

General financial management functions of accounting officers

95. The accounting officer of a municipal entity is responsible for managing the financial administration of the entity, and must for this purpose take all reasonable steps to ensure—

- (a) that the resources of the entity are used effectively, efficiently, economically and transparently; 5
- (b) that full and proper records of the financial affairs of the entity are kept;
- (c) that the entity has and maintains effective, efficient and transparent systems—
 - (i) of financial and risk management and internal control; and
 - (ii) of internal audit complying with and operating in accordance with any prescribed norms and standards; 10
- (d) that irregular and fruitless and wasteful expenditure and other losses are prevented;
- (e) that expenditure is in accordance with the operational policies of the entity; and 15
- (f) that disciplinary or, when appropriate, criminal proceedings, are instituted against any official of the entity who has allegedly committed an act of financial misconduct or an offence in terms of Chapter 15.

Asset and liability management

96. (1) The accounting officer of a municipal entity is responsible for the management of— 20

- (a) the assets of the entity, including the safeguarding and maintenance of those assets; and
- (b) the liabilities of the entity.

(2) The accounting officer must, for the purposes of subsection (1), take all reasonable steps to ensure that the entity has and maintains— 25

- (a) a management, accounting and information system that accounts for proper assets and liabilities of the management systems of the municipal entity; and
- (b) a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed. 30

Revenue management

97. The accounting officer of a municipal entity must take all reasonable steps to ensure—

- (a) that the entity has and implements effective revenue collection systems to give effect to its budget; 35
- (b) that all revenue due to the entity is collected;
- (c) that any funds collected by the entity on behalf of a municipality—
 - (i) are transferred to that municipality strictly in accordance with the agreement between the entity the municipality; and
 - (ii) are not used for the purposes of the entity; 40
- (d) that the municipal entity has effective revenue collection systems consistent with those of the parent municipality;
- (e) that revenue due to the entity is calculated on a monthly basis;
- (f) that accounts for service charges are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical; 45
- (g) that all money received is promptly deposited in accordance with this Act into the municipal entity's bank accounts;
- (h) that the municipal entity has and maintains a management, accounting and information system which—
 - (i) recognises revenue when it is earned; 50
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;
- (i) that the municipal entity has and maintains a system of internal control in respect of debtors and revenue, as may be prescribed; and

- (j) that all revenue received by the municipal entity, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis.
- (3) The accounting officer must immediately inform the parent municipality of any payments due by an organ of state to the entity in respect of service charges, if such payments are regularly in arrears for periods of more than 30 days. 5

Monthly reconciliation of revenue and accounts

98. The accounting officer of a municipal entity must take all reasonable steps to ensure that—
- (a) all revenue received by the entity, including revenue received by any collecting agency on its behalf, is reconciled on a monthly or more regular basis; and 10
- (b) all accounts of the entity are reconciled each month.

Expenditure management

99. (1) The accounting officer of a municipal entity is responsible for the management of the expenditure of the entity. 15
- (2) The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure—
- (a) that the entity has and maintains an effective system of expenditure control including procedures for the approval, authorisation, withdrawal and payment of funds; 20
- (b) that all money owing by the entity is paid within 30 days of receiving the relevant invoice or statement unless prescribed otherwise for certain categories of expenditure;
- (c) that the entity has and maintains a management, accounting and information system which— 25
- (i) recognises expenditure when it is incurred;
- (ii) accounts for creditors of the entity; and
- (iii) accounts for payments made by the entity;
- (d) that the entity has and maintains a system of internal control in respect of creditors and payments; 30
- (e) that payments by the entity are made—
- (i) directly to the person to whom it is due unless agreed otherwise only for reasons as may be prescribed; and
- (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only, and only up to a prescribed limit; 35
- (f) that the entity complies with its tax, duty, pension, medical aid, audit fees and other statutory commitments;
- (g) that the entity's available working capital is managed effectively and economically in terms of any prescribed cash management and investment framework; and 40
- (h) that the entity has and implements a supply chain management policy in accordance with section 111 in a way that is fair, equitable, transparent and cost-effective.

