



Province of the

EASTERN CAPE

SOCIAL DEVELOPMENT
& SPECIAL PROGRAMMES

**CODE OF CONDUCT FOR
PROCUREMENT OFFICIALS POLICY**

Policy Registration No: 2012-316

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DEFINITION AND TERMS

- i. PFMA - means Public Finance Management Act 1999
- ii. SCM - means Supply Chain Management
- iii. PPPFA - means Preferential Procurement Policy Framework Act
- iv. AO - means Accounting Officer
- v. Department - means Department of Social Development and Special Programmes

LEGISLATION FRAME WORK

- 1.1 The following prescripts re-enforces the financial conflict of interest:
- a. Section 38(1)(a)(i) of the Public Finance Management Act (PFMA) No. 1 of 1999 as amended states that the Accounting Officer for a Department must ensure that the Department, has and maintains an effective, efficient and transparent systems of financial and risk management and internal control.
 - b. Section 16A8.3 (a) of the Treasury Regulations of 2005 as amended states that a Supply Chain Management official or other role player must recognize and disclose any conflict of interest that may arise.
 - c. Section C.4.6 of Chapter 2 (code of Conduct) of the Public Service Regulations No.1 of 2001 as amended, read with section 5.12 of the Code of Ethics for the Eastern Cape Public Service states that an employee will recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this should be properly declared by the employee.
 - d. The Code of Conduct for Public Servants (Chapter 2 of Public Service regulations, 2001) requires that "An employee does not engage in any transaction or action that is in conflict with or infringes on the execution of his or her duties." (C.4.3) in addition, "An employee does not, without approval, undertake remunerative work outside his or her official duties or use office equipment for such work." (C.5.5)
 - e. In addition, the Public Service Act , 1994 (Act 103 of 1994 as amended) states: "Unless it is otherwise provided for in his or her conditions of employment (a) every officer and employee shall place the whole of his or her time at the disposal of the State; (b) no officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or by an officer authorised by said authority (Section 30).

1. PREAMBLE

- 1.1 The Department of Social Development & Special Programmes aims to contribute to the improvement of the quality of life of all South African citizens by empowering its communities, especially the historically disadvantaged individuals through a procurement system that would allow all stakeholders to participate in a fair, equitable and competitive manner.
- 1.2 The Department, therefore, takes into account the need for a transparent and effective procurement system that gives effect to the objectives of the Preferential Procurement Policy Framework Act (Act 5 of 2000) and the Regulations to the Framework on Supply Chain Management.
- 1.3 Furthermore it is the intention of the Department of Social Development & Special Programmes to instil standards of integrity, ethical conduct, and professionalism in the Department's evaluation and adjudication of all procurement undertaken by the Department of Social Development & Special Programmes in terms of Treasury Regulation 16A of the Public Finance Management Act, 1999 (PFMA), Supply Chain Management (SCM) Practice Notes and other relevant legislation and directives.
- 1.4 No officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or by an officer authorised by said authority.

2. PURPOSE

- 2.1 In terms of the Constitution of the Republic of South Africa, 1996, section 217:
 - 2.1.1 When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
 - 2.1.2 This Code of Conduct is issued by the Department of Social Development & Special Programmes to instil standards of integrity, ethical conduct, and professionalism in the Department's evaluation and adjudication of all procurement undertaken by the Department of Social Development & Special Programmes in terms of Treasury Regulation 16A of the Public Finance Management Act, 1999 (PFMA), Supply Chain Management (SCM) Practice Notes and other relevant legislation and directives.
 - 2.1.3 This Code of Conduct is intended to:
 - Confirm the SCM Practitioner's commitment to all its prescripts.
 - Guide SCM Practitioners who are faced with ethical dilemmas in an increasingly complex operational environment.
 - Provide a reference for disciplinary and/or prosecuting procedures if a SCM Practitioner is found guilty of fraud or corruption.
 - Serve as a public commitment by the Department to the highest standards of ethical and professional conduct in the execution of SCM functions.

3. SCOPE OF APPLICABILITY.

- 3.1 This policy is applicable to the Eastern Cape Department of Social Development and Special Programme and all its officials.

