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Department:  
**Public Works and Roads**  
North West Provincial Government  
Republic of South Africa

# DEPARTMENTAL POLICY ON AND PROCEDURES FOR HANDLING IRREGULAR EXPENDITURE

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## 1. DEFINITIONS

Unless otherwise indicated, the following terms shall be defined as follows:

|                       |   |
|-----------------------|---|
| Department            | Refers the Department of Public Works and Roads, within the North West Provincial Administration  |
| Financial Misconduct  | Refers to any intentional act to acquire financial gain for oneself or for those of relatives, friends, or associates from or through activities and transactions related to the business of the Department. It also refers to non-compliance to acts like the PFMA or any other law and that results in unauthorised expenditure, an irregular expenditure, fruitless and wasteful expenditure or any loss resulting from criminal conduct.  |
| FMC                   | Financial Misconduct Committee  |
| HOD                   | Head of Department  |
| Irregular Expenditure | Refers expenditure other than unauthorized expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation; i.e. PFMA, Act 1 of 1999; STBA, Act 86 of 1968; any provincial legislation providing for the procurement of goods and services in that province. Irregular expenditure is expenditure that is contrary to the Public Finance Management Act (Act No.1of 1999), or is in contravention of the department's supply chain management policy. |
| Treasury              | In the policy, the word treasury denotes both "National as well as Provincial Treasury" department.   |

## 2. POLICY STATEMENT

This is a policy directive on irregular expenditure and how to deal with cases which are considered financial misconduct under the Public Finance Management Act, No. 1 of 1999, Sections 38.

The main purpose of the policy is to:-

- a) To outline procedures with regards to the handling of irregular expenditure and
- b) Familiarise employees with the consequences of committing such acts; e.g. irregular spending.

## 3. INTRODUCTION AND BACKGROUND

Section 38 of the Public Finance Management Act 1 of 1999 (as amended) requires that the "Accounting Officer" of the department must, *inter alia*, take effective and appropriate steps to prevent:

- Unauthorized expenditure;
- Irregular expenditure;
- Fruitless and wasteful expenditure;
- Losses resulting from criminal conduct

In order for the department to address the above, all processes and procedures relating to expenditure control and management must be complied with by all officials concerned and be continuously reviewed and monitored; and these include; budget, procurement, payments, accounting and reporting.

The following are the examples of irregular expenditure:-

- Purchases exceeding threshold amounts;
- Procurement done without inviting competitive bids;
- Non-compliance with the delegations of authority;
- Non-compliance with other applicable departmental policies and procedures; and
- Non-compliance with applicable legislation, i.e. PFMA, PPPFA, Regulations; etc.

## 4. REGULATORY FRAMEWORK

- 4.1. The Constitution of the Republic of South Africa (Act No. 108 of 1996), section 215 and 217,
- 4.2. Section 38 of the Public Finance Management Act no.1 of 1999 (as amended by Act no 29 of 1999) dealing with general responsibilities of accounting officers and specifically subsections:

| Subsection      | Detail  |
|-----------------|---|
| 38 (1)(a)(i),   | AO must ensure:<br>that a department has and maintains effective, efficient and transparent systems of financial and risk management and internal control and;  |
| 38 (1)(a)(iii), | an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective and;   |
| 38 (1)(a)(iv),  | system for properly evaluating all major capital projects prior to a final decision on the project;   |
| 38(1)(b)        | responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional department;   |
| 38(1)(c)(ii),   | take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct;  |
| 38(1)(f)        | must settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period;  |
| 38(1)(g)        | on discovery of any unauthorised, irregular or fruitless and wasteful expenditure, must immediately report, in writing, particulars of the expenditure to the relevant treasury and in the case of irregular expenditure involving the procurement of goods or services, also to the relevant tender board; |
| 38(1)(h)(ii)    | must take effective and appropriate disciplinary steps against any official makes or permits an unauthorised expenditure, irregular expenditure or fruitless and wasteful expenditure.  |

- 4.3. Section 44 of the Public Finance Management Act no.1 of 1999 (as amended by Act no 29 of 1999) dealing with the assignment of powers and duties (delegations) by accounting officer .

| Subsection | Detail   |
|------------|--|
| 44(1)      | The Accounting Officer may:  |
| 44(1)(a)   | in writing delegate any of the powers entrusted or delegated him in terms of this Act, to an official in the department; |
| 44(1)(b)   | instruct any official in that department to perform any of the duties assigned to him in terms of this Act               |

