

**POLICY STRATEGY TO GUIDE UNIFORMITY IN  
PROCUREMENT REFORM PROCESSES IN  
GOVERNMENT**

**(07-04/2003)**

## **EXECUTIVE SUMMARY**

### **1. OBJECTIVES**

This policy strategy intends to achieve the following high level objectives:

- Promoting uniformity in the processes relevant to the repealing of tender board legislation in the various spheres of government and devolving the responsibility and accountability for procurement-related functions to accounting officers/authorities.
- Promoting uniformity in the various spheres of government in the interpretation of government's preferential procurement legislation and policies, also in the context of other broad-based but related legislative and policy requirements of government.
- Replacing the outdated procurement and provisioning practices in government with a supply chain management function and a systematic competitive procedure for the appointment of consultants as an integral part of financial management in government that conforms to internationally accepted best practice principles.
- Introducing parameters for the promulgation of a regulatory framework in terms of the PFMA and MFMA to ensure compliance to minimum norms and standards; but in such a manner that the principles of co-operative governance are observed.

### **2. BACKGROUND**

Procurement reforms in government started in 1995 and were directed at two broad focus areas, namely the promotion of principles of good governance and the introduction of a preference system to address certain socio-economic objectives. The procurement reform processes were supported by the introduction of a number of legislative measures, including the adoption of the PFMA and the PPPFA.

The procurement reform initiatives were given further impetus when in November 2000, the "Report on Opportunities for reform of Government Procurement in South Africa" served before Cabinet. Cabinet endorsed the

thrust of the report and directed that the Minister of Finance, in consultation with other relevant Ministers, address the details where necessary.

As the procurement reform measures in the national sphere of government were replicated by the other organs of state, very divergent interpretations of government's procurement objectives and strategies became prevalent. To assist the National Treasury in guiding a more uniform implementation approach, a Joint Country Procurement Assessment Review (CPAR) was conducted during 2001/02 with the World Bank. The CPAR revealed a number of deficiencies that needed to be addressed. These deficiencies are summarized below under issues that relate to governance aspects and aspects that relate to the interpretation and implementation of the PPPFA and its associated regulations.

## **2.1 Governance issues**

- The need to issue a single national legislative framework in terms of section 76(4)(c) of the PFMA and 106(1)(d) of the MFMA to guide uniformity in procurement reform initiatives in the different spheres of government.
- The need to replace the outdated and inefficient procurement and provisioning practices in government with a supply chain management function and a systematic competitive system for the appointment of consultants that are fully integrated with the financial management processes in government and that conform to internationally accepted best practices.
- The need to prescribe minimum norms and standards to promote uniformity in bid documentation, advertising, receipt and adjudication procedures.
- The need to monitor value for money performance.

## **2.2 Issues relevant to the implementation of the PPPFA and its associated regulations**

- The PPPFA and its supporting regulations are complex and therefore difficult to implement correctly.

- Preferential procurement policies are not clearly formulated and targets are not set for the introduction of sunset and graduation provisions once targets had been achieved.
- Procurement practitioners are not adequately trained in the application of the PPPFA and its associated regulations.
- The costs and outcomes of the PPPFA are not assessed adequately to evaluate the merits of the system.
- There is inadequate provision for capacity building for disadvantaged enterprises to successfully compete for government contracts.
- Certain organs of state apply set-aside practices, instead of the prescribed preference points system.
- Certain departmental policy directives are in conflict with the provisions of the PPPFA.

This policy strategy intends to address the above aspects by means of appropriate interventions by the responsible authorities in the various spheres of government. In addressing these matters, uniformity in supply chain management practices and procedures will be promoted in a spirit of co-operative governance.

### **3. Policy Interventions**

The following policy interventions are necessary:

#### **3.1 Introducing an integrated supply chain management function:**

The introduction of an integrated supply chain management function intends to address the division between the current outdated procurement and provisioning processes in government that cause the present system to be inefficient in its method of procurement, contract management, inventory/asset control and obsolescence planning.

Supply chain management is an integral part of financial management that seeks to introduce internationally accepted best practice principles, whilst at the same time addressing government's preferential procurement policy objectives.

The integrated supply chain management process, where value is added at every stage of the process, is depicted in the diagram on page 20 of this policy strategy document. The process will link to government's budgetary planning processes, but will also strongly focus on the outcomes of actual expenditure in respect of the sourcing of goods and services.

### **3.2 Introducing a systematic competitive procedure for the appointment of consultants**

It is necessary that certain minimum requirements of quality and efficiency be achieved when appointing consultants. It is also necessary to ensure that advice that is being solicited is unbiased, that is, being delivered by a consultant/s acting independently from any affiliation, economic or otherwise, which may cause conflicts between the consultant's interests and those of government.

It is also necessary to impose measures to ensure that assignments to consultants are executed in such a way that the ethical principles of the relevant consultancy profession are met at all times.

### **3.3 Introducing a national legislative framework to enforce minimum norms and standards and uniformity in respect of supply chain management practices and the interpretation of policy objectives:**

The promulgation of a regulatory framework in terms of section 76(4)(c) of the PFMA and section 106(1)(d) of the MFMA when the latter Act is finally promulgated will establish the policy parameters for the repealing of the existing tender board legislation and will prescribe minimum norms and standards for supply chain management practices in government.

The regulatory framework will further empower the National Treasury to facilitate the arranging of certain transversally used term contracts in instances where it might be more beneficial from a value for money perspective and/or in achieving government's preferential procurement policy objectives. The regulatory framework will also establish minimum reporting

requirements for accounting officers/authorities which will empower the National Treasury to monitor compliance to minimum norms and standards and policy outcomes so as to regularly report progress to Cabinet.

Uniformity in supply chain management practices would amongst others be promoted through uniformity in bid and contract documentation and options and standards of bid policies and procedures.

The 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 treasurers and municipal managers will issue further practice notes in a cascading fashion to guide the more detailed implementation of supply chain management functions.

In more fully addressing the deficiencies associated with the current PPPFA and its associated regulations, it is recognised that amendments to the Act and regulations would be necessary, particularly in respect of the need to more effectively achieve government's BEE policy objectives. This aspect will be addressed as an integral part of the process associated with the promulgation of the Broad Based Black Economic Empowerment Bill and implementing the principles and philosophies contained in its supporting strategy document during the course of 2003.

#### **4. IMPLEMENTATION STRATEGY**

The very substantial divide between the current outdated procurement and provisioning practices in government and the new integrated supply chain management function necessitates a phased implementation approach.

To prepare departments for the new concepts, tender boards, in liaison with the relevant treasuries, should begin to significantly delegate their authority to procurement departments so that the latter can begin to build capacity. In this endeavour, accounting officers/authorities should be supported by their relevant treasuries.

