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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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# GENERAL NOTICE

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## NOTICE 868 OF 2005

### LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 MUNICIPAL SUPPLY CHAIN MANAGEMENT REGULATIONS

The Minister of Finance, acting with the concurrence of the Minister for Provincial and Local Government, has in terms of section 168 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), made the Regulations as set out in the Schedule.

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### **Definitions**

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

**“competitive bidding process”** means a competitive bidding process referred to in regulation 12 (1) (d);

**“competitive bid”** means a bid in terms of a competitive bidding process;

**“final award”**, in relation to bids or quotations submitted for a contract, means the final decision on which bid or quote to accept;

**“formal written price quotation”** means quotations referred to in regulation 12(1)(c);

**“in the service of the state”** means to be –

- (a) a member of –
  - (i) any municipal council;
  - (ii) any provincial legislature; or
  - (iii) the National Assembly or the National Council of Provinces;
- (b) a member of the board of directors of any municipal entity;
- (c) an official of any municipality or municipal entity;
- (d) an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
- (e) a member of the accounting authority of any national or provincial public entity; or
- (f) an employee of Parliament or a provincial legislature;

**“long term contract”** means a contract with a duration period exceeding one year;

**“list of accredited prospective providers”** means the list of accredited prospective providers which a municipality or municipal entity must keep in terms of regulation 14;

**“other applicable legislation”** means any other legislation applicable to municipal supply chain management, including –

- (a) the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- (b) the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); and
- (c) the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000);

**“Treasury guidelines”** means any guidelines on supply chain management issued by the Minister in terms of section 168 of the Act;

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

**“written or verbal quotations”** means quotations referred to in regulation 12(1)(b).

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

### **Supply chain management policies**

2. (1) Each municipality and each municipal entity must in terms of section 111 of the Act have and implement a supply chain management policy that –
- (a) gives effect to –
    - (i) section 217 of the Constitution; and
    - (ii) Part 1 of Chapter 11 and other applicable provisions of the Act;
  - (b) is fair, equitable, transparent, competitive and cost effective;
  - (c) complies with –
    - (i) the regulatory framework prescribed in Chapter 2 of these Regulations; and
    - (ii) any minimum norms and standards that may be prescribed in terms of section 168 of the Act;
  - (d) is consistent with other applicable legislation;

- (e) does not undermine the objective for uniformity in supply chain management systems between organs of state in all spheres; and
  - (f) is consistent with national economic policy concerning the promotion of investments and doing business with the public sector.
- (2) The supply chain management policy of a municipal entity must, in addition to complying with subregulation (1), and to the extent determined by the parent municipality, also be consistent with the supply chain management policy of the parent municipality. If the supply chain management policy of an entity is not consistent with the supply chain management policy of its parent municipality, the council of the parent municipality must take appropriate steps to ensure consistency.
- (3) No municipality or municipal entity may act otherwise than in accordance with its supply chain management policy when –
- (a) procuring goods or services;
  - (b) disposing of goods no longer needed;
  - (c) selecting contractors to provide assistance in the provision of municipal services otherwise than in circumstances where Chapter 8 of the Municipal Systems Act applies; or
  - (d) in the case of a municipality, selecting external mechanisms referred to in section 80 (1) (b) of the Municipal Systems Act for the provision of municipal services in circumstances contemplated in section 83 of that Act.
- (4) Subregulations (1), (2) and (3) do not apply in the circumstances described in section 110(2) of the Act except where specifically provided otherwise in these Regulations.

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

3. (1) The accounting officer of a municipality or municipal entity must –
- (a) promptly prepare and submit a draft supply chain management policy complying with regulation 2 to the council of the municipality or the board of directors of the municipal entity for adoption;
  - (b) at least annually review the implementation of the policy; and
  - (c) when the accounting officer considers it necessary, submit proposals for the amendment of the policy to the council or the board of directors.
- (2) (a) The accounting officer may for purposes of subregulation (1)(a) make use of any Treasury guidelines determining

- standards for municipal supply chain management policies, and submit to the council or board of directors that guideline standard, or any modified version thereof, as a draft policy.
- (b) If the accounting officer submits a draft policy to the council or board of directors that differs from the guideline standard, the accounting officer must ensure that such draft policy complies with regulation 2.
  - (c) The accounting officer must report any deviation from the guideline standard to the National Treasury and the relevant provincial treasury.
- (3) When preparing or amending its supply chain management policy, a municipality or municipal entity must take account of the need for uniformity in supply chain practices, procedures and forms between organs of state in all spheres, particularly to promote accessibility of supply chain management systems for small businesses.
- (4) The accounting officer of a municipality must in terms of section 62(1)(f)(iv) of the Act, and the accounting officer of a municipal entity must in terms of section 99(2)(h) of the Act, take all reasonable steps to ensure that the municipality or municipal entity has and implements a supply chain management policy as set out in regulation 2.

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

4. (1) The council of a municipality and the board of directors of a municipal entity must delegate such additional powers and duties to the accounting officer so as to enable the accounting officer –
- (a) to discharge the supply chain management responsibilities conferred on accounting officers in terms of –
    - (i) Chapter 8 or 10 of the Act; and
    - (ii) the supply chain management policy of the municipality or municipal entity;
  - (b) to maximise administrative and operational efficiency in the implementation of the supply chain management policy;
  - (c) to enforce reasonable cost-effective measures for the prevention of fraud, corruption, favouritism and unfair and irregular practices in the implementation of the supply chain management policy; and
  - (d) to comply with his or her responsibilities in terms of section 115 and other applicable provisions of the Act.
- (2) Sections 79 and 106 of the Act apply to the subdelegation of powers and duties delegated to an accounting officer in terms of subregulation (1).



- (3) No municipal council, board of directors of a municipal entity or accounting officer may delegate or subdelegate any supply chain management powers or duties –
  - (a) in the case of a municipality –
    - (i) to a person who is not an official of the municipality; or
    - (ii) to a committee which is not exclusively composed of officials of the municipality; or
  - (b) in the case of a municipal entity –
    - (i) to a person who is not an official of the municipal entity; or
    - (ii) to a committee which is not exclusively composed of officials of the municipal entity.
- (4) This regulation may not be read as permitting an official to whom the power to make final awards has been delegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in regulation 26.

