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PROJECTS AND INFRASTRUCTURE ALERT

IN THIS ISSUE

NEW NATIONAL TREASURY STANDARDS FOR INFRASTRUCTURE PROCUREMENT - A MOVE TOWARD CENTRALISATION AND STRICTER APPROVAL SYSTEMS

On 6 April 2016, the National Treasury issued an instruction note in terms of s76(4)(c) of the Public Finance Management Act, No 1 of 1999 (PFMA) and a circular in terms of s168 of the Local Government: Municipal Finance Management Act, No 56 of 2003 (MFMA). The purpose of these documents is to bring into operation the Standard for Infrastructure Procurement and Delivery Management (Standards).

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The Standards are applicable from 1 July 2016 to all organs of state that are subject to the PFMA (it is directed to all departments, constitutional institutions, public entities listed under Schedules 2 and 3 of the PFMA and provincial treasuries). It will apply to both municipalities and municipal entities during the 2016 and 2017 financial year, when its councils adopt new supply chain management policies aligned with the Standards.

Policy underlying the Standards

The overarching aim of the Standard is to design a process around the various stages of an infrastructure project as contemplated by the National Development Plan 2030 (NDP). The Standards thereby establish a control framework for the planning, design and implementation of infrastructure projects and establishes minimum requirements for infrastructure procurement.

Stages of an infrastructure project

The Standards separate the life cycle related to an infrastructure project into nine stages, with minimum requirements at each stage as a precursor to entry into the next stage. Stage 0 is the project initiation phase, which requires the compilation of an initiation report, which, when accepted, triggers Stage 1. This phase involves the compilation of an infrastructure plan. Upon approval of that plan, Stage 2 follows, which requires the development of a delivery management strategy, indicating how identified needs can be met through various forms of delivery, from framework agreements to public-private partnerships (PPP). Stage 3 requires the conduct of a pre-feasibility study, triggered when the strategy is approved, requiring the compilation of a pre-feasibility report of the project. Upon acceptance of that report, the feasibility process under Stage 4 ensues, which requires the acceptance of a feasibility study report. Stage 5 follows with the compilation of a design development report. When the design report is accepted, Stage 6 (design documentation) is triggered, which is a precursor to Stage 7, the execution of the project. The penultimate stage is the handover of the infrastructure to the end user. Stage 9 is the close out of the project, which requires the compilation of a close-out report.

Additional oversight measures

The Standards not only detail the phases of the project cycle, which responsible institutions are required to follow in executing their infrastructure projects, but it also seeks to enhance the National Treasury's review role over public finance management and expenditure. As such, the Standards set up a more centralised and fairly stringent approval process for major capital projects. For example, where the value of the project

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exceeds R7.5 billion for departments and constitutional institutions, and more than R10 billion for other entities subject to the PFMA, approval by the relevant treasury (national or provincial) is required and further approval at multiple stages of the procurement process by different oversight functionaries, depending on the nature of the entity initiating the project. These overseers include Cabinet, the relevant executive council (depending on the nature of the institution) and its members.

Further checks on the project cycle process come in the form of 'gateway reviews', depending on the identity of the organ of state initiating the project and the capital amount of a project (the lowest amount is R50 million and the highest R250 million). The reviewers are people who are not involved with the project, but familiar with the subject matter under review, who compile a report on the project's deliverability, affordability and value for money. The Standards also allow the relevant treasury to institute a gateway review of any end-of-stage deliverable, and prescribe a specific focus for such a review, even when the threshold is not triggered.

Another reporting check under the Standards is that the initiator of the project must report to the relevant treasury within one month of the award of a contract where the award exceeds certain monetary thresholds (depending on the nature of the entity and the type of contract that has been awarded), giving reasons for the award.

Key observations on the new Standards

1. The Standards are not intended to alter legal frameworks governing other forms of procurement. For example, if a major capital project is to be procured as a PPP, Treasury Regulation 16A of the PFMA and the PPP Manual issued by National Treasury will still apply.
2. The Standards will require institutions setting out standards for construction procurement, such as the CIDB, to amend its standards.
3. The Standards are a laudable attempt to ensure that high-value capital projects are properly conceived, procured and implemented. However, with so many checks and reviews at each stage of the project cycle, it could well slow down the implementation of much needed economic and social infrastructure in South Africa.

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