Capacity building would include the establishment of supply chain management units in the relevant CFO structures, the establishment of clear

lines of authority and accountability and performance criteria for the minimising of risk, quicker and more efficient sourcing and better asset and inventory management.

It is the responsibility of every accounting officer/authority to ensure that their supply chain management personnel are adequately trained. The National Treasury is in the process of facilitating the development of appropriate training material in conjunction with SAMDI, IPFA and other service providers to assist accounting officers/authorities in the training of their personnel.

The policy strategy document and its supporting regulatory frameworks will initially apply to all national and provincial departments, constitutional institutions, public entities as defined in Schedule 3A and 3C of the PFMA, municipalities and municipal entities defined in the MFMA and all school governing bodies.

The policy strategy will be adapted to also include appropriate directives that will be applicable to public entities as defined in schedule 2 of the PFMA, after the amendment of the PPPFA and its associated regulations. The latter Act and its regulations will be aligned with the provisions of the Broad Based Black Economic Empowerment Bill and its supporting Strategy document during 2003, in such a way that preferential procurement targets will be set and incorporated into policy charters that will be issued by the Minister of Trade and Industry. These policy charters and the associated targets will also be applicable to schedule 2 public entities.

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## **PART 1**

### **1. INTRODUCTION**

#### **1.1. Background**

At the outset of the procurement reform process in 1995, it was recognised that a consistent legislative framework would be required to give effect to government's procurement reform policy objectives. As an interim measure, it was recognised that procurement reforms would have to be limited to those measures that could be implemented within the ambit of existing legislation. A 10 Point (Interim Strategies) Plan was adopted during November 1995. The 10 points of this plan encompassed 10 strategies designed to impact positively on the participation in the bidding system of small, medium and micro enterprises, with emphasis on the disadvantaged and marginalised sectors and with a focus on employment creation.

A Green Paper on Public Sector Procurement Reform in South Africa was published in April 1997. The Green Paper recognised that public sector procurement could be used by government as a mechanism to also achieve certain broader policy objectives such as black economic empowerment, local economic development spin-offs for small and medium sized business, skills transfer and job creation. To achieve this, institutional and economic reform was necessary within two broad themes, namely, to establish principles of good governance in the area of supply chain management and to introduce a preference system to achieve certain socio-economic policy objectives.

During November 2000 a memorandum served before Cabinet to propose certain changes to the procurement system in government. This Cabinet memorandum was supported by the "Report on Opportunities for reform of Government Procurement in South Africa" – the Roger Webb report.

Cabinet endorsed the thrust of the report and directed that the Minister of Finance, in consultation with other relevant Ministers, address the details where necessary.

Provinces also replicated the procurement reform initiatives. However, very divergent interpretations of government's procurement objectives and strategies became prevalent.

To assist the National Treasury in adopting a more uniform implementation approach, the National Treasury conducted a Joint Country Procurement Assessment Review (CPAR) with the World Bank during 2001/02.

The CPAR identified a number of issues that needed to be resolved. These issues could be classified into two main categories: firstly issues that require attention from a governance perspective and secondly, issues that relate to problems experienced in respect of the implementation of the PPPFA and its supporting regulations.

#### **1.1.1 Governance issues**

The following is a summary of the main aspects that needed to be resolved to improve governance in the procurement and provisioning systems of government:

- Serious conflicts of interest are prevalent due to the constitution of bid adjudication bodies. Following the Cabinet decision of November 2000, provinces initiated their processes to review their tender board legislation. The new legislation did however not in all instances address the potential conflict of interests caused by the constitution of the new tender adjudication bodies.
- The procurement and provisioning procedures in government are overly rule driven, where value for money is almost always equated to the lowest price tendered. The emphasis is almost exclusively focused on the monitoring of inputs, with little or no regard to the outcomes of procurement and provisioning processes.
- Procurement and provisioning activities are executed almost as stand-alone processes, where there is little or no linkage to budgetary planning. The current cash-based accounting in government encourages poor asset management practices, where asset management is focused mostly on

an inventory control approach, rather than on the concept of a satisfactory financial and developmental return that needs to be realized on the capital that is invested in goods, services and inventories/assets. This aspect is also being addressed in a broader context through the implementation of the PFMA.

- There is a lack of uniformity in bid documentation, advertising, receipt and adjudication procedures. This causes uncertainty and inefficiencies, not only on the part of bidders, but also within government.
- Data on contract awards and completion is not collected systematically throughout government. This makes it difficult to monitor value for money performance.
- Consultants are not selected in a systematic and competitive manner, despite the very substantial amounts expended annually by government to engage the services of consultants.

#### **1.1.2 Issues relevant to the implementation of the PPPFA and its associated regulations**

The following is a summary of the issues that were related to the implementation of the PPPFA and its associated Regulations:

- The PPPFA and its associated regulations are complex and therefore difficult to implement correctly. The PPPF Act and Regulations prescribe a definition of HDIs that should be used in granting preference points in the awarding of contracts. The definition includes, but is not exclusive to the promotion of BEE. This causes great confusion and in certain instances a total disregard of the definition in the PPPFA and its associated Regulations. A second set of problems in applying the definition arises from the fact that the definition is circumvented by way of large scale fronting practices that take place. The situation is aggravated by the fact that the PPPFA policies were not properly formulated and that national targets were not set in respect of important policy objectives such as the promotion of HDIs and SMMEs. This problem is further aggravated by the fact that procurement practitioners are not adequately trained in the

application of the PPPFA and its associated regulations. (It is estimated that there are about 15000 officials directly and indirectly involved in the procurement and provisioning area throughout government.)

- The costs and outcomes of the PPPFA are not assessed adequately to evaluate the merits of the system. This is mainly due to the lack of a systematic and consistent collection of data throughout government.
- There is inadequate provision for capacity building for disadvantaged enterprises to successfully compete for government contracts, despite the fact that the 80/20 and 90/10 points system as prescribed in the PPPFA provide for the payment of a premium of 25 percent in respect of contracts of R500 000 and below and 11.1 percent in respect of contracts above R500 000, for the awarding of contracts to disadvantaged enterprises.
- In addition to the incorrect application of the PPPFA and its associated Regulations in certain cases where set-aside practices are prevalent instead of applying the prescribed preference points system, certain departmental policy directives are also in direct conflict with the provisions of the PPPFA.

During March 2003 Cabinet adopted a Strategy On Black Empowerment and also The Broad Based Black Economic Empowerment Bill, 2003. The Strategy Document and Bill were advertised for public comment with a view of promulgating the Bill during 2003.

The Strategy Document also highlights the problems that are experienced with the implementation with the PPPFA and its associated Regulations and proposed a framework for the review of the Act and regulations.

