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TRANS-CALEDON TUNNEL AUTHORITY


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POLICY FOR THE SOURCING OF FUNDING


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Chief Executive Officer	Name: Mr Percy Sechemane
Chairman of the Board	Name: Mr GT Dumas
Chairman of the Board	Signature: 
	Date: 28 January 2021
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Policy Owner	Executive Manager: PF & T
Board Oversight	Finance Committee

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1. DEFINITIONS AND INTERPRETATION

1.1. In this Policy, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meaning and cognate words shall bear corresponding meaning:


- 1.1.1. **“Board”** – means the board of directors of TCTA, being the accounting authority of TCTA as prescribed by the PFMA and the Notice of Establishment;
- 1.1.2. **“CEO”** – means the chief executive officer of TCTA;
- 1.1.3. **“CFO”** – means the chief financial officer of TCTA;
- 1.1.4. **“Commercial Paper”** – means the debt instruments issued from time-to-time by TCTA under the provisions of Project Commercial Paper Programmes as contemplated by Government Notice 2172 (Government Gazette Number 16167) of 14 December 1994;
- 1.1.5. **“Constitution”** – means the Constitution of the Republic of South Africa No. 108 of 1998;
- 1.1.6. **“Cost-effectiveness”** – means the best achievable combination of costs and utility of the overall funding solution to TCTA;
- 1.1.7. **“Cost of funding”** – means the internal rate of return calculated by considering the estimated amounts and timing of all cash-flows flowing from the utilisation of funding facilities,

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debt and the associated interest payment;

- 1.1.16. **“Funding Process”** – means the process pertaining to the Sourcing of Funding, informed by this Policy and as set out in the Procedure for Sourcing of Funding;
- 1.1.17. **“Funding Proposals”** – means funding proposals submitted by Potential Lenders to TCTA in response to the invitation contemplated in paragraph 7 below;
- 1.1.18. **“Government”** – means the national government of the Republic of South Africa;
- 1.1.19. **“Grant Funding”** – means the non-repayable funding from the Government and/or lending institutions towards TCTA projects;
- 1.1.20. **“Invitations”** – means the invitations issued by TCTA to Potential Lenders, which invitations shall detail TCTA’s Funding requirements as well as the Evaluation Criteria;
- 1.1.21. **“JSE”** – means the Johannesburg Stock Exchange Limited;
- 1.1.22. **“JSE Debt Listing Requirements”** – means the JSE Debt Listing Requirements as updated on 31 August 2020, as may be amended;
- 1.1.23. **“Long-term Funding”** – means funding with an original tenure of more than 5 (five) years;

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default process for the Sourcing of Funding, as fully described in paragraph 7.1 below;

1.1.40. **“Unsolicited Proposal”**

– means any proposal/concept received by an institution outside its normal procurement process that is not an unsolicited bid (a submission that must be innovative, unique and provided by a sole supplier) as contemplated in National Treasury Note 11 of 2008/2009: Guidelines for institutions dealing with unsolicited proposals/concepts; and

1.1.41. **“Urgent Sourcing of Funding”**

– means the Sourcing of Funding subject to time constraints, when any of the provisions of this Policy may be waived –

1.1.41.1.

in order to avert a possible event of default under existing funding facilities that could arise if such provisions were followed, or


1.1.41.2.

if it would ensure compliance with the timelines specified in a Directive.

2. PURPOSE

2.1. This Policy establishes a framework for Sourcing of Funding that is cost-effective, flexible and responsive to TCTA project funding requirements.

2.2. The overall intent is to ensure that the application of this Policy results in all TCTA project funding requirements being fully and adequately funded at all times, and that TCTA’s project liquidity management is supported, taking into account the constitutional

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principles of fairness, equitability, transparency and competitiveness in the selection of Potential Lenders that shall provide funding to TCTA.

- 2.3. The Policy seeks to ensure that TCTA has a diversified pool of lenders to all its projects, thus strengthening competition and market depth.

3. LEGISLATIVE FRAMEWORK


- 3.1. Section 217 of the Constitution requires all organs of state in the national, provincial or local sphere of Government to contract for goods and/or services in a manner that is fair, equitable, transparent, competitive and cost-effective. Accordingly, various statutes were enacted for purposes of establishing frameworks to be followed by organs of state for the procurement of goods and services.

