

# *Select Committee on Finance*

## **Amendment to Supply Management Regulations under Municipal Finance Management Act**

**OFFICE OF THE DIRECTOR-GENERAL**

**Presenter: Adv Empie van Schoor | Chief Director: Legislation, National Treasury | 15 February 2017**



**national treasury**

Department:  
National Treasury  
**REPUBLIC OF SOUTH AFRICA**

# Affected regulations

- Regulation 44 of MFMA SCM Regulations of 2005
  - SCM policy of municipality must state that no tender may be awarded to a person who is **in the service of the state**
- Regulation 1 defines “in the service of the state” to include
  - a member of the accounting authority of any national or provincial public entity”

# Reason for amendment

- Inclusion of a non-executive director of a national or provincial public entity in the definition challenged in *Scheidner Electric (Pty) Ltd v Minister of Finance & Others*
  - Regulation 44 prohibited the director of the company who was at the time a non-executive director of a national public entity to tender for work of a municipality
- Senior counsel advised that there is no rational reason for regarding non-executive directors to be in the service of the state and therefore being barred from participating in municipal tenders

# Process

- NT decided to initiate process to amend definition “in the service of the state” to exclude non-executive directors of national/provincial public entities
- Consulted SALGA and publish draft amendment to regulations for public comment (as required by s169(1) of MFMA)
- Only one public comment – supported amendment and requested retrospective implementation
  - Retrospective implementation not authorised by MFMA
- Minister of Cooperative Governance and Traditional Affairs concurred with the amendment to the definition as required (s168(1) of MFMA)

# Process cont

- Regulations made in terms of s168 of the MFMA must be submitted for parliamentary scrutiny at least 30 days before promulgation (s169(2) of MFMA)
- Notice of amendment appeared in Parliament's ATC report on 4 November 2016
  - 30 day period ended in December 2016
- In view of pending litigation, amendment was approved by the Minister of Finance and gazetted on 20 January 2017

***Ri a livhuwa/Enkosi/Siyabonga/  
Re a leboga/Dankie/Thank you***

