

Guidance Notes

Guidelines on how to use the Guidance Notes:

This document contains the Guidance Notes for the drafting of Section B and C of a Contract that are essential in a contract between a Vendor and a Purchaser.

A complete contract has three (3) sections, which are:

1. *Section A: General Conditions of Contract (GCC)*
2. *Section B: Special Conditions of Contract (SCC)*
3. *Section C: Annexures*

Section A will only be amended when National Treasury issues amended General Conditions of Contract.

Section B has been drafted to enhance the GCC or to provide for clauses that are not included in the GCC, and may be amended under specific circumstances that may be pertinent for a particular Institution or type of goods/ works and/ or services.

Section C includes recommended templates and guidance to ensure standardisation. However, these may be amended under specific circumstances that may be pertinent for a particular Institution or type of goods/ works and/ or services.

It is essential that the contract be drafted by a competent and experienced legal professional with the assistance of the relevant subject matter expert. The main function of the drafter is to customise the contract to ensure that government's interests are protected, risks adequately managed and value-for-money is achieved.

The following notes are provided as explanatory guidance to drafters to ensure that the clauses that need to be customised are dealt with consistently by all drafters.

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Guidance Note 1: Contract Duration

(Clause 6 of the SCC)

1. The commencement date and termination date or the description of the event that will determine the commencement date and termination date must be inserted where indicated in paragraph 6.1 of the SCC. (Delete that which is not applicable)
2. The National Treasury Practice Note No.4 of 2008/2009 recognizes that, in exceptional cases, an Accounting Officer may deem it necessary to expand or vary orders against the original contract. The absence of a prescribed threshold for the expansion or variation of orders against the original contract has, however, led to gross abuse of the current SCM system.

In order to mitigate against such practices, Accounting Officers are directed that, contracts may be expanded or varied by not more than 20% or R20 million (including all applicable taxes) for construction related goods, works and/or services and 15% or R15 million (including all applicable taxes) for all other goods and/or services of the original value of the contract, whichever is the lower amount. The relevant treasuries may, however, decrease these thresholds for institutions reporting to them.

In accordance with this provision, an Accounting Officer may extend this contract, on a month-to-month basis, but not exceeding six (6) months, and the value of such extension may not exceed the thresholds set in the above paragraph. This procedure must only be implemented where there are valid reasons why a competitive bidding process could not be initiated and finalised prior to the termination date of this contract.

3. The same provisions described above will also apply to any contract renewal.

Guidance Note 2: Contract Price

(Clause 7 of the SCC)

1. In order to manage expenditure against the budget and procurement plan, and to avoid the incurrence of unauthorised and irregular expenditure, it is essential that the contract price is calculated accurately.
2. The contract price is the total all inclusive price offered by the bidder for the goods/ works and/or services to be delivered under this contract. This price is the price used in the calculation of price points when applying the formula prescribed by PPPFA. It should be the amount extracted from the Comparative Pricing Schedule. However, where there are unforeseen delays in the bid evaluation and adjudication processes, the price offered by the bidder may change due to the lapse of time. This may result in the bidder altering its original price. In this instance, the subsequent price offered when approving the extension of the validity period for the bid, will be used in the calculation of price points and this will be the contract price.
3. Where there is an amendment, variation, extension or renewal of this contract, the financial implication must be calculated and inserted on the Price Schedule in Annexure 5, provided that the budget is made available and the Procurement Plan is updated accordingly. The National Treasury Practice Note No. 4 of 2008/2009 thresholds must be complied with as described in Guidance Note 1.
4. An official order must be issued by the Purchaser for the contract price.

Guidance Note 3: Contract Amendments / Variations

(Clause 8 of the SCC)

When amending or varying a contract the drafter must ensure that the amending agreement complies with the following:

1. The names of the parties must be the same as in the original agreement.
2. The agreement that is being amended must be specified by mentioning:
 - 2.1 The date of signature; and
 - 2.2 The contract / project number under which the goods, works or services were ordered.
3. The names of the persons signing the amending agreement and their capacities must be reflected in print in the amending agreement.
4. The Purchaser's Accounting Officer or his/her delegated authority must sign the amending agreement and the person signing on behalf of the Vendor must (if he or she did not sign the original agreement) produce a resolution authorizing him or her to sign the amending agreement.
5. The drafter must:
 - 5.1 Specify the clause that is being amended;
 - 5.2 Indicate what the clause states in the original agreement;
 - 5.3 State the variation that is being effected;
 - 5.4 State the date from which the variation takes effect; and
 - 5.5 Where an annexure is being amended, attach the same to the amending agreement.
6. Always insert a clause providing that, in the event of a conflict between the amending agreement and the original agreement, the amending agreement will prevail.
7. The amending agreement, with annexures, must be attached to the original agreement and will form part of the original agreement.

