

(17 January 2014 – to date)

LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 32 OF 2000

(Gazette No. 21776, Notice No. 1187, dated 20 November 2000. Commencement date: 1 March 2001 – unless otherwise indicated) [Proc. No. R18, Gazette No. 22091, dated 23 February 2001]

LOCAL GOVERNMENT: MUNICIPAL PERFORMANCE REGULATIONS FOR MUNICIPAL MANAGERS AND MANAGERS DIRECTLY ACCOUNTABLE TO MUNICIPAL MANAGERS, 2006

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Government Notice GN 21 in Government Gazette 37245, dated 17 January 2014. Commencement date: 17 January 2014.

Under section 120 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), I, Fholisani Sydney Mufamadi, after consultation with the MEC's for local government and organised local government representing local government nationally, hereby make the regulations in the Schedule.

F. S. MUFAMADI

Minister for Provincial and Local Government

PREAMBLE

These regulations seek to set out how the performance of municipal managers will be uniformly directed, monitored and improved. The regulations address both the Employment Contract of a municipal manager and managers directly accountable to municipal managers, as well as the Performance Agreement that is entered into between respective municipalities, municipal managers and managers directly accountable to municipal managers. These instruments will, in combination, ensure a basis for performance and continuous improvement in local government.

The Employment Contract provides to specifically delineate the terms of employment for municipal managers, and managers directly accountable to municipal managers. Similarly, the Performance Agreement provides assurance to the municipal council of what can and should be expected from their municipal managers and managers directly accountable to municipal managers.

Prepared by:

In partnership with:

Finally, these instruments will be most effective when considered in the context of enabling the implementation of a municipality's Integrated Development Plan (IDP). As such, they should simultaneously create an enabling environment for enhanced performance and accountability.

SCHEDULE

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CHAPTER 1 INTERPRETATION

1. Definitions

In these regulations a word or phrase to which a meaning has been assigned in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), has that meaning and, unless the context otherwise indicates-

"employee" means a person employed by a municipality as a municipal manager or as a manager directly accountable to a municipal manager;

"employer" means the municipality employing a person as a municipal manager or as a manager directly accountable to a municipal manager and as represented by the mayor, executive mayor or municipal manager as the case may be;

"employment contract" means a contract as contemplated in Section 57 of the Act;

"performance agreement" means an agreement as contemplated in Section 57 of the Act; and

"the Act" means the Local Government: Municipal Systems Act, 2000.

CHAPTER 2
EMPLOYMENT CONTRACTS FOR MUNICIPAL MANAGERS AND MANAGERS DIRECTLY
ACCOUNTABLE TO MUNICIPAL MANAGERS

2. General principles

- (1) In accordance with section 57 of the Act a person may only be appointed as a municipal manager or a manager directly accountable to a municipal manager in terms of a written employment contract complying with the provisions of section 57 of the Act.
- (2) The employment contract must include, subject to applicable labour legislation:
 - (a) details of duties;
 - (b) remuneration;
 - (c) benefits; and
 - (d) other terms and conditions of employment.
- (3) The employment contract for a municipal manager must -
 - (a) be for a fixed term of employment not exceeding a period ending two years after the election of the next council of the municipality;
 - (b) include a provision for cancellation of the employment contract, in the case of non-compliance with the employment contract, or where applicable, the performance agreement, or due to medical incapacity;
 - (c) stipulate the terms of the renewal of the employment contract, but only by agreement between the parties; and
 - (d) reflect the values and principles referred to in section 50 of the Act, the Code of Conduct set out in Schedule 2 of the Act, and the management standards and practices contained in section 51 of the Act.
- (4) A municipality may extend the application of sub-regulation 3 to any manager directly accountable to the municipal manager as provided for in section 57(7) of the Act.

3. Parties

- (1) The employment contract should clearly identify the municipality concerned by means of referring to its official name and should reflect the address of the municipality's principal place of business.
- (2) The parties to the employment contract, in the case of the municipal manager, are the municipality as represented by the mayor or executive mayor and the person to be appointed through the employment contract, referred to as the employee.
- (3) In respect of managers directly accountable to the municipal manager, the parties to the employment contract are the municipality as represented by the municipal manager and the person accountable to the municipal manager, referred to as the employee.