Budget implementation 45

100. The accounting officer of a municipal entity is responsible for implementing the entity's budget, including taking effective and appropriate steps to ensure that—
- (a) the spending of funds is in accordance with the budget;
- (b) revenue and expenditure are properly monitored; and
- (c) spending is reduced as necessary when revenue is anticipated to be less than projected in the budget. 50

Part 4: Reports and reportable matters**Impending under collection, shortfalls, overspending, overdrafts, and non-payment**

- 101.** (1) The accounting officer of a municipal entity must report, in writing, to the board of directors of the entity, at its next meeting, and to the accounting officer of the entity's parent municipality any financial problems of the entity, including— 5
- (a) any impending or actual—
 - (i) under collection of revenue due;
 - (ii) shortfalls in budgeted revenue;
 - (iii) overspending of the entity's budget; 10
 - (iv) delay in the entity's payments to any creditors; or
 - (v) overdraft in any bank account of the entity for a period exceeding 21 days; and
 - (b) any steps taken to rectify such financial problems.
- (2) The accounting officer of the municipality must table a report referred to in subsection (1) in the municipal council at its next meeting. 15

Irregular or fruitless and wasteful expenditure

- 102.** (1) On discovery of any irregular expenditure or any fruitless and wasteful expenditure, the board of directors of a municipal entity must promptly report, in writing, to the mayor and municipal manager of the entity's parent municipality and the Auditor-General— 20
- (a) particulars of the expenditure; and
 - (b) any steps that have been taken—
 - (i) to recover the expenditure; and
 - (ii) to prevent a recurrence of the expenditure. 25
- (2) The board of directors of a municipal entity must promptly report to the South African Police Service any—
- (a) irregular expenditure that may constitute a criminal offence; and
 - (b) other losses suffered by the municipal entity which resulted from suspected criminal conduct. 30

Reporting of improper interference by councillors

- 103.** The accounting officer of a municipal entity must promptly report to the speaker of the council of the entity's parent municipality any interference by a councillor outside that councillor's assigned duties, in—
- (a) the financial affairs of the municipal entity; or 35
 - (b) the responsibilities of the board of directors of the municipal entity.

General reporting obligations

- 104.** (1) The accounting officer of a municipal entity—
- (a) is, except where otherwise provided in this Act, responsible for the submission by the entity of all reports, returns, notices and other information to the entity's parent municipality, as may be required by this Act; and 40
 - (b) must submit to the accounting officer of the entity's parent municipality, the National Treasury, the relevant provincial treasury, the department of local government in the province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required. 45
- (2) If the accounting officer of a municipal entity is unable to comply with any of the responsibilities in terms of this Act, he or she must promptly report the inability, together with reasons, to the council of the entity's parent municipality.

Part 5: Other officials of municipal entities**Duties of other officials**

105. (1) Each official of a municipal entity exercising financial management responsibilities must take all reasonable steps within that official's area of responsibility to ensure— 5

- (a) that the system of financial management and internal control established for the entity is carried out diligently;
- (b) that the financial and other resources of the entity are utilised effectively, efficiently, economically and transparently;
- (c) that any irregular expenditure, fruitless and wasteful expenditure and other losses are prevented; 10
- (d) that all revenue due to the entity is collected;
- (e) that the provisions of this Act to the extent applicable to that official, including any delegations in terms of section 106, are complied with; and
- (f) that the assets and liabilities of the entity are managed effectively, and that assets are safeguarded and maintained to the extent necessary. 15

(2) An official of a municipal entity must perform the functions referred to in subsection (1) subject to the directions of the accounting officer of the entity.

Delegation of powers and duties by accounting officers

106. (1) The accounting officer of a municipal entity— 20

- (a) may delegate to an official of that entity—
 - (i) any of the powers or duties assigned or delegated to the accounting officer in terms of this Act; or
 - (ii) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act; and 25
- (b) must regularly review delegations issued in terms of paragraph (a) and, if necessary, amend or withdraw any of those delegations.

(2) A delegation in terms of subsection (1)— 30

- (a) must be in writing;
- (b) is subject to any limitations and conditions the accounting officer may impose;
- (c) may be either to a specific individual or to the holder of a specific post in the municipal entity; and
- (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty. 35

(3) An accounting officer may confirm, vary or revoke any decision taken by an official in consequence of a delegation in terms of subsection (1), but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision. 40

Competency levels of professional financial officials

107. The accounting officer, senior managers, any chief financial officer and all other financial officials of a municipal entity must meet the prescribed financial management competency levels.

