



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

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## GENERAL NOTICE

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NOTICE 2458 OF 2004

NATIONAL TREASURY

**LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT**

**ACT, 2003**

**GAZETTE FOR PUBLIC COMMENT**

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I, Trevor Manuel, Minister of Finance, acting in terms of section 169 (1)(b) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), hereby publish for public comment the draft regulations contained in schedules 1,2 and 3 to this notice.

Any person wishing to submit comments on these regulations should do so before 19 November 2004 at email address: [mfma@treasury.gov.za](mailto:mfma@treasury.gov.za) of fax number 012-3155230, or mail to: Private Bag X115, Pretoria, 0001. For attention: Lesley Fisher.

**TREVOR A. MANUEL MP**  
**MINISTER OF FINANCE**

## EXPLANATORY NOTE ON DRAFT REGULATIONS

The draft regulations included in **this** gazette cover investments, supply chain management and public private partnerships. Though workshops and consultations have taken place with local government, the gazette offers a second opportunity for further comment on the draft regulations.

Once comments are received, they will be taken into account and finalised, for publication in a Government Gazette before **8 December 2004**. The proposals will also be submitted to Parliament by **8 December 2004**. It is intended that these regulations **will** be promulgated around **14 February 2005**.

The regulations relating to investments and public private partnerships (Schedules **1** and **3** in this gazette) are expected to take effect for all municipalities on **1 March 2004**.

The regulations relating to supply chain management (Schedule 2) are expected to take effect later, in order to enable municipalities to develop and approve a supply chain management policy in terms of section 111 of the Act. To support municipalities, the National Treasury will provide a standard supply chain policy that may be adopted by municipalities. This standard supply chain policy and a supporting guide assisting accounting officers with a step-by-step process will be issued by 28 February 2005. Service providers have been identified and training will be scheduled during early 2005. Exemptions will therefore be issued to all municipalities, so that the Schedule 2 supply management regulations take effect for all municipalities on 1 July 2005.

**All** municipalities are urged to prepare for implementing the new system immediately, using the draft gazettes. Nothing stops a municipality from applying any aspect of these draft regulations to the extent that they are applicable. Municipalities are also reminded that those sections of part 1 of chapter 11 not delayed in terms of section 180, issued in terms of Gazette 26510, still apply. The effective date for supply chain management that was originally gazetted to come into effect on 1 December 2004 will now be effective from 1 July 2005.

Municipalities are invited to submit comments to the National Treasury before **19 November 2004** on both the content of the regulations as well as the proposed implementation dates.

## SCHEDULE 1

### MUNICIPAL CASH MANAGEMENT AND INVESTMENT REGULATIONS

#### Definitions

1. In these regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and –

**“Act”** means the Municipal Finance Management Act, 2003 (Act No. 56 of 2003)

**“investee”** means an institution with which an investment is placed, or its agent;

**“investment manager”** means a natural person or legal entity that is a portfolio manager registered in terms of the Financial Markets Control Act (Act No. 55 of 1989) and Stock Exchanges Control Act (Act No. 1 of 1985), contracted by a municipality or municipal entity to –

- (a) advise it on investments; or
- (b) manage investments on its behalf; or
- (c) advise it on investments and manage investments on its behalf;

**“trust money”** means money held in trust on behalf of third parties in a trust contemplated in terms of section 12 of the Act.

#### Application

2. (1) These regulations apply to –
  - (a) all municipalities;
  - (b) all municipal entities; and

- (c) all investment managers acting on behalf of, or assisting, a municipality or municipal entity in making or managing investments.

(2) These regulations do not apply –

- (a) to a municipal pension or provident fund registered in terms of the Pension Funds Act (Act No. 24 of 1956) or any subsequent legislation; or
- (b) in respect of trust money administered by a municipality or municipal entity where a trust deed prescribes how the trust money is to be invested.

### **Adoption of cash management and investment policies**

3. (1) The cash management and investment policy to be established by a municipality in terms of section 13 (2) of the Act, must be –

- (a) adopted by the council of the municipality; and
- (b) consistent with these regulations.

(2) The board of directors of a municipal entity must adopt a cash management and investment policy for the entity consistent with these regulations.

(3) All investments made by a municipality or municipal entity, or by an investment manager on behalf of a municipality or entity, must be in accordance with the cash management and investment policy of the municipality or entity and these regulations.

### **Core elements of cash management and investment policies**

4. The cash management and investment policy of a municipality or municipal entity must –

- (a) be in writing;
- (b) give effect to these regulations; and
- (c) set out –
  - (i) the scope of the policy;

- (ii) the objectives of the policy, with due regard to the provisions of these regulations relating to –
  - (aa) the preservation and safety of investments as the primary aim;
  - (bb) the need for investment diversification; and
  - (cc) the liquidity needs of the municipality or entity;
- (iii) a minimum acceptable rating for investments, including –
  - (aa) a list of approved investment types that may be made, subject to regulation 6;
  - (bb) a list of approved institutions where or through which investments may be made, subject to regulation 10;
- (iv) measures regulating the invitation and selection of competitive bids or offers;
- (v) measures for ensuring implementation of the policy and internal control over investments made;
- (vi) procedures for reporting on and monitoring of all investments made, subject to regulation 9;
- (vii) procedures for benchmarking and performance evaluation;
- (viii) the assignment of roles and functions, including any delegation of decision-making powers;
- (ix) if investment managers are to be used, conditions for their use, including their liability in the event of non-compliance with the policy or these regulations; and
- (x) procedures for the annual review of the policy.

#### **Standard of care to be exercised when making investments**

**5.** Investments by a municipality or municipal entity, or by an investment manager on behalf of a municipality or entity –

- (a) must be made with such judgement and care, under the prevailing circumstances, as a person of prudence, discretion and intelligence would exercise in the management of that person's own affairs;

- (b) may not be made for speculation but for investment; and
- (c) must in the first instance be made with primary regard being to the probable safety of the investment, in the second instance to the liquidity needs of the municipality or entity and lastly to the probable income derived from the investment.

