

Reference number: RCS/C.5

TREASURY CIRCULAR MUN NO. 6/2020

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WESTERN CAPE GOVERNMENT'S MUNICIPAL RESPONSE PLAN FOR DISASTER PROCUREMENT REQUIREMENTS IN RESPECT TO THE LOCKDOWN FOR THE CORONAVIRUS (COVID-19)

1. PURPOSE

- 1.1 The purpose of this Circular is to provide guidance and clarity to Accounting Officers of municipalities and municipal entities in respect of managing their procurement requirements in response to the Coronavirus (COVID-19) pandemic and the subsequent business continuity during the lockdown period and thereafter.
- 1.2 To provide guidance on the impact of NT MFMA Circular 101 relating to COVID 19 Bulk Central Procurement Strategy for Government Institutions.

2. BACKGROUND

- 2.1 As of 15 March 2020, the COVID-19 Disaster has been classified as a National Disaster in terms of Section 23 and 27 of the Disaster Management Act, 2002 (Act No. 57 of 2002) ("the DMA").
- 2.2 The **Disaster Management Act, 2002** provides that municipalities and municipal entities must comply with the MFMA Act and the applicable emergency provisions in the regulations issued under this Act.
- 2.3 On 23 March 2020, the President announced a 21-day lockdown period with effect from 23:59 on 26 March 2020 due to rapid increase of the number of confirmed cases in respect of the COVID-19 pandemic and which was further extended until the end of April 2020.
- 2.4 **The Minister of Finance in terms of the Municipal Finance Management Act 56 of 2003 (MFMA) issued a conditional Exemption Notice** dated 30 March 2020, in order to ensure effective and efficient service delivery and to minimise any potential delay in decision making. The impact of this may be unpacked as follows:
 - (i) The Exemption Notice provides an exemption from a provision of the MFMA which requires any action to be taken between the date of publication of the notice and the date that the national state of disaster lapses or is terminated in terms of section 27(5) of the Disaster Management Act, 2002;
 - (ii) Municipalities and municipal entities will be exempted from the **timeline provisions** in the MFMA until such time that the national state of disaster declaration is lifted by the President; and
 - (iii) The exemption is conditional that the MFMA timelines referred to are, complied within 30 days after the national state of disaster is lifted.

- 2.5 **On the 30 March 2020, the Minister of Co-operative Governance and Traditional Affairs (CoGTA); issued directions in terms of Section 27 (2) of the Disaster Management Act.** This directive brings to the attention of municipalities and municipal entities to take cognisance of the following requirements as it relates to emergency procurement:
- (i) Undertake emergency procurement within the Disaster Management Act, 2020 and the transversal contracts issued by the National Treasury;
 - (ii) Adhere to all the applicable National Treasury Regulations and MFMA Circular No. 100 (NT MFMA Circular 101 has been issued to replace NT Circular 100);
 - (iii) Decision-making that would have been approved by the Municipal Councils, will be made by the Municipal Manager on recommendation by the Chief Financial Officer with the concurrence of the Mayor or Executive Mayor;
 - (iv) Decisions taken must be in respect of an emergency nature and be reported to the first council meeting after the lockdown period; and
 - (v) Report all procurement undertaken during the disaster period to the first council meeting after the period has lapsed.
- 2.6 Subsequent, to the above mentioned, the National Treasury on 15th April 2020, issued NT MFMA Circular 101 relating to COVID 19 Bulk Central Procurement Strategy for Government Institutions in an effort to determine a procurement and provisioning framework for critical emergency COVID 19 Personal Property Equipment (PPE) products to centralised procurement for these PPE products. The impact of the circular may be unpacked as follows:
- (i) NT MFMA Circular 101 updates and replaces Circular 100 issued on 19 March 2020;
 - (ii) In terms of Regulation 9 (a) the Disaster Management Act, it makes provision for emergency procurement;
 - (iii) Municipalities and Municipal Entities may implement the circular 101 on the central emergency procurement process for Personal Property Equipment (PPE);
 - (iv) The circular must be read in conjunction with the Municipal Supply Chain Management Regulations and the relevant MFMA provisions applicable to emergency procurement;
 - (v) A central procurement team has been established consisting of National Department of Health and NT Office of the Chief Procurement Office for bulk procurement for PPE products;
 - (vi) Bulk Procurement Principles have been instituted: For all COVID 19 PPE products to be procured, warehoused and distributed from placing the orders, stock levels at hand, until ordering to the payment process;
 - (vii) A list of approved local SA Suppliers and international Supplies will be established;
 - (viii) All contracts/agreements established under Circular 100 must be honoured;
 - (ix) Municipalities may approach other suppliers on condition that items are to specification as determined by NDOH, prices are equal to or lower than NDOH and the supplier is registered on CSD; and
 - (x) Municipalities must report within 10 days regarding emergency procurement under Circular 100 and the same reporting requirements are in place in terms of Circular 101.
- 2.7 Given the above, the Provincial Treasury herein provides guidance to municipalities and municipal entities on the existing measures available to ensure the timeous and effective procurement of essential goods and/or services required to respond to the COVID-19 Disaster.

