ANNEXURE B – Engagement of Consultants: NT Circular 82

MFMA CIRCULAR 82

1. **Challenges with this circular relating to Annexure A – Cost Containment Measures - par 1: Engagement of Consultants**
   a. The instruction in the March 2016 version of the circular was adopted verbatim by Council in May 2016 as part of the 2016/17 Budget.
   b. Comments, and recommendations, relating to all the bullets points contained in the circular are reflected in the table below:

	Circular Clause	Comments	Recommendations for adoption
1	Accounting Officers must only contract with consultants after a gap analysis report has confirmed that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required.	Problematic if CCT has to conduct a gap analysis for each and every consulting appointment. Currently, in terms of CM Directive 17 of 2014, each Executive Director (ED) must approve the necessity for any consulting appointment prior to any SCM process commencing. Infrastructure projects presents specific and unique requirements in so far as it generally requires one or more consulting contracts to design and manage one or more construction contracts. CCT simply does not have the staff capacity to fulfil all these requirements "in-house". The appointment of external consultants further mitigates risks as these consultants are required to have professional indemnity insurance in place against which damages suffered due to errors can be recouped – damages arising from errors made by staff are far more difficult to recoup fully, or at all.	**Adopt the clause as follows:** The Accounting Officer will only contract with consultants after the relevant ED has approved the necessity for such contract and upon confirmation that the municipality does not have the requisite skills or resources in its permanent employment to perform the services required.

	Circular Clause	Comments	Recommendations for adoption
2	Evidence of acute planning of the project must be visible to all relevant persons including the administration and political oversight mechanisms in place at the municipality.	<u>Infrastructure:</u> This should not be problematic for infrastructure projects as SAP PPM requirements require such planning. <u>Non-infrastructure:</u> E.g. legal audit etc. The contracting of other consultants may be slightly more problematic? The procedures by which EDs will determine the necessity as above should perhaps include applicable internal processes?	**Do not adopt this clause.**
3	Consultants, including construction and infrastructure related services, must only be remunerated at the rates equal to or below those: o determined in the “Guidelines on fees for audits done on behalf of the Auditor-General South Africa”, o issued by the South African Institute of Chartered Accountants (SAICA); o set out in the “Guide on Hourly Fee Rates for Consultants”, by the Department of Public Service and Administration (DPSA); or o Prescribed by the body regulating the profession of the consultant.	Significant concerns with this clause. o CCT generally procures these services via a competitive process and does not use any prescribed fee scales. These resulting contracts are often based on single percentages or prices per deliverable that does not bear any great resemblance to those that were published by the professional bodies. o Generally, the results from these competitive processes are significantly below the rates that were prescribed. However, in certain instances, the market may determine certain rates to be higher. o The Competition Commission has prevented the publication of such fee scales by the built environment councils o The rates published by SAICA refers to the rates that could be charged for audits done on behalf of the Auditor General and thus not relevant to CCT business o The rates published by DPSA are hourly based only – see comments about hourly based appointments elsewhere in this document. These rates could however be used to benchmark those hourly based rates we do procure from time to time.	**Do not adopt this clause.**

	Circular Clause	Comments	Recommendations for adoption
4	Ensure an exacting “specification” of the work to be accomplished accompanies the tender and is used as a monitoring tool, are appropriately recorded and monitored.	No concerns with this clause as CCT’s standard procedures require detailed specifications for consulting appointments.	**Adopt clause as is.**
5	Ensure that contracts for consultants include retention and penalty clauses for poor performance and in this regard against the above specification, accounting officers must invoke such clauses, where deemed necessary.	In principle no concerns with this clause as CCT’s standard templates allow for both penalties and retention when declared relevant, applicable and suitable by BSC. Slight amendment proposed.	**Adopt the clause as follows:** Ensure that contracts for consultants include retention and penalty clauses for poor performance when declared relevant, applicable and suitable by the BSC and in this regard against the above specification, accounting officers must invoke such clauses, where deemed necessary.
6	It is mandatory that accounting officers of municipalities and municipal entities conclude on the best “value for money”, i.e. matching fees against quality and against benchmarked practices.	Concerns with this clause. o See discussions in par 3 above please. o Due to the fact that CCT generally procures on a competitive basis, value for money will generally be achieved through such competition? o Due to the rulings made by the Competition Commission of late that precludes the publication of recommended fees, bench marking is very difficult. CCT would require access to external data bases in order to do so, and even with access to such info, this would have to be done with great circumspection.	**Adopt the clause as follows:** It is mandatory that accounting officers of municipalities and municipal entities conclude on the best “value for money”, i.e. matching fees against quality and against benchmarked practices wherever possible.

	Circular Clause	Comments	Recommendations for adoption
7	Accounting officers of municipalities and municipal entities must appoint consultants on a time and cost basis with specific start and end dates.	The use of time and cost basis as a means of appointment should be as a last resort. Such appointments can easily run completely out of control. Some appointments can have fixed start and end dates whilst others, such as infrastructure consultants, commencement and end dates are linked to other contracts. In these instances, commencement and completion should rather be linked to certain deliverables based on contractual events.	**Adopt the clause as follows:** Accounting officers of municipalities and municipal entities must appoint consultants on a time and cost basis with specific start and end dates only as a last resort if no other applicable procurement strategy is possible.
8	Travel and subsistence costs for the appointment of consultants must be in accordance with the travel policy of government and the contract price specifies all travel & subsistence costs.	In principle no concerns with this clause. Generally, CCT's consulting tenders does not allow separately for travel and disbursements. For those tenders where the above is not practical, BSCs to be advised of requirements of this circular for inclusion into tenders.	**Adopt clause as is.**
9	If travel and subsistence costs for appointed consultants are exclusive of the contract, the costs must be in accordance with the following provisions: a) Hotel accommodation may not exceed the amount mentioned in this Circular; b) Only economy class air tickets may be purchased for flights; c) Only group B vehicles or lower may be hired for engagements, as mentioned in this Circular; d) Kilometres claimed for the use of private vehicles may not exceed the rates approved by the National Department of Transport, as updated from time to time.	In principle no concerns with this clause. This circular to be compared to the CCT Travel Policy to check for any deviations. BSCs to be advised of requirements of this circular for inclusion into tenders.	**Adopt clause as is.**

	Circular Clause	Comments	Recommendations for adoption
10	Municipalities are urged to develop consultancy reduction plans.	In principle no concern with clause. CCT would have to commence with such a reduction plan, or at least, with the planning towards it. Alternatively, if not practical for CCT, have such a decision formalised and approved by the delegated authority.	**Adopt clause as is.**
11	Undertake all engagements of consultants in accordance with the SCM Regulations and the municipality's SCM policy.	No concern with this clause.	**Adopt clause as is.**