### **Subdelegations**

- 5. (1) An accounting officer may in terms of section 79 or 106 of the Act subdelegate any supply chain management powers and duties, including those delegated to the accounting officer in terms of regulation 4(1), but any such subdelegation must be consistent with subregulation (2) and regulation 4.
- (2) The power to make a final award –
  - (a) above R10 million (VAT included) may not be subdelegated by an accounting officer;
  - (b) above R2 million (VAT included), but not exceeding R10 million (VAT included), may be subdelegated but only to –
    - (i) the chief financial officer;
    - (ii) a senior manager; or
    - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - (c) not exceeding R2 million (VAT included) may be subdelegated but only to –
    - (i) the chief financial officer;
    - (ii) a senior manager;
    - (iii) a manager directly accountable to the chief financial officer or a senior manager; or
    - (iv) a bid adjudication committee.
- (3) An official or bid adjudication committee to which the power to make final awards has been subdelegated in accordance with subregulation (2) must within five days of the end of each month

- submit to the official referred to in subsection (4) a written report containing particulars of each final award made by such official or committee during that month, including –
- (a) the amount of the award;
  - (b) the name of the person to whom the award was made; and
  - (c) the reason why the award was made to that person.
- (4) A written report referred to in subregulation (3) must be submitted –
- (a) to the accounting officer, in the case of an award by –
    - (i) the chief financial officer;
    - (ii) a senior manager; or
    - (iii) a bid adjudication committee of which the chief financial officer or a senior manager is a member; or
  - (b) to the chief financial officer or the senior manager responsible for the relevant bid, in the case of an award by –
    - (i) a manager referred to in subregulation (2)(c)(iii); or
    - (ii) a bid adjudication committee of which the chief financial officer or a senior manager is not a member.
- (5) Subregulations (3) and (4) do not apply to procurements out of petty cash.
- (6) This regulation may not be interpreted as permitting an official to whom the power to make final awards has been subdelegated, to make a final award in a competitive bidding process otherwise than through the committee system provided for in regulation 26.
- (7) No decision-making in terms of any supply chain management powers and duties may be delegated to an advisor or consultant.

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

6. (1) The council of a municipality and the board of directors of a municipal entity must maintain oversight over the implementation of its supply chain management policy.
- (2) For the purposes of such oversight the accounting officer must –
- (a) (i) in the case of a municipality, within 30 days of the end of each financial year, submit a report on the implementation of the supply chain management policy of the municipality and of any municipal entity under its sole or shared control, to the council of the municipality;
  - (ii) in the case of a municipal entity, within 20 days of the end of each financial year, submit a report on the implementation of the municipal entity's supply chain management policy to the board of directors, who must then submit the report to the accounting officer of

- the parent municipality for submission to the council in terms of subparagraph (i); and
- (iii) whenever there are serious and material problems in the implementation of the supply chain management policy, immediately submit a report to the council of the municipality or in the case of a municipal entity, to the board of directors, who must then submit the report to the accounting officer of the parent municipality for submission to the council.
- (3) The accounting officer must, within 10 days of the end of each quarter, submit a report on the implementation of the supply chain management policy to the mayor of the municipality or the board of directors of the municipal entity, as the case may be.
- (4) The reports of a municipality must be made public in accordance with section 21A of the Municipal Systems Act. The reports of a municipal entity must be made public in a similar way.

#### **Supply chain management units**

7. (1) Each municipality and each municipal entity must establish a supply chain management unit to implement its supply chain management policy.
- (2) A parent municipality and a municipal entity under its sole or shared control may establish a joint supply chain management unit to implement their respective supply chain management policies.
- (3) A supply chain management unit must, where possible, operate under the direct supervision of the chief financial officer or an official to whom this duty has been delegated in terms of section 82 of the Act.

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

8. The training of officials involved in implementing a supply chain management policy should be in accordance with any Treasury guidelines on supply chain management training.

## **CHAPTER 2**

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

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

9. The supply chain management policy of a municipality or municipal entity must describe in sufficient detail –
- (a) the supply chain management system that is to be implemented by the municipality or municipal entity; and

- (b) effective systems for –
  - (i) demand management;
  - (ii) acquisition management;
  - (iii) logistics management;
  - (iv) disposal management;
  - (v) risk management; and
  - (vi) performance management.

#### ***Part 1: Demand management***

##### **System of demand management**

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

#### ***Part 2: Acquisition management***

##### **System of acquisition management**

11. (1) A supply chain management policy must provide for an effective system of acquisition management in order to ensure –
- (a) that goods and services are procured by the municipality or municipal entity in accordance with authorised processes only;
  - (b) that expenditure on goods and services is incurred in terms of an approved budget in terms of section 15 of the Act;
  - (c) that the threshold values for the different procurement processes are complied with;
  - (d) that bid documentation, evaluation and adjudication criteria, and general conditions of a contract, are in accordance with any applicable legislation; and
  - (e) that any Treasury guidelines on acquisition management are properly taken into account.
- (2) A supply chain management policy, except where provided otherwise in these Regulations, does not apply in respect of the procurement of goods and services contemplated in section 110(2) of the Act, including –
- (a) water from the Department of Water Affairs or a public entity, another municipality or a municipal entity; and
  - (b) electricity from Eskom or another public entity, another municipality or a municipal entity.

- (3) A municipality or municipal entity procuring goods or services contemplated in section 110(2) of the Act must make public the fact that it procures such goods or services otherwise than through its supply chain management system, including-
- (a) the kind of goods or services; and
  - (b) the name of the supplier.

#### **Range of procurement processes**

12. (1) A supply chain management policy must, subject to regulation 11(2), provide for the procurement of goods and services by way of –
- (a) petty cash purchases, up to a transaction value of R2 000 (VAT included);
  - (b) written or verbal quotations for procurements of a transaction value over R2 000 up to R10 000 (VAT included);
  - (c) formal written price quotations for procurements of a transaction value over R10 000 up to R200 000 (VAT included); and
  - (d) a competitive bidding process for–
    - (i) procurements above a transaction value of R200 000 (VAT included); and
    - (ii) the procurement of long term contracts.
- (2) A supply chain management policy may allow the accounting officer -
- (a) to lower, but not to increase, the different threshold values specified in subregulation (1); or
  - (b) to direct that –
    - (i) written or verbal quotations be obtained for any specific procurement of a transaction value lower than R2 000;
    - (ii) formal written price quotations be obtained for any specific procurement of a transaction value lower than R10 000; or
    - (iii) a competitive bidding process be followed for any specific procurement of a transaction value lower than R200 000.
- (3) A supply chain management policy must state–
- (a) that goods or services may not deliberately be split into parts or items of a lesser value merely to avoid complying with the requirements of the policy; and
  - (b) that when determining transaction values, a requirement for goods or services consisting of different parts or items must

as far as possible be treated and dealt with as a single transaction.