### **Permitted investments**

**6.** A municipality or municipal entity may invest funds only in any of the following investment types as may be appropriate to the anticipated future need for the funds:

- (a) securities issued by the national government;
- (b) listed corporate bonds with an investment grade rating from a nationally or internationally recognised credit rating agency;
- (c) deposits with banks registered in terms of the Banks Act, **1990** (Act No. **94** of **1990**);
- (d) deposits with the Public Investment Commissioners as contemplated by the Public Investment Commissioners Act, **1984** (Act No. **45** of **1984**);
- (e) deposits with the Corporation for Public Deposits as contemplated by the Corporation for Public Deposits Act, **1984** (Act No. **46** of **1984**);
- (f) banker's acceptance certificates or negotiable certificates of deposit of banks registered in terms of the Banks Act, **1990**;
- (g) guaranteed endowment policies with the intention of establishing a sinking fund;
- (h) repurchase agreements with banks registered in terms of the Banks Act, **1990**;
- (i) municipal bonds issued by a municipality; and
- (j) any other investment type as the Minister may identify by regulation in terms of section **168** of the Act, in consultation with the Financial Services Board.

**Investments denominated in foreign currencies prohibited**

**7.** A municipality or municipal entity may make an investment only if the investment is denominated in Rand and is not indexed to, or affected by, fluctuations in the value of the Rand against any foreign currency.

**Payment of commission**

**8.** (1) No commission or other reward may be paid to an official or councillor of a municipality or to a director or official of a municipal entity or to a spouse or close family member in respect of any investment made or referred by a municipality or municipal entity.

(2) If an investee pays any commission or other reward to an investment manager in respect of any investment made by a municipality or municipal entity, both the investee and the investment manager must declare such payment to the council of the municipality or the board of directors of the entity by way of a certificate disclosing full details of the payment.

**Reporting requirements**

**9.** (1) The accounting officer of a municipality or a municipal entity must within 10 working days of the end of each month submit to the mayor of the municipality or the board of directors of the entity a report describing in accordance with generally recognised accounting practice the investment portfolio of that municipality or entity as at the end of the month.

(2) The report referred to in subsubregulation (1) must set out at least

- (a) the market value of each investment as at the beginning of the reporting period;
  - (b) any changes to the investment portfolio during the reporting period;
  - (c) the market value of each investment as at the end of the reporting period;
- and



- (d) fully accrued interest or yield for the reporting period.

### **Credit requirements**

10. (1) A municipality or municipal entity must take all reasonable and prudent steps consistent with its cash management and investment policy and according to the standard of care set out in regulation 5, to ensure that it places its investments with credit-worthy institutions.

(2) A municipality or municipal entity must liquidate an investment that no longer has the minimum acceptable rating as specified in its cash management and investment policy.

### **Portfolio diversification**

11. A municipality or municipal entity must take all reasonable and prudent steps, consistent with its cash management and investment policy and according to the standard of care prescribed in regulation 5, to diversify its investment portfolio across institutions, types of investment and investment maturities.

### **Miscellaneous provisions**

12. (1) The responsibility and risk arising from any investment transaction vests in the relevant municipality or municipal entity.

(2) All investments made by a municipality or municipal entity must be in the name of that municipality or municipal entity.

(3) A municipality or municipal entity may not borrow money for the purpose of investment.

### **Existing investments**

13. Nothing in these regulations compels a municipality or municipal entity to liquidate an investment which existed when these regulations took effect merely because such investment does not comply with a provision of these regulations.

**Short title and commencement**

**14. These regulations are called the Municipal Investment Regulations, and take effect on 1 March 2005.**

## SCHEDULE 2

### MUNICIPAL SUPPLY CHAIN MANAGEMENT REGULATIONS

#### Definitions

1. In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the same meaning as in the Act, and –

“**board**”, in relation to a municipal entity, means the board of directors of the municipal entity;

“**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

“**director**”, in relation to a municipal entity, means a member of the board of a municipal entity;

“**Preferential Procurement Policy Framework Act**” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

“**the Act**” means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003).

**CHAPTER 1**  
**ESTABLISHMENT AND IMPLEMENTATION OF SUPPLY CHAIN**  
**MANAGEMENT POLICIES**

**Supply chain management policies**

- 2.** (1) Each municipality and each municipal entity must in terms of section 111 of the Act have and implement a supply chain management policy that –
- (a) gives effect to –
    - (i) section 217 of the Constitution; and
    - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with –
    - (i) the regulatory framework prescribed in Chapter 2 of these Regulations; and
    - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
  - (d) is consistent with other applicable legislation, including –
    - (i) the Preferential Procurement Policy Framework Act;
    - (ii) the Broad-Based Black Economic Empowerment Act; and
  - (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres.
- (2) The supply chain management policy of a municipal entity –
- (a) must, in addition to complying with subregulation (1), also be consistent with the supply chain management policy of its parent municipality; and
  - (b) takes effect only if approved by the council of the parent municipality.
- (3) No municipality or municipal entity may act otherwise than in accordance with its supply chain management policy when –
- (a) procuring goods or services;

- (b) disposing of goods no longer needed;
- (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
- (d) selecting external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.

(4) Subregulations (1), (2) and (3) do not apply in the circumstances described in section 110 (2) of the Act except where specifically provided otherwise in these Regulations.

### **Adoption and amendment of supply chain management policies**

3. (1) The accounting officer of a municipality or municipal entity must –
- (a) promptly prepare and submit a draft supply chain management policy complying with regulation 2 to the council of the municipality or the board of the municipal entity for adoption;
  - (b) at least annually review the implementation of the policy; and
  - (c) when deemed necessary by the accounting officer, submit proposals for the amendment of the policy to the council or the board.

