

**12. OPTIONAL SERVICES SPECIFIC TO DEPARTMENT OR PUBLIC BODY**

- 12.1 When a department or public body acquires an optional service for the department or public body through the Agency—
- (a) the final decision regarding the award of the bid, vests with the department or public body; and
  - (b) the department or public body and the supplier must conclude the necessary contract.
- 12.2 If the relevant department in writing informs the Agency that it intends to appoint the Agency to negotiate or manage the contract, referred to in regulation 12.1(b), the Agency must, before the award of the bid, compile a value proposal on the cost of the contract negotiations or management.
- 12.3 Before a department concludes a contract, referred to in regulation 12.1(b), the Agency must conduct standard certification in respect of the goods or services in question.

**13. REPRESENTATION DURING PROCUREMENT PROCESS<sup>9</sup>**

- 13.1 The Agency must, in consultation with the designated department, establish the following committees to deal with the evaluation of bids and the recommendation for the award of a bid by the accounting authority of the designated department or public body:
- (a) A Bid Evaluation Committee to-
    - (i) evaluate bids; and
    - (ii) make a recommendation for award to the Recommendation Committee, including the identification of all the risks associated with the recommendation and the rating of all the risks (herein referred to as “the risk report of the BEC”); and
  - (b) a Recommendation Committee to-
    - (i) verify compliance of the procurement process with all applicable legislation and generally the integrity of that process;
    - (ii) if the process is verified as not compliant or its integrity was compromised, refer the recommendation back to the Bid Evaluation Committee with its reasons;
    - (iii) identify any risks additional (if any) to those identified in the risk report of the BEC and provide its own rating for all the risks (herein referred to as the risk report of the RC); and
    - (iv) if the process has been verified as compliant and for its integrity, submit the recommendation of the Bid Evaluation Committee and the risk reports of the BEC and RC to the relevant accounting authority of the designated department or public body;

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<sup>9</sup> See section 23(2)(a) of the Act.

- 13.2 The Bid Evaluation Committee for a bid for information technology goods or services specific to a department or public body must be constituted of a majority of members designated by the accounting authority of that department or public body, consisting of—
- (a) an employee, other than the designated official, of the department or public body, designated by the accounting authority as chairperson;
  - (b) such other suitable persons as the accounting authority considers appropriate to designate; and
  - (c) such other suitable persons from the Agency as the Agency considers appropriate to designate.
- 13.3 The Bid Evaluation Committee for mandatory services and transversal term contracts must consist of at least the following:
- (a) An employee designated by the Agency as the chairperson;
  - (b) such employees of the designated department or public body, other than its designated official, as the accounting authority of the department or public body considers appropriate to designate;
  - (c) such employees of other departments or public bodies as the accounting authority of the designated department or public body considers appropriate after consultation with the GITO Council;
  - (d) one or more information technology experts from both the Agency and the designated department or public body, designated by the Agency and the accounting officer of the department or public body, respectively;
  - (e) one or more representatives designated by the National Treasury; but as a minimum one supply chain management practitioner to ensure compliance with the applicable legislation regarding procurement;
  - (f) one or more representative from the relevant section in the Agency directly responsible for the service delivery in question.
- 13.4 The Recommendation Committee must consist of at least four employees of the Agency of whom at least one must be a supply chain practitioner.
- 13.5 The Agency must render the necessary administrative support to the Bid Evaluation Committee and the Recommendation Committee.
- 14. AWARD OF BIDS**
- 14.1 Upon receipt of the recommendation of the Bid Evaluation Committee and the risks reports of the BEC and RC from the Recommendation Committee, the relevant accounting authority must make the final decision on the award of the bid to one or more bidders, as the case may be.
- 14.2 If the accounting authority decides to award a bid to a bidder or bidders other than the one or those recommended by the Bid Evaluation Committee, the accounting authority must, within 7 working days, in writing, notify the relevant treasury, the Agency and the Auditor-General, of the reasons for deviating from the recommendation.

- 14.3 An accounting authority may, before notifying the successful bidder or bidders of the award of the bid, cancel the bid if-
- (a) due to changed circumstances, the need for the information technology goods or services in question no longer exists;
  - (b) the total envisaged expenditure exceeds the available funding stipulated in the business case for the bid and additional funding cannot be obtained;
  - (c) no acceptable bids were received; or
  - (d) the procurement process did not comply with the applicable legislation or its integrity has been otherwise compromised.
- 14.4 If a bid is cancelled in terms of regulation 14.3, the accounting authority must record the reasons and immediately, in writing, report the particulars to the Agency, the National Treasury and the Auditor-General.
- 14.5 If a bid is cancelled in terms of regulation 14.3(d), the relevant department or public body, in consultation with the Agency, must ensure the institution of an appropriate investigation.
- 14.6 The accounting authority of the department or public body must in writing notify the Agency and the successful bidder or bidders of the award of the bid.
- 14.7 Upon such notification, the Agency must arrange for the publication of the award of the bid in the Government Tender Bulletin and on the website of the Agency.

**15. PROVINCIAL PROCUREMENT<sup>10</sup>**

If economically acceptable and suitable after sales support can be provided, the Agency must procure information technology goods or services required by—

- (a) a province or one or more provincial departments; or
  - (b) a national department for use in a province,
- from service providers located in the province concerned to ensure optimal spending in that province.