**General preconditions for consideration of written quotations or bids**

- 13.** A supply chain management policy must state that the municipality or municipal entity may not consider a written quotation or bid unless the provider who submitted the quotation or bid –
- (a) has furnished the municipality or municipal entity with that provider's –
    - (i) full name;
    - (ii) identification number or company or other registration number; and
    - (iii) tax reference number and VAT registration number, if any;
  - (b) has authorised the municipality or municipal entity to obtain a tax clearance from the South African Revenue Services that the provider's tax matters are in order; and
  - (c) has indicated –
    - (i) whether he or she is in the service of the state, or has been in the service of the state in the previous twelve months;
    - (ii) if the provider is not a natural person, whether any of its directors, managers, principal shareholders or stakeholder is in the service of the state, or has been in the service of the state in the previous twelve months; or
    - (iii) whether a spouse, child or parent of the provider or of a director, manager, shareholder or stakeholder referred to in subparagraph (ii) is in the service of the state, or has been in the service of the state in the previous twelve months.

**Lists of accredited prospective providers**

- 14.** (1) A supply chain management policy must –
- (a) instruct the accounting officer –
    - (i) to keep a list of accredited prospective providers of goods and services that must be used for the procurement requirements of the municipality or municipal entity through written or verbal quotations and formal written price quotations; and
    - (ii) at least once a year through newspapers commonly circulating locally, the website of the municipality or municipal entity and any other appropriate ways, to

- invite prospective providers of goods or services to apply for evaluation and listing as accredited prospective providers;
- (b) specify the listing criteria for accredited prospective providers; and
  - (c) disallow the listing of any prospective provider whose name appears on the National Treasury's database as a person prohibited from doing business with the public sector.
- (2) The list must be updated at least quarterly to include any additional prospective providers and any new commodities or types of services. Prospective providers must be allowed to submit applications for listing at any time.
- (3) The list must be compiled per commodity and per type of service.

#### **Petty cash purchases**

15. A supply chain management policy must stipulate the conditions for the procurement of goods by means of petty cash purchases referred to in regulation 12 (1)(a), which must include conditions –
- (a) determining the terms on which a manager may delegate responsibility for petty cash to an official reporting to the manager;
  - (b) limiting the number of petty cash purchases or the maximum amounts per month for each manager;
  - (c) excluding any types of expenditure from petty cash purchases, where this is considered necessary; and
  - (d) requiring monthly reconciliation reports from each manager to the chief financial officer, including –
    - (i) the total amount of petty cash purchases for that month; and
    - (ii) receipts and appropriate documents for each purchase.

#### **Written or verbal quotations**

16. A supply chain management policy must stipulate the conditions for the procurement of goods or services through written or verbal quotations, which must include conditions stating –
- (a) that quotations must be obtained from at least three different providers preferably from, but not limited to, providers whose names appear on the list of accredited prospective providers of the municipality or municipal entity, provided that if quotations are obtained from providers who are not listed, such providers must meet the listing criteria in the supply

- chain management policy required by regulation 14(1)(b) and (c);
- (b) that, to the extent feasible, providers must be requested to submit such quotations in writing;
  - (c) that if it is not possible to obtain at least three quotations, the reasons must be recorded and reported quarterly to the accounting officer or another official designated by the accounting officer;
  - (d) that the accounting officer must record the names of the potential providers requested to provide such quotations with their quoted prices; and
  - (e) that if a quotation was submitted verbally, the order may be placed only against written confirmation by the selected provider.

#### **Formal written price quotations**

17. (1) A supply chain management policy must stipulate the conditions for the procurement of goods or services through formal written price quotations, which must include conditions stating –
- (a) that quotations must be obtained in writing from at least three different providers whose names appear on the list of accredited prospective providers of the municipality or municipal entity;
  - (b) that quotations may be obtained from providers who are not listed, provided that such providers meet the listing criteria in the supply chain management policy required by regulation 14(1)(b) and (c);
  - (c) that if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the chief financial officer or an official designated by the chief financial officer; and
  - (d) that the accounting officer must record the names of the potential providers and their written quotations; and
- (2) A designated official referred to in subregulation (1)(c) must within three days of the end of each month report to the chief financial officer on any approvals given during that month by that official in terms of that subregulation.

#### **Procedures for procuring goods or services through written or verbal quotations and formal written price quotations**

18. A supply chain management policy must determine the procedure for the procurement of goods or services through written or verbal quotations or formal written price quotations, and must stipulate –



- (a) that all requirements in excess of R30 000 (VAT included) that are to be procured by means of formal written price quotations must, in addition to the requirements of regulation 17, be advertised for at least seven days on the website and an official notice board of the municipality or municipal entity;
- (b) that when using the list of accredited prospective providers the accounting officer must promote ongoing competition amongst providers, including by inviting providers to submit quotations on a rotation basis;
- (c) that the accounting officer must take all reasonable steps to ensure that the procurement of goods and services through written or verbal quotations or formal written price quotations is not abused;
- (d) that the accounting officer or chief financial officer must on a monthly basis be notified in writing of all written or verbal quotations and formal written price quotations accepted by an official acting in terms of a subdelegation; and
- (e) requirements for proper record keeping.

#### **Competitive bids**

19. A supply chain management policy must specify –

- (a) that goods or services above a transaction value of R200 000 (VAT included) and long term contracts may be procured by the municipality or municipal entity only through a competitive bidding process, subject to regulation 11(2); and
- (b) that no requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process.

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

20. A supply chain management policy must provide procedures for a competitive bidding process for each of the following stages:

- (a) the compilation of bidding documentation;
- (b) the public invitation of bids;
- (c) site meetings or briefing sessions, if applicable;
- (d) the handling of bids submitted in response to public invitation;
- (e) the evaluation of bids;
- (f) the award of contracts;
- (g) the administration of contracts; and

- (h) proper record keeping.

