a contract for the provision of a combination of supplies and services, arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of structures, including building and engineering infrastructures;

“form of offer and acceptance” means the documents that formalize the legal process of offer and acceptance;

“management” contract means a contracting strategy in term of which a management contractor is appointed to engage and manage a number of trade contractors to carry out construction on the basis of designs issued by the employer, as and when they are completed with the trade contracts being between the management contractor and the various trade contractors.

“quality” means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs

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

“supplies contract” means a contract for the provision of materials or commodities made available for purchase.

“tender data” means the document that establishes the tenderer’s obligations in submitting a tender and the employer’s undertakings in administering the tender process and evaluating tender offers.

2 Precedence of documents

Requirements contained in this Procurement Policy and Standard Procedures shall take precedence in the interpretation of any ambiguity or inconsistency between it and SANS 294: 2004, *Construction procurement processes, methods and procedures*, published by Standards South Africa (hereinafter “SANS 294”).

3 General requirements

3.1 Procurement shall be undertaken in accordance with the requirements of the Supply Chain Management Directives and SANS 294. No departures shall be made from the provisions of the’s⁵⁴ Procurement Policy and Standing Procedures or SANS 294 without the approval of the accounting officer.

3.2 Construction procurement shall be undertaken in accordance with the provisions of:

- a) the CIDB Code of Conduct for all parties engaged in Construction Procurement; and
- b) the CIDB Standard for Uniformity in Construction Procurement.

3.3 The’s⁵⁵ procurement processes together with the allocation of responsibilities associated with each main activity is as stated in Table 1.

54 Insert the name of the institution

55 Insert the name of the institution

Table 1 : The⁵⁶ procurement processes

ACTIVITY		STEPS		PERSONS RESPONSIBLE FOR PERFORMING ACTIVITY				
#	Description	Inputs	Procedural milestone (control point)	Supplies	Non- professional Services	Professional services	Engineering and Construction Works	Disposals
1	Establish what is to be procured	1.1 Prepare broad scope of work/TOR for procurement		*	*	*	*	*
		1.2 Estimate financial value of proposed procurement						
		1.3 Obtain permission to start with the procurement process		*	*	*	*	*
2	Decide on procurement strategies	2.1 Establish applicable preferential procurement policy		*	*	*	*	*
		2.2 Establish contract and pricing strategy						
		2.3 Establish targeting strategy						
		2.4 Establish procurement procedure						
		2.5 Obtain approval for procurement strategies that are to be adopted		AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate
3	Solicit tender offers	3.1 Prepare procurement documents		*	*	*	*	*
		3.2 Obtain approval for procurement documents		*	*	*	*	*
		3.3 Confirm that budgets are in place		CFO or SCMU	CFO or SCMU	CFO or SCMU	CFO or SCMU	CFO or SCMU
		3.4 Invite contractors to submit tender offers or expressions of interest		SCMU	SCMU	SCMU	SCMU	SCMU
		3.5 Receive tender offers or expressions of interest		*	*	*	*	*
		3.6 Evaluate expressions of interests		*	*	*	*	*
		3.7 Prepare evaluation report on shortlisting process		*	*	*	*	*
		3.8 Confirm shortlist		Tender committee	Tender committee	Tender committee	Tender committee	Tender committee
		3.9 Invite tender offers from shortlist		SCMU	SCMU	SCMU	SCMU	SCMU

