



**NATIONAL TREASURY
REPUBLIC OF SOUTH AFRICA**

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TO ALL

ACCOUNTING OFFICERS: NATIONAL DEPARTMENTS

HEADS: PROVINCIAL TREASURIES

CHIEF FINANCIAL OFFICERS: PROVINCIAL DEPARTMENTS

CHIEF EXECUTIVE OFFICERS / CHIEF FINANCIAL OFFICERS:

CONSTITUTIONAL INSTITUTIONS / PUBLIC ENTITIES

**Supply Chain Management Office
Practice Note Number SCM 5 of 2006**

- 1. RESTRICTION OF SUPPLIERS**
- 2. AUGMENTATION OF GENERAL CONDITIONS OF CONTRACT**

This practice note is applicable to all national and provincial departments, constitutional institutions and public entities as defined in schedule 3A and 3C of the Public Finance Management Act, Act 1 of 1999 (as amended by Act 29 of 1999). All accounting officers of national departments and heads of provincial treasuries are required to disseminate the contents of this circular to all chief financial officers of departments and public entities that fall under their jurisdiction.

1. RESTRICTION OF SUPPLIERS

- 1.1 The Preferential Procurement Regulations, 2001, pertaining to the Preferential Procurement Policy Framework Act, Act 5 of 2000, give the Accounting Officer/Authority the power to restrict a supplier from doing business with the public sector if such a supplier obtained preferences fraudulently or if such supplier failed to perform on a contract based on the specified goals.

1.2 Paragraph 15 of the Preferential Procurement Regulations reads as follows:

“15(1) An organ of state must, upon detecting that a preference in terms of the Act and these regulations has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.

(2) An organ of state may, in addition to any other remedy it may have against the person contemplated in sub-regulation (1) –

- (a) recover all costs, losses or damage it has incurred or suffered as a result of that person's conduct;
- (b) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (c) impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the tender; and
- (d) restrict the contractor, its shareholders and directors from obtaining business from any organ of state for a period not exceeding 10 years.”

2. To give effect to the remedies provided for in regulation 15 of the Preferential Procurement Regulations, 2001, the following directives should be followed:

2.1 Before action is taken in terms of regulation 15, the Accounting Officer / Authority must issue a final notification to the contractor by registered mail indicating the action to be taken in accordance with the contract conditions unless he / she complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time. (Such time limit should be decided upon by the Accounting Officer / Authority and should not be less than seven (7) and not longer than fourteen (14) calendar days.) If the contractor still does not perform satisfactorily despite this final notification, the Accounting Officer / Authority may, in addition to any other remedy it may have against the supplier, opt to follow any or all of the actions stipulated in paragraph 15(2) of the Preferential Procurement Regulations, 2001.

2.2 Should the Accounting Officer / Authority opt to restrict the contractor and / or any other person(s) from obtaining business with the public sector, the Accounting Officer / Authority must:

- (a) inform the contractor or person(s) by registered mail or by delivery of the notice by hand of the intention to impose the restriction, provide the reasons for such decision and the envisaged period of restriction;
- (b) allow the contractor and / or person(s) fourteen (14) calendar days to provide reasons why the envisaged restriction should not be imposed;

- (c) consider any reasons submitted by the contractor and / or person(s) in terms of paragraph (b) above;
 - (d) impose the restriction or amended restriction; and
 - (e) inform the National Treasury within five working days of such imposition of the name of the restricted person(s); the reason for restriction, the period of restriction and the date of commencement of the restriction.
- 2.3 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 2.4 Based on sound reasons, the Accounting Officer / Authority is empowered to amend / uplift any restriction imposed by him / her and must inform the National Treasury accordingly.
- 2.5 A contractor or any other person restricted by an Accounting Officer / Authority has a right to contest this restriction in a Court of Law, and the Accounting Officer / Authority who imposed the relevant restriction will be responsible and accountable for the Court proceedings.
- 2.6 According to Treasury Regulations 16A9.1(c) an Accounting Officer/ Authority must check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder or any of its directors are listed as companies or persons prohibited from doing business with the public sector.

2. AUGMENTATION OF GENERAL CONDITIONS OF CONTRACT

Paragraph 23 of the General Conditions of Contract is hereby augmented by the insertion of the following sub-paragraphs:

- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority,

also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.


C & W KRUGER
DEPUTY DIRECTOR-GENERAL: SPECIALIST FUNCTIONS
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