

**4.  
SUPPLY CHAIN MANAGEMENT IMPLEMENTATION REPORT – 2015/2016:  
2<sup>nd</sup> QUARTER: 01 OCTOBER TO 31 DECEMBER 2015**

**8/2/2**

**C Le Roux  
08 January 2016**

**(028) 313 8107**

**Corporate Head Office**

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**1. Executive Summary**

In terms of Clause 6(3) of Council's Supply Chain Management Policy, the Municipal Manager must, within 10 business days of each quarter, submit a report on the implementation of the Supply Chain Management Policy to the Executive Mayor.

The report contains the following:

- a) awards made through the bid committee system in terms of delegated authority,
- b) deviations from and minor breaches of the Supply Chain Management Policy, respectively approved and ratified by the Accounting Officer in terms of Clause 36 of the Supply Chain Management Policy, dated 25 September 2008 as amended,
- c) the status of Objections and Complaints lodged in terms of Clause 49 of the Supply Chain Management Policy against the implementation of the supply chain management system, and
- d) the status of incidences of irregular expenditure identified to date.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Directorate: Finance  
Department: Supply Chain Management

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Provision and maintenance of municipal services

**4. Delegated Authority**

None

**5. Legal Requirements**

Local Government: Municipal Finance Management Act 2003, (Act 56 of 2003)  
Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

## 6. Background/Discussion/Evaluation/Conclusion

### Background

The purpose of this report is to ensure that Council maintains oversight over the implementation of the Supply Chain Management Policy, specifically regarding the following:

- a) awards made through the bid committee system for the 2<sup>nd</sup> Quarter of the 2015/2016 financial year, 01 October to 31 December 2015;
- b) deviations in terms of Clause 36 of the Supply Chain Management Policy;
- c) minor breaches approved by the Accounting Officer in terms of Clause 36(2) of the Supply Chain Management Policy;
- d) objections and complaints received; and
- e) incidences of non-compliance and irregular expenditure identified and currently undergoing investigation.

### Discussion

#### a) Bid Awards

Bids are awarded in terms of Council's Supply Chain Management Policy and the preferential points system prescribed in the Preferential Procurement Policy.

All awards between R30,000 up to R10 million were approved through the bid committee system.

Procurement transactions have been processed through the bid committee system within the following timeframes:

Procurement Function	2015/2016 2 <sup>nd</sup> Quarter	2015/2016 to date	2014/2015
Bids Processed	27	58	124
Bids Processed- Average per Quarter	29	30	31
Average days from final evaluation to Bid Adjudication Committee	7	6	7
Average days from initiation to Bid Specification Committee	10	10	7
<b>Estimated Value of Awards (R)</b>	<b>70 804 999.61</b>	<b>1 073 436 298.61</b>	<b>326 565 348</b>

A schedule of these awards for the 2<sup>nd</sup> Quarter of 2015/2016 is attached as **Annexure A**.

**Value of all Awards**

The total value of tenders awarded by the Supply Chain Management Unit for the 2<sup>nd</sup> Quarter of 2015/2016 is:

	Operational Amount (Excluding VAT, where applicable)	Capital Amount (Excluding VAT, where applicable)	VAT @ 14%	Value of Awards (Including VAT, where applicable) for Q2
Bid Awards (27)	R 35 817 475.92	R 26 296 790.32	R 8 695 997.27	R 70 804 999.61

**b) Deviations – Clause 36(1)(a)**

Clause 36(1)(a) of Council’s Supply Chain Management Policy allows circumstances for deviations from the procurement processes. Furthermore, the policy requires in Clause 36(2), that the reasons for any deviations from the procurement processes must be recorded and be reported to Council.

Deviations approved by the Accounting Officer or by the delegated officials were motivated in terms of the following categories for applications approved for the 2015/2016 year to date is compared to the 2014/2015 financial year as per the following schedule:

SCM Policy	Description	2015/2016 2 <sup>nd</sup> Quarter	2015/2016 to date	2014/2015
Clause 36(1)(a)(i)	Emergency	2	2	10
Clause 36(1)(a)(ii)	Sole Provider	5	10	19
Clause 36(1)(a)(iii)	Special works of Art	0	2	2
Clause 36(1)(a)(v)	Impractical Impossible	15	27	55
		<b>22</b>	<b>41</b>	<b>86</b>

A schedule of all Deviations approved by the Municipal Manager or by the delegated officials for the 2<sup>nd</sup> Quarter of 2015/2016 is attached as **Annexure B**.

**Value of all Deviations awarded**

The total value of deviations processed via the Supply Chain Management Unit for the 2<sup>nd</sup> Quarter of 2015/2016, are as follows:

	Operational Amount (Excluding VAT, where applicable)	Capital Amount (Excluding VAT, where applicable)	VAT @ 14%	Value of Awards (Including VAT, where applicable) for Q2
Deviations (22)	R 1 626 473.08	R -	R 222 804.20	R 1 849 275.28

**c) Minor Breaches**

The Supply Chain Management Policy states in Clause 36(1)(b) that the Accounting Officer may consider ratifying any minor breach of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.

The Accounting Officer approved 1 minor breach of the Supply Chain Management Policy in the 2<sup>nd</sup> Quarter of the 2015/2016 financial year:

SCMMB #	Date approved	Description
2016/03	2015.12.24	The provision of Security (Guarding) Services for Overstrand Municipality in the Kleinmond area for the period July to September 2015.

**d) Objections and Complaints – Clauses 49 & 50**

In terms of Clause 49 of the SCM Policy, persons aggrieved by decisions or actions taken in the implementation of the supply chain management system, may lodge a written objection against the decision or action within 10 business days of the decision or action.

These objections must be dealt with and resolved in terms of Clause 50(1) of the SCM Policy. In terms of this, the Accounting Officer has appointed an ‘appeals authority’ which must strive to resolve all objections within 46 business days of receipt and report to the Accounting Officer on a monthly basis on the objections received, attended to and resolved in terms of Clause 50(3) of the Policy.

Council is hereby informed that disputes, objections, queries and complaints received during the 2<sup>nd</sup> Quarter of 2015/2016 are attached as **Annexure C**.

**e) Incidences of Non-compliance and Irregular Expenditure**

In terms of Section 32(4) of the Local Government Municipal Finance Management Act (56 of 2003) the Executive Mayor, inter alia, must be made aware of all possible irregular expenditure incurred by the municipality.

A register of all incidences of irregular expenditure identified and currently undergoing investigation is attached as **Annexure D**.

**f) Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings**

The Minister of Finance has, in terms of sections 168 and 175, of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, gazetted the Local Government: Municipal Finance Management Act, 2003, Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings in Government Notice No. R. 430 on 30 May 2014 effective from 1 June 2014.

The objective of the Regulations is to set out processes and procedures that a municipality and municipal entities must follow when dealing with allegations of financial misconduct. The regulations will apply to all officials and political office bearers within municipalities and municipal entities. (See attached **Annexure E**)

National Treasury has issued MFMA Circular No.76: Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings as guidance to assist Municipalities with the implementation of the regulations. (See attached **Annexure F**)

Management has developed a process flow to guide the implementation of the regulations at Overstrand Municipality. (See attached **Annexure G**)

**7. Financial Implications**

None

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

Annexure A: Schedule of Awards made through the Bid Committee system

Annexure B: Schedule of Deviations from the procurement processes

Annexure C: Schedule of disputes, objections, queries and complaints received

Annexure D: Schedule of Irregular Expenditure

Annexure E: Local Government: Municipal Finance Management Act, 2003, Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings

Annexure F: MFMA Circular No.76: Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings

Annexure G: Overstrand Municipality Financial Misconduct process flow

**RECOMMENDATION TO THE COUNCIL:**

that **cognisance be taken** of the activities undertaken and outcomes achieved in the implementation of the Overstrand Municipality Supply Chain Management Policy for the 2<sup>nd</sup> Quarter of 2015/2016.