4. Establishment of contract

- (1) The employment contract must be subject to the terms and conditions of the Act, in particular the responsibilities in terms of section 55 of the Act, as well as the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) and any other legislation imposing obligations on the municipal manager.
- (2) In the case of the municipal manager, and managers directly accountable to the municipal manager and to which sub-regulation 2(4) applies, the employment contract must provide for a commencement date and termination date.
- (3) Subject to sub-regulation 2(3)(c), there should be no expectation that the employment contract will be renewed or extended beyond the term referred to in sub-regulation (2).
- (4) Employment in terms of the employment contract must further be subject to compliance with the following terms and conditions-
 - (a) the signing of a separate performance agreement within ninety (90) calendar days after assumption of duty and annually within one month after the commencement of the new financial year;
 - (b) the submission of original certificates or certified copies thereof of the employee's academic and professional qualifications and proof of previous employment prior to the signing of the employment contract;
 - (c) the Code of Conduct as stipulated in Schedule 2 of the Act, which must form an appendix to the contract; and
 - (d) disclosure of financial interests on the date of assumption of duty and on an annual basis within one month after the commencement of the financial year, which shall be lodged with the municipal council.

- (5) The employment contract and performance agreement must be submitted to the MEC responsible for local government in the relevant province as well as the national minister responsible for local government within fourteen (14) days after concluding the employment contract and performance agreement.

5. Place of work

The employee's place of work includes the employer's area of jurisdiction, but he or she may be required to perform other duties or work related to the functions of the employer at other places that may reasonably be required by the employer.

6.

(Regulation 6 repealed by regulation 46 of Government Notice 21 of 2014)

7.

(Regulation 7 repealed by regulation 46 of Government Notice 21 of 2014)

8. Performance bonus

In accordance with regulation 32, a performance bonus, based on affordability, may be paid to the employee, after -

- (1) the annual report for the financial year under review has been tabled and adopted by the municipal council;
- (2) an evaluation of performance in accordance with the provisions of regulation 23; and
- (3) approval of such evaluation by the municipal council as a reward for outstanding performance.

9.

(Regulation 9 repealed by regulation 46 of Government Notice 21 of 2014)

10.

(Regulation 10 repealed by regulation 46 of Government Notice 21 of 2014)

11.

(Regulation 11 repealed by regulation 46 of Government Notice 21 of 2014)

12.

(Regulation 12 repealed by regulation 46 of Government Notice 21 of 2014)

13.

(Regulation 13 repealed by regulation 46 of Government Notice 21 of 2014)

14. Deductions from salary

The employer may make deductions from the employee's monthly all- inclusive remuneration package subject to the provisions of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).

15.

16.

(Regulation 16 repealed by Regulation 20 of Government Notice 344 in Government Gazette 34213, dated 21 April 2011)

17. Termination of contract

(1) The employment contract will terminate -

- (a) automatically on expiry of the term referred to in the contract, subject to any extension or renewal:
- (b) at the employee's initiative, if the employee gives the employer two (2) month's notice of termination in writing; or
- (c) at the employer's initiative, if the employer terminates the employee's appointment for reasons relating to misconduct, incapacity, unacceptable performance or the operational requirements of the municipality or for any other reason recognized by law as sufficient, on one calendar month's notice of termination in writing.

(2)

(Regulation 17(2) repealed by Regulation 20 of Government Notice 344 in Government Gazette 34213, dated 21 April 2011)

(3)

(Regulation 17(3) repealed by Regulation 20 of Government Notice 344 in Government Gazette 34213, dated 21 April 2011)

18. Grievances

The employee may lodge a complaint or grievance concerning an act or omission of the employer with the municipal council in accordance with applicable procedures and time frames.