56 Insert name of institution

ACTIVITY		STEPS		PERSONS RESPONSIBLE FOR PERFORMING ACTIVITY				
#	Description	Inputs	Procedural milestone (control point)	Supplies	Non-professional Services	Professional services	Engineering and Construction Works	Disposals
4	Evaluate tender offers	4.1 Open and record tender offers received		SCMU	SCMU	SCMU	SCMU	SCMU
		4.2 Determine whether or not tenders offers are complete		SCMU	SCMU	SCMU	SCMU	SCMU
		4.3 Determine whether or not tender offers are responsive		*	*	*	*	*
		4.4 Evaluate tender submissions		*	*	*	*	*
		4.5 Perform a risk analysis.		*	*	*	*	*
		4.6 Prepare a tender evaluation report		*	*	*	*	*
		4.7 Confirm recommendation contained in the tender evaluation report.	TC	TC	TC	TC	TC	TC
5	Award contract	5.1 Notify successful tenderer and unsuccessful tenderers of outcome		*	*	*	*	*
		5.2 Compile contract document		*	*	*	*	*
		5.3 Formally accept tender offer	AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate	AO/AA or AO/AA's delegate
		5.4 Capture contract award data	SCMU	SCMU	SCMU	SCMU	SCMU	SCMU
6	Administer contracts and confirm compliance with requirements	6.1 Administer contract in accordance with the terms and provisions of the contract		*	*	*	*	*
		6.2 Ensure compliance with requirements		*	*	*	*	*
		6.3 Capture contract completion / termination data	SCMU	SCMU	SCMU	SCMU	SCMU	SCMU

Abbreviations: AA = Accounting officer; AO = Accounting Authority; CFO= Supply Chain Management Unit; TC = Tender committee; SCMU = Supply Chain Management Unit

* The Public Finance Management Act permits accounting officers and accounting authorities to delegate any powers assigned by the Act to an official within their institutions and to instruct officials to perform a duty. The allocation of responsibilities should generally be made to holders of specific posts (eg director) or officials acting in specific roles (eg project manager).

- 3.4 The⁵⁷ will, in the event of one tender being received, determine whether or not fresh tenders will be called for.
- 3.6 Only disputed amounts and retention monies, if applicable, may be withheld from payments due to contractors in accordance with the provisions of the contract.
- 3.7 Contracts relating to information technology shall be prepared in accordance with the State Information Technology Act, 1998 (Act No. 88 of 1998), and any regulations made in terms of that Act.
- 3.8 The details set out in sub-clause 6.7.7 of SANS 294 shall be published in the Government Gazette within 30 calendar days of the signing of the acceptance portion of the Form of Offer and Acceptance in respect of any contract awarded in terms of the open, qualified and proposal procedure.
- 3.9 The details set out in sub-clause 6.7.7 of SANS 294 shall be included in the notification issued to all unsuccessful tenders sent in terms of sub-clause 6.7.5 of SANS 294. Such notifications shall be sent within two weeks after the date that the signing of the acceptance portion of the Form of Offer and Acceptance.
- 3.10 The⁵⁸ will be responsible for providing written reasons for any administrative action that is taken.
- 3.11 The tender data may state that a no-refundable deposit for tender documents must be paid if and when necessary, provided that:
 - a) the fee is reasonable and reflects only the cost of printing and delivery to prospective tenderers; and
 - b) that all monies received for the sale of bidding documents is paid into the National Revenue Fund or Provincial Revenue Fund in terms of sections 11(3), 13(1), 21(2) and 22(1) of the Public Finance Management Act.
- 3.12 Tender evaluation reports shall be prepared in accordance with the provisions of subclause 6.6.7 of SANS 294, using the proforma evaluation forms contained in the CIDB Best Practice Procurement Guideline A3, *Evaluating tender offers*.

4 Conduct of officials

Officials involved in procurement shall in addition to complying with the requirements of sub-clause 4.2.1 of SANS 294, observe the ethical standards set out in the⁵⁹ Supply Chain Management Directives.

5 Solicitation of tender offers

- 5.1 Tender offers shall be solicited using one of the standard procurement procedures and tender evaluation methods provided for in Tables 1 and 3 of SANS 294.
- 5.2 As a general rule, engineering and construction works, supplies and services other than professional services shall be solicited using a standard method in accordance with the provisions of Table 2, subject to the procurement procedures that are adopted being within the thresholds established in Table 3.