(2) The accounting officer may for purposes of subregulation (1) (a) make use of any guideline standard for municipal supply chain management policies published by the National Treasury, and submit to the council or board that guideline standard or any modified version thereof. If the accounting officer submits a draft policy to the council or board that differs from the guideline standard, the accounting officer must ensure that such draft policy complies with regulation 2.

(3) The accounting officer of a municipality must in terms of section 62 (1) (9) (iv) of the Act, and the accounting officer of a municipal entity must in

terms of section 99 (2) (h) of the Act, take all reasonable steps to ensure that the municipality or municipal entity has and implements a supply chain management policy as set out in regulation 2.

#### **Delegation of supply chain management powers and duties**

4. (1) The council of a municipality and the board of a municipal entity must delegate such supply chain management powers and duties to the accounting officer in order to enable the accounting officer –

- (a) to maximise administrative and operational efficiency in the implementation of the supply chain management policy;
- (b) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of the supply chain management policy; and
- (c) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.

(2) Sections 79 and 106 of the Act apply to the subdelegation of powers and duties delegated to an accounting officer in terms of subregulation (1).

(3) No supply chain management powers or duties may be delegated or subdelegated to –

- (a) a person who is a councillor of any municipality or a director of any municipal entity; or
- (b) a committee of which a councillor of any municipality or a director of any municipal entity is a member.

#### **Subdelegations**

5. An accounting officer may in terms of section 79 or 106 of the Act subdelegate any supply chain management powers and duties, provided that

when subdelegating the power to make a final award the accounting officer must impose –

- (a) a threshold value for such awards; and
- (b) a condition that the award of bids above that threshold value must be referred to the accounting officer.

### **Oversight role of council of municipality or board of municipal entity**

6. (1) The council of a municipality and the board of a municipal entity must maintain oversight over the implementation of its supply chain management policy.

(2) For the purposes of such oversight the accounting officer must at least annually, within 30 days of the end of each financial year, or whenever there are serious and material problems in the implementation of the supply chain management policy, submit reports on the implementation of the supply chain management policy to the council of the municipality or the board of the municipal entity. The accounting officer of a municipality must in addition, within 10 days after the end of each quarter, submit such implementation reports for consideration by the mayor, and if the municipality has a mayoral or executive committee, also by such committee.

### **Monitoring of municipal supply chain management**

7. The accounting officer of a municipality or municipal entity must, within 60 days of the end of each financial year, submit to the relevant provincial treasury information concerning supply chain management in the municipality or entity in such format as the National Treasury may determine.

### **Supply chain management units**

8. (1) Each municipality and, if warranted, each municipal entity, must establish a supply chain management unit to implement its supply chain management policy.

(2) The accounting officer of the parent municipality must decide whether the establishment of a supply chain management unit for a municipal entity is warranted.

(3) A supply chain management unit must, where possible, operate under the direct supervision of the chief financial officer.

### **Training of supply chain management officials**

9. (1) Each municipality and each municipal entity must ensure that section 119 of the Act is complied with.

(2) The training of officials involved in implementing a supply chain management policy should be in accordance with any guidelines issued by the National Treasury.

## **CHAPTER 2**

### **FRAMEWORK FOR SUPPLY CHAIN MANAGEMENT POLICIES**

#### **Format of supply chain management policy**

10. The supply chain management policy of a municipality or municipal entity must describe in sufficient detail –

- (a) the supply chain management system that *is* to be implemented by the municipality or municipal entity; and
- (b) effective systems for –
  - (i) demand management;
  - (ii) acquisition management;
  - (iii) logistics management;
  - (iv) disposal management;
  - (v) risk management; and
  - (vi) performance management.



***Part 1: Demand management*****System of demand management**

11. A supply chain management policy must provide for an effective system of demand management in order to ensure that the resources required to support the strategic and operational commitments of the municipality or municipal entity, are delivered at the correct time, at the right price and at the right location, and that the quantity and quality satisfy the needs of the municipality or entity.

***Part 2: Acquisition management*****System of acquisition management**

12. (1) A supply chain management policy must provide for an effective system of acquisition management in order to ensure –

- (a) that goods and services are procured by the municipality or municipal entity only in accordance with authorised processes;
- (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act.
- (c) that the threshold values for the different procurement processes are complied with;
- (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable requirements, including –
  - (i) the criteria prescribed in terms of the Preferential Procurement Policy Framework Act; and
  - (ii) any conditions of the Construction Industry Development Board as approved by the National Treasury, in the case of bids relating to construction; and
- (e) that procurement guidelines issued by the National Treasury, including on the appointment of consultants, are properly taken into account.

(2) A supply chain management policy, except where provided otherwise in these Regulations, does not apply in respect of the procurement of goods and services contemplated in section 110 (2) of the Act, including –

- (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
- (b) electricity from Eskom or another public entity, another municipality or a municipal entity.

### **Range of procurement processes**

**13.** (1) A supply chain management policy must, subject to regulation 12 (2), provide for the procurement of goods and services by way of –

- (a) verbal quotations, but only for procurements up to an estimated transaction value of R6 000 (VAT included);
- (b) written price quotations, but only for procurements up to an estimated transaction value of R120 000 (VAT included); and
- (c) a competitive bidding process for all procurements above an estimated transaction value of R120 000 (VAT included).

(2) A supply chain management policy may allow the accounting officer to lower, but not to increase, the different threshold values specified in subregulation (1).

(3) A supply chain management policy must specify that goods and services must not be split into parts or items of a lesser value merely to avoid following the requirements of the policy.

