

EXTERNAL POLICY

PROCUREMENT

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1 SCOPE

- a) This policy sets out the Procurement and Supply Chain Management (P&SCM) processes of SARS which are subject to the provisions of the Public Finance Management Act No.1 of 1999 (PFMA).
- b) The policy defines the legal, commercial and ethical parameters within which SARS employees and in particular its supply chain practitioners must conduct supply chain activities within SARS. This policy enables the proper and consistent application thereof across SARS.
- c) This document promotes efficient and effective procurement so as to achieve optimal value for money, based on life-cycle cost and quality (total cost of ownership).
- d) This policy applies uniformly throughout SARS.

2 POLICY

2.1 Procurement objectives

- a) All costs and benefits of procurement must be taken into account in order to obtain the best value for money.
- b) SARS shall do business with entities who can demonstrate that they can supply goods or deliver services that meet the required standard.

2.2 Broad-Based Black Economic Empowerment (BBBEE)

- a) SARS fully endorses and supports the Government's Broad-Based Black Economic Empowerment (BBBEE) programme.
- b) SARS would prefer to do business with local business enterprises who share its values and who are prepared to contribute to the meaningful BBBEE initiatives (including, but not limited to subcontracting and Joint Ventures) as part of their request for proposal (RFP) responses.
- c) SARS' policy is to allow a "preference" in accordance with the Preferential Procurement Policy Framework Act No.5 of 2000, to companies who provide a BBBEE Accreditation Certificate. All procurement and disposal transactions in excess of R30 000 must be evaluated accordingly.
- d) Suppliers with a turnover of between R5 million and above per annum should submit BBBEE accreditation certificates from the South African National Accreditation System (SANAS) accredited rating agency or auditors approved by the Independent Regulatory Board of Auditors (IRBA) with their tenders. Suppliers with a turnover of less than R5 million per annum (Exempted Micro Enterprises) should submit auditor certificate or similar certificate issued by an accounting officer with their tenders.
- e) SARS may, in the case of designated sectors, where in the award of tenders local production or specific goals are of critical importance, advertise such tenders with a specific tendering condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- f) Where respondents wish to enter into a Joint Venture or subcontracting portions of the contract to BBBEE companies, their tender response must state the percentage of the total contract value to be allocated to such BBBEE companies should they be awarded any business.
- g) A rating certificate in respect of such BBBEE Joint Venture partners or sub-contractor(s), as well as a breakdown of the distribution of the aforementioned percentage must also be furnished with the tender response to enable SARS to evaluate and adjudicate all tenders received on a fair basis.
- h) Notwithstanding paragraph (c), (d), (e) and (g), the National Treasury may at any time direct otherwise.

2.3 Business ethics and governance

- a) SARS and the wider public service have an obligation to treat, and to be seen to be treating, all citizens objectively and fairly. SARS must have the confidence and trust of the South African public in order to successfully administer the collection of Tax and Customs duties.

2.4 Delegation of authority

- a) The Commissioner, in terms of the SARS Act, is responsible for SARS' performance of its functions, takes all decisions in the exercise by SARS of its powers and exercises any power assigned to him/her in terms of any legislation or agreement and is the Chief Executive Officer and also the Accounting Authority for SARS.
- b) In terms of Section 51(1)(a) of the PFMA, an Accounting Authority for a public entity must ensure that the public entity has and maintains an appropriate procurement and provisioning system, which is fair, equitable, transparent, competitive and cost effective.
- c) The Commissioner may, in terms of Section 56(3) of PFMA, confirm or revoke any decision taken by an official as a result of a delegation or instruction in terms of sub-section 56(1), subject to any rights that may have become vested as a consequence of the decision.

2.5 Procurement mechanism

2.5.1 Application of procurement mechanism

- a) SARS invariably employs different procurement mechanisms depending on the circumstances to procure its goods and / or services.
- b) It is of critical importance that sufficient justification and proper motivation be provided for any chosen procurement path.

2.5.2 CIDB tenders

- a) The Construction Industry Development Board (CIDB) by virtue of the CIDB Act No. 38 of 2000, is empowered to promote efficiency and uniformity in the construction industry.
- b) In order to achieve this goal, it has promulgated a number of Regulations and Notices which SARS fully supports.
- c) With regards to "CIDB-tenders", kindly note that the CIDB limit may be changed as this is regularly updated and published by the CIDB.

2.5.3 Request for information (RFI)

- a) SARS may issue an RFI where the market to fulfil a certain need is unknown, i.e. the first time the product or service is bought, or when some time has elapsed since this product or service had been bought previously. The RFI is used to ascertain which suppliers and what products or services are available in the market. The RFI is merely focused market research and not a competitive tender and cannot be used for placing a contract or order, unless stated as such in the issued documentation.
- b) The RFI may request detailed information, including indicative pricing and timing. The RFI may be published in the media and interested parties may request or obtain more detail in a prescribed format.