4. THE HIGHEST ETHICAL STANDARDS.

- 4.1 All SCM officials and all officials of the Department must comply with the highest ethical standards in order to promote:
 - 4.1.01 Mutual trust and respect.
 - 4.1.01.1 An environment where business can be conducted with integrity and in a fair and reasonable manner.
 - 4.1.01.2 Preserve the highest standards of honesty, impartiality and objectivity.
 - 4.1.01.3 Maintain the highest level of impartiality and objectivity.
- 4.2 The SCM officials and role players must treat all providers or potential providers equally whilst still promoting the prescripts governing the procurement.
- 4.3 May not use their position for private gain or to improperly benefit another person.
- 4.4 The Accounting Officer shall take all reasonable steps to prevent abuse, corruption and collusion through at least regular internal audit reviews, and external audit as well as risk assessments in the supply chain environment.

- 4.5 All allegations of corruption, improper conduct or compliance failure shall be reported to the Accounting Officer and investigated by an appropriate individual/organisation appointed by the Accounting Officer.
- 4.6 Take steps against such official or other role player and inform the Provincial Treasury of such steps.
- 4.7 Report any conduct that may constitute an offence to the South African Police Services.
- 4.8 The Accounting Officer shall ensure that the Department of Social Development & Special Programmes considers all complaints received and shall respond thereto in a timely manner.
- 4.9 All bidders and contractors shall be made aware of the ethical standards of the Department of Social Development & Special Programmes, its expectations of them and the consequences of non-compliance.
 - 4.9.01 The application of these standards by bidders that the Department of Social Development & Special Programmes does business with must be promoted.

5 DECLARATION OF INTEREST.

- 5.1 All SCM officials and other role players must recognise and disclose any interest and determine any possible conflict that may arise.
- 5.2 SCM officials, to the extent required by their position, should declare any business, commercial and financial interest or activities undertaken for financial gain that may raise a possible conflict of interest. The Accounting Officer shall determine whether the interest declared, constitutes a conflict of interest in circumstances where it is not clear that it presents a conflict.
- 5.3 SCM officials or other role players should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- 5.4 SCM officials should not take improper advantage of their previous office after leaving their official position.

6 EQUAL TREATMENT.

- 6.1 All SCM officials and other role players must treat all suppliers and potential suppliers equally.
- 6.2 All Department of Social Development & Special Programmes officials associated with Supply Chain Management, particularly those dealing directly with service providers/suppliers or potential service providers/suppliers, are required to:
 - 6.2.01 Provide all assistance in the elimination of fraud and corruption.
 - 6.2.02 Be fair, efficient, firm and courteous.
 - 6.2.03 Achieve the highest professional standards in the adjudication of contracts.

7 ACCOUNTABILITY.

- 7.1 All SCM officials and other role players must be accountable for their decisions and actions to the public as well as to the Department of Social Development & Special Programmes.
- 7.2 The Accounting Officer or its delegate is fully responsible and should be held accountable for any expenditures relating to SCM within its area of responsibility.
- 7.3 Officials should not make any false or misleading entries into the accounting system for any reason whatsoever.

8 CONFIDENTIALITY.

- 8.1 Matters of a confidential nature in the possession of supply chain officials should be kept confidential unless legislation, the performance of duty or the provisions of law requires otherwise. Such restrictions should also apply after separation from service.
- 8.2 Any information that is the property of the Department of Social Development & Special Programmes or its suppliers/service providers should be protected at all times.

9 INDEPENDENCE

- 9.1 All SCM officials and role players may not use their position for private gain or to improperly benefit another person.
- 9.2 If a SCM official or other role player's family member, partner or associate of such official or role player, has any private or business interest in any bid to be submitted or to be adjudicated, such interest must be

disclosed and recorded and the party with the interest must withdraw from participating in the evaluation process relating to the bid if there is a conflict of interest.

10 GIFTS AND HOSPITALITY.

- 10.1 All SCM officials and other role players must:
 - 10.1.01 Ensure that officials do not compromise the credibility or integrity of the Department of Social Development & Special Programmes through the acceptance of gifts or hospitality or any other related act. Officials should exercise caution in the acceptance of such gifts.
 - 10.1.02 The Department of Social Development & Special Programmes shall maintain a gift register in which gifts as well as hospitality received must be recorded in line with the Department of Social Development & Special Programmes policy.
 - 10.1.03 The Department of Social Development & Special Programmes shall determine a value level for gifts that officials may accept and which gifts and/or value level may not at all be considered for acceptance.

