



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

**PFMA SCM INSTRUCTION NO. 03 OF 2021/22**  
**PUBLIC FINANCE MANAGEMENT ACT**  
**(ACT 1 OF 1999)**

**ENHANCING COMPLIANCE, TRANSPARENCY AND ACCOUNTABILITY IN SUPPLY CHAIN MANAGEMENT**

TO ALL:

ACCOUNTING OFFICERS OF DEPARTMENTS  
ACCOUNTING OFFICERS OF CONSTITUTIONAL INSTITUTIONS  
ACCOUNTING AUTHORITIES OF SCHEDULE 2 AND 3 PUBLIC ENTITIES  
HEAD OFFICIALS OF PROVINCIAL TREASURIES

**1. PURPOSE**

This Instruction is issued to provide measures to—

- (a) improve compliance, accountability and transparency in the procurement of goods and services;
- (b) reduce the abuse of the Supply Chain Management (SCM) system; and
- (c) ensure value for money.

**2. DEFINITIONS**

In this Instruction, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Public Finance Management Act, 1999 (Act No. 1 of 1999 – “the PFMA”) or Treasury Regulations, published on 15 March 2005 (as amended) has the same meaning assigned to it in the Act or the Regulations, and—

**“emergency situation”** means a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls for urgent action and there is insufficient time to follow a competitive bidding process;

**“institution”** means—

- (a) a national or provincial department;
- (b) a public entity listed in Schedule 2 or 3 to the PFMA; and
- (c) a constitutional institution listed in Schedule 1 to the PFMA;

**“investigate”** means an inquiry to determine and assess the facts of the complaint or allegation to establish the truth;

**“limited bidding”** means a bidding process reserved for a specific group or category of possible suppliers through procurement by—

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- (a) sole source where there is no competition in the market and only one supplier is able to provide the goods or services;
- (b) single source where a thorough analysis of the market and a transparent and equitable pre-selection process is used to decide on one supplier among a few prospective bidders to make a proposal;
- (c) multiple source where a thorough analysis of the market indicates that there is limited competition and only a few prospective bidders are requested to make a proposal;

**"urgent case"** means cases where early delivery is critical and the invitation of competitive bids is either impossible or impractical, not due to improper planning;

**"person"** means—

- (a) a bidder or supplier; or
- (b) a shareholder, director, trustee, partner member of a bidder or a supplier, or any person having a controlling interest in the bidder or supplier; and

**"State"** means—

- (a) a national or provincial department, national or provincial public entity or constitutional institution;
- (b) a municipality or municipal entity;
- (c) a provincial legislature; or
- (d) Parliament.

**3. BACKGROUND**

- 3.1 The PFMA promotes economy, efficiency, effectiveness and transparency in the use of state resources. Consequently, a key duty, amongst others, for the accounting officers/authorities (AOs/AAs) in terms of the PFMA are to establish and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.
- 3.2 In terms of section 6(2) of the PFMA, the National Treasury must prescribe uniform treasury norms and standards. This includes prescribing norms and standards to limit and prevent the abuse of the SCM system and the enforcement. In terms of section 18(2) of the PFMA, the provincial treasuries must enforce the prescribed norms and standards in their respective provinces.
- 3.3 Although the National Treasury is, in terms of section 6(1) of the PFMA required to, amongst others, promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of institutions, it must do so with due regard to the PFMA functions of the AO/AA. According to sections 38 and 51 of

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the PFMA, the AO/AA must ensure effective, efficient and transparent systems of financial management as well as a procurement and provisioning system.

- 3.4 Non-compliance with SCM prescripts by institutions undermine sound financial management and ultimately erodes scarce resources that are intended for public service delivery.
- 3.5 Therefore, it is imperative that the AOs/AAs establish mechanisms to identify the risks and internal control weaknesses in their SCM systems to develop mitigating strategies and controls.

**4. DEVIATIONS FROM NORMAL BIDDING PROCESS**

- 4.1 If in a specific case it is impractical to invite competitive bids, the AO/AA may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the AO/AA.
- 4.2 In this Instruction, procurement by “other means” includes—
  - (a) limited bidding;
  - (b) written price quotations within the threshold determined by National Treasury Instruction; and
  - (c) procurement that occurs in emergency situations and urgent cases.
- 4.3 The AO/AA must provide for procurement by “other means” in a SCM policy for the institution.
- 4.4 The SCM policy must at least provide for—
  - (a) procurement by “other means” referred to in paragraph 4.2(a), (b) and (c), and any other procurement by “other means” that may be utilised;
  - (b) a plan to curtail reliance on procurement by “other means”;
  - (c) circumstances under which each procurement by “other means” may be utilised;
  - (d) processes to be followed in respect of identifying prospective suppliers for, and recording and approval of, procurement by “other means”; and
  - (e) assessment of all instances that gave rise to procurement by “other means”.
- 4.5 When procuring goods or services by “other means”, the AO/AA must ensure that the institution complies with other applicable SCM prescripts.