This policy document proposes a framework for certain more immediate policy interventions that aim to correct the governance deficiencies associated with supply chain management practices and also to enhance uniformity in the interpretation of government's preferential procurement policies.

The PPPFA and its associated Regulations will be reviewed during the course of 2003 as an integral part of the process to promulgate the Broad Based Black Economic Empowerment Bill, 2003.

**Accounting officers/authorities would however be required to continue to implement the current PPPFA and its Associated Regulations until such time that the Act and Regulations are formally amended.**

## **1.2 Legislative Environment**

This Policy Strategy is provided against the background of the provisions of the Constitution and subsequent enabling legislation and the promulgation of new BEE legislation and amendments to the PPPFA as contemplated by government.

### **1.2.1 Constitutional Provisions**

Section 217(1) of The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) (The Constitution) provides the basis for procurement and determines that:

**“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”.**

Section 217(3) of The Constitution, 1996 further confers an obligation for national legislation to prescribe a framework providing for preferential procurement to address the social and economic imbalances of the past.

### **1.2.2 Enabling Legislation for a preferential procurement system**

The Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) and its accompanying Regulations were promulgated to prescribe a framework for a preferential procurement system. This Act and its Regulations incorporate the 80/20 and 90/10 preference point systems.

Sections 215-219 of The Constitution, 1996 further require that the National Treasury introduce uniform norms and standards within government, to ensure transparency and expenditure control measures, which should include best practices related to procurement and provisioning systems.

### **1.2.3 Financial enabling Legislation**

The Public Finance Management Act, 1999 (Act 1 of 1999 as amended by Act 29 of 1999) (PFMA) was promulgated to regulate financial management in the national and provincial spheres of government. The Municipal Finance Management Bill (MFMA) of 2002 will extend the same principles to municipalities. It is the responsibility of the National Treasury to foster coherent financial management in all organs of state, across all three spheres of government. At the same time considerable powers are assigned to accounting officers, accounting authorities and municipal managers to enable them to manage their financial affairs within the parameters laid down by the prescribed norms and standards. Both the PFMA and the MFMA require National Treasury to monitor the compliance of these prescribed norms and standards.

This policy document determines the underlying support structure that sets the parameters for the execution of supply chain management within government; and aim to formulate and consolidate supply chain management policies in all spheres of government and for all organs of state as outlined in paragraph 1.3 below.

- The onus of responsibility for supply chain management is placed on the accounting officers/authorities and municipal managers, thereby giving effect to section 38(1)(a)(iii) of the PFMA and section 36(a) of the MFMA. The Supply Chain Management Policy is strengthened by the issuing by the National Treasury of a framework as contemplated in terms of section 76(4)(c) of the PFMA and 106(1)(d) of the MFMA. This framework will determine specific norms and standards for supply chain management.
- To make all this possible and ensure uniformity in legislation, it would be necessary for both the national and provincial legislatures to repeal the respective Tender Board Acts.
- This Policy Strategy and the subsequent framework to be issued in terms of section 106(1)(d) of the MFMA would also replace regulations regarding the calling of tenders at municipal level as issued in terms of the Local Government Transition Act (as amended) by the Minister for Provincial Affairs and Constitutional Development published in Government Gazette No R.1224 dated 2 October 1998 and its amendments as published in No. R.387 dated 26 March 1999 (refer to Local Government Transition Act (as amended) and Municipalities in particular.

### **1.3 Scope of application of the supply chain management policy**

The Policy Strategy will apply to the acquiring and disposing of all goods, services, construction and road works and immovable property of all constitutional institutions, public entities as defined in schedule 3A and 3C of the PFMA, national and provincial departments, trading entities, municipalities and municipal entities as defined in the MFMA and all school governing bodies whether or not they have been assigned additional responsibilities in terms of section 21 of the South African Schools Act, 1996.

The successful implementation of this Policy Strategy is dependent on the principles of co-operative governance and intergovernmental relations as worded in sections 40 and 41 of the Constitution, enshrining the autonomy of each sphere whilst regulating the relationship between those spheres. This

concept is carried consistently throughout the Constitution particularly in sections 139 and 146.

#### **1.4 Objectives of supply chain management policy**

The objectives of this Policy are:

- To give effect to the provisions of The Constitution, 1996;
- To give effect to the provisions of the PFMA and the MFMA;
- To transform the procurement and provisioning functions in government into an integrated supply chain management function;
- To introduce a system for the appointment of consultants;
- To create a common understanding and interpretation of government's preferential procurement policy objectives; and
- To promote consistency in respect of supply chain policy and other related policy initiatives in government.

#### **1.5 Definitions and interpretations**

- Accounting Officers: As defined in section 36 of the PFMA, and includes for ease of use throughout this document also municipal managers as defined in the MFMA.
- Accounting Authority: As defined in section 49 of the PFMA and section 58 of the MFMA.

