



PART III of the agenda of the Council Meeting of the

CITY OF TSHWANE METROPOLITAN MUNICIPALITY (FIFTH TERM OF THE CITY OF TSHWANE)

to be held in the Council Chamber, Second Floor, Tshwane House, Madiba Street, Pretoria, on **WEDNESDAY, 27 MARCH 2024** at **10:00**, to consider the matters as set out in the agenda.

REPORT OF THE MAYORAL COMMITTEE

03/2024 report

20 MARCH 2024

Cllr M Ndzwanana
The Speaker of Council

22 March 2024

**PLEASE RETAIN THIS PART III OF COUNCIL FOR PURPOSE OF THE
COUNCIL MEETING OF 27 MARCH 2024**

AGENDA: COUNCIL: CITY OF TSHWANE METROPOLITAN MUNICIPALITY:
27 MARCH 2024

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Reference no. 46256/1
 Gareth Mnisi (8100)
 COUNCIL: 27 March 2024

7. GROUP FINANCIAL SERVICES DEPARTMENT
 SUPPLY CHAIN MANAGEMENT (SCM) DEVIATIONS TENDERS APPROVED FOR
 THE SECOND QUARTER OF 2023/24 FINANCIAL YEAR IN TERMS OF SUPPLY
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 MANAGEMENT ACT (MFMA)
(From the Mayoral Committee: 20 March 2024)

1. PURPOSE

The purpose of the report is to provide information of the deviations from procurement processes approved for the Second Quarter of 2023/24 financial year.

2. STRATEGIC PRIORITIES

- A business-friendly city that promotes employment and economic growth;
- Modernisation and digitisation of city processes; and
- A professional public service that drives accountability and transparency.

3. BACKGROUND

Deviations from the official supply chain process are recommended and approved by the Bid Adjudication Committee.

In terms of Section 38 of the reviewed Supply Chain Management Policy approved by Council 31 May 2023, the Accounting Officer may dispense with the official procurement process established by this policy and procure any required goods or services through any convenient process which may include direct negotiations-

“(a) dispense with the official procurement process established by this policy and Procure any required goods or services through any convenient process which may include direct negotiations-

- i. in an emergency;
- ii. where the accounting officer determines that it is impractical to invite competitive bids for specific procurement such as urgent or emergency cases, or in case of a sole supplier, he may in consultation with the Chief Financial Officer procure the goods or services by other means such as price quotations or negotiations, or reduce the required advertising period from 30 to 14 days to an appropriately deemed period. The reasons for deviation from inviting competitive bids must be recorded and approved by the accounting officer;
- iii. where it can be demonstrated that only one service provider can supply a particular service then a contract can be awarded by the accounting officer to that service provider subject to approval by the Bid Adjudication Committee;

- iv. for the acquisition of special works or art or historical objects where specifications are difficult to compile;
- v. acquisition of animals for zoos and/or nature; or
- vi. in any other exceptional case where it is impractical or impossible to follow the official procurement processes;

(b) Ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers of duties, which are purely of a technical nature.”

Delegations on Deviations

By the directive of the City Manager, all deviations irrespective of the amounts involved are considered and approved by the Bid Adjudication Committee appointed by the Accounting Officer.

4. DISCUSSION

The following deviation was approved by the City Manager in terms of Regulation 36 (2) of Municipal Finance Management Act, (Act No.56, 2003): Municipal Supply Chain Management Regulations the City Manager must record the reasons form the deviations and report them to the next meeting of Council for cognisance.

Deviations approved in the second quarter on 2023/24 financial year.

Ref no	Description	Contractor	Applicable regulation paragraph	Period	Award Value	Department	Recommended by BAC	Approved by CM
October 2023								
<p>One of the main objectives of the Communication, Marketing and Events Department (CME) is to market and communicate messages regarding the City's achievements, services, projects, and programmes. Newspapers are also used for placing advertisements of specific projects or programmes as required by legislation. CME then makes use of those newspapers that are best suited for the target audience of the specific project or programme.</p> <p>CME used to have a deviation report in place to buy newspapers adverts directly from the newspapers. The report was approved by the then CM and BAC. On 28 July 2022, CME tabled a new report to BAC to obtain approval to replace the previous report that expired. The BAC recommended the report for approval. However, the acting CM only approved the report for 12 months, instead of 3 years like the previous report. Secondly, the acting CM recommended that a new tender process be followed during the 12 months to award a tender specifically for statutory advertising.</p> <p>The intention of the report was to deviate from the normal procurement processes to save the municipality money in agency fees (working through a middleman) and to be able to place adverts on short notice when an emergency arises. However, the CM's recommendation implied that we had to appoint a service provider to buy media on behalf of the city, and by implication pay agency fees which we tried to avoid in the first place. For that matter, we can make use of the existing CME panel tender.</p>								
REG 36-01-10-2023/24	Appointment of Service provider to buy media directly from different newspapers	Various service providers	Regulation 36 (1) (a) (ii), sole provider and (v) exceptional case where it is impractical and	12 months	R 5 610 000,00	Group Communication Marketing and Events	17-Oct-23	24-Oct-23

Ref no	Description	Contractor	Applicable regulation paragraph	Period	Award Value	Department	Recommended by BAC	Approved by CM
			impossible to follow procurement process					
November 2023								
There were no deviations approved for the month of November 2023.								
December 2023								
There were no deviations approved for the month of December 2023.								
Total R 5 610 000,00								

5. COMMENTS OF THE STAKEHOLDER DEPARTMENTS

5.1 COMMENTS OF THE CHIEF FINANCIAL OFFICER

Cognisance is taken of the contents of the report.