57 Insert Accounting Officer or Accounting Authority or his / their delegate

58 Insert Accounting Officer or Accounting Authority or his / their delegate

59 Insert name of institution

Table 2: Standard methods for procuring different categories of contracts*

Category of contract	Type of procurement	Standard method
Engineering and construction works	Design by employer (normal)	Open Procedure with Method 1 or Method 2
	Design and build / develop and construct	Proposal procedure using two-stage system with Method 1, 2, 3 or 4; Qualified Procedure with Method 1 or 2 and eligibility criteria framed around the attainment of a minimum quality score or requirements; or Qualified Procedure with Method 3 or 4
	Management contractor / Construction Management	
	Works which require exceptional quality or where it is desirable to invite a limited number of tenders who are of a similar capability and size	
	Estimated value less than one fifth of the threshold for quotations provided for in Table 2.	Negotiated Procedure with Method 1
	Estimated value does not exceed the threshold provided for in Table 2.	Quotation Procedure with Method 1 or 2
	The works are largely identical to works previously executed and it is not in the organization's interest to solicit other offers or cannot be technically or economically separated from a previous contract	Negotiated Procedure with Method 1
	Simple works designed by the employer where the estimated value of the contract does not exceed the threshold provided for in Table 2.	Nominated Procedure with Method 1 or Method 2 where a shortlist is compiled.
Supplies	Purchase of readily available supplies where the value of the contract does not exceed the threshold provided for in Table 2.	Shopping Procedure with Method 1
	Estimated value does not exceed the threshold provided for in Table 2.	Quotation Procedure with Method 1 or 2
	Normal	Open Procedure with Method 1 or 2
	Supplies which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	Qualified Procedure with Method 1 or 2 and eligibility criteria framed around minimum quality requirements.
	Only one supplier has the required product or the supplies cannot be separated from a previous contract	Negotiated Procedure with Method 1
	Supplies which are readily available and which are frequently required where the estimated value does not exceed threshold provided for in Table 2.	Nominated Procedure with Method 1 or Method 2 where a shortlist is compiled
Services other than professional services	Estimated value does not exceed the threshold provided for in Table 2.	Quotation Procedure with Method 1 or 2
	Normal	Open Procedure with Method 1 or 2
	Services which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	Qualified Procedure with Method 1 or 2 and eligibility criteria framed around minimum quality requirements.
	Only one service provider has the required product or the supplies cannot be separated from another previous contract	Negotiated Procedure with Method 1
	Services which are readily available and which are frequently required where the estimated value does not exceed the threshold provided for in Table 2.	Nominated Procedure with Method 1 or Method 2 where a shortlist is compiled

* Delete any options that are not applicable

- 5.3 Professional services shall be solicited using a standard method in accordance with the provisions of Table 4, subject to the procurement procedures that are adopted being within the thresholds established in Table 3.

Table 3: Thresholds applicable to certain procurement procedures

Procedure	Threshold
Negotiated procedure	(Specific requirements as indicated in Tables 2 and 4)
Nominated procedure	Up to an estimated value inclusive of Value Added Tax of R 100 000 in respect of supplies. Up to an estimated value inclusive of Value Added Tax of R 250 000 in respect of services including professional services and engineering and construction works.
Open procedure	-
Qualified procedure	-
Quotation procedure	Up to an estimated value inclusive of Value Added Tax of R 100 000.
Proposal procedure using the two-envelope system	-
Proposal procedure using the two-stage system	-
Shopping procedure	Up to a value of R 5 000 inclusive of Value Added Tax.

