



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

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

NATIONAL TREASURY SCM CIRCULAR NO 2 OF 2018/2019

**CLARIFICATION ON THE IMPLEMENTATION OF CONTRACT RT 15: SUPPLY AND
DELIVERY OF MOBILE COMMUNICATION SERVICES TO THE STATE FOR THE PERIOD
15 SEPTEMBER 2016 TO 31 AUGUST 2020**

1. PURPOSE

1.1 The purpose of this circular is to provide guidance in respect of the implementation of contract RT15 for the supply and delivery of mobile communication services awarded to Vodacom in 2016.

2. BACKGROUND

- 2.1 Contract RT15 was arranged as a transversal term contract forming part of cost containment measures initiated by the National Treasury given the huge government procurement spend in mobile communication and related services.
- 2.2 However, the subsequent award of this contract to a single mobile communications operator, has resulted in unsuccessful mobile operators that participated in the procurement process raising concerns about the awarding of such a huge contract to a single mobile operator to the exclusion of other operators.
- 2.3 The competition authority was also approached by concerned mobile communications operators to investigate the extent to which this contract may have contravened the Competition Act. This investigation is ongoing and the Competition Commission would make the necessary decision once the process has been finalised.
- 2.4 Similar complaints have also been raised by various government institutions who are of the view that this transversal contract creates a monopoly in the market and supports the view that this contract should have been awarded to multiple suppliers of mobile operators. As a result, government institutions are not so clear whether or not this contract is compulsory for all organs of state to procure mobile communication requirements covered in this contract.

- 2.5 Furthermore, it has also been reported that the service provider on this contract is rolling out smart meters in certain municipalities which may be in conflict with the municipalities' mandate for such infrastructure as set out in the MFMA, Municipal System Act and other applicable municipal prescripts.
- 2.6 Therefore, this circular seeks to provide that clarification with the prospect that the confusion created would be addressed and government institutions would be in a position to procure mobile communication and related services in an efficient, transparent, cost-effective, fair and competitive manner as provided for in section 217(1) of the Constitution and confirmed by sections 38(1)(a)(iii) and 51(1)(a)(iii) of the PFMA.

3. DISCUSSION

- 3.1 Treasury Regulation 16A6.5 provides as follows: *"the accounting officer or accounting authority may opt to participate in transversal term contract facilitated by the relevant treasury. Should the accounting officer or accounting authority opt to participate in a transversal contract facilitated by the relevant treasury, the accounting officer or accounting authority may not solicit bids for the same or similar product or service during the tenure of the transversal term contract"*.
- 3.2 This means that in terms of the aforementioned treasury regulation participation in any transversal term contract facilitated by the relevant treasury is currently discretionary, i.e. at the inception of the contract, accounting officers or accounting authorities have the discretion whether or not to participate on contract RT15.
- 3.3 However, treasury regulation 16A6.5 provides that once a government institution opts to participate on a transversal term contract, such institution is prohibited from entering into a contract for same or similar goods and services during the tenure of such transversal term contract. Therefore, accounting officers or accounting authorities who opted to participate on contract RT15 may not enter into a contract for similar goods or services during the tenure of this contract.
- 3.4 Further, this contract is subject to the Special Conditions of Contract, General Conditions of Contract, treasury regulations, Preferential Procurement Policy Framework Act, Public Finance Management Act and other applicable legislation.
- 3.5 The General Conditions of Contract, treasury regulations and Preferential Procurement Policy Framework Act provide grounds for review of contracts in the event of fraud, misrepresentation and poor performance by the suppliers subject to the application of *audi alteram partem* rule.

4. COST SAVINGS AND ECONOMIC EMPOWERMENT

- 4.1 As indicated this contract was concluded on the basis of cost containment and value for money accruing to the state. Should accounting officer/authorities opt not to participate on the transversal term contract RT15, accounting officers/authorities concerned need to ensure that any new contracts that they enter into with alternative service providers are in compliance with the prescripts and processes of the PFMA, PPPFA and other applicable legislation.

4.2 Organs of state must ensure that any contract entered into takes into account broad socio-economic objectives of government such as the black economic empowerment, small business development, local industrial development, businesses owned by designated groups as provided for in the Preferential Procurement Regulations, 2017, Broad Based Black Economic Empowerment Act, Competition Act and other applicable legislation.

5. APPLICABILITY

5.1 This circular is applicable to national and provincial departments, public entities listed in Schedules 3A and 3C to the PFMA and Constitutional institutions.

6. DISSEMINATION

6.1 The content of this circular should be disseminated to the heads of departments, public entities and constitutional institutions.

7. ENQUIRIES

7.1 For enquiries please contact: Ms Kwanele Mtembu
Director: Transversal Contract
Office of the Chief Procurement Officer
Telephone: (012) 406 9188
Email: Kwanele.Mtembu@treasury.gov.za



WILLIE MATHEBULA
ACTING CHIEF PROCUREMENT OFFICER

DATE: 26.09.2018