4.4. Section 45 of the Public Finance Management Act no.1 of 1999 (as amended by Act no 29 of 1999) dealing with the responsibilities of other officials and specifically subsections:

| Subsection | Detail   |
|------------|--|
| 45(a)      | An official:<br>must ensure that the system of financial management and internal control established for that department, trading entity or constitutional department is carried out within the area of responsibility of that official and; |
| 45(b)      | is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility and;  |
| 45(c)      | must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorised expenditure, irregular expenditure and fruitless and wasteful expenditure and;   |
| 45(d)      | must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 44.  |

4.5. Treasury Regulation issued March 2005 and specifically:

| Subsection | Detail  |
|------------|---|
| TR 9.1.1   | The accounting officer of an department must exercise all reasonable care to prevent and detect unauthorised, irregular, fruitless and wasteful expenditure, and must for this purpose implement effective, efficient and transparent processes of financial and risk management.   |
| TR 9.1.2   | When an official of an department discovers unauthorised, irregular or fruitless and wasteful expenditure, that official must immediately report such expenditure to the accounting officer. In the case of a department, such expenditure must also be reported in the monthly report, as required by section 40(4) (b) of |

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| Subsection | Detail  |
|------------|---|
|            | the Act. Irregular expenditure incurred by a department in contravention of tender procedures must also be brought to the notice of the relevant tender board or procurement authority, whichever applicable.   |
| TR 9.1.3   | When an accounting officer determines the appropriateness of disciplinary steps against an official in terms of section 38(1)(g) of the Act, the accounting officer must take into account –<br>(a) the circumstances of the transgression;<br>(b) the extent of the expenditure involved; and<br>(c) the nature and seriousness of the transgression.  |
| TR 9.1.4   | The recovery of losses or damages resulting from unauthorised, irregular or fruitless and wasteful expenditure must be dealt with in accordance with regulation 12.   |
| TR 9.1.5   | The amount of the unauthorised, irregular, fruitless and wasteful expenditure must be disclosed as a note to the annual financial statements of the department.   |
| TR 11.4.1  | An accounting officer may only write off debts owed to the State if he or she is satisfied that –<br>(a) all reasonable steps have been taken to recover the debt and the debt is irrecoverable, or,<br>(b) he or she is convinced that –<br>(i) recovery of the debt would be uneconomical;<br>(ii) recovery would cause undue hardship to the debtor or his or her dependants; or<br>(iii) it would be to the advantage of the state to effect a settlement of its claim or to waive the claim. |
| TR 11.4.2  | An accounting officer must ensure that all debts written off are done in accordance with a write-off policy determined by the accounting officer.   |
| TR 11.4.3  | All debts written off must be disclosed in the annual financial statements, indicating the policy in terms of which the debt was written off.   |
| TR 12.7.1  | Losses or damages suffered by an department because of an act committed or omitted by an official, must be recovered from such an official if that official is liable in law.   |
| TR 12.7.2  | The accounting officer must determine the amount of the loss or damage and, in writing, request that official to pay the amount within 30 days or in reasonable instalments. If the official fails to comply with the request, the matter must be handed to the State Attorney for the recovery of the loss or damage.  |
| TR 12.7.3  | A claim against an official must be waived if the conditions in paragraph 12.2.1(a) to (g) are not applicable.  |
| TR 12.7.4  | If in doubt, the accounting officer of the department must consult  |

| Subsection | Detail  |
|------------|---|
|            | the State Attorney on questions of law in the implementation of paragraphs 12.7.1 and 12.7.3. |

- 4.6. Part 2 (Management Arrangements) section 4 dealing with financial misconduct;
- 4.7. Part 4 (Revenue and expenditure management) section 8 dealing with expenditure management and section 9 dealing with unauthorized, irregular, fruitless and wasteful expenditure.
- 4.8. Part 6 (Frameworks) section 16A dealing with Supply Chain Management.
- 4.9. The Public Service Act, Act No. 103 of 1994 which has financial implications for a department.
- 4.10. The Public Service Amendment Act, Act No. 13 of 1996 which has financial implication for a department.
- 4.11. Public Service Regulations (PSR)
- 4.12. The Prevention and Combating of Corrupt Activities Act (12 of 2004) aims to prevent and fight corruption in the Government and in the Public Sector.
- 4.13. Preferential Procurement Policy Framework Act No. 5 of 2000. (PPPFA)
- 4.14. Preferential Procurement Regulations
- 4.15. State Information Technology Agency Act of 1998. (SITA)
- 4.16. Construction Industry Development Board Act of 2000 (CIDB)



