



Reference number: RCS/C.5

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TREASURY CIRCULAR MUN. NO. 16 / 2020

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 THE CHIEF DIRECTOR: MFMA IMPLEMENTATION – NATIONAL TREASURY (MR TV PILLAY)

NT MFMA CIRCULAR NO. 105: PROCUREMENT IN RESPONSE TO NATIONAL STATE OF DISASTER REGARDING COVID-19 PANDEMIC AND REPEAL/WITHDRAWAL OF NT CIRCULAR 102

1. PURPOSE

- 1.1 The purpose of this Circular is to provide guidance and clarity to Accounting Officers of municipalities and municipal entities in respect to National Treasury (NT) MFMA Circular No. 105 considering any specific impact and procurement risks related to the applicable emergency provisions therein articulated. [Refer to “**Annexure F**” herein referred to as Circular 105].
- 1.2 To provide guidance on the impact of NT MFMA Circular 105 relating to the procurement of COVID-19 in response to the National State of Disaster on the following:
 - a) To unpack and define normal and existing procurement procedures for all goods, services and works (including the procurement of PPE items and fabric masks).

2. BACKGROUND

- 2.1 On 18 March 2020, regulations under the Disaster Management Act (DMA), regarding steps to prevent an escalation of the disaster or to alleviate, contain and minimize the effects of the Disaster were gazetted in Government Notice No. 318 of 18 March 2020, as amended and substituted from time to time (the DMA Regulations), which is effective until the 15 October 2020.
- 2.2 Taking the above-mentioned into account, the Disaster Management Dispensation has been in effect until the 15 September 2020 and Accounting Officers are still required to operate within the disaster dispensation up until 15 October 2020 and beyond.
- 2.3 On 5 August 2020, the National Treasury briefed the Standing and Select Committees on the procurement of PPE during the COVID-19 pandemic and highlighted some shortcomings in the transparency of PPE procurement information. Consensus was reached by these committees that

municipalities **must revert to normal procurement procedures for all goods, services and works (including the procurement of PPE items and fabric masks).**

- 2.4 In addition, National Treasury issued reporting guidelines for municipalities and municipal entities to improve the monitoring and transparency of COVID-19 procurement which will be published on the National Treasury's website. Noting that municipalities have been reporting on the procurement of PPE items in terms of emergency procurement to the Provincial Treasury as required by NT Circular 102.
- 2.5 Subsequent, to the afore-mentioned, the National Treasury on 26 August 2020, issued NT MFMA Circular 105 relating to the procurement of COVID-19 in response to the National State of Disaster regarding the COVID-19 pandemic to inform municipalities and municipal entities of the repeal/withdrawal NT Circular 102 and that municipalities and municipal entities must comply with existing procurement procedures. The impact of the circular may be unpacked as follows:
- a) To prescribe the maximum prices for the identified PPE items, including fabric masks to reflect realistic current market prices;
 - b) To prescribe the conditions with which service providers must comply in order to provide PPE items and fabric masks to institutions;
 - c) The procurement processes to be followed for RFQ's and RFB's and the conditions to comply with; and
 - d) National Treasury to issue reporting guidelines to institutions and improve the monitoring and transparency of PPE procurement.
- 2.6 The Provincial Treasury concluded an impact assessment of the revised NT Circular 105 and identified the following key risk issues that was presented by the Head Official of the Provincial Treasury to the National Treasury Technical Coordinating Forum (TCF) on 28 August 2020:
- a) Whilst the NT Circular dispenses with previous emergency requirements, the accounting officers are still instructed by the NT Circular bringing in central control and not Section 60 autonomy. This creates ambiguity as the emergency requirements are not being removed.
 - b) Supplier lists and benchmark pricing are issued with no indication of the necessary due diligence processes followed and accounting officers must ensure that suppliers are compliant, or prices are market related;
 - c) The NT Circular 105 dictates how contracts must be management without providing practical context;
 - d) The NT has issued the 5th iteration of benchmark prices in 5 months. The issuance of benchmark prices has already negatively affected pricing and has created an untested/superficial market value as it relates to pricing of the items concerned. Further to this, no assurance is provided to Provinces in terms of the process followed to ascertain these pricing and whether it is market related;
 - e) Local content and production requirements are cumbersome and not easy for suppliers and procuring institutions to comply with. The designation of the non-designated items is problematic, taking cognisance of Department of Trade Industry and Competition (the dtic) and South African Bureau of Standards (SABS) capacity to respond remains a challenge;

