



Reference number: RCS/C.6

Private Bag X9165
CAPE TOWN
8000

TREASURY CIRCULAR NO. 10/2022

THE PREMIER

THE MINISTER OF AGRICULTURE

THE MINISTER OF COMMUNITY SAFETY

THE MINISTER OF CULTURAL AFFAIRS AND SPORT

THE MINISTER OF EDUCATION

THE MINISTER OF FINANCE AND ECONOMIC OPPORTUNITIES

THE MINISTER OF HEALTH

THE MINISTER OF HUMAN SETTLEMENTS

THE MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

THE MINISTER OF SOCIAL DEVELOPMENT

THE MINISTER OF TRANSPORT AND PUBLIC WORKS

THE SPEAKER: PROVINCIAL PARLIAMENT

THE DEPUTY SPEAKER: PROVINCIAL PARLIAMENT

THE EXECUTIVE AUTHORITY: WESTERN CAPE GAMBLING AND RACING BOARD (MINISTER D MAYNIER)

THE EXECUTIVE AUTHORITY: WESTERN CAPE NATURE CONSERVATION BOARD (MINISTER A BREDELL)

THE EXECUTIVE AUTHORITY: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MINISTER D MAYNIER)

THE EXECUTIVE AUTHORITY: SALDANHA BAY IDZ LICENCING COMPANY (MINISTER D MAYNIER)

THE EXECUTIVE AUTHORITY: WESTERN CAPE CULTURAL COMMISSION (MINISTER A MARAIS)

THE EXECUTIVE AUTHORITY: WESTERN CAPE LANGUAGE COMMITTEE (MINISTER A MARAIS)

THE EXECUTIVE AUTHORITY: WESTERN CAPE HERITAGE (MINISTER A MARAIS)

THE EXECUTIVE AUTHORITY: CASIDRA (MINISTER IH MEYER)

THE EXECUTIVE AUTHORITY: WESTERN CAPE LIQUOR AUTHORITY (MINISTER A MARAIS) (ACTING)

THE ACCOUNTING OFFICER: VOTE 1: PREMIER (DR H MALILA)

THE ACCOUNTING OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MR R ADAMS)

THE ACCOUNTING OFFICER: VOTE 3: PROVINCIAL TREASURY (MR D SAVAGE)

THE ACCOUNTING OFFICER: VOTE 4: COMMUNITY SAFETY (ADV. Y PILLAY)

THE ACCOUNTING OFFICER: VOTE 5: EDUCATION (MR B WALTERS)

THE ACCOUNTING OFFICER: VOTE 6: HEALTH (DR K CLOETE)

THE ACCOUNTING OFFICER: VOTE 7: SOCIAL DEVELOPMENT (DR R MACDONALD)

THE ACCOUNTING OFFICER: VOTE 8: HUMAN SETTLEMENTS (MS P MAYISELA)

THE ACCOUNTING OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR G GERBER)

THE ACCOUNTING OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MS J GOOCH)

THE ACCOUNTING OFFICER: VOTE 11: AGRICULTURE (DR M SEBOPETSA)

THE ACCOUNTING OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MR S FOURIE)

THE ACCOUNTING OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MR G REDMAN)

THE ACCOUNTING OFFICER: VOTE 14: LOCAL GOVERNMENT (MR G PAULSE)

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THE CHIEF FINANCIAL OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MS N PETERSEN)

THE CHIEF FINANCIAL OFFICER: VOTE 3: PROVINCIAL TREASURY (MS A SMIT)

THE CHIEF FINANCIAL OFFICER: VOTE 4: COMMUNITY SAFETY (MR M FRIZLAR)

THE CHIEF FINANCIAL OFFICER: VOTE 5: EDUCATION (MR L ELY)

THE CHIEF FINANCIAL OFFICER: VOTE 6: HEALTH (MR S KAYE)

THE CHIEF FINANCIAL OFFICER: VOTE 7: SOCIAL DEVELOPMENT (MR JO SMITH)

THE CHIEF FINANCIAL OFFICER: VOTE 8: HUMAN SETTLEMENTS (MR F DE WET)

THE CHIEF FINANCIAL OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR RT MOSOME)

THE CHIEF FINANCIAL OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (ADV. C SMITH)

THE CHIEF FINANCIAL OFFICER: VOTE 11: AGRICULTURE (MR F HUYSAMER)

THE CHIEF FINANCIAL OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MS M ABRAHAMS)

THE CHIEF FINANCIAL OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MS BG RUTGERS)

THE CHIEF FINANCIAL OFFICER: VOTE 14: LOCAL GOVERNMENT (MS B SEWLALL-SINGH)