There are no financial implications emanating as a result of this report for the City of Tshwane as the purpose of the report is to inform the Mayoral Committee of the deviations from procurement processes approved for the second quarter of 2023/24 financial year.

The deviations approved in the second quarter of 2023/24 financial year amount to R5 610 000.

5.2 COMMENTS OF THE GROUP HEAD: GROUP LEGAL AND SECRETARIAT SERVICES

The purpose of this report is to inform the Mayoral Committee of the deviations from procurement processes approved for the Second Quarter of 2023/24 financial year.

In terms of Section 11(3) (a) (f) & (n) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (hereafter referred to as the "MSA"), a municipality exercises its legislative or executive authority by developing and adopting policies, plans, strategies and programs, including setting of targets for delivery, providing municipal services to the local community, or appointing appropriate service providers in accordance with the criteria and process set out in Section 78 and doing anything else within its legislative and executive competence.

Regulation 6(1) of the Supply Chain Management Regulation published under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (hereafter referred to as "MFMA") provides that, 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 and 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 required by Regulation 6(3) of the Act.

In accordance with Regulation 36(1) of the Supply Chain Management Regulations published under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (hereafter referred to as “MFMA”) read with Clause 38 of the Supply Chain Management Policy 2023 Incorporating 2022 Preferential Procurement approved by Council on 31 May 2023, The Accounting Officer is allowed to dispense with the official procurement processes established by the policy-

- (a) 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 for animals for zoos; or
 - (v) In any other exceptional cases where it is impractical or impossible to follow the official procurement processes;
- (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.

Regulation 36(2) the Supply Chain Management Regulation published under the MFMA further stipulates that, The Accounting Officer must record the reasons for any deviations in terms of sub-regulation (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.

Furthermore, note should be taken of Circular 34 of 2022 dated 14th September 2022 which provides that all requests for approval to deviate from normal supply chain management processes in terms of Regulation 36 of the MFMA, must be submitted to the Bid Adjudication Committee (BAC) for approval. Such an application must be accompanied by a report as contemplated in s32(2)(b) MFMA. The BAC will then submit the report together with the requested deviation to the City Manager for approval.

Having taken regard to the aforesaid and with specific reference to the contents of the report, Group Legal and Secretariat Services Department support the approval of the report and the recommendations.

5.3 COMMENTS OF THE GROUP HEAD: COMMUNICATIONS, MARKETING AND EVENTS

The Communication, Marketing and Events (CME) Department takes cognisance of the report for the deviation from the procurement processes approved for the Second Quarter of 2023/24 financial year. CME supports the report and its recommendations. This specific deviation as indicated in the report for October will benefit the City in the following ways:

- Saving money by cutting out advertising agency fees;
- Improved response time to place advertisements in cases of emergencies and unforeseen events;

- Stronger relations with media houses; and
- Negotiation for better rates and added value when buying media in bulk.

6. IMPLICATIONS

6.1 HUMAN RESOURCES

None.

6.2 FINANCES

None.

6.3 CONSTITUTIONAL AND LEGAL FACTORS

None.

6.4 COMMUNICATION

None

6.5 PREVIOUS COUNCIL OR MAYORAL COMMITTEE RESOLUTIONS

None.

7. CONCLUSION

The was one deviation in the second Quarter of FY2023/24.

The Mayoral Committee on 20 March 2024 resolved to recommend to Council as set out below:

RECOMMENDED:

1. That in terms of Regulation 36 (2) of the Supply Chain Management Regulations, promulgated in terms of Local Government Municipal Finance Act 56 of 2003 and the approved Supply Chain Management Policy section 35 cognizance be taken of the deviations from the official procurement process of tenders;
2. That the Chief Financial Officer includes the information regarding deviations as a note to the financial statement. That the implementation of the procurement plan is monitored;
3. That departments ensure the acceleration and development of outstanding specifications and terms of reference; and
4. That there is effective Contract Management ensuring that tenders are advertised 90 days before their expiry.

Reference no. 51393/1
 Gareth Mnisi (8100)
 COUNCIL: 27 March 2024

8. GROUP FINANCIAL SERVICES DEPARTMENT
 SUPPLY CHAIN MANAGEMENT (SCM) DEVIATION TENDERS APPROVED FOR
 DECEMBER 2023 (2023/24 FINANCIAL YEAR) IN TERMS OF SUPPLY CHAIN
 MANAGEMENT REGULATION 36 OF THE LOCAL GOVERNMENT: MUNICIPAL
 FINANCE MANAGEMENT ACT (MFMA), 2003 (ACT 56 OF 2003)
(From the Mayoral Committee: 20 March 2024)

1. PURPOSE

The purpose of the report is to provide information of deviations from procurement processes approved for December 2023 (2023/24 financial year).

2. STRATEGIC PRIORITIES

- A business-friendly city that promotes employment and economic growth;
- Modernisation and digitisation of city processes; and
- A professional public service that drives accountability and transparency.

3. BACKGROUND

Deviations from the official supply chain process are recommended by Bid Adjudication Committee and approved by the Accounting Officer.

