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LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 - MUNICIPAL COST CONTAINMENT REGULATIONS

In terms of section 169(1)(b) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), draft regulations intended to be made in terms of section 168(1)(b) and (p) of that Act, as set out in Part A of the Schedule, are hereby published for public comment.

An explanatory memorandum regarding the draft regulations is in Part B of the Schedule.

All comment received by 30 March 2018 will be considered and should be emailed to MFMA@treasury.gov.za or faxed to 012 315 5230.

SCHEDULE

PART A
DRAFT MUNICIPAL COST CONTAINMENT REGULATIONS
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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);

“**consultant**” means a professional person, individual, partnership, corporation, or a company appointed to provide technical and specialist advice or to assist with a design and implementation of projects or to assist a municipality or municipal entity perform its functions to achieve the objects of local government in terms of section 152 of the Constitution;

“**cost containment**” means measures implemented to curtail spending in terms of these regulations; and

“**credit card**” means a card issued by a financial service provider, which creates a revolving account and grants a line of credit to the cardholder.

Object of Regulations

2. The object of these Regulations, in line with section 62(1)(a), 78(1)(b), 95(a) and 105(1)(b) of the Act, is to ensure that resources of a municipality and municipal entity are used effectively, efficiently and economically by implementing cost containment measures.

Application of Regulations

3. These Regulations apply to all municipalities and municipal entities.

Cost containment policies

4. (1) Each municipality and municipal entity must revise or develop and implement a cost containment policy which must—
 - (a) in the case of a municipality, be adopted by the municipal council, and in the case of a municipal entity, by the board of directors as part of its budget related policies; and
 - (b) be consistent with the Act and these Regulations.
- (2) The cost containment policy of a municipality or a municipal entity contemplated in sub-regulation (1) must—
 - (a) be in writing;
 - (b) give effect to these Regulations;
 - (c) be reviewed annually, as may be appropriate;
 - (d) be communicated on the municipality's or municipal entity's website; and
 - (e) set out—
 - (i) measures for ensuring implementation of the policy;
 - (ii) procedures for the annual review of the policy; and
 - (iii) consequences for non-adherence to the measures contained therein.

Use of consultants

5. (1) A municipality or municipal entity may only appoint consultants if an assessment of the needs and requirements confirms that the affected municipality or municipal entity does not have the requisite skills or resources in its full time employ to perform the function.
- (2) An accounting officer must adopt a fair and reasonable remuneration framework for consultants taking into account the rates—
 - (a) determined in the "Guideline on fees for audits undertaken on behalf of the Auditor-General of South Africa", issued by the South African Institute of Chartered Accountants;
 - (b) set out in the "Guide on Hourly Fee Rates for Consultants", issued by the Department of Public Service and Administration;
 - (c) as prescribed by the body regulating the profession of the consultant.
- (3) The tender documentation for the appointment of consultants must include a clause that the remuneration rates will be subject to negotiation, not exceeding the applicable rates mentioned in sub-regulation (2).
- (4) When negotiating cost-effective consultancy rates for international consultants, the accounting officer may take into account the relevant international and market-determined rates.
- (5) When consultants are appointed, an accounting officer must—
 - (a) appoint consultants on a time and cost basis with specific start and end dates;
 - (b) where practical, appoint consultants on an output-specified basis, subject to a clear specification of deliverables and associated remuneration;
 - (c) ensure that contracts with consultants include overall cost ceilings by specifying whether the contract price is inclusive or exclusive of travel and subsistence disbursements;
 - (d) develop consultancy reduction plans; and
 - (e) undertake all engagements of consultants in accordance with the Municipal Supply Chain Management Regulations and the municipality's Supply Chain Management policy.

- (6) All contracts with consultants must include fee retention or penalty clause for poor performance.
- (7) A municipality or municipal entity must ensure that the specifications and performance, are used as a monitoring tool for the work to be undertaken and is appropriately recorded and monitored.
- (8) The travel and subsistence costs of consultants must be in accordance with the travel policy issued by the National Department of Transport, as updated from time to time.
- (9) The contract price must specify all travel and subsistence cost and, if the travel and subsistence costs for appointed consultants are excluded from the contract price, such costs must be reimbursed in accordance with the abovementioned travel policy of the National Department of Transport.

