



# CIGFARO PPPFA Regulation Audit Challenges and practical implementation at Municipal level



**CIGFARO**

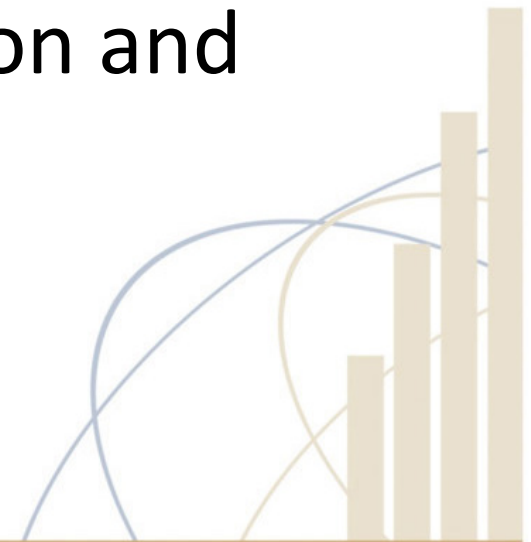
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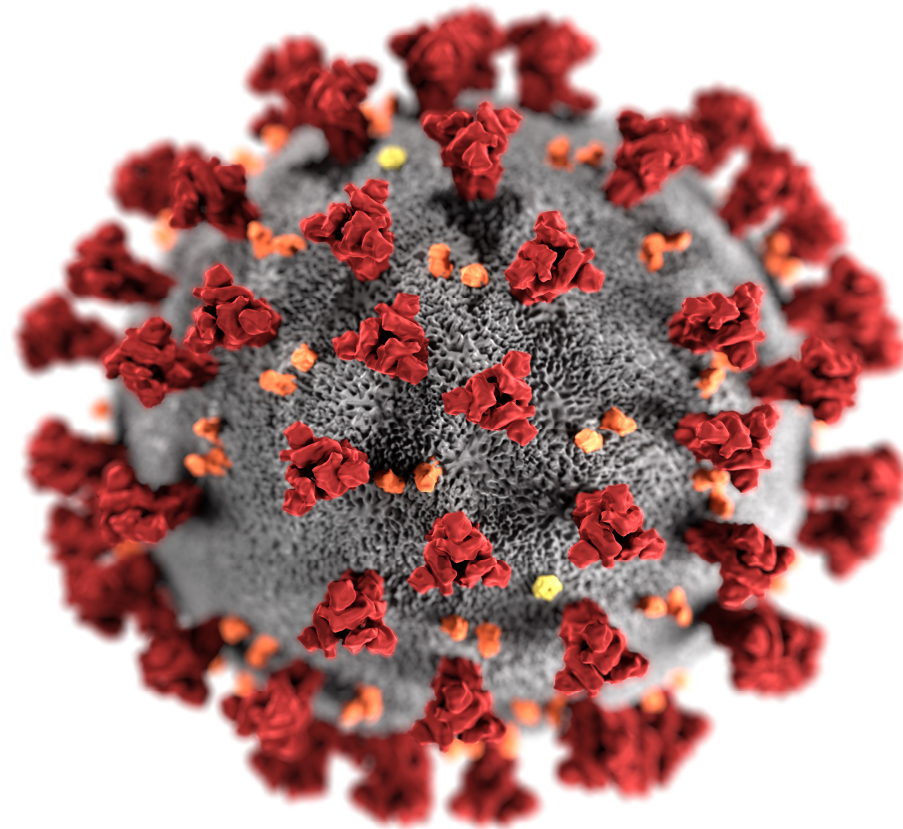


# 911





# Pandemic – COVID 19



# Preferential Procurement Regulations, 2017 - Minister of Finance v Afribusiness NPC [2022] ZACC4

- While awaiting the outcome of the above guidance from the Constitutional Court, organs of state are **advised** that-
  - tenders advertised before 16 February 2022 be finalised in terms of the Procurement Regulations;
  - tenders advertised on or after 16 February 2022 be held in abeyance; and
  - no new tenders be advertised.

