



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

MEMORANDUM

Reference No.: 1/3/1/2
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TO: ALL THE DTI STAFF

FINANCE CIRCULAR NO 15 OF 2011: NATIONAL TREASURY PRACTICE NOTE FOR SUPPLY CHAIN MANAGEMENT

PROHIBITION OF RESTRICTIVE PRACTICES: CERTIFICATE OF INDEPENDENT BID DETERMINATION: STANDARD BIDDING DOCUMENT (SBD 9)

It has come to light that in the supply chain management environment bid rigging (collusive bidding) is increasing rapidly at the expense of great cost and efficiency to government. To this end, National Treasury has introduced the following measures to combat any form of bid rigging:

- With immediate effect accounting authorities are required to utilize the attached Standard Bidding Document (SBD 9) "*Certificate of Independent Bid Determination*" when inviting price quotations, advertised competitive bids, limited bids or proposals.
- Bidders should be required to complete, sign and submit the Certificate together with the bid documentation at the closing date and time of the bid. If a bidder has failed to submit the SBD 9 together with the bid documentation, the bidder must be requested, in writing, to submit the signed form within seven (7) days of notification. Failure to submit the signed form within seven (7) working days of notification may result in the invalidation of the bid.
- Accounting officers and accounting authorities are required to utilize the information contained in the certificate to ensure that when bids are considered all reasonable steps are taken to prevent any form of bid rigging.
- An accounting officer or accounting authority may decide to refer a bidder or contractor who, based on reasonable grounds or evidence obtained by the accounting officer or accounting authority, has engaged in any restrictive practices to the Competition Commission for investigation and possible imposition of administrative penalties.

All dti staff involved in the procurement of goods and services to please ensure that they adhere to this Practice Note in obtaining price quotations, competitive bids, limited bids or proposals.

Your co-operation regarding the above will be appreciated

Mpho Ramatla

Acting Chief Financial Officer

Date: 08/07/2011

CERTIFICATE OF INDEPENDENT BID DETERMINATION

SBD 9

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

- 1. I have read and I understand the contents of this Certificate;
- 2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
- 3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
- 4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
- 5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

