

Reference number: RCS/C.6

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## TREASURY CIRCULAR NO. 6/2019

THE PREMIER

THE MINISTER OF ECONOMIC OPPORTUNITIES  
THE MINISTER OF COMMUNITY SAFETY  
THE MINISTER OF CULTURAL AFFAIRS AND SPORT  
THE MINISTER OF EDUCATION  
THE MINISTER OF FINANCE  
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 IH MEYER)  
THE EXECUTIVE AUTHORITY: WESTERN CAPE NATURE CONSERVATION BOARD (MINISTER A BREDELL)  
THE EXECUTIVE AUTHORITY: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MINISTER B SCHÄFER)  
THE EXECUTIVE AUTHORITY: SALDANHA BAY IDZ LICENCING COMPANY (MINISTER B SCHÄFER)  
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 B SCHÄFER)  
THE EXECUTIVE AUTHORITY: WESTERN CAPE LIQUOR AUTHORITY (MINISTER A WINDE)

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THE ACCOUNTING OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (DR G LAWRENCE)  
THE ACCOUNTING OFFICER: VOTE 3: PROVINCIAL TREASURY (MR Z HOOSAIN)  
THE ACCOUNTING OFFICER: VOTE 4: COMMUNITY SAFETY (MR G MORRIS)  
THE ACCOUNTING OFFICER: VOTE 5: EDUCATION (MR BK SCHREUDER)  
THE ACCOUNTING OFFICER: VOTE 6: HEALTH (DR B ENGELBRECHT)  
THE ACCOUNTING OFFICER: VOTE 7: SOCIAL DEVELOPMENT (DR R MACDONALD)  
THE ACCOUNTING OFFICER: VOTE 8: HUMAN SETTLEMENTS (MR T MGULI)  
THE ACCOUNTING OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR P VAN ZYL)  
THE ACCOUNTING OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MS J GOOCH)  
THE ACCOUNTING OFFICER: VOTE 11: AGRICULTURE (MS J ISAACS)  
THE ACCOUNTING OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MR S FOURIE)  
THE ACCOUNTING OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MR B WALTERS)  
THE ACCOUNTING OFFICER: VOTE 14: LOCAL GOVERNMENT (MR G PAULSE)

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THE CHIEF FINANCIAL OFFICER: VOTE 3: PROVINCIAL TREASURY (MS A SMIT)  
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THE CHIEF FINANCIAL OFFICER: VOTE 14: LOCAL GOVERNMENT (MS B SEWLALL-SINGH)

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THE ACCOUNTING AUTHORITY: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MR B FIGAJI)  
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For information

THE ACCOUNTING AUTHORITY: WESTERN CAPE HERITAGE (MR M DLAMUKA)  
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 THE DIRECTOR: GOVERNMENT MOTOR TRANSPORT (MR R WIGGILL)  
 THE HEAD OFFICIAL: PROVINCIAL TREASURY (MR Z HOOSAIN)  
 THE DEPUTY DIRECTOR-GENERAL: FISCAL AND ECONOMIC SERVICES (MR H MALILA)  
 THE DEPUTY DIRECTOR-GENERAL: GOVERNANCE AND ASSET MANAGEMENT (MR IG SMITH) (ACTING)  
 THE CHIEF DIRECTOR: PUBLIC POLICY SERVICES (VACANT)  
 THE CHIEF DIRECTOR: PROVINCIAL GOVERNMENT PUBLIC FINANCE (MS JD GANTANA)  
 THE CHIEF DIRECTOR: LOCAL GOVERNMENT PUBLIC FINANCE (VACANT)  
 THE CHIEF DIRECTOR: ASSET MANAGEMENT (MS N EBRAHIM) (ACTING)  
 THE CHIEF DIRECTOR: FINANCIAL GOVERNANCE AND ACCOUNTING (MR A HARDIEN)  
 THE CHIEF FINANCIAL OFFICER (MS A SMIT)  
 THE HEAD: OFFICE OF THE FINANCE MINISTRY (ADV. E PRETORIUS)  
 THE DIRECTOR: BUSINESS INFORMATION AND DATA MANAGEMENT (MR PP PIENAAR)  
 THE DIRECTOR: FINANCIAL GOVERNANCE (MS M VAN NIEKERK)  
 THE DIRECTOR: FISCAL POLICY (DR N NLEYA)  
 THE DIRECTOR: INFRASTRUCTURE (MR K LANGENHOVEN)  
 THE DIRECTOR: LOCAL GOVERNMENT ACCOUNTING (MR L BRINDERS)  
 THE DIRECTOR: LOCAL GOVERNMENT BUDGET OFFICE (MR M BOOYSEN)  
 THE DIRECTOR: LOCAL GOVERNMENT REVENUE AND EXPENDITURE (GROUP ONE) (VACANT)  
 THE DIRECTOR: LOCAL GOVERNMENT REVENUE AND EXPENDITURE (GROUP TWO) (MR M SIGABI)  
 THE DIRECTOR: LOCAL GOVERNMENT SUPPLY CHAIN MANAGEMENT (MR R MOOLMAN)  
 THE DIRECTOR: PROVINCIAL GOVERNMENT ACCOUNTING (MR A REDDY)  
 THE DIRECTOR: PROVINCIAL GOVERNMENT BUDGET OFFICE (MS RH SLINGER)  
 THE DIRECTOR: PROVINCIAL GOVERNMENT FINANCE (EXPENDITURE MANAGEMENT) (MS A PICK)  
 THE DIRECTOR: PROVINCIAL GOVERNMENT SUPPLY CHAIN MANAGEMENT (MS T RAKIEP) (ACTING)  
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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)

## **NATIONAL TREASURY INSTRUCTION SCM INSTRUCTION NOTE 3 OF 2016/17 PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM**

### **1. PURPOSE**

- 1.1 The purpose of this communique is to reiterate/disseminate the Western Cape Government's (WCG's) stance on National Treasury (NT) Instruction SCM Instruction Note 3 of 2016/17 (attached hereto marked Annexure A) on preventing and combating abuse in the supply chain management system.

### **2. BACKGROUND**

- 2.1 In terms of Section 76 of the Public Finance Management Act (PFMA) the NT is mandated to issue regulations and instructions. The two being very different instruments i.e. the former being subordinate legislation and the latter NOT, as it is a manner in which the legislation has been crafted, to empower the NT to ensure standardisation in practice and procedure as well as to ensure that there are sound controls and risk mitigation procedures in place.

- 2.2 Section 18 of the PFMA gives the power to instruct to the relevant provincial treasuries as well. This comes from the constitutional mandate on how provinces are created and their respective roles and responsibilities.
- 2.3 Hence it is therefore imperative that when instructions are issued that they are consistent with the powers and function enshrined in the Constitution, the primary legislation for finance i.e. (the PFMA) and subordinate legislation (i.e. regulations to the PFMA). In context public administrative decision-making is also governed by the administrative justice and the PAJA Act governs all administrative decision-making processes.
- 2.4 Since promulgating the PFMA and its last Regulations in 2005, accounting officers were allowed to implement a procurement and provisioning system in terms of Section 38 of the PFMA, suffice to say for disparate practice notes, circulars and guidelines issued by the NT.
- 2.5 In 2009 the WCG made a concerted effort in looking at an imbedded governance model and, internal control and risk mitigation initiative for SCM within the Province which culminated in the SCM blueprint and was augmented through Provincial Treasury Instructions being issued in 2012 and a pro-forma Accounting Officer's System (AOS) being implemented in 2013, thereby ensuring that the spirit and context of the internal control and risk management requirements espoused by the NT was entrenched in the SCM model and strategy for the Province.
- 2.6 When NT instructions are issued in the norm the following process is undertaken by the PT to test the requirements issued in respect regulatory impact assessment (RIA), that include amongst others the following:
- (a) Whether/not there similar or more improved ways of implementing the requirement that already exists in the Province;
  - (b) Practicality and rationality of the requirement;
  - (c) Whether or not such requirements are in line with the powers and functions ascribed in law;
  - (d) Test the impact of the requirements from a process, resource, value for money and red tape and systems perspective; and
  - (e) A cost benefit perspective where applicable.
- 2.7 Should there be no similar or such requirements in place in the Province that speaks to the requirements issued, then the requirements are implemented as-is and augmented with provincial operational requirements such as systems enablement or templates and Standard Operating Procedures (SOP's) etc. Should the Province be in disagreement with the instruction notes this would be communicated in writing to the NT. Whilst WCG does not receive a response in most cases, the WCG's comments are taken up through a retraction of the instruction/amendment in many instances.

### **3. TO NOTE**

- 3.1 The NT issued SCM IN 3 of 2016/2017 with the objective to provide guidance on measures to prevent and combat abuse in the Supply Chain Management System.
- 3.2 In 2016 PT issued Treasury Circular 23 of 2016 (attached hereto as Annexure B) in response to SCM IN 3 of 2016/2017. Comments to SCM IN 3 of 2016/2017 was sent to NT on 28 September 2016 (attached hereto as Annexure C). A legal opinion regarding SCM IN 3 of 2016/2017 was further obtained on 9 February 2018 (attached hereto as Annexure D).

- 3.3 A number of legal issues and risks identified by the Province in respect of IN 3 which was communicated to the NT who responded that they are in a process of re-looking at the Instructions issued and revising them accordingly. However, no such revision has come through as yet and institutions are being audited on the requirements as if this communication did not occur.
- 3.4 In the context of Instruction Note 3 of 2016/17, the bulk of the requirements are already contained in either the Provincial Treasury Instructions (PTI's) and in departmental Accounting Officer System's (AOS 's) and within the mandate and functions of the Forensic Services Unit within the Department of the Premier, in the spirit and context of the law.
- 3.5 SCM risks, abuse and complaints are addressed in paragraphs 3.8 and 3.9 of the WC PTI's and Chapters 24, 25 and 26 of the AOS. The shared Forensic Services Unit investigates fraud and corruption on behalf of Accounting Officers and provides feedback to SCOPA on outcomes, on a quarterly basis. Procurement methods (NT) instruction reference to deviations are dealt with in part 5 of the PTI's and Chapter 7 of AOS.
- 3.6 Par 17.13 of the AOS deals with expansions and extensions. In view of the WCG stance on IN 3 the PT has reiterated to departments that we maintain the position emanating from IN 32, which apply to expansions and variations of contracts and limited bidding. Provincial Treasury Circular 31 of 2012 (attached hereto as Annexure E), was issued in this regard to which a checklist /template for decision making was issued that speaks to the internal control and risks that IN 3 wants to implement for contract expansions. Departments have applied this process since 2012.
- 3.7 Thus, currently National Treasury Instruction Note 32 on enhancing compliance monitoring and improving transparency and accountability in SCM (31 May 2011) and Provincial Treasury Circular 31 of 2012 and National Treasury Regulations 16 A are being applied at the department, in line with Provincial Treasury's request.
- 3.8 Lastly as it relates to the IN 3 requirements for approval from PT on "deviations". This is ultra vires the NTR 16A6.4 which states:

***"If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority".***

"OTHER MEANS" here would be limited bidding, contract expansions or variations, unsolicited bids, claims back arrangements with other departments to name but a few applicable methods of procurement. A piggy backing option may also be utilised in terms of NTR 16A6.6.

#### **4. WAY FORWARD**

- 4.1 In respect of National Treasury Instruction 3 of 2016/17 the Provincial Treasury has noted that these requirements are in conflict with National Treasury Regulations 16 A and Treasury Circular 31 of 2012 (Attached hereto as Annexure B) and as a result, departments were advised not to implement National Treasury Instruction 3 of 2016/17.
- 4.2 For the reasons stated in 3.1 - 3.8 above it therefore does not make sense to issue the instruction. The Western Cape Government already have adequate control processes from and internal control and risk mitigation processes in place.
- 4.3 Provincial Treasury has therefore not issued the NT IN 3 of 2016/17. This has been communicated to departments when the IN was issued via the various fora i.e. SCM forum and CFO forum and a position paper was provided to departments.



- 4.4 However, for audit purposes the PT is issuing the stance via Circular and the stance has been effective since the issuance off the IN.
- 4.5 Should departments have not implemented PT Circular 31 of 2012, departments would fall foul of the requirements and would not be in a position to defend their case in NOT implementing Instruction Note 3 of 2016/17.
- 4.6 The PT will not in the context of the regulatory requirements usurp the power conferred on an AO/AA in terms of regulation I 6A6.4 as required by Instruction 3 as an instruction may not be contrary to OR override, the requirements entrenched in law. The power to authorise deviations from a competitive bidding process hence vests in the AO/AA and having exercised this power is deemed to have exercised his office.

## **5. REQUEST**

5.1 Accounting officer's/accounting authorities are requested to ensure that the content of the circular is brought to the attention of all relevant officials within their institution and public entities reporting to their executive authorities as it is applicable to national and provincial departments, public entities listed in Schedules 3A and 3C to the PFMA and Constitutional institutions.

5.2 Any enquiries relating to this circular may be directed to:

SCM Helpdesk: [SupplyChainManagement.HDPFMA@westerncape.gov.za](mailto:SupplyChainManagement.HDPFMA@westerncape.gov.za)



**MS TASNEEM RAKIEP**

**ACTING DIRECTOR: PROVINCIAL GOVERNMENT SUPPLY CHAIN MANAGEMENT**

**DATE:** 20 February 2019



**TO ALL : ACCOUNTING OFFICERS OF DEPARTMENTS AND CONSTITUTIONAL INSTITUTIONS**

**ACCOUNTING AUTHORITIES OF PUBLIC ENTITIES**

**HEAD OFFICIALS OF PROVINCIAL TREASURIES**

**NATIONAL TREASURY INSTRUCTION SCM INSTRUCTION NOTE 3 OF 2016/17**

**PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM**

**1. OBJECTIVE**

The objective of the *SCM Treasury Instruction* is to provide guidance on measures to prevent and combat abuse in the Supply Chain Management System.