## 5. OBJECTIVE AND SCOPE

The main objectives of the policy are:

- 5.1. To emphasize and to enhance the accountability of departmental employees with regards to the utilization of Department of Public Works and Roads resources;
- 5.2. To ensure compliance to the Public Finance Management Act, Treasury Regulations and relevant North West Provincial Administration (Provincial Treasury) provisions on expenditure.
- 5.3. To ensure timeous prevention of irregular expenditure by the department
- 5.4. To ensure timeous detection, investigating, processing and recording of irregular expenditure by the department;
- 5.5. Outline the procedures that must be followed by staff members with regards to the prevention and detection of irregular expenditure; and
- 5.6. To provide guidance as to the accounting treatment, reporting and disclosures relating to irregular expenditure identified.

## 6. PRINCIPLES, VALUES AND PHILOSOPHY

### 6.1. General Principles

6.1.1. This policy is intended to reflect the department's commitment to the principles, goals and ideals described in the department vision and core values.

6.1.2. It shall apply to all employees of the NWDPWR, appointed in terms of the Public Service Act, 1994, as amended.

6.1.3. It should be read in conjunction with the following policies and procedures:-

- Supply chain management policy
- Expenditure & Payment Procedures
- Policy on fruitless & wasteful expenditure

- Policy for handling unauthorised expenditure
- Policy for reporting and investigation of potential misconduct
- Code of conduct for public servants issued in terms of the Public Service Act

6.1.4. Departmental officials must ensure that in all instances of the procurement process irregular expenditure is prevented and detected where possible; and when discovered it gets reported to relevant authority timeously.

## **6.2. Principles relating to irregular expenditure**

6.2.1. For the department to incur irregular expenditure, the non-compliance must be linked to a financial transaction. Although a transaction or an event may trigger irregular expenditure, the department will only recognise irregular expenditure when a payment is made. If 'possible irregular expenditure' is determined prior to a payment being made, then the transgression shall be regarded as a non-compliance matter until payment is made and irregular expenditure is recognized.

6.2.2. For the purposes of determining whether irregular expenditure has taken place, there must have been a transgression of a provision contained in:-

- any applicable legislation;
- the PFMA;
- the Treasury Regulations;
- a National Treasury Instruction, issued in terms of section 76 of the PFMA;
- a Provincial Treasury Instruction issued in terms of section 18(2)(a) of the PFMA; and
- any policies or procedures that have been issued by the department in terms of Section 38(1)(a)(a)&(iii) or 51(1)(a)(a)&(iii) of the PFMA or any other applicable legislation and which have been formally approved by the accounting officer, whichever applicable.

6.2.3. In terms of the new Treasury Guidelines issued in May 2013; internal policies and procedures form an integral part of any department's internal control system. It is therefore important to stress the point that any expenditure incurred as

a result of non-compliance with a department's internal policies and procedures issued in terms of legislation shall also be regarded as irregular expenditure.

## **7. FINANCIAL MISCONDUCT**

- 7.1. Sections 38(1) (c) (ii) of the PFMA requires that the accounting officer must take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct.
- 7.2. In terms of sections 38(1)(h)(ii) and 51(1)(e)(ii) of the PFMA, the accounting officer must take effective and appropriate disciplinary steps against any official in the service of the department who commits an act which undermines the financial management and internal control system of the department.
- 7.3. In addition to the foregoing, sections 38(1)(h)(iii) and 51(1)(e)(iii) of the PFMA require that the accounting officer takes effective and appropriate disciplinary steps against any official in the service of the department who makes or permits irregular expenditure.
- 7.4. When an accounting officer determines the appropriateness of disciplinary steps against an official in terms of section 38 (1) (g) of the Act, the accounting officer must take the following into account:
  - a) the circumstances of the transgression;
  - a) the extent of the expenditure involved; and
  - b) the nature and seriousness of the transgression.
- 7.5. When disciplinary action is being considered, departments are advised to contact the Directorate Human Capital Management (Human Resources – Labour Relations) to ensure compliance with collective bargaining agreements and Department of Public Works and Roads HR policies.
- 7.6. Human Resources must be informed of any disciplinary action being considered to also ensure that employee's rights related to compensation and benefits are protected and reasonable employee relations are maintained. It is also advisable that departmental employees from regional and district offices should regularly discuss cases of financial misconduct amongst themselves.

