

**THE PROVINCE OF  
GAUTENG**



**DIE PROVINSIE VAN  
GAUTENG**

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21 NOVEMBER 2018  
21 NOVEMBER 2018

**No. 348**

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**PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS**

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**PROVINCIAL NOTICE 1266 OF 2018****THE GAUTENG PROVINCIAL GOVERNMENT INTENDS TO  
INTRODUCE THE GAUTENG FINANCE MANAGEMENT  
SUPPLEMENTARY ACT AMENDMENT BILL 2018 IN THE GAUTENG  
PROVINCIAL LEGISLATURE**

The above mentioned Bill is hereby published in English in the Gauteng Provincial Extraordinary Gazette No. 348 dated 21 November 2018 for public comments and general information.

The Bill seeks to amend the Gauteng Finance Management Supplementary Act 2000 (Act No. 1 of 2000, by introducing provisions intended to promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of provincial departments and provincial public entities when contracting for goods or services, to establish the Gauteng Bid Appeals Tribunal; to repeal obsolete provisions; and to provide for matters in connection therewith.

People, who wish to comment on the Bill, may send their written comments to:

Office of the Secretary  
Committee Coordinator (Mr. J Ntsane/ Ms. Mojapelo)  
Gauteng Provincial Legislature  
Private Bag X52  
Johannesburg  
2000

Tel: (011) 4985639  
Mobile: (060) 5332096

Tel. (011) 4985789

(079) 5248611  
Fax: (011) 498 5719

Comments must reach the above office on or before 08 February 2019.  
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GAUTENG PROVINCIAL GOVERNMENT

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**GAUTENG FINANCE MANAGEMENT  
SUPPLEMENTARY ACT AMENDMENT  
BILL, 2018**

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*(As introduced in the Gauteng Provincial Legislature as a Government  
Bill in terms of Rule 192(1) of the Standing Rules of the Gauteng  
Provincial Legislature (Version 5 – Revision 8))*

*(The English text is the official text of the Bill)*

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Member of the Executive Council responsible for matters related to  
finance in the Province of Gauteng

**GENERAL EXPLANATORY NOTE:**

[            ]      Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_      Words underlined with a solid line indicate insertions in existing enactments.

**B I L L**

To amend the **Gauteng Finance Management Supplementary Act, 2000 (Act No. 1 of 2000)**, by introducing provisions intended to promote and enforce transparency and effective management in respect of revenue, expenditure, assets and liabilities of provincial departments and provincial public entities when contracting for goods or services; to establish the **Gauteng Bid Appeals Tribunal**; to repeal obsolete provisions; and to provide for matters in connection therewith.

**BE IT ENACTED** by the Provincial Legislature of the Province of Gauteng as follows:—

**Amendment of the long title of 1 of Act 1 of 2000**

1. The long title of the Gauteng Finance Management Supplementary Act, 2000 (hereinafter referred to as "the principal Act") is hereby amended by the substitution for the long title of the following long title:

**"To give effect to certain provisions of the Public Finance Management Act, 1999, in the Province; to promote and enforce transparency and effective management in order to eliminate corruption, unethical practices, prevention of irregular expenditure and to restore confidence in public procurement in respect of revenue, expenditure, assets**

**and liabilities of provincial departments and provincial public entities when contracting for goods or services; to establish the Gauteng Bid Appeals Tribunal; to repeal the Provincial Exchequer Act, 1994; and to provide for matters in connection therewith.**"

### **Insertion of Preamble in Act 1 of 2000**

2. The following Preamble is hereby inserted after the long title of the principal Act:

**"Preamble**

WHEREAS section 217 of the Constitution requires that when an organ of state contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective;

AND WHEREAS the Provincial Government is committed to eradicate corruption, in all forms, from the process through which the state contracts for goods or services;

AND WHEREAS this Act is intended to complement the existing legislative framework to improve public confidence in the process by which provincial departments and provincial public entities contract for goods or services and public accountability in relation thereto,".