Vehicles used for political office-bearers

6. (1) The threshold limit for vehicle purchases relating to official use by political office-bearers may not exceed R700 000 or 70% of the total annual remuneration package for different grades, whichever is greater.
- (2) The procurement of vehicles must be undertaken using the national government transversal contract mechanism.
- (3) If any other procurement process is used, the cost may not exceed the threshold set out in sub-regulation (1).
- (4) Before deciding on another procurement process as contemplated in sub-regulation (3), the chief financial officer must provide the council with information relating to the following criteria which must be considered:
 - (a) status of current vehicles;
 - (b) affordability;
 - (c) extent of service delivery backlogs;
 - (d) terrain for effective usage of vehicle; and
 - (e) any other policy of council.
- (5) Regardless of their usage, vehicles for official use by public office bearers may only be replaced after completion of 120 000 kilometres.
- (6) Notwithstanding sub-regulation (5), a municipality or municipal entity may replace vehicles for official use by public office bearers before completion of one hundred and twenty thousand kilometres only in instances where the vehicle experiences serious mechanical problem and is in a poor condition, and subject to obtaining a detailed mechanical report by the vehicle manufacturer or approved dealer.

Travel and subsistence

7. (1) An accounting officer—
 - (a) may only approve purchase of economy class tickets for officials where the flying time for the flights is five hours or less; and
 - (b) for flights exceeding five hours, may purchase business class tickets only for accounting officers, and persons reporting directly to accounting officers.
- (2) Notwithstanding sub-regulation (1), an accounting officer may approve the purchase of business class tickets for officials with disabilities.
- (3) The cost containment policy must limit international travel to meetings or events that are considered critical. The number of officials attending such meetings or events must be limited to those officials directly involved in the subject matter related to such meetings or events.
- (4) An accounting officer may approve accommodation costs that exceed an amount as determined from time to time by the National Treasury only—
 - (a) during peak holiday periods; or
 - (b) when major local or international events are hosted in a particular geographical area that results in an abnormal increase in the number of local and/or international guests in that particular geographical area.
- (5) Officials of a municipality or municipal entity must—
 - (a) utilise the municipal fleet, where viable, before incurring costs to hire vehicles;

- (b) make use of shuttle service if the cost of such a service is lower than-
 - (i) the cost of hiring a vehicle;
 - (ii) the cost of kilometres claimable by the employee; and
 - (iii) the cost of parking.
 - (c) not hire vehicles from a category higher than Group B or an equivalent class; and
 - (d) where a different class of vehicle is required for a particular terrain or to cater for the special needs of an official, seek the written approval of the accounting officer before hiring the vehicle.
- (6) Municipalities and municipal entities must utilise the negotiated rates for flights and accommodation, communicated by the National Treasury, from time to time, or any other available cheaper flight and accommodation.

Domestic accommodation

8. An accounting officer must ensure that costs incurred for domestic accommodation and meals are in accordance with the maximum allowable rates for domestic accommodation and meals, as communicated by the National Treasury, from time to time.

Credit cards

9. (1) An accounting officer must ensure that no credit card or debit card linked to a bank account of a municipality or a municipal entity is issued to any official or public office bearer, including members of the board of directors of municipal entities.
- (2) Where officials or public office bearers incur expenditure in relation to official municipal activities, such officials or public officer bearers must use their personal credit cards or cash or arrangements made by the municipality or municipal entity, and request reimbursement from the municipality or municipal entity in accordance with the relevant municipality or municipal entity's policy and processes.

Sponsorships, events and catering

10. (1) A Municipality or municipal entity may not incur catering expenses for meetings which are only attended by persons in the employ of the municipality or municipal entity, unless the prior written approval of the accounting officer is obtained.
- (2) An accounting officer may incur catering expenses for hosting of meetings, conferences, workshops, courses, forums, recruitment interviews, and proceedings of council that exceed five hours.
- (3) Entertainment allowances of officials may not exceed two thousand rand per person per financial year, unless approved otherwise by the accounting officer.
- (4) An accounting officer may not incur expenses on alcoholic beverages.
- (5) An accounting officer must ensure that social functions, team building exercises, year-end functions, sporting events, budget vote dinners and other functions that have a social element are not financed from the municipality or municipal entity's budgets or by any suppliers or sponsors.
- (6) A municipality or municipal entity may not incur expenditure on corporate branded items like clothing or goods for personal use of officials, other than uniforms, office supplies and tools of trade, unless costs related thereto are recovered from affected officials.
- (7) An accounting officer may incur expenditure to host farewell functions in recognition of officials who retire after serving the municipality or municipal entity for ten or more years or retire on grounds of ill health, not exceeding the limits for petty cash usage.

