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Private Bag X9165
CAPE TOWN
8000

TREASURY CIRCULAR MUN NO 21 /2022

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IMPLEMENTATION STRATEGY FOR MUNICIPALITIES ON THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

1. PURPOSE

- 1.1 The purpose of this circular is to communicate the draft Municipal Preferential Procurement Policy and proposed implementation strategy for municipalities on the Preferential Procurement Regulations 2022.
- 1.2 To provide guidance to municipalities in respect of Section 2(1) of the Preferential Procurement Act which provides that *'an organ of state must determine its Preferential Procurement Policy, which municipalities must implement within the framework set out in the PPPFA Act, 2000.*
- 1.3 Communicating further developments that might require repositioning of SCM and related activities.

2. BACKGROUND

- 2.1 Subsequent to the Constitutional Court's judgment regarding the Preferential Procurement Regulations 2017, the Minister of Finance submitted an application to the Constitutional Court seeking clarity on its judgement of 16 February 2022. The clarity was handed down by the Constitutional Court on 30 May 2022.
- 2.2 Emanating from the Constitutional Court judgment handed down dated 30 May 2022, it was confirmed that suspension of the declaration of the order of invalidity of the 2017 Preferential Procurement Regulations (PPR) **is still valid for the remainder of the 12-month period, hence the 2017 Regulations are still enforceable, until 26 January 2023. The court judgement in essence meant that:**
 - The Minister of Finance must issue regulations within the ambit of his powers in terms of the PPPFA; and
 - Each organ of state must develop their own Preferential Procurement Policy in terms of Section 2(1) of the PPPFA.
- 2.3 On 4 November 2022, the Minister of Finance gazetted the new Preferential Procurement Regulations of 2022 (PPR's, 22) under the Preferential Procurement Policy Framework Act, 2000 (PPPFA) with effect from 16 January 2023 (attached as annexure A), The purpose of the 2022 Regulations is therefore to comply with Section 217 of the Constitution on procurement of goods and services by organs of state, the PPPFA of 2000 and the Constitutional Court judgement of 16 February 2022. Following the promulgation of the PPR's,22, municipalities are therefore required to implement its own Preferential Procurement Policy in terms of Section 2(1) of the PPPFA.
- 2.4 In anticipation of the PPR's,22 the Provincial Treasury (PT) hosted a 2-day workshop in April 2022 with all SCM managers and CFO's. Subsequently a SCM Governance Workstream (Workgroup) led by the PT was established to drive the development of a standardised and uniformed Preferential Procurement Policy for municipalities.

- 2.5 The first draft of this policy was discussed by the SCM Governance Workgroup on 1 November 2022, and focused on the two (2) key areas in terms of the PPPFA Act Section 2 (1) (d) (i) and (ii): namely
- (i) contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability; and
 - (ii) implementing the programmes of the Reconstruction and Development Programme (RDP) as published in Government Gazette 16085 dated 23 November 1994.
- 2.6 In addition to the above, the following proposals were made to ensure standardisation and uniformity amongst all 30 municipalities:
- (i) Maintain a concise policy
 - (ii) Key focus on service delivery and driving the socio-economic objectives of each municipality.
 - (iii) Incorporate the B-BBEE Scorecard in the policy to address Section 2 (1) (d) (i) of the PPPFA Act.
 - (iv) Key linkages with the SCM policy, LED policy and Preferential Procurement Policy.
 - (v) Addressing "locality" specifically local labour underpinned by the RDP Goals.
 - (vi) "Unemployment" should be utilised as a condition of tender.
 - (vii) Municipalities LED strategies must address the socio-economic targets within their LED policies.
 - (viii) Focus on strategic procurement and procurement planning to be driven through the policy.
 - (ix) Standardisation and uniformity of the policy to be applied across all 30 municipalities.
- 2.7 The PT presented the outcome of paragraph 2.5 and 2.6 together with an implementation strategy on the Preferential Procurement Policy to the Municipal Managers Forum, dated 4 November 2022. The Municipal Managers Forum was supportive in the approach and in addition directed and commented as follows:
- (i) Councils to approve policy by end of November.
 - (ii) Councils would likely request a policy workshop with the administration before approval of the policy.
 - (iii) Budget holders and LED units to be part of the re-skilling/training with the SCM units.
 - (iv) Raising awareness with small suppliers and communities.
 - (v) Request for the PT to take this discussion to the Min-May Tech Forum on 22 November 2022, which will assist the respective Councils understanding and approval of the policy.
 - (vi) Request made that the MMC for Finance also be part of the municipal district roadshows if possible.
 - (vii) It was accepted that further technical discussions will be taken to the CFO forum.