- f) Transversal Contracts: Use of SCM Regulation 32, have not addressed issues in MFMA Circular 96 relating to the two high court decisions on this, which poses a risk for municipalities participating into transversal contracts from National Treasury, bearing in mind SCM Regulation 32 is utilised to enter into such contracts.
- g) The NT Circular is silent on the process and procedures institutions must follow should a second wave of COVID-19 infections occur.

2.7 Given the above, the Provincial Treasury issued PT MFMA Circular No. 6/2020 and Circular No. 8/2020 in an effort to provide guidance to municipalities and municipal entities on the existing measures available to ensure the timeous and effective procurement of essential goods and/or services required to respond to the COVID-19 Disaster. However, these circulars are no longer applicable, given the NT requirements to move back to normal procurement requirements applicable to municipalities and municipal entities.

3. EXISTING MUNICIPAL PROCUREMENT REQUIREMENTS

3.1 In terms of NT Circular 105 municipalities and municipal entities must rely on its existing supply chain management policy, read with the applicable provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) ("the MFMA") and any guiding instructions issued by the National Treasury to procure any goods and/or services required including for the provisions of COVID-19.

3.2 Whilst NT indicates that municipalities must revert to its normal procurement procedures for all goods, services and works (including the procurement of PPE items and fabric masks, the circular still dictates central control in terms of pricing and prescribes requirements in terms of procurement requirements in response to the pandemic as it relates to PPE.

3.3 In order to revert to normal procurement requirements in terms of Chapter 11 of the MFMA and SCM Regulations would apply whereby it remains incumbent on the Accounting Officer to have and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective. Hence, the following provisions must still be applied:

- SCM Regulation 15 - Petty cash purchases;
- SCM Regulation 16 - Written or verbal quotations;
- SCM Regulation 17 - Formal written price quotations;
- SCM Regulation 18 - Procedures for procuring goods or services through written or verbal quotations and formal written price quotations;
- SCM Regulation 19 - Competitive bidding process;
- SCM Regulation 32 - Procurement of goods and services under contracts secured by other organs of state;
- SCM Regulation 36 - Deviation from, and ratification of minor breaches of, procurement processes; and
- SCM provisions as outlined in the PPPFA Regulation, 2017.

3.4 The Metro, district municipalities and local municipalities may consider the following procurement method when procuring COVID-19 items including the necessary guidelines for municipalities:

- **Emergency procurement:** An Accounting Officer may rely on its existing supply chain management policy, read with Regulation 36 of the MFMA Regulations, 2005, to dispense with its normal procurement processes, to procure essential goods or services required for the provision of disaster-related support in emergency circumstances; and

- *Should municipalities wish to procure the required goods or services for the purposes of responding to the COVID-19 pandemic, such goods and services may be procured using the emergency procurement provisions of the municipality's supply chain management policy, read with the requirements of regulation 36 of the SCM Regulations and noting paragraph 3.2 and 3.3 of MFMA Circular No. 105.*

3.5 For procurement of PPE items and fabric masks, the RFQ's must comply with the following conditions:

- The PPE items must comply with the item specifications of National Department of Health, World Health Organisation and the Department of Trade, Industry and Competition (the dtic) **[Annexure B- for Fabric Masks]**;
- The prices must be equal or lower than the prices in **[Annexure A]**;
- The service providers must be registered on the Central Supplier Database; and
- The PPE items must meet the stipulated minimum threshold for designated local content and production as required by the Preferential Procurement Regulations, 2017 (PPR 2017) **[Annexure C1 for PPE Commodities requiring adherence to the Local Content and Production Thresholds]**.

3.6 The Provincial Treasury submitted comments to the National Treasury and DTIC when the 2nd amendment to Circular 102 was issued, emphasising the challenges that municipalities have been experiencing since the implementation of local content and production requirements which has been raised with both the NT and DTIC to which the PT has not received appropriate redress.