Table 4: Standard methods for procuring professional services*

Type of procurement	Standard method
In most cases, except in the case of complex or highly specialised assignments or those that invite innovations on the basis of quality alone.	Nominated where a shortlist is compiled, Open, Qualified or Quotation Procedures or the Proposal Procedure using the two envelope system with either: <ul style="list-style-type: none"> • Methods 3 or 4; or • Methods 1 and 2 with eligibility criteria framed around the attainment of a minimum quality score or quality related requirements
A complex or highly specialised assignment, for which it is difficult to define the precise scope of work and tenderers are expected to demonstrate innovation in their proposals. An assignment that has a high downstream impact and requires the best available experts. An assignment could be carried out in substantially different ways, hence proposals will not be comparable.	Proposal Procedure using the two envelope system with either Method 3 or 4; Proposal Procedure using the two stage tendering system with Method 1 or 2 and eligibility criteria framed around the rejection of unacceptable proposals and quality related requirements; or Proposal Procedure using the two stage tendering system with Method 3 or 4 with weighting for price equal to zero.
A standard or routine assignment where well established practices and standards exist and in which the contract amount is small.	Proposal Procedure using the two envelope system with Method 1 or 2 and eligibility criteria framed around minimum quality related requirements
An assignment that represents a natural continuation of previous work carried out by the firm. A rapid selection is essential (eg in an emergency operation). Estimated value less than one third of the threshold for quotations provided for in Table 2. An assignment where only one firm is qualified or has the experience of exceptional worth for the assignment.	Negotiated Procedure with Method 1
Estimated value within the threshold provided for in Table 2	Quotation Procedure with Method 1 or Method 2
A relatively small assignment which does not justify the preparation and evaluation of competitive proposals where the estimated value does not exceed the threshold provided for in Table 2.	Nominated Procedure where a shortlist is compiled with Method 1 or Method 2.
A simple assignment which is precisely defined and the budget fixed.	Proposal Procedure using the two envelope system with Method 1 and 2 and eligibility criteria framed around minimum quality related requirements

* Delete any options that are not applicable

- 5.4 The “Guide for Hourly Fee Rates for Consultants” issued by the Department of Public Service and Administration or, where available and appropriate, any guideline fee determined by an institute, association or statutory council in accordance with legislation, shall be used to

evaluate the reasonableness of fees that are negotiated in the negotiated procedure, or proposal procedure using the two stage system.

- 5.5 Applications for admission to a data base developed for the purpose of using the quotation procedure shall be advertised in local newspapers or other suitable media every three months. Such data base shall be updated at least every three months.
- 5.6 Projects shall not be subdivided to reduce the estimated tender value to fall within a threshold applicable to a specific procurement procedure.
- 5.7 Accommodation and or conference facilities for conferences, seminars, workshops, "lekgotlas", and the like shall be obtained by means of one of the procurement procedures provided for in Table 3, subject to the procurement procedures that are adopted being within the thresholds established in Table 4.

6 Recording and reporting

- 6.1 The reasons for the following shall be recorded and forwarded to the⁶⁰ for acceptance and compliance auditing purposes:
 - a) A departure is made from the provisions of this Procurement Policy and Standing Procedures.
 - b) Less than five tenderers are short-listed in the nominated procedure, except where the estimated value of the tender inclusive of Value Added Tax is within the threshold provided in Table 4 for the quotation procedure and not less than three tenderers are short-listed.
 - c) Less than three tenderers are invited to submit quotations in the quotation procedure or in the nominated procedure where the estimated value of the tender inclusive of Value Added Tax is within the limits provided in Table 4 for the quotation procedure.
 - d) Less than five tenderers are short-listed in the qualified procedure.
 - e) The negotiated procedure is used to solicit a tender offer from a sole source provider.
 - f) The minimum time frames provided for the solicitation of tender offers in SANS 294 or in 8.1 of this Schedule are reduced.
 - g) Departures are made from the requirements of 5 for the solicitation of tender offers due to the presence of, or imminent risk of, extreme or emergency situations arising from one or more of the events outlined in clause 6.3.1.2 of SANS 294.
 - h) Selecting a particular disposal procedure provided for in sub-clause 6.3.10 of SANS 294.
- 6.2 The reasons for departing from the following shall be recorded and forwarded to the⁶¹ for approval and compliance auditing purposes:
 - a) the percentage score allocated to the financial offer where Method 3 or Method 4 (see Table 3 of SANS 294) is less than 40% (i.e. the percentage score for quality exceeds 60%).
 - b) the quantum of work is such that it is necessary to increase the work or to perform additional work within the broad scope of the contract such that the final contract amount, excluding any price adjustment, is more than the following percentages higher than the contract amount at the time that the contract was awarded:

i) services and supplies:	15%
ii) engineering and construction works	30%
- 6.3 The supply chain management unit will be responsible for keeping records of all procurements and for submitting a quarterly report to the accounting officer / authority and all reporting required by.....⁶²