3. IMPLEMENTATION STRATEGY FOR MUNICIPALITIES ON THE PREFERENTIAL PROCUREMENT REGULATIONS

- 3.1 Forth flowing the Workgroup discussions and direction by the Municipal Managers Forum the draft Preferential Procurement Policy was updated and is attached hereby as **Annexure B**. Municipalities should utilise this draft policy to engage the relevant role-players within the municipality and adjust it accordingly for approval and adoption by the respective Council.
- 3.2 The PT in partnership with the municipalities will drive the following implementation strategy put in place to assist with the implementation of the Preferential Procurement Regulations and subsequent municipal PPPFA policies.

FOCUS AREA	ACTIONS REQUIRED
DISTRICT DISCUSSIONS	<ul style="list-style-type: none"> Separate District Sessions, led by the District SCM Managers, inclusive of CFOs, for further comment. District to take a very conservative approach at least for the first year, and to build on it in Year 2 and 3.
TARGETED AREAS	<ul style="list-style-type: none"> HDI, Race, Gender, Disability linked to the B-BBEE scorecard. RDP Goals with the focus on "Locality" (local businesses within the local municipal boundaries) and "Unemployment" as a condition of tender.
ADOPTION TIMELINES	<ul style="list-style-type: none"> Issuance of final draft Municipal Preferential Procurement Policy together with a Guiding Circular by Tuesday, 15 November 2022. Council approval of policy by 30 November 2022.
RESKILLING OF SCM OFFICIALS	<ul style="list-style-type: none"> Reskilling of the SCM units. Re-institutionalisation of Procurement within Government. PT to introduce a 3-year plan with the first year ending November 2023, Annual assessments to be conducted. PT to implement an improvement plan for the respective municipal districts (In-Year Monitoring on a Quarterly Basis).

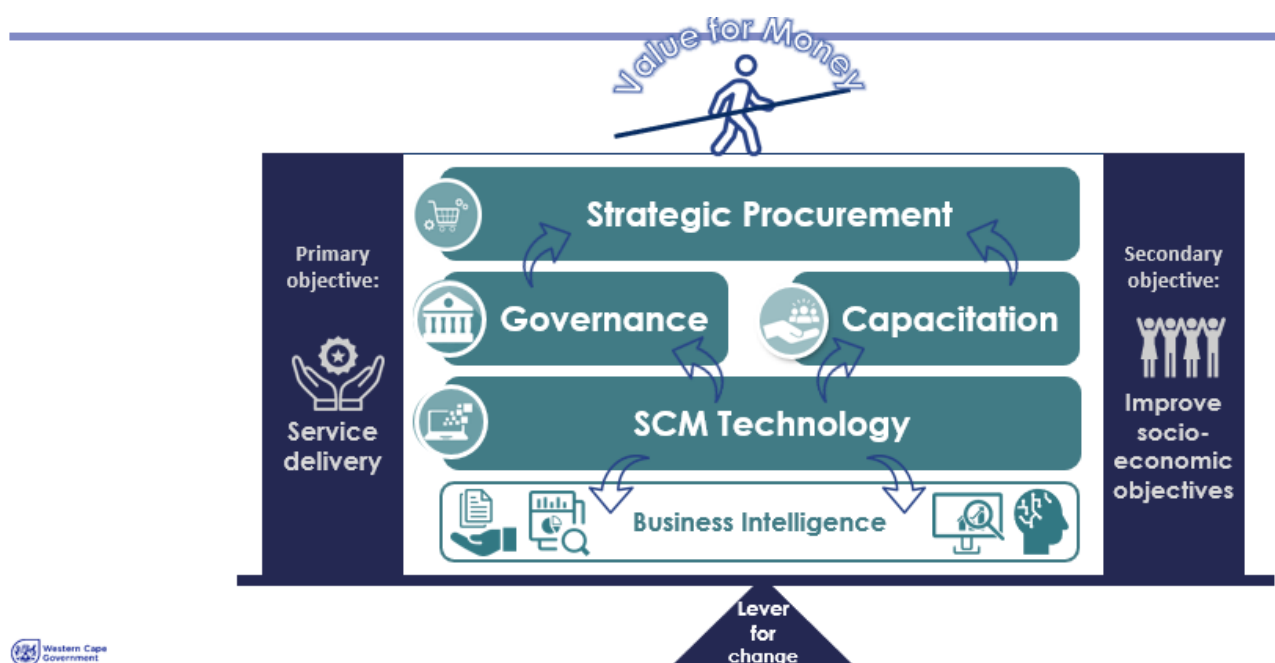
- 3.3 Municipalities should take cognizance of the Municipal District Roadshows and the subsequent SCM-LED Indaba which is scheduled to take place between 28 November - 2 December 2022. Municipal Districts are required to co-ordinate and take the lead in the key discussions at the Municipal District Roadshows.

