



EMERGENCY PROCUREMENT IN RESPONSE TO NATIONAL STATE OF DISASTER

1. PURPOSE

1.1 The purpose of this Circular is to-

General

- 1.2 Advise of emergency procurement procedures to deal with the COVID-19 pandemic, which was declared a national state of disaster (the Disaster) on 15 March 2020;
- 1.3 avoid the abuse of the supply chain management (SCM) system to deal with the Disaster;

Specific

- 1.4 advise of emergency procurement procedures of Covid-19 PPE items and cloth masks for ease of supply by small, medium and micro enterprises (SMMEs) and create an environment for stimulation of local supply and manufacturing; and
- 1.5 set the maximum prices to be paid by Municipalities and Municipal Entities for selected COVID-19 PPE items and cloth masks.

2. BACKGROUND

- 2.1 On 15 March 2020, President Cyril Ramaphosa announced the declaration of a national state of disaster following the World Health Organisation declaring the COVID-19 outbreak as a pandemic as well as measures that must be implemented in South Africa.
- 2.2 On 18 March 2020, regulations under the Disaster Management Act, 2002, regarding steps to prevent an escalation of the disaster or to alleviate, contain and minimise the effects of the Disaster were gazetted in Government Notice No. 318 of 18 March 2020, as amended and substituted from time to time (the DMA Regulations).
- 2.3 Regulation 9 of the DMA Regulations provides that emergency procurement for institutions is subject to-
 - (a) the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the applicable emergency provisions in the Regulations or Instructions made under section 76 of that Act; and



- (b) the Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and the applicable emergency provisions in the Regulations made under that Act.
- 2.4 In light of the above, the general and specific guidelines and applicable procedures are described below.

3. GENERAL EMERGENCY PROCUREMENT

- 3.1 Accounting officers of municipalities and municipal entities must put in place the following additional procurement and expenditure measures to address the programme of preventing the spread of the COVID-19 virus:
- (a) internal system for financial control, risk management and reporting in order to account for the funds used for the COVID-19 disaster;
 - (b) ensure that officials committing any expenditure are duly authorised or properly delegated;
 - (c) avail internal audit functions to conduct audit checks in order to pick up and prevent irregularities pro-actively;
 - (d) regular monitoring of expenditure and generate frequent expenditure reports (at least weekly) including monitoring any risks that may arise.
- 3.2 Accounting officers of municipalities and municipal entities may deviate from inviting competitive bids in cases of emergency in terms of regulation 36 of the Municipal Supply Chain Management Regulations read with the Municipal Supply Chain Management policies. This does not require National Treasury's approval. The Covid-19 pandemic is a situation that justifies the use of emergency procurement provisions.
- 3.3 The emergency procurement provisions provide for accounting officers to procure the required goods or services by other means, such as price quotations or negotiations. The reasons should be recorded and approved by the accounting officer or his / her delegate.
- 3.4 Where municipalities and municipal entities already procured items, prior to the issuance of this circular, under the emergency procurement procedure as stipulated in regulation 36 of the Municipal Supply Chain Management Regulations, such procurement must be reported within 10 days to the relevant treasury. The report must include the description of the goods or services, the name/s of the supplier/s, the amount/s involved and the reasons for dispensing with the prescribed competitive bidding process.
- 3.5 The MFMA Circular 62 addressed accounting officers on expansion of contracts for goods, works and services. For the period until the COVID-19 pandemic, the thresholds are increased to 30% or R30 million for construction-related goods, works or services and 25% or R25 million of the original contract value if the variation is for goods, works or services to prevent an escalation of the Disaster or to alleviate, contain or minimise the effects of the Disaster.
- 3.6 Council may delegate an appropriate structure, provided the decision is ratified by council at its next sitting. Municipalities and municipal entities must follow the process outlined in section 116(3) of the Municipal Finance Management Act.



4. EMERGENCY PROCUREMENT OF PPE ITEMS AND CLOTH MASKS

- 4.1 National Treasury has provided the specifications and maximum prices Municipalities and Municipal Entities must use to procure the basic preventative PPE items and cloth masks to contain and manage the transmission of the COVID-19 virus.
- 4.2 National Treasury has set the maximum prices for the identified PPE items and cloth masks to reflect realistic current market prices.
- 4.3 The list of PPE items and cloth masks with their maximum prices are attached as **Annexure A** that may be updated from time to time.
- 4.4 During the duration of the national state of disaster, the supply of the PPE items will be open to all suppliers that conform to the COVID-19 item specifications as issued by the World Health Organisation (WHO) and the National Department of Health (NDOH).
- 4.5 The specification for the cloth masks is determined by the Department of Trade, Industry and Competition (DTIC) and the National Department of Health (NDOH) and is attached as **Annexure B**.
- 4.6 Municipalities and Municipal Entities may approach any supplier to obtain quotes and may procure from such suppliers on condition that-
- (a) the items are to the specifications as determined by the WHO and NDOH;
 - (b) the prices are equal or lower than the prices in **Annexure A**; and
 - (c) the supplier is registered in the Central Supplier Database and any other database as may be approved by National Treasury.
 - (d) For the cloth masks, only suppliers that are registered with the Department of Small Business Development and are registered on CSD will be considered. The details of these suppliers will be updated and published on the National Treasury Website on weekly basis.
- 4.7 Municipal and Municipal Entities are encouraged to use small enterprises that fall under the designated group in terms of the Preferential Procurement Regulations, 2017.
- 4.8 Where Municipalities and Municipal Entities already have a contract(s) in place for the items listed in Annexure A, the municipality and municipal entities must honour the contract and continue to procure from that contract. Municipalities and Municipal entities must not pay prices in excess of the prices provided in Annexure A.
- 4.9 If prices are higher than those provided on Annexure A, a price variance of up to 10% of prices on Annexure A will be allowed. Any deviation to this provision must be approved by the accounting officer or delegated person based on a justifiable reason.
- 4.10 If any of the items listed in Annexure A is provided for in existing Facilities Management Contracts, municipalities and municipal entities may negotiate with the Facilities Management Service Provider to provide the items Contracts may be