In terms of Section 38 of the reviewed Supply Chain Management Policy approved by Council on 31 May 2023, the Accounting Officer dispense with the official procurement process established by this policy and procure any required goods or services through any convenient process which include direct negotiations. The policy reads as follows:

- “(a) dispense with the official procurement process established by this policy and procure any required goods or services through any convenient process which include direct negotiations-
- i. In an emergency;
 - ii. Where it can be demonstrated that only one service provider can supply a particular service then a contract can be awarded by the accounting officer to that service provider subject to approval by the Bid Adjudication Committee;
 - iii. For the acquisition of special works or art or historical objects where specifications are difficult to compile;
 - iv. Acquisition of animals for zoos and/or nature; or
 - v. In any other exceptional case where it is impractical or impossible to follow the official procurement processes;
- (b) Ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers of duties, which are purely of a technical nature.”

Delegations on deviations

By the directive of the City Manager, all deviations, irrespective of the amounts involved, are considered and recommended by the Bid Adjudication Committee appointed by the Accounting Officer and approved by The Accounting Officer.

4. DISCUSSION

There were no deviations approved for the month of December 2023.

5. COMMENTS OF THE STAKEHOLDER DEPARTMENTS

5.1 COMMENTS OF THE CHIEF FINANCIAL OFFICER

Cognisance is taken of the content of the report.

The purpose of this report is to inform Mayoral Committee of deviations from procurement processes approved for December 2023 in the 2023/24 financial year.

Note is taken that there were no deviations approved for the month of December 2023.

5.2 COMMENTS OF THE GROUP HEAD: GROUP LEGAL AND SECRETARIAT SERVICES

The purpose of this report is to inform Mayco of deviations from procurement processes approved for December 2023 (2023/24 financial year).

In terms of Section 11(3) (a) (f) and (n) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (hereafter referred to as the “MSA”), a municipality exercises its legislative or executive authority by developing and adopting policies, plans, strategies and programs, including setting of targets for delivery, providing municipal services to the local community, or appointing appropriate service providers in accordance with the criteria and process set out in Section 78 and doing anything else within its legislative and executive competence.

Regulation 6(1) of the Supply Chain Management Regulation published under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (hereafter referred to as “MFMA”) provides that, 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 and 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 required by Regulation 6(3) of the Act.

In accordance with Regulation 36(1) of the Supply Chain Management Regulations published under the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) (hereafter referred to as “MFMA”) read with Clause 38 of the Supply Chain Management Policy 2023 Incorporating 2022 Preferential Procurement approved by Council on 31 May 2023, The Accounting Officer is allowed to dispense with the official procurement processes established by the policy-

(a) 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 for animals for zoos; or
- (v) In any other exceptional cases where it is impractical or impossible to follow the official procurement processes.

(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.

Regulation 36(2) the Supply Chain Management Regulation published under the MFMA further stipulates that, The Accounting Officer must record the reasons for any deviations in terms of sub-regulation (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.

Furthermore, note should be taken of Circular 34 of 2022 dated 14th September 2022 which provides that all requests for approval to deviate from normal supply chain management processes in terms of Regulation 36 of the MFMA, must be submitted to the Bid Adjudication Committee (BAC) for approval. Such an application must be accompanied by a report as contemplated in s32(2)(b) MFMA. The BAC will then submit the report together with the requested deviation to the City Manager for approval.

Having taken regard to the aforesaid and with specific reference to the contents of the report, Group Legal and Secretariat Services Department support the approval of the report and the recommendations.

6. IMPLICATIONS

6.1 HUMAN RESOURCES

None.

6.2 FINANCES

None.

6.3 CONSTITUTIONAL AND LEGAL FACTORS

None.

6.4 COMMUNICATION

None.

6.5 PREVIOUS COUNCIL OR MAYORAL COMMITTEE RESOLUTIONS

None.

7. CONCLUSION

There were no deviations approved in the month of December 2023 of financial year 2023/24.

The Mayoral Committee on 20 March 2024 resolved to recommend to Council as set out below:

RECOMMENDED:

That cognisance be taken that there were no deviations approved for the month of December 2023 regarding deviations as a note to the financial statement.

Reference no. 35289/1
 Gareth Mnisi (1000)
 COUNCIL: 27 March 2024

9. GROUP FINANCIAL SERVICES DEPARTMENT
 DEVIATION FROM TENDER PROCESS FOR THE MONTH OF JANUARY 2024 OF
 2022/23 FYE
(From the Mayoral Committee: 20 March 2024)

1. PURPOSE

The purpose of the report is to provide information of deviations from procurement processes approved for January 2024 (2023/24 financial year).

2. STRATEGIC PRIORITIES

- A business-friendly city that promotes employment and economic growth;
- Modernisation and digitisation of city processes; and
- A professional public service that drives accountability and transparency.

3. BACKGROUND

Deviations from the official supply chain process are recommended by Bid Adjudication Committee and approved by the Accounting Officer.

In terms of Section 38 of the reviewed Supply Chain Management Policy approved by Council on 31 May 2023, the Accounting Officer dispense with the official procurement process established by this policy and procure any required goods or services through any convenient process which include direct negotiations. The policy reads as follows:

- “(a). Dispense with the official procurement process established by this policy and procure any required goods or services through any convenient process which include direct negotiations-
- i. In an emergency;
 - ii. Where it can be demonstrated that only one service provider can supply a particular service then a contract can be awarded by the accounting officer to that service provider subject to approval by the Bid Adjudication Committee;
 - iii. For the acquisition of special works or art or historical objects where specifications are difficult to compile;
 - iv. Acquisition of animals for zoos and/or nature; or
 - v. In any other exceptional case where it is impractical or impossible to follow the official procurement processes.
- (b). Ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers of duties, which are purely of a technical nature.”