## **PART 2**

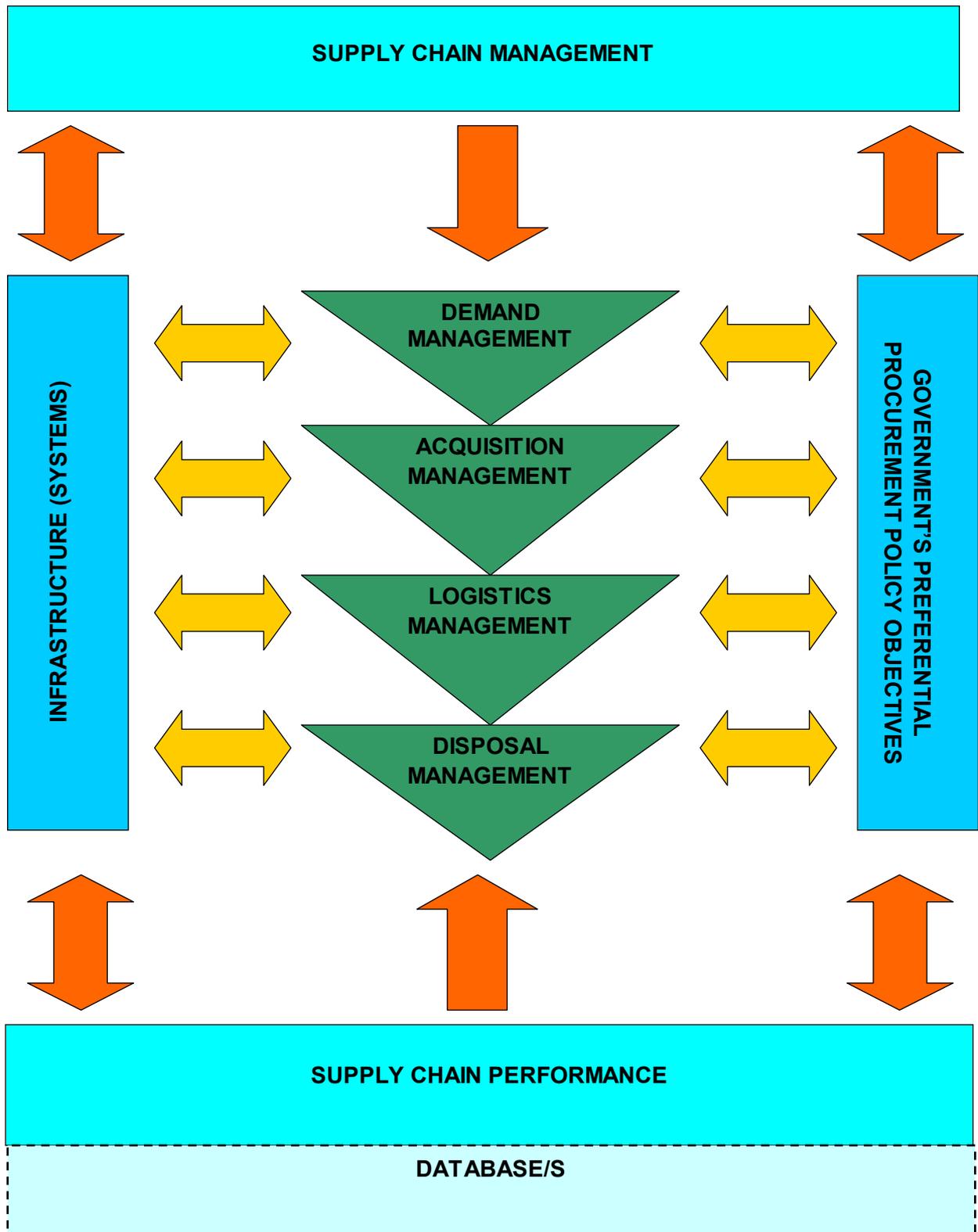
### **2. INTRODUCING THE CONCEPT OF SUPPLY CHAIN MANAGEMENT**

#### **2.1 Supply Chain Management**

Supply chain management is an integral part of financial management, which intends to introduce international best practice. It seeks to breach the gap between traditional methods of procuring goods and services and the balance of the supply chain and at the same time addressing procurement related matters that are of strategic importance.

The introduction of the principles of supply chain management will require of accounting officers and accounting authorities to extract accurate commercial and other relevant information, so as to effectively measure the achievement of government's procurement objectives.

The elements of government's supply chain management processes are depicted in the diagram below, where value is added at each phase of the process.



Current work in the National Treasury includes the development of a systems master plan for an integrated financial management system that conforms to

the requirements of the PFMA. This master plan will include the systems requirements, including the requirements of E-commerce, to more fully support the adoption of the proposed integrated supply chain management function.

Accounting officers/authorities are therefore required not to acquire new information technology support for the implementation of the new supply chain management function without consulting the National Treasury.

### **2.1.1 Demand Management**

This is the beginning of the supply chain where the following functions should take place:

Determining a needs assessment dealing with issues such as:

- Understanding future needs;
- Identifying critical delivery dates;
- The frequency of need;
- Linking the requirement to the budget;
- Doing an expenditure analysis (based on past expenditures);
- Determining the specifications;
- Doing a commodity analysis (checking for alternatives); and
- Doing an industry analysis.

This is a cross-functional exercise that brings the supply chain practitioner closer to the end user and ensuring that value for money is achieved.

### **2.1.2 Acquisition Management**

This is the stage where:

- The preferential procurement policy objectives are identified that could be met through the specific contract;
- The strategy of how the market is to be approached is determined;
- Applicable depreciation rates are determined;
- The total cost of ownership (TCO) principle is being applied e.g.
  - Life cycle cost;
  - Inventory carrying cost;
- The bid document would be compiled, attaching all necessary required documents and giving conditions etc;
- The bid evaluation criteria is determined;
- Bids would be evaluated and recommendations tabled;
- Contract documents would be compiled and signed;
  
- Contract administration is done; and
- Contract information is used to kick-start the logistics management process.

### **2.1.3 Logistics Management**

For stock or inventory items the following functions will amongst others be performed:

- Coding of items;
- Setting of inventory levels;
- Placing of orders;
- Receiving and distribution of material;
- Stores/Warehouse management;
- Expediting orders;
- Transport management; and
- Vendor performance etc.

For fixed capital items (construction and road projects, immovable property) a similar process, mutates mutandis has to be adopted, i.e. appropriate classification, additions to asset and property register, valuation, main use, etc.

From this process the financial system is activated to generate payments.

#### **2.1.4 Disposal Management**

At this stage:

- Obsolescence planning or depreciation rates per item required to be calculated;
- A data base of all redundant material is kept;
- Material is inspected for potential re-use;
- A strategy is determined of how the items are going to be disposed of; and
- Executing the physical disposal process.

Again a similar set of procedures is applicable to fixed capital stock, i.e. depreciation, maintenance and replacement planning and costing, etc.

#### **2.1.5 Supply Chain Performance**

Here a monitoring process takes place, undertaking a retrospective analysis to determine whether the proper process is being followed and whether the desired objectives are achieved.

Some of the issues that may be reviewed are:

- Achievement of goals;
- Compliance to norms and standards;
- Savings generated;
- Stores efficiency;
- Cost variance per item;
- Contract breach etc;
- Cost efficiency of procurement process (i.e. the cost of the process itself);
- Whether supply chain objectives are consistent with government's broader policy focus – also refer to paragraph 3.7 of this Policy document;
- That the material construction standards become increasingly aligned with those standards that support international best practice;

- That the principles of co-operative governance as expounded in the Constitution are observed; and
- That the reduction of regional economic disparities are promoted.

## PART 3

### 3. SPECIFIC GUIDELINES/POLICY OBJECTIVES/REQUIREMENTS

#### 3.1 Good Governance

In order to achieve the ideals of good governance and to address deficiencies in supply chain management, fundamental institutional reforms will have to be implemented. Such reforms need to promote efficient and effective procurement and provisioning systems and practices that enable government to deliver the required quality and quantity of services to its clients. The establishment of uniformity in procedures, policies, documentation and contract options and the implementation of sound systems of control and accountability should form the cornerstone of institutional reform.