19. Variation

The employment contract must provide that no addition to or variation or mutually agreed cancellation or novation of the contract and no waiver of any right arising from the contract or its breach or termination shall be of any force or effect unless reduced to writing and signed by or on behalf of both parties.

20. No indulgence

The employment contract must provide that no latitude, extension of time or other indulgence, which may be given or allowed by the employer to the employee in respect of the performance of any obligation in terms of the contract, and no delay or forbearance in the enforcement of any right of any party arising from the contract, and no single or partial exercise of any right by any party under the contract, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of arising from the contract or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term thereof.

21. Severability

Save to the extent contemplated in the employment contract, the parties should acknowledge and agree that each phrase, sentence, paragraph and clause of the contract is severable, the one from the other, notwithstanding the manner in which they may be linked together or grouped automatically and if in terms of any judgement or order, any phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining phrases, sentences, paragraphs and clauses, as the case may be, shall nevertheless continue to be of full force and effect.

22. General

The employment contract contemplated in these regulations must adhere to generally accepted principles of contract and labour law and should contain provisions providing for good faith; interpretation; jurisdiction; *domicilia citandi et executandi* and the serving of notices.

CHAPTER 3

PERFORMANCE AGREEMENTS FOR MUNICIPAL MANAGERS AND MANAGERS DIRECTLY ACCOUNTABLE TO MUNICIPAL MANAGERS

23. Purpose of performance agreement

The purpose of the agreement is to:

- (1) comply with the provisions of Section 57(1)(b), (4A), (4B) and (5) of the Act as well as the employment contract entered into between the parties;
- (2) specify objectives and targets defined and agreed with the employee and to communicate to the employee the employer's expectations of the employee's performance and accountabilities in alignment with the Integrated Development Plan, Service Delivery and Budget Implementation Plan (SDBIP) and the Budget of the municipality;
- (3) specify accountabilities as set out in a performance plan, which forms an annexure to the performance agreement;
- (4) monitor and measure performance against set targeted outputs;
- (5) use the performance agreement as the basis for assessing whether the employee has met the performance expectations applicable to his or her job;
- (6) in the event of outstanding performance, to appropriately reward the employee; and
- (7) give effect to the employer's commitment to a performance- orientated relationship with its employee in attaining equitable and improved service delivery.

24. Commencement and duration

- (1) The performance agreement must be entered into for each financial year of the municipality, or part thereof.
- (2) The parties must review the provisions of this agreement during June each year and must conclude a new performance agreement that replaces the previous agreement at least once a year within one month after the commencement of the new financial year.
- (3) The agreement will terminate on the termination of the employee's contract of employment for any reason.
- (4) If at any time during the validity of the agreement the work environment alters to the extent that the contents of the agreement are no longer appropriate, the contents must by mutual agreement between the parties, immediately be revised.

25. Performance objectives

- (1) The performance plan sets out:
 - (a) The performance objectives and targets that must be met by the employee; and

- (b) the time frames within which those performance objectives and targets must be met.
- (2) The performance objectives and targets reflected in the performance plan are set by the employer in consultation with the employee and based on the Integrated Development Plan, Service Delivery and Budget Implementation Plan (SDBIP) and the Budget of the municipality, and shall include key objectives; key performance indicators; target dates and weightings.
- (3) The key objectives describe the main tasks that need to be done. The key performance indicators provide the details of the evidence that must be provided to show that a key objective has been achieved. The target dates describe the timeframe in which the work must be achieved. The weightings show the relative importance of the key objectives to each other.
- (4) The employee's performance will, in addition, be measured in terms of contributions to the goals and strategies set out in the employer's Integrated Development Plan.