expanded or varied (refer paragraph 3.6 above), but only for items to prevent an escalation of the Disaster or to alleviate, contain or minimise the effects of the Disaster. Municipalities and Municipal Entities may not pay prices in excess of the prices provided for in Annexure A except as provided for in paragraph 4.9.

5. USE OF TRANSVERSAL CONTRACTS

- 5.1 Municipalities and Municipal Entities that are already participants in transversal contracts may continue placing orders as usual and may opt to use any other supplier.
- 5.2 The accounting officer may procure the listed PPE items on Annexure A without obtaining participation approval from the National Treasury Transversal Contracting Unit.
- 5.3 The transversal contract suppliers' prices will default to Annexure A prices and may vary as provided for in paragraph 4.9.

6. IMPACT ON OTHER PROCUREMENT PROCESSES

6.1 TENDER BRIEFING SESSIONS

- 6.1.1 Procurement is essential in preventing the spread of the virus and some processes within the procurement process are prone to interact with various stakeholders, such as tender briefing sessions and public tender opening.
- 6.1.2 To ensure that service delivery is not negatively impacted and to complement the measures announced by the President, National Treasury advises that municipalities and municipal entities must, as far as possible, avoid convening briefing sessions.
- 6.1.3 Briefing sessions should not be made compulsory or mandatory unless otherwise approved by the accounting officer.
- 6.1.4 Bidders may be requested to send electronic mails for any enquiries related to the bid. Municipalities and Municipal Entities must specify the period within which the e-mail enquiries must be sent. Municipalities and Municipal Entities must respond to all enquiries related to the bid at least a week before the closing date of the bid. A schedule of the questions and answers must be uploaded on the municipalities or Municipal Entities website and or any other measure to ensure that all bidders receive the information.
- 6.1.5 Municipalities and Municipal Entities may extend the response period for bids beyond the required 21 days to accommodate the enquiry process, but not more than 40 days.
- 6.1.6 Where briefing session cannot be avoided and to the extent permitted by the DMA Regulations, the session must be arranged by other means such as podcasting, teleconferencing, Microsoft Teams, Zoom, and similar enablers as well as combination of any of these enablers and face-face meetings.
- 6.1.7 In the case of bids that have already been advertised with a determined briefing date, the bid closing date and briefing session date may be extended to accommodate the logistical arrangements to affect the necessary health requirements as published. The revised dates must be republished on the eTender publication portal and the organ of state's website where possible. However, bidders who have submitted their bids



already may not submit new bids as a result of the extensions.

- 6.1.8 Municipalities and Municipal Entities must ensure that, in respect of all procurement activities, all precautionary measures issued by the Department of Health and other relevant authorities are strictly observed to prevent the spread of the COVID-19 virus.

6.2 PUBLIC OPENING OF TENDERS

- 6.2.1 Where there is a public bid opening, the municipality and municipal entities must comply with the regulations made under the Disaster Management Act, 2002, published in the *Gazette* on 18 March 2020.

7. REPORTING REQUIREMENT

- 7.1 Municipalities and Municipal Entities must amend their procurement plans to reflect their planned COVID-19 related procurement and available budget.

8. APPLICABILITY

- 8.1 This circular applies to all municipalities and municipal entities in terms of the MFMA.

9. WITHDRAWAL OF NATIONAL TREASURY CIRCULARS

- 9.1 MFMA Circular 100 relating to Emergency Procurement in Response to COVID-19 Pandemic, and MFMA Circular 101 relating to COVID-19 Bulk Central Procurement Strategy for Government Institutions, are hereby withdrawn. If municipalities and municipal entities had procured in terms of the above, this must be ratified through municipal approvals.

10. DISSEMINATION OF INFORMATION

- 10.1 Accounting officers are requested to bring the contents of this circular to the attention of municipal officials and municipal entities, responsible for such items, the supply chain management officials and their support personnel.

11. NOTIFICATION TO THE AUDITOR-GENERAL

- 11.1 A copy of this circular will be submitted to the Auditor-General for notification.

12. AUTHORITY FOR THIS CIRCULAR AND EFFECTIVE DATE

- 12.1 This circular is issued in terms of the section 168 of the Municipal Finance Management Act, 2003 and takes effect from the date of issue.



12.2 This circular will be in effect until the national state of disaster, declared on 15 March 2020, lapses or terminates or until this Circular is withdrawn.

13. CONTACT INFORMATION

Any enquiries in respect of this circular can be submitted to the MFMA helpdesk, MFMA@treasury.gov.za and to:

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DONDO MOGAJANE
DIRECTOR-GENERAL: NATIONAL TREASURY
Date: 5 May 2020

Attachments:

Annexure A: Covid-19 Personal Protective Equipment Price List (as at 28 April 2020)

Annexure B: Recommended Guidelines – updated. Fabric Face Masks Manufactured by South Africa’s Clothing and Textile Manufacturing Industry for General Public Use