The development of a world-class professional supply chain management system should result in continuing improvement in affordability and value for money, based on total cost of ownership, and quality of procurement, through the enhancing of competition amongst suppliers. Organs of State, in dealing with suppliers and potential suppliers, should, but not be limited to:

- Preserve the highest standards of honesty, integrity, impartiality and objectivity;
- Be fair, efficient, firm and courteous;
- Achieve the highest professional standards in the awarding of contracts, so as to maximise value for money while adhering to international standards;
- Provide clear specifications of requirements which encourage innovation and refer, where appropriate, to relevant technical and other standards;
- Make available as much information as suppliers need to respond to the bidding process, and to define and publicise procurement contact points;
- Manage the bidding process so that genuine competition is preserved and discrimination is avoided;
- Make available the broad criteria intended for the evaluation of bids, to evaluate bids objectively, and to notify the outcome promptly;
- Within the bounds of commercial confidentiality, to debrief un/successful bidders of the outcome of the bidding process so as to facilitate better performance on future occasions;

- Achieve the highest professional standards in the management of contracts;
- Pay promptly for work done in accordance to standards as set by a legal and binding contract; and
- Respond promptly, courteously and efficiently to suggestions, enquiries and complaints.

In furthering these principles, labour standards must not be compromised. Furthermore, suppliers must demonstrate "good standing" as far as all their tax, levy and service charge obligations are concerned as a prerequisite to doing business with government. Failure to meet such obligations should be sufficient grounds for exclusion from participation in public sector procurement. All databases reflecting contracting activities should be made accessible to officials of the South African Revenue Services (SARS).

### **3.2 National Treasury standards**

National Treasury should set standards whether through regulation or other methods that:

- Recognise the requirements of consistency in terms of other policy initiatives in government;
- Ensures that material construction standards become increasingly aligned with those standards that support international best practice;
- Establishes selection standards for the appointment of consultants;
- Observes the principles of co-operative governance as expounded in the Constitution; and
- Promote the policy objectives as outlined in the PPPF Act and its accompanying Regulations.

What the former implies is an overall national envelope that sets the guiding and regulatory framework within which all organs of state should restructure their current procurement and logistic efforts to be able to comply with this Policy Strategy. What is foreseen is a cascading set of documents structured as follows:

- This Policy Strategy, which also draws in the PPPFA and its Regulations,
- The Framework to be issued in terms of section 76(4)(c) of the PFMA and section 106(1)(d) of the MFMA.
- Other National Treasury Guidelines mainly directed at National Accounting Officers and National Accounting Authorities to assist them in fulfilling their obligations.
- Other National Treasury Guidelines directed at Provincial Treasuries to assist them in fulfilling their provincial responsibilities.
- Provincial Treasury Instructions and Guidelines directed at provincial accounting officers and provincial accounting authorities ensuring fulfilment of their responsibilities in the Provincial sphere.
- Accounting Officers Directives and standards in terms of section 38 of the PMFA and section 36 of the MFMA.
- Accounting Authority Standards, issues in terms of section 51(1)(a)(iii) of PFMA and section 59(1)(a)(iii) of the MFMA to enable them to fulfil their fiduciary responsibilities.

### **3.3 Provincial Treasury standards**

Provincial Treasuries will be required to reconfigure their current procurement and logistics sections resulting in a similar Supply Chain Management Office within their organisations to be able to deal with Supply Chain Management responsibilities as provided for in this Policy Strategy and in the PFMA ancillary to the efforts of the National Treasury and their responsibilities. Where applicable, Provincial Treasuries must set complimentary standards within the parameters as set by National Supply Chain Management Office and National Treasury regulations. These standards may not jeopardise national objectives.

### **3.4 Accounting Officer standards (constitutional institutions, national and provincial departments, trading entities and municipal managers)**

Accounting officers should, whilst setting standards and assigning responsibilities, promote the development of a supply chain management system that conforms to this Policy Strategy and its attendant regulations or directives as might be applicable.

### **3.5 Accounting Authority standards (public entities)**

Likewise Accounting authorities should, whilst setting standards and assigning responsibilities, promote the development of a supply chain management system that conforms to this Policy Strategy and its attendant regulations or directives as might be applicable.

### **3.6 Promoting uniformity in supply chain management practices**

Uniformity in supply chain management practices should be promoted in the following manner:

#### **3.6.1 Uniformity in bid procedures, policies and control measures**

Uniformity in bidding procedures and control measures should be enhanced to ensure efficiency and effectiveness in supply chain management. This can be accomplished through:

- The implementation of a uniformed procurement policy at national, provincial and local spheres;
- Ensuring that bidding procedures are easy to interpret, cost effective, inexpensive, quick, transparent and free of corruption; using where necessary bid committees to properly adjudicate bids and advise accounting officers and accounting authorities; and
- A system of supply chain management, which is uniformly applied by all organs of State.

Accounting officers/authorities should ensure that a formal set of delegations is issued to bid evaluation committees. Bid evaluation committees should be constituted of at least three members of whom at least one member should be a supply chain management functionary. When it is deemed necessary, independent experts may also be co-opted to a bid evaluation committee in an advisory capacity.

### **3.6.2 Uniformity in contract documentation and contract options**

The need exists for generic documentation and contract options which can be adapted to cater for specific industry requirements. Bid documents define the rights, risks and obligations of the parties involved in a contract and define the nature, quantity and quality of the goods, services or works to be provided in the performance of the contract. Accordingly, such documentation should be legally and technically correct and should assign risk in an appropriate manner.

Typically, bid documents have to comprise of at least the following core documents:

- Bid conditions of contract;
- Specifications, data sheets/drawings;
- The bid itself; and
- A specific contract agreement stipulating delivery standards and requirements.

Uniformity in bid and contract documentation will promote:

- Ease of entry by new entrants/ emerging enterprises to government procurement;
- Cost effectiveness, both in financial and human resource terms;
- Improved understanding and easier interpretation by new entrants/emerging contractors; and
- Simplification of the documentation process.

Uniformity in contract documentation will result in:

- Bidders being able to more easily determine the scope and extent of risk;
- Easier management of contracts between all potential contracting parties and facilitating the streamlining of administrative procedures;
- Savings in cost and improvement in quality; and
- Greater transparency in terms of cost premiums paid in pursuit of government's preferential procurement objectives.

### **3.6.3 Contracting**

#### **3.6.3.1 Standardisation of bid policies and procedures**

It is imperative that accounting officers/authorities take due care that standardised bid documents are used for all standard procurement of goods and services. In cases where special bid conditions make it necessary to deviate from the standardised bid documentation, it is advisable for accounting officers/authorities to insist that he/she should provide written approval for such deviations; and that the motivation for deviations be documented.

It is the responsibility of the Supply Chain Management Office in the National Treasury to prescribe *pro forma* standardised tender documentation.

