



# PROVINCIAL TREASURY

Provincial Government of the Western Cape

**Movable Asset Mangement (MAM)**

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## TREASURY CIRCULAR, NO 35 / 2010

THE PREMIER

THE MINISTER OF AGRICULTURE AND RURAL DEVELOPMENT  
THE MINISTER OF COMMUNITY SAFETY  
THE MINISTER OF CULTURAL AFFAIRS AND SPORT  
THE MINISTER OF EDUCATION  
THE MINISTER OF FINANCE, ECONOMIC DEVELOPMENT AND TOURISM  
THE MINISTER OF HEALTH  
THE MINISTER OF HOUSING  
THE MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING  
THE MINISTER OF SOCIAL DEVELOPMENT  
THE MINISTER OF TRANSPORT AND PUBLIC WORKS  
THE SPEAKER: PROVINCIAL PARLIAMENT  
THE DEPUTY SPEAKER: PROVINCIAL PARLIAMENT  
ALL OTHER MEMBERS OF PARLIAMENT

} For information

THE ACCOUNTING OFFICER: VOTE 1: PREMIER (ADV B GERBER)  
THE ACCOUNTING OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MR P WILLIAMS)  
THE ACCOUNTING OFFICER: VOTE 3: PROVINCIAL TREASURY (DR JC STEGMANN)  
THE ACCOUNTING OFFICER: VOTE 4: COMMUNITY SAFETY (DR GA LAWRENCE)  
THE ACCOUNTING OFFICER: VOTE 5: EDUCATION (MS P VINJEVOLD)  
THE ACCOUNTING OFFICER: VOTE 6: HEALTH (PROF KC HOUSEHAM)  
THE ACCOUNTING OFFICER: VOTE 7: SOCIAL DEVELOPMENT (MS K LUBELWANA)  
THE ACCOUNTING OFFICER: VOTE 8: HOUSING (MR M TSHANGANA)  
THE ACCOUNTING OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR R ELLIS)  
THE ACCOUNTING OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MR J FOURIE)  
THE ACCOUNTING OFFICER: VOTE 11: AGRICULTURE (MS J ISAACS)  
THE ACCOUNTING OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MR S FOURIE)  
THE ACCOUNTING OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MR B WALTERS)  
THE ACCOUNTING OFFICER: VOTE 14: LOCAL GOVERNMENT (DR H FAST)

THE CHIEF FINANCIAL OFFICER: VOTE 1: PREMIER (MR P O'BRIEN)  
THE CHIEF FINANCIAL OFFICER: VOTE 2: PROVINCIAL PARLIAMENT (MR R HINDLEY) (ACTING)  
THE CHIEF FINANCIAL OFFICER: VOTE 3: PROVINCIAL TREASURY (MR A GILDENHUYS)  
THE CHIEF FINANCIAL OFFICER: VOTE 4: COMMUNITY SAFETY (MR M FRIZLAR)  
THE CHIEF FINANCIAL OFFICER: VOTE 5: EDUCATION (MR L ELY)  
THE CHIEF FINANCIAL OFFICER: VOTE 6: HEALTH (MR A VAN NIEKERK)  
THE CHIEF FINANCIAL OFFICER: VOTE 7: SOCIAL DEVELOPMENT (MR JO SMITH)  
THE CHIEF FINANCIAL OFFICER: VOTE 8: HOUSING (MR D BASSON)  
THE CHIEF FINANCIAL OFFICER: VOTE 9: ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (MR AA GAFFOOR)  
THE CHIEF FINANCIAL OFFICER: VOTE 10: TRANSPORT AND PUBLIC WORKS (MR CR ISMAY)  
THE CHIEF FINANCIAL OFFICER: VOTE 11: AGRICULTURE (MR F HUYSAMER)  
THE CHIEF FINANCIAL OFFICER: VOTE 12: ECONOMIC DEVELOPMENT AND TOURISM (MS M ABRAHAMS)  
THE CHIEF FINANCIAL OFFICER: VOTE 13: CULTURAL AFFAIRS AND SPORT (MS BG RUTGERS)  
THE CHIEF FINANCIAL OFFICER: VOTE 14: LOCAL GOVERNMENT (MR D BASSON)