**Bid documentation for competitive bids**

21. A supply chain management policy must determine the criteria to which bid documentation for a competitive bidding process must comply, and state that in addition to regulation 13 the bid documentation must –
- (a) take into account –
    - (i) the general conditions of contract;
    - (ii) any Treasury guidelines on bid documentation; and
    - (iii) the requirements of the Construction Industry Development Board, in the case of a bid relating to construction, upgrading or refurbishment of buildings or infrastructure;
  - (b) include evaluation and adjudication criteria, including any criteria required by other applicable legislation;
  - (c) compel bidders to declare any conflict of interest they may have in the transaction for which the bid is submitted;
  - (d) if the value of the transaction is expected to exceed R10 million (VAT included), require bidders to furnish–
    - (i) if the bidder is required by law to prepare annual financial statements for auditing, their audited annual financial statements –
      - (aa) for the past three years; or
      - (bb) since their establishment if established during the past three years;
    - (ii) a certificate signed by the bidder certifying that the bidder has no undisputed commitments for municipal services towards a municipality or other service provider in respect of which payment is overdue for more than 30 days;
    - (iii) particulars of any contracts awarded to the bidder by an organ of state during the past five years, including particulars of any material non-compliance or dispute concerning the execution of such contract;
    - (iv) a statement indicating whether any portion of the goods or services are expected to be sourced from outside the Republic, and, if so, what portion and whether any portion of payment from the municipality or municipal entity is expected to be transferred out of the Republic; and
  - (e) stipulate that disputes must be settled by means of mutual consultation, mediation (with or without legal representation), or, when unsuccessful, in a South African court of law.

**Public invitation for competitive bids**

22. (1) A supply chain management policy must determine the procedure for the invitation of competitive bids, and must stipulate –
- (a) that any invitation to prospective providers to submit bids must be by means of a public advertisement in newspapers commonly circulating locally, the website of the municipality or municipal entity or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin); and
  - (b) the information a public advertisement must contain, which must include –
    - (i) the closure date for the submission of bids, which may not be less than 30 days in the case of transactions over R10 million (VAT included), or which are of a long term nature, or 14 days in any other case, from the date on which the advertisement is placed in a newspaper, subject to subregulation (2); and
    - (ii) a statement that bids may only be submitted on the bid documentation provided by the municipality or municipal entity.
- (2) A supply chain management policy may allow the accounting officer to determine a closure date for the submission of bids which is less than the 30 or 14 days requirement, but only if such shorter period can be justified on the grounds of urgency or emergency or any exceptional case where it is impractical or impossible to follow the official procurement process.
- (3) Bids submitted to the municipality or municipal entity must be sealed.
- (4) Where bids are requested in electronic format, such bids must be supplemented by sealed hard copies.

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

23. A supply chain management policy must determine the procedure for the handling, opening and recording of bids, and must –
- (a) stipulate that bids–
    - (i) may be opened only in public; and
    - (ii) must be opened at the same time and as soon as possible after the period for the submission of bids has expired;
  - (b) confer on any bidder or member of the public the right to request that the names of the bidders who submitted bids in time must be read out and, if practical, also each bidder's total bidding price; and

- (c) require the accounting officer –
  - (i) to record in a register all bids received in time;
  - (ii) to make the register available for public inspection; and
  - (iii) to publish the entries in the register and the bid results on the website of the municipality or municipal entity.

#### **Negotiations with preferred bidders**

24. (1) A supply chain management policy may allow the accounting officer to negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
- (a) does not allow any preferred bidder a second or unfair opportunity;
  - (b) is not to the detriment of any other bidder; and
  - (c) does not lead to a higher price than the bid as submitted.
- (2) Minutes of such negotiations must be kept for record purposes.

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

25. (1) A supply chain management policy may allow a two-stage bidding process for –
- (a) large complex projects;
  - (b) projects where it may be undesirable to prepare complete detailed technical specifications; or
  - (c) long term projects with a duration period exceeding three years.
- (2) In the first stage technical proposals on conceptual design or performance specifications should be invited, subject to technical as well as commercial clarifications and adjustments.
- (3) In the second stage final technical proposals and priced bids should be invited.

#### **Committee system for competitive bids**

26. (1) A supply chain management policy must provide for –
- (a) a committee system for competitive bids consisting of at least–
    - (i) a bid specification committee;
    - (ii) a bid evaluation committee; and
    - (iii) a bid adjudication committee;
  - (b) the appointment by the accounting officer of the members of each committee, taking into account section 117 of the Act; and

- (c) an attendance or oversight process by a neutral or independent observer appointed by the accounting officer when this is appropriate for ensuring fairness and promoting transparency.
- (2) The committee system must be consistent with –
  - (a) regulations 27, 28 and 29; and
  - (b) any other applicable legislation.
- (3) A supply chain management policy may allow the accounting officer to apply the committee system to formal written price quotations.

#### **Bid specification committees**

27. (1) A bid specification committee must compile the specifications for each procurement of goods or services by the municipality or municipal entity.
- (2) Specifications –
- (a) must be drafted in an unbiased manner to allow all potential suppliers to offer their goods or services;
  - (b) must take account of any accepted standards such as those issued by Standards South Africa, the International Standards Organisation, or an authority accredited or recognised by the South African National Accreditation System with which the equipment or material or workmanship should comply;
  - (c) where possible, be described in terms of performance required rather than in terms of descriptive characteristics for design;
  - (d) may not create trade barriers in contract requirements in the forms of specifications, plans, drawings, designs, testing and test methods, packaging, marking or labeling of conformity certification;
  - (e) may not make reference to any particular trade mark, name, patent, design, type, specific origin or producer unless there is no other sufficiently precise or intelligible way of describing the characteristics of the work, in which case such reference must be accompanied by the words "equivalent";
  - (f) must indicate each specific goal for which points may be awarded in terms of the points system set out in the supply chain management policy of the municipality or municipal entity; and
  - (g) must be approved by the accounting officer prior to publication of the invitation for bids in terms of regulation 22.
- (3) A bid specification committee must be composed of one or more officials of the municipality or municipal entity, preferably the

- manager responsible for the function involved, and may, when appropriate, include external specialist advisors.
- (4) No person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts.