# Risks - chaos

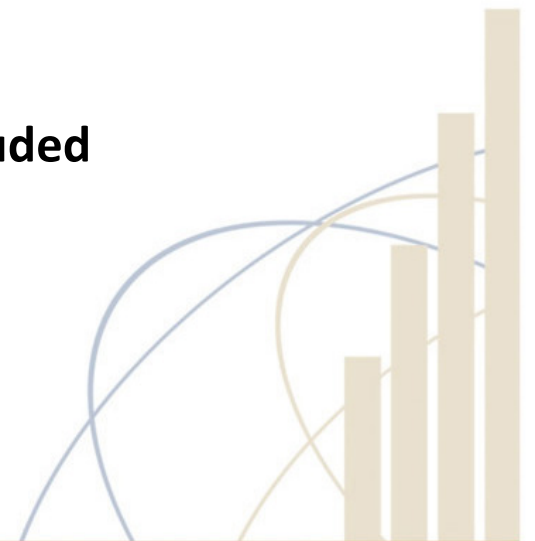
- National Treasury has stopped all procurement
- Service delivery will come to a halt
- Municipalities will not be able to spend their budget and conditional grants
- Municipalities will come to a standstill
- A new cloud of uncertainty hangs over the rollout of the government's multibillion-rand infrastructure investment programme.
- Invalidity of the PPPFA Regulations of 2017 does not invalidate the B-BBEE Act, and the PPPFA Regulations were not issued under to the B-BBEE Act. The framework for the B-BBEE Act and how it is applied is clear and thus not affected by the ruling of the Supreme Court of Appeal.

# Communication 3 and draft new regulation 2022

- National Treasury indicated that exemptions will be allowed by the Minister
- New Draft 2022 PPPFA regulation issued
- Rationale for the Draft Preferential Procurement Regulations, 2022
  - Section 2(1)(b) and (c) of the Preferential Procurement Policy Framework Act, 2000 (the Act) requires that the Minister prescribes by regulation the threshold amounts in which the 80/20 and 90/10 preference point systems must be utilised, as well as the formula to be applied. Section 5(1) of the Act also authorises the Minister to make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of the Act.

# Communication 3 and draft new regulation 2022

- Rationale for the Draft Preferential Procurement Regulations, 2022 determination by organs of state in their own policy:
  - **local production and content aligned to DTI**
  - **Functionality**
  - **subcontracting after the award of a tender**
  - **cancellation of tenders**
  - **prequalification for preferential procurement**
  - **subcontracting as a condition of tender**
  - **issuance of circulars and guidelines by NT excluded**



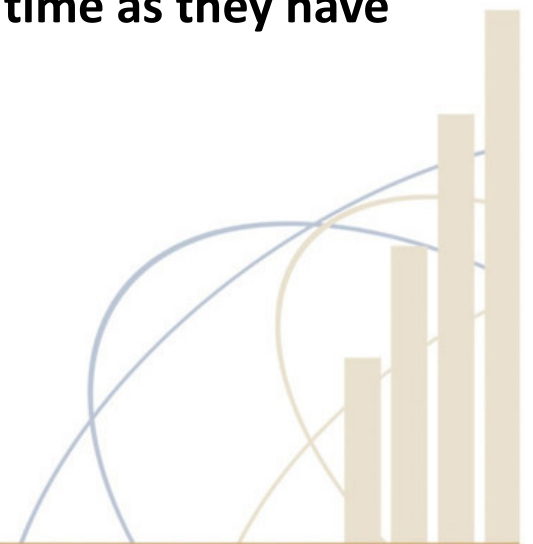


# Nkangala District Municipality action and challenges

- **After Receipt of the notice From NT:**
  - **Did a full analysis how the notice will affect our current procurement, our budget spending and IDP and took an item to council in that regard**
  - **We finalised all tenders and seven day quotations that were advertised before 16 Feb 2022 in terms of the Procurement Regulations;**
  - **Tenders and seven day quotations advertised on or after 16 February 2022 were held in abeyance; and**
  - **No new tenders were advertised.**
  - **PT and Provincial SALGA were requested to assist with a way forward, of which the response only came towards middle May 2022 advising that we should apply for exemption.**
  - **We applied for exemption for our security tender that was advertised after 16 Feb 2022 but before we received the notice form NT, it was not approved by NT**
  - **We also applied for a bulk exemption on all other projects that were crucial for our municipalities service delivery, we never received feedback from NT in this regard.**