11 CONDUCT OF MEMBERS OF BID COMMITTEES

- 11.1 Conduct of all members and non-members must be in accordance with the relevant legislative environment, the National Treasury's Code of Conduct for SCM practitioners and instructions issued from time to time by the Provincial Treasury in this regard.
- 11.2 A member of any Bid Committee, technical advisor or user representative who contravenes or fails to comply with the aforementioned must summarily be dismissed from its role and appropriate steps taken against the person.
- 11.3 It is the responsibility of the SCM Unit to ensure that all members of Bid Committees are aware of the required conduct and that they are provided with a copy of the relevant documentation regulating the behaviour.
- 11.4 Should a member fail to comply, the SCM Unit must draw in the relevant role players such as HR to deal with the issue and to escalate it appropriately.

12 FRAUD AND CORRUPTION.

- 12.1 The Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004 shall be adhered to.
- 12.2 The Department of Social Development & Special Programmes is to ensure that all officials, clients and other stakeholders (including providers) are made aware of the implications of The Prevention and Combating of Corrupt Activities Act.
- 12.3 Fraud prevention and anti-corruption plans should be instituted.
- 12.4 A SCM practitioner or other role player must assist the Accounting Officer in combating corruption and fraud in the SCM system.
- 12.5 The Accounting Officer must reject a proposal for adjudication if he/she determines that the supplier/service provider recommended for adjudication, has engaged in corrupt or fraudulent activities in competing for the contract in question.
- 12.6 Contractors shall observe the highest standard of ethics during the selection and execution of the contract. In terms of this provision corrupt and fraudulent practices can be defined as follows:
 - 12.6.01 Corrupt practice means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.
 - 12.6.02 Fraudulent practise means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Accounting Officer and includes collusive practices designed to establish prices at artificial, non-competitive levels and to deprive the Accounting Officer of the benefits of competition.
- 12.7 Contractors must assist in combating corruption in supply chain management in line with the Prevention and Combating of Corrupt Activities Act, by not giving, receiving or soliciting any item of value to influence the action of an official dealing with supply chain management.
- 12.8 Contractors and Departmental officials must assist in combating procurement fraud through awareness, vigilance and consistent assessment in line with the Prevention and Combating of Corrupt Activities Act by not misrepresenting facts in order to influence a procurement process or the execution of a contract

to the detriment of the Department of Social Development & Special Programmes including collusive practices.

- 12.9 The Constitution provides for rights such as just administration and access to information and requires high standards of ethics within public administration. Recent legislation dealing with transparency and anti-corruption measures strengthen Government's ability to combat corruption and also protects employees from making disclosures against their employers in both the public and private sectors.
- 12.10 All SCM practitioners and other role players must assist the Accounting Officer in combating corruption and fraud.
- 12.11 The Accounting Officer must insist that a provision be included in the contract agreement, requiring contractors to permit the Accounting Officer to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by the Accounting Officer.

13 COMBATIVE PRACTICES

- 13.1 The use of combative practices shall not be allowed.
 - 13.1.01 Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:
 - 13.1.02 Suggestions of fictitious lower quotations.
 - 13.1.03 Reference to non-existent competition.
 - 13.1.04 Exploiting errors in bids.
 - 13.1.05 Soliciting bids from bidders whose names appear on the list of restricted bidders/suppliers/persons.
- 13.2 The use of these practices should be avoided at all costs.
- 13.3 The Accounting Officer shall ensure that the preferential procurement system is not abused for any purpose, neither for the benefit of the Department of Social Development & Special Programmes nor for the benefit of any potential provider/contractor or individual.
- 13.4 All conducts, dealings and actions are to be bona fide.
- 13.5 Any employee suspected of acting contrary to this policy, will be dealt with in terms of the disciplinary code of the Department of Social Development & Special Programmes.
- 13.6 No official of the Department of Social Development & Special Programmes should be involved in or promote the abuse of the preferential procurement system.
- 13.7 Internal control mechanisms should have as objective to at least try and avoid abuse of the system internally.

14 EXTERNAL ABUSE OF THE PREFERENTIAL PROCUREMENT SYSTEM

- 14.1 This Department of Social Development & Special Programmes shall vigorously pursue all legal remedies available in the event that the preferential procurement points system is abused, particularly through for example, but not limited to the following ways:
 - 14.1.01 That a provider or contractor is suspected of contravening Regulation 13 of the PPPFA.
 - 14.1.02 Has promised, offered or given a bribe during the bidding process and/or after conclusion of the contract.
 - 14.1.03 Has acted in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of the contract.
 - 14.1.04 That an agreement was entered into with the contractor on the strength of information furnished by him, and it became apparent after conclusion of such agreement that the information provided was incorrect.