26. Performance management system

- (1) The employee agrees to participate in the performance management system that the employer adopts or introduces for the municipality.
- (2) The employee accepts that the purpose of the performance management system will be to provide a comprehensive system with specific performance standards to assist the employer, management and municipal staff to perform to the standards required.
- (3) The employer will consult the employee about the specific performance standards that will be included in the performance management system as applicable to the employee.
- (4) The employee undertakes to actively focus towards the promotion and implementation of the Key Performance Areas (KPAs) (including special projects relevant to the employee's responsibilities) within the local government framework.
- (5) The criteria upon which the performance of the employee must be assessed consist of two components, both of which must be contained in the performance agreement. The employee must be assessed against both components, with a weighting of 80: 20 allocated to the Key Performance Areas (KPAs) and the Core Competency Requirements (CCRs), respectively. Each area of assessment will be weighted and will contribute a specific part to the total score. KPAs covering the main areas of work will account for 80% and CCRs will account for 20% of the final assessment.
- (6) The employee's assessment will be based on his or her performance in terms of the outputs/outcomes (performance indicators) identified as per the performance plan which are linked to the KPA's, which

constitute 80% of the overall assessment result as per the weightings agreed to between the employer and employee.

Key Performance Areas (KPA's) for Municipal Managers	Weighting
Basic Service Delivery	
Municipal Institutional Development and Transformation	
Local Economic Development (LED)	
Municipal Financial Viability and Management	
Good Governance and Public Participation	
Total	100%

(7) In the case of managers directly accountable to the municipal manager, key performance areas related to the functional area of the relevant manager, must be subject to negotiation between the municipal manager and the relevant manager.

(8)

(Regulation 26(8) repealed by regulation 46 of Government Notice 21 of 2014)

CORE COMPETENCY REQUIREMENTS FOR EMPLOYEES (CCR)		
Core Managerial and Occupational Competencies	(Indicate choice)	Weight
Core Managerial Competencies:		
Strategic Capability and Leadership		
Programme and Project Management		
Financial Management	compulsory	
Change Management		
Knowledge Management		
Service Delivery Innovation		
Problem Solving and Analysis		
People Management and Empowerment	compulsory	
Client Orientation and Customer Focus	compulsory	
Communication		
Honesty and Integrity		
Core Occupational Competencies:		
Competence in Self Management		
Interpretation of and implementation within the legislative and national policy frameworks		
Knowledge of developmental local government		
Knowledge of Performance Management and Reporting		
Knowledge of global and South African specific political, social and economic contexts		
Competence in policy conceptualisation, analysis and implementation		

Knowledge of more than one functional municipal field/discipline		
Skills in Mediation		
Skills in Governance		
Competence as required by other national line sector departments		
Exceptional and dynamic creativity to improve the functioning of the municipality		
Total percentage	-	100%

27. Evaluating performance

- (1) The performance plan sets out -
 - (a) the standards and procedures for evaluating the employee's performance; and
 - (b) the intervals for the evaluation of the employee's performance.
- (2) Despite the establishment of agreed intervals for evaluation, the employer may in addition review the employee's performance at any stage while the employment contract remains in force.
- (3) Personal growth and development needs identified during any performance review discussion must be documented in a personal development plan as well as the actions agreed to and implementation must take place within set time frames.
- (4) The annual performance appraisal must involve:
 - (a) Assessment of the achievement of results as outlined in the performance plan:
 - (i) Each KPA should be assessed according to the extent to which the specified standards or performance indicators have been met and with due regard to ad hoc tasks that had to be performed under the KPA.
 - (ii) An indicative rating on the five-point scale should be provided for each KPA.
 - (iii) The applicable assessment rating calculator must then be used to add the scores and calculate a final KPA score.
 - (b) Assessment of the CCRs
 - (i) Each CCR should be assessed according to the extent to which the specified standards have been met.
 - (ii) An indicative rating on the five-point scale should be provided for each CCR.