Communication

11. (1) A Municipality or municipal entity must, as far as possible, advertise municipal related events on its website instead of advertising in magazines or newspapers.
- (2) An accounting officer must ensure that allowances to officials for private calls are limited to an amount as determined by the accounting officer in the cost containment policy of the municipality or municipal entity.

- (3) Newspapers and other related publication for the use of officials must be discontinued on expiry of existing contracts or supply orders.
- (4) A municipality or municipal entity must participate in the transversal term contract arranged by the National Treasury for the acquisition of mobile communication services.

Conferences, meetings and study tours

12. (1) An accounting officer must establish policies and procedures to manage application by officials to attend conferences or events hosted by professional bodies or non-governmental institutions held within and outside the borders of South Africa taking into account their merits and benefits, costs and available alternatives.
- (2) An accounting officer may consider appropriate benchmark costs with other professional bodies or regulatory bodies prior to granting approval for an official to attend a conference or event within and outside the borders of South Africa.
- (3) Such benchmark costs may not exceed an amount as determined by the National Treasury.
- (4) When considering applications from officials to attend conferences or events within and outside the borders of South Africa, an accounting officer must take the following into account—
- (a) the official's role and responsibilities and the anticipated benefits of the conference or event;
 - (b) whether the conference or event addresses relevant concerns of the institution;
 - (c) the appropriate number of officials, not exceeding three officials, attending the conference or event; and
 - (d) availability of funds to meet expenses related to the conference or event.
- (5) The amount referred to in sub-regulation (3) above excludes costs related to travel, accommodation and related expenses, but includes—
- (a) conference or event registration expenses; and
 - (b) any other expense incurred in relation to the conference or event.
- (6) When considering costs for conferences or events these may not include items, such as laptops, tablets and other similar tokens that are built into the price of such conferences or events.
- (7) The accounting officer of a municipality or municipal entity must ensure that meetings and planning sessions that entail use of municipal funds are, as far as may be practically possible, held in-house.
- (8) Municipal or provincial office facilities must be utilised for conference, meetings, strategic planning sessions, inter alia, where an appropriate venue exists within the municipal jurisdiction.
- (9) An accounting officer may consider granting approval, as contemplated in sub-regulation (4), for officials, and in the case of Councillors, the Mayor.
- (10) A municipality or municipal entity must, where applicable, take advantage of early registration discounts by granting the required approvals to attend the conference, event or study tour, in advance.

Other related expenditure items

13. (1) All commodities, services and products covered by a transversal contract concluded by the National Treasury must be procured through that transversal contract before approaching the market, to benefit from savings where lower prices or rates have been negotiated.
- (2) Municipal resources may not be used to fund elections, campaign activities, including the provision of food, clothing and other inducements as part of, or during election periods.

Enforcement Procedures

14. Failure to implement or comply with these Regulations may result in any official of the municipality or municipal entity, political office bearer or director of the board that authorised or incurred any expenditure contrary to these regulations being held liable for financial misconduct

as set out in Chapter 15 of the Act read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

Disclosures of cost containment measures

15. (1) The disclosure of cost containment measures applied by the municipality and municipal entity must be included in the municipal in-year budget reports and annual costs savings disclosed in the annual report.
- (2) The measures implemented and aggregate amounts saved per quarter, together with the regular reports on reprioritisation of cost savings, on the implementation of the cost containment measures must be submitted to the Municipal Council for review and resolution. The municipal council can refer such reports to an appropriate Council Committee for further recommendations and actions.
- (3) Such reports must be copied to the National Treasury and relevant Provincial Treasuries within seven calendar days after the report is submitted to Municipal Council.

Short title and commencement

16. These Regulations are called the Municipal Cost Containment Regulations, 2018 and take effect on 01 July 2018.

PART B**EXPLANATORY MEMORANDUM ON DRAFT COST CONTAINMENT REGULATIONS INTENDED TO BE MADE IN TERMS OF LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003**

The wider implementation of the Local Government: Municipal Finance Management Act, 2003 (MFMA) in all municipalities and entities is an important element in the roll out strategy to modernise and improve financial management in local government. Linked to this strategy are the fundamental principles of effective and efficient utilisation of public resources in a transparent and accountable manner.

Despite the provisions in the MFMA and the reforms developed over the last 13 years to support the implementation of the MFMA, municipalities and municipal entities continue to spend public funds and municipal resources on non-priority items. More often than not this results in a diversion of public funds from core service delivery to other expenditures resulting in dissatisfaction by communities and delays in service delivery.