### **Amendment of section 1 of Act 1 of 2000**

3. Section 1 of the principal Act is hereby amended—

(a) by the substitution of the words preceding the definition of the following words:

"In this Act, unless the context otherwise indicates, any meaning ascribed to a word or expression in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) must bear the meaning so ascribed, and—";

- (b) by the insertion after the words preceding the definition of the following definitions, respectively:

"'probity audit' means the independent review of the process through which provincial departments and provincial public entities contract for goods and services to ensure its compliance with legislation and relevant prescripts;

"'Province' means the Province of Gauteng established by or in section 103(1)(c) of the Constitution of the Republic of South Africa, 1996, and 'provincial' has the same corresponding meaning';";

- (c) by the substitution for the full-stop (.) at the end of the definition of the expression "and"; and

- (d) by the addition of the following definitions, respectively:

"'this Act' includes any regulations and instructions issued in terms of sections 3G and 3H respectively; and

'Tribunal' means the Gauteng Bid Appeals Tribunal established in terms of section 3E.";

### **Repeal of section 3 of Act 1 of 2000**

4. Section 3 of the principal Act is hereby repealed.

### **Insertion of sections 3A, 3B, 3C, 3D, 3E, 3F, 3G, and 3H into Act 1 of 2000**

5. Sections 3A, 3B, 3C, 3D, 3E, 3F, 3G, and 3H are hereby respectively inserted after section 3 of the principal Act:—

#### **"Purpose and objects of this Act**

**3A. (1)** The purpose of this Act is to put measures in place to restore public confidence in procurement by increasing transparency, public accountability and integrity when provincial departments or provincial public entities contract for goods or services exceeding the amount determined by the Provincial Treasury, by providing for probity audit on bid specifications in

relation to compliance with regulatory prescripts and the auditing of certain processes.

(2) The objects of this Act are to-

- (a) ensure that contracting for goods or services exceeding the amount determined by the Provincial Treasury, is effected in a manner that is fair, equitable, transparent, competitive and cost-effective;
- (b) ensure that corruption and unethical practices are eliminated when provincial departments or provincial public entities contract for goods or services exceeding the amount determined by the Provincial Treasury;
- (c) ensure that irregular expenditure is prevented through improved control; and
- (d) eliminate speculation about the motives for the eventual contracting decision by providing for adjudication in public.

(3) Every person concerned with the implementation of this Act must exercise their powers and perform their functions as to give full effect to the purpose and objects set out in subsections (1) and (2).

### **Probity advisory on bid specifications**

**3B.** The accounting officer or accounting authority of a provincial department or provincial public entity, as the case may be, when contracting for goods or services exceeding the amount determined by the Provincial Treasury, must ensure that prior to publishing an invitation to bid—



- (a) the bid specification in relation to that invitation to bid is assessed by an auditor designated by the Provincial Treasury for compliance with regulatory prescripts; and
- (b) a report is issued by the auditor referred to in paragraph (a) to the accounting officer or accounting authority concerned to the effect that all regulatory prescripts have been adhered to before the invitation to bid is published.

### **Probity auditing**

**3C. (1)** The accounting officer or accounting authority of a provincial department or provincial public entity, as the case may be, when contracting for goods or services exceeding the amount determined by the Provincial Treasury, must ensure that—

- (a) meetings of the bid specification committee and the bid evaluation committee are attended by an auditor designated by the Provincial Treasury;
- (b) the auditor referred to in paragraph (a) probes the bid specification and the bid evaluation process to ensure the compliance of the process with legislation and relevant prescripts;
- (c) the auditor contemplated in paragraph (a) issues a report to the accounting officer or accounting authority concerned providing assurance of compliance with the process referred to in paragraph (b) prior to the bid adjudication committee considering the recommendations of the bid evaluation committee; and
- (d) the report contemplated in paragraph (c) must at least contain an assurance that the particular bid complies with the following prescripts:
  - (i) that the process is fair, equitable, transparent, competitive and cost-effective;

- (ii) that the process is free from corruption or unethical practices; and
- (iii) that the process would not create irregular expenditure.