**RESPONSIBLE OFFICIAL :**

**C LE ROUX**

**TARGET DATE FOR IMPLEMENTATION :**

**TO BE NOTED**



**SUPPLY CHAIN MANAGEMENT REPORT IN TERMS OF CLAUSE 5(3) OF THE SCM POLICY  
TENDERS & FORMAL WRITTEN QUOTATIONS AWARDED TO THE BIDDER SCORING THE HIGHEST POINTS AS WELL AS TENDERS CANCELLED IN TERMS OF COUNCIL'S PREFERENTIAL  
PROCUREMENT POLICY - OCTOBER - DECEMBER 2015**

#	Tender #	Description	Tender Awarded / Cancelled	Awarded to	S-BBEE Status Level	Completion Period	Unit Price	Amount Operational	Amount Capital	VAT @ 14%	Total Amount (including VAT)
1	SC15020015	Site of Unmanned ERF 1165-1166-1167 for Residential Purposes	2015/10/30	Laborum Afrimat	MA	N/A	-	R 760 473,59	R 110 526,30	R 870 000,00	
2	SC15020015	Mechanical, Electrical & Civil Works of Sewage pump station, Hermonas	2015/10/02	Neto Tech Systems (Pty) Ltd	2	2010/06/30	-	R 1 425 468,00	R 199 565,32	R 1 625 033,32	
3	SC15020015	Upgrading of residential roads in Majara (Hlabeni)	2015/10/09	ATH Group (Pty) Ltd	1	2016/06/30	-	R 5 443 162,88	R 760 042,29	R 6 203 205,17	
4	SC15020015	Mounting tables for live and appearance stations across Overstrand Municipality	2015/10/08	DEP Technologies (Pty) Ltd	Non-compliant contributor	2017/06/30	Verse	R 281 606,05	-	R 30 428,85	R 321 034,90
5	SC15020015	Management of Short-term licences for Overstrand Municipality for period ending 30 June 2018	2015/10/18	Next Swan Consultancy (Pty) Ltd	Non-compliant contributor	2018/06/30	-	R 3 807 810,00	-	R 548 894,00	R 4 356 704,00
6	SC15020015	Provision of Hygiene Services to Overstrand Municipality for a contract period ending 30 June 2018	2015/10/23	Stamer Hygiene Services (Pty) Ltd	2	2018/06/30	Verse	R 688 914,00	-	R 92 247,84	R 781 161,84
7	SC15020015	Provision of OHS Services in the Overstrand Municipal area for a contract period ending 30 June 2017	2015/10/23	EBPE South Africa (Pty) Ltd	3	2017/06/30	Verse	R 382 102,00	-	R 53 489,20	R 435 591,20
8	SC15020015	Transverse Provision of Building Services	2015/10/20	ABSA Bank (Pty) Ltd	MA	2017/11/20	Verse	R 5 000 000,00	-	R 695 670,40	R 5 695 670,40
9	SC15020015	Protective clothing and uniforms for Protection Services 1 July 2015 - 30 June 2016	2015/11/28	Cancelled - Vaidity period expired	MA	N/A	-	-	-	-	6
10	SC15020015	Traffic speed measuring, speed cameras for speed, number plate recognition system & truck office for fire collection	2015/11/12	TUM Services & Supplies (Pty) Ltd	2	2019/03/31 + 18 Month "try out"	AARTE R 40,00 Non-AARTE R 72,00	R 11 916 000,00	R 1 688 240,00	R 13 604 240,00	
11	SC15020015	Supply of Medium & Low Voltage network in Westpark, Genetank, Frankston & Stutterd	2015/11/12	Alexico Construction (Pty) Ltd	2	2018/06/30	-	R 8 961 303,36	R 960 759,49	R 9 922 062,85	
12	SC15020015	Upgrading of the Existing Boundary Wall at the Zonelle Sportsground, Phase 2	2015/11/06	Masanda Trading CC	Non-compliant contributor	2018/06/30	-	R 250 000,00	R 30 000,00	R 280 000,00	
13	SC15020015	Supply of sewerage vacuum tankers for period 1 December 2015 to 30 November 2018	2015/11/06	Cancelled - Incorrect Preference Points System Applied	MA	N/A	-	-	-	-	
14	SC15020015	Lease of Refreshment Kiosks: Patrick Cawston Park, Kalkbarron	2015/11/27	Dunwyn de la Gueire	MA	2016/06/30	R 284,00	R 23 202,72	R 3 289,88	R 26 492,60	
15	SC15020015	Lease of Refreshment Kiosks: Circus Circus Park, Circus Rise	2015/11/27	Andrew Sebbs	MA	2016/06/30	R 1 140,00	R 98 824,20	R 5 434,97	R 104 259,17	
16	SC15020015	Upgrading of the Pre-bidder Process of the Pearly Beach WTW	2015/11/20	Cancelled - Incorrect Preference Points System Applied	MA	N/A	-	-	-	-	
17	SC15020015	Training in the Application of Health and Safety Legislation and Principles regarding Hazardous Substances in the Workplace	2015/11/20	Cancelled - No response bids received	MA	N/A	-	-	-	-	
18	SC15020015	Training of Chemist Operators	2015/11/20	Cancelled - No response bids received	MA	N/A	-	-	-	-	

Appendix A<sub>1/2</sub>



**SUPPLY CHAIN MANAGEMENT REPORT IN TERMS OF CLAUSE 5(3) OF THE SCM POLICY  
TENDERS & FORMAL WRITTEN QUOTATIONS AWARDED TO THE BIDDER SCORING THE HIGHEST POINTS AS WELL AS TENDERS CANCELLED IN TERMS OF COUNCIL'S PREFERENTIAL  
PROCUREMENT POLICY- OCTOBER - DECEMBER 2015**

#	Tender #	Description	Date Awarded / Cancelled	Awarded to	S-BBEE Status Level	Completion Period	Unit Price	Amount Operational	Amount Capital	VAT @ 14%	Total Amount (Including VAT)
18	SC18370015	Annexment: The provision of additional Hotel Licenses	2015/11/12	Legal Dynamics (Pty) Ltd	N/A	2017/11/30	R	167 130,00	156 040,00	R 38 842,40	R 365 002,40
19	SC18380015	Turnover: Supply and Delivery of Protective Clothing to Overstrand Municipality for a period ending 31 March 2016	2015/11/28	PG Uniforms CC Inlight Safety Products (Pty) Ltd	N/A	2016/03/31	R	173 347,26 R 221 582,73		R 24 212,63 R 48 441,58	R 181 560,00 R 270 024,31
20	SC18390015	Turnover: Traffic Speeding Monitoring Services and Data Office Support	2015/11/23	TMT Review & Supply (Pty) Ltd	N/A	2016/03/31	MARKET R 34,50 Non-MARKET R 89,54	R 1 100 000,00		R 124 000,00	R 1 224 000,00
21	SC18400015	Appointment of Professionals	2015/12/04	Engelwood & George Architects C CSM Consulting Services Joseph Architects and Urban Design Bergman South Africa Consulting & Co	4 2 3 3	2016/06/30	Variable	R 1 108 413,10		R 124 007,04	R 1 232 420,14
22	SC18410015	Installation of Existing panel meets in Swabias - Phase 1	2015/12/04	Wolmar-Hooden CC (a LWA Queue CC)	1	2016/06/30			R 4 457 803,56	R 504 114,80	R 4 961 918,36
23	SC18420015	Accommodation of Informal Settlers and Dogs for a contract period ending 30 June 2016	2015/12/15	Silverhead Animal Rescue Centre (BARC) - Genesee/Sarabul Heritage Animal Welfare Society (Pty) Ltd - Namakwa	Non-compliant Contributor Non-compliant Contributor	2018/06/30 2018/06/30	Variable Variable	R 1 002 231,40		R 140 372,40	R 1 142 603,80
24	SC18430015	Provision of alarm systems for Overstrand Municipality for a contract period ending 30 June 2016	2015/12/15	407 Security (Pty) Ltd	6	2016/06/30	Variable	R 671 524,89		R 84 014,86	R 755 539,75
25	SC18440015	Crime Subscription for Access to Legal Information	2015/12/15	Secur International Security (Pty) Ltd Lesa Nwoni (Pty) Ltd	3	2017/11/30	Variable	R 213 492,11		R 20 288,80	R 233 780,91
26	SC18450015	Provision of email works and maintenance as and when needed for a contract period ending 30 June 2016	2015/12/17	Alex Bailey Civil Engineering and Construction CC	5	2016/06/30	Variable	R 10 095 541,60		R 1 483 305,52	R 11 578 847,12
27	SC18460015	Lease of a portion of ERF 830, Hermanus, known as 'Brennang's Cove', for the operation of a restaurant	2015/12/15	Brennang's Cove CC	N/A	2020/12/31	R 43 000,00		R 8 093 258,90	R 974 726,50	R 9 068 005,40