2.5.4 Request for proposal (RFP)

- a) Where SARS faces a challenge which it would like to approach with flexibility and innovation by using the expertise available in the marketplace, an RFP may be used.
- b) An RFP is a document setting out the desired outcome in as much detail as possible, without unnecessary limitations in terms of a possible solution.

- c) The suppliers are requested to propose a solution or viable alternatives that might result in a solution, based on the available information.
- d) Where required a site meeting would be conducted in order to share information and to inspect the proposed solution or product.

2.5.5 Request for quotation (RFQ)

- a) Where SARS procures goods and services for less than the amount prescribed by National Treasury for quotations, the RFQ is used.

2.5.6 Transversal procurement

- a) In order to promote uniformity in supply chain management practices, National Treasury and other government institutions such as the State Information Technology Agency (SITA), the State Owned Enterprise Procurement Forum (SOEPF), can facilitate the arrangement of certain contracts in instances where it might be more beneficial from a value for money perspective.
- b) Where other government institutions have entered into contracts with service providers, SARS can opt to utilise this contract by either getting consent from SOEPF or the particular government entity.
- c) Should approval be granted SARS may wish to contract under the same terms and conditions or agree to enter into a new contract with the vendor.

2.5.7 Closed tendering / Limited bidding

- a) SARS may use a closed selection process where there are a limited number of potential providers of the goods or services or where the open tender is unlikely to provide significant benefits for SARS or potential providers.
- b) The closed tender is distributed to selected suppliers asking them to respond to a request for information, credentials, quote or proposal.
- c) Closed tendering shall be based on thorough analysis and market research.

2.5.8 Exemptions

- a) National Treasury Regulations deal with and regulate supply chain management within departments, constitutional institutions and public entities.
- b) In a situation where it is impractical to invite competitive bids, SARS 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 accounting officer or accounting authority.

2.5.9 Emergency procurement

- a) In urgent and emergency cases, SARS may deviate from the invitation of bids and may obtain the required goods, works or service by means of quotation by preferably making use of the database of prospective suppliers or otherwise in any manner in the best interest of SARS.
- b) In such an instance the emergency work is performed and a full motivation only submitted afterwards, in the normal manner, to obtain the necessary "retrospective authority to award". The words "in exceptional circumstances" shall be applied judiciously and restrictively.

2.5.10E-Procurement / E-auction

- a) SARS may apply e-procurement in order to increase competition and streamline public procurement.
- b) E-Procurement processes shall be governed by the same legal and policy obligations applicable to non-electronic procurement. SARS applies the following types of e-auctions:

- i) E-forward auction - a form of auction where vendors bid on goods or services supplied by an auction host. The prices tendered typically increase until the auction is brought to a close.
- ii) E-auction or reverse auction - a form of auction that is opposite in nature to the E-forward auction. Suppliers bid online via a secure internet-based technology on an opportunity to sell goods / services to a particular buyer. The prices tendered typically decrease until the auction is brought to a close.

2.5.11 Public Private Partnership (PPP)

- a) If there is a need, SARS may enter into a PPP in accordance with the National Treasury Regulations.

2.6 Evaluation

2.6.1 Pre-qualification of bidders

- a) The pre-qualification and evaluation criteria are approved by the Bid Evaluation Committee (BEC) or buyer before the tender or quotations are opened.
- b) After the closing date and time of the tenders / quotations, the tender office or buyer will open and record all bids received. The recording is followed by qualifying or disqualifying bidders based on the minimum criteria decided upfront by the BEC or buyer.

2.6.2 Technical evaluation

- a) The need to invite and evaluate bids on the basis of functionality depends on the nature of the commodity or service that is required. Where functionality is an evaluation criterion, this is communicated to the bidders. The bids will indicate the following:
 - i) The evaluation criteria for measuring functionality; and
 - ii) The applicable value as well as minimum threshold set for functionality.
- b) Bids that do not meet the minimum threshold on functionality will be disqualified.

2.6.3 Pricing evaluation

- a) Bidders that meet the minimum threshold on functionality will be evaluated on the 80/20 or 90/10 principle where 80 (eighty) and 90 (ninety) points must be used for price and 20 (twenty) or 10 (ten) points be used for Black Economic Empowerment (BEE).
- b) The prescribed formulae from National Treasury shall be used to calculate the points awarded for pricing.
- c) SARS is not obliged to accept the lowest price, as price is not the only consideration.