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4.6 The AO/AA must within 14 days after the finalisation of the procurement by “other means”, report the procurement to the relevant treasury and the Auditor-General of South Africa (AGSA) in a format determined by the National Treasury.

4.7 The AO/AA must ensure that procurement by “other means” is recorded in the annual report of the institution in a format determined by the National Treasury.

**5. EXPANSIONS AND VARIATIONS OF CONTRACTS**

5.1 The AO/AA may, in accordance with this paragraph—

- (a) expand a contract by increasing the scope of work; or
- (b) vary a contract by changing the scope of work.

5.2 If an expansion or variation in the scope of work requires an extension in the period of the contract, the motivation must distinguish between the change in the scope of work and the period for which the contract is extended.

5.3 If the AO/AA participates in a transversal contract, the AO/AA may not expand or vary the transversal contract, but may request the relevant treasury to expand or vary the contract.

5.4 If a contract for—

- (a) construction-related goods or services or both, is expanded or varied by more than 20% or R20 million (including all applicable taxes), whichever is the lesser; and
- (b) all other goods or services or both, is expanded or varied by more than 15% or R15 million (including all applicable taxes), whichever is the lesser,

the AO/AA must, in a format determined by the National Treasury, submit a monthly report, including the reasons for the expansion or variation, to the relevant treasury and the AGSA.

5.5 The AO/AA must record expansions or variations referred to in paragraph 5.4 in the annual report of the institution in a format determined by the National Treasury.

5.6 The relevant treasury and the AGSA may request additional information pertaining to expansions or variations referred to in paragraph 5.4.

**6. RESTRICTION OF PERSON DOING BUSINESS WITH GOVERNMENT**

6.1 The AO/AA must, in writing, notify a person of—

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- (a) the intention to restrict the person from doing business with the State;
  - (b) the grounds for the restriction;
  - (c) the intended period of restriction which may not exceeding 10 years; and
  - (d) the right to make representations within 14 days as to why the person should not be restricted.
- 6.2 The AO/AA must—
- (a) consider the reasons provided by the person on why the person should not be restricted; and
  - (b) if, after considering the reasons referred to in paragraph (a), the AO/AA intends to restrict the person, in writing, consult the National Treasury by submitting the notification envisaged in paragraph 6.1 and the reasons referred to in paragraph (a).
- 6.3 The National Treasury must, within 14 days of receipt of the notification envisaged in paragraph 6.2(b), submit to the AO/AA its view on the intended restriction.
- 6.4 The AO/AA must—
- (a) after considering the view of the National Treasury, make the decision whether to restrict; and
  - (b) within seven days following a decision to restrict, submit to the National Treasury—
    - (i) the reasons for the decision to restrict;
    - (ii) the name and address of the person restricted;
    - (iii) the identity or registration number of the person;
    - (iv) the period of restriction; and
    - (v) the representations made by the person and the reasons why the AO/AA proceeded with the decision to restrict despite the representations.
- 6.5 The National Treasury, on receipt of the information in paragraph 6.4(b)—
- (a) may, within 14 days, request the AO/AA to submit further information pertaining to the restriction; and
  - (b) must record the information on a list of restricted suppliers within 14 days of receipt of the submission by the AO/AA, and any responses to further information requested in terms of paragraph (a).
- 6.6 The restriction is effective from the date that the National Treasury records the information on the list of restricted suppliers.

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- 6.7 The National Treasury must inform the AO/AA immediately after the restriction is recorded on the list of restricted suppliers.
- 6.8 The AO/AA must inform the person immediately after the National Treasury has informed the AO/AA that the restriction is recorded on the list of restricted suppliers.