Approved: *[Signature]* A2/2



**DEVIATIONS FROM THE POLICY, APPROVED IN TERMS OF CLAUSE 36(1)(a) FOR THE QUARTER-OCTOBER TO DECEMBER 2015**

Deviation #	Date Approved	Deviation in terms of Clause 36(1)(a)	Description	Responsible Official	Awarded to	Amount Operational	Amount Capital	VAT @ 14%	Value of the Deviation
1	2015/10/26	Clause 36(1)(a)(v)	Renting of marquee tent at the Hermanus Whale Festival	Manager, Communications, Zwerf N	Hermanus Whale Festival	R 7 995,00		R -	R 7 995,00
2	2015/10/21	Clause 36(1)(a)(v)	Exhibition at The Beeld Holiday Show from the 26 - 28 February 2016	Acting Manager : Tourism, Kurtz J	Beeld Holiday Show	R 16 939,00		R 2 371,32	R 19 309,32
3	2015/10/13	Clause 36(1)(a)(v)	Calibration and servicing of equipment used in the roadworthy test centre	Chief Traffic Services, Fraser R	Workshop Electronics CC	R 3 282,50		R 416,80	R 3 678,30
4	2015/10/29	Clause 36(1)(a)(v)	Overhauling of the Nissan UD 70 sewerage truck / CEM 21722 and the Mercedes-Benz fire truck / CEM 21592Z-scargas	Acting Manager - Fleet Frans F	SPATE Industries ( Pty) Ltd	R 103 024,81		R 14 423,29	R 117 448,00
5	2015/10/21	Clause 36(1)(a)(v)	Attending a conference for occupational health nursing practitioners and registered members of SASORH on the 4 - 9 November 2015	Senior Manager: Human Resources, Bouchanan L	South African Society of Occupational Health Nursing ( SASORH )	R 3 710,00		R -	R 3 710,00
6	2015/10/21	Clause 36(1)(a)(v)	Legalisation of LP gas system in the Banquetting Hall in terms of SABS 10087-1	Area Manager: Hermanus, Klatny D	M3 Electrical	R 6 250,00		R -	R 6 250,00
7	2015/10/26	Clause 36(1)(a)(v)	Attending of a fire and emergency conference	Chief: Fire - Rescue and Disaster Management, Sibeth L	IMD Conferences, Exhibitors and Woodstock PTY) Ltd	R 13 200,00		R 1 848,00	R 15 048,00
8	2015/10/26	Clause 36(1)(a)(v)	Attendance of a conference provided by the institute for Municipal Engineering of South Africa	Senior Manager, Geosteel Administration, Myburgh F	Institute of Municipal Engineering of South Africa	R 5 482,46		R 767,54	R 6 250,00
9	2015/11/16	Clause 36(1)(a)(ii)	Reassessment of Vicotest cable kiosk due to the hardware changes and software upgrades	Senior Manager, Electro Technical Services, Du Plessis K	Vicotest ( Pty) Ltd	R 6 692,20		R 964,91	R 7 657,11
10	2015/11/16	Clause 36(1)(a)(ii)	Servicing of the boiler at the Garabast material recovery facility at the Garabast landfill site.	Deputy Director: Engineering Planning, Blignaut H	Aluak Manufacturing Engineering Company (Pty) Ltd	R 2 725,00		R 382,00	R 3 106,00
11	2015/11/17	Clause 36(1)(a)(v)	Attending a conference on Municipal Finance Financial Sustainability of utilities and special rating areas, by eight municipal offices	Senior Manager, Human Resources, Bouchanan L	MFC ( Institute of Municipal Finance Officers )	R 4 912,26		R 687,72	R 5 600,00
12	2015/11/24	Clause 36(1)(a)(ii)	Sanitrac training for two municipal officials.	Senior Manager, Human Resources, Bouchanan L	NOSA ( Pty) Ltd	R 27 936,60		R 3 911,40	R 31 800,00
13	2015/11/20	Clause 36(1)(a)(ii)(a)	Locating of a cable fault between Phuntshani minibus and Madatsela minibus	Senior Manager: Electro Technical Services - Brouwer F	Caltest CC (via Protection Testing	R 4 997,05		R 699,05	R 5 696,20

Annexure B  
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**DEVIATIONS FROM THE POLICY, APPROVED IN TERMS OF CLAUSE 36(1)(a) FOR THE QUARTER-OCTOBER TO DECEMBER 2015**

#	Deviation #	Date Approved	Deviation in terms of Clause 36(1)(a)	Description	Responsible Official	Awarded to	Amount Operational	Amount Capital	VAT @ 14%	Value of the Deviation
14	SCD2860	2015/1/24	Clause 36(1)(a)(v)	Hiring of sewerage vacuum tankers for the Klermond and Gansbaai areas from 1 December 2015 – 31 January 2016	Deputy Director: Operational Services, Barrman M	Abachumeli Trading 851 CC via Pollution Control Services	R 486 701.75		R 68 138.25	R 554 840.00
15	SCD2860a	2015/1/21	Clause 36(1)(a)(v)	Hiring of sewerage vacuum tankers for the Klermond and Gansbaai areas from 1 December 2015 – 31 January 2016 - AMENDMENT OF TOTAL VALUE	Deputy Director: Operational Services, Barrman M	Abachumeli Trading 881 CC via Pollution Control Services	R 244 231.58		R 34 102.42	R 278 424.00
16	SCD2860b	2015/1/22	Clause 36(1)(a)(v)	Hiring of sewerage vacuum tankers for the Klermond and Gansbaai areas from 22 December 2015 to 5 January 2016	Deputy Director: Operational Services, Barrman M	Jeyave South Africa (Pty) Ltd	R 270 000.00		R 37 800.00	R 307 800.00
17	SCD2860c	2015/1/29	Clause 36(1)(a)(v)	Hiring of sewerage vacuum tankers for Klermond and Gansbaai Areas from 22 December 2015 – 05 January 2016 - AMENDMENT OF TOTAL VALUE	Deputy Director: Operational Services, Barrman M	Jeyave South Africa (Pty) Ltd	R 371 250.00		R 51 970.00	R 423 220.00
18	SCD2861	2015/1/201	Clause 36(1)(a)(v)	Attending of training seminar for mobile cyber defence strategies; protective mobile devices for three municipal officials	Senior Manager: Human Resources, Buchanan L	Elvitus CC	R 16 770.00		R -	R 16 770.00
19	SCD2862	2015/1/30	Clause 36(1)(a)(v)	Attending of WISA 2016 Conference and Election by two municipal officials	Deputy Director: Engineering Planning, Regional H	Water Institution of South Africa	R 13 859.65		R 1 940.35	R 15 800.00
20	SCD2863	2015/1/10	Clause 36(1)(a)(ii)	Repair of the SCADA system	Senior Manager: Electrotechnical Services, du Plessis J	Spectrum Communications (Pty) Ltd	R 5 530.00		R 774.20	R 6 304.20
21	SCD2864	2015/1/207	Clause 36(1)(a)(i)(a)(i)	Locating of a cable fault between Sandbaai Switching Station Eskom 6 feeder and Eskom Distributor Substation	Senior Manager: Electrotechnical Services, du Plessis J	Calcedi CC via Protection Testing	R 5 772.50		R 828.15	R 6 590.65
22	SCD2865	2015/1/2/14	Clause 36(1)(a)(v)	The identification and repair of faults (strip and quote) with CEM15338 Cherry Picker	Manager: Housing, Frans F	Hydranco (Pty) Ltd	R 5 030.00		R 704.20	R 5 734.20
							R 1 626 872.08	R -	R 222 004.20	R 1 848 876.28

Annexure B  
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SUPPLY CHAIN MANAGEMENT												
APPEALS / COMPLAINTS / DISPUTES / QUERIES REGISTER - 2015/2016												
#	TENDER NO	Date Advert closed	Evaluation Date	Adjudication Date	Description	Awarded to	Complainant	Appeal / Complaint / Dispute Query	Date received	Where in process	Date of Outcome	Outcome
1	SC 1563/2015	2015/05/29	2015/10/15	2015/10/20	Sale of art 11466 Hermaeus	L Mmwar	TL Havings	Appeal against the fairness evaluation of the offers	2015/11/12	Refer to Section 62 appeal		
2	SC 1579/2015	2015/06/08	2015/11/05	2015/11/12	Traffic Speed Measuring camera and back office for fine collection in the Overstrand	TMT Services (Pty) Ltd	Sybil (Pty) Ltd	Appeal against the awarding of tender to TMT Services	2015/11/30	Refer to Section 62 appeal		
3	SC 1565/2015	2015/07/17	2015/11/26	2015/12/04	Appointment of Architects, Architectural Technologists, structural engineers and Quantity Surveyors	Engelbrecht & Scorgie	John C. Pfeiffer Architecture	Appeal against the awarding of tender to Engelbrecht & Scorgie	2015/12/15	Refer to Section 62 appeal		