**2. BACKGROUND**

- 2.1 The Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) promotes economy, efficiency, effectiveness and transparency in the use of state resources. A key objective is to establish and maintain a responsive and credible Supply Chain Management System.
- 2.2 In terms of section 6 (2) (a), (b), (f) and (g) and section 18 (2) a), (b), (g) and (i) of the PFMA, the National Treasury and provincial treasuries have an obligation to ensure that proper norms and standards are set to prevent abuse of the Supply Chain Management System and enforce the prescribed measures.
- 2.3 The National Treasury therefore considered it prudent to introduce and enhance measure to prevent and combat abuse of the SCM System.

**3. REGISTER OF COMPLAINTS**

- 3.1 The Accounting Officer/Accounting Authority must establish a system that deals with the management of complaints and or allegations of abuse in the Supply Chain Management System.
- 3.2 The system must provide for:
  - 3.2.1 Written, verbal or anonymous reporting of the complaint.
  - 3.2.2 The establishment of a register of all allegations of abuse in the Supply Chain Management System in the format as per Annexure A attached to this *SCM Treasury Instruction*.

- 3.3 Complaints that implicate the Accounting Officer/Accounting Authority must be reported to the relevant Treasury within 14 calendar days of the receipt of the complaint, by the delegated official in relevant institutions.

#### **4. INVESTIGATE<sup>1</sup> COMPLAINTS**

- 4.1 The Accounting Officer/Accounting Authority must:
- 4.1.1 Initiate an investigation within 14 calendar days of receipt of the complaint and or allegation of abuse;
  - 4.1.2 The investigation must be completed within 30 calendar days from date of initiation unless an extension was approved by the relevant treasury;
  - 4.1.3 Ensure that the investigation reports are securely stored;
  - 4.1.4 Inform the relevant treasury of the outcome of the investigation, together with the proposed actions within 7 calendar days of receiving the investigation report.
- 4.2 The relevant treasury must initiate an investigation into complaints that implicate the Accounting Officer/Accounting Authority, within 14 calendar days from the receipt of the complaint and or allegation of abuse.
- 4.3 The relevant treasury must inform the Executive Authority of the outcome of the investigation, together with the proposed actions within 7 calendar days of receiving the investigation report.
- 4.4 The Executive Authority will thereafter handle the financial misconduct process, if applicable.

#### **5. IMPLEMENT REMEDIAL ACTION**

- 5.1 The Accounting Officer/Accounting Authority must:
- 5.1.1 Initiate disciplinary proceedings if the investigation report confirms the allegations of financial misconduct.
  - 5.1.2 Report such allegations to the South African Police Services within 7 working days if the investigation report confirms the allegations of a criminal nature.
  - 5.1.3 Inform the relevant treasury, in writing, of any criminal complaint within 7 working days of the complaint being lodged with the South African Police Services.
  - 5.1.4 Initiate the implementation of the recommended remedial actions against the supplier within 14 calendar days of the receipt of the investigation report. Such remedial actions may include:
    - 5.1.4.1 rejecting the bid;
    - 5.1.4.2 cancelation of the contract;

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<sup>1</sup> Investigate in the context of this Instruction means to carry out a systematic or formal probe to examine or analyse the particulars of an allegation or incident or occurrence so as to establish the reality and may include one or more of the following:

- 1. Compliance review by the procuring entity or the relevant Treasury
- 2. Internal audit review by the procuring entity or the relevant Treasury
- 3. Forensic audit review by a relevant authorised institution
- 4. Any other probity check conducted by the relevant authorised institution

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- 5.1.4.3 restricting the supplier from doing business with the state; and/or
- 5.1.4.4 claiming damages (if any).

- 5.2 If the Accounting Officer/ Accounting Authority fail to initiate the remedial actions against the supplier within 14 calendar days of receiving the investigation report, the National Treasury or the relevant provincial treasury must initiate the implementation of the remedial actions.
- 5.3 The National Treasury or the relevant provincial treasury must recover all costs for initiating the implementation of the remedial actions from the Accounting Officer/ Accounting Authority.
- 5.4 The relevant treasury must publish an investigation report which confirms the abuse of supply chain management on the website.
- 5.5 The relevant treasury must publish a list of all SCM related criminal cases opened by various enforcement agencies on the website.
- 5.6 The relevant treasury must publish a list of irregular expenditure applications processed on the website on a quarterly basis.

**6. REPORT OUTCOMES**

- 6.1 The Accounting Officer/Accounting Authority of provincial institutions must table the reports on the allegations received, outcome of the investigations and the remedial actions at the Provincial Legislatures on a quarterly basis.
- 6.2 The Accounting Officer/Accounting Authority of National Institutions must table the reports on the allegations received, outcome of the investigations and the remedial actions in Parliament on a quarterly basis.
- 6.3 The Accounting Officer/Accounting Authority must submit reports to the Provincial Legislatures/ Parliament by the 15<sup>th</sup> of the month following the end of the quarter.
- 6.4 Relevant Legislature/Parliament Committees must ensure that the Accounting Officer/ Accounting Authority are held accountable to enhance efficiencies in the SCM System.

**7. RESTRICTION OF SUPPLIERS, SHAREHOLDERS AND DIRECTORS**

- 7.1 The Accounting Officer/Accounting Authority must:
  - 7.1.1 Notify the supplier and any other person of the intention to restrict by registered mail. The letter of restriction must provide for:
    - 7.1.1.1 the grounds for restriction;
    - 7.1.1.2 the period of restriction which must not exceed 10 years;
    - 7.1.1.3 A period of 14 calendar days for the supplier to provide reasons why the restriction should not be imposed.

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- 7.2 The Accounting Officer/Accounting Authority:
  - 7.2.1 May regard the intended penalty as not objected to and may impose such penalty on the supplier, should the supplier fail to respond;
  - 7.2.2 Must assess the reasons provided by the supplier and take the final decision.
- 7.3 If the penalty is imposed, the Accounting Officer/Accounting Authority must inform National Treasury of the restriction within 7 calendar days and must furnish the following information:
  - 7.3.1 The name and address of the person to be restricted;
  - 7.3.2 The identity number of individuals and the registration number of the entity;
  - 7.3.3 Period of restriction.
- 7.4 National Treasury will load the details on the Database of Prohibited Suppliers after ensuring that the Accounting Officer/Accounting Authority has complied with Supply Chain Management legal framework.
- 7.5 A supplier who refuses to cooperate with a government institution must be suspended from the Central Supplier Database until it fully complies.

**8. DEVIATIONS FROM NORMAL BIDDING PROCESS**

- 8.1 The Accounting Officer/Accounting Authority must only deviate from inviting competitive bids in cases of emergency and sole supplier status.
- 8.2 An emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids.
- 8.3 Sole source procurement may occur when there is evidence that only one supplier possesses the unique and singularly available capacity to meet the requirements of the institution.
- 8.4 The Accounting Officer/Accounting Authority must invite as many suppliers as possible and select the preferred supplier using the competitive bid committee system.
- 8.5 Any other deviation will be allowed in exceptional cases subject to the prior written approval from the relevant treasury.

**9. EXPANSIONS OR VARIATION OF ORDERS**

- 9.1 The Accounting Officer/Accounting Authority must ensure that contracts are not varied by more than 20% or R 20 million (including VAT) for construction related goods, works and or services and 15% or R15 million (including VAT) for all other goods and or services of the original contract value.
- 9.2 Any deviation in excess of the prescribed thresholds will only be allowed in exceptional cases subject to prior written approval from the relevant treasury.

**10. BID COMMITTEE MEETINGS**

The relevant Treasury may, at its sole discretion, choose to attend Bid Committee meetings in an advisory capacity or prescribe which bid evaluation/adjudication process must be open to the public.

Every member of the Bid Committee is jointly and severally liable for the improper evaluation and adjudication of the bid.

**11. PROCUREMENT WITHOUT A BUDGET**

The Accounting Officer/ Accounting Authority must not advertise a bid for which no provision has been made in the budget.

**12. CONDONATION OF IRREGULAR EXPENDITURE**

Irregular expenditure may be condoned if there is evidence that the Accounting Officer/ Accounting Authority took effective and appropriate steps against any person found to have caused it.

**13. INFORMATION TO BE SUBMITTED**

The Accounting Officer/ Accounting Authority must submit such information, returns, documents, explanations and motivations as prescribed or required by the relevant treasury.

Any application from the Accounting Officer/ Accounting Authority who fail to submit the required information must not be processed by the relevant treasury until they fully comply.

**14. APPLICABILITY**

This *SCM Treasury Instruction* applies to all institutions and public entities.

**15. WITHDRAWAL OF CIRCULAR DATED 24 APRIL 2012**

Circular on the postponement of paragraph 3.9.4 dated 24/04/2012 of Instruction Note 32 of 2011 is hereby withdrawn.

**16. EFFECTIVE DATE**

This *SCM Treasury Instruction* takes effect from the 1 May 2016.

**17. DISSEMINATION OF INFORMATION CONTAINED IN THIS INSTRUCTION**

17.1 Head officials of provincial treasuries must bring the contents of this *SCM Treasury Instruction* to the attention of all Accounting Officers/Accounting Authorities.

17.2 Accounting Officers and Accounting Authorities at National level must bring the contents of this *SCM Treasury Instruction* to the attention of the relevant officials.



**National Treasury Instruction 3 of 2016/2017**  
**Preventing and Combating Abuse in the Supply Chain Management System**

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**18 AUTHORITY FOR THIS SCM INSTRUCTION**

This *SCM Treasury Instruction* is issued in terms of section 76(4) (c) of the PFMA.

**19 CONTACT INFORMATION**

Enquiries related to this *SCM Treasury Instruction* may be directed to:

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Email: [Knowledge.Ndou@Treasury.gov.za](mailto:Knowledge.Ndou@Treasury.gov.za) or [Lebo.Molefe@Treasury.gov.za](mailto:Lebo.Molefe@Treasury.gov.za)



**KENNETH BROWN**  
**CHIEF PROCUREMENT OFFICER**

DATE: 19/4/2016



Reference: RCS/C.6

## TREASURY CIRCULAR, NO. 23/2016

THE PREMIER

THE MINISTER OF ECONOMIC OPPORTUNITIES

THE MINISTER OF COMMUNITY SAFETY

THE MINISTER OF CULTURAL AFFAIRS AND SPORT

THE MINISTER OF EDUCATION

THE MINISTER OF FINANCE

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

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THE DEPUTY SPEAKER: PROVINCIAL PARLIAMENT

THE ACCOUNTING OFFICER: VOTE 1: PREMIER (ADV B GERBER)

THE ACCOUNTING OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (DR G LAWRENCE)

THE ACCOUNTING OFFICER: VOTE 3: PROVINCIAL TREASURY (MR Z HOOSAIN)

THE ACCOUNTING OFFICER: VOTE 4: COMMUNITY SAFETY (MR G MORRIS)

THE ACCOUNTING OFFICER: VOTE 5: EDUCATION (MS P VINJEVOLD)

THE ACCOUNTING OFFICER: VOTE 6: HEALTH (DR B ENGELBRECHT)

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

THE ACCOUNTING OFFICER: VOTE 8: HUMAN SETTLEMENTS (MR T MGULI)

THE ACCOUNTING OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR P VAN ZYL)

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

THE ACCOUNTING OFFICER: VOTE 11: AGRICULTURE (MS J ISAACS)

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

THE ACCOUNTING OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MR B WALTERS)

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

THE CHIEF FINANCIAL OFFICER: VOTE 1: PREMIER (MR D BASSON)

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

THE CHIEF FINANCIAL OFFICER: VOTE 3: PROVINCIAL TREASURY (MR A GILDENHUYS)

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 A VAN NIEKERK)

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 T GILDENHUYS)

THE CHIEF FINANCIAL OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MR CR ISMAY)

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)

THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE GAMBLING AND RACING BOARD (MR P ABRAHAMS)

THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE NATURE CONSERVATION BOARD (DR R OMAR)

THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MR T HARRIS)

THE CHIEF EXECUTIVE OFFICER: SALDANHA BAY IDZ LICENCING COMPANY (MR D SOUTHGATE) (ACTING)

THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE CULTURAL COMMISSION (MS J MOLELEKI)

THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE LANGUAGE COMMITTEE (MS J MOLELEKI)

THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE HERITAGE (MS HM DU PREEZ) (ACTING)

THE CHIEF EXECUTIVE OFFICER: CASIDRA (MR M BRINKHUIS)

THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE LIQUOR AUTHORITY (DR L MDUNYELWA)