(2) Compliance by an accounting officer or accounting authority with subsection (1) does not divest the accounting officer or accounting authority concerned of any responsibility in terms of the Act to ensure that the process concerned is compliant with legislation and relevant prescripts.

(3) Where an accounting officer or accounting authority rejects a report by an auditor as contemplated in subsection (2), the relevant accounting officer or accounting authority must report the rejection, together with specific reasons for it, to the Provincial Treasury before a decision to award the bid is made by that accounting officer or accounting authority.

(4) Where the Provincial Treasury is notified as contemplated in subsection (3), it must investigate the matter and advise the relevant accounting officer or accounting authority of its findings and recommend how the relevant accounting officer or accounting authority should deal with the matter before the particular bid may be awarded.

(5) Where an auditor provides an assurance as contemplated in subsection (1)(c), the auditor does so in his or her professional capacity as an auditor as contemplated in the Auditing Professions Act, 2005 (Act No. 26 of 2005).

### **Adjudication of tenders in public**

**3D.** (1) The accounting officer or accounting authority of a provincial department or provincial public entity, as the case may be, when contracting for goods or services exceeding the amount determined by the Provincial Treasury,

must ensure that—

- (a) the details of the closing date in respect of each public invitation to bid issued by that provincial department or provincial public entity and the dates on which the bids submitted in response to such public invitation to bid will be evaluated and adjudicated are published in the manner and form determined by the Provincial Treasury;
- (b) the provincial department or provincial public entity gives adequate public notice of meetings of its bid adjudication committee at which bids will be considered in the manner and form determined by the Provincial Treasury;
- (c) meetings of the bid adjudication committee at which reports of the bid evaluation committee are presented for consideration are made open to members of the public and bidders to attend; and
- (d) the meetings referred to in paragraph (c) are recorded by the provincial department or provincial public entity concerned in the form and manner as prescribed.

(2) Members of the public and bidders who attend meetings of bid adjudication committee contemplated in subsection (1)(c) may observe the proceedings of those meetings, but must not participate in or disrupt those proceedings.

(3) A member of the public or a bidder that contravenes subsection (2) may be requested by the chairperson of the bid adjudication committee to leave the meeting and such member of the public or bidder must comply with such a request.

### **Gauteng Bid Appeals Tribunal**

**3E.** (1) The MEC must, by notice in the Provincial Gazette, establish an independent and impartial tribunal in the

Province to be known as the Gauteng Bid Appeals Tribunal.

(2) The term of office of members of the Tribunal is a maximum of three years and a member may not serve more than two consecutive terms.

(3) The MEC must prescribe the process of appointment of members of the Tribunal and the chairperson of the Tribunal, whether the members of the Tribunal will serve on a full time or part time basis, the term of office of members of the Tribunal, the qualifying criteria to be considered as a member of the Tribunal, the number of members of the Tribunal, the remuneration of members of the Tribunal, conflict of interest of members of the Tribunal to be declared and procedure for recusal, termination of membership of the Tribunal, removal from office, filling of vacancies and re-appointment to the Tribunal.

(4) The MEC must prescribe the seat of the Tribunal and the procedures and time frames for consideration of appeals.

### **Appeals**

**3F.** (1) A bidder who is aggrieved by a procedural aspect of a decision of a provincial department or provincial public entity when contracting for goods or services exceeding the amount determined by the Provincial Treasury may, in the prescribed form and manner and within 30 days of the date of decision, appeal against such decision to the Tribunal.

(2) Before lodging an appeal contemplated in subsection (1), the bidder concerned must, in the prescribed form and manner and within ten days of the date of the decision, file a notice of intention to appeal with the designated office at the department or public entity respectively.

(3) The respective department or public entity

must upon receipt of the notice contemplated in subsection (2) and within ten days of the receipt of the notice, furnish the bidder, the Provincial Treasury, and any other interested party that requests a transcript with a transcribed copy, which has been certified as accurate, of the proceedings before the adjudication committee concerned.