Guidance Note 4: Responsibilities of the Purchaser

(Clause 13 of the SCC and Annexure 9)

1. The responsibilities of the Purchaser must be included in **Annexure 9** marked as "**Responsibilities of the Purchaser**".
2. The responsibilities listed herein amplify the terms and conditions as recorded in the contract and they help to break down into finer details the roles, duties and tasks of the Purchaser.
3. This is to ensure that there is no ambiguity as to who should perform or provide what during the implementation stage of the contract.

Guidance Note 5: Responsibilities of the Vendor

(Clause 14 of SCC and Annexure 10)

1. The responsibilities of the Vendor must be included in **Annexure 10** marked as "**Responsibilities of the Vendor**".
2. The responsibilities listed herein amplify the terms and conditions as recorded in the contract and they help to break down into finer details the roles, duties and tasks of the Vendor.
3. This is to ensure that there is no ambiguity as to who should perform or provide what during the implementation stage of the contract.

Guidance Note 6: Insurance

(Clause 15 of SCC and Annexure 11)

1. A Certificate of Insurance must be furnished as an original document by the Vendor and attached to Annexure 11.

2. The official responsible for managing this contract must verify, on a monthly basis, the existence and validity of such insurance until the contract is terminated. Each Certificate of Insurance requested must be attached as Annexure 11.

Guidance Note 7: Warranties

(Clause 16 of SCC)

1. Clause 16.1 is only applicable to services as the GCC adequately provides for goods and works.
2. Any variation to the warranty period provided under clause 15.2 of the GCC must be inserted under clause 16.2 of the SCC, in months.
3. The specific period, appropriate to the type of goods/ works and/ or services that is agreed by the parties for the repair or replacement of defective goods and/ or works or sub-standard performance of services, must be inserted under clause 16.3 of the SCC.

Guidance Note 8: Penalties

(Clause 19 of SCC)

1. In the event of the Penalty Clause being invoked, the value calculated under clause 19.1 of the SCC must be included on the Price Schedule in Annexure 5 as well.

2. In the event that the Penalty Clause is being invoked in accordance with clause 19.2 of the SCC, the value calculated must be included on the Price Schedule in Annexure 5 as well.

Guidance Note 9: Suspension

(Clause 21 of SCC)

1. The parties must agree on the maximum number of days for the temporary suspension of the contract and insert this in clause 21.1 of the SCC.
2. When the Suspension Clause is being invoked in accordance with clause 21.2 of the SCC, the value calculated must be included on the Price Schedule in Annexure 5 as well.

Guidance Note 10: Termination

(Clause 23 of SCC)

1. In the event that the contract is terminated, the parties must agree on the obligations outlined in Paragraph 23 of the SCC.

Guidance Note 11: Scope of Work

(Clause 4 of SCC and Annexure 3)

1. Introduction

- a. The scope of work should be very clear in the contract and should be set out in detail.
- b. Deliverables and milestones should be detailed, where this is not clear from the bid documents, then this should be recaptured.
- c. Deliverables should be measurable so as to enable monitoring and evaluation.
- d. Any changes to the scope of work are considered variations and should be dealt with as provided for in Guidance Note 3 above.

Guidance Note 12: Performance Standards

(Clause 5 of SCC and Annexure 4)

1. Performance standards are aimed at achieving value out of the contract and ensuring cost efficiency.
2. Performance standards should be set:
 - o Per resource on the project; and
 - o At a project level for those tasks which are overarching of the project.
3. The performance standards should be aligned to the appropriate best practice for the industry, for instance ISO standards or internationally recognised contracts, such as NEC and CIDB in the construction and industrial environment.
4. Clear and measurable standards should be set which enable one to easily ascertain whether or not the standard has been met.
5. Performance standards which are not met should, if appropriate, be linked to penalties which must be dealt with in terms of Guidance Note 8 above.

Guidance Note 13: Price Schedule

(Annexure 5)

1. All financial implications must be inserted on the Price Schedule to calculate the total contract price and shall include:
 - a. Contract price offered in the bid.
 - b. Cost of any amendments, variations, extensions or renewals of the contract.
 - c. Penalties.
 - d. Cost of suspension.
 - e. Cost of termination.
2. An official order must be issued by the Purchaser for the original contract price and each of the prices listed above.

Guidance Note 14: Performance Security

(Annexure 7)

1. The Performance Security provided by the Vendor must be furnished in original form and must carry the stamp of the relevant Institution granting such security.

Guidance Note 15: Payment Schedule

(Annexure 8)

1. The Payment Schedule should properly identify the contract by including the project name, project description, project start and end dates and the bid number used in the bidding process of the contract. A proper description of the contract will provide for ease of identification and alignment with the Contract Register.
2. The project Procurement Plan values, contract and budgeted values should also be placed on the pricing schedule so as to act as an early warning mechanism for any over expenditure that may be incurred on the project.
3. The order number issued against the contract should also be a part of the payment schedule as reference can be made to previous payments made against the contract. In the case of multiple orders against the contract, all orders made against the contract should be present on the payment schedule.