15 FRONTING

- 15.1 The Department of Social Development & Special Programmes shall ensure that, where possible, fronting is identified before a contract is awarded.
- 15.2 Where, after award of a contract it becomes evident that the award made to the organisation based on incorrect information constituting fronting, the appropriate action is to be taken in accordance with all legal remedies available, especially the Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004 and the Promotion of Administrative Justice Act, Act No 3 of 2000.

- 15.3 The Department of Social Development & Special Programmes shall ensure that Regulation 13 of the PPPFA is adhered to i.e. equity ownership, active management and active control.
- 15.4 Where the Department of Social Development & Special Programmes becomes aware of a possible fronting case, the following process that is in accordance with the Constitution, the rules of Administrative Law and the Promotion of Administrative Justice Act, should be followed as a starting point:
 - 15.4.01 The Organ of State must inform the bidder/contractor of the alleged/suspected offence, i.e.
 - 15.4.01.1 That he is suspected of contravening Regulation 13 of the PPPFA or;
 - 15.4.01.2 Has promised, offered or given a bribe during the bidding process and/or after conclusion of contract; or
 - 15.4.01.3 Has acted in a fraudulent manner or in bad faith or in any other improper manner during the bidding process or after conclusion of contract; or
 - 15.4.01.4 That an agreement was entered into with the contractor on the strength of information furnished by him, and it became apparent after conclusion of such agreement that the information provided was incorrect.
- 15.5 The bidder/contractor must also be afforded an opportunity to state their case. This is the application of the principles of natural justice.

16. REVIEW OF THE POLICY

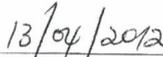
- 16.1 This policy will be reviewed from time to time as changes occur within the Public Service Regulations and the procurement processes

17. RECOMMENDATIONS AND POLICY APPROVAL

Recommended/ ~~Not Recommended~~



Head of Department: Dept. of Social Development & Special Programmes

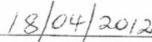


Date

Approved/ ~~Not Approved~~



MEC: Dept. of Social Development & Special Programmes



Date

ANNEXURE 1 CODE OF CONDUCT FOR SCM PRACTITIONERS

I, _____, (full names and surname) _____

(Persal Number) acting in my capacity as SCM Practitioner for Department hereby undertake:

1. to act at all times with fidelity, honesty, integrity and in the best interests of the state and the general public it serves.
2. to diligently perform the duties of a SCM Practitioner efficiently, effectively and strictly in accordance with the rules of bidding and bid evaluation, as set out in the SCM Practice Notes, legislation, policy and according to all relevant instructions given by the institution.
3. to act at all times in accordance with the relevant legislation and regulations, including the Public Service Regulations, the PFMA, National Treasury Regulations, National/Provincial Practice Notes, directives and circulars given by Provincial Treasury.
4. specifically, to comply with the *Code of Conduct for the Public Service*, in Chapter 2 of the Public Service Regulations, 2001 especially clauses C4.5 and C4.12 and C5.3 and C5.4 thereof.
5. to recognise the public's right to access to information in the interests of administrative justice.
6. not to receive visitors in the SCM Unit where confidential documentation is housed and to take the utmost care in ensuring that there is reasonable protection of the records of the institution and all bid documentation.
7. not to misuse the position or privileges of a SCM Practitioner, or privileged or confidential information obtained as a SCM Practitioner nor take improper advantage of their previous office after leaving their official position.
8. to conduct duties with the skill and care expected from a person of knowledge and experience, and to exercise due judgement.
9. to prevent any unauthorised, irregular fruitless and wasteful expenditure and losses resulting from criminal conduct in terms of section 38(1)(c)(ii) of the PFMA and if the SCM Practitioner discovers such expenditure must immediately report such expenditure to the Accounting Officer.
10. not to afford any undue preferential treatment to any group or individual or unfairly discriminate against any bidder on the grounds of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language.
11. not to abuse any position in the public services to promote or prejudice the interest of any political party or interest group.
12. to give the Auditor-General, Department of Social Development Internal Auditors and Provincial SCM Unit all the information and explanations it requires to carry out its functions.
13. to report to the appropriate authorities any case of fraud, corruption, nepotism, mal-administration and any other acts which constitute an offence or which are prejudicial to the public interest, arising during the bid evaluation panel proceedings.
14. to declare, diligently, accurately and honestly, in the declaration of interest, all personal and/or business interests that I or a family member may have in any business of any bidder.
15. to be open and honest about all decisions and actions taken regarding the quotation/bid evaluation, and to give clear reasons for these, which can be accurately recorded.
16. to ensure that public resources are administered responsibly.
17. not to amend or tamper with any bid/quotation after its submission.
18. not to make any dishonest allegations about any bidder.
19. not to make any false or misleading entries in accounting records and submissions to the Price Quotation Committee/Bid Evaluation Committee.
20. to make no contractual commitments related to the bid/quotation, to any bidding party, on behalf of the Department.
21. to proactively protect privileged or confidential information of the Bid Specification Committee/Bid Evaluation Committee/ Price Quotation committee/Bid Adjudication Committee from theft, unauthorised disclosure or inappropriate use, and specifically:
 - 21.1 not respond to any queries relating to the bid/quotation evaluation on behalf of the Department, unless expressly authorised in writing by the accounting officer/authority to do so.