THE HEAD OFFICIAL: PROVINCIAL TREASURY (DR JC STEGMANN)  
THE HEAD: BRANCH FISCAL AND ECONOMIC SERVICES (MR H MALILA)  
THE HEAD: BRANCH GOVERNANCE AND ASSET MANAGEMENT (MR TC ARENDSE)  
THE HEAD: PUBLIC POLICY SERVICES (MR A PHILLIPS)  
THE HEAD: PUBLIC FINANCE (MR H MALILA) (PRO TEM)  
THE HEAD: FINANCIAL GOVERNANCE (MR A REDDY) (ACTING)  
THE HEAD: ASSET MANAGEMENT (MR TC ARENDSE) (PRO TEM)  
THE CHIEF FINANCIAL OFFICER (MR A GILDENHUYS)  
THE SENIOR MANAGER: ACCOUNTING SERVICES: PROVINCIAL GOVERNMENT (MR N VAN NIEKERK) (ACTING)  
THE SENIOR MANAGER: ACCOUNTING SERVICES: LOCAL GOVERNMENT (MR T MADONDILE/MS M FORTUIN) (ACTING)  
THE SENIOR MANAGER: CORPORATE GOVERNANCE (MR B VINK)  
THE SENIOR MANAGER: BUDGET MANAGEMENT: PROVINCIAL GOVERNMENT (MS M SHERATON)  
THE SENIOR MANAGER: BUDGET MANAGEMENT: LOCAL GOVERNMENT (MR ML BOOYSEN)  
THE SENIOR MANAGER: PROVINCIAL GOVERNMENT FINANCE (MS A PICK)  
THE SENIOR MANAGER: LOCAL GOVERNMENT FINANCE (GROUP ONE) (MR F SABBAT)  
THE SENIOR MANAGER: LOCAL GOVERNMENT FINANCE (GROUP TWO) (MR M SIGABI)  
THE SENIOR MANAGER: PUBLIC FINANCE POLICY RESEARCH AND MODELLING (MS C HORTON)  
THE SENIOR MANAGER: IMMOVEABLE ASSET MANAGEMENT (MR NB LANGENHOVEN)  
THE SENIOR MANAGER: MOVEABLE ASSET MANAGEMENT (MS N EBRAHIM)  
THE SENIOR MANAGER: SUPPORTING AND INTERLINKED FINANCIAL SYSTEMS (MR A BASTIAANSE)  
THE HEAD: OFFICE OF THE FINANCE MINISTRY (MS A SMIT)  
THE PROVINCIAL AUDITOR

MASTER RECORDS OFFICIAL: FINANCIAL MANAGEMENT

# **NATIONAL TREASURY INSTRUCTION ON THE AMENDED GUIDELINES IN RESPECT OF BIDS THAT INCLUDED FUNCTIONALITY AS A CRITERION FOR EVALUATION (ISSUED SEPTEMBER 2010)**

## **1. PURPOSE**

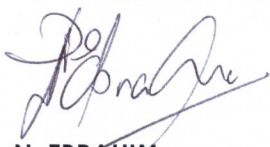
- 1.1 The purpose of the attached National Treasury Instruction is to provide clarity and provide guidelines in the evaluation of bids that include functionality.

## **2. BACKGROUND**

- 2.1 Resulting from various court judgments in other provinces regarding the utilization of functionality in bids, various municipalities' and departments raised their concern and requested guidance from the Treasury in these matters.
- 2.2 Even though the above-mentioned judgments are not binding on the Western Cape it is persuasive of nature and may be utilised in the arguments in similar litigation processes within the province.
- 2.3 Subsequently the Provincial Treasury issued circular 33 of 2010 (dated 12 August 2010) to propose to Western Cape Departmental and Municipal Accounting Officers a way forward in mitigating the risk surrounding these matters and to provide an interim mechanism to manage functionality requirements when procuring goods and services.

## **3. NATIONAL TREASURY INSTRUCTION DATED 3 SEPTEMBER 2010**

- 3.1 The National Treasury has issued the attached circular to address the concerns surrounding the utilisation of functionality in bids as alluded to in the background above.
- 3.2 It must be noted that although the National Instruction deems only to be applicable to bids the same requirements must be utilised when applying functionality to quotations.
- 3.2 In areas where National Instruction and Provincial curricular are in conflict the National Instruction will prevail. The Provincial circular should now be considered as supplementary to the National Instruction.



**N. EBRAHIM**

**SENIOR MANGER: MOVABLE ASSET MANAGEMENT**

**DATE:** 17 September 2010



## **national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

**TO : ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS AND  
CONSTITUTIONAL INSTITUTIONS  
ACCOUNTING AUTHORITIES OF PUBLIC ENTITIES LISTED IN  
SCHEDULE 3A AND 3C OF THE PFMA  
HEAD OFFICIALS OF ALL PROVINCIAL TREASURIES**

### **NATIONAL TREASURY INSTRUCTION NOTE ON THE AMENDED GUIDELINES IN RESPECT OF BIDS THAT INCLUDE FUNCTIONALITY AS A CRITERION FOR EVALUATION (ISSUED SEPTEMBER 2010)**

#### **1 PURPOSE**

- 1.1 The purpose of this instruction note is to clarify and provide amended guidelines on the invitation and evaluation of bids<sup>1</sup> that include functionality.