3.7 Municipalities and municipal entities must ensure that where items are designated for local production and content that the requirements be included in the bid advertisement and that the normal exemption processes will apply as and when required. Where institutions do not receive adequate responses; this must be documented, and the accounting officer/authority must decide on the best way to proceed i.e. whether to proceed with the evaluation and award or whether to cancel and re-invite the bid depending on the circumstances in respect of the need and the required delivery timeframes.

3.8 The NT has further in paragraph 3.4(e) of the Circular 105 prescribed that where products have not yet been designated, the provisions of Regulation 8.4 of the PPR, 2017 must be utilised and the items must meet the recommended minimum threshold for local production and content as per Annexure C2 of the Instruction Note 11. Regulation 8.4(a) of the PPR, 2017 stipulates that if there is no designated sector, an organ of state **may** include, as a specific condition of tender, that only locally produced goods and services or locally manufactured goods with a stipulated minimum threshold for local production and content will be considered. The PPR, 2017 makes this requirement discretionary and hence accounting officers/authorities may consider the requirement and where possible based on the market readiness include it as a special condition of tender.

3.9 The NT has issued the 5th iteration of bench mark pricing which municipalities must as far as possible negotiate maximum prices with service providers and where prices still exceed the prices provided in **[Annexure A]**, the necessary approvals must be obtained from the accounting officer or accounting authority or delegated person with justifiable reasons and confirmation that the prices are market related. Where prices are identified as exorbitant by the department, such supplier must be reported to the Competition Commission.

- 3.10 Whilst balancing controls and efficiencies within the legal framework, municipalities and municipalities must maintain the five pillars as encapsulated under section 217 of the Constitution.
- 3.11 It must be noted that for each of these key decisions, the necessary and practical internal controls must be built in as far as it is reasonably possible to do so, and municipalities are to ensure that the necessary evidence is kept supporting their management decisions.

4. USE OF TRANSVERSAL CONTRACTS

- 4.1 Municipalities and municipal entities already participating in the National Treasury Transversal RT Contracts, may continue placing orders with the service providers as per contract. [Refer to **Annexure D1 of NT Circular 105**].
- 4.2 Regulation 32 compliance and participation in transversal contracts where municipalities were not participants in the transversal contracts:
- a) Where municipalities are not participants in NT transversal contracts the NT has advised that prior approval from NT is not required in Circular No. 105 and no prior approval is required from the NT, however noting court decisions that have been upheld in two high court decisions which the NT has indicated as the leading decisions and/or authority on participation in contracts procured by other organs of state as per NT Circular 96 which create an inconsistency in applying these provisions.
 - b) The Provincial Treasury take cognisance of the NT MFMA Circular 96 and the associated audit risks and challenges raised in respect of SCM Regulation 32 and thus cautioning municipalities and municipal entities in terms of the risk associated with SCM Regulation 32 procurement processes. Municipalities must mitigate their risks in this regard and rather refrain from using this option given that NT Circular 96 has not been withdrawn.
 - c) Paragraph 5.2(a) applies to those procurement transactions were municipalities had utilised Circular 102 and it is expected that municipalities honour these contracts and keep all record in terms of compliance to these two Circulars for audit evidence purposes.
- 4.3 Municipalities are advised to ensure that control measures are in place in keeping of the appropriate evidence that supports their decision-making process and document all processes and procedures followed to the circumstances relevant to COVID-19 for audit purposes.

5. EXISTING CONTRACTS AND ORDERS

- 5.1 Contracts and orders concluded under the provision of Circular 102 must be honoured until the expiry thereof and apply the requirements as listed under the General Terms and Conditions of Contract.
- 5.2 The Circular indicates that municipalities and municipal entities should not extend these contracts and orders in any way, however Accounting Officers must put in place control measures to manage the extension/expansion of contracts as indicated in Section 116 and Section 33 of the MFMA and NT Circular 62.

6. REPORTING REQUIREMENTS ON COVID-19 EMERGENCY PROCUREMENT EXPENDITURE

- 6.1 National Treasury instituted reporting guidelines to improve the monitoring and transparency of COVID-19 related data. The reports will be published monthly in the public domain and the National Treasury websites and therefor it is important that Accounting Officers or accounting authorities ensure that the information submitted is **credible and auditable**.