#### **Bid evaluation committees**

28. (1) A bid evaluation committee must –
- (a) evaluate bids in accordance with –
    - (i) the specifications for a specific procurement; and
    - (ii) the points system as must be set out in the supply chain management policy of the municipality or municipal entity in terms of regulation 27(2)(f) and as prescribed in terms of the Preferential Procurement Policy Framework Act;
  - (b) evaluate each bidder's ability to execute the contract;
  - (c) check in respect of the recommended bidder whether municipal rates and taxes and municipal service charges are not in arrears; and
  - (d) submit to the adjudication committee a report and recommendations regarding the award of the bid or any other related matter.
- (2) A bid evaluation committee must as far as possible be composed of–
- (a) officials from departments requiring the goods or services; and
  - (b) at least one supply chain management practitioner of the municipality or municipal entity.

#### **Bid adjudication committees**

29. (1) A bid adjudication committee must –
- (a) consider the report and recommendations of the bid evaluation committee; and
  - (b) either –
    - (i) depending on its delegations, make a final award or a recommendation to the accounting officer to make the final award; or
    - (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement.
- (2) A bid adjudication committee must consist of at least four senior managers of the municipality or municipal entity which must include–

- (i) the chief financial officer or, if the chief financial officer is not available, another manager in the budget and treasury office reporting directly to the chief financial officer and designated by the chief financial officer;
  - (ii) at least one senior supply chain management practitioner who is an official of the municipality or municipal entity; and
  - (iii) a technical expert in the relevant field who is an official of the municipality or municipal entity, if the municipality or municipal entity has such an expert.
- (3) The accounting officer must appoint the chairperson of the committee. If the chairperson is absent from a meeting, the members of the committee who are present must elect one of them to preside at the meeting.
- (4) Neither a member of a bid evaluation committee, nor an advisor or person assisting the evaluation committee, may be a member of a bid adjudication committee.
- (5) (a) If a bid adjudication committee decides to award a bid other than the one recommended by the bid evaluation committee, the bid adjudication committee must prior to awarding the bid –
  - (i) check in respect of the preferred bidder whether that bidder's municipal rates and taxes and municipal service charges are not in arrears; and
  - (ii) notify the accounting officer.
- (b) The accounting officer may –
  - (i) after due consideration of the reasons for the deviation, ratify or reject the decision of the bid adjudication committee referred to in paragraph (a); and
  - (ii) if the decision of the bid adjudication committee is rejected, refer the decision of the adjudication committee back to that committee for reconsideration.
- (6) The accounting officer may at any stage of a bidding process, refer any recommendation made by the evaluation committee or the adjudication committee back to that committee for reconsideration of the recommendation.
- (7) The accounting officer must comply with section 114 of the Act within 10 working days.

**Procurement of banking services**

30. (1) A contract for the provision of banking services to a municipality or municipal entity –
- (a) must be procured through competitive bids;
  - (b) must be consistent with sections 7 or 85 of the Act; and
  - (c) may not be for a period of more than five years at a time.
- (2) The process for procuring a contract for banking services must commence at least nine months before the end of an existing contract.
- (3) The closure date for the submission of bids may not be less than 60 days from the date on which the advertisement is placed in a newspaper in terms of regulation 22(1). Bids must be restricted to banks registered in terms of the Banks Act, 1990 (Act No. 94 of 1990).

**Procurement of IT related goods or services**

31. (1) A supply chain management policy may allow the accounting officer to request the State Information Technology Agency (SITA) to assist the municipality or municipal entity with the acquisition of IT related goods or services through a competitive bidding process.
- (2) The parties must enter into a written agreement to regulate the services rendered by, and the payments to be made to, SITA.
- (3) The accounting officer must notify SITA together with a motivation of the IT needs of the municipality or municipal entity if –
- (a) the transaction value of IT related goods or services required by the municipality or municipal entity in any financial year will exceed R50 million (VAT included); or
  - (b) the transaction value of a contract to be procured by the municipality or entity whether for one or more years exceeds R50 million (VAT included).
- (4) If SITA comments on the submission and the municipality or municipal entity disagrees with such comments, the comments and the reasons for rejecting or not following such comments must be submitted to the council, the National Treasury, the relevant provincial treasury and the Auditor General.

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

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



- (a) the contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;
  - (b) the municipality or entity has no reason to believe that such contract was not validly procured;
  - (c) there are demonstrable discounts or benefits for the municipality or entity to do so; and
  - (d) that other organ of state and the provider have consented to such procurement in writing.
- (2) Subregulation (1)(c) and (d) do not apply if –
- (a) a municipal entity procures goods or services through a contract secured by its parent municipality; or
  - (b) a municipality procures goods or services through a contract secured by a municipal entity of which it is the parent municipality.

#### **Procurement of goods necessitating special safety arrangements**

33. (1) A supply chain management policy must restrict the acquisition and storage of goods in bulk (other than water) which necessitate special safety arrangements, including gasses and fuel.
- (2) Where the storage of goods in bulk is justified, such justification must be based on sound reasons, including the total cost of ownership and cost advantages for the municipality or municipal entity.

#### **Proudly SA Campaign**

34. A supply chain management policy must stipulate to what extent the municipality or municipal entity supports the Proudly SA Campaign.

#### **Appointment of consultants**

35. (1) A supply chain management policy may allow the accounting officer to procure consulting services provided that any Treasury guidelines in respect of consulting services are taken into account when such procurements are made.
- (2) A contract for the provision of consultancy services to a municipality or municipal entity must be procured through competitive bids if –
- (a) the value of the contract exceeds R200 000 (VAT included); or
  - (b) the duration period of the contract exceeds one year.
- (3) In addition to any requirements prescribed by these Regulations for competitive bids, bidders must furnish the municipality or municipal entity with particulars of –

- (a) all consultancy services provided to an organ of state in the last five years; and
  - (b) any similar consultancy services provided to an organ of state in the last five years.
- (4) The municipality or municipal entity must ensure that copyright in any document produced, and the patent rights or ownership in any plant, machinery, thing, system or process designed or devised, by a consultant in the course of the consultancy service is vested in the municipality or entity.