Supply Chain Management Policy															
Irregular Expenditure Incurred in terms of Paragraph 36(2)															
Register 2015/2016															
SCM#	Date of Discovery	Date Reported to the Accounting Officer	Date of Mems	Removal	Issue approved for payment	Report to Council	Net Trade	Description	Type of Prohibited Expenditure	Amount to be Approved	Responsible Function	Amount Capital	Amount Operational	VAT @ 15%	Total
<b>i. Incidences identified and currently under investigation</b>															
2015001	20150415	20150617	20150410 (20150513)	20150410	20150417	20151009	20150620	Provision of food to the department officials who were participating in the 2015/16 budget process (from the period of February and March 2015)	SCM Issue 19	R 4 000,00	Production and Security Services	R -	R 4 000,00	R -	R 4 000,00
2015007	20150624	20150628	20150629	20150628	20150620	20151029	20150620	The issue of medical oxygen cylinders for use at the workplace in Pretoria and its district	SCM Issue 19	R 7 400,00	Community Services / Production and Security Services	R -	R 7 400,00	R 1 110,00	R 8 510,00
2015008	20150801	20150830	20150829	20150829	20150829	20151028	20150820	The supply and delivery of equipment to the Department during the budget process for the period September 2015, without following the usual procurement process	SCM Issue 19	R 1 410,00	Community Services	R -	R 1 410,00	R 167,25	R 1 577,25
<b>ii. Investigation reports received for consideration in terms of the MFMA Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings</b>															
2015001	20150616	20151029	20150628	20151028	20151028	20150629	20151028	The allocation of a contracted fee to a consultant for training purposes for a newly established service provider, without following the usual procurement process, or the timely application and approval of a variation in terms of Paragraph 36 of the SCM Policy	SCM Issue 11	R 3 807,44	Infrastructure and Planning	R -	R 3 807,44	R 541,44	R 4 348,88
2015002	20151002	20151029	20151019	20151028	N/A	20150423	20151029	The provision of security services for various sites and properties controlled by Overstrand Municipality, without following the usual procurement process, or the timely application and approval of a variation in terms of Paragraph 36 of the SCM Policy	SCM Issue 11	R 794 000,00	Community Services	R -	R 794 000,00	R 109 760,00	R 903 760,00
2015003	20151005	20151028	20151019	20151028	N/A	20150629	20151028	The provision of a mobile tax database for municipalities and preparation of a report on the impact of the mobile tax database on the financial performance of the municipalities, without following the usual procurement process, or the timely application and approval of a variation in terms of Paragraph 36 of the SCM Policy	SCM Issue 11	R 47 880,00	Finance	R -	R 47 880,00	R 6 793,20	R 54 673,20
<b>iii. Incidences received, consideration and condoned in terms of clause 39(1)(d) of the Overstrand Municipality SCM Policy</b>															
2015004	20150202	20151029	20151024	20150124	20150124	In Progress	In Progress	The Supply and Delivery of cement to Municipal authorities for the correct supply and not the one identified through the usual procurement process	SCM Issue 11	R -	Community Services	R -	R -	R 2 338,54	R 2 338,54

NOTE: Condoned incidences reported in the last quarter SCM expenditure report being those listed in items above and still under investigation due to the municipality being the respondent, consideration and report of the Municipal Finance Management Reportable on Financial Misconduct Procedures and Criminal Proceedings and National Treasury MFMA Circular No. 18 (published during October 2015).

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## GOVERNMENT NOTICE

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### NATIONAL TREASURY

### CORRECTION NOTICE

In Ordinary (National) Government Gazette No. 37682, of 30 May 2014, Government Notice No. 425 is hereby withdrawn and replaced with the following:

No. R. 430

30 May 2014

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003

#### MUNICIPAL REGULATIONS ON FINANCIAL MISCONDUCT PROCEDURES AND CRIMINAL PROCEEDINGS

The Minister of Finance has, in terms of sections 168 and 175, of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), and acting with the concurrence of the Minister of Cooperative Governance and Traditional Affairs, made the regulations as set out in the Schedule.

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## CHAPTER 1 INTERPRETATION

### Definitions

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

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

“designated official” means the official identified in a municipality or municipal entity to receive reports of allegations of financial offences against councillors or members of the board of directors of municipal entities;

“disciplinary board” means a disciplinary board established in terms of regulation 4(1) or a disciplinary board of a district municipality or provincial structure referred to in regulation 4(8);

“financial misconduct” means any act of financial misconduct referred to in—

- (a) section 171 of the Act committed by an official of a municipality; or
- (b) section 172 of the Act committed by an official of a municipal entity;

“financial offence” means any offence referred to in section 173 of the Act committed by—

- (a) an official of a municipality or municipal entity;
- (b) a councillor of a municipality;
- (c) a member of the board of directors of a municipal entity; or
- (d) any other person;

“investigator” means the board, treasury, person or team conducting a full investigation in terms of regulation 5(4).

## CHAPTER 2 FINANCIAL MISCONDUCT PROCEDURES

### Application of Chapter

2. This Chapter applies to alleged financial misconduct.

### Reporting of allegations of financial misconduct

3. (1) Any person must report an allegation of financial misconduct against—
- (a) the accounting officer, a senior manager or the chief financial officer of a municipality, to the municipal council of the municipality, the provincial treasury and the national treasury;
  - (b) an official of a municipality other than its accounting officer, to that accounting officer;
  - (c) the accounting officer of a municipal entity, to the chairperson of the board of directors, the mayor and the accounting officer of the entity's parent municipality;

- (d) an official of a municipal entity other than its accounting officer, to that accounting officer.
- (2) The mayor, the accounting officer or chairperson of the board of directors, as the case may be, must table an allegation referred to in sub-regulation (1) before the municipal council or, board of directors in the case of municipal entities, not later than seven days after receipt thereof or at the next sitting of the council or the board of directors.
- (3) The person to whom an allegation of financial misconduct has been reported in terms of sub-regulation (1) must ensure that the report is treated in a confidential manner.
- (4) This regulation must not be read as preventing a person from laying a criminal charge with the South African Police Service against any councillor, member of the board of directors of a municipal entity, or official of a municipality or municipal entity in relation to any conduct that may constitute an offence in terms of Part 2 of Chapter 15 of the Act.
- (5) An official against whom an allegation of financial misconduct is made must be given an opportunity to make written representation to the municipality or municipal entity as to why he or she should not be suspended, within seven days of being notified of the allegation.

**Establishment of disciplinary board and its functioning**

4. (1) A municipal council or board of directors of a municipal entity must establish a disciplinary board to investigate allegations of financial misconduct in the municipality or municipal entity, and to monitor the institution of disciplinary proceedings against an alleged transgressor.
- (2) A disciplinary board is an independent advisory body that assists the council or the board of directors with the investigation of allegations of financial misconduct, and provide recommendations on further steps to be taken regarding disciplinary proceedings, or any other relevant steps to be taken.
- (3) A disciplinary board must consist of maximum five members appointed on a part-time basis by the council or board of directors for a period not exceeding three years, in accordance with a process as determined by the municipal council or board of directors.
- (4) A member of a disciplinary board must-
- (a) be a natural person;
- (b) be a citizen or permanent resident of the Republic and resident in the province where the municipality is situated; and
- (c) not be disqualified under sub-regulation (5).
- (5) The following persons are disqualified from membership of a disciplinary board:
- (a) a person who has been convicted of an offence in terms of this regulation or any other legislation;

- (b) a person who, whether in the Republic or elsewhere, has been convicted of theft, fraud, forgery, the uttering of a forged document or any offence of which dishonesty is an element;
- (c) a person who has at any time been removed from any office of trust on account of misconduct or dishonesty;
- (d) an accounting officer of a municipality or municipal entity;
- (e) a political office-bearer or a member of a board of directors; and
- (f) a person who is an office-bearer in a political party.

- (6) A disciplinary board may consist of—
- (a) the head of the internal audit unit within the municipality or municipal entity or representative of an organisation performing internal audit functions for the municipality or municipal entity if the internal audit function is outsourced;
  - (b) one member of the Audit Committee of the municipality or municipal entity;
  - (c) a senior manager from the legal division in the municipality or municipal entity;
  - (d) a representative of the National Treasury or the provincial treasury; and
  - (e) any other person as may be determined by the municipal council or board of directors of a municipal entity.

(7) If an official referred to in sub-regulation (6)(a) or (c) is implicated in the financial misconduct, the municipality or municipal entity may co-opt a senior manager in another unit, who does not have a conflict of interest.

(8) If a municipality or municipal entity does not have sufficient capacity to establish a disciplinary board, a disciplinary board established by a district municipality or an equivalent provincial or national structure established for a similar purpose may, with approval of the district municipality or provincial or national structure, be used as a disciplinary board for the municipality or municipal entity.