- (iii) This rating should be multiplied by the weighting given to each CCR during the contracting process, to provide a score.
- (iv) The applicable assessment-rating calculator must then be used to add the scores and calculate a final CCR score.
- (c) Overall rating
- (i) An overall rating is calculated by using the applicable assessment-rating calculator. Such overall rating represents the outcome of the performance appraisal.
- (ii) The assessment of the performance of the employee will be based on the following rating scale for KPA's and CCR's:

Level	Terminology	Description	Rating				
			1	2	3	4	5
5	Outstanding Performance	Performance far exceeds the standard expected of an employee at this level. The appraisal indicates that the Employee has achieved above fully effective results against all performance criteria and indicators as specified in the PA and Performance plan and maintained this in all areas of responsibility throughout the year.					
4	Performance significantly above expectations	Performance is significantly higher than the standard expected in the job. The appraisal indicates that the Employee has achieved above fully effective results against more than half of the performance criteria and indicators and fully achieved all others throughout the year.					
3	Fully effective	Performance fully meets the standards expected in all areas of the job. The appraisal indicates that the Employee has fully achieved effective results against all significant performance criteria and indicators as specified in the PA and Performance Plan.					
2	Performance not fully effective	Performance is below the standard required for the job in key areas. Performance meets some of the standards expected for the job. The review/assessment indicates that the employee has achieved below fully effective results against more than half the key performance criteria and indicators as specified in the PA and Performance Plan.					
1	Unacceptable performance	Performance does not meet the standard expected for the job. The review/assessment indicates that the employee has achieved below fully effective results against almost all of the performance criteria and indicators as specified in the PA and Performance Plan. The employee has failed to demonstrate the commitment or ability to bring performance up to the level expected in the job despite management efforts to encourage					

	improvement.	
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- (d) For purposes of evaluating the annual performance of the municipal manager, an evaluation panel constituted of the following persons must be established -
- (i) Executive Mayor or Mayor;
 - (ii) Chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee;
 - (iii) Member of the mayoral or executive committee or in respect of a plenary type municipality, another member of council;
 - (iv) Mayor and/or municipal manager from another municipality; and
 - (v) Member of a ward committee as nominated by the Executive Mayor or Mayor.
- (e) For purposes of evaluating the annual performance of managers directly accountable to the municipal managers, an evaluation panel constituted of the following persons must be established -
- (i) Municipal Manager;
 - (ii) Chairperson of the performance audit committee or the audit committee in the absence of a performance audit committee;
 - (iii) Member of the mayoral or executive committee or in respect of a plenary type municipality, another member of council; and
 - (iv) Municipal manager from another municipality.
- (f) The manager responsible for human resources of the municipality must provide secretariat services to the evaluation panels referred to in sub-regulations (d) and (e).

28. Schedule for performance reviews

- (1) The performance of the employee in relation to his or her performance agreement must be reviewed on the following dates with the understanding that reviews in the first and third quarter may be verbal if performance is satisfactory:

First quarter : July - September.....

Second quarter : October - December.....

Third quarter : January-March.....
Fourth quarter : April-June.....

- (2) The employer must keep a record of the mid-year review and annual assessment meetings.
- (3) Performance feedback must be based on the employer's assessment of the employee's performance.
- (4) The employer will be entitled to review and make reasonable changes to the provisions of the performance plan from time to time for operational reasons on agreement between both parties.
- (5) The employer may amend the provisions of the performance plan whenever the performance management system is adopted, implemented and/or amended as the Case may be on agreement between both parties.

29. Developmental requirements

A personal development plan (PDP) for addressing developmental gaps must form part of the performance agreement.

30. Obligations of the employer

The Employer must -

- (1) create an enabling environment to facilitate effective performance by the employee;
- (2) provide access to skills development and capacity building opportunities;
- (3) work collaboratively with the employee to solve problems and generate solutions to common problems that may impact on the performance of the employee;
- (4) on the request of the employee delegate such powers reasonably required by the employee to enable him or her to meet the performance objectives and targets established in terms of the agreement; and
- (5) make available to the employee such resources as the employee may reasonably require from time to time to assist him or her to meet the performance objectives and targets established in terms of the agreement.

31. Consultation

- (1) The employer agrees to consult the employee timeously where the exercising of the powers will have, amongst others, -

- (a) a direct effect on the performance of any of the employee's functions;
 - (b) commit the employee to implement or to give effect to a decision made by the employer; and
 - (c) a substantial financial effect on the employer.
- (2) The employer agrees to inform the employee of the outcome of any decisions taken pursuant to the exercise of powers contemplated in sub- regulation (1) as soon as is practicable to enable the employee to take any necessary action without delay.

