



Province of the
EASTERN CAPE
PROVINCIAL PLANNING
AND TREASURY

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TO ALL:

ACCOUNTING OFFICERS

ACCOUNTING AUTHORITIES

CHIEF FINANCIAL OFFICERS

HEADS: SUPPLY CHAIN MANAGEMENT UNITS

CIRCULAR NO. 5 OF 2014/15

GUIDELINES ON CESSIONS

1. Purpose

- 1.1 The purpose of this Circular is to issue the Guidelines on Cessions in order to assist accounting officers/authorities with a uniform approach in managing requests for cessions of contracts and/or cessions of payments.

6 Dissemination of Information

- 6.1 Accounting Officers / Authorities are kindly requested to ensure that the contents hereof are disseminated to all relevant officials.

7 Enquiries

- 7.1 Should there be any questions regarding the contents of this circular, please contact:

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



MS N. T. M. MBINA-MTHEMBU

HEAD OFFICIAL

EASTERN CAPE DEPARTMENT OF
PROVINCIAL PLANNING AND TREASURY



DATE





Province of the
EASTERN CAPE
PROVINCIAL PLANNING
AND TREASURY

**EXCELLENCE
DEDICATION
INTEGRITY
ACCOUNTABILITY**

**GUIDELINES ON
SESSIONS**

APRIL 2014
Supply Chain Management Office

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GLOSSARY OF TERMS & ABBREVIATIONS

Accounting Officer:	is the head of a department as contemplated in Section 36 of the PFMA.
Accounting Authority:	is the accountable authority of a public entity as contemplated in Section 49 of the PFMA.
Bid:	must be read interchangeably with quotation.
Cedent:	is the principle holder of a contract who agrees to transfer his/her/their/its rights and obligations to perform in terms of a contract to a cessionary.
Cession:	is an agreement in terms of which one party, the cedent, agrees to transfer his/her/their/its rights and obligations to perform in terms of a contract to another person/persons/entity, the cessionary.
Cessionary:	is a person/persons/entity that takes over and becomes the new holder of rights and obligations in terms of the contract.
CIPC:	means Companies and Intellectual Property Commission.
Contracting institution:	means a department or public entity which contracted the services of the cedent.
Contract:	means a formal contract, service level agreement or a contract format, including bid awarded with an official order or letter of award which creates an obligation to perform in terms thereof.
Contractor:	the successful bidder appointed in terms of a procurement process to supply goods or render services to a department/public entity.
Department:	means a provincial department within the Eastern Cape Provincial Government.
PFMA:	means Public Finance Management Act 1 of 1999.
Public Entity:	means a provincial public entity within the Eastern Cape Province.

1. PURPOSE

- 1.1 The purpose of this guideline is to assist accounting officers/authorities with a uniform approach in managing requests for cessions of contracts and/or cessions of payments.
- 1.2 These guidelines are an important tool to ensure that the correct procedures are followed, the legal documentary requirements are complied with and departments/public entities and suppliers have a clear understanding of their respective rights and obligations when concluding cessions of contracts and payments.
- 1.3 These guidelines will ensure the legality, validity and enforceability of the contract.

2. LEGISLATIVE FRAMEWORK AND BACKGROUND

2.1 The Constitution of 1996

- 2.1.1 Section 217 of the Constitution stipulates that *"When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective"*.

2.2 Public Finance Management Act 1 of 1999

- 2.2.1 Section 38(1)(a)(iii) provides that, *"the accounting officer for a department, trading entity or constitutional institution must ensure that the department, trading entity or constitutional institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent competitive and cost-effective"*; and

2.3 National Treasury Regulations (NTR)

- 2.3.1 NTR 16A regulates the procurement of goods and services by departments and schedule 3C public entities.

- 2.4 The procurement process followed by an institution in terms of the above legislation and related prescripts will culminate in the conclusion of a contract. It is incumbent upon the institution that a proper risk assessment is undertaken before the award of the contract to ensure that the successful bidder has the ability and capability to execute the contract,

which will also minimise the necessity for cessions. The successful bidder (contractor) will then be required to supply the goods or render the services in accordance with the terms and conditions of the contract.

- 2.5 During the contract period, circumstances may arise that result in the contractor being unable to continue to fulfil his/her/their/its obligations in accordance with the terms and conditions of the contract. Such circumstances may result in the contractor, the **cedent**, opting to transfer his/her/their/its contractual obligations to another supplier/service provider, the **cessionary**. This transfer of contractual obligations constitutes a **cession of contract**. Upon finalisation of the cession, the cedent relinquishes his/her/their/its rights to the contract and the cession cannot be revoked.
- 2.6 In some instances, the contractor may not have the financial resources to finance the contract/project. In such instances the contractor will source funding from development finance institutions such as the Eastern Cape Development Corporation (ECDC). The development finance institutions may stipulate a condition in the financing agreement that the payments due to the contractor, the cedent, be paid over to them. The development finance institutions, the cessionary, will then deduct the repayment portion owing to them in lieu of the financing agreement and transfer the remaining portion of the payment to the contractor. Such an arrangement constitutes a **cession of payment**.

