



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**LEGAL SERVICES**

PO Box 15 Cape Town 8000 Republic of South Africa  
Tel: 27 (21) 403 2911  
www.parliament.gov.za

Tel: (021) 403-2626  
Direct: (021) 403-8663  
Fax (021) 403-3888  
E-mail: fjenkins@parliament.gov.za

**LEGAL OPINION**  
**[Confidential]**

**TO: Co-Chairperson: Interim Joint Committee on Scrutiny of Delegated  
Legislation**  
**[Mr V Smith, MP & Ms M Boroto, MP]**

**COPY: Acting Secretary to Parliament [Ms P Tyawa]**

**FROM: Constitutional and Legal Services Office**  
**[Adv F S Jenkins, Senior Parliamentary Legal Adviser]**

**DATE: 14 February 2014**

**REF NO.: 17 / 14**

---

**SUBJECT: Draft Supply Chain Management Regulations for Parliament**

---

**MESSAGE: Attached please find a memorandum for your attention.**



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**LEGAL SERVICES**

PO Box 15 Cape Town 8000 Republic of South Africa  
Tel: 27 (21) 403 2911  
www.parliament.gov.za

## **MEMORANDUM**

**TO: Co-Chairperson: Interim Joint Committee on Scrutiny of Delegated Legislation**  
**[Mr V Smith, MP & Ms M Boroto, MP]**

**COPY: Acting Secretary to Parliament**  
**[Ms P Twaya]**

**FROM: Constitutional and Legal Services Office**  
**[Adv F S Jenkins, Senior Parliamentary Legal Adviser]**

**DATE: 14 February 2014**

**REF. NO.: 17 / 14**

---

**SUBJECT: Draft Supply Chain Management Regulations for Parliament**

---

### **Background**

1. The Draft Supply Chain Management Regulations (hereinafter the "SCM Regulations") was published in the *Government Gazette* on 4 February 2013 (No. 36130), as required by section 65(5) of the Financial Management of Parliament Act, 2009 (Act No. 10 of 2009) (hereinafter the "FMPA"). On 9 May 2013 the Speaker of the National Assembly and the Chairperson of the National Council of Provinces tabled the SCM Regulations in Parliament (ATC, 9 May 2013, p. 1277).
2. The draft regulations were referred to the Interim Joint Committee on Scrutiny of Delegated Legislation and the Standing and Select Committees on Finance. The referral indicates that the three committees must consider and report in terms of their respective mandates, the finance committees to confer.



3. The Interim Joint Committee on Scrutiny of Delegated Legislation met on 5 June 2013 and resolved to wait for the process in the Standing and Select Committees to be completed. It also resolved that the style of the draft Regulations should conform to the legislative style used for regulations.
4. The Standing and Select Committees on Finance, conferring as was required by the referral, reported amended SCM regulations on 28 October and 5 November 2013, respectively. The Assembly and the Council approved the amended SCM regulations on 5 and 21 November 2013, respectively.

#### **Amendments made to draft as published**

5. The style and formatting of the entire document was changed in line with the prevailing legislative drafting practices for regulations, as was required by the Interim Joint Committee on Scrutiny of Delegated Legislation.
6. The paragraph introducing the SCM Regulations referring to the empowering provision in the FMPA was amended in line with the provisions in the principal Act.
7. The following clauses in the SCM Regulations were amended.
  - Regulation 1: Two abbreviations were deleted as they were included in the definitions.
  - Regulation 2: A number of definitions were added and amended as required.
  - Regulation 4: Amended sub-regulation (4), for consistency with other peremptory requirements in respect of procurement committees.
  - Regulation 5: Deleted sub-regulation (7).
  - Regulation 6: Included clause to make provision for the submission of verbal quotations and amended provisions dealing with competitive bidding.



- Regulation 7: Amended the provision that deal with the appointment of members of the Committees established in terms of the SCM Regulations to simplify it.
- Regulation 8: Amendment to sub-regulation (3) to provide fairness in considering a bid in addition to taking into account the issue of conflict of interests.
- Regulation 11: Amendment to make provisions for dispute settling within the contract management function as required by item (r) of Schedule 3.
- Regulation 16: Clause dealing with dispute resolution through Executive Authority deleted due to legal concern that section 44 of the FMPA prohibit such a role for Members of Parliament.

8. Regulations 3, 9, 10, 12 – 15 and 17 remain unchanged.

#### **Advice**

9. The amended SCM Regulations comply with the scrutiny criteria.

#### **Conclusion**

10. Given the mandate of the Interim Joint Committee, it may report to the Houses for information of the relevant portfolio and select committees that the SCM Regulations comply with the scrutiny criteria as determined by the resolution of both Houses.

A handwritten signature in black ink, appearing to read 'F S Jenkins'.

Adv F S Jenkins

Senior Parliamentary Legal Adviser