6.2 Municipalities and municipal entities must take cognisance of the reporting requirements as it relates to **ALL** procurement transactions as per paragraph 6.1 of Circular 105 as it relates to the following:

- emergency procurement for COVID-19 19-PPE items;
- fabric masks;
- goods, works and services to prevent, alleviate, contain or minimise the effects of the Disaster;
- expenditure for quarantine and isolation services; and
- expenditure on humanitarian relief.

6.3 Municipalities and municipal entities are required to report procurement transactions for the periods indicated in the below table by the deadlines provided **must be reported to the National Treasury and copy the Provincial Treasury in the correspondence.**

Reporting Period	Deadline of Submission	Report to be published by PT in the Public Domain
April – August 2020	21 September 2020	30 September 2020
September 2020	21 October 2020	31 October 2020
October 2020	21 November 2020	30 November 2021
November 2020	21 December 2020	10 January 2021
December 2020	21 January 2020	31 January 2021
January 2021	21 February 2020	28 February 2021
February 2021	21 March 2020	31 March 2021
March 2021	21 April 2020	20 April 2021

6.4 **Municipalities and municipal entities must report to National Treasury on all emergency procurement items procured for COVID-19.** The reporting guidelines to be submitted to National Treasury must include the following information:

- i. Supplier Name;
- ii. CSD Registration number (if not on CSD, then Business registration number);
- iii. Manufacturer (Y/N) (if not, name of manufacturer);
- iv. Item description;
- v. Unit of Measure (UoM);
- vi. Quantity;
- vii. Unit Price;
- viii. Total Payment amount;
- ix. Order number;

- x. Full contract/Order Value; and
- xi. Order date.

6.5 Municipalities and municipal entities must utilise the MS Excel Template [hereto attached as “**Annexure E**”] to capture the information on the formatted excel spreadsheet template. All reports submitted to the National Treasury by email at the following email address within the required due date:

- ocpocovid-19reporting@treasury.gov.za

6.6 Municipalities and municipal entities must provide a copy of the reporting information to the Provincial Treasury to the following email address:

- SupplyChainManagement.HDMFMA@westerncape.gov.za

6.7 Provincial Treasury will continue to support the municipalities during the lockdown period to assist with expenditure linked to the emergency to address the COVID-19 pandemic.

7. REQUEST

7.1 Accounting officers and Accounting authorities must note that:

- (a) PT MFMA Circular 6/2020 and Circular 8/2020 are no longer applicable with effect from 15 September 2020;
- (b) the National Treasury MFMA Circular No. 102 on Emergency procurement in response to National State of Disaster, and all amendments, has been **withdrawn** by the National Treasury.
- (c) Note and implement the requirements of the **NT MFMA 105** which must be read in conjunction with NT Circular 105 and this Circular including the relevant Annexures:
 - Annexure A – Prices as from 1 September 2020 (unchanged);
 - Annexure B - Recommended Guidelines - Updated Fabric Face Masks Manufactured in South Africa's Clothing and Textile Manufacturing Industry for General Public use;
 - Annexure C1 – PPE Items Commodities adherence to Local Content and Production Thresholds;
 - Annexure C2 – Non-designated products - minimum threshold for Local Content and Production Thresholds;
 - Annexure D1 – RT64 List;
 - Annexure D2 – DSBD List;
 - Annexure E – Reporting Template; and
 - Annexure F – NT MFMA Circular 105 – Withdrawal of MFMA Circular 102: Procurement of COVID-19 in response to the National State of Disaster regarding COVID-19 pandemic.

- (d) Ensure that the content of this Circular is brought to the attention of all relevant officials within their institution.
- (e) For any enquiries relating to the Circular may be directed to the MFMA SCM Helpdesk Function:
 - SCM Helpdesk: SupplyChainManagement.HDMFMA@westerncape.gov.za



JULINDA GANTANA
DEPUTY DIRECTOR-GENERAL: GOVERNANCE AND ASSET MANAGEMENT
DATE: 25 September 2020