### **Lists of accredited prospective providers**

**14.** (1) A supply chain management policy must –

- (a) instruct the accounting officer –
  - (i) to keep and at least quarterly update a list of accredited prospective providers of goods and services that **must** be used for

- the procurement requirements of the municipality or municipal entity through verbal quotations and written price quotations; and
- (ii) at least once a year through newspapers commonly circulating locally, the website of the municipality or municipal entity and any other appropriate ways, to invite prospective providers of goods or services to apply for evaluation and listing as an accredited prospective provider;
  - (b) specify the listing criteria for accredited prospective providers; and
  - (c) prevent the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.

### **Verbal quotations**

**15.** A supply chain management policy must stipulate the conditions for the procurement of goods or services through verbal quotations, which must include conditions –

- (a) that quotations must be obtained from at least three different providers whose names appear on the list of accredited prospective providers which the municipality or municipal entity must keep in terms of regulation **14**;
- (b) that if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the Chief Financial Officer;
- (c) that the accounting officer must record the names of the potential providers and their quoted prices; and
- (d) that an order may be placed only against written confirmation by the selected provider.

**Written price quotations**

**16.** A supply chain management policy must stipulate the conditions for the procurement of goods or services through written price quotations, which must include conditions –

- (a) that written quotations must be obtained from at least three different providers whose names appear on the list of accredited prospective providers which the municipality or municipal entity must keep in terms of regulation 14; and
- (b) that if it is not possible to obtain at least three written quotations, the reasons must be recorded and approved by the Chief Financial Officer.

**Process for procuring goods or services through verbal or written price quotations**

**17.** (1) A supply chain management policy must determine the procedure for the procurement of goods or services through verbal quotations or written price quotations, and must stipulate –

- (a) that the use of the list of accredited prospective providers is obligatory for such quotations, but that quotations may be obtained from providers who are not listed only when no suitable providers for the required commodity or type of service are available from the list;
- (b) that all requirements in excess of R30 000 that are to be procured by means of written price quotations must be advertised for at least seven days on the website and an official notice board of the municipality or municipal entity;
- (c) that when using the list of accredited prospective providers the accounting officer must –
  - (i) promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
  - (ii) promote the objectives of the Broad-Based Black Economic Empowerment Act; and

- (iii) apply the Preferential Procurement Policy Framework Act and any regulations made in terms of that Act, for all procurements equal to or exceeding R30 000, and if appropriate, also for procurements of less than R30 000;
- (d) that the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through verbal quotations or written price quotations is not abused; and
- (e) that the accounting officer or chief financial officer must on a monthly basis be notified in writing of all verbal quotations and written price quotations accepted by an official acting in terms of delegated powers.

(2) The process for the procurement of goods or services through written price quotations must be similar to the process prescribed in terms of regulations 20, 25, 26, 27 and 28 for Competitive bids.

#### **Competitive bids by means of public advertisement**

**18.** A supply chain management policy must specify –

- (a) that goods or services above an estimated transaction value of R120 000 (VAT included) may be procured by the municipality or municipal entity only through competitive bids, subject to regulation 12 (2);
- (b) that no requirement for goods or services above an estimated transaction value of R120 000 (VAT included) may be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through competitive bids; and
- (c) that a requirement for goods or services consisting of different parts or items must as far as possible be treated and dealt with as a single transaction.

#### **Process for competitive bidding**

**19.** A supply chain management policy must provide for procurements through a competitive bidding process in the following stages:

- (a) the compilation of bidding documentation;
- (b) the public invitation of bids;
- (c) the handling of bids submitted in response to the public invitation;
- (d) the evaluation of bids;
- (e) the award of contracts;
- (9) the administration of contracts; and
- (g) proper record keeping.

#### **Bid documentation for competitive bids**

**20.** A supply chain management policy must determine the criteria to which bid documentation for competitive bids must comply, and must state that bid documentation must –

- (a) take into account –
  - (i) the general conditions of contract and supply chain management guidelines of the National Treasury; and
  - (ii) the requirements of the Construction Industry Development Board as approved by the National Treasury, in the case of a bid relating to construction;
- (b) include evaluation and adjudication criteria, including any criteria stated in –
  - (i) the Preferential Procurement Policy Framework Act and its regulations; and
  - (ii) the Broad-Based Black Economic Empowerment Act and its regulations;
- (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
- (d) require bidders to furnish their tax reference numbers, VAT registration numbers and identification or registration numbers; and
- (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

**Public invitation for competitive bids**

**21.** (1) A supply chain management policy must determine the procedure for the invitation of competitive bids, and must stipulate –

- (a) that any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or municipal entity and any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
- (b) the information a public advertisement must contain, which must include –
  - (i) the closure date for the submission of bids, which may not be less than 14 days from the date on which the advertisement is placed in a newspaper, subject to subregulation (2); and
  - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality or municipal entity.

(2) A supply chain management policy may allow the accounting officer to determine a closure date for the submission of bids which is less than the 14 days requirement, but only if such shorter period can be justified on the grounds of emergency.

(3) Bids must be submitted to the municipality or municipal entity in sealed envelopes.

**Procedure for handling, opening and recording of bids**

**22.** A supply chain management policy must determine the procedure for the handling, opening and recording of bids, and must –

- (a) stipulate that bids–
  - (i) may be opened only in public; and
  - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;

- (b) confer on any bidder or member of the public the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's bidding price; and
- (c) require the accounting officer –
  - (i) to record in a register all bids received in time;
  - (ii) to make the register available for public inspection; and
  - (iii) to publish the entries in the register and the bid results on the website of the municipality or municipal entity.

### **Negotiations with preferred bidders**

23. (1) A supply chain management policy may allow the accounting officer to negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –

- (a) does not allow any preferred bidder a second or unfair opportunity; and
- (b) is not to the detriment of any other bidder.

(2) Minutes of such negotiations must be kept for record purposes.

### **Two-stage bidding process**

24. (1) A supply chain management policy may allow a two-stage bidding process for large complex plants or projects of a special nature where it may be undesirable to prepare complete detailed technical specifications.

(2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.

(3) In the second stage final technical proposals and priced bids should be invited.