} For information

THE CHIEF FINANCIAL OFFICER: WESTERN CAPE GAMBLING AND RACING BOARD (MR T SWART) (ACTING)  
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE NATURE CONSERVATION BOARD (MR M BHAYAT)  
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MR I BLACKIE)  
 THE CHIEF FINANCIAL OFFICER: SALDANHA BAY IDZ LICENCING COMPANY (MR H BONESCHANS)  
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE CULTURAL COMMISSION (MS B RUTGERS)  
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE LANGUAGE COMMITTEE (MS B RUTGERS)  
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE HERITAGE (MS B RUTGERS)  
 THE CHIEF FINANCIAL OFFICER: CASIDRA (MR F VAN ZYL)  
 THE CHIEF FINANCIAL OFFICER: WESTERN CAPE LIQUOR AUTHORITY (MS V LETSWALO)  
 THE SENIOR MANAGER: GOVERNMENT MOTOR TRANSPORT (MR J KOEGELENBERG)  
 THE HEAD OFFICIAL: PROVINCIAL TREASURY (MR Z HOOSAIN)  
 THE DEPUTY DIRECTOR GENERAL: FISCAL AND ECONOMIC SERVICES (MR H MALILA)  
 THE DEPUTY DIRECTOR GENERAL: GOVERNANCE AND ASSET MANAGEMENT (MR A HARDIEN)  
 THE CHIEF DIRECTOR: PUBLIC POLICY SERVICES (MR M BOOYSEN) (ACTING)  
 THE CHIEF DIRECTOR: PROVINCIAL GOVERNMENT PUBLIC FINANCE (MS JD GANTANA)  
 THE CHIEF DIRECTOR: LOCAL GOVERNMENT PUBLIC FINANCE (MR M SIGABI) (ACTING)  
 THE CHIEF DIRECTOR: ASSET MANAGEMENT (MR IG SMITH)  
 THE CHIEF DIRECTOR: FINANCIAL GOVERNANCE AND ACCOUNTING (MR B VINK) (ACTING)  
 THE CHIEF FINANCIAL OFFICER (MR A GILDENHUYS)  
 THE HEAD: OFFICE OF THE FINANCE MINISTRY (ADV E PRETORIUS)  
 THE DIRECTOR: BUSINESS INFORMATION AND DATA MANAGEMENT (MR PP PIENAAR)  
 THE DIRECTOR: FINANCIAL GOVERNANCE (MS N PALMER) (ACTING)  
 THE DIRECTOR: FISCAL POLICY (MR D TSENG) (ACTING)  
 THE DIRECTOR: INFRASTRUCTURE (MR P CHANDAKA)  
 THE DIRECTOR: LOCAL GOVERNMENT ACCOUNTING (MR L BRINDERS)  
 THE DIRECTOR: LOCAL GOVERNMENT BUDGET OFFICE (MR ML BOOYSEN)  
 THE DIRECTOR: LOCAL GOVERNMENT REVENUE AND EXPENDITURE (GROUP ONE) (MS S CUPIDO) (ACTING)  
 THE DIRECTOR: LOCAL GOVERNMENT REVENUE AND EXPENDITURE (GROUP TWO) (MR Z ZONYANE) (ACTING)  
 THE DIRECTOR: LOCAL GOVERNMENT SUPPLY CHAIN MANAGEMENT (MR R MOOLMAN)  
 THE DIRECTOR: PROVINCIAL GOVERNMENT ACCOUNTING (MR A REDDY)  
 THE DIRECTOR: PROVINCIAL GOVERNMENT BUDGET OFFICE (MS R SLINGER)  
 THE DIRECTOR: PROVINCIAL GOVERNMENT FINANCE (EXPENDITURE MANAGEMENT) (MS A PICK)  
 THE DIRECTOR: PROVINCIAL GOVERNMENT SUPPLY CHAIN MANAGEMENT (MS N EBRAHIM)  
 THE DIRECTOR: STRATEGIC AND OPERATIONAL MANAGEMENT SUPPORT (MS A SMIT)  
 THE DIRECTOR: SUPPORTING AND INTERLINKED FINANCIAL SYSTEMS (MS R ESACK) (ACTING)  
 THE PROVINCIAL AUDITOR  
 MASTER RECORDS OFFICIAL: BUSINESS INFORMATION AND DATA MANAGEMENT  
 THE DEPUTY DIRECTOR GENERAL: CORPORATE ASSURANCE, DEPARTMENT OF THE PREMIER (MS H ROBSON)

## **STATUS OF NATIONAL TREASURY SCM INSTRUCTION NOTE 3 OF 2016/17: PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM**

### **1. PURPOSE**

- 1.1 The purpose of this communiqué is to inform Accounting Officers and Accounting Authorities of the current status and way forward in terms of the implementation of National Treasury's SCM Instruction Note 3 of 2016/17: Preventing and Combating Abuse in the Supply Chain Management system (attached as Annexure "A").

### **2. BACKGROUND**

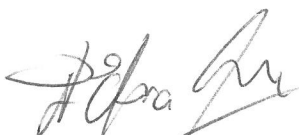
- 2.1 The National Treasury issued SCM Instruction Note 3 of 2016/17 effective 1 May 2016 with the objective of providing guidance to departments and public entities on measures to prevent and combat abuse of the SCM system.

- 2.2 The Provincial Treasury has noted various risks that would impact on governance, administrative functions as well as potential audit risk. The gravity of these issues necessitated that the PT address the requirements of the Instruction Note in such a way that it mitigates the associated risk for the Province.
- 2.3 The Instruction Note was discussed with departmental SCM managers at the SCM Focus Group of 11 May 2016. Departments voiced their concerns with various issues in the instruction. The chairperson of the SCM Focus Group (Mr Isac Smith: Head Asset Management) indicated that the PT would address these issues with NT in conjunction with departments, Legal Services and other stakeholders. It was indicated that an approach similar to the one utilised for National Treasury's Instruction Note 32 of 2012 would be adopted.
- 2.4 In brief, the Provincial Treasury submitted written comments to Instruction Note 32 and met with the National Treasury regarding the impact of the Instruction Note, the mechanisms and processes needed to give effect to the requirements as well as the limited timeframe given to implement the requirements. However, not all tabled concerns/comments were taken up or responded to by the National Treasury. The PT decided to exclude sections under dispute from the revised Provincial Treasury Instructions (PTIs) issued 28 March 2012 and issued Treasury Circular 31 of 2012, which depicted the extent to which the requirements of NT Instruction Note 32 was taken up in the PTIs, what the current provincial requirements were, which requirements were postponed by NT and requirement not implemented by the Province including reasons for non-implementation.
- 2.5 The envisaged process is as follows:
- (a) Issue a circular to inform departments, public entities and stakeholders of the PT's intention to address concerns regarding the Instruction Note with NT, to solicit comprehensive comments from departments and other stakeholders and to indicate the envisaged way forward;
  - (b) Engage key provincial stakeholders regarding the concerns, risks and way forward (Provincial top management, Legal Services, Auditor- General, Risk Management);
  - (c) Engage NT by discussing and providing comprehensive written comments highlighting governance and operational impact and risk; and
  - (d) Issue a circular to inform departments and public entities of the extent to which the requirements of the Instruction will be taken up, the current associated provincial requirements and of any requirements that will not be implemented; as well as reasons for non-implementation.

- 2.6 It should be noted that the effective date for the Instruction was 1 May 2016 and there is at present an audit risk in not complying with the requirements. It is therefore crucial that concerns be formally addressed with the National Treasury as soon as possible.
- 2.7 The Provincial Treasury highlighted key risks regarding the Instruction Note with departmental SCM managers at the SCM Focus Group of 11 May 2016, as indicated in paragraph 2.3 above. As SCM managers were made aware of the Provincial Treasury's approach and in anticipation of this circular, departmental SCM managers were requested to submit comments on the Instruction by **1 June 2016**. It was requested that comments be submitted in electronic format (template was provided) to facilitate the process of consolidation and drafting of the formal communication to NT and stakeholders.
- 2.8 Departments should immediately report any legal action or audit queries regarding this instruction to the Provincial Treasury for attention the Director: Provincial Government Supply Chain Management (PG: SCM): Mrs N Ebrahim [Nadia.Ebrahiem@westerncape.gov.za](mailto:Nadia.Ebrahiem@westerncape.gov.za) and the Manager: PG: SCM Mrs T Rakiep [Tasneem.Rakiep@westerncape.gov.za](mailto:Tasneem.Rakiep@westerncape.gov.za).
- 2.9 Queries and complaints should be sent to the SCM helpdesk on the following email address [SupplyChainManagement.HDPFMA@westerncape.gov.za](mailto:SupplyChainManagement.HDPFMA@westerncape.gov.za) as well as the responsible manager Mrs T Soetzenberg, [Theresa.Soetzenberg@westerncape.gov.za](mailto:Theresa.Soetzenberg@westerncape.gov.za).

### 3. REQUEST

- 3.1 Accounting Officers, Accounting Authorities and SCM Managers are requested to:
- Ensure that the content of this circular is brought to the attention of all relevant officials within their institutions;
  - Ensure that comprehensive comments are received by Provincial Treasury by **1 June 2016** as per paragraph 2.7 above;
  - Immediately report any legal action or audit queries to the Provincial Treasury for attention Mrs N Ebrahim and Mrs T Rakiep (paragraph 2.8 above); and
  - Submit queries and complaints to the SCM helpdesk email address and the relevant manager Mrs T Soetzenberg (paragraph 2.9 above).



**NADIA EBRAHIM**

**DIRECTOR: PROVINCIAL GOVERNMENT SUPPLY CHAIN MANAGEMENT**

**DATE:** 27/05/2016





**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

**TO ALL : ACCOUNTING OFFICERS OF DEPARTMENTS AND CONSTITUTIONAL INSTITUTIONS**

**ACCOUNTING AUTHORITIES OF PUBLIC ENTITIES**

**HEAD OFFICIALS OF PROVINCIAL TREASURIES**

**NATIONAL TREASURY INSTRUCTION SCM INSTRUCTION NOTE 3 OF 2016/17**

**PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM**

**1. OBJECTIVE**

The objective of the *SCM Treasury Instruction* is to provide guidance on measures to prevent and combat abuse in the Supply Chain Management System.

**2. BACKGROUND**

- 2.1 The Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) promotes economy, efficiency, effectiveness and transparency in the use of state resources. A key objective is to establish and maintain a responsive and credible Supply Chain Management System.
- 2.2 In terms of section 6 (2) (a), (b), (f) and (g) and section 18 (2) a), (b), (g) and (i) of the PFMA, the National Treasury and provincial treasuries have an obligation to ensure that proper norms and standards are set to prevent abuse of the Supply Chain Management System and enforce the prescribed measures.
- 2.3 The National Treasury therefore considered it prudent to introduce and enhance measure to prevent and combat abuse of the SCM System.

**3. REGISTER OF COMPLAINTS**

- 3.1 The Accounting Officer/Accounting Authority must establish a system that deals with the management of complaints and or allegations of abuse in the Supply Chain Management System.
- 3.2 The system must provide for:
  - 3.2.1 Written, verbal or anonymous reporting of the complaint.
  - 3.2.2 The establishment of a register of all allegations of abuse in the Supply Chain Management System in the format as per Annexure A attached to this *SCM Treasury Instruction*.



**National Treasury Instruction 3 of 2016/2017**  
**Preventing and Combating Abuse in the Supply Chain Management System**

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- 3.3 Complaints that implicate the Accounting Officer/Accounting Authority must be reported to the relevant Treasury within 14 calendar days of the receipt of the complaint, by the delegated official in relevant institutions.

**4. INVESTIGATE<sup>1</sup> COMPLAINTS**

- 4.1 The Accounting Officer/Accounting Authority must:
- 4.1.1 Initiate an investigation within 14 calendar days of receipt of the complaint and or allegation of abuse;
  - 4.1.2 The investigation must be completed within 30 calendar days from date of initiation unless an extension was approved by the relevant treasury;
  - 4.1.3 Ensure that the investigation reports are securely stored;
  - 4.1.4 Inform the relevant treasury of the outcome of the investigation, together with the proposed actions within 7 calendar days of receiving the investigation report.
- 4.2 The relevant treasury must initiate an investigation into complaints that implicate the Accounting Officer/Accounting Authority, within 14 calendar days from the receipt of the complaint and or allegation of abuse.
- 4.3 The relevant treasury must inform the Executive Authority of the outcome of the investigation, together with the proposed actions within 7 calendar days of receiving the investigation report.
- 4.4 The Executive Authority will thereafter handle the financial misconduct process, if applicable.

**5. IMPLEMENT REMEDIAL ACTION**

- 5.1 The Accounting Officer/Accounting Authority must:
- 5.1.1 Initiate disciplinary proceedings if the investigation report confirms the allegations of financial misconduct.
  - 5.1.2 Report such allegations to the South African Police Services within 7 working days if the investigation report confirms the allegations of a criminal nature.
  - 5.1.3 Inform the relevant treasury, in writing, of any criminal complaint within 7 working days of the complaint being lodged with the South African Police Services.
  - 5.1.4 Initiate the implementation of the recommended remedial actions against the supplier within 14 calendar days of the receipt of the investigation report.  
Such remedial actions may include:
    - 5.1.4.1 rejecting the bid;
    - 5.1.4.2 cancelation of the contract;

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<sup>1</sup> Investigate in the context of this Instruction means to carry out a systematic or formal probe to examine or analyse the particulars of an allegation or incident or occurrence so as to establish the reality and may include one or more of the following:

- 1. Compliance review by the procuring entity or the relevant Treasury
- 2. Internal audit review by the procuring entity or the relevant Treasury
- 3. Forensic audit review by a relevant authorised institution
- 4. Any other probity check conducted by the relevant authorised institution

**National Treasury Instruction 3 of 2016/2017**  
**Preventing and Combating Abuse in the Supply Chain Management System**

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- 5.1.4.3 restricting the supplier from doing business with the state; and/or
  - 5.1.4.4 claiming damages (if any).
- 5.2 If the Accounting Officer/ Accounting Authority fail to initiate the remedial actions against the supplier within 14 calendar days of receiving the investigation report, the National Treasury or the relevant provincial treasury must initiate the implementation of the remedial actions.
  - 5.3 The National Treasury or the relevant provincial treasury must recover all costs for initiating the implementation of the remedial actions from the Accounting Officer/ Accounting Authority.
  - 5.4 The relevant treasury must publish an investigation report which confirms the abuse of supply chain management on the website.
  - 5.5 The relevant treasury must publish a list of all SCM related criminal cases opened by various enforcement agencies on the website.
  - 5.6 The relevant treasury must publish a list of irregular expenditure applications processed on the website on a quarterly basis.