#### **3.6.3.2 Subcontracting and Joint Venture Issues**

Government supports the principle that subcontracting and joint venture agreements in its supply chain management activities should be encouraged as a means of furthering its preferential procurement policy objectives – also refer to paragraph 4.2.2 of this Policy Strategy document.

It is furthermore incumbent upon accounting officers to take due care that:

- Subcontractors and partners in joint venture arrangements are engaged in fair and reasonable conditions of contract;
- Contractors who contravene the conditions of contract relating to subcontractors and joint ventures be designated as non-preferred suppliers; and
- Secured payment options only be considered in instances where such options could reasonably and fairly be justified.

### **3.6.4 Appointment of consultants**

Technical quality and independence of advice are key considerations in engaging consultants.

#### **3.6.4.1 Primary reasons for appointment of consultants**

Consultants are engaged principally for the following reasons:

- To provide specialised services for limited periods without any obligation of permanent employment;
- To benefit from superior knowledge, transfer of skills and upgrading of a knowledge base while executing an assignment;
- To provide independent advice on the most suitable approaches, methodologies and solutions of projects.

#### **3.6.4.2 Minimum requirements when appointing consultants**

When appointing consultants, it is necessary to strive to satisfy the following minimum requirements:

- Meeting the highest standards of quality and efficiency;
- Obtaining advice that is unbiased, that is, being delivered by a consultant acting independently from any affiliation, economic or otherwise, which may cause conflicts between the consultant's interests and those of government; and
- Ensuring the advice proposed, or assignment executed, meeting the ethical principles of the consultancy professions.

### **3.6.4.3 Selection methods for the appointment of consultants**

The following are the methods most generally used for the appointment of consultants:

- Quality and cost based selection.
- Quality based selection.
- Selection under a fixed budget.
- Least cost selection.
- Single source selection.

The method of selection is determined by the scope of the assignment, the quality of the service, the complexity of the assignment and whether assignments are of a standard or routine nature.

### **3.6.5 Risk management**

It is imperative that accounting officers/authorities take cognisance of potential risks during the supply chain management process. Due consideration should ideally be given to the following:

- Identification of procurement risk on a case-by-case basis;
- Allocation of risks to the party best equipped to manage such;
- The State bearing the cost of risks where the cost of transferring them is greater than that of retaining them;
- The exercising of risk management in a proactive manner and providing adequately for the cover of residual risks; and
- Contract documentation clearly and unambiguously assigning relative risks to the contracting parties.

Risk management should therefor form part of the business plan for the acquisition of all goods and services.

#### **3.6.5.1 Insurance**

Organs of State should either insure for procurement related physical risks, establish risk management programmes or make advance provision for losses associated with such risks, within the scope of the provisions of paragraph 12 of the Treasury Regulations issued in terms of section 76 of the PFMA.

Suitable arrangements should also be made to ensure that insurance related excesses do not cause the failure of emerging small and micro enterprises.

#### **3.6.5.2 Guarantees**

Performance guarantees should be commensurate with the degree of contractual risk to which organs of State are exposed.

In cases of large and complex contracts, it is advisable to call for bid guarantees to circumvent the submission of irresponsible bids.

Performance guarantees should spread the cost of the risk of failure between the contracting parties and should be set at such a level that all the State's costs relating to such failure are likely to be recovered.

It would be prudent to make adequate provision in all engineering and construction works contracts to ensure that monies are available to rectify defects.

Performance bonds in engineering and construction works contracts should be waived in low value, low risk contracts or

where a third party carries the risk of failure in an acceptable manner.

### **3.6.6 Ethics and fair dealings**

In supply chain management, all parties are required to comply with the highest ethical standards to promote:

- Mutual trust and respect; and
- An environment where business can be conducted in a fair and reasonable manner and with integrity.

All government staff associated with procurement, particularly those dealing directly with suppliers or potential suppliers, are required to:

- Recognise and deal with conflicts of interest or the potential therefor;
- Deal with suppliers even-handedly;
- Ensure that they do not compromise the good standing of the state through acceptance of gifts or hospitality;
- Be scrupulous in their use of public property; and
- Provide all assistance in the elimination of fraud and corruption.

### **3.7 Supply chain management office**

A Supply Chain Management Office has been established in the National Treasury to oversee the implementation of this Policy document in conjunction with Provincial Treasuries and SALGA that is recognised in terms of the organised Local Government Act, Act 52 of 1997 at municipal level. Its main functions are to:

- Formulate and advise on supply chain management policy;
- Administer national procurement legislation and regulations;
- Monitor the performance of Supply Chain Management Units at national, provincial and local government level;

- Serve as a linkage between central government, National Treasury and the different supply chain management units located in organs of State;
- Issue regulations to ensure uniform application of the national supply chain management policy;
- Promote communications and liaison between different supply chain management units;
- Investigate complaints received from the public regarding bid procedures and irregularities;
- Assist supply chain management units in executing the national procurement policy and instituting remedial steps in those units not adhering to or not implementing such policy;
- Maintain a database of non-preferred suppliers;
- Maintain a database to support the monitoring of the extent to which government's procurement reform objectives are met;
- Monitor the manner in which policy is implemented in respect of government's procurement reform objectives, the manner in which targets are set and attained, value for money obtained and delivery mechanisms; and
- Facilitate the arrangement of transversal contracts provided that it is cost-effective.

### **3.8 Linkages between accounting officers/authorities and the supply chain management office**

In terms of sections 38 of the PFMA and 36 of the MFMA, accounting officers/authorities are fully responsible and should be held accountable for any expenditures relating to supply chain management within their line of responsibility. Any expenditure incurred in this regard should be subject to appropriate regulations and accounting officers'/authorities' directives and procedures. However, to ensure uniformity within the supply chain management system, national policy guidelines issued by the Supply Chain Management Office should provide the broad policy parameters. The Supply Chain Management Office must monitor all public sector procurement and should assist any accounting officer in rectifying any deviations from the national policy guidelines, should such deviations occur.

## **PART 4**

### **4. POLICY INTEGRATION**

#### **4.1 Other related policy initiatives**

Government's supply chain policies and practices have direct and indirect linkages to other policy and regulatory matters over a broad front. Government's supply chain policies and practices therefore impact not only on the activities of other policy departments, but also influence the economic behaviour of people, both within and outside the borders of the country. It is therefore imperative that government's procurement reform initiatives remain fully aligned with government's broader policy focus. To this end, the following policy areas are particularly important:

##### **4.1.1 Competition law and regulations**

Competitive business practices are regulated by the Competition Act 89 of 1998, which aim to outlaw:

- Restrictive practices between businesses, or between businesses, their supplier(s) and customers, which hinder competition;
- Price-fixing, collusive tendering, restricting output and investment and market sharing; and the abuse of a dominant position (which, according to the Act, is defined as a market share of 35% or more); and
- Mergers and acquisitions where it is deemed likely that the merger will prevent or reduce competition to a degree that will outweigh the benefits of the merger.