3. PROCEDURE FOR PROCESSING OF CESSIONS

3.1 CESSION OF CONTRACT

- 3.1.1 A cession of contract will be initiated by the cedent who will submit a written request to the accounting officer/authority of the contracting institution for approval to cede all of his/her/their/its rights and obligations to perform in terms of a contract to the cessionary.
- 3.1.2 Cession of the contract will only come into effect upon approval by the accounting officer/authority, which may not unreasonably be withheld.
- 3.1.3 Before approval of a request for cession of a contract, the accounting officer/authority must undertake the following:
- 3.1.3.1 Review the reasons for the request for cession;

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- 3.1.3.2 Ensure that the request for cession is not as a result of attempts at fronting, engaging in combative or anti-competitive practices, etc;
 - 3.1.3.3 Ensure that the cessionary is of equal or higher BBBEE status level to the cedent;
 - 3.1.3.4 Ensure that the cessionary submits the following documentation at the time of application:
 - 3.1.3.4.1 Certified copy of business registration of the cedent with CIPC (CK1/CM1);
 - 3.1.3.4.2 Certified copy of the identity document of the owner/manager of the business entity; i.e. cessionary;
 - 3.1.3.4.3 Original valid Tax Clearance Certificate of the cessionary;
 - 3.1.3.4.4 any other documentation related to the contract that the cedent was required to submit, including but not limited to, the SBD 4 and SBD 8 forms; and
 - 3.1.3.5 Conduct a detailed risk analysis to ensure that the cessionary has the capability and ability, including resources, to supply the goods or render the services in accordance with the terms and conditions of the original contract. The accounting officer/authority must also verify the validity of the documents referred to in paragraph 3.1.3.4 above.
 - 3.1.4 Once the request for the cession is approved, the cedent and cessionary must be informed in writing and requested to enter into a transfer agreement within a timeframe predetermined by the accounting officer/authority and must comply with any formalities set by law. Failure to conclude the transfer agreement within the predetermined time will result in the lapse of the approval of the cession. The transfer agreement must be vetted by the Legal Advisor of the contracting institution. The Office of the Chief State Law Advisor in the Office of the Premier may also be approached for assistance in this regard.
 - 3.1.5 The accounting officer/authority must, in its notice of approval of the cession, advise both the cedent and cessionary of the remedies that will be available to the contracting institution if it is detected that the request for cession **was** a result of or with the intent to commit fraudulent, corrupt, combative or anti-competitive practices or to manipulate the procurement process. The following remedies, in addition to any other remedies that may be available to the contracting institution, must be included in the notice of approval of cession:
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- 3.1.5.1 Cancel the contract and recover all costs, losses or damages it has incurred or suffered as a result of the conduct of the cedent and/or cessionary;
 - 3.1.5.2 Cancel the contract and claim damages suffered as a result of having to make less favourable arrangements due to such cancellation;
 - 3.1.5.3 Restrict the cedent and/or cessionary, its shareholders and directors, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from any organ of state for a period not exceeding ten years; and
 - 3.1.5.4 Refer the matter for criminal prosecution.
- 3.1.6 Caution must be exercised to ensure that the process of finalising the cession of the contract does not have a negative impact/delay on service delivery.
- 3.1.7 The contracting institution must withdraw the letter of award of contract and/or official order that was/were issued to the cedent and issue a letter of award of contract and/or official order to the cessionary.
- 3.1.8 The contracting institution must be vigilant in its monitoring of the performance of the cessionary.
- 3.1.9 Once a transfer of contract has been finalised, accounting officers/authorities may not issue any further cessions in respect of the same contract.