- 3.2. However, the Constitution and the legislative framework statutes only deal with sourcing of goods and services and do not deal specifically with the Sourcing of Funding by organs of state. Notwithstanding this exclusion, in keeping with the spirit of the Constitution and taking into account the realities of the funding market, this Policy aims to promote the Constitutional principles in the Sourcing of Funding.

- 3.3. Clause 26(1)(a) of the TCTA's Notice of Establishment provides that TCTA may only borrow money within a borrowing limit approved by the Minister acting with the concurrence of the Minister of Finance.

- 3.4. This Policy is to be read at all times with the provisions of the JSE Debt Listing Requirements as set out in the FICA Policy.

- 3.5. In light of the above, TCTA wishes to implement this policy to govern the sourcing of Funding guided by the principles of fairness, equity, transparency, competitiveness and

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cost-effectiveness in order to align its operations and business with the spirit and purport of the Constitution.

4. POLICY PRINCIPLES

This Policy is based on the following principles:

- 4.1. *Transparency*: Information pertaining to the requirement for Funding shall be made available to all Potential Lenders without favouring any Potential Lender over another.
- 4.2. *Equitable treatment of lenders*: TCTA shall ensure fair and equitable treatment of all Potential Lenders.
- 4.3. *Cost-effectiveness (value-for-money)*: TCTA strives to achieve cost-effective Funding for all its projects that shall ensure that water users benefit from infrastructure development.
- 4.4. *Competitiveness*: TCTA shall follow competitive funding processes unless there are justifiable reasons for Urgent Sourcing of Funding as outlined in paragraph 7.2 below. TCTA shall also strive to diversify its pool of lenders to strengthen competition and market depth.
- 4.5. *Efficiency*: An ad-hoc committee shall be appointed and the members of the committee working on each transaction shall be drawn from TCTA personnel with the requisite skill, experience and capability ensure an efficient process of securing funding for TCTA projects.
- 4.6. *Ethics*: All members of committees appointed for each transaction shall abide by the Terms of Reference for such a committee and any breach of ethical conduct shall be dealt with in terms of TCTA’s disciplinary policy.

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5. **APPLICABILITY**

This Policy shall apply to the Sourcing of Funding for projects as set out in clause 24 (*List of Non-Treaty Functions*) of the Notice of Establishment and all projects implemented by TCTA as directed by the Minister, from time to time, that require off-budget funding. The Policy shall further apply to the following types of funding:

- 5.1. Short-Term Funding;
- 5.2. Medium-Term Funding; and
- 5.3. Long-Term Funding.


6. **EXCLUSIONS**

Save as provided for in paragraph 7.4 below, this Policy shall not apply to:

- 6.1. the Sourcing of Funding through JSE-listed instruments and unlisted Commercial Paper;
- 6.2. Grant Funding; and
- 6.3. Project Preparation Funding.

7. **PROCESSES FOR SOURCING OF FUNDING**

Sourcing of Funding shall follow one or more of the processes outlined in this paragraph 7. Any process for sourcing of funding that is not consistent with any of the processes listed in this paragraph 7 may only be followed with the prior approval of the Board on a transaction by transaction basis.

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7.1. Standard Bidding Process

7.1.1. A Standard Bidding Process shall commence with an invitation to Potential Lenders to submit Funding Proposals, which invitation shall be published on TCTA’s website for a period of 15 (fifteen) calendar days.

7.1.2. To encourage responses from the market, TCTA may issue written notifications to Potential Lenders which shall include, as a minimum, all the Existing Lenders.

7.1.3. Upon receipt of satisfactory Funding Proposals from Potential Lenders, TCTA shall determine Preferred Lenders in accordance with the Evaluation Criteria.


7.2. Urgent Sourcing of Funding

In the event of an Urgent Sourcing of Funding, the following principles shall apply:

7.2.1. TCTA shall, on an urgent basis and through the issuance of written invitations to a minimum of 3 (three) Potential Lenders (which may include the Existing Lenders), invite Funding Proposals;

7.2.2. the invitation to submit Funding Proposals shall not be open to the general public but shall be extended only to the Potential Lenders contemplated in paragraph 7.2.1 above; and

7.2.3. upon receipt of satisfactory Funding Proposals from Potential Lenders as contemplated in this paragraph 7.2, TCTA shall determine Preferred Lenders in accordance with the Evaluation Criteria.