#### **2 BACKGROUND**

##### **2.1 Eastern Cape High Court**

- 2.1.1 An issue was raised in the Eastern Cape High Court, Grahamstown, under case No. 230/09, in the matter between TBP Buildings & Civils (Pty) Ltd versus East London Industrial Development and others relating to a potential conflict between the prescripts of the PPPF Act and its associated Preferential Procurement Regulations. Section 2 of PPPF Act allows 80 or 90 points for price only, whereas regulations 8 (2) and 8 (3) of the Preferential Procurement Regulations allow for 80 or 90 points for price and functionality.

- 2.1.2 In the judgment of the said case, the judge noted the apparent conflict and dealt with the matter as an *obiter dictum* (i.e. an observation by a judge that is incidental to the case being tried, but not binding to any future courts)

##### **2.2 Kwa-Zulu Natal High Court**

- 2.2.1 An application was also lodged in the Kwa-Zulu Natal High Court, Pietermaritzburg, under Case No. 10878/2009, in a matter between Sizabonke Civils CC t/a Pilcon Projects versus Zululand District Municipality and others in which it was argued that Regulation 8 of the Preferential Procurement Regulations, 2001 is *ultra vires* in terms of section 2 (1) (b) of the PPPF Act. The applicant complained that Regulation 8 introduced points for "functionality" as part of points for price which was contrary to section 2 (1) (b) (i) of the PPPF Act which only deals with the scoring on price and other specific goals.

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<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

**National Treasury Instruction Note on the amended guidelines in respect of bids that include functionality as a criterion for evaluation (issued September 2010)**

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- 2.2.2 The Court found that Regulations 8(2) to 8(7) of the Preferential Procurement Regulations, 2001, are *ultra vires* in terms of the PPPF Act and are therefore invalid.
- 2.2.3 The Court was further in agreement that although functionality is key to the procurement process, it should be dealt with separately from price and other specific goals.

**3 GUIDELINES WHEN FUNCTIONALITY IS INCLUDED AS A CRITERION IN THE EVALUATION OF BIDS**

- 3.1 "Functionality" means the measurement according to predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service or commodity.
- 3.2 The need to invite and evaluate bids on the basis of functionality depends on the nature of the required commodity or service. When functionality is utilised as an evaluation criterion, paragraphs 3.3 and 3.4 below must be adhered to.
- 3.3 When inviting bids an institution must indicate: -
- (i) whether the bids will be evaluated on functionality;
  - (ii) the evaluation criteria for measuring functionality;
  - (iii) the weight of each criterion; and
  - (iv) the applicable values as well as the minimum threshold for functionality
- 3.4 The evaluation of the bids must be conducted in the following two stages:
- 3.4.1 Firstly, the assessment of functionality must be done in terms of the evaluation criteria and the minimum threshold referred to in paragraph 3.3 above. A bid must be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation.
- 3.4.2 Thereafter, only the qualifying bids are evaluated in terms of the 80/20 or 90/10 preference points systems, where the 80 or 90 points must be used for price only and the 20 or 10 points are used for HDI ownership and / or for achieving the prescribed RDP goals.
- 3.5 **The guidance provided above replaces and prevails over the relevant guidelines contained in paragraphs 4.9 and 5.9 of the Supply Chain Management (SCM): A Guide to Accounting Officers/Authorities, paragraph 9 of Practice Note No. 3 of 2003 dated 5 December 2003 and paragraph 2 of the SCM Circular on the Appointment of Consultants dated 10 May 2005.**

**4 PRESCRIPTS OF THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD (CIDB)**

- 4.1 In the case of bids relating to the construction industry, institutions are required to adhere to the prescripts of the Construction Industry Development Board (CIDB) as prescribed in Treasury Regulation 16A6.3 (a) (ii).

**National Treasury Instruction Note on the amended guidelines in respect of bids that include functionality as a criterion for evaluation (issued September 2010)**

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**5 APPLICABILITY**

- 5.1 This instruction note applies to all national and provincial departments, constitutional institutions and schedule 3A and 3C public entities.

**6 DISSEMINATION OF INFORMATION CONTAINED IN THIS INSTRUCTION NOTE**

- 6.1 Heads of provincial treasuries are requested to bring the contents of this instruction note to the attention of accounting officers of their respective provincial departments.
- 6.2 Accounting officers of national and provincial departments are requested to bring the contents of this instruction note to the attention of accounting authorities of schedule 3A and 3C public entities reporting to their respective executive authorities.

**7 AUTHORITY FOR THIS INSTRUCTION NOTE AND EFFECTIVE DATE**

- 7.1 This instruction note is issued in terms of section 76(4)(c) of the PFMA and applies to all new bid invitations issued on or after 15 September 2010. Earlier adoption is however encouraged.

**8 CONTACT PERSON**

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**SF NOMVALO**  
**ACCOUNTANT-GENERAL**  
**DATE: 3 September 2010**