3.2 CESSION OF PAYMENT

- 3.2.1 A cession of payment, applicable to departments only, will be initiated by the cedent who will submit a written request to the accounting officer of the contracting institution for approval to cede his/her/their/its payments to the development finance institution. The cedent must acknowledge that his/her/their/its banking details will be changed on LOGIS and that he/she/they/it will make suitable arrangements with the development finance institution with regards to payments that may be effected in favour of the cessionary which do not relate to the cession. Neither the contracting institution nor Provincial Planning and Treasury will be liable for recovery or re-imburement of such payments.
- 3.2.2 The cession of payment will only come into effect upon approval by the accounting officer.
- 3.2.3 Before approval of a request for cession of payment, the accounting officer must undertake the following:
- 3.2.3.1 Review the reasons for the request for cession;

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- 3.2.3.2 Ensure that the request for cession is not as a result of attempts at fronting, engaging in combative or anti-competitive practices, disguising fraudulent activities (eg. non-payment of VAT), etc; and
- 3.2.3.3 Ensure that the cessionary is a registered financial institution in terms of the Financial Advisory and Intermediary Services Act 37 of 2002 or an approved credit provider in terms of the National Credit Act 34 of 2005.
- 3.2.4 Once the request for cession of payment is approved, the cedent and cessionary must be informed in writing and the cedent must be requested to submit the following documentation to Provincial Planning and Treasury in order to amend the record of banking details and facilitate payments to the cessionary:
- 3.2.4.1 LOGIS Form- supplier application for registration form completed by the cedent;
- 3.2.4.2 Certified copy of business registration of the cedent with CIPC (CK1/CM1);
- 3.2.4.3 Certified copy of the identity document of the owner/manager of the business entity; i.e. cedent;
- 3.2.4.4 Original valid Tax Clearance Certificate of the cedent;
- 3.2.4.5 Ensure that the "Original Bank Stamp" is imprinted on the LOGIS Form, confirming the bank details of the cessionary;
- 3.2.4.6 Letter from the bank of the cessionary confirming banking details or cancelled cheque;
- 3.2.4.7 Affidavit from cedent attesting to the cession of payments to the cessionary and request for change of banking details; and
- 3.2.4.8 Letter from the accounting officer confirming approval of the cession of payment.
- 3.2.5 Provincial Planning and Treasury will then amend the record of banking details on LOGIS upon compliance by the cedent to the above requirements.
- 3.2.6 Upon completion of the contract, the cessionary must issue a letter of release to cedent and contracting institution wherein it must be confirmed that the cedent has fulfilled his/her/their/its obligations to the cessionary and that the cedent is being released from the cession.
- 3.2.7 The cedent must submit the following documentation to Provincial Planning and Treasury requesting for his/her/their/its banking details to be re-instated:
- 3.2.7.1 LOGIS Form - supplier application for registration form completed by the cedent;
- 3.2.7.2 Certified copy of business registration of the cedent with CIPC (CK1/CM1);
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- 3.2.7.3 Certified copy of the identity document of the owner/manager of the business entity, i.e. cedent;
 - 3.2.7.4 Original valid Tax Clearance Certificate of the cedent;
 - 3.2.7.5 Ensure that the "Original Bank Stamp" is imprinted on the LOGIS Form, confirming the bank details of the cedent;
 - 3.2.7.6 Letter from the bank of the cedent confirming banking details or cancelled cheque;
 - 3.2.7.7 Affidavit from cedent attesting that the cession of payments has terminated and request for own banking details to be re-instated; and
 - 3.2.7.8 Letter of release from the cessionary wherein it is confirmed that the cedent has fulfilled his/her/their/its obligations to the cessionary and that the cedent is released from the cession.
- 3.2.8 Provincial Planning and Treasury will amend the record of banking details on LOGIS upon compliance by the cedent to the above requirements.

4. SCOPE AND APPLICATION

- 4.1 These guidelines are applicable to all Eastern Cape Provincial Government departments in respect of both transfer of contracts and cession of payments and Schedule 3C public entities in respect of transfer of contracts only. However, it may also be adopted by any other government entity in the province including municipalities to strengthen their contract management procedures.

5. ENQUIRIES

- 5.1 Should there be any enquiries regarding the contents of this circular, please contact:

Mr Radhesh Surajbali

Director: Policy Formulation and Implementation

Supply Chain Management Office

Tel: 040 608 5930 Fax: 040 609 5617

Email: Radhesh.surajbali@ectreasury.gov.za

6. REVIEW AND AMENDMENT

- 6.1 These guidelines shall be reviewed when necessary.
- 6.2 Any amendment to any provision of these guidelines shall not be binding unless reduced into writing and approved by The Head of the Eastern Cape Department of Provincial Planning and Treasury.

7. DISSEMINATION OF INFORMATION

- 7.1 Accounting Officers / Authorities are kindly requested to ensure that the contents hereof are disseminated to all relevant officials.

8. IMPLEMENTATION DATE

- 8.1 These Guidelines are applicable from 1 April 2014.



MRS N. T. M. MBINA-MTHEMBU
HEAD OF DEPARTMENT
EASTERN CAPE DEPARTMENT OF
PROVINCIAL PLANNING AND TREASURY

31/03/2014
DATE