Part 6: General 45**Borrowing of money**

108. (1) A municipal entity may borrow money, but only in accordance with—

- (a) the entity's multi-year business plan referred to in section 87(5)(d); and
- (b) the provisions of Chapter 6 to the extent that those provisions can be applied to a municipal entity. 50

(2) In applying Chapter 6 to a municipal entity, a reference in that Chapter to a municipality, a municipal council or an accounting officer must be read as referring to a municipal entity, the board of directors of a municipal entity or the accounting officer of a municipal entity, respectively.

Financial problems in municipal entities 5

109. If a municipal entity experiences serious or persistent financial problems and the board of directors of the entity fails to act effectively, the parent municipality must either—

- (a) take appropriate steps in terms of its rights and powers over that entity, including its rights and powers in terms of any relevant service delivery or other agreement; 10
- (b) impose a financial recovery plan, which must meet the same criteria set out in section 142 for a municipal financial recovery plan; or
- (c) liquidate and disestablish the entity.

CHAPTER 11 15

GOODS AND SERVICES

Part 1: Supply chain management

Application of this Part

110. (1) This Part, subject to subsection (2), applies to—

- (a) the procurement by a municipality or municipal entity of goods and services; 20
- (b) the disposal by a municipality or municipal entity of goods no longer needed;
- (c) the selection of contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; and
- (d) the selection of 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. 25

(2) This Part, except where specifically provided otherwise, does not apply if a municipality or municipal entity contracts with another organ of state for—

- (a) the provision of goods or services to the municipality or municipal entity; 30
- (b) the provision of a municipal service or assistance in the provision of a municipal service; or
- (c) the procurement of goods and services under a contract secured by that other organ of state, provided that the relevant supplier has agreed to such procurement. 35

(3) The disposal of goods by a municipality or municipal entity in terms of this Part must be read with sections 14 and 90.

Supply chain management policy

111. Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part. 40

Supply chain management policy to comply with prescribed framework

112. (1) The supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management, which must cover at least the following: 45

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- (a) The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when a municipality or municipal entity may or must use a particular type of process; 5
- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
- (f) competitive bidding processes in which only pre-qualified persons may participate; 10
- (g) bid documentation, advertising of and invitations for contracts;
- (h) procedures and mechanisms for—
- (i) the opening, registering and recording of bids in the presence of interested persons; 15
- (ii) the evaluation of bids to ensure best value for money;
- (iii) negotiating the final terms of contracts; and
- (iv) the approval of bids;
- (i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value; 20
- (j) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;
- (k) participation in the supply chain management system of persons who are not officials of the municipality or municipal entity, subject to section 117; 25
- (l) the barring of persons from participating in tendering or other bidding processes, including persons—
- (i) who were convicted for fraud or corruption during the past five years;
- (ii) who wilfully neglected, reneged on or failed to comply with a government contract during the past five years; or 30
- (iii) whose tax matters are not cleared by South African Revenue Service;
- (m) measures for—
- (i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
- (ii) promoting ethics of officials and other role players involved in municipal supply chain management; 35
- (n) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by—
- (i) councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or 40
- (ii) municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act;
- (o) the procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state; 45
- (p) contract management and dispute settling procedures; and
- (q) the delegation of municipal supply chain management powers and duties, including to officials.
- (2) The regulatory framework for municipal supply chain management must be fair, equitable, transparent, competitive and cost-effective. 50

Unsolicited bids

113. (1) A municipality or municipal entity is not obliged to consider an unsolicited bid received outside its normal bidding process.

(2) If a municipality or municipal entity decides to consider an unsolicited bid received outside a normal bidding process, it may do so only in accordance with a prescribed framework. 5

(3) The framework must strictly regulate and limit the power of municipalities and municipal entities to approve unsolicited bids received outside their normal tendering or other bidding processes.