3. CRITICAL KEY PRINCIPLES TO BE OBSERVED DURING THE COVID-19 DISASTER

- 3.1 The following core principles have been identified as being relevant to the disaster procurement framework for COVID-19 under the lockdown period:
- 3.1.1 Extraordinary operations that are different from day-to-day procurement activities are required;
- 3.1.2 A balance is required between the controls and efficiency of the procurement system within the applicable legal framework, and the need to be responsive to COVID-19 response requirements;
- 3.1.3 Sourcing rules should be appropriately adapted within the applicable legal framework to enable procurement decisions to be exercised in a manner that achieves the desired procurement outcomes with the required urgency and responsiveness;
- 3.1.4 Whilst balancing controls and efficiencies within the legal framework, municipalities and municipalities must maintain the five pillars as encapsulated under 217 of the Constitution;
- 3.1.5 Disaster related procurement decisions should be delegated to and exercised by those closest to and critical to the need to respond to the pandemic;
- 3.1.6 Applicable procurement roles and responsibilities require to be adapted for the purposes of ensuring adequate emergency preparedness planning and responsiveness to the pandemic; and
- 3.1.7 All decisions taken municipalities and municipal entities are required to adequately document all processes and procedures followed to the circumstances relevant to COVID 19 for audit purposes.

4. THE PROVINCIAL TREASURY'S SUPPORT TO MUNICIPALITIES DURING THE COVID 19 PANDEMIC

- 4.1 In terms of section 5 (3) of the Municipal Finance Management Act (Act 56 of 2003), the Provincial Treasury is mandated to assist, guide and monitor and enforce compliance to the said Act. The Provincial Treasury will during the lockdown period provide continuous support to municipalities and municipal entities.
- 4.2 The Local Government Supply Chain Management unit will be available during the lockdown period for any further guidance and assistance.
- 4.3 Municipalities can contact the following officials which is responsible for the Central Procurement Unit in the Province and or via email:

Name	Focus Area	Contact details
Isac Smith	PT: SCM	073 685 2258
Nadia Ebrahim	PT: SCM	061 533 3464
Rodney Moolman	PT: LGSCM	082 214 4422
Letitia Sallies	PT: LGSCM	071 118 1552
Reginald Clarke	PT: LGSCM	071 473 5408

- 4.4 Continuous support will be provided via the MFMA SCM Helpdesk function for any SCM and emergency procurement enquiries at the following email address and will be fully operational during the lockdown and the normal protocol would apply:

- Supply Chain Management HDMFMA
SupplyChainManagement.HDMFMA@westerncape.gov.za

5. SUPPORT WITH THE PROCUREMENT OF PERSONAL PROTECTIVE CLOTHING (PPE)

5.1 PERSONAL PROTECTIVE EQUIPMENT DATABASE

5.1.1 The Provincial Treasury is currently in the process of compiling a database of compliant service providers that is registered on the Central Supplier Database (CSD) to provide municipalities with the necessary information to determine the availability of stock of Personal Protective Equipment (PPE) in the market and pricing thereof (i.e. medical PPE **Not** included in the NT database and for non-medical PPE items only) to assist municipalities with the procurement of these items. this will include various of categories of PPE items but not limited to the following:

- Masks, Gowns, Hand sanitisers, soap, gloves, Goggles / Face-Shield, Test Kits, boots etc.