Delegations on deviations

By the directive of the City Manager, all deviations, irrespective of the amounts involved, are considered and recommended by the Bid Adjudication Committee appointed by the Accounting Officer and approved by The Accounting Officer.

4. DISCUSSION

There were no deviations approved for the month of January 2024.

5. COMMENTS OF THE STAKEHOLDER DEPARTMENTS

5.1 COMMENTS OF THE CHIEF FINANCIAL OFFICER

Cognisance is taken of the contents of the report.

The purpose of this report is to inform the Executive Committee of deviations from procurement processes approved for January 2024 of 2023/24 financial year.

Note is taken that there were no deviations approved for the month of January in the 2023/24 financial year.

5.2 COMMENTS OF THE GROUP HEAD: GROUP LEGAL AND SECRETARIAT SERVICES

The purpose of the report is to inform the Executive Committee of deviations from procurement processes approved for January 2024 (2023/24 financial year).

In addition, Regulation 36(1) of the Supply Chain Management Regulations published under the MFMA read with Section 38 of the Supply Chain Management Policy approved by Council on 31 May 2023, states that the Accounting Officer is allowed 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 for animals for zoos; or
- v. In any other exceptional case where it is impractical or impossible to follow the official procurement processes; and
- vi. For the acquisition of goods and services from other Organs of State.

Regulation 36(2) read with paragraph 38(2) of the Policy, stipulates that, the Accounting Officer must record the reasons for any deviations in terms of sub-regulation (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.

Regulation 13 of the Local Government: Municipal Planning and Performance Management Regulations, 2001, published in terms of the MSA and the Management Policy and Procedure developed by the City of Tshwane provide that reporting or giving feedback is to assist in monitoring, which aims to provide managers, decision-makers and other stakeholders with regular feedback on the implementation progress made so that corrective measures may be put into place, where necessary.

It is noted that there were no deviations approved for the month of January 2024.

Having regard of the aforesaid legal prescripts and with specific reference to the contents of the report, Group Legal and Secretariat Services Department take cognizance of the report and its recommendation.

6. IMPLICATIONS

6.1 HUMAN RESOURCES

Not applicable.

6.2 FINANCES

Not applicable.

6.3 CONSTITUTIONAL AND LEGAL FACTORS

Not applicable.

6.4 COMMUNICATION

Not applicable.

6.5 PREVIOUS COUNCIL OR MAYORAL COMMITTEE RESOLUTIONS

Not applicable.

7. CONCLUSION

Not applicable.

The Mayoral Committee on 20 March 2024 resolved to recommend to Council as set out below:

RECOMMENDED:

That cognisance that there were no deviations approved for the month of January 2024 regarding deviations as a note to the financial statement be taken.

Reference no. 15042/1
 Jordan Griffiths (1225)
 COUNCIL: 27 March 2024

10. OFFICE OF THE EXECUTIVE MAYOR
 ESTABLISHMENT OF CAPITAL PROJECTS COMMITTEE (CPC) AND APPROVAL
 OF ITS TERMS OF REFERENCE (TOR)
(From the Mayoral Committees: 21 February 2024 and 20 March 2024)

1. PURPOSE

The purpose of the report is to request approval from the Mayoral Committee for the establishment of a Section 80 Committee on Capital Projects (CPC), which will be chaired by the Deputy Executive Mayor and to approve its Terms of Reference.

2. STRATEGIC PRIORITIES

- Provide stringent financial management and oversight.

3. BACKGROUND

3.1 On 9 November 2023, the Council of the City of Tshwane, approved the establishment of the position of Deputy Executive Mayor (DEM) and directed the Speaker to engage the Member of the Executive Committee (MEC) for Cooperative Governance and Traditional Affairs (COGTA) in Gauteng as per the requirements of the Municipal Structures Act. The MEC gave his approval for the establishment of the position, and on 25 January 2024 Council voted to appoint Cllr Nasiphi Moya as the first DEM of the City of Tshwane.

3.2 In the letter of appointment as a Member of the Mayoral Committee dated 18 January 2024, the Executive Mayor granted the Deputy Executive Mayor the delegation to establish and to chair the mayoral sub-committee on Regional Councillor Forums. The establishment of the sub-committee on Regional Councillor Forums requires the approval of formal terms of reference by the Mayoral Committee so that the sub-committee can commence its work.

The said letter is attached hereto as annexure (A).

4. DISCUSSION

4.1 In terms of Section 56 (6) of the Municipal Structures Act:

“The deputy executive mayor of a municipality exercises the powers and performs the duties of the executive mayor if the executive mayor is absent or not available or if the office of the executive mayor is vacant.”

This provision of the Act bestows latent mayoral powers in the person of the Deputy Executive Mayor, which are only activated once the Executive Mayor is absent, unavailable or vacates office.

These latent powers, which come into effect immediately and without a need for anyone to take any action save for what is provided for in the Act, betray a certain level of precedence, responsibility and seniority in the person of the Deputy Executive Mayor. This seniority grants the Deputy Executive Mayor the gravitas required to be able, if so delegated by the Executive Mayor, to oversee the work being done on capital projects in the City. In the letter of appointment of the Deputy Executive Mayor as a Member of the Mayoral Committee dated 18 January 2024, the Executive Mayor granted the Deputy Executive Mayor the delegation to chair the section 80 Committee on Capital Projects.

The said letter is attached hereto as annexure (A).

