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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

NATIONAL TREASURY

NO. 4393

19 February 2024

CALL FOR COMMENTS ON PROPOSED AMENDMENTS TO MUNICIPAL PUBLIC-PRIVATE PARTNERSHIP REGULATIONS, 2005

The Minister of Finance in terms of section 169(1)(b) of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), publishes for comment the proposed amendments to the Municipal Public-Private Partnership Regulations that were published under Government Notice No. R. 309 in Government Gazette No. 27431 of 1 April 2005 as set out in the Schedule.

Written comments on the proposed amendments should be submitted to CommentsPPPDraftLegislation@treasury.gov.za within 30 days after the date of publication of this notice.

An explanatory note will be published on the National Treasury website: <https://www.treasury.gov.za>.

SCHEDULE**Amendment of regulation 1**

1. Regulation 1 of the Regulations is hereby amended—
 - (a) by the insertion after the definition of “municipal property” of the following definition:

“**preferred bidder**” means the bidder, including any bidding consortium, to be appointed as preferred bidder in terms of regulation 4(8).”; and
 - (b) by the insertion after the definition of “public-private partnership” of the following definitions:

“**Public-Private Partnership Advisory Unit**” means the Public-Private Partnership Unit within the Government Technical Advisory Centre, or any functionary delegated, in terms of section 6(1) of the Act, a power or duty assigned to the National Treasury in terms of these Regulations;

“**total project cost**” means all the costs, capital expenditure, operational expenditure costs including maintenance and refurbishment costs, associated with the development, implementation and operation of a public-private partnership project, including all direct and indirect costs incurred throughout the entire life cycle of the project.”.

Amendment of regulation 3

2. Regulation 3 of the Regulations is hereby amended by the substitution for paragraph (b) of subregulation (1) of the following paragraph:

“(b) assess the needs of the municipality in respect of such activity, including—
 - (i) the various options available to the municipality to satisfy those needs;
 - (ii) the advantages and disadvantages of each option; and
 - (iii) the direct and indirect costs and benefits associated with the project, including the expected effect of any service delivery mechanism on the environment and on human health, wellbeing and safety.”.

Amendment of regulation 4

3. Regulation 4 of the Regulations is hereby amended—

(a) by the substitution for subregulation (2) of the following subregulation:

“(2) An award of a public- private partnership agreement may be made only after the process set out in section 120 (6) of the Act has been completed.”; and

(b) by the addition after subregulation (4) of the following subregulations:

“(5) After complying with section 120(6) of the Act, the municipality must proceed with the procurement of that project through a public-private partnership procurement process, seeking the relevant and applicable treasury views and recommendations.

(6) If the municipality, having commenced a public-private partnership procurement process, fails to adhere to its procurement timelines, the municipality must advise the National Treasury in writing of the delay and the reasons for the delay, and the steps taken to mitigate the delay.

(7) A municipality may only abandon or suspend a procurement process after consultation with the National Treasury following submission of a report to National Treasury addressing—

- (a) the reasons for the decision to abandon or suspend;
- (b) the justifiability of the decision to abandon or suspend in consideration of the circumstance surrounding the procurement of the project on a public-private partnership basis;
- (c) the decision to abandon or suspend having been exercised in good faith; and
- (d) what is in the best interests of the municipality in the circumstances.

(8) Notwithstanding any other provisions of this regulation, a public-private partnership project with an estimated total project cost of less than R2 billion, is exempted from complying with subregulation (1), provided that—

- (a) the municipality must submit the procurement documents for the relevant public-private partnership project to the Public-Private Partnership Advisory Unit for its views and recommendations, prior to such documents being finalised to be released for procurement purposes;
- (b) the accounting officer of the municipality provides formal authorisation and sign off on all project preparation and procurement documents for that public-private partnership project, after considering the recommendations of the Public-Private Partnership Advisory Unit on the procurement documents;
- (c) prior to taking a decision on either—
 - (i) the pre-qualification of bidders following a request for qualification; or
 - (ii) the selection of a preferred bidder following a request for proposal process,

the municipality must prepare and furnish reports to the Public-Private Partnership Advisory Unit for its views and recommendations, in the format determined by the National Treasury, as applicable at the time of pre-qualification of bidders or appointment of a preferred bidder, with respect to the evaluation of the responses to the request for qualification or request for proposal; and

- (d) the accounting officer of the municipality may only appoint pre-qualified bidders in response to the request for qualification or a preferred bidder in response to the request for proposal after considering the recommendations from the Public-Private Partnership Advisory Unit on such reports. The Public-Private Partnership Advisory Unit must furnish its recommendations after consultation with the National Treasury.”.

Commencement

4. These Regulations take effect on the date of publication in the *Gazette*.

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