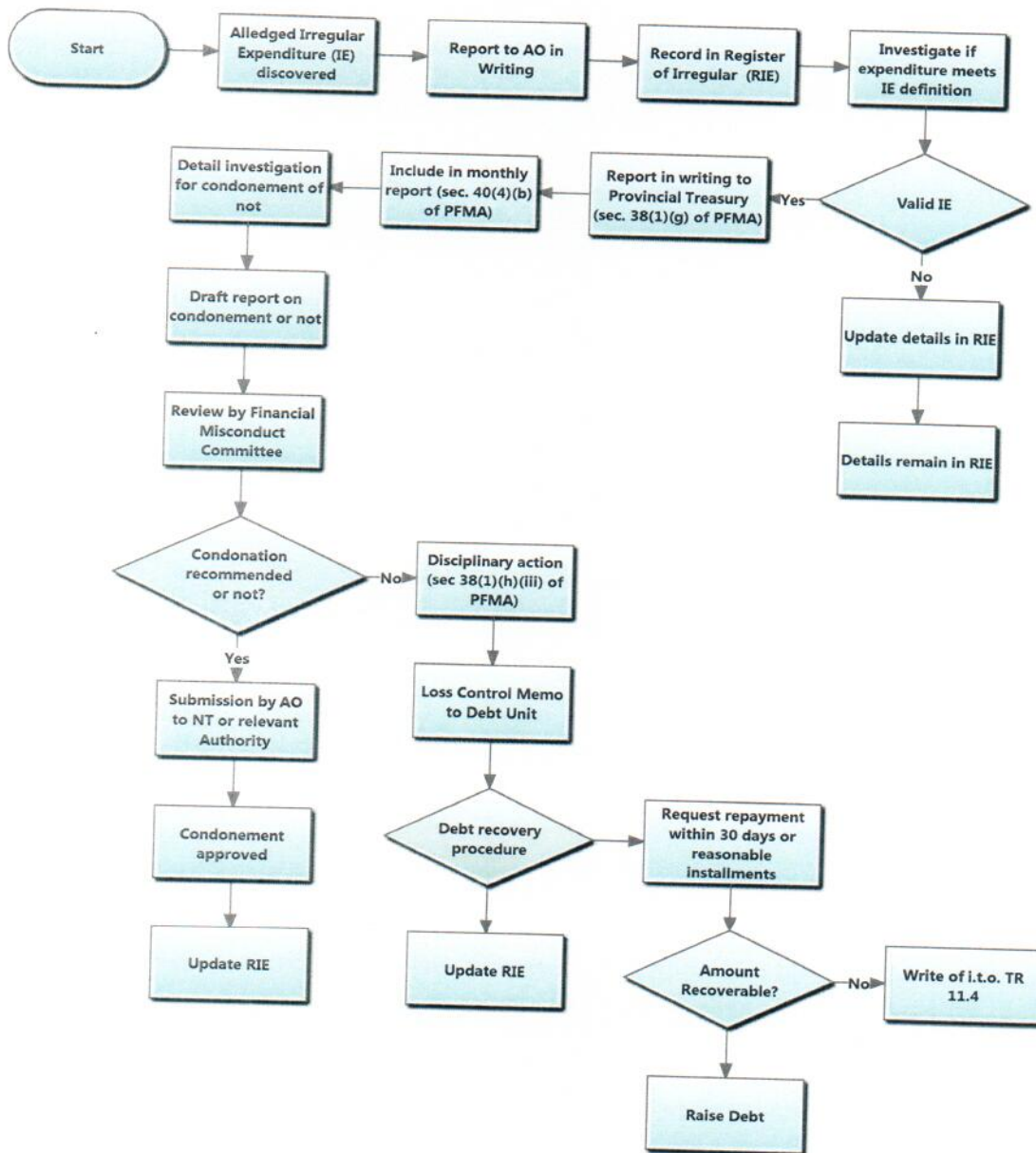
- 7.7. Should you act in any way that infringes the terms of this policy, you may face disciplinary action. In cases of serious violations involving deception, this may lead to the matter being dealt with through the department's formal grievance and disputes procedure.
- 7.8. Failure to take disciplinary action where required under this policy shall itself be a breach of financial discipline under this policy.
- 7.9. **CRIMINAL PROCEEDING** (TR Part 2 Section 4.2)
- 7.11.1. The accounting officer must advise the executive authority, relevant treasury and the Auditor-General of any criminal charges it has laid against any person in terms of section 86 of the Act.
- 7.10. The relevant treasury may direct the department to lay criminal charges against any person should an accounting officer fail to take appropriate action.

