



CODE OF CONDUCT

PROCUREMENT OF MARKETING, ADVERTISING, COMMUNICATIONS AND PR SERVICES/PRODUCTS

OVERVIEW

The very nature of the advertising and communications sector is that of competition and advertising and communications agencies rely on this prevailing characteristic for their very survival. Competition is healthy, in that it stimulates growth, promotes creativity, encourages training and has resulted in South Africa's reputation ranking amongst the best in the world. However, it is important to that the competitiveness be directed to constructive development and not lead to "unwarranted disruption of productive client-agency relationships, unfair loss of profitability for agencies, potential distrust between advertisers and agencies, or the decrease of the general perception of advertising for what it is – a freestanding, highly professional trade in its own right."

Furthermore, during November 2002, Government and the advertising and communications industry consolidated a report to the Portfolio Committee on Communications on the state of transformation in the marketing, advertising and communications sector. Government noted in its concluding remarks to the Portfolio Committee the need to ensure that existing procurement policies are used to their full potential to promote transformation and to assist small, medium and micro enterprises ("SMMEs") participation in the sector.

It is to this end that the Association for Advertising and Communications (ACA) and ASOM - the then representative body of marketers, in collaboration with the Department of Trade and Industry (DTI), the Government Communication and Information Services (GCIS) and National Treasury put their collective experience together to provide a set of rules for marketers, advertisers (procuring party/ies) and agencies to follow in order to improve the level of professional reputation desired and to ensure transformation and the protection and promotion of SMMEs. Within this context, the Code of Conduct for the procurement of marketing, advertising and PR services/products aims to:

- Address gaps hampering the effective use of procurement policies, including subcontracting by all procuring parties – Private Sector, Government, Parastatals and the industry – to assist the process of transformation.
- Ensure procedures for procurement of marketing, advertising and PR services/products to promote participation of Black-owned enterprises and of SMMEs.
- Achieve agreement through a consultative process with consensus amongst all key stakeholders, inclusive of less experienced procuring parties, design and public relations agencies, Government and NGO organisations.
- Protect intellectual property.
- Reimburse direct costs through the payment of agreed pitch fees when strategic and creative work is required from agencies.



- Prevent unfair, exploitative and unreasonable competition during the procurement of marketing, advertising, communications and PR services/products from the advertising and communications sector.

PROCUREMENT AND CONTRACTING PRINCIPLES

The following must be heeded when procuring marketing, advertising and communications and PR products and/or services:

A. Stage 1 - Compulsory: Procurement process by a procuring party

1. The procuring parties can invite any number of agencies to provide a proposal (“pitch”) for marketing, advertising, communications or PR products and/or services (“invitation stage”).
2. The procuring party must not use any exclusion criteria based on size, experience, financial criteria such as turnover or racial profile of the agency.
3. At the invitation stage the agencies will only be required to submit examples of previous work done, relevant case studies and the nature and business of previous clients.
4. At the procurement stage an agreement must be concluded to protect the intellectual property of the agency to the effect that the intellectual property will remain with the agency.
5. Subsequent to the invitation stage the procuring party has the option to shortlist not more than five agencies, including the incumbent agency (“shortlisted agencies”).
6. At least one of the shortlisted agencies must be a Black-owned enterprise and/or an SMME.
7. The procuring party may at this stage and based only on the criteria in 3 above, award the contract for marketing, advertising, communications or PR products and/or services to any one of the shortlisted agencies.

B. Stage 2 - Voluntary: Alternative procurement process

Should a contract not be awarded under the circumstances and requirements in A (7), the *procuring party* and *the agency/ies* should follow the following process in respect of the agencies shortlisted under A:

1. **Sufficient time** must be agreed for the agencies for preparation of their submissions/pitch.
2. The time will depend on what is required for the particular submission/pitch, but at least **fifteen working days** (three weeks) will be reasonable for a full creative pitch.
3. Agencies should not be excluded from making a pitch and the fair and reasonable opportunity to be successful merely due to lack of resources.
- 3.1. **Due to the costs involved, depending on what creative/strategic work is required for the submission/pitch**, all agencies, including those who are not successful in the pitch, should therefore be appropriately remunerated for expenses reasonably incurred for creative/strategic work in for and in respect of the pitch.

July 2019



- 3.2. The ACA will as independent third party, assist in advising the procuring party and the agencies as to the appropriate reasonable costs involved in a particular pitch and the profile of the agencies in respect of transformation and/or economic empowerment in the interest of the marketing industry as a whole.
4. The **intellectual property** in respect of the creative/strategic work of all agencies in respect of the pitch remains with the agency, subject to an agreement to the contrary with the successful agency. This would be fair and reasonable and equitable in respect of the process and would protect the agency/ies with limited resources and also due to the relatively unequal relationship between the procuring party and the agency/ies that are not successful.

Note that the pitch fee does not under any circumstances purchase ownership of the agencies' intellectual property. Clients who wish to use the agencies ideas must pay the agencies separately for their intellectual property as pitch fees are merely a token in recognition of the hard costs incurred by the agencies during pitch processes.

ADDITIONAL INFORMATION Additional information/documentation is available from the ACA, pertaining to:

Glossary of Terms
Request for Information Form
Campaign Brief
Scope of Work
Financial Balanced Score Card
Agency Remuneration
Client and Agency Contracts.

Enquiries regarding the Code of Conduct and/or additional information should be directed in writing to: Chief Executive Officer, Association for Communication and Advertising, 27 Fricker Road Illovo 2196, Email Address: ceo@acasa.co.za, Telephone No.: (010) 880 3399