**6. REPORT OUTCOMES**

- 6.1 The Accounting Officer/Accounting Authority of provincial institutions must table the reports on the allegations received, outcome of the investigations and the remedial actions at the Provincial Legislatures on a quarterly basis.
- 6.2 The Accounting Officer/Accounting Authority of National Institutions must table the reports on the allegations received, outcome of the investigations and the remedial actions in Parliament on a quarterly basis.
- 6.3 The Accounting Officer/Accounting Authority must submit reports to the Provincial Legislatures/ Parliament by the 15<sup>th</sup> of the month following the end of the quarter.
- 6.4 Relevant Legislature/Parliament Committees must ensure that the Accounting Officer/ Accounting Authority are held accountable to enhance efficiencies in the SCM System.

**7. RESTRICTION OF SUPPLIERS, SHAREHOLDERS AND DIRECTORS**

- 7.1 The Accounting Officer/Accounting Authority must:
  - 7.1.1 Notify the supplier and any other person of the intention to restrict by registered mail. The letter of restriction must provide for:
    - 7.1.1.1 the grounds for restriction;
    - 7.1.1.2 the period of restriction which must not exceed 10 years;
    - 7.1.1.3 A period of 14 calendar days for the supplier to provide reasons why the restriction should not be imposed.

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- 7.2 The Accounting Officer/Accounting Authority:
    - 7.2.1 May regard the intended penalty as not objected to and may impose such penalty on the supplier, should the supplier fail to respond;
    - 7.2.2 Must assess the reasons provided by the supplier and take the final decision.
  - 7.3 If the penalty is imposed, the Accounting Officer/Accounting Authority must inform National Treasury of the restriction within 7 calendar days and must furnish the following information:
    - 7.3.1 The name and address of the person to be restricted;
    - 7.3.2 The identity number of individuals and the registration number of the entity;
    - 7.3.3 Period of restriction.
  - 7.4 National Treasury will load the details on the Database of Prohibited Suppliers after ensuring that the Accounting Officer/Accounting Authority has complied with Supply Chain Management legal framework.
  - 7.5 A supplier who refuses to cooperate with a government institution must be suspended from the Central Supplier Database until it fully complies.
- 8. DEVIATIONS FROM NORMAL BIDDING PROCESS**
- 8.1 The Accounting Officer/Accounting Authority must only deviate from inviting competitive bids in cases of emergency and sole supplier status.
  - 8.2 An emergency procurement may occur when there is a serious and unexpected situation that poses an immediate risk to health, life, property or environment which calls an agency to action and there is insufficient time to invite competitive bids.
  - 8.3 Sole source procurement may occur when there is evidence that only one supplier possesses the unique and singularly available capacity to meet the requirements of the institution.
  - 8.4 The Accounting Officer/Accounting Authority must invite as many suppliers as possible and select the preferred supplier using the competitive bid committee system.
  - 8.5 Any other deviation will be allowed in exceptional cases subject to the prior written approval from the relevant treasury.
- 9. EXPANSIONS OR VARIATION OF ORDERS**
- 9.1 The Accounting Officer/Accounting Authority must ensure that contracts are not varied by more than 20% or R 20 million (including VAT) for construction related goods, works and or services and 15% or R15 million (including VAT) for all other goods and or services of the original contract value.
  - 9.2 Any deviation in excess of the prescribed thresholds will only be allowed in exceptional cases subject to prior written approval from the relevant treasury.

**10. BID COMMITTEE MEETINGS**

The relevant Treasury may, at its sole discretion, choose to attend Bid Committee meetings in an advisory capacity or prescribe which bid evaluation/adjudication process must be open to the public.

Every member of the Bid Committee is jointly and severally liable for the improper evaluation and adjudication of the bid.

**11. PROCUREMENT WITHOUT A BUDGET**

The Accounting Officer/ Accounting Authority must not advertise a bid for which no provision has been made in the budget.

**12. CONDONATION OF IRREGULAR EXPENDITURE**

Irregular expenditure may be condoned if there is evidence that the Accounting Officer/ Accounting Authority took effective and appropriate steps against any person found to have caused it.

**13. INFORMATION TO BE SUBMITTED**

The Accounting Officer/ Accounting Authority must submit such information, returns, documents, explanations and motivations as prescribed or required by the relevant treasury.

Any application from the Accounting Officer/ Accounting Authority who fail to submit the required information must not be processed by the relevant treasury until they fully comply.

**14. APPLICABILITY**

This *SCM Treasury Instruction* applies to all institutions and public entities.

**15. WITHDRAWAL OF CIRCULAR DATED 24 APRIL 2012**

Circular on the postponement of paragraph 3.9.4 dated 24/04/2012 of Instruction Note 32 of 2011 is hereby withdrawn.

**16. EFFECTIVE DATE**

This *SCM Treasury Instruction* takes effect from the 1 May 2016.

**17. DISSEMINATION OF INFORMATION CONTAINED IN THIS INSTRUCTION**

17.1 Head officials of provincial treasuries must bring the contents of this *SCM Treasury Instruction* to the attention of all Accounting Officers/Accounting Authorities.

17.2 Accounting Officers and Accounting Authorities at National level must bring the contents of this *SCM Treasury Instruction* to the attention of the relevant officials.

**National Treasury Instruction 3 of 2016/2017**  
**Preventing and Combating Abuse in the Supply Chain Management System**

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**18 AUTHORITY FOR THIS SCM INSTRUCTION**

This *SCM Treasury Instruction* is issued in terms of section 76(4) (c) of the PFMA.

**19 CONTACT INFORMATION**

Enquiries related to this *SCM Treasury Instruction* may be directed to:

Egendri Nanakan

Director: SCM Governance

Tel 012 315 5452

Email: [Knowledge.Ndou@Treasury.gov.za](mailto:Knowledge.Ndou@Treasury.gov.za) or [Lebo.Molefe@Treasury.gov.za](mailto:Lebo.Molefe@Treasury.gov.za)



**KENNETH BROWN**  
**CHIEF PROCUREMENT OFFICER**

DATE: 19/4/2016







MY CONTENT: WCG-2016-4471

**National Treasury**

**Private Bag X115**

**PRETORIA**

**0001**

ATTENTION: MR SCHALK HUMAN

**COMMENTS ON INSTRUCTION NOTE 3 OF 2016/17: PREVENTION AND COMBATING  
ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM**

1. We refer to the above.
2. Please find attached hereto the Western Cape Government's (WCG) comments on the issued Instruction Note 3 of 2016/17 that provides guidance on measures to prevent and combat abuse in the SCM system ("the PCA SCM Instruction").
3. The WCG has made the decision not to issue the Instruction Note for implementation by accounting officers and accounting authorities as a number of risks have been identified from a legal and implementation perspective that the WCG raises with the National Treasury for a response and possible retraction/ amendment of the PCA SCM Instruction. A number of these issues were already raised with the National Treasury at various fora.
4. The Provincial Treasury sought a legal opinion on the PCA SCM Instruction which is incorporated into the comments hereunder. Several concerns have been raised through comments sourced from Departments. Some of the main concerns relate to the additional administrative burden placed on officials - without the prospect of extra personnel to address the increase in duties.

5. We will comment on the document on a paragraph by paragraph basis:
- 5.1 Ad General comments / status of the PCA SCM Instruction / paragraph 1 read with paragraph 18.
- (a) It is our view that it would have been much clearer what is being meant by "*abuse*<sup>1</sup> in the Supply Chain Management System" had the PCA SCM Instruction defined the concept.
  - (b) "Abuse" is defined in the 10<sup>th</sup> edition of the Concise Oxford Dictionary as "*use to bad effect or for a bad purpose*".
  - (c) In our view, abuse does not include irregularities caused by an innocent mistake on the part of any supply chain management practitioner / third party (e.g. innocent failure to comply with supply chain management delegations leading to irregular expenditure).
  - (d) In our view, therefore, "*abuse in the Supply Chain Management System*" will only occur where there is intentional / wilful contravention of the supply chain management regulatory framework, such as:
    - (i) "Fronting", which is defined in the Western Cape Treasury Instructions as "*a misrepresentation or the making of a misrepresentation in order to obtain undue preference points*" in the context of Preferential Procurement;
    - (ii) "Collusive tendering" i.e. where bidding companies secretly share information or make arrangements among themselves in order to control the result; and
    - (iii) "Influencing the bidding process" i.e. directly or indirectly influencing or interfering with the work of relevant Supply Chain Management practitioners involved in the bidding process in order to influence the outcome of the process.
  - (e) It should be noted that the PCA SCM Instruction was issued in terms of section 76(4) (c) of the Public Finance Management Act, 1999 ("the PFMA"). The PFMA states in its definitions section that "this Act" includes any regulations and instructions in terms of section 76. Section 76(4)(c) stipulates as follows:

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<sup>1</sup> The synonyms for "abuse" include "misuse, exploitation, manipulation, mishandling and misapplication".

"(4) The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning-

(a) ...;

(b) ...;

(c) the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;

..."

- (f) We are of the view, however, that Treasury Instructions, Circulars, and Guides are not legally binding on provinces, it being neither legislation nor subordinate legislation (based on a persuasive opinion by Adv. O Rogers (SC) as he then was<sup>2</sup>)<sup>3</sup> and that the requirements contained in paragraph 5 of the Instruction must be adhered to with circumspection.
- (g) Notwithstanding the above, the Auditor-General may regard the document as a binding instruction issued in terms of section 76(4)(c) of the PFMA and may as a result make negative audit findings should any Departments fail to comply therewith.
- (h) The fact that NT states in paragraph 1 that the document serves as a guideline, contradicts with the prescriptive nature of some of the provisions of the PCA SCM Instruction, especially when read with the content of paragraph 18 of the Instruction (stating that the SCM Treasury Instruction is issued in terms of section 76(4)(c)). This creates confusion and may, serve as ground for defending any potential negative finding referred to above (i.e. although the PCA SCM Instruction was issued in terms of section 76(4)(c), it is only meant to guide departments).

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<sup>2</sup> Adv. Rogers *inter alia* advised that:

- a) "the instructions which s76 of the PFMA purports to empower the NT to issue to institutions are in my view not "subordinate legislation" made in terms of the PFMA..."; and
- b) "One facet of the rule of law is that enacted law should be made known to the state's subjects. This is expressly required by s101(3) of the Constitution which provides that proclamations, regulations "and other instruments of subordinate legislation" must be accessible to the public."

<sup>3</sup> The National Treasury (NT) disagrees with the above position of the WCG. NT argues that SCM instructions issued in terms of section 76(4)(c) are binding. In this regard they rely on a recent SCA judgment (Minister of Transport NO v Prodiba (Pty) Ltd). Legal Services is still considering the judgment to determine whether it in fact makes such a finding.

## 5.2 Ad paragraph 3

- (a) The regulatory framework applicable to the WCG already provides for a complaint procedure. In this regard please see paragraph 3.9 of chapter 16A of the Western Cape Treasury Instructions, read with Part 6 thereof.
- (b) Paragraph 3.2.1 stipulates that the system must provide for written, verbal or anonymous complaints. This may prove to be problematic from a complaints management perspective i.e. following up on the complaint.
- (c) Regarding paragraph 3.3 of the PCA SCM Instruction, Departments must ensure that the Supply Chain Management delegations include a delegation identifying a delegated official for this purpose.

## 5.3 Ad paragraph 4

- (a) Provincial Forensic Service (PFS) within the WCG renders a transversal forensic service to the 13 provincial departments. Allegations are received from whistle-blowers, the National Anti-corruption Hotline and referrals from departments (which are registered on their own case management system). The PFS is mandated by Cabinet to conduct forensic investigations into the following:
  - The commission of common - and/or statutory law economic offences including but not limited to theft, fraud and corruption, and
  - alleged misconduct and irregularities causing, or which can possibly cause, financial loss or potential financial loss or affecting the WCG to such an extent that, if allowed to continue unchecked, will/could have an adverse effect on the effective and efficient operation of the WCG. For the sake of completeness see CSC Circular 26 of 2013/14 relating the process of reporting cases to the Provincial Forensic Services.

- (b) With regards to paragraph 4.1, as a result of limited resources, it is not possible to commence all forensic investigations immediately after receipt thereof.
- (c) Further, it goes without saying that forensic investigations are extremely time-consuming involving document upliftment and analysis, cyber forensic imaging of computers and electronic devices, email upliftment and analysis, legal research, interviewing of witnesses, liaison with stakeholders such as the SAPS, Asset Forfeiture Unit, NPA, formal reporting etc. It is not possible to complete these processes within 30 calendar days. In fact, it is a well-known fact that a forensic investigation can last months, even more than a year.
- (d) Furthermore, in terms of the Anti-corruption Strategy and the Whistle-blowing Policy, the PFS serves as a recipient of anonymous disclosures which might constitute protected disclosures for the purposes of the Protected Disclosures Act. Accordingly, applying for an extension to a third party such as the relevant treasury might defeat the whistle-blowing regime in place in the WCG.