(4) The appeal must be in the prescribed form and must be lodged with the designated office at the Provincial Treasury.

(5) The Tribunal must make its finding on an appeal within 60 days of the date of lodgement of an appeal contemplated in subsection (1).

### **Regulations**

**3G.** (1) The MEC may make regulations relating to—

- (a) any matter or thing that must be prescribed in terms of this Act;
- (b) a framework or procedure to ensure the uniform and effective implementation of this Act; and
- (c) any matter or thing which, in the opinion of the MEC, is necessary or expedient to prescribe in order to achieve the objects of, or give effect to, this Act, and the generality of this provision shall not be limited by the preceding paragraph of this subsection.

(2) A regulation in terms of this section may—

- (a) differentiate between different categories of—
  - (i) provincial departments or provincial public entities;  
and
  - (ii) accounting officers or accounting authorities; or
- (b) be limited in its application to a specific category of —
  - (i) provincial departments or provincial public entities;

and

(ii) accounting officers or accounting authorities.

### **Treasury instructions**

3H. (1) The Provincial Treasury may issue treasury instructions applicable to provincial departments and provincial public entities regarding any matter in terms of this Act which the Provincial Treasury considers necessary or expedient to prescribe to ensure the uniform and efficient implementation of this Act.

(2) Before issuing an instruction contemplated in subsection (1), the Provincial Treasury must—

(a) consult with the relevant provincial departments and provincial public entities; and

(b) seek the concurrence of the MEC on the final version of an instruction.

(3) An instruction issued under this section has the same force and effect as a regulation made under section 3G of this Act."

### **Short title and commencement**

6. This Act is called the Gauteng Finance Management Supplementary Act Amendment Act, 2018, and comes into operation on a date determined by the Premier by proclamation in the Provincial Gazette.

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## **MEMORANDUM ON THE OBJECTS OF THE GAUTENG FINANCE MANAGEMENT SUPPLEMENTARY ACT AMENDMENT BILL, 2018**

### **1. BACKGROUND**

All over the world, the tender system through which the state contracts for goods or services is known as an avenue through which corruption, and associated ills are facilitated, thus negating the original pro-competitive effects of the system.

One of the shortcomings with the current system of adjudication and award is insufficient transparency: a committee meets in a boardroom, concealed from the public, to deliberate and reach a decision. Information regarding how the decision in issue was made is not readily available: an interested party has to avail him/herself of the often-laborious process under PAIA in order to obtain insight into the factors that influenced the decision. This only fuels the perception of corruption, and unethical practices in government contracts, something that any government can ill-afford.

The lack of transparency (and therefore public accountability) in relation to the adjudication often leads to speculation about the actual motives for the eventual decision. This coupled with the already contaminated public perception of rampant corruption in the public sector makes it all too easy for people to speculate that the motives behind a particular decision are less than honourable.

The probity auditing and adjudication in public is one of the ground-breaking policy initiatives pioneered by the Fifth Administration of the Gauteng Provincial Government ("GPG").

Through this initiative Gauteng will strengthen clean governance and enhance integrity across all provincial departments and provincial public entities.

The initiative was first announced by the Premier during his 2014 State of the Province Address as part of the Transformation, Modernization and Reindustrialization Programme. The Gauteng Provincial Treasury (“GPT”) has piloted the process since the early days of the Fifth Administration, with encouraging results.

The Fifth Administration introduced this innovation to promote accountability, transparency, integrity and public observation regarding all decisions made when contracting for goods or services, in large part to demonstrate in practice the commitment to eradicate corruption in the public sector, and in recognition of the fact that clean governance, integrity and transparency are vital elements in instilling greater public confidence in government and its processes, in particular contracting for goods or services.

It is for these reasons that the promulgation of the Gauteng Finance Management Supplementary Act Amendment Bill, 2018 (“the Bill”) is proposed.