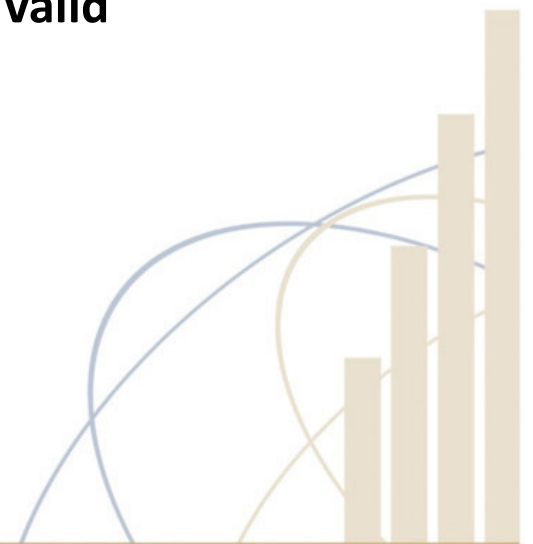
# Nkangala District Municipality action and challenges

- **After Receipt of the notice From NT:**
  - **A lot of our challenges were for term contracts for 3 years that would have expired by 30 June 2022. We then took section 116 applications to Council to extend those contract for another 12 months.**
  - **We also reviewed out 2022/23 SCM policy to be aligned with our SCM policy of 2016 as it were before the 2017 regulations. This policy was adopted by council together with the MTREF on the 25 May 2022.**
  - **We communicated with NT regarding the challenges we have in terms of our policy review and the time frame for the draft regulations to be promulgated as final. NT indicated that it will take some time as they have receive a huge amount of comments on the draft.**



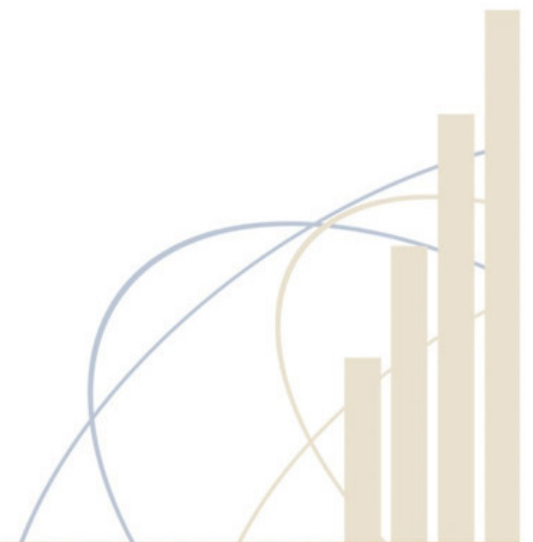
# Nkangala District Municipality action and challenges

- **After Receipt of the clarity and circular issued 30 May 2022 that the PPPFA regulations are valid till 15 Feb 2023:**
  - **We had to take a item to council to rescind the approved policy for 2022/23. We have taken an item to council in June 2022 to adopt our initial policy that was aligned to the PPPFA 2017 regulations for the period 1 July 2022 to 15 Feb 2023 and then a policy which exclude those for period 16 Feb 2023 to 30 June 2023, this policy might be adjusted if the final PPPFA 2022 regulations are promulgated before the 15 Feb 2023.**
  - **We also then advertised all our contracts that were put in abeyance and continued with procurement where the validity was still valid**



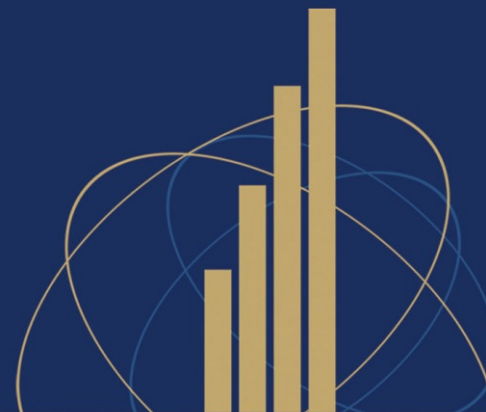
# Auditor General Challenges

- **Expected challenges with AG**
  - **Low spending**
  - **Non implementation of pre determine objectives**
- **We did liaise with our provincial and regional AG to understand the impact on the 2021/22 audit. They still did not get guidance from their head office.**





# Thank You!



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