Approval of tenders not recommended 10

114. (1) If a tender other than the one recommended in the normal course of implementing the supply chain management policy of a municipality or municipal entity is approved, the accounting officer of the municipality or municipal entity must, in writing, notify the Auditor-General, the relevant provincial treasury and the National Treasury and, in the case of a municipal entity, also the parent municipality, of the reasons for deviating from such recommendation. 15

(2) Subsection (1) does not apply if a different tender was approved in order to rectify an irregularity.

Implementation of system

115. (1) The accounting officer of a municipality or municipal entity must— 20

- (a) implement the supply chain management policy of the municipality or municipal entity; and
- (b) take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices. 25

(2) No person may impede the accounting officer in fulfilling this responsibility.

Contracts and contract management

116. (1) A contract or agreement procured through the supply chain management system of a municipality or municipal entity must—

- (a) be in writing; 30
- (b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for—
 - (i) the termination of the contract or agreement in the case of non- or under-performance;
 - (ii) dispute resolution mechanisms to settle disputes between the parties; 35
 - (iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
 - (iv) any other matters that may be prescribed.

(2) The accounting officer of a municipality or municipal entity must—

- (a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced; 40
- (b) monitor on a monthly basis the performance of the contractor under the contract or agreement;
- (c) establish capacity in the administration of the municipality or municipal entity— 45
 - (i) to assist the accounting officer in carrying out the duties set out in paragraphs (a) and (b); and
 - (ii) to oversee the day-to-day management of the contract or agreement; and

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- (d) regularly report to the council of the municipality or the board of directors of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.
- (3) A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after— 5
- (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
- (b) the local community— 10
- (i) has been given reasonable notice of the intention to amend the contract or agreement; and
- (ii) has been invited to submit representations to the municipality or municipal entity.

Councillors barred from serving on municipal tender committees

117. No councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer. 15

Interference

118. No person may—
- (a) interfere with the supply chain management system of a municipality or municipal entity; or 20
- (b) amend or tamper with any tenders, quotations, contracts or bids after their submission.

Competency levels of officials involved in municipal supply chain management

119. (1) The accounting officer and all other officials of a municipality or municipal entity involved in the implementation of the supply chain management policy of the municipality or municipal entity must meet the prescribed competency levels. 25
- (2) A municipality and a municipal entity must for the purposes of subsection (1) provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels. 30
- (3) The National Treasury or a provincial treasury may assist municipalities and municipal entities in the training of officials referred to in subsection (1).

Part 2: Public-private partnerships**Conditions and process for public-private partnerships**

120. (1) A municipality may enter into a public-private partnership agreement, but only if the municipality can demonstrate that the agreement will— 35
- (a) provide value for money to the municipality;
- (b) be affordable for the municipality; and
- (c) transfer appropriate technical, operational and financial risk to the private party. 40
- (2) A public-private partnership agreement must comply with any prescribed regulatory framework for public-private partnerships.
- (3) If the public-private partnership involves the provision of a municipal service, Chapter 8 of the Municipal Systems Act must also be complied with.
- (4) Before a public-private partnership is concluded, the municipality must conduct a feasibility study that— 45
- (a) explains the strategic and operational benefits of the public-private partnership for the municipality in terms of its objectives;
- (b) describes in specific terms— 50
- (i) the nature of the private party's role in the public-private partnership;
- (ii) the extent to which this role, both legally and by nature, can be performed by a private party; and

- (iii) how the proposed agreement will—
- (aa) provide value for money to the municipality;
 - (bb) be affordable for the municipality;
 - (cc) transfer appropriate technical, operational and financial risks to the private party; and
 - (dd) impact on the municipality's revenue flows and its current and future budgets;
- (c) takes into account all relevant information; and
- (d) explains the capacity of the municipality to effectively monitor, manage and enforce the agreement.
- (5) The national government may assist municipalities in carrying out and assessing feasibility studies referred to in subsection (4).
- (6) When a feasibility study has been completed, the accounting officer of the municipality must—
- (a) submit the report on the feasibility study together with all other relevant documents to the council for a decision, in principle, on whether the municipality should continue with the proposed public-private partnership;
 - (b) at least 60 days prior to the meeting of the council at which the matter is to be considered, in accordance with section 21A of the Municipal Systems Act—
 - (i) make public particulars of the proposed public-private partnership, including the report on the feasibility study; and
 - (ii) invite the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed public-private partnership; and
 - (c) solicit the views and recommendations of—
 - (i) the National Treasury;
 - (ii) the national department responsible for local government;
 - (iii) if the public-private partnership involves the provision of water, sanitation, electricity or any other service as may be prescribed, the responsible national department; and
 - (iv) any other national or provincial organ of state as may be prescribed.
- (7) Part 1 of this Chapter applies to the procurement of public-private partnership agreements. Section 33 also applies if the agreement will have multi-year budgetary implications for the municipality within the meaning of that section.

