



Reference number: RCS/C.5

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## TREASURY CIRCULAR MUN NO. 8 / 2020

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MASTER RECORDS OFFICIAL: BUSINESS INFORMATION AND DATA MANAGEMENT  
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THE CHIEF DIRECTOR: LOCAL GOVERNMENT BUDGET ANALYSIS – NATIONAL TREASURY (MR J HATTINGH)  
THE CHIEF DIRECTOR: MFMA IMPLEMENTATION – NATIONAL TREASURY (MR TV PILLAY)

## **EMERGENCY PROCUREMENT IN RESPONSE TO NATIONAL STATE OF DISASTER - COVID-19**

### **1. PURPOSE**

- 1.1 The purpose of this Circular is to communicate National Treasury (NT) MFMA Circular No. 102 (attached hereto marked "Annexure D" and herein referred to as Circular 102) taking into account any specific impact and procurement risks related to the applicable emergency provisions therein articulated.

### **2. BACKGROUND**

- 2.1 As of 15 March 2020, COVID-19 has been classified as a Disaster in terms of section 23 of the Disaster Management Act, 2002 (Act No. 57 of 2002) ("the DMA"). It has further been classified as a national state of disaster in terms of section 27 of the DMA.
- 2.2 On 18 March 2020, regulations under the DMA, regarding steps to prevent an escalation of the disaster or to alleviate, contain and minimise 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).
- 2.3 Circular No. 102 advises generally on emergency procurement procedures as it relates to the disaster and to avoid abuse; and more specifically on procedures to purchase PPE items and cloth masks and set maximum prices related thereto.
- 2.4 The following timelines must be taken into consideration in terms of the various documentary issuances over the period of the lockdown as it relates to Procurement for COVID 19:

NATIONAL REQUIREMENT	DETAILS	APPLICABLE DATES
<b>NT Circular No. 100</b> Emergency Procurement in response to the COVID 19 pandemic	<ul style="list-style-type: none"> <li>● Compliance with National Department of Health specifications for medical PPE, to use prices from NT price list and to negotiate prices with suppliers;</li> <li>● To continue participating in NT transversal contracts were municipalities were already participating and that should municipalities need to purchase and were not participants on the transversal contract no prior written approval from NT was required (SCM Regulation 36 and 32 may be applied);</li> <li>● Tender briefing sessions and the extension of bid closing dates whilst maintaining disaster management requirements;</li> <li>● Expansions on contracts for goods to be done i.t.o. MFMA Circular No. 62 for goods. Expansions in excess of 15% for goods - Council to create a structure for approval Council to ratify at next sitting); and</li> <li>● Reporting requirements i.t.o. SCM Regulation 36.</li> </ul>	<b>15 March 2020 to 13 April 2020</b>  Issued on the 19 March 2020 and replaced as at 14 April by NT Circular No. 101
<b>COGTA Regulations Amendments to the DMA</b>	<ul style="list-style-type: none"> <li>● Emergency procurement i.t.o. SCM Regulation 32 (NT transversal contracting);</li> <li>● Adherence to NT MFMA Circular No. 100 for emergency procurement requirements;</li> <li>● Decision-making approvals delegated to the CFO and MM; and</li> <li>● Reporting requirements i.t.o. NT MFMA Circular 100.</li> </ul>	<b>Gazetted on 30 March 2020</b>
<b>Annexure to MFMA Circular No. 99</b>	<b>SCM Matters:</b> <ul style="list-style-type: none"> <li>● Provided further guidance i.t.o. emergency procurement requirements relating to NT MFMA Circular No. 100; and</li> <li>● Donations and sponsorships received i.t.o. SCM Regulation 48 needs to be reported to PT as part of the NT MFMA Circular No. 100 reporting requirements.</li> </ul>	<b>08 April 2020</b> Still applicable
<b>NT Circular No. 101</b> COVID 19 Bulk Central Procurement Strategy for Government Institutions	<ul style="list-style-type: none"> <li>● Advised municipalities on NT centralising procurement for PPE items which Accounting Officers <b>MAY</b> implement;</li> <li>● Municipalities may place bulk purchasing orders with NT. Items not covered to use SCM Regulation 36;</li> <li>● Expansions of contracts to be done in terms of MFMA Circular No. 62 and expansions in excess of 15% to be dealt with i.to. MFMA section 116(3); and</li> <li>● Any procurement done, continues i.t.o. NT MFMA Circular No. 100 <u>must be honoured.</u></li> </ul>	<b>14 April 2020 to 04 May 2020</b>  Updates and replaces NT Circular No. 100
<b>NT Circular No. 102</b> Emergency Procurement in Response to National State of Disaster	<ul style="list-style-type: none"> <li>● Procurement and Expenditure controls to be put in place for COVID-19;</li> <li>● Advises on emergency procurement procedures;</li> <li>● Increased thresholds for expansions to <b>30%/R30 million for Construction and 25%/R25 million for Goods and Services;</b></li> <li>● Follow section 116(3) of MFMA in terms approvals in excess of the Threshold;</li> <li>● Guidance on PPE items and Cloth Masks determining the <u>maximum prices for these items and price variance allowed;</u></li> <li>● Use of transversal contracts emanating from NT Circular No. 100 and 101 to continue; and</li> </ul>	<b>From 05 May 2020</b>  Withdrawn NT MFMA Circular No. 100 and NT MFMA Circular No. 101