##### **4.1.2 The National Small Business Act**

The National Small Business Act of 1996 establishes a National Small Business Council (NSBC) to:

- Represent and promote the interests of small business, with emphasis on those entities contemplated in the National Small Business Support Strategy; and

- Advise the national, provincial and local spheres of government on social and economic policy that promotes the development of small business.

The Act also establishes the Ntsika Enterprise Promotion Agency (Ntsika). The main functions of Ntsika are:

- To expand, co-ordinate and monitor the provision of training, advice, counselling and any other non-financial services to small business in accordance with the National Small Business Support Strategy;
- To provide financial support to service providers that provide the services to small business;
- To consult with any organ of government, the NSBC or a service provider in order to –
  - facilitate the provision of business advice and counselling services to small business;
  - facilitate access by small business to raw material and other products;
  - facilitate international and national market access for products and services of small business; and
  - generally, strengthen the capacity of –
    - service providers to support small business; and
    - small business to compete successfully in the economy; and
    - to formulate and co-ordinate a national programme of policy research, collection and dissemination of information concerning small business.

#### **4.1.3 Anticorruption measures and practices**

- The Constitution provides for rights such as just administration and access to information and requires high standards of ethics within public administration. Acts passed in recent years relating to transparency and anti-corruption measures have enhanced the ability to combat corruption. It also protects employees making

disclosures against their employers in both the public and private sectors.

Legislation that are aimed at preventing corruption are:

- Public Protector Act of 1998;
- Corruption Act of 1994;
- Protected Disclosure Act of 2000;
- Promotion of Administrative Justice Act of 2000; and
- Promotion of Access of Information Act 2000.

#### **4.1.4 State Information Technology Agency (SITA) Act, (Act No. 88 of 1998, as amended by the SITA Amendment Act, Act No. 38 of 2002)**

Section 7(3) of the SITA Amendment Act, provides that SITA must act as procurement agency in respect of information technology requirements and procure all information technology goods and services on behalf of every department. All responsibilities were transferred from the National Treasury to SITA on 1 April 2002. All IT-related contracts should therefore be arranged with the assistance of SITA in accordance with the Act and its related Regulations.

#### **4.1.5 Trade policy**

South Africa's offer to the World Trade Organisation (WTO) through its endorsement of the Marrakech Agreement in 1995, consisted of a five year tariff reduction and rationalisation programme. This entailed a reduction to a number of six the number of tariff categories, which had previously numbered more than 100. The only exceptions to the five year tariff rationalisation programme were the clothing and textiles industry and automotive sectors, that were granted 8 years to attain the levels made in the WTO offer.

Government's commitment to trade liberalisation should also be reflected in its supply chain practices, by not precluding foreign companies from bidding for government procurement contracts.

However, where justified, preference points may be awarded to further government's preferential procurement policy objectives.

#### **4.1.6 Labour issues**

Government subscribes to international best practice principles of equitable and fair labour practices. It is therefore incumbent upon accounting officers to ensure that suppliers/contractors comply with all provisions of national Labour Laws. To this extent, it is advisable for accounting officers/accounting authorities to:

- Designate suppliers, service providers or contractors who abuse labour standards, as non-preferred suppliers;
- Ensuring that contracts in contractor development programmes be awarded to emerging contractors only after an independent party has verified that the sum tendered has the potential to meet minimum labour standards;
- Striving for a common wage order applicable to all engineering and construction works projects, which is flexible enough to accommodate payment on the basis of outputs in specific circumstances, in order to remove market distortions and enable bidders to bid on an equitable basis; and
- Linking employment equity to procurement contracts only in instances where it can be adequately defined, quantified, measured, verified, audited and be implemented in a manner in which companies of different sizes are treated equitably.

#### **4.1.7 Safety, health and environment**

Government is committed to the highest standards of safety, health and environmental protection and promotes a culture of "non tolerance". In this regard government promotes occupational health and safety for its employees and that of contractors' employees performing work on site at any of the organs of State. Government subscribes and operates within the framework of all national and

international legal requirements, including but not limited to the Occupational Health and Safety act, Act 85 of 1993.

#### **4.1.8 Public/Private/Partnerships**

Whenever goods, works and/or services are procured by means of public private partnerships or part thereof, Treasury Regulation 16 should be adhered to.

#### **4.1.9 New partnership for Africa's development (NEPAD)**

The New Partnership for Africa's Development is an initiative to accelerate a new relationship with the highly industrialised countries to overcome the widening development chasm between them and the African continent.

A commitment is fostered on the part of governments, the private sector and other institutions of civil society towards the meaningful integration of all nations into the global economy and body politic. This requires the recognition of global interdependence in respect of production and demand, the protection of the environmental base that sustains the planet, reversal of the skills-loss from the continent and a global financial architecture that rewards good socio-economic management and global governance.

African leaders will, amongst others, take joint responsibility for the following:

- Restoring and maintaining macro-economic stability, especially by developing appropriate standards and targets for fiscal and monetary policies and introducing appropriate institutional policies to achieve these standards;
- Instituting transparent legal and regulatory policies for financial markets and auditing of private companies and the public sector;
- Promoting the role of women in social and economic development by reinforcing their capacity in the domains of education and

training; by the development of revenue-generating activities through facilitating access to credit; and by assuring their participation in the political and economic life of African countries.

For each sector, however, the objective is to bridge existing gaps between Africa and the developed countries so as to improve the continent's international competitiveness and to enable her to participate in the globalisation process.

South African supply chain management practices should thus aim to support the objectives of NEPAD by:

- Being sensitive to possibilities for increasing production and improving the competitiveness and diversification of the domestic private sector, especially in the agro-industrial, mining and manufacturing sub-sectors, with potential for exports and employment creation;
- Promoting uniform standards;
- Harmonising technical regulatory policies;
- Being sensitive to opportunities for the development of new industries, or upgrading of existing ones, where comparative advantages are prevalent, including agro-based industries and energy and mineral resource-based industries;
- Facilitating partnership through the development of mechanisms, such as joint business councils for information sharing between non-African and African firms and for facilitating processes towards the establishment of joint ventures and subcontracting arrangements.

#### **4.1.10 Black Economic Empowerment (BEE)**

The definition of Historically Disadvantaged Individuals (HDIs) as expounded in the PPPFA and its associated regulations includes, but is not exclusive to BEE. This aspect created considerable confusion amongst both supply chain management practitioners and suppliers of goods and services to government.

On 19 March 2003 Cabinet adopted a Broad Based Black Economic Empowerment Bill and a supporting Strategy Document for publication, with a view of promulgating the new Bill during the course of 2003.