5.1.2 Municipalities will be provided with the above-mentioned PPE database which will indicate the quantities that the supplier is able to provide, lead times, and items which suppliers can provide including the pricing schedule. Municipalities must take cognisance of the normal supply chain management requirements to be followed in terms of Request for quotations.

5.2 DEMAND PLAN FOR PERSONAL PROTECTIVE EQUIPMENT

5.2.1 The Provincial Treasury is currently compiling a demand forecast for Personal Protective Equipment (PPE) for Municipalities for a six-month period based on the reporting requirements and PPE needs we are receiving from municipalities in an effort to assist municipalities with responsive suppliers with the necessary stock levels available.

6. PROCUREMENT REQUIREMENTS FOR COVID-19

6.1 PROCUREMENT OF ESSENTIAL GOODS AND SERVICES REQUIRED BY MUNICIPAL DISTRICTS AND MUNICIPALITIES

6.1.1 Each metropolitan and district municipality is legally mandated to provide disaster relief-related support and must rely on its existing supply chain management policy, read with the applicable provisions of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) ("the MFMA") and any guiding instructions issued by the National Treasury to procure any essential goods and/or services required for the provision of such support. This will be done in terms of the functions and services performed by each metropolitan and district municipality's current mandate.

6.1.2 These essential services amongst others include basic services such as water provisions, waste management and cleaning services to the communities and citizens.

6.2 In addition, Metropolitan, District Municipalities and Local Municipalities may consider the following procurement method when procuring COVID 19 items including the necessary guidelines for municipalities:

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

Should municipalities wish to procure the required goods or services for the purposes of responding to the COVID-19 pandemic, such goods and services may be procured using the emergency procurement provisions of the municipality's supply chain management policy, read with the requirements of regulation 36 of the SCM Regulations and paragraph 5.1 of the MFMA Circular No. 101.

- 6.3 Municipalities may also use expedited methods of procurement that may include amongst others the following:
- Limited bidding/single source purchasing from preferred suppliers may be utilised; and
 - The items procured are to the specification as provided for by the Department of Health.
- 6.4 Non-medical related PPE: In terms of NT MFMA Circular 101 Annexure C attached herewith:
- a) If an item or service is not covered in the Circular and is considered to be a specific requirement for the municipality to combat COVID - 19, the emergency procurement prescripts must be followed in terms of Regulation 36 of Municipal SCM Regulations and report such expenditure to the relevant Treasury.
 - b) Expand any such contracts in terms of MFMA Circular 62 for goods not more than 15% and any expansions in excess municipalities and municipal entities must follow the requirements as outlined in Section 116 of the MFMA.
 - c) Where municipalities already have contracts in place, they must honour such contracts.
 - d) Where a municipality have utilised emergency procurement requirements in respect of Circular 100, the compliance reporting as cited in paragraph 6.5 of MFMA Circular 101 is applicable.
- 6.5 Municipalities and municipal entities are required to verify the tax compliance status, potential conflict of interest and status of suppliers on the National Treasury's database of restricted suppliers and tender defaulters on the CSD before the award of a contract.
- 6.6 Existing bid documents and governance requirements that are enabled through the system may be utilised. Municipalities are advised to adhere to the requirements as outlined in NT MFMA Circular No. 101.
- 6.7 It must be noted that for each of these key decisions, the necessary and practical internal controls must be built in as far as it is reasonably possible to do so, and municipalities are to ensure that the necessary evidence is kept supporting their management decisions.

7. REPORTING REQUIREMENTS ON COVID 19 EMERGENCY PROCUREMENT

- 7.1 Municipalities must take cognisance of the following reporting requirements as it relates to procurement processes:
- (i) Recording the reasons for any deviations undertaken in terms of regulation 36(1)(a) of the said Regulations; the report such reasons to the next meeting of the municipal council and record same as a note in the municipality's annual financial statements as soon as is reasonably possible post lock down; and
 - (ii) Reporting to Council in terms of SCM Regulation 6, on any procurement processes followed in terms of SCM Regulation 32 at a convenient time to be arrange as soon as it is reasonably practical and safe to do so.
- 7.2 Municipalities must report to Provincial Treasury on all emergency procurement items procured for COVID 19. The reporting guidelines to be submitted to Provincial Treasury must include the following information:
- (i) Description of the items;
 - (ii) Supplier name;

- (iii) Unit price;
- (iv) Quantity;
- (v) Total price;
- (vi) Saving achieved when compared to the price listed; and
- (vii) Motivation for deviating from the items listed.