#### **Preliminary investigation of allegations of financial misconduct**

5. (1) On receiving a report in terms of regulation 3(1), if the municipal council, board of directors or accounting officer of the municipality or municipal entity, is satisfied that there is reasonable cause to believe that an act of financial misconduct has been committed, it must within seven days refer the matter to the disciplinary board to conduct a preliminary investigation into the allegation as envisaged in terms of section 171(4)(a) or 172(3)(a) of the Act.
- (2) A disciplinary board must conduct a preliminary investigation to determine whether or not the allegation is founded and make a recommendation to the council or board of directors as to whether sufficient grounds exist to warrant a full investigation into the allegation.
- (3) If, during a preliminary investigation, the disciplinary board determines that the allegation is frivolous, vexatious, speculative or obviously unfounded, the investigation must be terminated.
- (4) If the disciplinary board determines that the allegation is founded, a full investigation must be conducted by—
- (a) the disciplinary board;
  - (b) the provincial treasury or the National Treasury, but only if the conditions specified in regulation 19 apply; or

- (c) where the cost, the seniority of the alleged transgressor and the seriousness or sensitivity of investigating the alleged financial misconduct, warrants such a step, by—
- (i) a person appointed by the council or board of directors who has appropriate specialist expertise and who is not an official of the municipality or municipal entity; or
  - (ii) an independent team of investigators appointed by the council or the board of directors;
- in accordance with the applicable supply chain management prescripts.
- (5) A team of investigators appointed in terms of sub-regulation (4)(c)(ii) may include—
- (a) a person, other than an official of the municipality or municipal entity, with appropriate specialist expertise, designated by the municipal council or the board of directors; or
  - (b) an official of the department responsible for local government in the relevant province, designated by the department; or
  - (c) an official of the provincial treasury or the National Treasury, designated by the relevant treasury.
- (6) The investigator or investigating team appointed in terms of sub-regulation (4)(c) must, within a period of 30 days of the appointment, submit a report with recommendations to the mayor or accounting officer as may be appropriate.

#### Investigation of allegation of financial misconduct and submission of reports

6. (1) A municipality or municipal entity must develop terms of reference for an investigation, in terms of regulation 5, within seven days of receipt of a referral from a disciplinary board for approval by the council or the board of directors.
- (2) If the council or the board of directors has not acted on the recommendation by the disciplinary board that the financial misconduct is founded and sufficient grounds exist to warrant a full investigation into the allegation, the disciplinary board may request the provincial treasury or the National Treasury for assistance and a possible intervention in terms of regulation 19.
- (3) After completion of a full investigation, the investigator must—
- (a) compile a report on the investigation;
  - (b) submit its report to the mayor or the chairperson of the board of directors and the accounting officer together with its findings and recommendations, if applicable, regarding disciplinary steps that should be taken against the alleged transgressor; and
  - (c) immediately inform the speaker of the council of the submission of the report referred to in paragraph (b), and also submit a copy of the report to the provincial treasury and the National Treasury.
- (4) The mayor, speaker, accounting officer or the chairperson of the board of directors must table the report of the investigation referred to in sub-

regulation (3)(b) in the council or the board of directors at the first sitting after the report is finalised.

(5) If the report that is tabled in the council or the board is amended, the person tabling the report must provide written reasons for the amendments to the council or the board.

(6) If the findings or recommendations of the report referred to in sub-regulation (3)(b) are rejected by the council or the board, reasons for the rejection must be provided to the investigator within five days of the rejection.

(7) Where the recommendations of the report referred to in sub-regulation (3)(b) regarding disciplinary steps against the alleged transgressor are not implemented, the investigator must notify the provincial treasury and the National Treasury for a possible intervention in terms of regulation 19.

(8) If the investigator recommends that disciplinary proceedings be instituted against the alleged transgressor the council or board of directors must by way of resolution institute the disciplinary proceedings-

- (a) in the case of a senior manager, in accordance with the Local Government Disciplinary Codes and Procedures for Senior Managers Regulations made in terms of the Municipal Systems Act; or
- (b) in the case of an official who is not a senior manager, in accordance with the applicable collective bargaining agreement concluded in the bargaining council established for municipalities and municipal entities.

(9) Where the alleged transgressor is found guilty of financial misconduct after the disciplinary proceedings, he or she may not be re-employed in any municipality for a period of ten years as provided in section 57A(3) of the Municipal Systems Act.

#### Purpose of investigations

7. An investigation in terms of regulations 5 and 6 must establish-
- (a) whether the allegation of financial misconduct has any substance; and
  - (b) if it has substance, whether sufficient grounds exist for instituting disciplinary proceedings against the alleged transgressor.

### CHAPTER 3 CRIMINAL PROCEEDINGS

#### Application of Chapter

8. This Chapter applies to alleged financial offences.

#### Reporting of allegations of financial offences

9. (1) Any person may report an allegation of a financial offence against-

- (a) a councillor of a municipality, to the designated official, the Minister of Finance and the MEC for finance;
  - (b) the speaker of a municipality, to the mayor of the municipality;
  - (c) a member of the board of directors of a municipal entity, to the designated official or, if the designated official is implicated, to the mayor and the accounting officer of the entity's parent municipality.
- (2) An allegation referred to in sub-regulation (1)(a) or (b) must be dealt with in terms of the Code of Conduct for Councillors in Schedule 1 to the Municipal Systems Act.
- (3) An allegation referred to in sub-regulation 1(c) must be dealt with in terms of the Code of Conduct for directors and members of staff of municipal entities in section 93L of the Municipal Systems Act.

#### Reporting of alleged financial offence to South African Police Service

10. (1) Where a financial offence has been committed by any person referred to in section 173 of the Act, the accounting officer or, if the accounting officer is involved, the municipal council or board of directors of the municipal entity, as the case may be, must report the alleged financial offence to the South African Police Service.
- (2) If there is a likelihood of further financial loss for a municipality or municipal entity as a result of a financial offence, the accounting officer, council or board of directors must report the matter without delay to the South African Police Service and not await the completion of any investigation referred to in regulations 5 and 6 related to the financial offence.
- (3) Where a financial offence is successfully prosecuted, the judgment must be reported to the National Treasury, together with full details of the convicted person, the name of the municipality where the offence was committed and the sanction that was imposed.

#### Allegations of financial offences not amounting to breaches of Code of Conduct for Councillors

11. (1) The designated official must, on receipt of a report of alleged financial offence referred to in section 173(4) or (5) of the Act by a councillor—
- (a) authorise an investigation of the facts and circumstances of the alleged financial offence; and
  - (b) give that councillor an opportunity to make, within five days, a written submission with regard to the alleged financial offence.
- (2) As soon as the designated official has complied with sub-regulation (1), the designated official must submit a report, within five days of completing the investigation, on the outcome of the investigation to the municipal council.

- (3) The designated official must ensure that the public has access to the report referred to in sub-regulation (2).
- (4) The designated official must, within five days of submitting the report to council, submit the report on the outcome of the investigation to—
- (a) the MEC for finance in the province;
  - (b) the MEC for local government in the province;
  - (c) Minister of Finance, and
  - (d) Minister responsible for local government.

**Allegations of financial offences not amounting to breaches of Code of Conduct for members of the board of directors of municipal entities**

12. (1) The designated official must, on receipt of a report of alleged financial offence referred to in section 173(5) of the Act by a member of the board of directors or any other person referred to in that section—
- (a) authorise an investigation of the facts and circumstances of the alleged financial offence; and
  - (b) give that member of the board of directors or other person the opportunity to make, within five days, a written submission with regard to the alleged financial offence.
- (2) As soon as the designated official has complied with sub-regulation (1), the designated official must, within five days of completing the investigation, submit a report on the outcome of the investigation to the board of directors.
- (3) The designated official must ensure that the public has access to the report referred to in sub-regulation (2).
- (4) The designated official must, within five days of submission to the board of directors, furnish a report on the outcome of the investigation to—
- (a) the board of directors;
  - (b) the municipal council of the entity's parent municipality;
  - (c) the MEC for finance in the province;
  - (d) the MEC for local government in the province;
  - (e) the Minister of Finance; and
  - (f) the Minister responsible for local government.