## **2. PURPOSE OF THE BILL**

The purpose of the Bill is to introduce provisions into the principal Act to increase transparency, public accountability, and integrity in public procurement processes by providing for probity advisory on bid specifications in relation to compliance with regulatory prescripts, the auditing of certain processes and the adjudication of tenders in public; the establishment of the Gauteng Bid Appeals Tribunal; and to provide for matters connected therewith.



### 3. DISCUSSION

The main object of the Bill is to address the following central problems in the process of contracting for goods or services:

- Eradication of corruption and unethical practices, in the process through which the state contracts for goods or services;
- The prevention of irregular expenditure through an improved internal control environment; and
- The lack of transparency (and therefore public accountability) in relation to the actual adjudication, leading to speculation about the actual motives for the eventual contracting decision.

Thus the objectives of the Bill are to institutionalise legally binding norms intended to:

- Open the adjudication process to public observation in order to re-build public confidence in the system through which provincial departments and provincial public entities contract for goods or services;
- Empower black owned businesses through access to business opportunities in the process of contracting for goods or services. As the Premier said during the 2014 State of the Province address, “[*]let us empower black people . . . unashamedly, transparently and ethically. I believe we can*”;
- Mitigate the risk of corruption and manipulation in the process through which provincial departments or provincial public entities contract for goods or services;
- Re-institute core standards of behaviour, to promote ethical leadership and professionalism in the process through which

provincial departments or provincial public entities contract for goods or services; and

- Strengthen internal controls and environment by subjecting the process through which provincial departments or provincial public entities contract for goods or services to probity auditing.

The contracting for goods or services process which this Bill seeks to regulate comprises of three main elements, namely:

- Probity advisory on bid specifications in relation to compliance with regulatory prescripts prior to approval for publication;
- Probity auditing of the evaluation process.
- The public observation of meetings of the bid adjudication committees at which decisions are taken in relation to the process through which the provincial department or provincial public entity contracts for goods or services.

These elements are discussed briefly in turn.

### **Probity advisory on bid specifications**

It is a truism that well-prepared bid documentation gives suppliers the opportunity to prepare good proposals, which in turn ensures a good contracting result. Bid specifications of poor quality often lead to significant problems further down the value chain.

It is for this reason that the Bill introduces a requirement that bid specifications be audited by an auditor designated by the GPT prior to publication to ensure that the bid specification is legislatively

compliant. In this regard, the auditor concerned identifies any areas of ambiguity or vagueness in the document, determines whether there is a proper link-up between the institutional contracting requirement and the evaluation criteria, and reviews whether the specification complies with the relevant Treasury instructions.

Where the auditor identifies any concerns, these are brought to the attention of the relevant provincial department or provincial public entity and are addressed prior to the approval of the bid specifications for publication. In this way, a number of difficulties in the preparation of bid specifications (which may later have turned out to be material) have been identified at a stage when they could still be rectified without derailing an already advanced process.

### **Public observation of bid adjudication**

In the normal course, the actual adjudication of a tender is conducted by a Bid Adjudication Committee (“BAC”) behind closed doors. Neither the competing bidders nor interested members of the community (which the goods and or services are supposed to benefit) have insight into what considerations influenced the contract award in issue.

Thus the second element of the transparency measures introduced by this Bill is about demonstrating a commitment to fight fraud and corruption in the contracting value chain by opening the process of contracting for goods and services to public scrutiny so that citizens can see how government complies with the constitutional principles of fairness, equity, transparency, competitiveness and cost-effectiveness in the award of each contract. It is about demystifying public sector corruption by sharing information related to all steps of the process to contract for goods and services.

The Bill achieves this by obliging provincial departments and provincial public entities to ensure that meetings of their bid adjudication committees, where the contracting decisions of open competitive bidding are taken, are open to the public in order to create the necessary space and environment for the populace to observe firsthand proceedings of the BAC.