**7. TREATMENT OF DISCLOSURES AND DECLARATIONS**

- 7.1 Institutions must, as part of their SCM processes, identify and manage all potential conflicts of interest and other disclosures made by a person participating in procurement processes to enable the AO/AA to make informed decisions about the person participating in the SCM process.
- 7.2 The application of the Bidder's Disclosure form, issued as Standard Bidding Document (SBD) 4, attached as **Annexure A**, is extended to all institutions to which this Instruction applies. Institutions may incorporate the information contained in the SBD4 into their bid documents, including documents issued for the invitation of price quotations, but may not alter the content of the disclosure and the order of the information captured in the SBD4.
- 7.3 The SBD4 applies to all procurement, irrespective of the value and method of procurement, excluding petty cash purchases, and must be completed by all persons responding to the invitation.
- 7.4 The AO/AA must, as part of the evaluation of a procurement process, evaluate information provided by a person on the SBD4.
- 7.5 If the evaluation of the AO/AA establishes that—
- (a) a person within the bidding entity is an employee of the State, the AO/AA must request the relevant AO/AA to advise whether the person—
    - (i) is prohibited from conducting business with the State in terms of section 8 of the Public Administration Management Act, 2014 (Act No. 11 of 2014 – “the PAMA”); or
    - (ii) has permission to perform other remunerative work outside of their employment, where the PAMA does not apply to such employee;
  - (b) the conduct of a person constitutes a transgression of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004 – “the PRECCA”), the conduct must be dealt with in accordance with the PRECCA;

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- (c) the conduct of a person constitutes a transgression of the Competition Act, 1998 (Act No. 89 of 1998), the conduct must be reported to the Competition Commission; and
  - (d) the conduct of a person constitutes a transgression of the institution's policies, the conduct must be dealt with in terms of the prescripts applicable to the institution.
- 7.6 If the AO/AA establishes that a person has committed a transgression, referred to in paragraph 7.5, or any other transgression of SCM prescripts, the AO/AA may reject the bid and restrict the person in terms of paragraph 6.
- 7.7 The AO/AA must inform the relevant treasury of any action taken against a person in terms of paragraph 7.6 within 30 days of implementing the action.
- 7.8 During the evaluation process, the AO/AA must in addition to other due diligence measures, establish if a person is not listed in—
- (a) the Register for Tender Defaulters provided for PRECCA; and
  - (b) the list of restricted suppliers provided for in paragraph 6.3 of this Instruction and regulations under the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- 7.9 The SBD 4 attached as **Annexure A** to this Instruction replaces all SBDs 4, 8 and 9.

**8. GENERAL REQUIREMENTS**

- 8.1 The AOs/AAs of all institutions must ensure that—
- (a) the SCM system provides for the establishment, composition and functioning of bid specification, evaluation and adjudication committees and the selection of bid committee members;
  - (b) procurement through a bidding process is subjected to the bid committee system envisaged in paragraph (a); and
  - (c) bid committee members are duly appointed and a quorum is determined for each committee.
- 8.2 If considered necessary, one or more independent expert may be co-opted to a bid evaluation/adjudication committee in an advisory capacity. The expert does not have voting rights and is subject to the same conflict of interest declarations/disclosures applicable to bid committee members.

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- 8.3 A representative of the relevant treasury may attend bid committee meetings of any institution in an observer capacity and must inform the relevant AO/AA when he/she will be attending. The representative does not have voting rights and is subject to the same conflict of interest declarations/disclosures applicable to bid committee members.
- 8.4 The AO/AA—
- (a) may not invite price quotations or bids if no or insufficient provision is made in the budget of the institution;
  - (b) must ensure that cash flow is sufficient to meet contractual obligations;
  - (c) must pay suppliers within 30 days of receipt of invoice or the period provided for in the contract; and
  - (d) may not place orders with suppliers for goods and services to be received in the current financial year and arrange with suppliers to be invoiced and payment to be made in the next financial year, except in the case of a multi-year contract.

## **9. REGISTER OF COMPLAINTS AND ALLEGATIONS**

- 9.1 The AO/AA must establish a procedure for the management of complaints and allegations of abuse in the SCM system, which must provide for—
- (a) the submission of written complaints/allegations of abuse in the SCM system; and
  - (b) the establishment of a register of all complaints/allegations of abuse in the SCM system, in the format prescribed in **Annexure B**.
- 9.2 The chief financial officer of the institution must report a complaint/allegation of abuse in the SCM system that implicates the AO/AA to the relevant treasury within 14 days of receipt of the complaint/allegation, by the institution.

## **10. INVESTIGATE COMPLAINTS AND ALLEGATIONS**

- 10.1 The AO/AA—
- (a) must investigate a complaint/allegation of abuse in the SCM system, resolve and provide a response to the person who submitted the complaint/allegation by no later than 60 days after receipt of the complaint/allegation;
  - (b) may extend the period mentioned in paragraph (a), up to 30 days and provide to the person who submitted the complaint/allegation written reasons for the extension and a status update at the time of the extension;