For information

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 THE ACCOUNTING AUTHORITY: WESTERN CAPE NATURE CONSERVATION BOARD (PROF. D HENDRICKS)
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 THE CHIEF FINANCIAL OFFICER: CASIDRA (MR F VAN ZYL)
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE LIQUOR AUTHORITY (MR S GCWABE)
 THE CHIEF FINANCIAL OFFICER: ATLANTIS SPECIAL ECONOMIC ZONE (MS W SAIB)
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 THE HEAD OFFICIAL: PROVINCIAL TREASURY (MR D SAVAGE)
 THE DEPUTY DIRECTOR-GENERAL: FISCAL AND ECONOMIC SERVICES (DR R HAVEMANN)
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 THE CHIEF DIRECTOR: ASSET MANAGEMENT (MR I SMITH)
 THE CHIEF DIRECTOR: FINANCIAL GOVERNANCE AND ACCOUNTING (MR A HARDIEN)
 THE CHIEF FINANCIAL OFFICER (MS A SMIT)
 THE HEAD: OFFICE OF THE FINANCE MINISTRY (MS C GREEN)
 THE DIRECTOR: BUSINESS INFORMATION AND DATA MANAGEMENT (MR P PIENAAR)
 THE DIRECTOR: FINANCIAL GOVERNANCE (MS M VAN NIEKERK)
 THE DIRECTOR: FISCAL POLICY (MR M BOOYSEN) (PRO TEM)
 THE DIRECTOR: INFRASTRUCTURE (MR K LANGENHOVEN)
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 THE DIRECTOR: LOCAL GOVERNMENT REVENUE AND EXPENDITURE (GROUP ONE) (MR T NTSHINGILA)
 THE DIRECTOR: LOCAL GOVERNMENT REVENUE AND EXPENDITURE (GROUP TWO) (MR I TSIE)
 THE DIRECTOR: LOCAL GOVERNMENT MFMA COORDINATION (MR S KENYON) (PRO TEM)
 THE DIRECTOR: LOCAL GOVERNMENT SUPPLY CHAIN MANAGEMENT (MR R MOOLMAN)
 THE DIRECTOR: PROVINCIAL GOVERNMENT ACCOUNTING (MS A ABOO)
 THE DIRECTOR: PROVINCIAL GOVERNMENT BUDGET OFFICE (MS T VAN DE RHEEDE)
 THE DIRECTOR: PROVINCIAL GOVERNMENT FINANCE (EXPENDITURE MANAGEMENT) (MS A PICK) (PRO TEM)
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 THE DIRECTOR: SUPPORTING AND INTERLINKED FINANCIAL SYSTEMS (MR A MAZOMBA)
 THE PROVINCIAL AUDITOR
 MASTER RECORDS OFFICIAL: BUSINESS INFORMATION AND DATA MANAGEMENT
 THE DEPUTY DIRECTOR-GENERAL: CORPORATE ASSURANCE, DEPARTMENT OF THE PREMIER (MS H ROBSON)

ISSUANCE OF THE REVISED WESTERN CAPE BIDDING DOCUMENT 6.1 (I.E. WCBD 6.1) AS ALIGNED TO THE WESTERN CAPE GOVERNMENT'S INTERIM STRATEGY AS IT RELATES TO PREFERENTIAL PROCUREMENT

1. PURPOSE

- 1.1 The purpose of this communicate is to inform accounting officers and accounting authorities of the issuance of the revised WCBD 6.1 Preference Points Claim Form (hereto attached marked Annexure A) as a result of the invalidity of the Preferential Procurement Regulations, 2017 (PPPFR) and the Western Cape Government's (WCG) interim strategy as it relates to preferential procurement.

2. BACKGROUND

- 2.1 On Wednesday, 16 February 2022, the Constitutional Court handed down judgment in the application for leave to appeal against a judgment and order of the Supreme Court of Appeal (SCA). This application was brought by the national Minister of Finance ("the Minister") against Afribus NPC and concerns the validity of PPPFR promulgated by the Minister on 20 January 2017, in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000.
- 2.2 The SCA held that the Minister's promulgation of regulations 3(b) (to determine whether pre-qualification criteria are applicable to the tender as envisaged in regulation 4 to the tender), regulation 4 (prequalification criteria for preferential procurement) and regulation 9 (subcontracting as a condition of tender) of the PPPFR are unlawful.
- 2.3 Due to the interconnectedness of the regulations, the SCA declared the entire set of Regulations are invalid on the basis that the content of the Regulations exceeded the Minister's power on what could permissibly be regulated on in terms of section 5 of the Procurement Act and section 217 of the Constitution.
- 2.4 In response to the above, the Provincial Treasury issued Treasury Circular 7 of 2022 articulating the interim arrangements as approved by the Provincial Cabinet via Cabinet Minute 85/2022 for the WCG as it relates preferential procurement.
- 2.5 The said Circular communicated that the WCG will maintain the status quo as it relates to the application of the PPPFR in so far as the preference point system is concerned up until such time that as the Constitutional Court Clarifies the applicable date of the invalidity of said Regulations or new Regulations come into effect. This necessitated the revision of the WCBD 6.1 to align to the interim strategy so as to avoid confusion for procuring entities and bidders.