7.3 This may be done electronically via email to the Provincial Treasury who will remain available online during the lockdown process and the required reporting may be done through the PT helpdesk email address as reflected in paragraph 10.1 hereunder.

7.4 The PT will compile a register and will be monitoring these transactions in-flight hence municipalities are required to adhere to paragraph 6.2 to avoid the abuse of the supply chain management system to deal with the Disaster. **Annexure A** is attached for municipalities to duly compete and submit to Provincial Treasury.

7.5 Municipalities and municipal entities to take cognisance of the reporting requirements for Annexure A to NT MFMA Circular 99 relating to donations and sponsorships.

8. MUNICIPAL PROCUREMENT PLANNING REQUIREMENTS

8.1 It is understood that municipalities and municipal entities are exerting all efforts to ensure an appropriate and adequate response to the COVID-19 pandemic. It therefore becomes necessary for the Provincial Treasury to reconsider the timelines for the submission of the annual procurement plans until after the lockdown period.

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

9. SUPPORT TO MUNICIPALITIES TO SPEED UP THE RESPONSE TIME DURING THE PROCUREMENT PROCESSES

9.1 In order to be more responsive and timeously respond to the COVID-19 crisis, Provincial Treasury encourages municipalities to share information via the MFMA SCM Helpdesk function by sharing specifications for such similar goods or services for COVID-19 items.

9.2 Municipalities are required to after the award of any contracts related to COVID-19 essential goods and services, kindly share such specifications via the following email address:

- Supply Chain Management HDMFMA
SupplyChainManagement.HDMFMA@westerncape.gov.za

9.3 Provincial Treasury will distribute such specifications to other municipalities in the Western Cape to assist in fast tracking their procurement processes and ensuring service delivery as soon as possible.

10. HONOURING EXISTING CONTRACTS & PAYMENT OF SUPPLIERS

10.1 Municipalities and municipal entities must honour the contractual agreements made under NT MFMA Circular 100 and apply the requirements as listed under the General Terms and Conditions of Contract.

10.2 From a governance and control perspective it is important to note that in this time of crisis that there is also a rife market for opportunists to exploit the crisis and the related scarcity, supply and demand conditions in the market. To this end the Minister of Trade, Industry and Competition has in response

as at 03 April 2020 issued regulations on Competition Tribunal Rules for COVID -19 Excessive Pricing Complaint Referrals. (See Annexure D attached herewith.)

11. AVOIDING ABUSE OF SUPPLY CHAIN MANAGEMENT SYSTEM

- 11.1 All existing measures required in terms of applicable legislation, regulations, instructions and policies to address abuse of the supply chain management system shall remain applicable and must be duly implemented in the event of any disaster category occurring within the Western Cape.

12. DATE OF COMMENCEMENT

- 12.1 The guidance and requirements included herein are applicable with immediate effect in support to the NT MFMA Circular 101 which is effective from 15 April 2020. The following Annexures must also be read in conjunction with this Circular:
- 12.1.1 Annexure A – Reporting Template on Emergency Procurement items;
 - 12.1.2 Annexure B – NT MFMA Circular 100 Emergency Procurement in response to COVID 19 pandemic;
 - 12.1.3 Annexure C – NT MFMA Circular 101 COVID 19 Bulk Central Procurement Strategy for Government Institutions; and
 - 12.1.4 Annexure D - Competition Tribunal Rules for COVID -19 Excessive Pricing Complaint Referrals.

13. REQUEST

- 13.1 Accounting Officers of municipalities and municipal entities are required to keep evidence of decisions undertaken to support all decision-making processes.
- 13.2 Accounting officers of municipalities and municipal entities are requested to ensure that the content of this Circular is brought to the attention of all relevant officials within their institution.

DAVID SAVAGE

HEAD OFFICIAL: PROVINCIAL TREASURY

DATE: 22 April 2020