#### 5.4 Ad paragraph 5

- (a) The periods stipulated in paragraphs 5.1.2 and 5.1.4 may in many instances be difficult to achieve. Accounting Officers may first wish to seek advice from other units within the WCG, such as Provincial Treasury and / or Legal Services, before initiating / executing the recommendations referred to. After receiving the requested advice, the Accounting Officer may even decide not to execute the recommendation. This requirement might also be onerous on departments. The PFS reports cases to the SAPS after a department accepted recommendations encapsulated in a forensic report. More often than not a forensic report consists of in excess of 100 pages together with several arch-level files of annexures / documentary evidence.
- (b) Further to the above, it is important to keep in mind that in certain instances it may be necessary to give an affected third party an opportunity to make representations in terms of section 3 of the Promotion of Administrative Justice Act, 2000. E.g. should the recommendation be to restrict an existing /

prospective service provider, such a service provider must first be given the opportunity to make representations as to why he / she / it should not be so restricted. Requesting such representations would be the first step in initiating recommendation to this effect (therefore, once this step has been taken the recommended remedial action has been initiated, which is easily achievable within 14 days).

(c) We find the requirements of paragraphs 5.4, 5.5 and 6.1 problematic for the following reasons:

- (i) It is not clear to what "website" the PCA SCM Instruction is referring to;
- (ii) In our view, a finding is merely an opinion and does not amount to conclusive evidence of any wrongdoing. It is therefore inappropriate to "name and shame" any person in circumstances where a court has not found such a person guilty of an offence. Such publication may expose the WCG to delictual claims (including potential claims for defamation of character);
- (iii) The PFS includes in all its reports the caveat that the documents and attachments, are by their very nature, sensitive and classified as confidential. The reason for this is that the resolution of these matters remain incomplete until the criminal issues have been entertained by the SAPS and / or the NPA on the one hand, and the disciplinary issues by the internal processes of the relevant department;
- (iv) During the investigation phase implicated officials or external individuals might wish to remain silent and only exercise their right to respond during the final legal processes;
- (v) It is the view that the premature publication of these reports or the fact that cases had been reported, might expose the WCG to substantial risks as far as legal action is concerned or otherwise.

5.5 Ad paragraph 6



In light of the fact that the Provincial Legislature is a public forum, our comments in paragraphs 5.4 (c) are also applicable to paragraph 6.4 of the PCA SCM Instruction.

#### 5.6 Ad paragraph 7

- (a) Given the unreliability of the South African Postal Services, it is suggested that the notice referred to in paragraph 7.1.1 also be forwarded to the person concerned by email / per hand / fax (if such contact information is known to the Department).
- (b) Paragraph 7.4 refers to the "Database of Prohibited Suppliers". The current SCM prescripts speaks to the Database of Restricted Suppliers and Register of Tender Defaulters, hence it is unclear which database is being referred to.
- (c) Paragraph 7.5 speaks to suspending a supplier who refuses to co-operate with a government institution from the Central Supplier Database until it fully complies. By virtue of suspending a supplier from the CSD means that the supplier would be restricted from doing business with government. It needs to be borne in mind that a process needs to be followed to suspend a supplier from the CSD which includes the audi alteram partem principle. "Refuses to co-operate" is broad and may be prone to interpretation.

#### 5.7 Ad paragraph 8

- (a) In our view, the provisions of paragraph 8.1 of the PCA SCM Instruction is unlawful as it is in conflict with the existing legislative framework, particularly regulation 16A6.4 of the National Treasury Regulations, 2005 (NTRs). The said regulation reads as follows:

*"If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority."*

- (b) Paragraph 8.1 and 8.5 of the PCA SCM Instruction is a prescriptive provision and usurps the powers of the Accounting Officer and the various SCM committees to decide on a bid as it gives the entire scope of power to the Treasury to decide on the procurement needs of a department with the department being accountable for it. Cannot be said follow from logic. The instruction is also contradictory to the draft NTR's which prescribes the various forms of procurement and the separation of duties and power of the Accounting Officer to award a contract.
- (c) "Deviations" needs to be clearly defined. The WC Provincial Treasury Instructions (PTIs) includes emergency procurement and limited bidding as a method of procurement and not necessarily a deviation and criteria in terms of what constitutes emergency/ limited bidding is clearly articulated in the PTIs.

#### 5.8 Ad paragraph 9.2

- (a) In our view this is also a prescriptive provision which interferes with an Accounting Officer's ability to exercise his / her discretion based on the relevant facts of each case.

#### 5.9 Ad paragraph 10

- (a) This paragraph is problematic for the following reasons:
  - (i) Section 38 of the PFMA vests that authority in an Accounting Officer therefore a Treasury cannot take sole discretion in this regard. Public evaluation holds the risk of recommendation being communicated before approval;
  - (ii) The sentence is vague;
  - (iii) It is not clear what is regarded as "*improper evaluation and adjudication*" of a bid;

- (i) The so-called improper evaluation and adjudication of a bid does not necessarily lead to financial loss. Only in instances of fruitless and wasteful expenditure would the Department have a claim for damages against transgressing officials, in instances where such officials forfeited their State cover as contemplated by chapter 12 of the NTRs;
- (ii) In most instances a Department would only be able to institute disciplinary proceedings against any official(s) failing to fulfill his / her / their duties in accordance with the Supply Chain Management framework; and
- (iii) The principle of joint and several liability is most relevant in delictual claims, whereby a plaintiff may recover all the damages from any of the defendants regardless of their individual share of the liability. In our view, it does not find proper application in this case, since disciplinary proceedings would normally only be instituted against alleged transgressors. The guilt of one Bid Committee member, can therefore not become the guilt of all; and
- (iv) The process of awarding a bid falls within the ambit of an administrative action as defined in PAJA, 2001, members of committees may not be held jointly and severally but rather the Department in its juristic capacity. The requirement is ultra vires as the decision made is only evaluated and recommend to the Accounting Officer (ex officio) which awards the contract for the department. The AO still has the prerogative to reject the recommendation.

- (b) Paragraph 10 is contradictory to paragraph 8.5 as the relevant Treasury cannot be an advisor to a process as indicated in paragraph 10 but also grant prior written approval for a deviation as per paragraph 8.5.

5.11 Ad paragraph 11:

- (a) It stands to reason that no procurement may be undertaken if not funded. There is a requirement for procurement plans to be linked to a budget and

submitted to the relevant Treasury annually. What about unforeseen emergencies? Relevant Accounting Officer must act and fund such action.

5.12 Ad paragraph 13

(a) It is unclear whether this paragraph relates to paragraph 12. If so, the paragraph heading should be omitted.

6. The WC Provincial Treasury urgently awaits your response hereto.

7. For any further enquiries please contact:

Nadia Ebrahim

[Nadia.Ebrahim@westerncape.gov.za](mailto:Nadia.Ebrahim@westerncape.gov.za)

021 483 6645

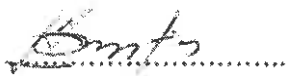
OR

Tasneem Rakiep

[Tasneem.Rakiep@westerncape.gov.za](mailto:Tasneem.Rakiep@westerncape.gov.za)

021 483 4720

I trust the above is in order.



**MR I SMITH**

**HEAD: ASSET MANAGEMENT**

**DATE:** 28/09/16

## **CORPORATE SERVICES CENTRE CIRCULAR NO. 26 OF 2013/14**

THE HEAD OF DEPARTMENT: AGRICULTURE (MS J ISAACS)  
THE HEAD OF DEPARTMENT: COMMUNITY SAFETY (DR GA LAWRENCE)  
THE HEAD OF DEPARTMENT: CULTURAL AFFAIRS & SPORT (MR B WALTERS)  
THE HEAD OF DEPARTMENT: ECONOMIC DEVELOPMENT AND TOURISM (MR S FOURIE)  
THE HEAD OF DEPARTMENT: EDUCATION (MS P VINJEVOLD)  
THE HEAD OF DEPARTMENT: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR P v ZYL)  
THE HEAD OF DEPARTMENT: HEALTH (PROF. KC HOUSEHAM)  
THE HEAD OF DEPARTMENT: HUMAN SETTLEMENTS (MR T MGULI)  
THE HEAD OF DEPARTMENT: LOCAL GOVERNMENT (DR H FAST)  
THE HEAD OF DEPARTMENT: PREMIER (ADV B GERBER)  
THE HEAD OFFICIAL: PROVINCIAL TREASURY (DR JC STEGMANN)  
THE HEAD OF DEPARTMENT: SOCIAL DEVELOPMENT (MR R MACDONALD) (ACTING)  
THE HEAD OF DEPARTMENT: TRANSPORT AND PUBLIC WORKS (MR J FOURIE)

HEAD OF BRANCHES: DEPARTMENT OF THE PREMIER

## **PROCESS FOR REPORTING ALLEGATIONS TO THE FORENSIC INVESTIGATIVE UNIT (FIU)**

Herewith please find the final flowchart depicting the process for reporting allegations to the FIU (Annexure A), which replaces the one issued per CSC Circular 10 of 2011/12.

A draft flowchart was presented and discussed at the Provincial Top Management (PTM) meeting of 11 September 2013. The outcome of this meeting was to obtain legal advice relating to matters where prima facie evidence of fraud, theft or corruption is identified by the department.

After extensive consultation, we were advised that the action to be taken will depend on the specific set of facts and circumstances. The flowchart has therefore been amended to indicate that in such instances, the Head of Department, the relevant Directorate: Employee Relations and the relevant representative of the FIU must collectively decide on the appropriate action. This decision must be recorded in writing and appropriately retained.

You are further reminded that, in accordance with this process adopted by PTM on 11 September 2013, the Department has to inform the FIU and relevant Directorate: Employee Relations within 14 days of receipt of the report about the progress with the disciplinary matters and/or decision in this regard, where relevant.

In addition to the above, the following principled decisions taken at the Provincial Top Management meeting of 13 November 2013 will be implemented with immediate effect:

- In instances where suppliers are recommended to be blacklisted subsequent to a FIU investigation, a copy of the FIU report will be presented to the Provincial Government Supply Chain Management Directorate in Provincial Treasury to fast track and assist departments during the blacklisting of suppliers.

- Departments to inform the FIU as to the reasons for not implementing recommendations to enable FIU to retain these reasons and, where requested, report on them.
- For the purposes of statistical reports, the FIU to report on progress of implementation of recommendations accepted by management only.

Your assistance with the implementation of the above is appreciated.

