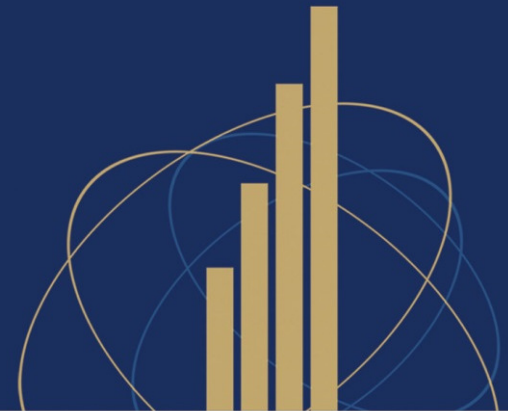




Public Finance Seminar

5 July 2022



CIGFARO
Chartered Institute of
Government Finance, Audit & Risk Officers

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Western Cape PT's Interim Measures proposed to Municipalities

PTs Interim Measures proposed to Municipalities

After an extensive consultations process with key stakeholders including the Provincial Cabinet, Legal Services in the Province and other stakeholders to determine an interim way forward that would mitigate the risks.

The PT advised municipalities via PT Mun Circular 06/2022 considering the following interim measures. Noting such interim arrangements must be approved by the Council of each municipality: **(Note that the circular was providing guidance to municipalities in terms of the PT's mandate).**

- **Municipalities and municipal entities should maintain the status quo and apply the Preferential Procurement Policy Framework Regulations, 2017 (PPPFR)** up until such time as the Constitutional Court clarifies the applicable date of the invalidity of said Regulations, or new Procurement Regulations come into effect.
- **use the pre-existing points system with thresholds** and associated formulas as per the PPPFR, 2017 i.e., 80/20 preference point system for procurement with a rand value equal to or above R30 000 up to R50million and the 90/10 preference point system for procurement above R50million (all applicable taxes included);
- **use the pre-existing mechanism to address the evidence requirements as it relates to the allocation of points for preference** i.e., B-BBEE certificates and affidavits given that these matters were not in dispute and will be covered by the new National Treasury regulations;
- **sub-contracting (Reg, 6,7,9) requirements as contemplated in the 2017 Procurement Regulations** have also been declared as invalid. However, the CIDB prescripts/ regulations in terms of empowerment impact assessments may still be concluded and sub-contracting as per the CIDB prescripts/ regulations in terms of the different CIDB contracts may still be used in terms of the different contracting models for construction-related bids; and
- **the status quo in terms of the advertisement and evaluation and awarding of quotations below R30 000 to be maintained.**

Risks associated with judgement

- ✓ Increase in Irregular expenditure;
- ✓ Delivery of critical municipal service and in the procurement processes (procurement planning);
- ✓ Audit risks, non-compliance, and interpretation challenges;
- ✓ NT not responding or approving exemption timeously or at all;
- ✓ Impact on future budgetary allocations for the 2022/23 financial year;
- ✓ Legal implications for municipalities;
- ✓ Some tenders for the period will be dealt with in terms of preference and the exempted ones not; and
- ✓ Possibility of supplier litigation risks from aggrieved suppliers who will have grounds for the municipalities applying regulations that have been declared unconstitutional with higher chances of success.

WAY FORWARD FOR THE MUNICIPALITIES UNTIL THE NEW REGULATIONS COMES INTO EFFECT



- ✓ **The 2017 Regulations in their entirety remains valid;**
- ✓ **All exemptions granted to deal with the period of uncertainty following the Court's judgment of 16 February 2022, lapse (according to the condition in the letters of exemptions);**
- ✓ **From 31 May 2022, all new quotations must be requested, and tenders must be advertised, and dealt with, in accordance with the 2017 Regulations;**
- ✓ **A quotation requested, or a tender advertised before 30 May 2022 must be dealt with in terms of the exemption and the internal procurement policy in place for the duration of the exemption.**
- ✓ **An organ of state may however decide to withdraw such a request for a quotation or an advertisement for a tender and request a new quotation or advertise a new tender that will be subject to the 2017 Regulations;**

WAY FORWARD FOR THE MUNICIPALITIES UNTIL THE NEW REGULATIONS COMES INTO EFFECT

- ✓ **The Provincial Treasury has engaged the Auditor-General (AG) on the approach applied within the province for audit purposes. AGSA confirmed that they will audit before 16 February 2022 in terms of the 2017 PPPFA Regs. From 16 February 2022 until 29 May 2022, they will not express an opinion. From 30 May 2022 to 26 January 2023, AGSA will audit in terms of the 2017 PPPFA Regs. This is depended if the new PPPFA Regs is not issued in the interim.**

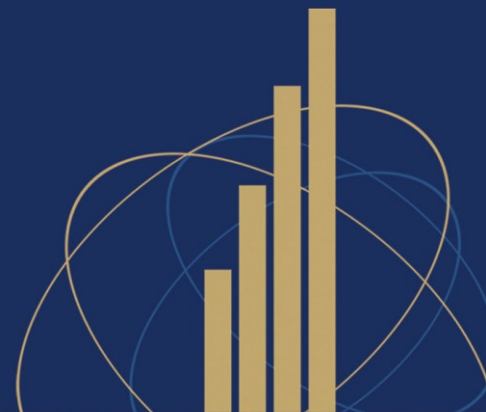
Acknowledgments



✓ *Provincial Treasury Western Cape*



Thank You!



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