**Deviation from, and ratification of minor breaches of, procurement processes**

36. (1) A supply chain management policy may allow the accounting officer—
- (a) to dispense with the official procurement processes established by the policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –
    - (i) in an emergency;
    - (ii) if such goods or services are produced or available from a single provider only;
    - (iii) for the acquisition of special works of art or historical objects where specifications are difficult to compile;
    - (iv) acquisition of animals for zoos; or
    - (v) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
  - (b) to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.
- (2) The accounting officer must record the reasons for any deviations in terms of subregulation (1)(a) and (b) and report them to the next meeting of the council, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.
- (3) Subregulation (2) does not apply to the procurement of goods and services contemplated in regulation 11(2).

**Unsolicited bids**

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

- (2) If a municipality or municipal entity decides in terms of section 113(2) of the Act to consider an unsolicited bid, it may do so only if—
  - (a) the product or service offered in terms of the bid is a demonstrably or proven unique innovative concept;
  - (b) the product or service will be exceptionally beneficial to, or have exceptional cost advantages for, the municipality or municipal entity;
  - (c) the person who made the bid is the sole provider of the product or service; and
  - (d) the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.
- (3) If a municipality or municipal entity decides to consider an unsolicited bid that complies with subregulation (2), the municipality or municipal entity must make its decision public in accordance with section 21A of the Municipal Systems Act, together with —
  - (a) its reasons as to why the bid should not be open to other competitors;
  - (b) an explanation of the potential benefits for the municipality or entity were it to accept the unsolicited bid; and
  - (c) an invitation to the public or other potential suppliers to submit their comments within 30 days of the notice.
- (4) Once the municipality or municipal entity has received written comments pursuant to subregulation (3), it must submit such comments, including any responses from the unsolicited bidder, to the National Treasury and the relevant provincial treasury for comment.
- (5) The adjudication committee must consider the unsolicited bid and may award the bid or make a recommendation to the accounting officer, depending on its delegations.
- (6) A meeting of the adjudication committee to consider an unsolicited bid must be open to the public.
- (7) When considering the matter, the adjudication committee must take into account —
  - (a) any comments submitted by the public; and
  - (b) any written comments and recommendations of the National Treasury or the relevant provincial treasury.
- (8) If any recommendations of the National Treasury or provincial treasury are rejected or not followed, the accounting officer must submit to the Auditor General, the relevant provincial treasury and the National Treasury the reasons for rejecting or not following those recommendations.
- (9) Such submission must be made within seven days after the decision on the award of the unsolicited bid is taken, but no contract

committing the municipality or municipal entity to the bid may be entered into or signed within 30 days of the submission.

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

38. (1) A supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer –
- (a) to take all reasonable steps to prevent such abuse;
  - (b) to investigate any allegations against an official or other role player of fraud, corruption, favouritism, unfair or irregular practices or failure to comply with the supply chain management policy, and when justified –
    - (i) take appropriate steps against such official or other role player; or
    - (ii) report any alleged criminal conduct to the South African Police Service;
  - (c) to check the National Treasury's database prior to awarding any contract to ensure that no recommended bidder, or any of its directors, is listed as a person prohibited from doing business with the public sector;
  - (d) to reject any bid from a bidder –
    - (i) if any municipal rates and taxes or municipal service charges owed by that bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, are in arrears for more than three months; or
    - (ii) who during the last five years has failed to perform satisfactorily on a previous contract with the municipality or municipal entity or any other organ of state after written notice was given to that bidder that performance was unsatisfactory;
  - (e) to reject a recommendation for the award of a contract if the recommended bidder, or any of its directors, has committed a corrupt or fraudulent act in competing for the particular contract;
  - (f) to cancel a contract awarded to a person if –
    - (i) the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract; or
    - (ii) an official or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the contract that benefited that person; and

- (g) to reject the bid of any bidder if that bidder or any of its directors –
  - (i) has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system;
  - (ii) has been convicted for fraud or corruption during the past five years;
  - (iii) has willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
  - (iv) has been listed in the Register for Tender Defaulters In terms section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
- (2) The accounting officer must inform the National Treasury and relevant provincial treasury in writing of any actions taken in terms of subregulation (1)(b)(ii), (e) or (f).

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

#### **Logistics management**

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

#### **Disposal management**

40. (1) A supply chain management policy must provide for an effective system of disposal management for the disposal or letting of assets, including unserviceable, redundant or obsolete assets, subject to sections 14 and 90 of the Act
- (2) A supply chain management policy must –
- (a) specify the ways in which assets may be disposed of, including by –
    - (i) transferring the asset to another organ of state in terms of a provision of the Act enabling the transfer of assets;
    - (ii) transferring the asset to another organ of state at market related value or, when appropriate, free of charge;
    - (iii) selling the asset; or
    - (iv) destroying the asset;

- (b) stipulate that –
  - (i) immovable property may be sold only at market related prices except when the public interest or the plight of the poor demands otherwise;
  - (ii) movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality or municipal entity;
  - (iii) in the case of the free disposal of computer equipment, the provincial department of education must first be approached to indicate within 30 days whether any of the local schools are interested in the equipment; and
  - (iv) in the case of the disposal of firearms, the National Conventional Arms Control Committee has approved any sale or donation of firearms to any person or institution within or outside the Republic;
- (c) provide that –
  - (i) immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise; and
  - (ii) all fees, charges, rates, tariffs, scales of fees or other charges relating to the letting of immovable property are annually reviewed; and
- (d) ensure that where assets are traded in for other assets, the highest possible trade-in price is negotiated.

#### **Risk management**

41. (1) A supply chain management policy must provide for an effective system of risk management for the identification, consideration and avoidance of potential risks in the supply chain management system.
- (2) Risk management must include –
- (a) the identification of risks on a case-by-case basis;
  - (b) the allocation of risks to the party best suited to manage such risks;
  - (c) acceptance of the cost of the risk where the cost of transferring the risk is greater than that of retaining it;
  - (d) the management of risks in a pro-active manner and the provision of adequate cover for residual risks; and
  - (e) the assignment of relative risks to the contracting parties through clear and unambiguous contract documentation.

**Performance management**

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

**Part 4: Other matters****Prohibition on awards to persons whose tax matters are not in order**

43. (1) The supply chain management policy of a municipality or municipal entity must, irrespective of the procurement process followed, state that the municipality or municipal entity may not make any award above R15 000 to a person whose tax matters have not been declared by the South African Revenue Service to be in order.
- (2) Before making an award to a person, a municipality or municipal entity must first check with SARS whether that person's tax matters are in order.
- (3) If SARS does not respond within seven days such person's tax matters may for purposes of subregulation (1) be presumed to be in order.