- 4.2 The establishment of the Section 80 Committee on Capital Projects requires the formal approval of its terms of reference, which are attached hereto as annexure (B). Both the Terms of Reference and the establishment of the committee have to be approved by Council in terms of sections 79 and 80 of the Municipal Structures Act. The Executive Mayor has already, in line with section 80(3)(a) elected to place the chairpersonship of this committee in the person of the Deputy Executive Mayor, should Council approve the establishment of the committee. It is therefore imperative that Council considers this report expeditiously, particularly in light of the imminent adjustment budget process, to ensure that any amendments to the capital budget expenditure projections be immediately placed under the scrutiny of this proposed committee, to ensure delivery of the City's predetermined objectives on capital projects.
- 4.3 Historical underspend and under delivery on capital projects has contributed to the City's deteriorating infrastructure and poor delivery of services to residents. Furthermore, capital projects that do not spend their allocated budgets within a clear timeframe are at a great risk of losing their funding, which is often conditional grant funding. This carries the added risk of the City not receiving further grant allocations going forward. This risk has been shown to be exacerbated by, and to large degree originated from, the planning culture of the municipality. Generally speaking, departmental planning occurs late in a financial year and mostly after budgetary wish lists have been indicatively confirmed by the Budget Office, within the Group Financial Services Department. This leads to procurement specifications only being prepared in the first quarter of each financial year, thus resulting in a congested supply chain management process in the second and third quarters of the financial year. Expenditure within the City of Tshwane, including on capital projects, has consistently shown itself to conform to a hockey stick approach, where most of the funds are expended in the fourth quarter. Due to the limited time period remaining at that point in time, the risk of underspending would either be realised or "forced" expenditure would result in contractors delivering substandard work in order to be able to submit invoices to lessen the pressure from the line department. It is this practice that has to be ameliorated or completely eliminated in favour of a more linear expenditure pattern.
- 4.4 The Project Management Unit within the Office of the Chief Operating Officer is responsible for co-ordinating capital project management, but this office currently lacks a political oversight body. While it can be argued that such oversight is not necessary because the COO already accounts to political structures in her own capacity, the importance of capital projects as well as their impact in communities evidences a need for political oversight.

This is important because ultimately, politicians are accountable to the public on both the successes and failures of projects announced within the Integrated Development Programme document as well as through public pronouncements made in various forms on different fora.

- 4.5 The intention of the Section 80 Committee on Capital Projects is to provide a forum for Members of the Mayoral Committee and councillors to exercise closer oversight on the City's capital projects, which are critical to the functioning and delivery of basic services. While oversight of capital projects is currently conducted by MMCs, the significance of capital projects requires an integrated approach that brings greater focus on the City's project management practices. MMCs are not able to be at every project in every ward for oversight purposes as they have other responsibilities to fulfil. They therefore tend to rely on reports submitted by the administration to oversee projects and make sense of project performance. Ward Councillors on the other hand, are by the nature of their work, closest to communities and can play a vital role in the oversight of specific ward-based projects. The Section 80 Committee on Capital Projects therefore would not only rely on reports submitted by the administration but would also place greater reliance on the eyewitness account on projects by ward councillors.
- 4.6 The Section 80 Committee on Capital Projects will be constituted by Members of the Mayoral Committee who head portfolios that deliver capital projects as well as their respective Group Heads. Since all these departments would fall under the cluster of the Chief Operations Officer, the COO, as well as the Enterprise Project Management Unit (ePMU), would also be permanent members of the committee. Ward councillors would then be invited to the committee on the basis of the capital projects that fall within their respective wards. Such invitations would be standing invitations for the duration of the project up to its capitalization. For proper management, efficient and effective oversight, the secretariat would manage the invitations relative to the agenda of the scheduled meetings. These invitations would be timeously channelled through the Office of the Chief Whip, with proposed dates and times and venues for said meetings so that councillors are afforded sufficient time to prepare for these meetings.
- 4.8 There are 107 ward councillors in the City. Section 80 of the Municipal Structures Act has a prohibition on the number of members of a section 80 committee relative to the number of members of the Mayoral Committee. However, this prohibition would defeat the purpose of the section 80 committee as there are more ward councillors than the number of mayoral committee members and there are more capital projects than the number of mayoral committee members. Therefore it is proposed, similar to the decision that was made when the Regional Councillor Forum were established, that the prohibition of section 80 of the Municipal Structures Act be waived for purposes of this committee.
- 4.7 The DEM is positioned and delegated to provide the required transversal co-ordination and oversight over the Capital Projects Committee. It is envisaged that this would contribute towards effective project management of capital projects and that no projects would fall under the cracks.

The e-PMU would work collaboratively with the secretariat in setting the agenda for the meetings and in ensuring that all capital projects in all affected wards are placed on the radar of the committee.

5. COMMENTS OF THE STAKEHOLDER DEPARTMENTS

5.1 COMMENTS OF THE CHIEF FINANCIAL OFFICER

Cognisance is taken of the contents of the report.

The purpose of the report is to request approval from the Mayoral Committee for the establishment of a Section 80 Committee on Capital Projects, which will be chaired by the Deputy Executive Mayor and to approve its Terms of Reference.

Group Financial Services support the proposed establishment of the Section 80 Committee on Capital Projects as alluded in the report that it will be necessary for oversight purposes through a co-ordinated transversal approach.

There are no financial implications for the City of Tshwane as a result of this report.