2.6.4 BBBEE

- a) When scoring BBBEE bidders, documents referred to in subsection 2.2(d) shall be considered.
- b) 20 (twenty) points will be calculated for procurement equal to or above R30 000 up to R500 000 (all applicable taxes included).
- c) 10 (ten) points will be calculated for procurement above R500 000 (all applicable taxes included).
- d) National Treasury may from time to time amend the proportions and the points.

2.6.5 Other evaluation criteria

- a) SARS supports South Africa's industrial policies such as the National Infrastructure Protection Plan, the Individual Partnership Alliance Plan, the New Growth Plan and any other government policies that might be issued at any given time.

2.7 Cancellation of tender anytime before awarding

- a) SARS may cancel a tender at any time before the awarding process where one (1) or more of the following conditions apply but not limited to these:
- i) When no tender has been submitted within the specified deadline;
 - ii) When it is established that the tender documents contain terms or technical specifications that cannot be met by any tenderers or that specifications lead exclusively to the appointment of a specific supplier;
 - iii) When the prices of all tenders meeting the terms and technical requirements of the tender documents are unrealistic or appear to be the product of collusion between the tenderers;
 - iv) When the circumstances under which the tender was published have changed to such an extent that the scope of the tender is no longer necessary or relevant;
 - v) When any other serious unforeseeable reason which is deemed to be justifiable, occurs, for example funds are no longer available to cover the total envisaged expenditure; or
 - vi) When bidders do not meet the minimum requirements.

2.8 Exclusion of tenderer from further business

- a) SARS may at its discretion decide to exclude a tenderer from further procurement processes in cases where one or more of the following actions prevail;
- i) The tenderer has carried out a contract emanating from a tender process in an unsatisfactory manner or has breached a condition of such contract;
 - ii) The tenderer has offered, promised or given a bribe in relation to the obtaining or the execution of such contract;
 - iii) The tenderer has acted in a fraudulent or improper manner or in bad faith towards SARS or any Government Department or towards any public body, enterprise or person; or
 - iv) The tenderer has made an incorrect statement in the affidavit or certificate with regard to the local content of his/her goods or his/her BEE involvement and is unable to prove to the satisfaction of SARS that:
 - A) He/she made the statement in good faith honestly believing it to be correct;
 - B) Before making such statement he/she took all reasonable steps to satisfy himself/herself of its correctness; and
 - C) Caused SARS damage or incurred costs in order to meet the contractor's requirements and which could not be recovered from the contractor.
- b) Depending on the seriousness of the wrongdoing, the SARS authorised body may decide, after consultation with all the role-players, to also terminate all other existing contracts between the said enterprise and SARS and/or SARS may institute any legal course of action it may deem to be appropriate.

2.9 Communication of the decision to accept tenders

- a) All tenders that were awarded will be published on the SARS website.

2.10 Tax clearance certificates (TCC)

- a) No contract above R30 000 will be awarded to a tenderer who failed to submit an original TCC certifying that the tax affairs of the tenderer are in order or provide written proof from SARS that suitable arrangements have been made with SARS to remedy an adverse situation.

3 REFERENCES

3.1 Legislation

TYPE OF REFERENCE	REFERENCE
Legislation and Rules administered by SARS:	South African Revenue Service Act No. 46 of 2002: All
Other Legislation:	Companies Act No.71 of 2008: Sections 30 and 75 Constitution of the Republic of South Africa, 1996: Sections 9(2) and 217 Broad-Based Black Economic Empowerment Act No. 53 of 2003: Sections 9 and 11 Code of Good Practice under section 9(1) of the Broad-Based Black Economic Empowerment Act No. 53 of 2003: All Preferential Procurement Policy Framework Act No. 5 of 2000: All Public Finance Management Act No. 29 of 1999: Sections 44; 49; 50; 51(1) (a) to (d); 56; 57 and 76 and 77 Government of the Republic of South Africa General Procurement Guidelines: All Regulations in terms of the PFMA, 1999 - Framework for Supply Management Chain: All
International Instruments:	None

3.2 Cross References

DOCUMENT #	DOCUMENT TITLE	APPLICABILITY
AS-TCC-02	External Policy - Tax Clearance Certificates	All

4 DEFINITIONS AND ACRONYMS

BBBEE	Broad Based Black Economic Empowerment
BEC	Bid Evaluation Committee
BEE	Black Economic Empowerment
CIDB	Construction Industry Development Board
PMFA	Public Finance Management Act
PPP	Public Private Partnership
RFI	Request for information
RFP	Request for proposal
RFQ	Request for quotation
SOEPF	State Owned Enterprise Procurement Forum
TCC	Tax Clearance Certificate

5 DOCUMENT MANAGEMENT

Designation	Name / Division
Business Owner:	Chief Financial Officer
Policy Owner:	Executive: Process Solutions Customs & Support Services
Author:	J Magana
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