**16. DISPUTES ABOUT PREFERRED BIDDER<sup>11</sup>**

Any dispute relating to-

- (a) any recommendation or decision to award a bid between a department or a public body and the Agency; or
- (b) any other dispute relating to the procurement process between a department or the Agency,

must be resolved in accordance with the procedure set out in regulation 6.1.

**17. CIRCUMSTANCES REGARDING PROCUREMENT NOT THROUGH AGENCY<sup>12</sup>**

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<sup>10</sup> See section 23(2)(b) of the Act.

<sup>11</sup> See section 23(1)(b)(iii) and (2)(d) of the Act.

<sup>12</sup> See section 23(2)(c) of the Act.

**17.1 GENERAL**

- 17.1.1 When a department does not procure information technology goods or services through the Agency in terms of any provision of regulation 17.2 to 17.7, such procurement must take place in accordance with the applicable law referred to in regulation 7.2.
- 17.1.2 Before a department acquires goods or services in terms of regulation 17.2 or 17.5, the Agency must conduct standard certification in respect of the relevant goods or services.
- 17.1.3 Standard certification is not required for procurement in terms of regulation 17.3, 17.4 and 17.6.
- 17.1.4 If a department does not procure through the Agency in terms of any provision of regulation 17.2 to 17.7, the department must, within 30 days, submit a report to the relevant treasury, the Department of Public Service and Administration and the Agency stating the provision of regulation 17.2 in terms of which the Agency is not used as the procurement agency and particulars of the procurement process followed.

**17.2 NON-COMPLIANCE WITH PROCUREMENT PRESCRIPTS**

- 17.2.1 If, when procuring information technology goods or services for one or more department, the Agency does not comply with—
- (a) a procurement schedule referred to in regulation 8.2.1; or
  - (b) any other provision of these Regulations regarding procurement, the relevant executing authority<sup>13</sup> or authorities may request the Minister to approve that such goods or services be procured directly by the department or departments or through an institution other than the Agency.
- 17.2.2 The Minister, or an official of the Department of Public Service and Administration authorised by the Minister, may approve the request subject to such conditions as the Minister, or the authorised official, considers appropriate.

**17.3 FOREIGN PROCUREMENT**

- 17.3.1 If a department requires information technology goods or services for use in a foreign country, such goods or services may be procured outside the Republic in accordance with the procurement procedures determined by the relevant department for acquisitions in a foreign country.
- 17.3.2 For purposes of operations in a foreign country, the Department of Foreign Affairs or any other department may acquire directly from any fixed-line operator, as defined in section 1 of the Telecommunications Act, 1996 (Act No. 103 of 1996)—
- (a) an international telecommunication service, as defined in section 1 of the Telecommunications Act; or

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<sup>13</sup> The term "executing authority" is defined in section 1 of the Act as an "executing authority as defined in section 1 of the Public Service Act, 1994".

- (b) small, software-driven earth stations used for the reliable transmission of data, video, or voice via satellite, known as a VSAT network.

#### **17.4 DEPARTMENT OF DEFENCE**

When the Department of Defence requires information technology goods or services which constitute defence matériel, as defined in the Armaments Corporation of South Africa, Limited, Act, 2003 (Act No. 51 of 2003),<sup>14</sup> the Department must acquire such goods or services in terms of the provisions of that Act and not through the Agency.

#### **17.5 SOUTH AFRICAN POLICE SERVICE**

If the National Commissioner of the South African Police Service, with the concurrence of the Director-General: National Treasury and the Director-General: Public Service and Administration, determines it to be in the interest of safety and security, such Service may procure information technology goods or services directly from suppliers or through an institution other than the Agency, whichever is agreed to by the said Commissioner and Directors-General.

#### **17.6 EMERGENCY OR URGENT PROCUREMENT**

17.6.1 If the compliance with procurement requirements in terms of these Regulations is not possible or practicable because-

- (a) immediate action is necessary to avoid a dangerous or risky situation or misery; or
  - (b) the resumption of interrupted services, or the delivery of goods or services, earlier than in the normal course of procurement is of critical importance not resulting from inadequate planning,
- the relevant department may acquire the information technology goods or service in any manner, which is in the best interest of the State.

17.6.2 The accounting authority of the department must approve and record for audit purposes the reasons for procurement in terms of regulation 17.6.1.

#### **17.7 PUBLIC PRIVATE PARTNERSHIP**

17.7.1 When a department wishes to acquire information technology goods or services by means of a public private partnership, as defined in the applicable regulations made under the Public Finance Management Act, such acquisition must take place in accordance with such regulations.

17.7.2 When a department acquires information technology goods or services in terms of regulation 17.7.1, the applicable regulations made under the Public Finance Management Act prevail over these Regulations, subject to regulations 17.1 and 17.7 of these Regulations.

17.7.3 The Agency must appoint a representative on the relevant public private partnership project task team to arrange standard certification in respect

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<sup>14</sup> The term "defence matériel" is defined in section 1 as "any material, equipment, facilities or services used principally for military purposes".

of all informational technology goods or services acquired in terms of regulation 17.7.1.