5.2 COMMENTS OF THE GROUP HEAD: GROUP LEGAL AND SECRETARIAT SERVICES

The purpose of the report is to request approval from the Mayoral Committee for the establishment of a Section 80 Committee on Capital Projects, which will be chaired by the Deputy Executive Mayor and to approve its Terms of Reference.

The request herein is in compliance with the provisions of section 11 (3) (a) (d) & (n) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) (hereafter referred to as the "MSA") which states that a municipality exercises its legislative or executive authority by developing and adopting policies, plans, strategies and programs, including setting of targets for delivery, administering and regulating its internal affairs and the local government affairs of the local community and also by doing anything else within its legislative and executive competence.

In accordance with section 53 (1) of the MSA a municipality must, within the framework of and in accordance with relevant provisions of the Municipal Structures Act, this Act and other applicable legislation, define the specific role and area of responsibility of each political structure and political office bearer of the municipality and of the municipal manager.

Section 53 (2) of the MSA directs that the respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager must-

- a. be defined in precise terms by way of separate terms of reference, in writing, for each political structure or political office bearer and the municipal manager; and
- b. be acknowledged and given effect to in the rules, procedures, instructions, policy statements and other written instruments of the municipality.

Section 53 (5) (a) to (c) of the MSA further requires that, when defining the respective roles and areas of responsibility of each political structure and political office bearer and of the municipal manager, the municipality must determine-

- (a) the relationships among those political structures and political office bearers and the municipal manager, and the manner in which they must interact;
- (b) appropriate lines of accountability and reporting for those political structures and political office bearers and the municipal manager; and
- (c) mechanisms, processes and procedures for minimising cross-referrals and unnecessary overlapping of responsibilities between those political structures and political office bearers and the municipal manager.

Furthermore, section 80 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (hereafter referred to as the “Municipal Structures Act”) provides that (1) If a municipal council has an executive committee or executive mayor, it may appoint in terms of section 79, committees of councillors to assist the executive committee or executive mayor.

- (2) Such committees may not in number exceed the number of members of the executive committee or mayoral committee.
- (3) The executive committee or executive mayor-
 - a. appoints a chairperson for each committee from the executive committee or mayoral committee;
 - b. may delegate any powers and duties of the executive committee or executive mayor to the committee;
 - c. is not divested of the responsibility concerning the exercise of the power or the performance of the duty; and
 - d. may vary or revoke any decision taken by a committee, subject to any vested rights.
- (4) Such a committee must report to the executive committee or executive mayor in accordance with the directions of the executive committee or executive mayor.

Having taken regard to the aforesaid and with specific reference to the contents of the report, Group Legal and Secretariat Services Department supports the approval of the report and its recommendations thereof.

5.3 COMMENTS OF THE GROUP HEAD: ENERGY AND ELECTRICITY

The Energy and Electricity Department (EED) takes note of the report to request approval from the Mayoral Committee for the establishment of a Section 80 Committee on Capital Projects, which will be chaired by the Deputy Executive Mayor and to approve its Terms of Reference. The EED supports the establishment of the Section 80 Committee which is expected to provide not only the oversight, but also support to departments for them to plan and implement critical capital projects. Currently, departments are utilizing internal staff for the planning and implementation of capital projects. The Department commits to fully support the proposed committee.

5.4 COMMENTS OF THE GROUP HEAD: HUMAN SETTLEMENT

The purpose of the report is to request approval from the Mayoral Committee for the establishment of a Section 80 Committee on Capital Projects, which will be chaired by the Deputy Executive Mayor and to approve its Terms of Reference.

The Human Settlements Department supports the proposed establishment of the Section 80 Committee on Capital Projects as alluded in the report and will fully participate as required. The Committee will also be instrumental in ensuring better coordination and oversight on the performance and expenditure of capital conditional grant fund.

5.5 COMMENTS OF THE GROUP HEAD: ROADS & TRANSPORT

Comments requested on 13 February 2024 8:48:34 AM and not received by 20 February 2024 12:28:53 PM.

5.6 COMMENTS OF THE OFFICE OF THE CHIEF OPERATIONS OFFICER

The Enterprise Programme Management Unit (EPMU) takes note of the report to request approval from the Mayoral Committee for the establishment of a Section 80 Committee on Capital Projects, which will be chaired by the Deputy Executive Mayor and to approve its Terms of Reference.

It should be noted that the EPMU has an oversight role on all Capex projects and is not responsible for the management of projects as indicted in the Term of Reference. Projects are executed and managed by Departments.

The EPMU supports the establishment of the Section 80 Committee of Capital Projects. EPMU will support this committee and provide all information as maybe requested by the Committee.”

6. IMPLICATIONS

6.1 HUMAN RESOURCES

None.

6.2 FINANCES

There are no financial implications for this report.

6.3 CONSTITUTIONAL AND LEGAL FACTORS

Since the report seeks to establish a section 80 committee in terms of the Municipal Structures Act, a resolution of Council is required in this regard.

6.4 COMMUNICATION

None.

6.5 PREVIOUS COUNCIL OR MAYORAL COMMITTEE RESOLUTIONS

None.

7. CONCLUSION

The establishment of the Section 80 Committee on Capital Projects is necessary for oversight purposes through a co-ordinated transversal approach, as expounded in the report. The Deputy Executive Mayor, as Chairperson of the committee, will be responsible for this approach. The argument for the improvement of performance on capital projects cannot be over emphasized and the risks associated with failure in that regard are evident in many wards, where projects were defunded due to lack of resources among others, or poor delivery.