**CHAPTER 4**

**GENERAL**

**Application of Chapter**

13. This Chapter applies to alleged financial misconduct and financial offences.

**Preparation of information document on alleged financial misconduct and financial offences**

14. (1) The municipality or municipal entity must prepare an information document on any alleged financial misconduct or financial offence stating—
- (a) the name and position of the person against whom the allegation was made;
  - (b) a summary of the facts and circumstances of the alleged financial misconduct or financial offence, including the monetary value involved;
  - (c) any disciplinary steps taken or to be taken against the person concerned, or if no disciplinary steps have been or are to be taken, the reasons for that decision;
  - (d) in the case of a financial offence, the case number issued by the South African Police Service; and
  - (e) any steps taken or to be taken to recover any unauthorised, irregular or fruitless and wasteful expenditure incurred as a result of the alleged financial misconduct or financial offence in terms of section 32 of the Act.
- (2) The municipality or municipal entity must within five days of finalising the information document submit it, together with any investigation report compiled in terms of regulation 5 and 8 to—
- (a) the mayor of the municipality;
  - (b) the accounting officer of the parent municipality;
  - (c) the chairperson of the board of directors;
  - (d) the MEC for local government in the province;
  - (e) the national department responsible for local government;
  - (f) the provincial treasury;
  - (g) the National Treasury; and
  - (h) the Auditor-General;

**Tabling of information document in municipal council or board of directors of municipal entities**

15. (1) The mayor of a municipality or the chairperson of the board of directors must table the information document submitted in terms of regulation 14(2) in the municipal council or the board of directors at the first meeting of the council or the board of directors after receipt of the document.
- (2) Any resolutions taken by the municipal council or the board of directors relating to the information document referred to in sub-regulation (1) must be reported to the provincial treasury and the national treasury.
- (3) If the mayor, the accounting officer or the chairperson of the board of directors, as the case may be, is of the view that the alleged financial misconduct or financial offence may have a significant impact on the finances of the municipality, and that the funds need to be recovered from the alleged transgressor concerned, the mayor must request the speaker of the municipal council to convene a special meeting of the council to discuss the recoverability of the funds in accordance with section 32 of the Act.

**Reports on disciplinary proceedings and criminal charges**

16. (1) The municipality or municipal entity must report to the institutions referred to in regulation 14(2) (a) to (h)–
- (a) any decision to institute or not to institute disciplinary proceedings against the person who allegedly committed a financial misconduct;
  - (b) the reasons for the decision;
  - (c) the outcome where disciplinary proceedings have been instituted; and
  - (d) whether a charge has been laid against the person concerned with the South African Police Service, if the alleged financial misconduct constitutes a financial offence in terms of section 173 of the Act.
- (2) Municipalities and municipal entities must report on all suspensions, disciplinary or criminal proceedings instituted in cases of financial misconduct in their annual reports.

**Procedures for confidential reporting financial misconduct and financial offence**

17. (1) A municipality must–
- (a) establish reporting procedures for persons to report allegations of financial misconduct and financial offences on a confidential basis; and
  - (b) make public the reporting procedures in accordance with section 21(1)(a) and (b) of the Municipal Systems Act.
- (2) A parent municipality together with its municipal entity, must establish reporting procedures to allow persons to report allegations of financial misconduct and financial offence on a confidential basis and the municipal entity must make the reporting procedures public.
- (3) When establishing reporting procedures in terms of sub-regulation (1) or (2), a municipality or municipal entity must take into account its financial and administrative capacity.

**Protection of officials reporting allegations of financial misconduct and financial offence**

18. The Protected Disclosures Act 2000 (Act No. 26 of 2000) applies to an official who makes a report or disclosure against a political office-bearer, a member of the board or an official who is alleged to have committed financial misconduct or a financial offence.

**Interventions by treasury**

19. If a municipality, designated official or municipal entity fails to investigate an allegation of financial misconduct or financial offence, the provincial treasury or the National Treasury may direct that the allegation be investigated.

**Transitional arrangements**

20. Any disciplinary process instituted before the commencement of these Regulations and not yet completed—
- (a) must be finalised in terms of the prescripts applicable at the time when the process was instituted; or
  - (b) may, by agreement in writing between the affected official, political office-bearer or director of the municipal entity and the municipal council or board of directors, be finalised in terms of these Regulations.

**Short title and commencement**

21. These Regulations are called the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings and takes effect on 1 July 2014.
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Annexure F<sub>1/19</sub>



**NATIONAL TREASURY**  
MFMA Circular No. 76  
Municipal Finance Management Act No. 56 of 2003

**Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings**

**Purpose**

The implementation of the Municipal Finance Management Act (MFMA) in all municipalities and entities remains an important strategy to modernise and improve financial management and service delivery. Linked to this strategy are the fundamental principles of effective and efficient utilisation of public resources and transparent and accountable financial management practices.

Whilst many of the reforms that form part of this financial management strategy have commenced in a phased manner, over the last ten years, and much has been done to provide support, training and capacity building, it has become imperative to strengthen the enforcement provisions enabled in the MFMA to respond to various challenges in the sector.

The Auditor-General has highlighted a number of issues in the Consolidated Report on Local Government that include, amongst others, persistent non-adherence to financial management policies and prescripts, as well as the need to improve governance arrangements. A significant number of municipalities have also incurred unauthorised, irregular as well as fruitless and wasteful expenditure and a cursory view suggests that amounts in this regard are increasing year on year.

The MFMA through section 62 sets out the general financial management responsibilities of the accounting officer. The accounting officer is required to take all reasonable steps to ensure that the resources of the municipality are effectively, efficiently and economically utilised and that unauthorised, irregular, fruitless and wasteful expenditure are prevented. In addition, section 62 also obliges the accounting officer to ensure that disciplinary or when appropriate, criminal proceedings are instituted against any official of the municipality who has allegedly committed an act of financial misconduct or an offence in terms of the Act. The same responsibilities have also been placed upon other municipal officials.

To give effect to the priorities outlined in government outcomes, and to address requests to provide further regulations to deal effectively with matters of financial misconduct and to give effect to the concept of consequence management, the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings were promulgated on 31 May 2014 to complement the Local Government: Municipal Systems Act, 2000 (Act No 32 of 2000) ("MSA") as amended and the regulations issued in terms thereof. These Regulations must be read together when implemented.

## Objective and overview

The Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings will support measures to expeditiously address financial misconduct and mismanagement.

The objective of the Regulations is to set out processes and procedures that a municipality and municipal entities must follow when dealing with allegations of financial misconduct. The regulations will apply to all officials and political office bearers within municipalities and municipal entities.

The Financial Misconduct Regulations consist of four chapters. Chapter one contains the definition of terms that are used in the Regulations.

Chapter two deals with the manner in which allegations of financial misconduct should be reported within municipalities and municipal entities including simultaneous reporting of all allegations to the South African Police Services for criminal investigation, the establishment and functioning of the disciplinary board, preliminary and full scale investigations of allegations of financial misconduct and the submission of the necessary reports. The Regulations require that the Board be an independent advisory body that will assist the municipal council or the board of directors of a municipal entity with the investigation of allegations of financial misconduct. The Board will also make recommendations based on the findings of the investigation on further steps to be taken regarding the disciplinary proceedings or any other relevant steps.

Chapter two also provides details with regard to the composition of the Board, including those persons that are disqualified from serving on the board. By disqualifying certain persons on the board, especially political office bearers, the regulations ensure that there is clear separation of responsibilities and accountability between employer and employee. The chapter sets out the manner in which the council or the board of directors must refer allegations of financial misconduct to the Board, and the timeframes within which the Board must initiate investigations. The rationale for the proposed composition of the board was to ensure that there is sufficient skills present to perform the activities of the board. It is also important that appropriately experienced and skilled persons serve on the board to ensure that the board conducts its activities in accordance with the applicable legal framework, thereby making sure that proceedings are procedurally fair. In the event that the Board recommends that the allegation be further investigated by an external investigator, the Regulations provide for the framework within which the external investigator must be appointed. The Regulations further provide for the creation and submission of reports to the council or the board of directors by the external investigator. The investigation must be concluded and a report submitted within 30 days of referral by council or board of directors. The MSA provides for the conclusion of disciplinary proceedings within 90 days.

Chapter three deals with instances where a financial offence has been committed by a political office bearer of the municipality or municipal entity, for purposes of section 173(4) and (5) of the MFMA. The municipality has to deal with the allegations in accordance with the procedure set out in item 13 of Schedule 1 of the MSA, if the alleged financial offence also amounts to a breach of the Code of Conduct for Councillors. In the case of municipal entities, the entity must deal with the allegation in terms of section 93L of the MSA, if the alleged financial offence also amounts to a breach of the Code of Conduct applicable to directors of a municipal entity.

Chapter four of the Regulations makes provision for the Minister of Finance and the MEC's for Finance in the provinces to receive investigation reports and an information document that clearly sets out the name and position of the alleged wrongdoer, a summary of the facts

of the allegation, including the monetary value involved, any disciplinary steps taken or to be taken against the alleged wrongdoer, or if no disciplinary steps have been taken, the reason for such a decision. The MEC for Finance, the National Treasury or the Provincial Treasury may intervene by directing that an allegation be investigated if the council or board of directors has failed to act on allegations or recommendations.