60 Insert Accounting Officer or Accounting Authority or his / their delegate

61 Insert Accounting Officer or Accounting Authority or his / their delegate

62 Insert the name of the relevant treasury

6.4 The supply chain management unit must present an annual report on all procurement to the accounting officer within six weeks of the financial year end which shall report on a range of key performance indicators including those associated with a preferential procurement policy.

7 Functioning and composition of tender committee

7.1 The⁶³. shall establish a permanent tender committee comprising not less than three officials, one of whom shall be a supply chain functionary, to evaluate tenders and make recommendations for the award of a contract.

7.2 Members of a tender committee shall be cleared at the level of "CONFIDENTIAL".

7.3 Tender committee members shall not act as panel members for the evaluation and scoring of quality in submissions.

7.4 The tender committee shall review all proposals for the shortlisting of tenderers and tender evaluation reports and, as appropriate, make recommendations for:

- a) the award of a tender including the acceptance of proposals made by a tenderer in the process of offer and acceptance;
- b) commencing with the negotiations with a preferred tenderer in a two stage tendering process; and
- c) the acceptance of the shortlist prepared for a procurement.

7.5 The tender committee may co-opt independent experts to participate as advisors in the workings of the committee provided that such persons undertake to abide by the same ethical standards that apply to officials.

7.6 The tender committees may award all tenders solicited using the quotation and nominated procedure. All other contracts shall be awarded by the.....⁶⁴.

7.7 The quorum for a tender committee shall not be less than 3 members, provided that one of the members present is a supply chain functionary.

8 Advertisements

8.1 All calls for expressions of interest and invitations for tender offers using the open, qualified and proposal procedure shall be advertised in the Government Tender Bulletin at least 30 days before the closing date for tenders and, if deemed necessary by the⁶⁵, in order to ensure greater exposure to potential tenderers, in other appropriate media.

8.2 All procurement documents shall be made available on the publication date of the advertisement.

8.3 Advertisements for admission to data bases shall be published in the Government Tender Bulletin.

9 Procurement documents

9.1 All procurement documents shall be drafted strictly in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement and SANS 294.

9.2 The standard forms of contract listed in Table 5 shall be used in respect of the different categories and subcategories of contracts.