**Committee system for competitive bids**

- 25.** (1) A supply chain management policy must provide for –
- (a) a committee system for competitive bids consisting of at least –
    - (i) a bid specification committee;
    - (ii) a bid evaluation committee; and
    - (iii) a bid adjudication committee; and
  - (b) the appointment by the accounting officer of the members of each committee, taking into account section 117 of the Act.
- (2) The committee system must **be** consistent with –
- (a) regulations **26, 27** and **28**; and
  - (b) any other applicable legislation, including –
    - (i) the Act;
    - (ii) the Preferential Procurement Policy Framework Act and its regulations; and
    - (iii) the Broad-Based Black Economic Empowerment Act and its regulations.
- (3) A supply chain management policy may allow the accounting officer to procure goods or services for the municipality or municipal entity by utilising the committee system of another municipality or municipal entity **in** terms of an agreement with that other municipality or municipal entity.

**Bid specification committees**

- 26.** (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality or municipal entity.
- (2) Specifications –
- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;

- (b) indicate each specific goal for which points may be awarded in terms of the Preferential Procurement Policy Framework Act; and
- (c) **must** be approved by the accounting officer prior to publication of the invitation for bids in terms of regulation 21.

(3) A bid specification committee must be composed of officials of the municipality or municipal entity and may, when appropriate, include external specialists.

### **Bid evaluation committees**

**27.** (1) A bid evaluation committee must –

- (a) evaluate bids in accordance with –
  - (i) the specifications for a specific procurement; and
  - (ii) the preference point system in terms of the Preferential Procurement Policy Framework Act;
- (b) evaluate each bidder's ability to execute the contract;
- (c) check in respect of each bidder whether –
  - (i) a tax clearance certificate issued by the South African Revenue Services has been submitted; and
  - (ii) municipal rates and taxes and municipal service charges are not in arrears;
- (d) verify whether national industrial participation programme requirements have been complied with, if the contract is in excess of R 100 million; and
- (e) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.

(2) A bid evaluation committee must in so far as may be possible –

- (a) be cross-functional;
- (b) be composed of –
  - (i) officials from departments requiring the goods or services; and
  - (ii) at least one supply chain management practitioner; and

- (c) allow for a neutral or independent person to monitor the fairness of the proceedings.

#### **Bid adjudication committees**

**28. (1)** A bid adjudication committee must –

- (a) consider the report and recommendations of the bid evaluation committee; and
- (b) either –
  - (i) make a final award or a recommendation to the accounting officer to make the final award, depending on its delegations; or
  - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.

(2) A bid adjudication committee must –

- (a) be cross-functional; and
- (b) consist of –
  - (i) the chief financial officer of the municipality or municipal entity or, if the chief financial officer is not available, another top or senior management official of the municipality or municipal entity designated by the chief financial officer;
  - (ii) at least four top or senior management officials of the municipality or municipal entity;
  - (iii) at least one supply chain management practitioner; and
  - (iv) when necessary, a technical expert in the relevant field.

(3) The chief financial officer or the official designated by the chief financial officer in terms of subregulation (2) (b) (i) must be the chairperson of the committee.

(4) A member of a bid evaluation committee may not be a member of a bid adjudication committee.

(5) If a bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication Committee must immediately notify the accounting officer; provided that the accounting officer may at any stage of a bidding process refer any recommendation made **by** the evaluation committee or the adjudication committee back to that Committee for reconsideration of the recommendation.

(6) The accounting officer must comply with section 114 of the Act.

### **National Industrial Participation Programme**

29. Before awarding a contract above R100 million which is subject to the National Industrial Participation Programme, the accounting officer must obtain clearance for the recommended bidder from the Department of Trade and Industry. If no response is received by the accounting officer within 30 days of the request, this clearance of the recommended bidder as a precondition for the award of the contract falls away.

### **Participation of advisors**

30. A supply chain management policy may allow the accounting officer to appoint advisors to assist in the execution of the supply chain management function, provided –

- (a) that an appointment may only be made through a competitive bidding process;
- (b) that no advisor may participate in the final decision-making process regarding the award of bids; and
- (c) that **no** decision-making authority may be delegated to an advisor.

### **Procurement of IT related goods or services**

31. (1) A supply chain management policy may allow the accounting officer to request the State Information Technology Agency (SITA) to assist the

municipality or municipal entity with the acquisition of IT related goods or services through a competitive bidding process.

(2) The parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.

(3) If the transaction value of IT related goods or services exceeds R50 million in any financial year, the accounting officer must notify SITA together with a motivation of the IT needs of the municipality or municipal entity. If SITA comments on the submission and the municipality or entity disagrees with such comments, the comments must be made public in terms of section 21A of the Municipal Systems Act.

**Procurement of goods and services under contracts secured by other organs of state**

32. A supply chain management policy may allow the accounting officer to procure goods or services for the municipality or municipal entity under a contract secured by another organ of state, but only if –

- (a) the contract has been secured by that other organ of state by means of a competitive bidding process; and
- (b) that other organ of state and the provider have consented to such procurement in writing.

**Procurement of goods necessitating special safety arrangements**

33. (1) A supply chain management policy must restrict the acquisition and storage of goods in bulk which necessitate special safety arrangements, including gasses and fuel.

(2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership and cost advantages for the municipality or municipal entity.

**Appointment of consultants**

**34.** A supply chain management policy may allow the accounting officer to procure professional services through the appointment of consultants provided the guidelines issued by the National Treasury in respect of professional services are taken into account when such appointments are made.

**Deviation from official procurement processes**

**35.** (1) A supply chain management policy may allow the accounting officer to dispense with the official procurement processes established by the policy **and** to procure any required goods or services through any convenient process, which may include direct negotiations, but only –

- (a) in an emergency;
- (b) if such goods or services are produced or available from a single provider only; or
- (c) in any other exceptional case where it is impractical to follow the official procurement processes.