Government has therefore committed in the Medium Term Strategic Framework for 2014 – 2019 to urgently implement cost saving measures across all three spheres of government to assist in re-prioritizing expenditure and free up resources that can be targeted towards service delivery. These measures introduced are also intended to eliminate wastage of public resources on non-service delivery items. This will be undertaken through advocacy, strengthening the legal and policy prescripts and frameworks aimed at cost containment and ensuring the implementation thereof by municipalities and municipal entities.

The Minister of Finance has also pronounced during the February 2016 Budget Speech and the October 2016 Medium Term Budget Policy Statement that the National Treasury will issue regulations on cost containment measures for local government. The initial cost containment measures were introduced through MFMA Circular. Additional measures will also be taken to ensure a transparent tendering system by ensuring that value for money is attained through the revised procurement process. Similar measures have also been introduced in national and provincial government in terms of the Public Finance Management Act 1 of 1999.

Over the last 4 to 5 years, the Auditor-General's General Report on Local Government Audit Outcomes highlighted the extent of wastage of public resources. This was also observed through various publications in the print media and other government publications. Weak governance as well as the significant increase in the number of municipalities incurring unauthorised, irregular as well as fruitless and wasteful expenditure, were also highlighted as areas of concern.

Building on the MFMA Circular, the National Treasury in association with other stakeholders, have drafted regulations that will promote the cost containment measures introduced in a number of spending areas.

Section 168(1)(b) and (p) of the MFMA provides that the Minister may regulate financial management and internal control and generally, any other matter that may facilitate the enforcement and administration of the Act, respectively. The object of the draft Regulations is to ensure that the resources of municipalities and municipal entities are used effectively, efficiently and economically (regulation 2). The Regulations will apply to all municipalities and municipal entities (regulation 3).

Regulation 1 contains the definition of terms that are used in the regulations. Regulation 4 deals with the establishment of cost containment policies including the principles applicable to such policies.

Regulations 4 to 13 contain the actual cost containment measures to be implemented by municipalities and municipal entities. These measures include:

- Principles around appointment of consultants to perform municipal functions and assessment to be undertaken by municipalities and municipal entities before appointing consultants;

- Procurement of mayoral vehicles. The regulations introduce a ceiling in terms of the value of the vehicles to be procured and principles in terms of management of such vehicle by the municipalities and municipal entities;
- Travel and subsistence allowance. This section of the regulations provides the thresholds for purchasing air tickets and hiring of vehicles. The intention with this specific measure is to ensure that institutions actually realise the discounts which have been negotiated at National Government level. These thresholds will contribute towards institutions achieving cost savings on their travel and accommodation budgets;
- Prohibition on issuance of credit or debit cards linked to municipal bank accounts to officials or public office bearers;
- Prohibition on using municipal funds for specific functions which include, amongst others, spending on catering for internal meetings only attended by officials, and social, farewell or team building activities. This section also prohibits the utilisation of municipal funds on alcoholic beverages;
- The regulations also make it mandatory for institutions to procure vehicles, cell phone and other related assets via the transversal contract negotiated at National Government level. This will ensure that there are cost savings and benefits passed to municipalities on all such items;
- The regulations also introduce a monetary threshold for conference fees which include the attendance of both local and international conferences;
- The regulations are intended to reduce excessive spending on office furniture and equipment;
- Municipalities and municipal entities are also encouraged to ensure that proper processes are followed when dismissing and suspending officials, this minimise unnecessary legal costs. Institutions are also encouraged to manage their expenditure on leave and overtime benefits; and
- The regulations make it mandatory for municipalities to conduct threat assessments before approving any security measures for councillors or officials.

Regulation 4 introduces consequence management aspects for non-adherence to the regulations. Non-compliance with these measures must be investigated for financial misconduct in terms of the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

Regulation 5 provides the framework for disclosure of actual cost savings achieved by institutions in their annual reports, this improve transparency.

Regulation 6 contains the short title and the commencement date of the regulations.

These draft regulations therefore propose to provide a framework that is consistent with the provisions of the MFMA. The effective implementation of the regulations is intended to ensure that municipalities and municipal entities achieve value for money in utilising public resources to deliver municipal services. It is the intention that the Regulations would become effective on 01 July 2018.

Comments received during the consultation process will be considered and processed with a view to addressing any shortcomings.