DISTRICT	ENGAGEMENT DATE	TIME	VENUE
West Coast District	Monday, 28 November 2022	09:00 – 16:00	Moorreesburg Hall, Swartland Municipality
Central Karoo District	Tuesday, 29 November 2022	09:00 – 16:00	Beaufort West, Thusong Centre, Beaufort West Municipality
Garden Route District	Tuesday, 29 November 2022	09:00 – 16:00	George Auditorium, George Municipality
Cape Winelands District and City of Cape Town	Wednesday, 30 November, 2022	09:00 – 16:00	Drakenstein, Thusong Centre, Drakenstein Municipality
Overberg District	Wednesday, 30 November, 2022	09:00 – 16:00	Bredasdorp Thusong Centre, Overstrand Municipality

4. OPPORTUNITY TO REPOSITION SCM AND STRENGTHENING THE INTEGRATION WITH LOCAL ECONOMIC DEVELOPMENT

4.1 The primary objective of government procurement in South Africa is centered around the citizen through effective and efficient service delivery. A very crucial secondary objective is to address any socio-economic needs. These objectives are required to be supported by the principles of value for money which entails getting the right product at the right time and right place. This objective is closely aligned with sections 152(1)(c) and 152(2) of the Constitution of the Republic of South Africa, 1996, which provides that local government must promote social and economic development and that the municipality must strive within its financial and administrative capacity, to achieve the objects set out in subsection 152(1).

4.2 It is therefore of critical importance that Municipalities in finalising their Preferential Procurement Policy understand the linkage with their SCM Policy/Strategy and their Local Economic Strategy. SCM policies thus far is very rule and compliance driven and the opportunity exist to adopt a more value driven approach. This can be depicted by the following illustration:



Strategic Procurement

4.3 The opportunity exists to drive the objectives of service delivery and socio-economic development through procurement strategies that focus on:

- Leveraging of economies of scale and value chain improvements;
- SMME development and job creation;
- Targeting key sectors and commodities for strategic sourcing and preferential procurement;
- Robust evidence-based commodity and market analysis; and
- Understanding the profile of strategic and scarce commodities and their procurement options as well as strategic partners and a detailed analysis of the supplier base.

- 4.4 The above entails a re-articulation of municipalities' supply chains which will require a cohesive approach by adopting a procurement system that is premised on effective planning, strategic purchasing, and sound contract management across the whole organization. The value for money concept is a key focus in determining how the municipality utilises resources through procurement, effectively, economically and without waste and with due regard for the total costs and benefits and the contribution to required outcomes. This will also be aimed at striking a balance between economy, effectiveness, and efficiency as a way of thinking in using resources optimally.

Governance and Capacitation

- 4.5 Whilst repositioning SCM strategy to ensure value for money and enable local economic development it is imperative to maintain a resilient governance platform with a primary focus on service delivery. This requires skillful SCM staff (CFO office and officials involved with SCM activities) to ensure that the overly regulated and policy environment does not stifle procurement and provides for transitioning into performing supply chains for enhanced and efficient service delivery. Building on governance capacitation and performance information is important to support strategic management decisions within SCM of municipalities and municipal entities.
- 4.6 The PT will assist municipalities with Municipal Insight Performance Reporting in order to enhance transparency and accountability and make sustainable procurement choices. Initiatives that will be driven through this approach includes assisting with the designing and drafting of procurement strategies and framework agreements for specific commodities unique to each district, identifying procurement spend to designated groups, evaluate the SCM trends and impact on the municipal resources committed.

e-SCM strategy

- 4.7 The Office of the Chief Procurement Office (OCPO) is in process developing an SCM digital strategy applicable to all organs of state. The intent is to connect procurement planning to actual procurement processes via e-Procurement enablement while strengthening governance and reporting. The utilisation of technology will also act as an enabler to improve SCM performance.
- 4.8 The key focus will be on building data analytics and business intelligence competence to support municipalities with procurement decision-making and better supply chain information management. (i.e., strategic procurement analysis, municipal performance insight reporting). Initiatives that are driven through this approach include: specific commodity sourcing strategies that improve efficiencies within the municipal procurement environment; procurement planning improvements; the localisation of procurement to stimulate regional economic development through the utilisation of South African suppliers and suppliers within the respective municipal area to render goods and services; supplier development initiatives; promoting the use of small business in procurement activities; e procurement and supplier database management.

5. WAY FORWARD

- 5.1 Municipalities to utilise this draft policy to engage the relevant role-players within the municipality and adjust it accordingly for approval and adoption by its respective Council.
- 5.2 Approval of Municipal Preferential Procurement Policy by **30 November 2022**.
- 5.3 To effectively implement the Preferential Procurement Policy Framework Act, 2000 and its subsequent regulations issued in 2022, which to comes into effective on **16 January 2023**.

6. ANNEXURES

6.1 Preferential Procurement Regulations 2022 (Annexure A)

6.2 Preferential Procurement Policy drafted by the PT (Annexure B)

MR I SMITH

CHIEF DIRECTOR: ASSET MANAGEMENT