(2) The accounting officer must record the reasons for such deviation.

(3) Subregulation (2) does not apply **to** the procurement **of** goods and services contemplated in regulation 12 (2).

**Unsolicited bids**

**36.** (1) A supply chain management policy must state that the municipality or municipal entity is in terms **of** section 113 of the Act not obliged to consider unsolicited bids received outside a normal bidding process.

(2) If a municipality or municipal entity decides in terms of section **113** (2) of the Act to consider an unsolicited bid, it may do **so** only **if–**

- (a) the product or service offered in terms of the bid is a unique innovative concept that will be exceptionally beneficial to, or have exceptional cost advantages for, the municipality or municipal entity;
- (b) the person who made the bid is the sole provider of the product or service;
- (c) the need for the product or service by the municipality or municipal entity has been established during its strategic planning and budgeting processes; and
- (d) the National Treasury and the relevant provincial treasury have been notified of the bid and given **60** days to provide written comments and recommendations.

(3) Any written comments and recommendations of the National Treasury or the relevant provincial treasury submitted in terms of subregulation (2) (d) must be taken into account before any contract committing the municipality or entity is signed.

(4) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must table at the next meeting of the council or the board –

- (a) the comments and recommendations of the National Treasury or provincial treasury; and
- (b) the reasons for rejecting or not following those recommendations.

### **Combating of abuse of supply chain management system**

**37.** (1) A supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer –

- (a) to take all reasonable steps to prevent such abuse;
- (b) to investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with the supply chain management policy, and when justified –

- (i) take appropriate steps against such official or other role player; or
  - (ii) report any alleged criminal conduct to the South African Police Service;.
- (c) to check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
- (d) to reject any bid from a bidder –
  - (i) who fails to provide written proof from the South African Revenue Services that that bidder either has no outstanding tax obligations or has made arrangements to meet outstanding tax obligations;
  - (ii) whose municipal rates and taxes or municipal service charges owed to the municipality, or other municipalities, are in arrears for more than three months; or
  - (iii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or entity after written notice was given to that bidder that performance was unsatisfactory;
- (e) to reject a recommendation for the award of a contract if the recommended bidder has committed a corrupt or fraudulent act in competing for the particular contract;
- (f) to cancel a contract awarded to a person if –
  - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
  - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and
- (g) to reject the bid of any bidder if that bidder, or any of its directors –
  - (i) has abused the supply chain management system of the municipality or municipal entity or has Committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years; or



- (iii) has wilfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years.

(2) The accounting officer must inform the relevant provincial treasury in writing of any actions taken in terms of subregulation (1)(b)(ii) and 1 (e) to (f).

### ***Part 3: Logistics, Disposal, Risk and Performance Management***

#### **Logistics management**

**38.** A supply chain management policy must provide for an effective system of logistics management in order to provide for the setting of inventory levels, placing of orders, receiving and distribution of goods, stores and warehouse management, expediting orders, transport management, vendor performance, maintenance and contract administration.

#### **Disposal management**

**39.** (1) A supply chain management policy must provide for an effective system of disposal management for the disposal or letting of assets no longer needed, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act.

(2) A supply chain management policy must –

- (a) specify the ways in which assets may be disposed of, including by –
  - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
  - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
  - (iii) selling the asset; or
  - (iv) destroying the asset;
- (b) stipulate that –

- (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
- (ii) movable assets may be sold either by way of written price quotations, competitive bids, auction or at market related prices, whichever is the most advantageous to the municipality or municipal entity;
- (iii) in the case of the disposal of computer equipment, the provincial department of education must first be approached to indicate whether any educational institutions are interested in the equipment; and
- (iv) in the case of the disposal of firearms, the National Conventional Arms Control Committee **has** approved any sale or donation of firearms to any person **or** institution within or outside the Republic;
- (c) provide that –
  - (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
  - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
- (d) ensure that where assets are traded in **for** other assets, the highest possible trade-in price is negotiated.

### **Risk management**

**40.** (1) A supply chain management policy must provide for an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.

- (2) Risk management must include –
  - (a) the identification of risks on a case-by-case **basis**;
  - (b) the allocation of risks to the party best suited to manage such risks;

- (c) acceptance of the cost **of** the risk where the cost of transferring the risk is greater than that of retaining it;
- (d) the management of risks in a pro-active manner and the provision **of** adequate cover for residual risks; and
- (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

### **Performance management**

41. A supply chain management policy must provide for an effective internal monitoring system in order to determine, on the basis **of** a retrospective analysis, whether the authorised supply chain management processes are being followed and whether the desired objectives are being achieved.

### ***Part 4: Other matters***

#### **Ethical standards**

42. (1) A supply chain management policy must establish a code of ethical standards complying with subregulation (2) for officials and other role players in the supply chain management system in order to promote –
- (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.

(2) A municipal code of ethical standards must stipulate that an official or other role player involved in the implementation of the supply chain management policy **of** the municipality or municipal entity –

- (a) must treat all providers and potential providers equitably;
- (b) may not use his or her position for private gain or to improperly benefit another person;
- (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate **of** that person;

- (d) notwithstanding subregulation (2)(c), must declare to the accounting officer details of any reward, gift, favour, **hospitality** or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
- (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process **of**, or in any award of a contract by, the municipality or municipal entity;
- (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of **a** contract in which that person, or any close family member, partner or associate, has any private or business interest;
- (g) must be scrupulous in his or her use of property belonging to the municipality or municipal entity;
- (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
- (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
  - (i) any alleged fraud, corruption, favouritism or unfair conduct;
  - (ii) any alleged contravention **of** regulation 43 **(1)**; or
  - (iii) any alleged breach **of** the code of ethical standards.