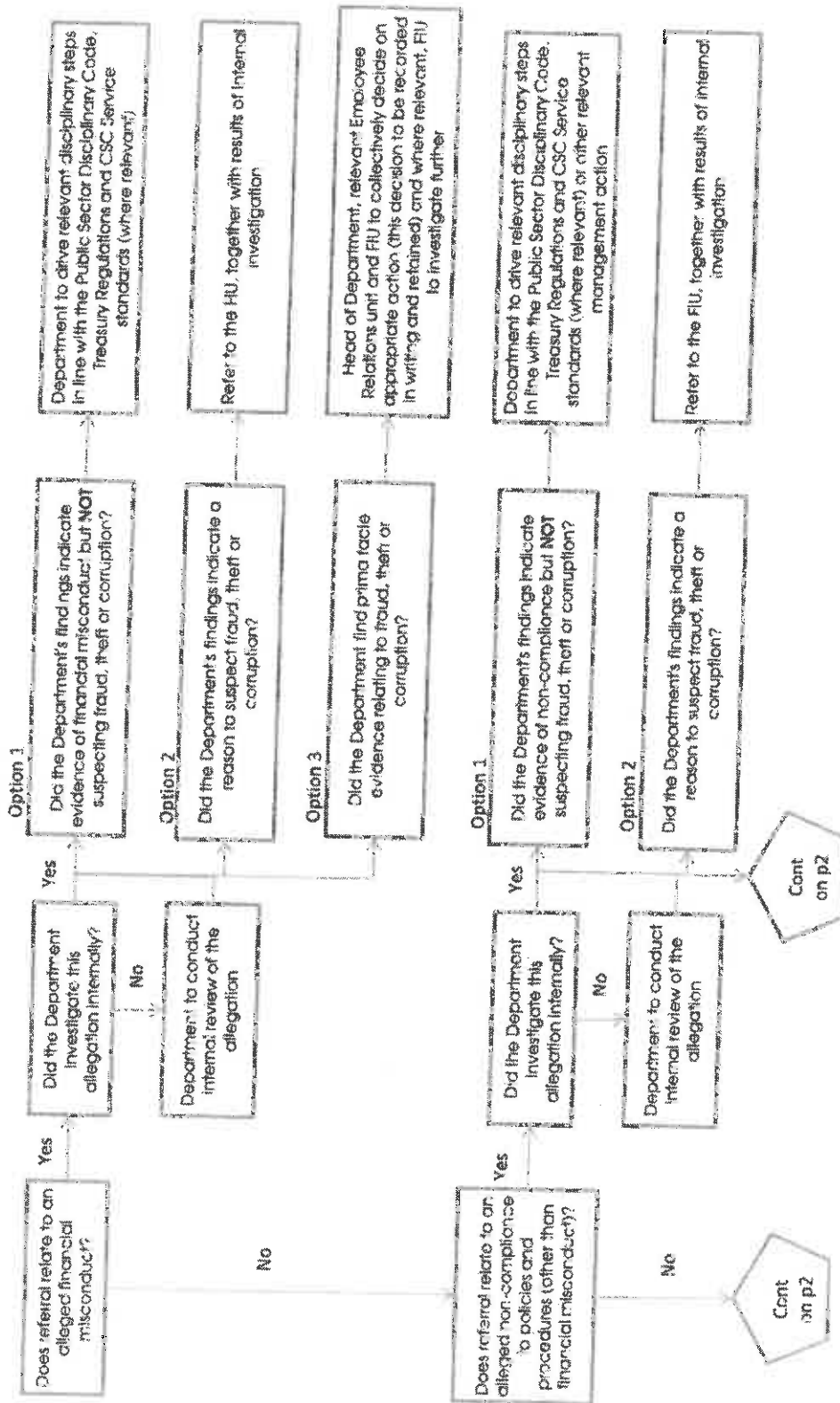
Regards



**Mr André Joemat**  
**Head: Corporate Services Centre**

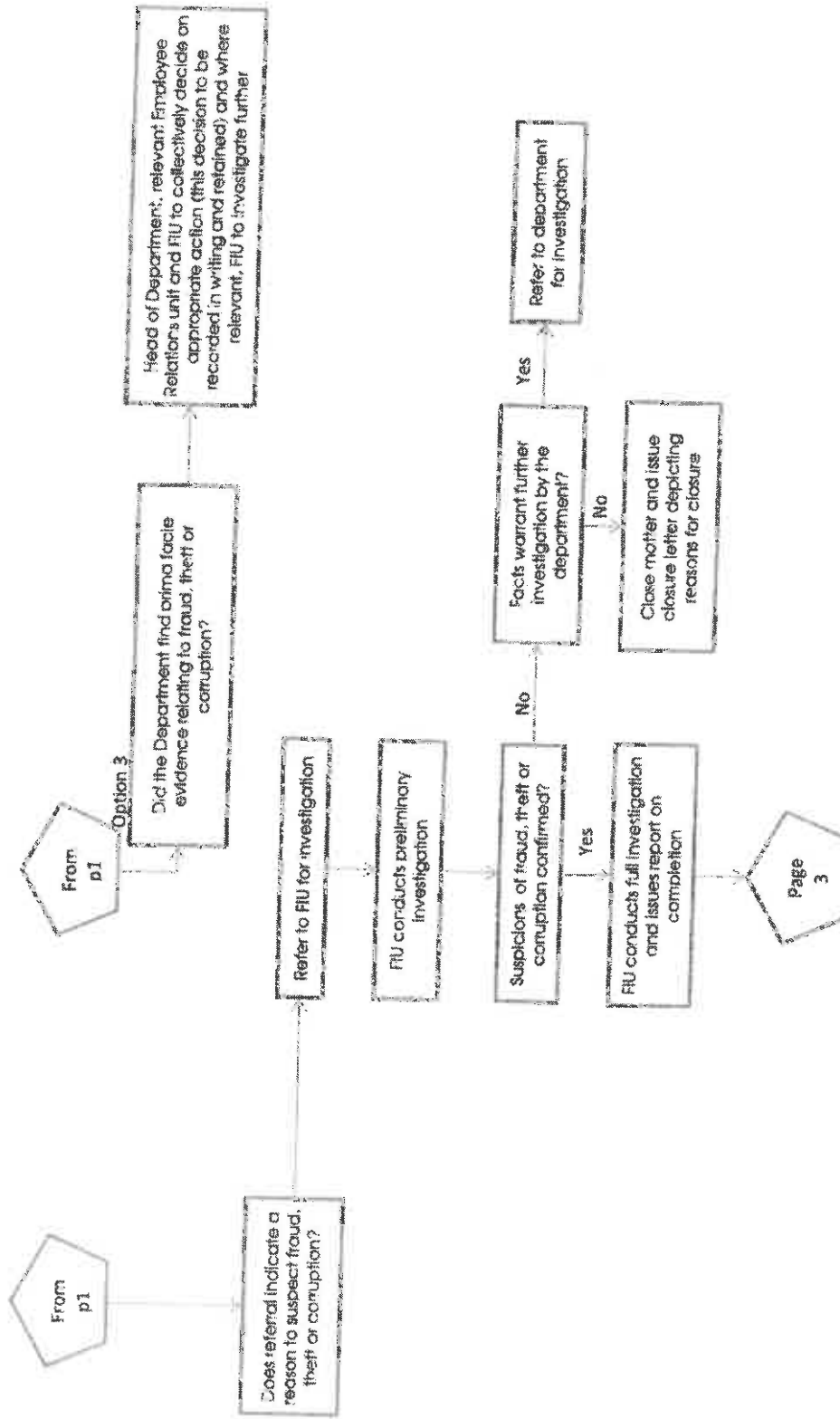
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Referral to FIU

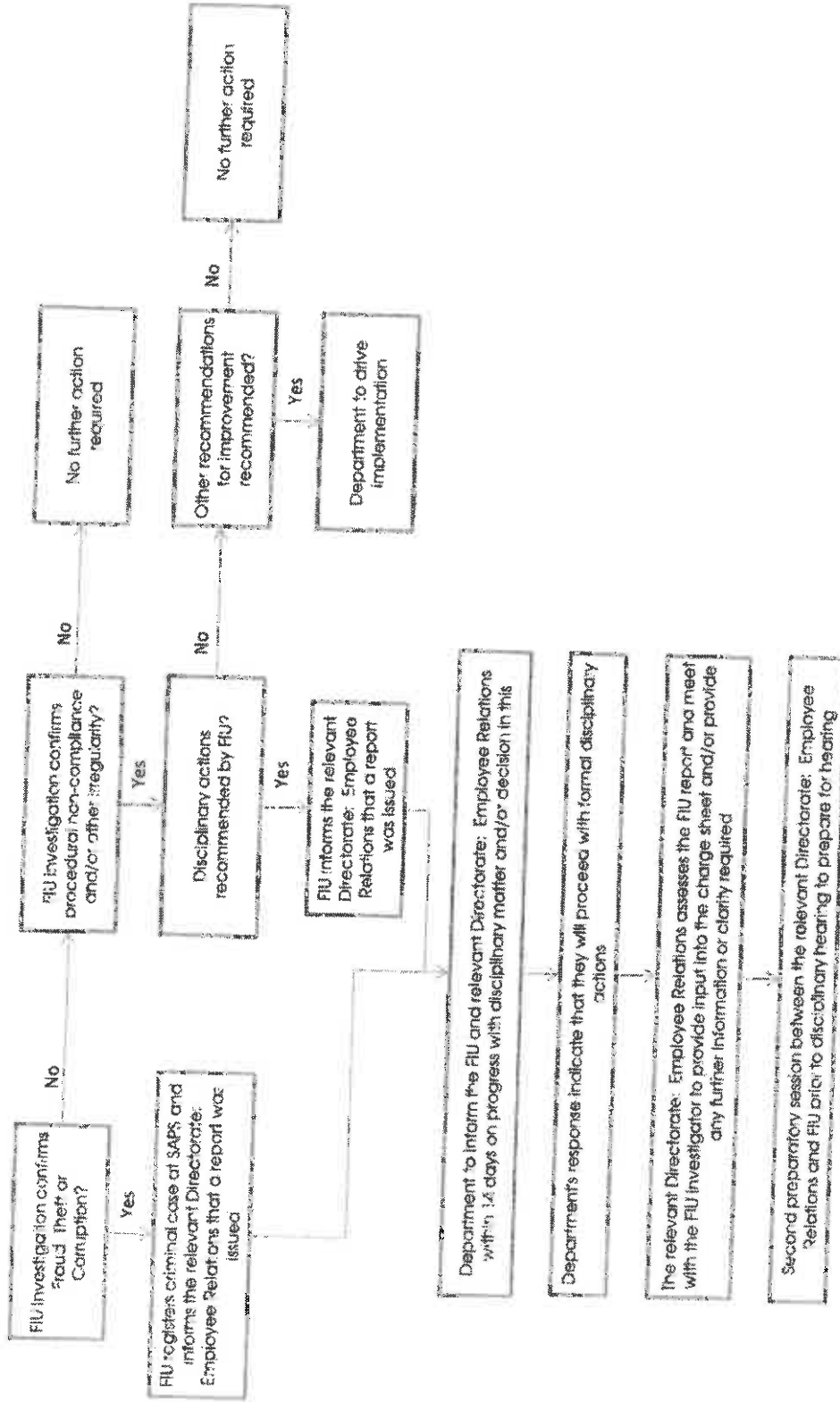




Annexure A



**Process after FIU Investigation**





**Western Cape  
Government**

Department of the Premier

Corporate Services Centre  
Legal Services  
Enquiries: Barbara Steyn  
Barbara.Steyn@westerncape.gov.za

**File reference: 10/1/1/LO 165 of 2016-17**

## **PROVINCIAL GOVERNMENT: SUPPLY CHAIN MANAGEMENT**

Provincial Treasury

1<sup>st</sup> Floor, 4 Dorp Street

Cape Town

**(For attention: Mr Rayno Alberts)**

### **COMMENTS ON NT SCM INSTRUCTION 3 OF 2016/17: PREVENTING AND COMBATING ABUSE OF SCM**

1. National Treasury (NT) issued the abovementioned SCM instruction on 19 April 2016 with an effective date of 1 May 2016 ("the PCA SCM Instruction").
2. We have been requested to provide advice regarding potential risk and conflict with other policies and legislation.
3. Our Barbara Steyn has prepared the following response:
4. Several concerns have been raised through comments sourced from Departments. Some of the main concerns relate to the additional administrative burden placed on officials - without the prospect of extra personnel to address the increase in duties.
5. We will comment on the document on a paragraph by paragraph basis.

5.1 Ad General comments / status of the PCA SCM Instruction / paragraph 1 read with paragraph 18.

- (a) I am of the view that it would have been much clearer what is being meant by “*abuse<sup>1</sup> in the Supply Chain Management System*” had the PCA SCM Instruction defined the concept.
- (b) “*Abuse*” is defined in the 10<sup>th</sup> edition of the Concise Oxford Dictionary as “*use to bad effect or for a bad purpose*”.
- (c) In my view, abuse does not include irregularities caused by an innocent mistake on the part of any supply chain management practitioner / third party (e.g. innocent failure to comply with supply chain management delegations leading to irregular expenditure).
- (d) In my view, therefore, “*abuse in the Supply Chain Management System*” will only occur where there is intentional / wilful contravention of the supply chain management regulatory framework, such as:
  - (i) “*Fronting*”, which is defined in the Western Cape Treasury Instructions as “*a misrepresentation or the making of a misrepresentation in order to obtain undue preference points*” in the context of Preferential Procurement;
  - (ii) “*Collusive tendering*” i.e. where bidding companies secretly share information or make arrangements among themselves in order to control the result; and
  - (iii) “*Influencing the bidding process*” i.e. directly or indirectly influencing or interfering with the work of relevant Supply Chain Management practitioners involved in the bidding process in order to influence the outcome of the process.

---

<sup>1</sup> The synonyms for “abuse” include “misuse, exploitation, manipulation, mishandling and misapplication”.

- (c) It should be noted that the PCA SCM Instruction was issued in terms of section 76(4)(c) of the Public Finance Management Act, 1999 ("the PFMA"). The PFMA states in its definitions section that "this Act" includes any regulations and instructions in terms of section 76. Section 76(4)(c) stipulates as follows:

*"(4) The National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning-*

*(a) ...;*

*(b) ...;*

*(c) the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective;*

*..."*

- (b) We are of the view, however, that Treasury Instructions, Circulars, and Guides are not legally binding on provinces, it being neither legislation nor subordinate legislation (based on a persuasive opinion by Adv. O Rogers (SC) as he then was<sup>2</sup>)<sup>3</sup> and that the requirements contained in paragraph 5 of the Instruction must be adhered to with circumspection.

- (c) Notwithstanding the above, the Auditor-General may regard the document as a binding instruction issued in terms of section

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<sup>2</sup> Adv. Rogers *inter alia* advised that:

- a) "the instructions which s76 of the PFMA purports to empower the NT to issue to institutions are in my view not *"subordinate legislation"* made in terms of the PFMA..."; and
- b) "One facet of the rule of law is that enacted law should be made known to the state's subjects. This is expressly required by s101(3) of the Constitution which provides that proclamations, regulations *"and other instruments of subordinate legislation"* must be accessible to the public."

<sup>3</sup> The National Treasury (NT) disagrees with the above position of the WCG. NT argues that SCM instructions issued in terms of section 76(4)(c) are binding. In this regard they rely on a recent SCA judgment (Minister of Transport NO v Prodiba (Pty) Ltd). Legal Services is still considering the judgment to determine whether it in fact makes such a finding.

76(4)(c) of the PFMA and may as a result make negative audit findings should any Departments fail to comply therewith.

- (d) The fact that NT states in paragraph 1 that the document serves as a guideline, contradicts with the prescriptive nature of some of the provisions of the PCA SCM Instruction, especially when read with the content of paragraph 18 of the Instruction (stating that the SCM Treasury Instruction is issued in terms of section 76(4)(c)). This creates confusion and may, serve as ground for defending any potential negative finding referred to above (i.e. although the PCA SCM Instruction was issued in terms of section 76(4)(c), it is only meant to guide departments).
- (e) Notwithstanding the above and in the interest of avoiding any negative audit finding, we recommend that Departments adhere to the PCA SCM Instruction as far as practically possible.

## 6. Ad paragraph 3

- 5.1 The regulatory framework applicable to the Western Cape Government already provides for a complaint procedure. In this regard please see paragraph 3.9 of chapter 16A of the Western Cape Treasury Instructions, read with Part 6 thereof.
- 6.2 Regarding paragraph 3.3 of the PCA SCM Instruction, Departments must ensure that the Supply Chain Management delegations include a delegation identifying a delegated official for this purpose.

7. Ad paragraph 4

7.1 The requirements of these provisions can easily be accommodated within our existing procedures. If, for example, fraud or corruption is suspected, the Forensic Investigation Unit (FIU) may be approached to conduct the investigation. By requesting the FIU to consider the matter, the Accounting Officer has “initiated an investigation”. These investigations are typically not concluded within 30 (thirty) days. In my view the FIU would be able to give an indication as to how long an investigation could take, and the Provincial Treasury (PT) could be requested to approve an extension for an equivalent period (as provided for in paragraph 4.1.2 of the PCA SCM Instruction).