CHAPTER 12

FINANCIAL REPORTING AND AUDITING

Preparation and adoption of annual reports

- 121.** (1) Every municipality and every municipal entity must for each financial year prepare an annual report in accordance with this Chapter. The council of a municipality must within nine months after the end of a financial year deal with the annual report of the municipality and of any municipal entity under the municipality's sole or shared control in accordance with section 129.
- (2) The purpose of an annual report is—
- (a) to provide a record of the activities of the municipality or municipal entity during the financial year to which the report relates;
 - (b) to provide a report on performance against the budget of the municipality or municipal entity for that financial year; and
 - (c) to promote accountability to the local community for the decisions made throughout the year by the municipality or municipal entity.
- (3) The annual report of a municipality must include—
- (a) the annual financial statements of the municipality, and in addition, if section 122(2) applies, consolidated annual financial statements, as submitted to the Auditor-General for audit in terms of section 126(1);

- (b) the Auditor-General's audit report in terms of section 126(3) on those financial statements;
- (c) the annual performance report of the municipality prepared by the municipality in terms of section 46 of the Municipal Systems Act;
- (d) the Auditor-General's audit report in terms of section 45(b) of the Municipal Systems Act; 5
- (e) an assessment by the municipality's accounting officer of any arrears on municipal taxes and service charges;
- (f) an assessment by the municipality's accounting officer of the municipality's performance against the measurable performance objectives referred to in section 17(3)(b) for revenue collection from each revenue source and for each vote in the municipality's approved budget for the relevant financial year; 10
- (g) particulars of any corrective action taken or to be taken in response to issues raised in the audit reports referred to in paragraphs (b) and (d);
- (h) any explanations that may be necessary to clarify issues in connection with the financial statements; 15
- (i) any information as determined by the municipality;
- (j) any recommendations of the municipality's audit committee; and
- (k) any other information as may be prescribed.
- (4) The annual report of a municipal entity must include— 20
- (a) the annual financial statements of the entity, as submitted to the Auditor-General for audit in terms of section 126(2);
- (b) the Auditor-General's audit report in terms of section 126(3) on those financial statements;
- (c) an assessment by the entity's accounting officer of any arrears on municipal taxes and service charges; 25
- (d) an assessment by the entity's accounting officer of the entity's performance against any measurable performance objectives set in terms the service delivery agreement or other agreement between the entity and its parent municipality; 30
- (e) particulars of any corrective action taken or to be taken in response to issues raised in the audit report referred to in paragraph (b);
- (f) any information as determined by the entity or its parent municipality;
- (g) any recommendations of the audit committee of the entity or of its parent municipality; and 35
- (h) any other information as may be prescribed.

Preparation of financial statements

122. (1) Every municipality and every municipal entity must for each financial year prepare annual financial statements which—

- (a) fairly presents the state of affairs of the municipality or entity, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results, and its financial position as at the end of the financial year; and 40
- (b) disclose the information required in terms of sections 123, 124 and 125.

(2) A municipality which has sole control of a municipal entity, or which has effective control within the meaning of the Municipal Systems Act of a municipal entity which is a private company, must in addition to complying with subsection (1), prepare consolidated annual financial statements incorporating the annual financial statements of the municipality and of such entity. Such consolidated annual financial statements must comply with any requirements as may be prescribed. 45 50

(3) Both annual financial statements and consolidated annual financial statements must be prepared in accordance with generally recognised accounting practice prescribed in terms of section 91(1)(b) of the Public Finance Management Act.