IT WAS RECOMMENDED (TO THE MAYORAL COMMITTEE: 21 FEBRUARY 2024):

1. That the establishment of the Section 80 Committee on Capital Projects, be approved; and
2. That the Terms of Reference (ToR) of the Section 80 Committee on Capital Projects, be approved.

During the consideration of the report, it was agreed:

That the report be referred back for refinement and be re-submitted to the Mayoral Committee meeting scheduled for 6 March 2024.

In view of the above:

IT WAS RESOLVED (BY THE MAYORAL COMMITTEE: 21 FEBRUARY 2024):

That the report be referred back for refinement and be re-submitted to the Mayoral Committee meeting scheduled for 6 March 2024.

The Mayoral Committee on 20 March 2024 resolved to recommend to Council as set out below:

ANNEXURES:

- A. Deputy Mayor appointment
- B. Term of Reference (ToR) of Capital Projects Committee (CPC)

RECOMMENDED:

1. That the establishment of the Section 80 Committee on Capital Projects, be approved;
2. That the Terms of Reference (ToR) of the Section 80 Committee on Capital Projects, be approved; and
3. That the provisions of section 80(2) of the Municipal Structures Act be waived for purposes of this committee.



Office of the Executive Mayor

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18 January 2024

LETTER OF DELEGATION TO THE DEPUTY MAYOR

This letter serves to congratulate you on your election as Deputy Mayor as well as your appointment as a Member of the Mayoral Committee, and to formally delegate powers and duties to you in terms of legislation, council resolutions and taking in account the provisions of the Tshwane Multi-Party Coalition Agreement.

Section 49 (2) of the Municipal Structures Act states as follows;

(2) The deputy mayor exercises the powers and performs the duties of the mayor if the mayor is absent or not available or if the office of the mayor is vacant. The mayor may delegate duties to the deputy mayor.

The following powers and responsibilities are delegated to you in your capacity as Deputy Mayor subject to the conditions below as agreed within the Tshwane Multi-Party Coalition:

1. In my absence, to act as the Executive Mayor with associated powers and duties, and to attend official engagements on my behalf; unless being unable to do so such that another MMC is required to act;
2. The portfolio of Community Services and Social Development;
3. Chairperson of the Section 80 Committee on Capital Projects;
4. Chairperson of the Mayoral Sub-Committee on Regional Councillor Forums;
5. Member of the Budget Steering Committee; and
6. Oversight of the Office of the Chief Operations Officer.

The above delegations are conferred subject to the following conditions;

The Deputy Mayor shall not unduly interfere with the political leadership and reporting lines between the Executive Mayor and MMCs. The Deputy Mayor shall not usurp the role of any MMC and must consult and exercise authority in a consensus-seeking manner.

This letter also serves to acknowledge the following:

- Acknowledgement that you received the MMC welcome pack.
- Acceptance that you will sign a performance agreement.


Cllr Nasiphi Moya

DEPUTY MAYOR AND MMC OF COMMUNITY SERVICES AND SOCIAL DEVELOPMENT


Cllr Gilliers Brink
EXECUTIVE MAYOR

SECTION 80 COMMITTEE ON CAPITAL PROJECTS
TERMS OF REFERENCE

Document control: Version 1 _ January 2024
Office of the Executive Mayor

- 1.1. The Section 80 Committee on Capital Projects (referred to hereafter as the Capital Projects Committee) is an essential oversight tool of the executive to ensure that effective project management processes are being implemented by employees of the City for all capital projects, from the project inception phase to project completion and handover.
- 1.2. Capital projects are sometimes large and complex and require technical expertise as well as a multitude of stakeholders working in collaboration. The City's Project Management Unit in the Office of the Chief Operations Officer is responsible for the co-ordination of projects and their management. The aim of this work is to promote best practice, deliver projects on time and within budget, while contributing to essential service delivery and the creation of the City's critical infrastructure.
- 1.3. While project management is employed across all of the City's operations, capital projects require a specific focus due to their complexity, the quantum of funds involved, and the importance of spending those funds within a specific timeframe. Most of the funds allocated to capital projects are grants and may be withdrawn by grant entities if not spent. The deteriorating state of the City's critical infrastructure for the delivery of basic services makes effective capital project management critical and worthy of enhanced oversight.
- 1.4. A Section 80 committee provides for greater interface between the Executive and councillors, particularly Ward Councillors, who are typically closer to communities affected by or beneficiary to relevant projects in specific wards. They serve as an important interface between the City and its residents. Their involvement in oversight on specific projects, which are within their wards is therefore invaluable to the City.

2. COMMITTEE COMPOSITION

- 2.1. The following individuals will be permanent members of the committee:
 - 2.1.1. Deputy Executive Mayor (Chairperson)
 - 2.1.2. Member of the Mayoral Committee for Human Settlements (Deputy Chairperson)
 - 2.1.3. Member of the Mayoral Committee for Roads and Transport
 - 2.1.4. Member of the Mayoral Committee for Utilities and ROC
 - 2.1.5. Councillors who have capital projects within their wards
 - 2.1.6. Chief Operations Officer (COO)
 - 2.1.7. Divisional Head: Project Management Unit
 - 2.1.8. Group Head: Energy and Electricity (or the head of the dept project management unit)
 - 2.1.9. Group Head: Water and Sanitation (or the head of the dept project management unit)
 - 2.1.10. Group Head: Roads and Transport (or the head of the dept project management unit)
 - 2.1.11. Group Head: Human Settlements (or the head of the dept project management unit)

- 2.2. Any other MMC or Head of Department may be invited to a committee meeting on an ad hoc basis.
- 2.3. The Chair of the meeting shall be the Deputy Executive Mayor and in her absence, the Member of the Mayoral Committee for Utilities and ROC.
- 2.4. If both the Chairperson and the Deputy Chairperson are temporarily unavailable during a meeting, the Chair shall be designated by the Chairperson.