7.2 There is an additional administrative burden on Departments to monitor the progress of the investigation and to ensure that the PT periodically approves the extension of time periods.

8. Ad paragraph 5

8.1 The periods stipulated in paragraphs 5.1.2 and 5.1.4 may in many instances be difficult to achieve<sup>4</sup>. Accounting Officers may first wish to seek advice from other units within the WCG, such as Provincial Treasury and / or Legal Services, before initiating / executing the recommendations referred to. After receiving the requested advice, the Accounting Officer may even decide not to execute the recommendation.

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<sup>4</sup> Also refer to email correspondence received from Ruthen van Rensburg from the FIU on 6 June 2016 in which he states the following:

*“The PFS reports cases to the SAPS after a department accepted the recommendations encapsulated in a forensic report. More often than not a forensic report consists of in excess of 100 pages together with several arch-lever files of annexures / documentary evidence.”*



- 8.2 Further to the above, it is important to keep in mind that in certain instances it may be necessary to give an affected third party an opportunity to make representations in terms of section 3 of the Promotion of Administrative Justice Act, 2000. E.g. should the recommendation be to restrict an existing / prospective service provider, such a service provider must first be given the opportunity to make representations as to why he / she / it should not be so restricted. Requesting such representations would be the first step in initiating recommendation to this effect (therefore, once this step has been taken the recommended remedial action has been initiated, which is easily achievable within 14 days).
- 8.3 We find the requirements of paragraphs 5.4 and 5.5 problematic for the following reasons:
- (i) It is not clear to what "website" the PCA SCM Instruction is referring to; and
  - (ii) In our view, a finding is merely an opinion and does not amount to conclusive evidence of any wrongdoing. It is therefore inappropriate to "name and shame" any person in circumstances where a court has not found such a person guilty of an offence. Such publication may expose the WCG to delictual claims (including potential claims for defamation of character).
- 8.4 The Provincial Treasury / relevant accounting officer should therefore consider preparing separate reports for publication purposes, which do not include any personal information or identifying information (i.e. information which could expose the identity of the assumed transgressor).

9. Ad paragraph 6

In light of the fact that the Provincial Legislature is a public forum, our comments in paragraphs 8.3(ii) and 8.4 are also applicable to paragraph 6.4 of the PCA SCM Instruction.

10. Ad paragraph 7

10.1 Given the unreliability of the South African Postal Services, I suggest that the notice referred to in paragraph 7.1.1 also be forwarded to the person concerned by email / per hand / fax (if such contact information is known to the Department).

11. Ad paragraph 8

11.1 In our view, the provisions of paragraph 8.1 of the PCA SCM Instruction is unlawful as it is in conflict with the existing legislative framework, particularly regulation 16A6.4 of the National Treasury Regulations, 2005 (NTRs). The said regulation reads as follows:

*"If in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority."*

11.2 Paragraph 8.1 of the PCA SCM Instruction is a prescriptive provision which interferes with an Accounting Officer's ability to exercise his / her discretion based on the relevant facts of each case.

12. Ad paragraph 9.2

In our view this is also a prescriptive provision which interferes with an Accounting Officer's ability to exercise his / her discretion based on the relevant facts of each case.

13. Ad paragraph 10

13.1 The second sentence of this paragraph is problematic for the following reasons:

- (i) The sentence is vague;
- (ii) It is not clear what is regarded as "*improper evaluation and adjudication*" of a bid;
- (iii) The so-called improper evaluation and adjudication of a bid does not necessarily lead to financial loss. Only in instances of fruitless and wasteful expenditure would the Department have a claim for damages against transgressing officials, in instances where such officials forfeited their State cover as contemplated by chapter 12 of the NTRs;
- (iv) In most instances a Department would only be able to institute disciplinary proceedings against any official(s) failing to fulfill his / her / their duties in accordance with the Supply Chain Management framework; and
- (v) The principle of joint and several liability is most relevant in delictual claims, whereby a plaintiff may recover all the damages from any of the defendants regardless of their individual share of the liability. In my view, it does not find proper application in this case, since disciplinary proceedings would normally only be instituted against alleged transgressors. The guilt

of one Bid Committee member, can therefore not become the  
guilt of all.

14. Please do not hesitate to contact our office should you have any queries.

Yours faithfully

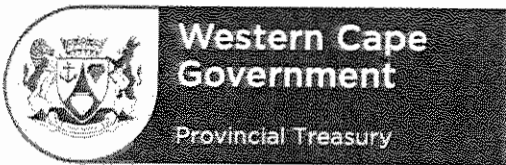


**ADV. GODFREY REED**

**DIRECTOR: LEGAL ADVISORY SERVICES**

**(GOVERNANCE & ECONOMIC CLUSTER)**

**DATE:** 09 / 02 / 2018



Tasneem Rakiep  
Moveable Asset Management  
Email: Tasneem.Rakiep@pgwc.gov.za  
tel: +27 21 483 4720

Reference: T16/P

## TREASURY CIRCULAR, NO. 31 /2012

THE PREMIER

THE MINISTER OF AGRICULTURE AND RURAL DEVELOPMENT  
THE MINISTER OF COMMUNITY SAFETY  
THE MINISTER OF CULTURAL AFFAIRS AND SPORT  
THE MINISTER OF EDUCATION  
THE MINISTER OF FINANCE, ECONOMIC DEVELOPMENT AND TOURISM  
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 ACCOUNTING OFFICER: VOTE 1: PREMIER (ADV B GERBER)  
THE ACCOUNTING OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MR R HINDLEY)  
THE ACCOUNTING OFFICER: VOTE 3: PROVINCIAL TREASURY (DR JC STEGMANN)  
THE ACCOUNTING OFFICER: VOTE 4: COMMUNITY SAFETY (DR GA LAWRENCE)  
THE ACCOUNTING OFFICER: VOTE 5: EDUCATION (MS P VINJEVOLD)  
THE ACCOUNTING OFFICER: VOTE 6: HEALTH (PROF KC HOUSEHAM)  
THE ACCOUNTING OFFICER: VOTE 7: SOCIAL DEVELOPMENT (MR M RICHARDSON)  
THE ACCOUNTING OFFICER: VOTE 8: HUMAN SETTLEMENTS (MR M TSHANGANA)  
THE ACCOUNTING OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR P VAN ZYL)  
THE ACCOUNTING OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MR J FOURIE)  
THE ACCOUNTING OFFICER: VOTE 11: AGRICULTURE (MS J ISAACS)  
THE ACCOUNTING OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MR S FOURIE)  
THE ACCOUNTING OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MR B WALTERS)  
THE ACCOUNTING OFFICER: VOTE 14: LOCAL GOVERNMENT (DR H FAST)

For information

THE CHIEF FINANCIAL OFFICER: VOTE 1: PREMIER (MR D BASSON)  
THE CHIEF FINANCIAL OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MS N PETERSEN)  
THE CHIEF FINANCIAL OFFICER: VOTE 3: PROVINCIAL TREASURY (MR A GILDENHUIJS)  
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 A VAN NIEKERK)  
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 AA GAFFOOR)  
THE CHIEF FINANCIAL OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MR CR ISMAY)  
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)

THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE GAMBLING AND RACING BOARD (MR R BENNETT) (ACTING)  
THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE NATURE CONSERVATION BOARD (MS M MOROKA)  
THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MR N FLAATTEN)  
THE CHIEF EXECUTIVE OFFICER: CAPE TOWN ROUTES UNLIMITED (DMO) (MR C GILFELLAN)  
THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE CULTURAL COMMISSION (MS J MOLELEKI)  
THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE LANGUAGE COMMISSION (MS J MOLELEKI)  
THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE HERITAGE COMMISSION (MS J MOLELEKI)  
THE CHIEF EXECUTIVE OFFICER: CASIDRA (MS T MLONYENI) (ACTING)  
THE CHIEF EXECUTIVE OFFICER: WESTERN CAPE LIQUOR BOARD (MR S FOURIE)

THE CHIEF FINANCIAL OFFICER: WESTERN CAPE GAMBLING AND RACING BOARD (MR P ABRAHAMS)  
THE CHIEF FINANCIAL OFFICER: WESTERN CAPE NATURE CONSERVATION BOARD (MR A PRESTON)  
THE CHIEF FINANCIAL OFFICER: WESTERN CAPE INVESTMENTS AND TRADE PROMOTION AGENCY (MR I BLACKIE)  
THE CHIEF FINANCIAL OFFICER: CAPE TOWN ROUTES UNLIMITED (DMO) (MR H BONESCHANS)  
THE CHIEF FINANCIAL OFFICER: WESTERN CAPE CULTURAL COMMISSION (MS B RUTGERS)  
THE CHIEF FINANCIAL OFFICER: WESTERN CAPE LANGUAGE COMMISSION (MS B RUTGERS)  
THE CHIEF FINANCIAL OFFICER: WESTERN CAPE HERITAGE COMMISSION (MS B RUTGERS)  
THE CHIEF FINANCIAL OFFICER: CASIDRA (MR F VAN ZYL)  
THE CHIEF FINANCIAL OFFICER: WESTERN CAPE LIQUOR BOARD (MS M ABRAHAMS)

THE HEAD OFFICIAL: PROVINCIAL TREASURY (DR JC STEGMANN)  
THE HEAD: BRANCH FISCAL AND ECONOMIC SERVICES (MR H MALILA)  
THE HEAD: BRANCH GOVERNANCE AND ASSET MANAGEMENT (VACANT)  
THE HEAD: PUBLIC POLICY SERVICES (MR A PHILLIPS)  
THE HEAD: PUBLIC FINANCE (MR H MALILA) (PRO TEM)  
THE HEAD: LOCAL GOVERNMENT FINANCE (MR TC ARENDSE)  
THE HEAD: FINANCIAL GOVERNANCE (MR A HARDIEN)  
THE HEAD: ASSET MANAGEMENT (MR I SMITH)  
THE CHIEF FINANCIAL OFFICER (MR A GILDENHUY)  
THE SENIOR MANAGER: ACCOUNTING SERVICES: PROVINCIAL GOVERNMENT (MR A REDDY)  
THE SENIOR MANAGER: ACCOUNTING SERVICES: LOCAL GOVERNMENT (MS L NGXONONO)  
THE SENIOR MANAGER: CORPORATE GOVERNANCE (MR B VINK)  
THE SENIOR MANAGER: BUDGET MANAGEMENT: PROVINCIAL GOVERNMENT (MS M SHERATON-KORSTEN)  
THE SENIOR MANAGER: BUDGET MANAGEMENT: LOCAL GOVERNMENT (MR ML BOOYSEN)  
THE SENIOR MANAGER: PROVINCIAL GOVERNMENT FINANCE (MS A PICK)  
THE SENIOR MANAGER: LOCAL GOVERNMENT FINANCE (GROUP ONE) (MR F SABBAT)  
THE SENIOR MANAGER: LOCAL GOVERNMENT FINANCE (GROUP TWO) (MR M SIGABI)  
THE SENIOR MANAGER: PUBLIC FINANCE POLICY RESEARCH AND MODELLING (MS C HORTON)  
THE SENIOR MANAGER: IMMOVEABLE ASSET MANAGEMENT (MR NB LANGENHOVEN)  
THE SENIOR MANAGER: MOVEABLE ASSET MANAGEMENT (MS N EBRAHIM)  
THE SENIOR MANAGER: SUPPORTING AND INTERLINKED FINANCIAL SYSTEMS (MR A BASTIAANSE)  
THE SENIOR MANAGER: STRATEGIC AND OPERATIONAL MANAGEMENT SUPPORT (MS A SMIT)  
THE HEAD: OFFICE OF THE FINANCE MINISTRY (MS T EVANS)

THE PROVINCIAL AUDITOR

MASTER RECORDS OFFICIAL: FINANCIAL MANAGEMENT

## **1) STATUS OF NATIONAL TREASURY INSTRUCTION NOTE 32 OF 2011; AND**

## **2) ISSUANCE OF NATIONAL TREASURY CIRCULAR: POSTPONING IMPLEMENTATION OF SUBPARAGRAPH 3.9.4 OF INSTRUCTION NOTE 32: ENHANCING COMPLIANCE MONITORING AND IMPROVING TRANSPARENCY AND ACCOUNTABILITY IN SUPPLY CHAIN MANAGEMENT (SCM), DATED 31 MAY 2011**

### **1. PURPOSE**

1.1 The purpose of this communiqué is to inform departments on the requirements of:

- a) The current status in the Provincial context of the implementation of National Treasury's Instruction Note 32 of 2011, and
- b) To disseminate the attached National Treasury Circular (included as "Annexure A").

## **2. BACKGROUND**

- 2.1 Since the issuing of Instruction Note 32 on 31 May 2011 and rendering of provincial comments at various stages, National Treasury Circular dated 28 September 2011 was issued, postponing paragraph 3.3, 3.4 and 3.5 of the Instruction Note. Subsequent to this, National Treasury Circular dated 24 April 2012 (attached Circular) was issued, postponing the implementation of sub-paragraph 3.9.4.
- 2.2 The Provincial Treasury submitted comments in writing and met with the National Treasury regarding our concerns in respect of the Instruction Note and afforded National Treasury an opportunity to interrogate the concerns to which it issued a revised Instruction Note for comment.
- 2.3 Whilst we have tabled our concerns/ comments to the revised Instruction Note the National Treasury has to date not issued the final Instruction Note 33 ( the revised version of Instruction Note 32), nor responded to our concerns/ comments.
- 2.4 Therefore the sections under dispute have not been taken up in the revised Provincial Treasury Instructions (PTIs) issued 28 March 2012.
- 2.5 Taking cognisance of the above, the following requirements of Instruction Note 32 are reflected in the Table hereunder depicting the extent to which the requirements of NT Instruction Note 32 has been taken up in the PTIs, and what the current Provincial requirements are as well as those which have been postponed by National Treasury and those that have not been implemented by the Province including the reasons for non-implementation.