### **Probity auditing**

The Bill also introduces a requirement for probity auditing of all bid evaluations above a certain threshold (currently pegged at R2 million) by auditors appointed by the GPT who observe the process for total compliance with the laws and regulations and ensure that there is no maladministration and or corruption.

Probity auditing contemplates two concurrent processes.

The *first* is that an auditor is required to be present at all stages of the process, commencing with the public opening of bids and the evaluation of bid submissions by the BEC. The object of this is to close the space for any possible malfeasance, such as collusion among bid committee members or the coercion of some of them to go along with unlawful or unethical conduct.

The *second* leg of probity auditing is the actual auditing of the process followed and the documentation generated in the process for compliance with the prescripts set out in the relevant legislation and Treasury instructions. The entire value chain is subjected to an audit to *inter alia* eliminate the possibility of criteria being invented during the evaluation process.

In this sense, probity auditing provides a level of assurance that a

particular contracting process was conducted in a manner that is fair, equitable and defensible. Through probity auditing of tenders, deficiencies in the internal control environment are identified and corrective measures implemented to prevent repetitive errors.

#### **4. GAUTENG BID APPEALS TRIBUNAL**

Disputes and complaints regarding public procurement decisions are commonplace. Litigation comes at a significant cost for both the aggrieved tenderer who challenges a procurement decision and the GPG which has to defend that decision.

In order to ameliorate this difficulty, the Bill introduces provisions to establish a provincial tribunal to deal with all complaints and adjudicate disputes arising from procurement decisions.

#### **5. CONSTITUTIONAL IMPLICATIONS**

Section 104 read with section 114 of the Constitution of the Republic of South Africa, 1996 gives a provincial legislature the authority to pass legislation for its province. The existing Gauteng Finance Management Supplementary Act, 2000, is legislative precedent for the enactment of provincial legislation regarding financial matters.

The Bill is intended to be complementary to the provisions of the Public Finance Management Act, 1999 and to promote and enforce transparency and effective management in respect of expenditure of provincial departments and provincial public entities when contracting for goods or services.

## 5. LEGAL IMPLICATIONS

The bedrock of the process is section 217 the Constitution, which requires that when an organ of state contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

The regulatory framework that is in place to give effect to this constitutional injunction in the national and provincial spheres of government comprises an interconnected and intricate web of original and delegated legislation and policy pronouncements. Primary among these is the Public Finance Management Act, 1999 ("PFMA"), and Section 16A of the Treasury Regulations, 2005 which regulate *inter alia* the contracting by organs of state for goods and services.

The GPT has also issued its own practice notes for the Province, which are supplementary to the legislative framework and National Treasury guidelines and practice notes already referred to.

Thus the Bill is intended to complement (rather than contradict) the existing provisions of this legislative scheme in order to improve public confidence in the process by which provincial departments and provincial public entities contract for goods or services and public accountability in relation thereto.

It is therefore unlikely that the provisions of this Bill will be in conflict with the existing scheme. Section 3(3) of the PFMA is a specific trumping clause which ensures that the PFMA prevails over any other legislation in the event of conflict.

## **6. SOCIAL IMPLICATIONS**

Without deliberate and focussed strategic and ethical implementation of the public contracting process, leakages of public resources intended for the millions of economically disadvantaged South Africans will continue, redounding to the ultimate disadvantage of these intended beneficiaries. Corruption bears a large measure of responsibility for poor service delivery of social services and basic public goods and has resulted in escalating social unrest in an increasing number of low-income communities.

The implementation of the provisions of this Bill will demonstrate in practice government's commitment to eradicate corruption from the processes through which the state contracts for goods or services, thus improving public confidence in the process and public accountability in relation thereto.

Not only will the implementation of the Bill open the process to public scrutiny in order to re-build public confidence therein, but it will empower black owned businesses through access to business opportunities in the open tender process.

## **7. ENVIRONMENTAL IMPLICATIONS**

None.