63 Insert Accounting Officer or Accounting Authority or his / their delegate

64 Insert Accounting Officer or Accounting Authority or his / their delegate

65 Insert Accounting Officer or Accounting Authority or his / their delegate

Table 5: Standard forms of contract*

Category of contract	Subcategory	Standard Form of Contract
Supplies	<ul style="list-style-type: none"> ▪ Simple, regional purchase of readily available materials or commodities; ▪ Requires almost no management of the buying and delivery process and may only need simple cross border formalities; ▪ Minimal testing, installation and commissioning on delivery. 	Contract for the Supply and Delivery of Goods as published by the Construction Industry Development Board. General conditions of purchase as published by the Construction Industry Development Board. Supply of Goods (Short Contract) as published by the Construction Industry Development Board.
	Other than above	The Supply Contract as published by the Construction Industry Development Board.
Services	Professional services i.e. knowledge-based expertise provided on the basis of trust	NEC Professional Services Contract 2 nd Edition June 1998 (PSC2) as published by the Institution of Civil Engineers. Standard Professional Services Contract as published by the Construction Industry Development Board.
	Facilities i.e. operation and / or maintenance of an existing facility, structure or system.	NEC Term services contract (1 st Edition) as published by the Institution of Civil Engineers
Engineering and construction works	<ul style="list-style-type: none"> ▪ Straightforward or repetitive work, for short duration; ▪ Almost no requirement for sophisticated management techniques; ▪ Imposes only low risks on both the procuring department and the contractor; and the ▪ Design of the works is almost complete when construction starts. 	JBCC series 2000 Minor Works Agreement as published by the Joint Building Contracts Committee. Short Form of Contract ("Green Book") (1999) as published by the International Federation of Consulting Engineers (FIDIC). NEC Engineering and Construction Short Contract 1 st Edition 1999 (ECSC1) as published by the Institution of Civil Engineers.
	Other than above	Conditions of Contract for Construction for Building and Engineering Works designed by the Employer ("Red Book") (1999) as published by the International Federation of Consulting Engineers (FIDIC). Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works, designed by the Contractor ("Yellow Book") (1999) as published by the International Federation of Consulting Engineers (FIDIC). Conditions of Contract for EPC Turnkey Projects ("Silver Book") (1999) as published by the International Federation of Consulting Engineers (FIDIC). General Conditions of Contract for Construction Works (2004) as published by the South African Institution of Civil Engineering. JBCC series 2000 Principal Building Agreement as published by the Joint Building Contracts Committee. NEC Engineering and Construction 2 nd Edition 1995 (ECC2) as published by the Institution of Civil Engineers.

* Delete any options that are not applicable

9.3 Guarantees, which guarantee performance with a stated financial benefit in the event of non-performance, should as a general rule should not be required in service, professional service and supply contracts. Guarantees of an insurance company or bank and retention monies required in engineering and construction contracts shall be in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement and Table 6.

Table 6: Minimum levels of securities generally provided for in engineering and construction contracts

DESCRIPTION	MINIMUM VALUE OF SECURITY
Contracts having an estimated contract value inclusive of value added tax not exceeding R100 000 where the works are straightforward or repetitive work and of short duration, there are almost no requirement for sophisticated management techniques; the risks imposed on both the institution and the contractor are low; and the design of the works is substantially complete when construction starts.	Nil
Contracts having an estimated contract value excluding value added tax not exceeding R 750 000 where the works are straightforward or repetitive work and of short duration, there are almost no requirement for sophisticated management techniques; the risks imposed on both the institution and the contractor are low; and the design of the works is substantially complete when construction starts.	<ul style="list-style-type: none"> • 2,5% if estimated contract value excluding VAT is less than or equal to R 375 000; or • 5% if estimated contract value excluding VAT is greater than R 750 000.
Contracts which comprise works which are not straightforward or repetitive work and of short duration, there are requirement for sophisticated management techniques; the risks imposed on both the institution and the contractor are not low; and the design of the works is substantially incomplete when construction starts.	<ul style="list-style-type: none"> • 10% where retention monies are fixed at 5%; or • 7,5% where retention monies start at 10% and are subject to a limit of 5%.
Contracts in which third party management support is provided in accordance with the provisions of SANS 1921-4 (Third party management support in works contracts).	Nil if the third party management support provides professional indemnity insurance in an amount not less than one and a half times the construction cost.

- 9.4 Tender securities, which fall away once the tenderer commences the contractor, will only be called for in exceptional circumstances.
- 9.5 Interest on late payments will be at a level that approximates commercial rates of interest or as provided for in a standard form of contract.
- 9.6 As a general rule, no advance payments shall be made to contractors. Contractors should only be paid for amounts due for work completed or partially completed in terms of their contract
- 9.7 Professional service appointments shall as a general rule be subject proof of current professional indemnity insurance being submitted in an amount not less than that set out below with a first amount payable not exceeding 5% of the limit of indemnity:

Consulting Engineering Firms	R1 000 000
Others	R 500 000

- 9.8 Penalties that are applied for late completion shall as a general rule be set at a level that covers all the⁶⁶s direct costs.
- 9.9 Payment to professional service providers should wherever possible be made on the basis of activities satisfactorily completed or on the basis of milestones achieved.
- 9.10 The contractor will be required to take out all construction insurances.