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7.3. Sourcing of Funding from DFIs and MDBs

7.3.1. TCTA acknowledges that certain DFIs and MDBs may, as a result of their policies, be precluded from participating in bidding processes, such as the Standard Bidding Process. Accordingly, and in accordance with the Policy principles set out in paragraph 4 above, TCTA shall also invite Potential Lenders who are DFIs or MDBs to indicate whether they are precluded from participating in bidding processes but would still be interested in funding the project subject to the conditions appearing in paragraph 7.3.10 below.

7.3.2. In the event that a DFI and/or MDB is not precluded from participating in bidding processes, such DFI and/or MDB may participate in the Standard Bidding Process.

7.3.3. TCTA may enter into direct negotiations with DFIs/MDBs (as case may be) if:

7.3.3.1. such DFIs/MDBs are subject to existing and legitimate rules or policies that prevent them from participating in bidding practices, provided that:


(a) the DFI/MDB can provide evidence or warrant to that effect; and

(b) it has expressed its interest to fund the project in response to TCTA’s request for expression of interest mentioned in 7.3.1;

or;

7.3.3.2. the DFI/MDB operates in South Africa under protocols with National Treasury for engaging with SOEs.


7.3.4. The direct negotiations with DFIs/MDBs in terms of paragraph 7.3.3 may be followed if the Standard Bidding Process did not yield the desired market response

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(for example in terms of the amount, maturity, cost or reasonableness of terms and conditions of funding).

- 7.3.5. TCTA may also enter into direct negotiations with DFIs/MDBs if it deems that DFIs/MDBs may play a lead role in undertaking project evaluation and due diligence (including internationally accepted social and environmental safeguards standards, as well as project governance, technical, procurement, financial and socio-economic aspects of the project), provided that the DFI/MDB agrees to make the project evaluation and due diligence reports and any other reports which may emanate from its studies in connection with the project, available to other relevant Preferred Lenders.
- 7.3.6. Without detracting from 7.3.10, for the purposes of paragraph 7.3.5 TCTA shall approach all Potential Lenders who are DFIs/MDBs, and they may independently or jointly evaluate the project and conduct due diligence provided that they shall all agree to appoint a lead DFI/MDB in relation to the lenders' monitoring and supervision of the project.
- 7.3.7. The participation of the DFI/MDB under the provision of 7.3.5 shall be capped at 50% (fifty percent) of the required amount of project funding, unless there is insufficient interest from commercial lenders to provide the rest of the Funding.
- 7.3.8. The maximum participation referred to in 7.3.7, above, may be reduced, in TCTA's discretion, if the terms offered by the DFI/MDB are no less favourable overall than those which may be obtained from the other Preferred Lenders.

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7.3.9. TCTA shall, by written request to a minimum of 2 (two) DFIs/MDBs, request the DFIs/MDBs to furnish TCTA with term sheets detailing their Funding Proposals to TCTA.

7.3.10. The determination of which DFIs/MDBs shall participate shall be transaction specific and may be based on locality, commencing with local, then regional/continental and ultimately international DFIs/MDBs.


7.4. Sourcing of Funding through conditional Grant Funding or Project Preparation Funding

Grant Funding or Project Preparation Funding which is offered by a Potential Lender subject to conditions that may bind TCTA to a future financial commitment may be accepted on condition that the Potential Lender agrees to capping the cost of funding of the ensuing funding to the weighted average cost of any other project funding that may be sourced from other Preferred Funders (taking into account the Grant Funding or Project Preparation Funding).

7.5. Unsolicited Proposals

Unsolicited Proposals may only be considered if both the Standard Bidding Process and the process for Sourcing of Funding from DFIs/MDBs have been unsuccessful, or efforts at developing a viable and sustainable project funding model have not been successful, and it is deemed that the Unsolicited Proposal will lead to the development and approval of a viable funding model by National Treasury.