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- (c) must, if the investigation concludes that there has been an irregularity or that the irregularity is as a result of an alleged misconduct by an official, refer the matter for further investigation and processing;
  - (d) must, where the investigation indicates any irregularity by a person, act against the person in terms of the relevant prescripts and may in addition to the penalties/remedies provided for in the relevant prescripts, also implement remedial actions which may include but are not limited to—
    - (i) rejecting the bid;
    - (ii) cancelling the contract;
    - (iii) restricting the person from conducting business with the State;
    - (iv) claiming damages (if any); and
  - (e) must inform the relevant treasury and the AGSA of the outcome of the investigation and the proposed actions, within 30 days of completing the investigation.
- 10.2 If—
- (a) an institution receives a complaint/allegation that implicates the AO/AA or a member of the AA; or
  - (b) during the investigation of a complaint/allegation, it is established that the AO/AA or a member of the AA is implicated,
- the chief financial officer must submit the complaint/allegation to the relevant treasury with all the evidence for investigation.
- 10.3 The relevant provincial treasury must submit a report of the outcomes of investigations, received from its provincial departments and public entities listed in Schedules 3C and 3D to the PFMA, to its provincial legislature on a quarterly basis.
- 10.4 The National Treasury must submit a report of the outcomes of investigations, received from national departments, constitutional institutions and public entities listed in Schedules 2, 3A and 3B to the PFMA, to Parliament on a quarterly basis.
- 10.5 The relevant treasuries must submit the quarterly reports referred to in paragraphs 10.3 and 10.4 by the 15<sup>th</sup> day of the month following the end of the quarter.
- 10.6 The relevant treasury—
- (a) must investigate a complaint/allegation that implicates the AO/AA not later than 60 days after the receipt of the complaint/allegation; and

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- (b) may extend the period mentioned in paragraph (a), up to 30 days, and provide to the person who made the allegation/complaint written reasons for the extension and a status update at the time of the extension.

10.7 The relevant treasury must submit a report to the executive authority, AGSA and Parliament/provincial legislature of the outcome of the investigation of the complaint/allegation against the AO/AA, and the proposed actions for consideration by the relevant functionary for purposes of resolution or remedial actions or both.

### **11. MONITORING**

The relevant treasury must monitor and assess the implementation of this Instruction by institutions.

### **12. APPLICABILITY**

This Instruction applies to all departments, constitutional institutions and public entities listed in Schedules 2 and 3 to the PFMA.

### **13. REPEAL**

This Instruction repeals the following Instructions, Practice Notes and Circulars:

- (a) National Treasury SCM Instruction Note 3 of 2016/17;
- (b) Instruction Note No 32 dated 31 May 2011 related to enhancing compliance monitoring and improving transparency and accountability in Supply Chain Management (SCM);
- (c) Supply Chain Management Circular postponing implementation of certain paragraphs in Instruction Note No 32 dated 31 May 2011 related to enhancing compliance monitoring and improving transparency and accountability in Supply Chain Management (SCM);
- (d) Practice Note No 7 of 2009/2010 dated 2 October 2009 and the SBD4 document;
- (e) Practice Note No SCM 5 of 2006 on the restriction of suppliers and augmentation of general conditions of contract;
- (f) National Treasury Practice Note Supply Chain Management: Prohibition of Restrictive Practices: Certificate of Independent Bid Determination: Standard Bidding Document (SBD 9); and
- (g) Practice Note No SCM 4 of 2006 on Standard Bidding Document: Declaration of bidder's past supply chain management practices (SBD 8).

### **14. EFFECTIVE DATE**

14.1 This Instruction takes effect on 1 April 2022.

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14.2 Procurement processes that have commenced prior to the coming into effect of this Instruction must be concluded in accordance with the prescripts applicable at the time of invitation or advertisement.

**15. DISSEMINATION OF INFORMATION**

15.1 The AOs of national departments and constitutional institutions must bring the contents of this Instruction to the attention of—

- (a) chief financial officers, heads of supply chain management and supply chain management officials of their respective institutions; and
- (b) all accounting authorities of public entities reporting to the executive authority of their respective departments.

15.2 Heads officials of provincial treasuries must bring the contents of this Instruction to the attention of accounting officers of their provincial departments and accounting authorities of the provincial public entities with the request that the information contained herein be disseminated to all chief financial officers, heads of supply chain management and supply chain management officials of their respective institutions.

15.3 The AAs of Schedule 2, 3B and 3D public entities must bring the contents of this Instruction to the attention of the chief financial officers, heads of supply chain management and supply chain management officials of their public entities.

**16. AUTHORITY FOR THIS SCM INSTRUCTION**

This Instruction is issued in terms of section 76(4)(b), (c) and (g) of the Public Finance Management Act, 1999.

**17. CONTACT INFORMATION**

Enquiries pertaining to the contents of this Instruction may be directed to:

Email: [cpo@treasury.gov.za](mailto:cpo@treasury.gov.za)



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**ACTING CHIEF PROCUREMENT OFFICER**

**DATE:** 2022 | 03 | 31

Cc: Auditor-General South Africa