10 Applying the CIDB Register of Contractors in engineering and construction works contracts

The CIDB Register of Contractors shall be applied to engineering and construction works contracts in accordance with the provisions of the CIDB Standard for Uniformity in

66 Insert name of institution

Construction Procurement and the Construction Industry Development Regulations issued in terms of the Construction Industry Development Board Act from⁶⁷.

11 Award of contracts

11.1 No contract may be entered into a contract, other than an engineering and construction works contract where the CIDB Register of Contractors is applied, with tenderers who are not in possession of an original tax clearance certificate. The supply chain management unit shall, except in the case on engineering and construction works where the Register of Contractors is applied, forward for audit purposes the contractor's original tax clearance certificate together with a copy of the completed Form of Offer and Acceptance to:

The Commissioner
South African Revenue Services
Private Bag X923
Pretoria
0001

For attention: Cecilia Makgeledisa Tel 012-422 4444 Fax 012-422 6843
Email cmakgeledisa@sars.gov.za"

11.2 No contract may be entered into a contract with a contractor whose company or principals are listed on National Treasury's database as being prohibited from doing business with the public sector.

11.3 With effect from, no engineering and construction works contract may be entered into with a contractor that is not appropriately registered with the Construction Industry Development Board⁶⁸.

11.4 Only the⁶⁹ may commit the⁷⁰ to a contract, except where the quotation or nominated procedure is used, where the tender committee may do so.

11.5 The⁷¹, as appropriate, shall:

- a) reject a proposal for the award of a contract if the recommended tenderer has committed a corrupt or fraudulent act in competing for the particular contract; or
- b) cancel a contract awarded to contractor if:
 - i) if the contractor committed any corrupt or fraudulent act during the tender process or the execution of that contract; or
 - ii) if any official or other role player committed any corrupt or fraudulent act during the tender process or the execution of that contract that benefited that contractor.

11.6 The⁷² shall submit a report to the⁷³ on all actions taken in respect of 11.5.

11.7 The tender committee may disregard the tender of any tenderer who has failed to perform on any previous contract.

11.8 Professional service providers who are commissioned to prepare a scope of work for a particular procurement (i.e. a document that specifies and describes the supplies, services, or engineering and construction works which are to be provided and any other requirements and

67 Insert commencement date provided for in the Construction Industry Development Regulations issued by the Construction Industry Development Board

68 Insert commencement date provided for in the Construction Industry Development Regulations issued by the Construction Industry Development Board

69 Insert Accounting Officer or Accounting Authority or his / their delegate

70 Insert the name of the institution

71 Insert Accounting Officer or Accounting Authority or his / their delegate

72 Insert Accounting Officer or Accounting Authority or his / their delegate

73 Insert name of relevant treasury

constraints relating to the manner in which the contract work is to be performed) shall as a general rule be precluded from submitting tender offers for that procurement

12 Preferencing arrangements

- 12.1 Preferences shall do so in accordance with the provisions of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)
- 12.2 No tenderer, respondent or contractor shall be obliged to attain specific goals, including the forming of joint ventures, relating to a preferential procurement policy in order to be eligible to submit tenders or to be considered responsive for the award of a contract. Specific goals relating to a preferential procurement policy shall only be implemented through tender evaluation methods or accelerated rates of rotation on an electronic data base in accordance with the provisions of SANS 294.
- 12.3 The supply chain management unit shall prepare an annual report on the outcomes of their preferential procurement policy in respect of a financial year and submit such a report to the accounting officer within six weeks of the financial year end.

13 National Industrial Participation Program

The head of the supply chain management unit shall obtain clearance to award a contract for a recommended tenderer from the Department of Trade and Industry, in respect of the following contracts which are subject to the National Industrial Participation Program of that Department:

- a) purchases or lease contracts (goods, equipment or services) with an imported content in a single contract which exceeds US\$ 10 million; or
- b) multiple contracts for the same products or services each exceeding US\$ 3 million awarded to one tenderer over a 2-year period which in total exceeds US\$ 10 million.