NATIONAL REQUIREMENT	DETAILS	APPLICABLE DATES
	<ul style="list-style-type: none"> <li>● Reporting requirements i.t.o. SCM Regulation 36 within 10 days to PT; and</li> <li>● Amend Procurement plans to include COVID 19 procurement and available budget.</li> </ul>	
<b>CoGTA Regulations: Amendments to the Disaster Management Act</b>	<ul style="list-style-type: none"> <li>● Emergency procurement within the framework of the Disaster Management Act, 2002, all applicable COVID -19 Regulations, and <u>National Treasury Instruction No. 05 of 2020/21</u>. <b>(Should reference NT MFMA Circular No. 102 of 2020/21 instead); and</b></li> <li>● Report all procurement undertaken during the period of the national state of disaster to the first council meeting.</li> </ul>	<b>From 07 May 2020</b> Issued on 30 March 2020

### 3. IDENTIFIED RISKS AND MITIGATION

3.1 Regulation 32 compliance and participation in transversal contracts where municipalities were not participants in the transversal contracts:

- (a) Where municipalities are participants to the transversal contracts, there appears to be no issue;
- (b) Where municipalities are not participants in NT transversal contracts the NT has advised that prior approval from NT is not required in Circulars No. 100, 101 and no prior approval is required from the NT. Provision here is made in terms of the disaster dispensation and the unusual circumstances and supply and demand conditions that exist and will be deemed acceptable during the period of the disaster and any expenditure related to COVID-19 or other necessary procurement within the disaster conditions;
- (c) Paragraph 3.1 (b) applies to those procurement transactions where municipalities had utilised Circulars 100 and 101 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;
- (d) Municipalities are advised to ensure that control measures are in place in keeping the appropriate evidence that supports their decision-making process; and
- (e) Paragraphs 5.1 - 5.3 of Circular No. 102 now deals with transversal contracting requirements going forward with effect from 05 May 2020.

3.2 Lockdown conditions and the need to procure other essential service delivery requirements not necessarily COVID-19 related have been raised by various municipalities. Municipalities and municipal entities must adhere to the Disaster Management Act, 2002 gazetted on 18 March 2020 when procuring and must take cognisance of the following:

- (a) May extend bids responses for not more than 40 days to accommodate any bid enquiries;
- (b) Extend the validity periods to provide the organ of state with sufficient time to finalise the evaluation and award of those bids;
- (c) Lockdown Level 4 restrictions and the different associated lockdown restrictions, when issuing any new bids during the lockdown period. This must be done a manner that ensures that no prospective bidder is deprived of the opportunity to be able to respond to such tender advertisement;

- (d) Different lockdown levels allow certain industries/suppliers to open for business, and the decision on whether or not to advertise a bid must take cognisance of this. If a municipality decides to advertise a bid, the bid must be related to the industries which are open for business during that specific level of lockdown, and municipalities must ensure that submission of responses is done in a manner that is compliant to SCM prescripts and the Disaster Management Act and its Regulations; and
- (e) It is against this backdrop that municipalities may decide on whether/not to advertise a bid, especially for non-essential goods and services during the lockdown period.

### 3.3 Procurement of PPE and Cloth Masks:

- (a) Circulars No. 100 and 101 made provision for central and bulk procurement of PPE items to which municipalities may tap into.
- (b) Any contracts procured in terms of these circulars must be honoured.
- (c) Challenges in respect of supply and demand and performance on these contracts purchased in terms of Circulars 100 and 101 must be dealt with in accordance with the *General conditions of Contract (GCC)* (See Annexure E attached herewith in terms of guidance on how to deal with issues here).
- (d) Provincial Treasury further put together databases for medical and non-medical PPE and has availed this database for municipal utilisation. Municipalities may continue to be utilise this as it is in compliance with the requirements articulated in NT Circular 102 and the guidance provided by PT in terms of its utilisation as it relates to benchmarking prices and negotiating of prices with suppliers must be followed.
- (e) As it relates to Cloth masks:
  - i) Any contracts procured prior to NT Circular No. 102 must be honoured;
  - ii) PT has put together a database for cloth mask databases in the Province which was availed for municipal utilisation prior to the issuance of NT Circular No. 102. PT is in the process of arranging for these suppliers on the list to be registered with the Department of Small Business Development according to NT compliance requirements and will advise municipalities accordingly when this process is complete; and
  - iii) In the interim municipalities should use the NT list of suppliers that have been published on its website.

### 3.4 In the current state of disaster, the municipalities must ensure that the necessary due diligence and controls are proactively managed to mitigate against financial management and control risks that become more imminent within a disaster.

#### 4. REQUEST

4.1 Accounting officers and accounting authorities must:

- (a) Note that the National Treasury MFMA Circular No. 101: Covid-19 Disaster Management Central Emergency Procurement Strategy for MFMA Organs of State has been repealed.
- (b) Note and implement the requirements of the NT MFMA 102 which must be read in conjunction with Provincial Treasury Circular No. 6 and this Circular including the relevant Annexures:
  - Annexure A - Personal Protection Equipment Price List;
  - Annexure B - Refer to Annexure B Recommended Guidelines - Updated Fabric Face Masks Manufactured in SA;
  - Annexure C - Cloth Mask list of suppliers;
  - Annexure D - NT MFMA Circular No. 102 - Emergency Procurement in Response to National State of Disaster; and
  - Annexure E - Honouring of Existing Contracts and Payment of Suppliers.
- (c) Ensure that the content of this Circular is brought to the attention of all relevant officials within their institution.



**JULINDA GANTANA**  
**HEAD: GOVERNANCE AND ASSET MANAGEMENT:**  
**PROVINCIAL TREASURY**  
**DATE:** 11 May 2020