32. Management of evaluation outcomes

- (1) The evaluation of the employee's performance will form the basis for rewarding outstanding performance or correcting unacceptable performance.
- (2) A performance bonus ranging from 5% to 14% of the all-inclusive remuneration package may be paid to an employee in recognition of outstanding performance. In determining the performance bonus the relevant percentage is based on the overall rating, calculated by using the applicable assessment-rating calculator; provided that -
- (a) a score of 130% to 149% is awarded a performance bonus ranging from 5% to 9%; and
 - (b) a score of 150% and above is awarded a performance bonus ranging from 10% to 14%.
- (3) In the case of unacceptable performance, the employer shall -
- (a) provide systematic remedial or developmental support to assist the employee to improve his or her performance; and
 - (b) after appropriate performance counselling and having provided the necessary guidance and/or support and reasonable time for improvement in performance, and performance does not improve, the employer may consider steps to terminate the contract of employment of the employee on grounds of unfitness or incapacity to carry out his or her duties.

33. Dispute resolution

- (1) Any disputes about the nature of the employee's performance agreement, whether it relates to key responsibilities, priorities, methods of assessment and/ or salary increment in the agreement, must be mediated by -

- (a) In the case of the municipal manager, the MEC for local government in the province within thirty (30) days of receipt of a formal dispute from the employee, or any other person designated by the MEC; and
- (b) In the case of managers directly accountable to the municipal manager, the executive mayor or mayor within thirty (30) days of receipt of a formal dispute from the employee;

whose decision shall be final and binding on both parties.

- (2) Any disputes about the outcome of the employee's performance evaluation, must be mediated by -

- (a) In the case of the municipal manager, the MEC for local government in the province within thirty (30) days of receipt of a formal dispute from the employee, or any other person designated by the MEC; and
- (b) In the case of managers directly accountable to the municipal manager, a member of the municipal council, provided that such member was not part of the evaluation panel provided for in sub- regulation 27(4)(e), within thirty (30) days of receipt of a formal dispute from the employee;

whose decision shall be final and binding on both parties.

34. General

- (1) The contents of the performance agreement must be made available to the public by the employer in accordance with the Municipal Finance Management Act, 2003 and Section 46 of the Act.
- (2) Nothing in this agreement diminishes the obligations, duties or accountabilities of the employee in terms of his or her employment contract, or the effects of existing or new regulations, circulars, policies, directives or other instruments.
- (3) The performance assessment results of the municipal manager must be submitted to the MEC responsible for local government in the relevant province as well as the national minister responsible for local government, within fourteen (14) days after the conclusion of the assessment.

CHAPTER 4 JOB DESCRIPTION FOR MUNICIPAL MANAGERS

35.

(Regulation 35 repealed by regulation 46 of Government Notice 21 of 2014)

36.

(Regulation 36 repealed by regulation 46 of Government Notice 21 of 2014)

37.

(Regulation 37 repealed by regulation 46 of Government Notice 21 of 2014)

38.

(Regulation 38 repealed by regulation 46 of Government Notice 21 of 2014)

39. Short title and transitional arrangements

- (1) These regulations are called the Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers, 2006, and take effect on the date of publication thereof.
- (2) Employment contracts entered into before the effective date of the regulations continue to apply until such employment contracts have terminated in terms of the provisions of such contracts.
- (3) Chapter 3 of the Regulations, providing for performance agreements, takes immediate effect, subject to the provisions of existing employment contracts and the continuation of performance agreements that have been concluded before the Regulations took effect.
- (4)
 - (a) In the event that a municipal manager or a manager directly accountable to a municipal manager has not attained the prescribed competencies as provided for in the Regulations, the employer must ensure that such employee is assessed in order to identify competency gaps and to develop such employee.
 - (b) A municipal manager in the employ of a municipality on the effective date and who does not meet the prescribed requirements provided for in regulation 38 is exempted from compliance with that regulation.