



Legal Framework for Procurement of New Generation Energy Capacity by Municipalities and Municipal Entities

Purpose

The purpose of this Circular is to provide advice to municipalities and municipal entities relating to the legal framework for procurement of new generation energy capacity, particularly from renewable energy sources, within the provisions of the Constitution, MFMA and other related legislation.

Background

The Department of Mineral Resources and Energy (“DMRE”) published amendments to the New Generation Capacity Regulations (“amended NewGenRegs”) in terms of the Electricity Regulation Act 4 of 2006, as amended, on 16 October 2020.

Clarity was requested from municipalities and municipal entities regarding the applicable legal framework, the processes and procedures for the development and procurement of new generation capacity, alignment with the MFMA section 33, and the DMRE regulations.

This relates to procurement, public private partnerships and consultation processes as the various stages in ensuring effective implementation consists of consultation, planning, resourcing, institutional capacity and capability, operational commitments and sustainability, infrastructure assessments, development of new and upgrading of assets, as well as financial obligations, amongst others, arising from such projects require substantial investments.

The National Treasury, in collaboration with the Department of Mineral Resources and Energy, National Energy Regulator and SALGA, have developed the supporting information to assist municipalities and municipal entities.

In respect of each of Scenario, the applicable legal framework is identified and key risks which may affect the viability of the specific scenario is highlighted. Possible mitigation measures are also included, where applicable.

The Annexure, include roadmaps, to assist municipalities and municipal entities when considering how they may procure, buy, sell and generate electricity.

Conclusion

It is important that accounting officers ensure that the content of this Circular is brought to the attention of the Municipal Council and all other relevant officials within the municipality and municipal entities.

It is advised that Municipalities and Municipal Entities refer to the Annexure to this Circular, where the legal and regulatory framework is explained in respect of municipal procurement or establishment of new generation capacity.

Any queries on the Circular should be directed to the respective National or Provincial Treasury official or MFMA helpdesk, email: mfma@treasury.gov.za or to DMRE at email: determinations@dmre.gov.za or NERSA email: info@nersa.org.za as may be appropriate.

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ANNEXURE: Summary Report

ANNEXURE A: Scenario 1 Roadmap - MIPPP with a Ministerial Determination

ANNEXURE B: Scenario 2 Roadmap - MIPPP in which the municipality is both procurer and buyer

ANNEXURE C: Scenario 3 Roadmap - MIPPP based on PPP requirements

ANNEXURE D: Scenario 4 and 5 Roadmap - MIPPP based on developing and operating own power plants

ANNEXURE E: Other licences, permits and authorisations required to construct and operate renewable energy electricity generation infrastructure