3. AMENDMENTS TO THE WESTERN CAPE BIDDING DOCUMENT 6.1 (I.E. WCBD 6.1)

- 3.1 The following amendments were made to the WCBD 6.1 as reflected in Table 1 hereunder:

Table 1

Reference	Paragraph	Status	Amended Paragraph
Heading	Preference points claim form in terms of the preferential procurement regulations 2017 and codes of good practice.	Amended	Preference points claim form in terms of the preferential procurement in terms of the Western Cape Governments interim strategy as it relates to preference points.
1.6	(Therefore in the context of the 2017 regulations "bidder" and "tenderer" have the same meaning).	Removed	Removed entirely
1.12	" functionality " means the ability of a tenderer to provide goods or services in accordance with specification as set out in the tender documents.	Removed	Removed entirely
1.20	" sub-contract " means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.	Removed	Removed entirely

Reference	Paragraph	Status	Amended Paragraph
3.1	Subject to Regulation 11 of the Regulations, the bidder obtaining the highest number of total points will be awarded the contract.	Amended	Subject to Section 2 (1)(f) of the Preferential Procurement Policy Framework Act, 2000, the bidder obtaining the highest number of total points will be awarded the contract.
3.6	When functionality is part of the evaluation process and two or more bids have scored equal total points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest points for functionality.	Amended	As per section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000 the contract may be awarded to a bidder other than the one scoring the highest number of total points based on objective criteria in addition to those contemplated in paragraphs (d) and (e) of the Preferential Procurement Policy Framework Act, 2000 that justifies the award to another tenderer provided that it has been stipulated upfront in the tendering conditions.
5.9	A tenderer may not be awarded points for B-BBEE status level of contributor if the bid documents indicate that the tenderer intends sub-contracting more than 25% of the value of the contract to any other person not qualifying for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.	Removed	Removed entirely
5.10	A tenderer awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.	Removed	Removed entirely
8	SUB-CONTRACTING	Removed	Removed entirely
8.1	Will any portion of the contract be sub-contracted? YES/NO (delete which is not applicable)	Removed	Removed entirely
8.1.1	If yes, indicate: i. what percentage of the contract will be subcontracted? ii. the name of the sub-contractor? iii. the B-BBEE status level of the sub-contractor? iv. whether the sub-contractor is an EME or QSE? YES/NO (delete which is not applicable)	Removed	Removed entirely

Reference	Paragraph	Status	Amended Paragraph
8.1.2	Sub-contracting relates to a particular contract and if sub-contracting is applicable, the bidder to state in their response to a particular RFQ that a portion of that contract will be sub-contracted.	Removed	Removed entirely

- 3.2 Given that the empowerment impact assessments for procurement above R10 million will not be applied as the decision taken in the province to conclude empowerment impact assessments was in terms of sub-contracting requirements, departments and public entities are required to note that the below requirements are held in abeyance until the necessary clarity is received:
- a) paragraph 2.4 and 2.6 of Treasury Circular 09 of 2021 (hereto attached as Annexure B); and
 - b) Annexure 3: Empowerment impact assessment guide issued via PT Circular 30 of 2021.
- 3.3 In terms of the Provincial Cabinet approved interim strategy, it must be noted that the revised WCBD 6.1 issued herewith **comes into effect for all bids issued after the date of issuance of this Circular** up until such time the exemption sought from the National Treasury in terms of Section 3 (c) of the Act becomes applicable where the claiming of points will become invalid up until the new Preferential Procurement Regulations are issued, when a revised WCBD 6.1 document will be issued.
- 3.4 Bids advertised with the previous version of the WCBD6.1 must be processed in terms of the document that was advertised with the bid.

4. REQUEST

- 4.1 Accounting officers and accounting authorities must note the content of this Circular and communicate the requirements to officials under their control responsible for the functions depicted in this Circular.
- 4.2 Accounting officers and accounting authorities must note that the WCBD 6.1 issued via Treasury Circular 09/2021 is herewith replaced with the attached WCBD 6.1 Preference Points Claim Form.
- 4.3 Accounting officers to note that the attached WCBD 6.1 is only applicable in terms of the cabinet endorsed interim arrangements post the Constitutional Court judgement on 16 February 2022 and will be reconsidered once the Constitutional Court provides clarity on the suspension of validity of the 2017 regulations as determined by the High Court. Once clarity is received the Provincial Treasury will reconsider and revise the attached WCBD6.1 further.
- 4.4 Accounting Officer's to note that once the new regulations have not been issued the Provincial Treasury will similarly revise the attached WCBD 6.1 in alignment to the new regulations.

5. ENQUIRIES

- 5.1 All enquiries in respect of this circular or any other enquiries in respect of procurement must be directed to: SupplyChainManagement.HDPFMA@westerncape.gov.za

NADIA EBRAHIM
DIRECTOR: PROVINCIAL GOVERNMENT SUPPLY CHAIN MANAGEMENT
DATE: 8 April 2022