3. PERMITTED ATTENDEES

- 3.1. Each Head of Department is permitted to bring departmental employees to the meeting to assist in presenting the required information and/or report to the committee.
- 3.2. Political support employees to the MMCs may attend the meeting.
- 3.3. The committee may call any employee to provide the committee with information.
- 3.4. The committee may invite an external expert to provide comment on any matter before the committee to assist the committee to understand the matter before it.

4. INVITED COUNCILLORS

- 4.1. The committee shall invite the ward councillor in whose ward the relevant capital project is being delivered or whose ward may be affected by that project, as per determination by the Deputy Executive Mayor.
- 4.2. The invited councillor may send another nominated councillor in their place if they are unable to attend the committee meeting or oversight visit.
- 4.3. The Chairperson must be informed in writing of this, otherwise the nominated councillor may not attend the committee meeting or oversight visit.
- 4.4. The committee may issue a standing invitation to the relevant ward councillor for the duration of the relevant project.

5. COMMITTEE SECRETARIAT

- 5.1. The committee secretariat will be provided by the Office of the Executive Mayor.
- 5.2. The committee secretariat will be responsible for arranging meetings, sending out invitations, distribution of agendas, setting up the room, recording and keeping minutes, and distribution of minutes.

6. MEETINGS

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6.1. The committee shall meet at least once on a monthly basis.

6.2. All meetings for the year must be scheduled by the committee secretariat and diarised by members accordingly.

7. CONFIDENTIALITY

7.1. The Committee may determine that any information before the committee or any discussion of the committee be deemed confidential.

7.2. Only the Chair, Deputy Chair, or the COO may permit the distribution of information and discussions of the meeting that are deemed confidential.

7.3. All committee members, councillors who are members by virtue of projects in their wards and the committee secretariat must sign a declaration of confidentiality which is valid for as long as that person is a member of the committee.

7.4. Permitted attendees and ad hoc attendees must sign a declaration of confidentiality that is valid for as long as they are permitted to attend the committee.

8. RECUSAL

8.1. Any member of the committee, committee secretariat, or attendee who has a conflict of interest in a matter before the committee must declare the conflict and recuse themselves from the meeting.

8.2. The Chair of the meeting may determine when the recused individual(s) may return to the meeting.

9. ATTENDANCE AND QUORUM

9.1. All employees who are members or who are invited to a committee meeting must attend the meeting.

9.2. Only with the consent of the Chair of the meeting may a deputy or delegate attend in the place of the invited employee.

9.3. A meeting of the committee will quorate if the Chairperson, Deputy Chairperson or nominated Chair are present.

9.4. If quorum is not maintained, the meeting must adjourn.

10.COMMITTEE OBJECTIVES AND RESPONSIBILITIES

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- 10.1. The committee must aim to have a comprehensive view of all capital projects that are underway in the City, from project conceptualisation to conclusion and handover.
- 10.2. The committee must ensure that there are action items on the agenda that are tracked with regular updates and progress reports.
- 10.3. The committee may establish criteria for the prioritization of projects for tracking purposes, but may also permit politically sensitive projects into the prioritization matrix.
- 10.4. The committee should be able to assure itself that all capital projects in the City are being managed according to good project management principles and best practice.
- 10.5. The committee must make recommendations to the Budget Steering Committee on the readiness of projects for implementation.
- 10.6. All capital projects in the City should be examined by the committee at the discretion of the Deputy Executive Mayor.
- 10.7. All matters relating to the project management of capital projects must be made available to the committee, including but not limited to:
 - (a) Details of the Capital Expenditure Framework as well as the project stage gates as processed by the e-PMU;
 - (b) The Capital Budget Performance Report; and
 - (c) The status of assets under construction and the capitalization of same.

11.COMMITTEE OVERSIGHT VISITS

- 11.1. The committee may conduct oversight visits on specific capital projects where construction is underway.
- 11.2. The committee shall invite and provide at least 10 working days' notice to the MMC whose portfolio is responsible for the relevant project or as agreed with the Deputy Executive Mayor.
- 11.3. The committee shall invite and provide at least 10 working days' notice to the Ward Councillor where the relevant project falls within their ward or as agreed with the Deputy Executive Mayor.
- 11.4. The committee shall invite and provide at least 10 working days' notice to the Group Head whose department is responsible for the relevant project or as agreed with the Deputy Executive Mayor.

- 11.5. The committee secretariat is responsible for co-ordinating oversight visits and sending invitations to relevant parties.

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12. INFORMATION PROVIDED TO THE COMMITTEE

- 12.1. All information provided to the committee must be accurate.
- 12.2 All information required or requested must be submitted to committee members at least four working days prior to the meeting.
- 12.3 All information must be submitted in formats determined by the committee.

13. RECOMMENDATIONS AND REFERRALS TO THE MAYORAL COMMITTEE

- 13.1. The committee may submit recommendations or make referrals of information to the Mayoral Committee on any matter relating to capital projects in the City.

14. REVIEW

- 14.1. These terms of reference shall be reviewed and approved by the Mayoral Committee on an annual basis.