**Prohibition on awards to persons in the service of the state**

44. The supply chain management policy of a municipality or municipal entity must, irrespective of the procurement process followed, state that the municipality or municipal entity may not make any award to a person –
- (a) who is in the service of the state;
  - (b) if that person is not a natural person, of which any director, manager, principal shareholder or stakeholder is a person in the service of the state; or
  - (c) who is an advisor or consultant contracted with the municipality or municipal entity.

**Awards to close family members of persons in the service of the state**

45. The notes to the annual financial statements of a municipality or municipal entity must disclose particulars of any award of more than R2 000 to a person who is a spouse, child or parent of a person in the service of the state, or has been in the service of the state in the previous twelve months, including –
- (a) the name of that person;
  - (b) the capacity in which that person is in the service of the state; and
  - (c) the amount of the award.

**Ethical standards**

- 46.** (1) A supply chain management policy must establish a code of ethical standards complying with subregulation (2) for officials and other role players in the supply chain management system in order to promote –
- (a) mutual trust and respect; and
  - (b) an environment where business can be conducted with integrity and in a fair and reasonable manner.
- (2) A municipal code of ethical standards must stipulate that an official or other role player involved in the implementation of the supply chain management policy of the municipality or municipal entity –
- (a) must treat all providers and potential providers equitably;
  - (b) may not use his or her position for private gain or to improperly benefit another person;
  - (c) may not accept any reward, gift, favour, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person;
  - (d) notwithstanding subregulation (2)(c), must declare to the accounting officer details of any reward, gift, favour, hospitality or other benefit promised, offered or granted to that person or to any close family member, partner or associate of that person;
  - (e) must declare to the accounting officer details of any private or business interest which that person, or any close family member, partner or associate, may have in any proposed procurement or disposal process of, or in any award of a contract by, the municipality or municipal entity;
  - (f) must immediately withdraw from participating in any manner whatsoever in a procurement or disposal process or in the award of a contract in which that person, or any close family member, partner or associate, has any private or business interest;
  - (g) must be scrupulous in his or her use of property belonging to the municipality or municipal entity;
  - (h) must assist the accounting officer in combating fraud, corruption, favouritism and unfair and irregular practices in the supply chain management system; and
  - (i) must report to the accounting officer any alleged irregular conduct in the supply chain management system which that person may become aware of, including –
    - (i) any alleged fraud, corruption, favouritism or unfair conduct;
    - (ii) any alleged contravention of regulation 47(1); or



- (iii) any alleged breach of the code of ethical standards.
- (3) A supply chain management policy must –
  - (a) determine that all declarations in terms of subregulation (2)(d) and (e) must be recorded in a register which the accounting officer must keep for this purpose;
  - (b) determine that all declarations by the accounting officer must be made to the mayor of the municipality or the board of directors of the municipal entity who must ensure that such declarations are recorded in the register; and
  - (c) contain measures to ensure that appropriate action is taken against any official or other role player who commits a breach of the code of ethical standards.
- (4) A supply chain management policy must take into account the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management.
- (5) A municipality or municipal entity may adopt the National Treasury's code of conduct for supply chain management practitioners and other role players involved in supply chain management. When adopted, such code of conduct becomes binding on all officials and other role players involved in the implementation of the supply chain management policy of the municipality or municipal entity.
- (6) Subregulation (2)(c) does not apply to gifts less than R350 in value.

**Inducements, rewards, gifts and favours to municipalities, municipal entities, officials and other role players**

47. (1) No person who is a provider or prospective provider of goods or services to a municipality or municipal entity, or a recipient or prospective recipient of goods disposed or to be disposed of by a municipality or municipal entity, may either directly or through a representative or intermediary promise, offer or grant –
- (a) any inducement or reward to the municipality or municipal entity for or in connection with the award of a contract; or
  - (b) any reward, gift, favour or hospitality to –
    - (i) any official of the municipality or municipal entity; or
    - (ii) any other role player involved in the implementation of the supply chain management policy of the municipality or municipal entity.
- (2) The accounting officer of a municipality or municipal entity must promptly report any alleged contravention of subregulation (1) to the National Treasury for considering whether the offending person, and any representative or intermediary through which such person is alleged to have acted, should be listed in the National Treasury's

database of persons prohibited from doing business with the public sector.

- (3) Subregulation (1) does not apply to gifts less than R350 in value.

#### **Sponsorships**

**48.** The accounting officer of a municipality or municipal entity must promptly disclose to the National Treasury and the relevant provincial treasury any sponsorship promised, offered or granted to the municipality or municipal entity, whether directly or through a representative or intermediary, by any person who is –

- (a) a provider or prospective provider of goods or services to the municipality or municipal entity; or
- (b) a recipient or prospective recipient of goods disposed or to be disposed, of by the municipality or municipal entity.

#### **Objections and complaints**

**49.** The supply chain management policy of a municipality or municipal entity must allow persons aggrieved by decisions or actions taken by the municipality or municipal entity in the implementation of its supply chain management system, to lodge within 14 days of the decision or action a written objection or complaint to the municipality or municipal entity against the decision or action.

#### **Resolution of disputes, objections, complaints and queries**

**50.** (1) The supply chain management policy of a municipality or municipal entity must provide for the appointment by the accounting officer of an independent and impartial person not directly involved in the supply chain management processes of the municipality or municipal entity –

- (a) to assist in the resolution of disputes between the municipality or municipal entity and other persons regarding–
  - (i) any decisions or actions taken by the municipality or municipal entity in the implementation of its supply chain management system; or
  - (ii) any matter arising from a contract awarded in the course of its supply chain management system; or
- (b) to deal with objections, complaints or queries regarding any such decisions or actions or any matters arising from such contract.

- (2) A parent municipality and a municipal entity under its sole or shared control may for purposes of subregulation (1) appoint the same person.

- (3) The accounting officer, or another official designated by the accounting officer, is responsible for assisting the appointed person to perform his or her functions effectively.
- (4) The person appointed must –
  - (a) strive to resolve promptly all disputes, objections, complaints or queries received; and
  - (b) submit monthly reports to the accounting officer on all disputes, objections, complaints or queries received, attended to or resolved.
- (5) A dispute, objection, complaint or query may be referred to the relevant provincial treasury if –
  - (a) the dispute, objection, complaint or query is not resolved within 60 days; or
  - (b) no response is received from the municipality or municipal entity within 60 days.
- (6) If the provincial treasury does not or cannot resolve the matter, the dispute, objection, complaint or query may be referred to the National Treasury for resolution.
- (7) This regulation must not be read as affecting a person's rights to approach a court at any time.