In the event that an alleged wrongdoer resigns whilst disciplinary proceedings are ongoing, all investigations including disciplinary proceedings should continue against the alleged wrongdoer in his or her absence. This will ensure that cases do not unnecessarily stall to frustrate proceedings. It will however be important in this instance to ensure that the method of delivering the notice of suspension setting out particulars of the allegation and plans to investigate is appropriate to prove receipt thereof by the recipient. This is usually done via registered post.

### **Process initiated before the promulgation of the Regulations**

If an allegation was reported before the promulgation of the regulations, municipalities should deal with it in terms of the law that was applicable at the time the offence was committed. The parties can however agree to utilise the regulations provided that there is written agreement to that effect.

### **Process to follow after the promulgation of the Regulations**

If an allegation is reported after 1 July 2014, the provisions of the regulations will have to be fully implemented.

### **Synergy with other local government reforms**

The Minister of Cooperative Governance and Traditional Affairs promulgated Disciplinary Regulations for Senior Managers in terms of the MSA. These Regulations are limited in their application as they deal with general acts of misconduct and not financial misconduct for purposes of the MFMA, and they apply to accounting officers and section 56 managers in municipalities, only.

The processes to be followed are now interlinked, as the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings deal with processes and procedures regarding the reporting of allegations of financial misconduct and financial offences and any internal investigations to be undertaken and the conclusion thereof.

Disciplinary proceedings will be dealt with in terms of the Disciplinary Regulations for Senior Managers or the collective bargaining agreement between the South African Local Government Association (SALGA) and relevant municipal unions. All issues that are not covered in the Disciplinary Regulations for Senior Managers relating to financial misconduct will be dealt with in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings. The Regulation also reinforces the prohibition of employment of officials found guilty of financial misconduct for a period of 10 years in the local sphere of government.

The Regulations, therefore, provide a framework that is consistent with the provisions of the MSA and MFMA. The effective implementation of these Regulations is intended to address the current gaps identified. Please refer to the step-by-step flowchart attached as annexure A which explains the process.

## Clarification of overall intention and spirit of the regulations

Section 40 of the Constitution of the Republic of South Africa provides that government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Furthermore, section 41 of the Constitution goes further by requiring that each sphere of government and all organs of state must, amongst others, cooperate with one another in mutual trust and good faith by informing one another of, and consulting one another on matters of common interest and to avoid legal proceedings against one another. In addition, section 151(4) of the Constitution provides that national and provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions.

The regulations in no way impede on the executive authority of municipalities or on their ability to make decisions and it is important to note that accountability to make decisions and take action with regard to allegations of financial misconduct still vests with the municipal council or the board of directors in case of municipal entities. Therefore, the secondary and complementary part is when Council or municipal officials do not act within a reasonable time as stipulated in the regulations, then there are options for the provincial or national treasuries to act as part of our system of cooperative governance as this relates to matters of public resources and public funds. Municipalities can also strengthen current council policies dealing with disciplinary matters to clearly stipulate the decision making powers of council and other relevant municipal structures.

The regulations provide for the disciplinary board to conduct a preliminary investigation into the allegation and if need be, a full investigation to determine the merit of a specific allegation. The disciplinary board does not necessarily have to conduct such investigations itself. A disciplinary board can request existing structures within the municipality, province or national government to conduct such investigations and provide the necessary reports with recommendations. For this purpose the accounting officer should ensure that a delegation is in place to ensure operational efficiency and effectiveness.

## Clarification of specific provisions within the regulations

Regulation 3(1) sets out the reporting lines for allegations of financial misconduct against officials in municipalities and municipal entities. Specifically, regulation 3(1)(a) sets out the reporting lines for allegations of financial misconduct against the accounting officer, chief financial officer and a senior manager within municipalities. Regulation 3(1)(b) sets out the reporting lines for allegations of financial misconduct against "all officials other than the accounting officer" of a municipality. The term "official" is defined in the MFMA to include an employee of a municipality or municipal entity. If we apply the definition to specifically regulation 3(1)(b), the implication is that the same officials who are covered under regulation 3(1)(a), namely the chief financial officer and senior managers, will also be covered under regulation 3(1)(b). The reporting of allegations against the chief financial officer and senior managers must be done under regulation 3(1)(a).

The regulations provide for a full blown investigation to be conducted when the preliminary investigation warrants such a step. Specifically, regulation 6(8) guides the municipal council or board of directors on how to proceed when the investigator's report recommends that disciplinary processes be instituted against the alleged wrongdoer. Regulation 6(8) therefore provides the synergy with existing reforms and it also gives effect to section 171(4)(b) of the MFMA. Section 171(4)(b) provides that a municipality must, if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial

officer or that senior manager or other official in accordance with systems and procedures referred to in section 67 of the MSA, read with schedule 2 of that Act. The intention behind regulation 6(8) was therefore to give effect to section 171(4)(b) of the MFMA, hence the cross-reference to the MSA regulations in relation to senior managers and the collective bargaining agreement for officials below senior management as acknowledged in section 67 of the MSA.

Section 57A(3) of the MSA provides that any staff member dismissed for financial misconduct contemplated in section 171 of the MFMA, corruption or fraud, may not be re-employed in any municipality for a period of ten years. The intention with regulation 6(9) is to re-enforce the provisions of section 57A(3) of the MSA.

Regulation 9(1) specifies the reporting lines for allegations of financial offences against councillors and members of the board of directors in municipal entities. Please note that the reporting lines for officials in municipalities and municipal entities are already clearly spelt in regulation 3(1), hence it was not repeated in regulation 9(1). Therefore, allegations of financial offences against officials in municipalities and municipalities must be reported as per the reporting lines in regulation 3(1).

Whilst the majority of actions by councillors or members of the board of directors in municipal entities will fall within the ambit of the Code of Conduct for Councillors or members of the board of directors, there will also be instances where the actions of councillors or members of the board of directors will fall outside their respective Codes of Conduct. It is important to note that chapter 3 of the regulations deals with two scenarios, namely, (1) where the actions of the councillor or member of the board of directors for purposes of section 173 of the MFMA also breach their respective Codes of Conduct and (2) where their actions do not breach their respective Codes of Conduct. The intention behind regulations 11 and 12 was to provide municipal councils and board of directors of municipal entities clarity on proceeding in cases where the actions of their members do not breach their respective Codes of Conduct. In this way, all roles currently created or existing under the Code of Conduct for Councillors i.e. Speaker and Mayors, will be acknowledged whenever allegations are dealt with in terms of the Code of Conduct for Councillors.

Regulations 11 and 12 require the appointment of a designated official who will receive, investigate and report on allegations of financial offences against the councillors and members of the board of directors in municipal entities. It was left to the municipal council or the board of directors (in cases of municipal entities) to decide and nominate for themselves who this person will be, given that this aspect is only applicable where the allegation is against a councillor or a member of the board of directors.

Regulation 19 allows the National or Provincial Treasury to intervene and direct that allegations be investigated in cases where a municipality, a municipal entity or a designated official fails to act on such allegations. It is important in this instance to understand the context within which the term 'intervention' is used. The term 'intervention', for purposes of the regulations, is used within the context of instances where the municipal council fails to act on allegations of financial misconduct as defined in section 171 and 172 of the MFMA. It is not used within the context of section 139 of the Constitution of the Republic of South Africa.

To improve transparency, provision has also been made in the Regulations for municipalities and municipal entities to report on all suspensions, disciplinary or criminal proceedings instituted in their annual report.

As part of the normal municipal audit cycle, the auditor-general audits compliance with laws and regulations. It therefore follows that during the 2014/15 financial year municipal audit, the auditor-general will audit whether allegations of financial misconduct and financial offences were dealt with in terms of the financial misconduct regulations. It is therefore important for accounting officers to introduce appropriate tracking mechanisms which will ensure that allegations are appropriately dealt with and that relevant documents are safeguarded.

### **Municipal Public Accounts Committee and the Disciplinary Board and other committees within municipalities**

During the countrywide workshops on the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings there were discussions around the potential conflict or duplication of functions between the Municipal Public Accounts Committee (MPAC) and the Disciplinary Board (DC Board) in so far as it relates to the council committee appointed in terms of section 32(2) of the MFMA to investigate the recoverability of irregular expenditure. Whilst we have taken note of the arguments raised in support of this assertion, the clarification provided below should clear any confusion which might exist in this regard.