(3) A supply chain management policy must –

- (a) determine that all declarations in terms of subregulation (2) (d) and (e) must be recorded in a register which the accounting officer must keep for this purpose;
- (b) determine that all declarations by the accounting officer must be made to the mayor and that the mayor must ensure that such declarations are recorded in the register; and

- (c) contain measures to ensure that appropriate action ~~is~~ taken against any official or other role player who commits a breach of the code of ethical standards.

(4) A supply chain management policy must take into account the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management.

(5) A municipality or municipal entity may adopt the National Treasury's code of conduct for supply chain management Practitioners and other role players involved in supply chain management. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity.

**Rewards, gifts and favours to municipal officials and other role players**

43. (1) No person who is a provider of goods or services or prospective provider of goods or services to a municipality or municipal entity, or a recipient or prospective recipient of goods disposed, or to be disposed, of by a municipality or municipal entity, may either directly or through a representative or intermediary promise, offer or grant any reward, gift, favour or hospitality to –

- (a) any official of the municipality or entity; or
- (b) any other role player involved in the implementation of the supply chain management policy of the municipality or entity.

(2) The accounting officer ~~of~~ a municipality or municipal entity must promptly report any alleged contravention of subregulation (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's database of persons prohibited from doing business with the public sector.

### Sponsorships

- 44.** The accounting officer **of** a municipality or municipal entity **must** promptly disclose to the National Treasury any sponsorship promised, offered **or** granted to the municipality or entity, whether directly or through a **representative or** intermediary, by any person who is –
- (a) a provider of goods or services or prospective provider **of** goods **or** services to the municipality or entity; or
  - (b) a recipient or prospective recipient **of** goods disposed, or to be disposed, of by the municipality or enttty.

### Commencement

- 45.** These Regulations take effect for a municipality or municipal entity on the date on which section 111 **of** the **Act** becomes effective for that municipality or municipal entity.

*Handwritten signature*

## SCHEDULE 3

### REGULATORY FRAMEWORK FOR PUBLIC-PRIVATE PARTNERSHIPS

#### Definitions

1. In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and –

**“Act”** means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

**“affordable”**, in relation to a public-private partnership agreement, means that the financial obligations to be incurred by a municipality in terms of the agreement can be met by –

- (a) funds designated in the municipality’s budget for the current year for the activity outsourced in terms of the agreement;
- (b) funds destined for that activity in accordance with the future budgetary projections of the municipality;
- (c) any allocations to the municipality; or
- (d) a combination of such funds and allocations;

**“municipal function”** means –

- (a) a municipal service; or
- (b) any other activity within the legal competence of a municipality;

**“municipal property”**, in relation to a municipality, includes any movable, immovable or intellectual property, owned by or under the control of –

- (a) the municipality; or
- (b) a municipal entity under the sole or shared control of the municipality;

**“private party”** excludes –

- (a) a municipality;
- (b) a municipal entity; or
- (c) an organ of state, including an institution listed in any of the Schedules to the Public Finance Management Act, 1999 (Act **No. 1** of 1999);

**“project officer”** means a person appointed in terms of regulation 7 (1);

**“public-private partnership”** means a commercial transaction between a municipality and a private party in terms of which the private party -

- (i) performs a municipal function on behalf of a municipality ; or
- (ii) acquires the use of municipal property for its own commercial purposes; or
- (iii) performs both a municipal function and acquires the use of municipal property as referred to in (i) and (ii); and
- (iv) assumes substantial financial, technical and operational **risks** in connection with the performance of the municipal function or use of municipal property; and
- (v) receives a benefit for performing a municipal function or from utilising municipal property, by way of -
  - (aa) consideration to be paid by the municipality ; or
  - (bb) charges or fees to be collected by the private party from **users** or customers of a service provided to them; **or**
  - (cc) a combination of (aa) and (bb).



**“transaction advisor”** means a person appointed in terms of regulation 2 (1) (b);

**“value for money”**, in relation to a public-private partnership agreement, means that the performance of a private party in terms of the agreement will result in a net benefit to the municipality in terms of cost, price, quality, quantity, risk transfer or any combination of those factors.

#### **Initiation of feasibility studies**

2. (1) Before a municipality initiates a feasibility study for a public-private partnership contemplated in section 120 (4) of the Act, the accounting officer of the municipality must –

- (a) notify the National Treasury and the relevant provincial treasury in writing of the municipality's intention, together with information on the expertise within the municipality to comply with that section of the Act;  
and
- (b) if requested to do so by the National Treasury or the relevant provincial treasury, appoint a person with appropriate skills and experience, either from within or outside the municipality, as the transaction advisor to assist and advise the municipality on the preparation and procurement of the public-private partnership agreement.

(2) Subregulation (1) also applies when a municipality in terms of section 78(2) of the Municipal Systems Act explores the provision of a municipal service through an external mechanism to be appointed in terms of a public-private partnership agreement.

#### **Additional matters to be addressed in feasibility studies**

3. (1) A feasibility study conducted in terms of section 120 (4) of the Act, in addition to the matters specified in that section, must –

- (a) identify and define the activity which the municipality proposes to outsource to a private party;
- (b) assess the needs of the municipality in respect of such activity, including –

- (i) the various options available to the municipality to satisfy those needs; and
  - (ii) the advantages and disadvantages of each option;
- (c) assess the projected impact of the proposed outsourcing of the activity to a private party on the staff, assets, liabilities and revenue of the municipality or a municipal entity under the sole or shared control of the municipality, which must include an assessment of –
  - (i) the number of officials of the municipality or such entity that would become redundant as a result of the outsourcing of the activity;
  - (ii) the cost to the municipality or such entity of any staff retrenchments or the retention of redundant staff;
  - (iii) any assets of the municipality or such entity proposed to be placed under the control of the private party;
  - (iv) any assets of the municipality or such entity that would become obsolete as a result of the outsourcing of the activity;
  - (v) any liabilities of the municipality or such entity proposed to be ceded to the private party;
  - (vi) any debt of the municipality or such entity attributed to the activity to be outsourced which the municipality or such entity would retain; and
  - (vii) any revenue to be foregone by the municipality or such entity as a result of the outsourcing of the activity; and
- (d) recommend an appropriate plan for the procurement of the proposed public-private partnership agreement, if outsourcing of the activity is the preferred option.