7.6. Government Mandate

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8. Subject to the provisions of the Notice of Establishment and TCTA’s status as a PFMA Schedule 2 Entity, which vest the authority to borrow money with the Board, TCTA may enter into direct negotiations with a potential funder pursuant to a legitimate mandate from the Department of Water and Sanitation, the Minister of Human Settlements, Water and Sanitation, and with National Treasury’s concurrence. This could be considered where Government has facilitated funding on behalf of SOEs, including TCTA. For the avoidance of doubt, TCTA shall not be under any obligation to conclude or enter into any funding agreement with such potential funder following the negotiations. **EVALUATION PROCESSES**


Funding Proposals under paragraph 7 above shall be received, evaluated and adjudicated in terms of the administrative process described in the Sourcing of Funding Procedure.

9. **GENERAL**

- 9.1. Services related to the Sourcing of Funding, such as structuring, arranging of Funding through syndication, market-making or otherwise, which are rendered for a consideration, shall be subject to the SCM Policy. For the avoidance of any doubt, arrangers and agents of the lenders shall be regulated outside the scope of this Policy.
- 9.2. Underwriting of Funding is considered to be Sourcing of Funding and shall be conducted in accordance with this Policy.
- 9.3. Refinancing terms concluded under the conditions of each finance agreement shall not be subject to this Policy. Any other refinancing shall be conducted in accordance with the Policy.
- 9.4. Assignment and transfers of rights and/or obligations under each finance agreement to third parties shall be governed by the provisions of such finance agreement.

10. **POLICY IMPLEMENTATION: RESPONSIBILITIES**

10.1. **DELEGATED AUTHORITY**

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In order to enhance effective corporate governance and unless otherwise specified in this Policy, the delegation of authority as outlined hereunder must be complied with at all times.

10.1.1. **Board**


The Board shall be responsible for approving this Policy.

10.1.2. **CFO**

A list of TCTA staff members which shall have been proposed by the CFO and appointed by the CEO to serve on the Evaluation Committee.

10.1.3. **CEO is responsible for:**

- 10.1.3.1. the operational management of TCTA, including the implementation of this Policy;
- 10.1.3.2. the sub-delegation of Sourcing of Funding powers to any employee and/or committee consisting solely of TCTA employees to assist him/her in the implementation of this Policy;
- 10.1.3.3. creating awareness of employee delegations on this Policy;
- 10.1.3.4. ensuring that TCTA has standard procedures for the implementation of this Policy;
- 10.1.3.5. ensuring employee awareness and adherence to the Sourcing of Funding Procedure;
- 10.1.3.6. authorising any deviations from the Sourcing of Funding Procedure; and

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10.1.3.7. providing regular management reports to the Board on the performance of the Sourcing of Funding.

10.1.4. **The Executive Manager: Project Finance & Treasury is responsible for:**

10.1.4.1. Ensuring that Funding for each transaction is sourced using this Policy as the basis thereof;

10.1.4.2. Monitoring implementation of the Policy and recommending for its review to keep up with prevailing financial market conditions.

10.1.5. **The Senior Manager/Specialist within Project Finance & Treasury is responsible for:**


10.1.5.1. Being the lead transactor applying this Policy for each transaction requiring the Sourcing of Funding;

10.1.5.2. monitoring the financial markets and recommend to the Executive Manager for its review should the prevailing market conditions so dictate.

10.2. **Compliance**

10.2.1. The lead transactor (senior manager or senior specialist) in the Sourcing of Funding shall be responsible for ensuring that Sourcing of Funding, unless excluded by the Policy, is conducted in accordance with this Policy. Any incident of material non-compliance with the Policy shall be immediately reported to the CEO for condonation.

10.2.2. The PF&T staff member designated as the divisional compliance champion shall be responsible for monitoring and reporting on compliance with the Policy. A

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compliance report shall be prepared and submitted to the Executive Manager: PF&T at the conclusion of the Sourcing of Funding.

10.3. **Records management**


The lead transactor must ensure that all records relevant to the administration of this Policy are properly maintained.

11. **MONITORING AND REVIEW**

11.1. This Policy is a living document and shall be reviewed and amended at least every 3 (three) years, or as and when necessary.

11.2. Notwithstanding the above, the implementation of this Policy shall be monitored on an ongoing basis as and when so required and shall be reviewed to align it to prevailing financial market conditions. An updated version shall then be brought to the Board for consideration and approval following TCTA's internal approval processes.

12. **APPROVED BY:**

Name	Designation	Signature	Date
Mr GT Dumas	Chairman: TCTA Board		28 January 2021

ANNEXURE: PROCEDURE FOR SOURCING OF FUNDING