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EASTERN CAPE
PROVINCIAL TREASURY

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**TO : ALL ACCOUNTING OFFICERS
ACCOUNTING AUTHORITIES
CHIEF FINANCIAL OFFICERS**

PROVINCIAL TREASURY INSTRUCTION 8 OF 2015/16

**REPORTING FRAMEWORK FOR DEVIATIONS FROM NORMAL PROCUREMENT
PROCESSES**

PURPOSE

1. The purpose of this instruction note is to provide a reporting framework for deviations from normal procurement processes in terms of National Treasury Regulations 16A6.4. This will enable Provincial Treasury to exercise proper oversight with regard to the deviation reports submitted by provincial departments and public entities.

BACKGROUND AND LEGISLATIVE FRAMEWORK

2. Section 217 of the Constitution of 1996 together with Section 38 (1) (a) (iii) of the PFMA and Section 51(1) (a) (iii) of the PFMA, require that the procurement for goods and services must be fair, equitable, transparent , competitive and cost-effective.
3. National Treasury Regulation 16A6.4 provides that "*if in a specific case it is impractical to invite competitive bids, the accounting officer or accounting authority may procure the required goods or services by other means, provided that the reasons for deviating from inviting competitive bids must be recorded and approved by the accounting officer or accounting authority*"
4. National Treasury Practice Note Number 6 of 2007/08 provides that "*accounting officers and accounting authorities are required to report within ten (10) working days to the relevant treasury and Auditor General all cases where goods and services above the value of R1 million (VAT included) were procured in terms of Treasury Regulation 16A6.4*"
5. Provincial Treasury issued Circular 11 of 2013/14 with guidelines to promote technical understanding on when and how to invoke SCM deviations in order to minimise the risk of non-compliance with Treasury Regulation 16A6.4.
6. Notwithstanding the issued guidelines, Provincial Treasury has observed a steady increase in the number of instances wherein departments and public entities deviate from normal procurement processes relying on the provisions of National Treasury Regulation 16A6.4 to procure goods and services without having to follow normal procurement processes.
7. The reports submitted to Provincial Treasury are often not adequate to assess whether the relevant Regulation has been correctly applied in that the motivation for deviation is often weak and may lead to irregular expenditure.

FRAMEWORK FOR DEVIATIONS FROM NORMAL PROCUREMENT PROCESSES

8. The experience gained from the limited information provided suggests that the following factors are contributing to the increased reliance on deviations from normal procurement process:
 - 8.1 Lack of effective and efficient planning and acquisition management capacity in institutions often leads to situations of urgency where a service delivery obligation has to be fulfilled at the expense of a competitive process;
 - 8.2 Inadequate contract management systems which fail to cater for termination of existing contracts.
 - 8.3 Lack of consequence management practices.
9. This Provincial Treasury Instruction note introduces a uniform reporting format which must be applied when reporting deviations to Provincial Treasury.
10. Section 41 and 54 of the PFMA require the Accounting Officer and Accounting Authority to submit to the relevant treasury or the Auditor – General, such information, returns, documents, explanations and motivations as may be prescribed or as the relevant treasury or Auditor – General may require.
11. Section 18 (2) (a) of the PFMA empowers provincial treasury to issue instructions not inconsistent with the PFMA.

REPORTING FRAMEWORK FOR SCM DEVIATIONS

12. When reporting deviations to Provincial Treasury, the following information must be included in the report:
 - 12.1 Description of the goods and service procured;
 - 12.2 Name(s) of suppliers and the reason(s) for selecting the supplier;
 - 12.3 Amount involved and confirmation of availability of budget;
 - 12.4 Reasons for deviation;
 - 12.5 Nature of deviation (e.g. single sourcing or limited bidding etc);

FRAMEWORK FOR DEVIATIONS FROM NORMAL PROCUREMENT PROCESSES

- 12.6 If market conditions warranted the deviation, evidence of market test undertaken (e.g. expression of interest invitation or invitation to register in database of limited suppliers)
- 12.7 Signed memo by Accounting Officer (and supported by Chief Financial Officer) approving the deviation;
- 12.8 Where the deviation is the result of inefficiency (e.g. poor planning or poor specifications) within the institution, indicate disciplinary steps taken or to be taken against the responsible official for any irregular expenditure to be incurred.

13. Accounting Officers and Accounting Authorities must ensure that there is adequate and justifiable motivation recorded for any deviations from normal procurement process, based on the circumstances for deviations as outlined in the Guidelines of Provincial Treasury Circular 11 of 2013/14.

14. Deviation reports to Provincial Treasury must **be forwarded within ten working days from date of approval**, to :

Office of the Head of Department

Provincial Treasury

2nd Floor Tyamzashe Building

Bhisho

USE OF SINGLE SOURCE PROCUREMENT IN URGENT SITUATIONS

15. Single source procurement is the most restrictive form of deviation from the Constitutional imperatives of a fair, equitable, transparent, competitive and cost-effective procurement system in the public sector must be applied with the necessary caution and restraint.
16. Single source procurement may not be utilized on the grounds of urgency, as it is always possible to obtain different prices from different suppliers within a limited time. Therefore, in

FRAMEWORK FOR DEVIATIONS FROM NORMAL PROCUREMENT PROCESSES

situations of urgency, the institution must, as a minimum, request price quotations from at least three possible suppliers and this must still be recorded in terms of Regulation 16A6.4, as a deviation approved by the Accounting Officer;

17. In cases of urgency, instead of single sourcing, institutions must therefore motivate for reduction of prescribed time frames and/or the form of inviting suppliers (advertise publicly or invite quotations from selected suppliers, instead of a comprehensive bid).
18. Single source procurement may only be used if substantiated by documented market research (e.g. specialization or sole supplier).

NON – COMPLIANCE

19. Officials responsible for non-compliance may be charged with financial misconduct as envisaged in section 81 and 83 of the PFMA.

APPLICABILITY

20. This Instruction applies to all provincial departments and Schedule 3C public entities.

EFFECTIVE DATE

21. The provisions of this Instruction note shall be effective from the date of signature.

AUTHORITY

22. This Instruction note is issued in terms of section 18 (2) (a) of the PFMA.

DISSEMINATION OF INFORMATION

23. Kindly ensure that all relevant officials receive copies of this Instruction note.

24. Should there be any enquiries regarding the contents of the Instruction note, please contact:

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Ikhwezi Lomso greetings: Serving with Honesty, Humility and Integrity.



MR D. MAJEKE

30/10/15

DATE

HEAD OF DEPARTMENT