- 21.2 not to speak to or correspond carelessly with any person (fellow colleague, friend, family member or otherwise) on any matter related to the bid/quotation evaluation.
22. not to request, solicit or accept any reward, gift or favour in return for voting or not voting in a particular way on any matter, or for disclosing privileged or confidential information.
 23. not to accept or agree to later accept, any 'kickbacks' in the form of money, favours, inappropriate gifts or anything else of value from a member of the public, government, a political or social movement, or any stakeholder or potential stakeholder which is or may be viewed as aimed at influencing or directing the evaluation of the bids/quotation.
 24. to disclose immediately to the chairperson or the accounting officer/authority any attempted inducement or offers of perks that may be construed as aimed at influencing or directing the evaluation of the bids/quotations.
 25. to report to the Head of the SCM unit any invitations to any kind of entertainment by any party that may be construed as being associated in any way with the outcome of the bid/quotation evaluation.
 26. not attend or participate in any other way in any meeting or hearing in relation to any matter before the bid evaluation panel, if any interest prevents me from carrying out my SCM Practitioner functions in a fair, unbiased and proper way in accordance with this Code of Conduct.
 27. Combative practices are unethical and illegal and should be avoided at all cost. They include but are not limited to:
 - (i). Suggestions to fictitious lower quotations;
 - (ii). Reference to non-existent competition;
 - (iii). Exploiting errors in bids;
 - (iv). Soliciting bids from bidders whose names appear on the list of restricted bidders/suppliers/persons.
 28. You are required to familiarize yourself and strictly comply with SCM Practice Note No.4 of 2006: Code of Conduct.
 29. Iappointed as a SCM Practitioner hereby acknowledged this Code of Conduct. I confirm that I have read and understood the contents of this document.

Initials: _____	Signed	:	_____
	Date	:	_____
Endorsed: Chief Financial Officer	Signed	:	_____
	Date	:	_____



APPLICATION FOR APPROVAL FOR REMUNERATIVE WORK OUTSIDE THE DEPARTMENT OF SOCIAL DEVELOPMENT

1. PARTICULARS OF APPLICANT

NAME :

SURNAME :

PERSAL NUMBER :

INSTITUTION/
 DIRECTORATE :

2. PARTICULARS OF REMUNERATIVE WORK OUTSIDE APPLIED FOR

Nature of work/ business

Name of person / Institution for whom work will be performed by you or name of your company

Your status of ownership in the company (e.g sole owner, directorship (%), member)

Estimated income from work (per hour, week, month) if you work for a person or institution

Indicate the department/s you are trading with and provide supplier numbers accordingly

DEPARTMENT	SUPPLIER NUMBER

Estimated number of hours per week/month which will be devoted by you for that person or institution

.....

Duration of period outside work:

3. STATEMENT OF APPLICANT

Please indicate in the blocks underneath whether you do have business or not

- I hereby certify that the nature of work specified will be performed completely outside my official working hours.
- I hereby certify that I do not have any business outside the work I performed within the Public Sector.
- Does your spouse/relative own a company? If so provide details:

Name of Spouse/Relative:

Relation:

Name of Company:

Signature:

Signature of applicant Date

Comments Supervisor
.....
.....

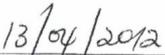
Signature of supervisor Date

Additional information to motivate this application must be attached to this form.

Recommended/ ~~Not Recommended~~



**Head of Department: Dept. of Social
Development & Special Programmes**

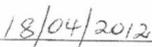


Date

Approved/ ~~Not Approved~~



**MEC: Dept. of Social Development &
Special Programmes**



Date