## **8. FINANCIAL IMPLICATIONS**

The costs associated with the public observation of bid adjudication meetings are unlikely to be significant. Generating the required

publicity to make members of the public aware of a forthcoming meeting of the BAC is expected to have minimal financial implications as electronic media is predominantly used and, to the extent that the public media is used to communicate, the GPG has good relations with community radio stations, where it has complimentary advertising.

The two elements, i.e., probity advisory on bid specifications and probity audits, have fiscal implications of some degree.

It is envisaged that in the short to medium term, while the GPT builds the necessary internal auditing capacity, external auditors will be employed to conduct probity advisory on bid specifications and probity audits, and they charge on a time basis. By way of illustration, during the 2016/17 financial year, 75 probity audits were conducted at an average cost of R200 000, 00 per audit.

When one considers the value of these transparency and accountability measures the average cost per audit is justified. The singular advantage of external review of bid specifications and probity audits is that irregularities are detected at a time when they can still be cured or, in the extreme cases, when the process of contracting for goods or services can still be cancelled and reissued without exposing the relevant provincial department or provincial public entity to legal action founded on an irregular process. The advantage of this both in terms of saved legal costs and in terms of avoidable interruptions to service delivery outweigh the cost.

However, it would appear that extending the probity advisory on bid specifications and probity audit pillars to all projects for which contracting of goods or services will be required in the Province is not cost-effective.



Thus the Bill contemplates the external review of bid specifications and probity auditing for contracts with a minimum value of R2 000 000, 00. This is expected to cost an estimated R35 000 000.00 *per annum*, which can be accommodated within the projected appropriations to the GPT over the current MTEF period.

As the GPT will completely fund the external review of bid specifications and probity audits, the issue of the ability of provincial departments and provincial public entities to afford the cost of the probity audits does not arise.

#### **9. ORGANIZATIONAL AND PERSONNEL IMPLICATIONS**

None.

#### **10. COMMUNICATION IMPLICATIONS**

The decision to introduce provincial legislation to institutionalise the transparency and accountability measures was presented in the medium term budget policy statement for 2016 and the provincial adjustment appropriation for 2016/17.

Accounting Officers have been informed about the decision to introduce such provincial legislation.

The draft bill was published for a 30 day period in which community roadshows were conducted to allow members of the public to participate on the draft Bill.

## 11. CONSULTATION

The GPT consulted:

- The National Treasury;
- All provincial departments and public entities;
- Organised labour; and
- Organised business.

## 12. CLAUSE BY CLAUSE EXPLANATION OF THE BILL

**Clause 1** amends the long title of the principal Act in order to reflect the object of promoting and enforcing transparency and effective management in respect of revenue, expenditure, assets and liabilities of provincial departments and provincial public entities when contracting for goods or services;

**Clause 2** inserts a Preamble in the principal Act to clarify the policy intent of the legislation.

**Clause 3** amends section 1 of the principal Act to insert new definitions, none of which are novel.

**Clause 4** repeals section 3 of the principal Act, which has served its purpose and has thus become obsolete.

**Clause 5** inserts new sections 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H into the principal Act:

- section **3A** which provides for the purpose and objects of the Act;
- section **3B** which provides for probity advisory on bid specifications prior to the invitation of bids in respect of the

process to contract for goods and services above a monetary threshold to be prescribed by regulation;

- section **3C** provides for the compulsory probity auditing of the bidding processes in respect of the process to contract for goods and services above a prescribed threshold initiated by provincial departments and provincial public entities by auditors designated by the Provincial Treasury;
- section **3D** provides for the compulsory public observation of meetings of the bid adjudication committees of provincial departments and provincial public entities at which contracting decisions are made;
- section **3E** seeks to establish the Gauteng Bid Appeals Tribunal (“Tribunal”).
- section **3F** provides for the right of bidders to appeal to the Tribunal;
- section **3G** provides for the MEC to make regulations in terms of the matters prescribed in the Act; and
- section **3H** provides for the power of the Provincial Treasury to issue instructions applicable to all provincial departments and provincial public entities.

**Clause 6** contains the short title and commencement of the Act.

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