RELEVANT PARAGRAPH OF INSTRUCTION NOTE 32	REFERENCE TO ISSUE TAKEN UP IN PTIs ISSUED 28 MARCH 2012	PROVINCIAL TREASURY COMMENTS TO NATIONAL TREASURY / REASONS WHY RELEVANT SECTIONS NOT TAKEN UP IN PTIs
3.1 Submission of procurement plans in respect of advertised competitive bids	<p><b>PTIs Chapter 16A Part 4: Paragraph 4.3.5</b></p> <p>"The accounting officer of a department must submit a procurement schedule containing all planned procurement for the financial year in respect of goods or services which exceed R500 000 (all applicable taxes included) to the Provincial Treasury by 30 April of each year in the prescribed format for monitoring purposes</p>	
3.2 Publication of names of bidders in respect of advertised competitive bidding above the threshold value of R500 000.00	<p>Not taken up in PTIs</p> <p><b>See: PT Circular 14/2012 paragraph 6.3 (e) and (f)</b></p> <p><b>PT circular 26/2011 and PT circular 14 of 2010 (Reporting requirements)</b></p>	<p>Letter to NT dated 03/09/2011 by the Provincial Treasury.</p> <p>The requirement is highlighted as a risk as it would create expectations by bidders as this would involve publication of points claimed before verification. One needs to balance risk against transparency.</p>

	<p><b><u>New PTI requirements:</u></b></p> <p><b>PTIs Chapter 16A Part 11: Paragraph 11.1.2 (c) (vi)</b></p> <p>“ Accounting Officers or authorities must within two working days:</p> <p>aa) Notify the Provincial Treasury of all bids advertised via the open bidding process as and when they advertised in Government Tender Bulletin (GTB) or the local newspaper;”</p> <p><i>This information is sent to the PT website collator for publication on the PT website</i></p>	<p>NB: It is already a practice in the Construction industry to read out this information when the bid box is opened.</p> <p>There is also the assumption created that all bidders are responsive.</p> <p>It will also be an administrative nightmare for bigger departments as information would have to be uploaded daily on the website.</p>
<p>3.3 Verifying the names and identity numbers of directors/trustees/shareholders of companies/enterprises/closed corporations and trusts against relevant trust structure</p>	<p><b>POSTPONED BY NATIONAL TREASURY</b></p> <p><b>See: PT Circular 14/2012 paragraph 6.3 (b) (i-iii)</b></p>	
<p>3.4 Information on bids in excess of R10 million (including applicable</p>	<p><b>POSTPONED BY NATIONAL TREASURY</b></p>	

taxes)	<b>See: PT Circular 14/2012 paragraph 6.3 (b) (i-iii)</b>	
3.5 Auditing of bidding process for bids in excess of R10 million	<b>POSTPONED BY NATIONAL TREASURY</b>  <b>See: PT Circular 14/2012 paragraph 6.3 (b) (i-iii)</b>	
3.6 Legal vetting of formal contracts/SLA	<b>PTIs Chapter 16A Part 7: Paragraph 7.1(a)</b>  "The accounting officer or accounting authority must ensure that all contracts entered into by the institution are legally sound"	
3.7 Publication of awards	<b><u>New PTI requirements:</u></b> <b>PTIs Chapter 16A Part 11: Paragraph 11.1.2 (c) (vi)</b>  "bb) for awards, forward a copy of the acceptance letter sent to the successful bidder to the Provincial Treasury."  <i>This information is sent to the PT website collator for publication on the PT website</i>  <b>Also requirement of NTR 16A6.3 (d)</b>	

<p>3.8 Placing of orders for payments in another financial year</p>	<p><b>See: PTIs issued November 2009; Chapter 8: Paragraph 8.3: Date of Payment is date of Charge</b></p> <p>Paragraphs 8.3.1 – 8.3.4</p>	
<p>3.9 Management of expansion or variations of orders against the original contract</p>	<p><b>NT Supply Chain Circular dated 24/04/2012 : Postponing implementation of subparagraph 3.9.4 in Instruction Note dated 31 May 2011, related to enhancing Compliance monitoring and Improving Transparency and Accountability in Supply Chain Management.</b></p> <p><b>Paragraphs 3.3 -3.5</b></p> <p><i><u>New Requirement:</u></i></p> <p><i>Prior approval by PT no longer required. PT to be notified and to take appropriate steps where deemed necessary.</i></p>	
<p>3.10 Payment within 30 days</p>	<p><b>See: PTIs issued November 2009; Chapter 8: Paragraph 8.2.3:</b></p>	

2.6 It should be noted that the National Treasury has in the interim amended the requirement of sub-paragraph 3.9.4, unpacked further in paragraph 3 below.

### **3. POSTPONEMENT OF THE IMPLEMENTATION OF SUB-PARAGRAPH 3.9.4**

3.1 Following consultations with departments and Provincial Treasuries by the National Treasury, it was found that the implementation of sub-paragraph 3.9.4 was problematic. The National Treasury has therefore taken a decision to postpone the implementation of the abovementioned paragraph pending the issuance of a revised instruction note.

3.2 Sub-paragraph 3.9.4 reads as follows:

*"Any deviation in excess of these thresholds (20% or R20 million in respect of construction related goods, works and/ services and 15% or R15 million in respect of all other goods and/ services, whichever is the lower amount) will only be allowed subject to the prior written approval of the relevant treasury. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist."*

3.3 The requirement has however in the interim been amended, where institutions are required to forward motivations for all expansions/ extensions in excess of these thresholds (mentioned in 3.2 above) to the Provincial Treasury and to the Auditor-General within 10 (ten) working days after the Accounting Officer or Accounting Authority has granted approval for the deviation.

3.4 The Provincial Treasury will scrutinise such reports and take appropriate action where deemed necessary.

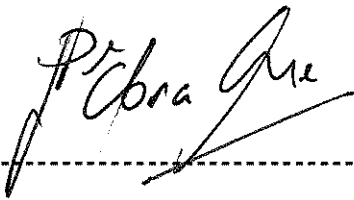
3.5 Reports sent to the Provincial Treasury will assess the case against current policy and prescripts and institutions should note that the Provincial Treasury will only provide a written response if any findings of non-compliance are noted.

3.6 Cases submitted to the Provincial Treasury must address the following key criteria and Departments are requested to submit such cases in the attached format (Annexure B).

#### 4. REQUEST

4.1 Accounting officers / accounting authorities are requested to:

- (a) Note and adhere to the requirements of this Circular; and
- (b) Ensure that the content of the Circular is brought to the attention of all relevant officials within their institution and schedule 3A and 3C public entities reporting to their executive authorities.



NADIA EBRAHIM

DIRECTOR: PROVINCIAL AND LOCAL GOVERNMENT SCM

DATE: 21/06/2012



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

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**TO ALL: ACCOUNTING OFFICERS OF DEPARTMENTS AND  
CONSTITUTIONAL INSTITUTIONS**

**: ACCOUNTING AUTHORITIES OF SCHEDULE 3A AND 3C  
PUBLIC ENTITIES**

**: HEAD OFFICIALS OF PROVINCIAL TREASURIES**

## **SUPPLY CHAIN MANAGEMENT CIRCULAR**

**POSTPONING IMPLEMENTATION OF SUB-PARAGRAPH 3.9.4 IN  
INSTRUCTION NOTE NUMBER 32 DATED 31 MAY 2011, RELATED TO  
ENHANCING COMPLIANCE MONITORING AND IMPROVING TRANSPARENCY  
AND ACCOUNTABILITY IN SUPPLY CHAIN MANAGEMENT (SCM)**

### **1 PURPOSE**

- 1.1 This Circular serves to inform accounting officers and accounting authorities that sub-paragraph 3.9.4 in Instruction Note Number 32 dated 31 May 2011 has been postponed for implementation.
- 1.2 This postponement shall be for the period up until a revised Instruction Note is issued.

### **2. BACKGROUND**

- 2.1 On 31 May 2011, the National Treasury issued Instruction Note No. 32 to, amongst others, improve accountability and provide supply chain management directives to accounting officers of departments and constitutional institutions and to accounting authorities of public entities listed in Schedules 3A and 3C to the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999).
- 2.2 On 28 September 2011, the National Treasury issued a Circular postponing implementation of paragraphs 3.3, 3.4 and 3.5 as contained in Instruction Note 32 dated 31 May 2011 pending the issuance of a revised Instruction Note.
- 2.3 After consultation with departments and provincial treasuries, it has since come to light that sub-paragraph 3.9.4, as contained in Instruction Note 32 dated 31 May 2011, is also problematic for implementation.



### **3. POSTPONEMENT OF IMPLEMENTATION**

3.1 Taking cognisance of paragraph 2.3 above, sub-paragraph 3.9.4, as contained in Instruction Note No. 32 dated 31 May 2011 is also postponed for implementation pending the issuance of a revised Instruction Note.

3.2 The sub-paragraph in question reads as follows:

#### ***Sub-paragraph 3.9.4***

*Any deviation in excess of these thresholds will only be allowed subject to the prior written approval of the relevant treasury. Whilst provision is made for deviations, it is imperative to note that requests for such deviations may only be submitted to the relevant treasury where good reasons exist.*

3.3 Institutions are, however, required to forward motivations for all expansions in excess of the thresholds to the relevant treasuries and to the Auditor-General within 10 (ten) working days after the Accounting Officer or Accounting Authority has granted approval for the deviation.

3.4 Such motivations must include, among others, the contract number, the description of the contract, the name of the contractor, the original contract amount, the value and percentage of the deviation and the reasons for the deviation.

3.5 The relevant treasuries will scrutinize such reports and take appropriate action, if deemed necessary. This may include the investigation of any system of financial management and internal control in terms of sections 6(2)(e) and 18(2)(f) of the PFMA and the institution of financial misconduct proceedings in terms of Chapter 10 of the PFMA and Chapters 4 and 33 of the Treasury Regulations.

### **4. STATUS OF INSTRUCTION NOTE NUMBER 32 DATED 31 MAY 2011**

With the exception of paragraphs 3.3, 3.4, 3.5 and sub-paragraph 3.9.4 all other provisions in Instruction Note No. 32 dated 31 May 2011 are still effective until a revised Instruction Note is issued.

### **5. APPLICABILITY**

This Circular applies to all departments and constitutional institutions and to public entities listed in Schedule 3A and 3C to the PFMA.

### **6. DISSEMINATION OF INFORMATION CONTAINED IN THIS CIRCULAR**

6.1 Head Officials of Provincial Treasuries are requested to please bring the contents of this Circular to the attention of all accounting officers of their respective provincial departments.

6.2 Accounting officers of national and provincial departments are requested to please bring the contents of this Circular to the attention of accounting authorities of all Schedules 3A and 3C public entities reporting to their respective executive authorities.

**7. NOTIFICATION TO THE AUDITOR-GENERAL**

A copy of this Circular will be forwarded to the Auditor-General for notification.



**SF NOMVALO  
ACCOUNTANT-GENERAL**

DATE: 24/04/2012

Jan2312(h)

**Submission for extension/ expansion of a contract**

1.	Type of process	Extension of contract Yes / No		Expansion of contract Yes /No	
2.	Does the Department's Accounting Officer's System make provision for expansions/ extensions? Please make reference to the relevant sections of the Department's AOS that details the process applicable	Yes / No			
3.	Contract number/ reference number				
4.	Name of contractor				
5.	Description of existing contract				
6.	How was the existing / principle contract procured? (tick appropriate box)	Quotation	Competitive bidding	Limited Bidding	Emergency Procurement
7.	Original contract value				
8.	Original contract period				

9.	Deliverables of the project	
10.	Value of extension/ expansion and percentage of deviation	
11.	Period of extension	
12.	Motivation for expansion/extension of contract	
13	Was the current contract previously extended/ expanded?	
a)		
b)	If yes, provide reason/s and nature of previous extension/ expansion	
c)	Value and period of previous extension/ expansion	
14.	Description of expansion/ extension (attach terms of reference and proposal of service provider)	
a)		
b)	How was the proposal evaluated and accepted? (process followed)	
c)	How and when were the additional requirements identified?	

d)	Why could the additional requirement not be conceptualised at the initiation of the contract?	
15.	Why was a new procurement process not initiated? Provide reasons/ motivation	
16.	Has the service provider agreed to render the expansion/ extension at the same terms and conditions / are there additional / amended terms and conditions?	
17. a)	Has the Department considered the reasonableness of the extension /expansion proposal and is the proposal considered reasonable?	
b)	If no to the latter (above), why is the Department continuing with the process?	
18.	Is budget adequately provided for the duration of the contract period?	

19.	How will the Department deal with additional expansions/ extensions?	
20.	Were all relevant stakeholders involved in the process? (Cost centre manager/ project manager/ service provider/ SCM unit etc.)	
21. a)	Has the case served before the departmental bid adjudication committee? (attach proof of submission to DBAC)	
b)	Was the extension/ expansion approved by the relevant delegate? (Indicate relevant delegation and attach proof of approval, if already not provided for in the submission to the DBAC)	

**Note:**

- ❖ Submissions should be drafted in a meticulous manner, should not be prone to interpretation and should provide detail of the expansion/ extension **(attach copy of all submissions, if already not provided for above)**.
- ❖ Minutes of meetings should be clear, concise and should reflect all discussion or decisions that took place at the meetings **(attach copy of all bid committee minutes and minutes of meetings with the contractor, if applicable)**.