The Bill and Strategy envisage the strengthening of government's legislative and other policy instruments towards achieving its BEE objectives. This includes a revisioning of the PPPFA and its associated regulations.

The Bill, when finally promulgated, will amongst others, provide that the Minister of Trade and Industry may issue codes of practice that could include qualification criteria for preferential procurement and other economic activities. The Bill further provides for the development of broad based charters to promote BEE.

This strategy document will be updated as work progresses towards the promulgation of the Bill. However, until such time that the Bill is finally promulgated, it would be necessary for accounting officers/authorities to apply the current PPPFA and regulations.

#### **4.1.11 Proudly South African**

To showcase South Africa as an advanced manufacturing economy, the Department of Trade and Industry has become a key sponsor and strategic partner of the Proudly South African campaign.

In terms of the campaign, South African companies are encouraged to submit interesting and innovative achievements in the manufacturing field – new products, export achievements, new partnerships and successes and milestones.

The objectives of the campaign should be supported through government's supply chain management processes, if and when such opportunities arise.

## **PART 5**

### **5. IMPLEMENTATION STRATEGY**

#### **5.1 A phased implementation approach is required**

It is the responsibility of accounting officers/authorities to work out the detailed implementation of the principles contained in this Policy Strategy document. The measurement of progress of implementation against the implementation plan should form an integral part of the performance agreements of accounting officers.

The introduction of the concept of an integrated supply chain management system for government will contribute significantly towards the improvement of financial management in the broader public sector. At the same time, it will create a consistent framework for achieving government's preferential procurement objectives. It should be realised, however, that the gap between the current procurement and provisioning procedures and practices and those contemplated in this Policy Strategy document is substantial. It would therefore require the adoption of a phased strategy to move from the current position to the new. These phases can be categorised as, firstly, the pre-tender board abolition or preparation phase, secondly, the immediate post-tender board abolition or full implementation phase, and lastly, the support and monitoring phase.

Such a phased implementation strategy would need to include the following measures:

##### **5.1.1 The adoption of a consistent policy strategy for supply chain management in government**

This Policy Strategy document sets the broad parameters for a consistent approach in all organs of state for the introduction of the

principles and philosophies of government's supply chain management function.

To prepare departments specifically for the new concept of supply chain management and increased accountability, tender boards, in liaison with the relevant treasury, should begin to significantly delegate their authority to procure to departments so that the latter can begin to build capacity, to put the necessary systems and structures in place for both procurement and provisioning as envisaged by the PFMA (section 38). In this endeavour, accounting officers must be supported by the relevant treasury, who should issue best practice notes to counter any perceived deficiencies in departments. The latter would also point the way in furthering development work on the new supply chain management concept. Likewise, tender boards (to the extent that they still exist), again working closely with their respective treasuries, must monitor the situation and step in where circumstances might so dictate, but only on the clear understanding that this be a targeted (i.e. directed at a weak department or specific sector) and not a blanket intervention.

Key objectives, apart from giving effect to the PFMA, would be to establish CFO structures, establish clear lines of authority and accountability and performance criteria for the minimising of risk, quicker and more efficient sourcing and better asset and inventory management. In essence this would account for the first phase of preparing for the new supply chain management concept.

The full supply chain management concept, for national and provincial departments would commence on a date after the final repeal of the relevant tender board legislation.

To make sure that all treasuries are acting in unison, the national treasury, as with the implementation of the PFMA, will draw up a checklist to make sure that all relevant aspects are addressed and will also monitor the process of phased implementation to ensure success.

Ongoing work will however be required to more fully develop preferential procurement policy priorities, charters and targets in conjunction with the Department of Trade and Industry and other role players after the promulgation of the Broad Based Black Economic Empowerment Bill during the course of 2003, in terms of which policy charters are issued and targets are identified. These targets should indicate priorities in respect of the different policy priorities, where applicable.

The national procurement policy charters and targets should be used by accounting officers/authorities to set their own short and medium term policy targets at the appropriate contract level.

#### **5.1.2 The adoption of a consistent legislative framework for supply chain management in government**

To adopt a consistent legislative framework for supply chain management, it would be necessary to:

- Repeal all national and provincial Tender Board Legislation by the respective legislatures to allow for preparatory implementation steps. (A provision has already been included in the PFMA amendment Bill to repeal the National State tender Board Act);
- The strengthening of the Policy Strategy as outlined in paragraph 5.1.1 above that has the purpose of ensuring uniformity and a monitoring system, through the issuing of supportive Regulatory Frameworks as contemplated in section 76(4)(c) of the PFMA and 106(1)(b) of the MFMA;
- The publishing by the relevant treasuries of regular practice notes to address relevant supply chain management topics such as performance specifications, procurement documentation, targeted procurement procedures and integrity management.
- The development by Accounting Officers and Accounting Authorities of supply chain management systems as envisaged by section 38 of the PFMA and section 36 of the MFMA.

### **5.1.3 Institutional Reform**

It would be necessary for accounting officers/authorities to adopt the appropriate practices and procedures as contemplated in the PFMA and MFMA as also outlined in this Policy Strategy document and to establish supply chain management units within the offices of CFOs (or equivalents in the case of public and municipal entities).

Adequate CFO capacity in the form of appropriate structures with fully skilled and professional supply chain management personnel are key success factors particularly as supply chain management was either neglected or dealt with in a very fragmented or desultory manner, made worse by a lack of understanding of industry dynamics. The latter has an important bearing on the success or failure of preferential procurement.

Accounting officers/authorities would have to assume direct responsibility for supply chain management processes and come to grips with this entirely new concept, where appropriate planning and management is necessary to ensure success.

A third intervention would be the introduction of depreciation rates linked to the various categories of goods/assets including buildings and roads, so that this can be incorporated into an integrated budgetary planning process.

### **5.1.4 Training**

To fully deploy the supply chain management policy objectives as outlined in this Policy Strategy document, it would be necessary to introduce a dedicated, well-trained, professional supply chain management cadre in government. Training for the supply chain management cadre should include the following:

- General managerial training;
- Financial management training; and

- Specialist supply chain management training

It is the responsibility of every accounting officer/authority to ensure that their supply chain management personnel are adequately trained. The National Treasury will however provide support by facilitating the development of appropriate training material in conjunction with SAMDI, IPFA and other training service providers.

## **5.2 Monitoring and guidance**

### **5.2.1 Supply Chain Management Office**

The Supply Chain Management Office established in the National Treasury will oversee the implementation of this Policy Strategy, and any supporting regulations and standards issued in conjunction with Provincial Treasuries, SALGA (the latter's regional counterparts) and Chief Financial Officers from the different spheres of government.