#### **Contracts providing for compensation based on turnover**

51. If a service provider acts on behalf of a municipality or municipal entity to provide any service or act as a collector of fees, service charges or taxes and the compensation payable to the service provider is fixed as an agreed percentage of turnover for the service or the amount collected, the contract between the service provider and the municipality or municipal entity must stipulate –
- (a) a cap on the compensation payable to the service provider; and
  - (b) that such compensation must be performance based.

#### **Commencement**

52. These Regulations take effect on 1 July 2005 and becomes effective for a municipality or municipal entity on that date subject to any exemptions that may be granted in terms of section 177 of the Act.

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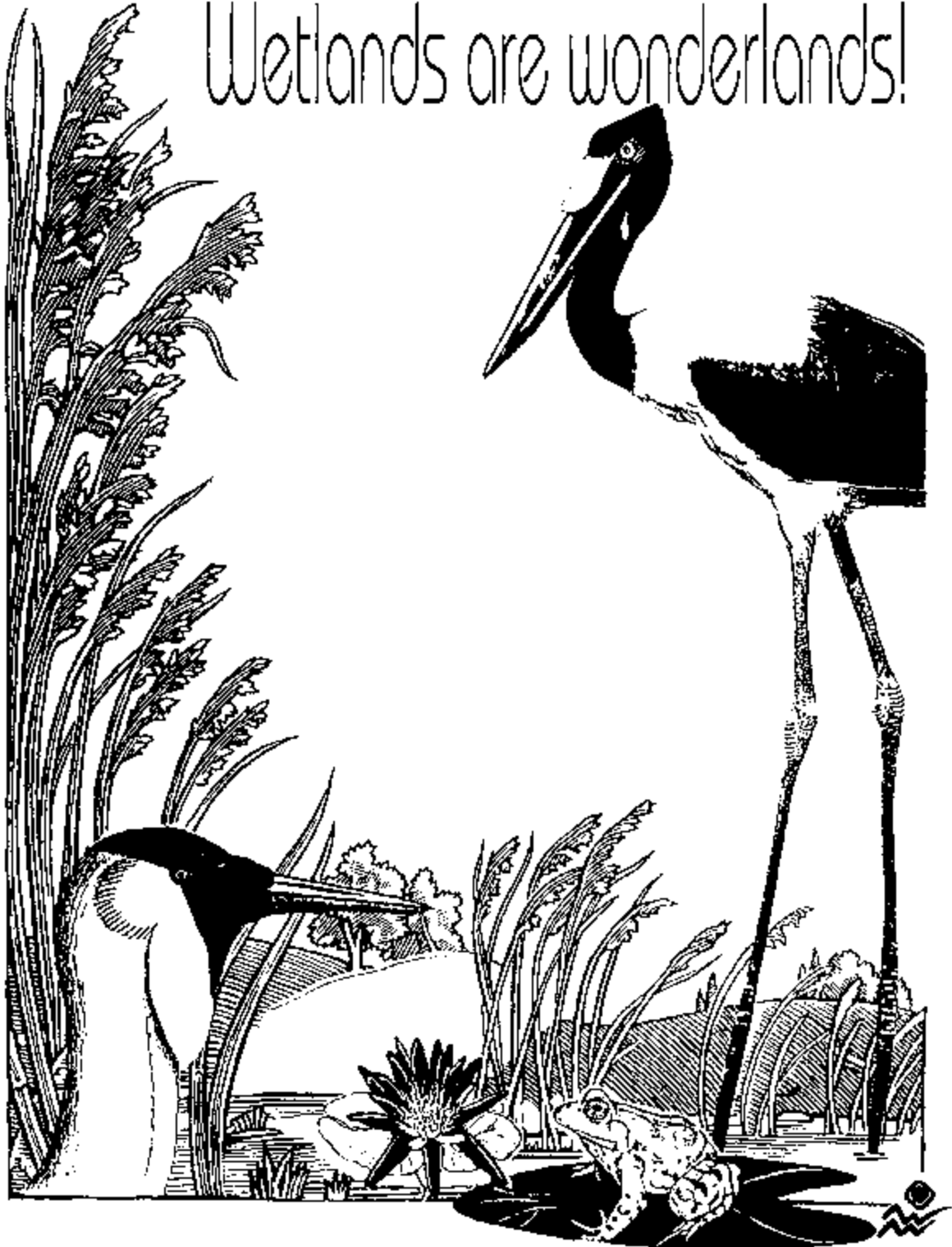
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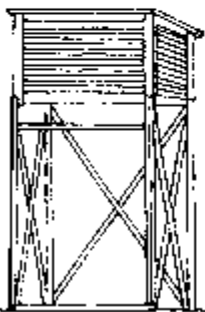
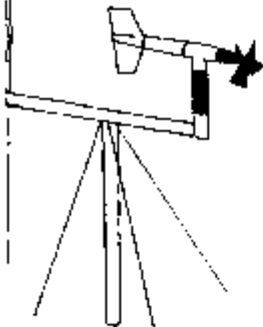
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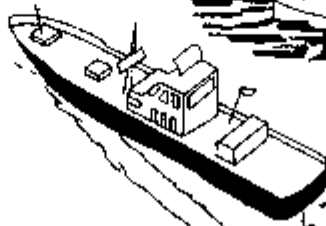
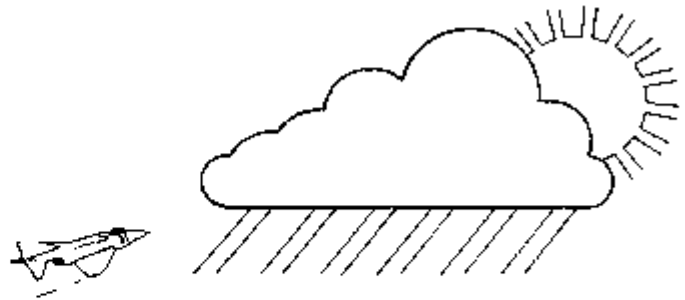


Department of Environmental Affairs and Tourism

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