(2) An assessment in terms of subregulation (1) (b) must show comparative projections of –

- (a) the full costs to the municipality for the activity if that activity is not outsourced through a public-private partnership agreement; and

- (b) the full costs to the municipality for the activity if that activity is outsourced through a public-private partnership agreement.

(3) Subregulations (1) and (2) need not be complied with if the activity which the municipality proposes to outsource is a municipal service in respect of which an assessment in terms of section 78 (3) (b) and a feasibility study in terms of section 78 (4) of the Municipal Systems Act have already been carried out, provided that –

- (a) such assessment and feasibility study cover the matters referred to in subregulations (1) and (2); and
- (b) the documents reflecting the results of such assessment and feasibility study are included in the documents submitted to the council in terms of section 120 (6)(a) of the Municipal Finance Management Act.

#### **Procurement of public-private partnership agreements**

4. (1) When complying with Part 1 of Chapter 11 of the Act, the accounting officer of the municipality must solicit the views and recommendations of the National Treasury and the relevant provincial treasury on –

- (a) the proposed bid documentation at least 30 days before bids are publicly invited; and
- (b) the evaluation of the bids received and of any preferred bidder at least 30 days before any award is made.

(2) An award of a public-private partnership agreement –

- (a) may be made only after the process set out in section 120 (6) of the Act has been completed; and
- (b) is subject to compliance with section 33 of the Act.

(3) When complying with section 120 (6)(c) (i) of the Act, the municipality must specifically solicit the views and recommendations of the National Treasury on –

- (a) the proposed terms and conditions of the draft public-private partnership agreement;
- (b) the municipality's plan for the effective management of the agreement after its conclusion; and
- (c) the preferred bidder's –
  - (i) competency to enter into the public-private partnership agreement; and
  - (ii) capacity to comply with his or her obligations in terms of the public-private partnership agreement.

**Basic requirements to which public-private partnership agreements must comply**

**5. A public-private partnership agreement between a municipality and a private party must –**

- (a) bind the private party –
  - (i) to perform a municipal function specified in the agreement for or on behalf of the municipality;
  - (ii) to manage or utilise municipal property specified in the agreement on a commercial basis for own account; or
  - (iii) to carry out both activities set out in subparagraphs (i) and (ii);
- (b) provide for the transfer to, or assumption by, the private party of substantial financial, technical and operational risks in connection with the activities carried out by it in terms of the agreement;
- (c) allow the private party to receive a benefit for such activities in the form of
  - (i) consideration paid to it by the municipality or a municipal entity under the sole or shared control of the municipality;
  - (ii) fees collected by it from users or customers for the activity; or
  - (iii) both such consideration and fees;
- (d) provide value for money to the municipality;
- (e) be affordable for the municipality;
- (f) describe in specific terms the nature of the private party's role in the public-

- private partnership;
- (g) confer effective powers on the municipality –
    - (i) to monitor implementation of, and to assess the private party's performance under, the agreement;
    - (ii) to manage and enforce the agreement;
  - (h) impose financial management duties on the private party, including transparent processes relating to internal financial control, budgeting, accountability and reporting;
  - (i) provide for the termination of the agreement if the private party –
    - (i) fails to comply with any terms or conditions of the agreement; or
    - (ii) deliberately provides incorrect or misleading information to the municipality;
  - (j) restrain the private party, for the full period of the agreement, from offering an employment, consultancy or other contract to a person –
    - (i) who is an official of the municipality or a municipal entity under the sole or shared control of the municipality; or
    - (ii) who was such an official at any time during a period of one year before the offer is made; and
  - (k) comply with section 116 (1) of the Act.

### **Signing of public-private partnership agreements**

6. (1) Only the accounting officer of a municipality may sign a public-private partnership agreement on behalf of the municipality.

(2) The accounting officer may not sign a public-private partnership agreement unless section 33 of the Act has been complied with.

### **Project officers**

7. (1) Prior to notifying the National Treasury in terms of regulation (2), the accounting officer must appoint a person with appropriate skills and experience, either from within or outside the municipality, as the project officer for

the public-private partnership.

- (2) The project officer is responsible for performing –
  - (a) the duties set out in section 116 (2)(c) (i) and (ii) of the Act; and
  - (b) any other the duties or powers delegated by the accounting officer to the project officer in terms of section 79 of the Act.

### **Responsibilities of accounting officers**

**8.** The accounting officer of a municipality which has entered into a public-private partnership agreement must, in addition to complying with section 116 (2) of the Act, take all reasonable steps to ensure –

- (a) that the outsourced activity is effectively and efficiently carried out in accordance with the agreement; and
- (b) that municipal property which is placed under the control of the private party in terms of the agreement is appropriately protected against forfeiture, theft, loss, wastage and misuse.

### **Amendment of public-private partnership agreements**

**9.** (1) A public-private partnership agreement may be amended by the parties provided –

- (a) section 116 (3) of the Act has been complied with; and
- (b) the amendment is consistent with the basic essentials of public-private partnership agreements set out in regulation 5 and other applicable provisions of these Regulations.

(2) At least 60 days before a public-private partnership agreement is amended, the accounting officer must solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the reasons for the amendment.

**Municipal entities**

**10.** No municipal entity may initiate, procure or enter into a public-private partnership agreement on *its* own or on behalf of its parent municipality, but may be a party to a public-private partnership agreement initiated, procured and entered into by *its* parent municipality.

**Commencement**

**11.** These Regulations take effect for a Municipality on 1 March 2005.

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