In August 2011, the National Treasury and the Department of Cooperative Governance and Traditional Affairs jointly issued a guide on the establishment of MPACs. This guide explicitly stated that the MPAC, once established, is a committee that will exercise oversight over the executive obligations of the municipal council. The MPAC is therefore the equivalent of the section 79 council committee in terms of the Municipal Structures Act which will assist council with its oversight responsibilities. In terms of the guide council can also assign certain investigation powers to the MPAC.

Section 32(2) of the MFMA states that a municipality must recover, amongst others, irregular expenditure unless it is certified, after an investigation by a council committee, as irrecoverable and be written off. We have noted that in most instances municipalities utilise the MPAC for purposes of MFMA section 32 investigations. It is therefore clear that the role of the MPAC for purposes of section 32(2) is limited to investigating the recoverability of the irregular expenditure.

The Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings makes provision for the establishment of a Disciplinary Board which will receive and investigate allegations of financial misconduct within municipalities. It is important to note that this board is made up of municipal officials and external representatives. Councillors are however prohibited from serving on this board. The main purpose of this board is to assist the Accounting Officer to discharge his or her responsibility to institute disciplinary proceedings against officials who commit acts of financial misconduct.

It is clear that both structures have different functions within the municipalities and their representation is also fundamentally different in that the MPAC consists solely of councillors whereas the DC Board is made up of officials. However, in the unlikely event that there is a duplication of functions, we suggest that the respective terms of reference be amended to ensure that all the investigative powers relating to allegations of financial misconduct vest solely with the DC Board.

The same argument is also relevant to the utilisation of the audit committee for purposes of the investigation of allegations of financial misconduct. The audit committee consists solely of external persons whereas the disciplinary board is composed of municipal officials and only one member of the audit committee.

Although section 166 of the MFMA allows council to provide the audit committee with some investigative powers, it is our understanding that the nature of such investigation is normally from an institutional perspective whereas the nature of the disciplinary board investigation relates to the conduct of individuals within the municipality. Municipalities and municipal entities are required to utilise the disciplinary board as a regulated structure to dispense with these matters and to make recommendations to Council for final decisions. This will also assist during the external auditor, performed by the Auditor-General.

### Names of provincial officials responsible for monitoring implementation of regulations

Although the regulations were promulgated by the Minister of Finance, the MFMA does assign oversight responsibilities to the provincial treasuries through the MEC's for Finance to oversee the implementation of the Act in their respective provinces. It is for this reason that officials have been identified who will assist with the monitoring responsibilities of the implementation of the regulations. Monitoring will entail, regular follow up by provincial officials on status of allegations, actions taken, reports produced, council resolutions and propose interventions, to the MEC for Finance where actions are not taken in terms of the regulations. The provincial treasuries will maintain a database of all allegations against officials and all those found guilty of financial misconduct. Regular feedback must also be provided to the respective provincial legislatures to enable oversight over municipalities. This information will be shared with other government departments who have other legislated responsibilities in this regard. These persons will also be the first line of support in the provinces should municipalities or municipal entities need any assistance with regard to the implementation of the regulations. Please see below names of provincial officials responsible for monitoring implementation of these regulations:

Name	Province	E-mail Address	Office number
Ndomelele Madyibi	Eastern Cape	<a href="mailto:Ndomelele.Madyibi@treasury.ecprov.gov.za">Ndomelele.Madyibi@treasury.ecprov.gov.za</a>	(040) 101-0288
Seabata Mokhele	Free State	<a href="mailto:mokheles@treasury.fs.gov.za">mokheles@treasury.fs.gov.za</a>	(051) 405-4784
Seipati Tsiu	Gauteng	<a href="mailto:Seipati.tsiu@gauteng.gov.za">Seipati.tsiu@gauteng.gov.za</a>	(011) 227-9063
Phehello Maloi	KZN	<a href="mailto:Phehello.Maloi@kzntreasury.gov.za">Phehello.Maloi@kzntreasury.gov.za</a>	(033) 897-4664
JN Raphaela	Limpopo	<a href="mailto:RaphaelaJN@treasury.limpopo.gov.za">RaphaelaJN@treasury.limpopo.gov.za</a>	(015) 291-8444
Nimrod Hlabane	Mpumalanga	<a href="mailto:nhlabane@mpg.gov.za">nhlabane@mpg.gov.za</a>	(013) 766-8713
Philip Seane	Northern Cape	<a href="mailto:pseane@ncpg.gov.za">pseane@ncpg.gov.za</a>	(053) 836-3000
Sello Makwepa	North West	<a href="mailto:smokwepa@nwpg.gov.za">smokwepa@nwpg.gov.za</a>	(018) 388-4070
Bazil Vink	Western Cape	<a href="mailto:Bazil.Vink@westerncape.gov.za">Bazil.Vink@westerncape.gov.za</a>	(021) 483-6646

## Conclusion

It is important that the accounting officer ensures that this Circular together with the Regulations is brought to the attention of the Municipal Council and other relevant officials within municipalities and municipal entities.

In order to better support the implementation of the regulations, the National Treasury has developed a process flowchart which explains step-by-step process to be followed. The flowchart is attached as annexure A. This Circular should be communicated within the municipality and especially to the senior manager responsible for Human Resources, Chief Finance Officer and Internal Audit to enable implementation and improvements to processes.

All requests for assistance should be addressed to the postal details below or email [mfma@treasury.gov.za](mailto:mfma@treasury.gov.za)

Office of the Accountant-General  
Private Bag X115  
Pretoria  
0001

## Contact



**national treasury**  
Department  
National Treasury  
REPUBLIC OF SOUTH AFRICA

*Post* **Private Bag X115, Pretoria 0001**  
*Phone* **012 315 5850**  
*Fax* **012 315 5230**  
*Email – General* **[mfma@treasury.gov.za](mailto:mfma@treasury.gov.za)**  
*Website* **[www.treasury.gov.za/mfma](http://www.treasury.gov.za/mfma)**

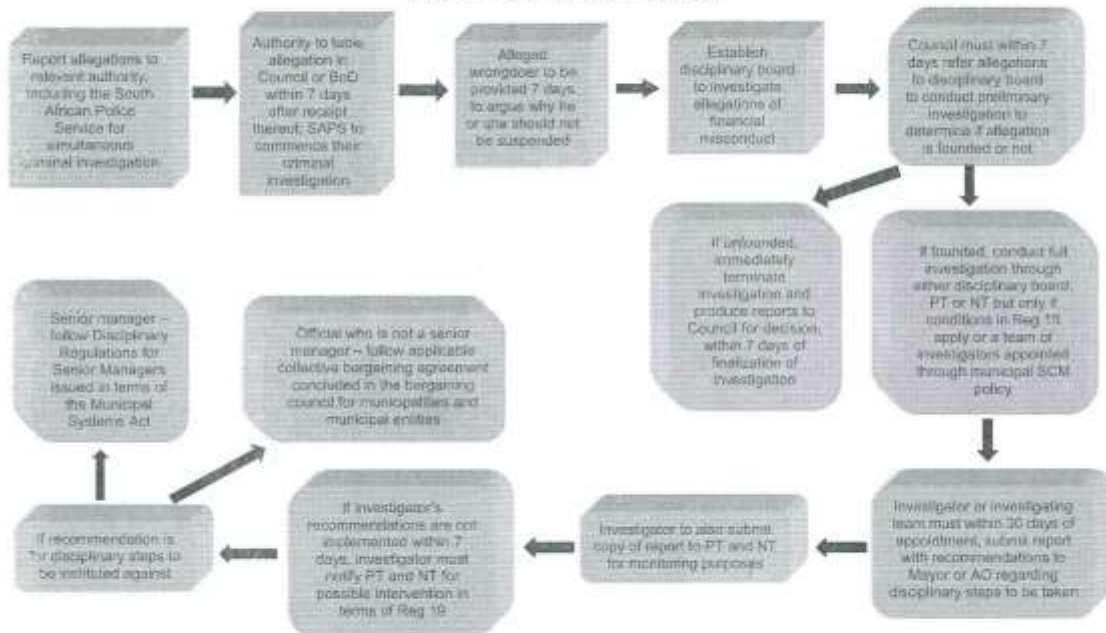
TV PILLAY  
CHIEF DIRECTOR: MFMA IMPLEMENTATION  
19 October 2015

Annexure A: Flowchart aligning processes in the MFMA and MSA

**Annexure A**

**PROCESS TO IMPLEMENT FINANCIAL MISCONDUCT REGULATIONS**

**PROCESS FOR OFFICIALS**



**PROCESS FOR POLITICAL OFFICE BEARERS**