## **8. UNAUTHORIZED EXPENDITURE VERSUS IRREGULAR EXPENDITURE**

- 8.1. If a department undertakes a transaction that contravenes legislation, the transaction meets the definition of irregular expenditure. The same transaction may be outside the mandate of the department and/or cause overspending on a programme or vote which meets the definition of unauthorised expenditure. A transaction of this nature must not be accounted for as both irregular expenditure and unauthorised expenditure. Irregular expenditure is defined as expenditure other than unauthorised expenditure. This means that unauthorised expenditure takes precedence over irregular expenditure. Therefore the transaction will be accounted for as unauthorised expenditure.

## 9. PROCEDURES - TREATMENT OF IRREGULAR EXPENDITURE

### 9.1. SCHEMATIC REPRESENTATION FOR PROCEDURES FOR THE TREATMENT OF IRREGULAR, EXPENDITURE



## 9.2. PROCEDURES IRREGULAR EXPENDITURE

The procedures for the treatment of irregular expenditure are as follows:-

### 9.2.1. Discovery of irregular expenditure

- Any employee of the department who discovers or suspects the occurrence of irregular expenditure to be taking place should immediately notify (report) the Accounting Officer.
- Immediate steps must thereafter be taken to:
  - ❖ Confirm that the expenditure is irregular;
  - ❖ Identify the responsible person;
  - ❖ Take necessary disciplinary action against the responsible person and
  - ❖ Where possible and applicable recover the amount from the person concerned.
- Register of irregular expenditure must be updated.

### 9.2.2. Investigation of irregular expenditure

- The Accounting Officer should investigate the suspected irregular expenditure to determine whether the alleged expenditure meet the criteria for the definition of irregular expenditure. During the period of investigation the expenditure must remain in the expense account. The results of the investigation will determine the appropriate action to be taken regarding the expenditure.
- If in doubt, accounting officers must consult the relevant treasury for guidance on interpretation of the definition of irregular expenditure.
- Should the investigation reveal that the expenditure is in fact valid expenditure and therefore does not constitute irregular expenditure, the details of the expenditure should be retained in the register for the purposes of completeness (and to provide an appropriate audit trail). The register must then be updated to reflect the outcome of the investigation.

### 9.2.3. Accounting policy for irregular expenditure

The recommended accounting policy for irregular expenditure that the department has adopted and use in its annual financial statements:

“Irregular expenditure is recorded in the notes to the financial statements when confirmed. The amount recorded is equal to the total value of the irregularity unless it is impracticable to determine in which case reasons therefore is provided in the note. Irregular expenditure is removed from the note when it is either condoned by the relevant authority or transferred to receivables for recovery”.

### 9.2.4. Accounting treatment

- Prior to departments recording expenditure as irregular, it is imperative that a process be instituted to ensure that the expenditure in question meets with the definition of irregular expenditure, as contained in section 1 of the PFMA.
- Irregular expenditure is accounted for as expenditure in the Statement of Financial Performance and where recovered, it is subsequently accounted for as revenue in the Statement of Financial Performance.
- Irregular expenditure that was incurred and identified during the current financial and which was condoned before year end and/or before finalisation of the financial statements must also be recorded appropriately in the irregular expenditure register. In such an instance, no further action is also required with the exception of updating the note to the financial statements (no journal is passed).
- Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end must be recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements (no journal is passed).
- Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements must be updated with the amount condoned (no journal is passed).

- Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority must be recorded appropriately in the irregular expenditure register.
- If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps must thereafter be taken to recover the amount from the person concerned. The irregular expenditure register must also be updated accordingly.

#### 9.2.5. Register of Irregular Expenditure

- The department shall maintain an irregular expenditure register which must contain a detailed schedule (per year) of all irregular expenditure incurred.
- Prior the final recording expenditure as irregular, the department must ensure that the expenditure in question falls within the definition of irregular expenditure, as provided in section 1 of the PFMA. If in doubt the department must consult the relevant treasury for guidance on interpretation of the definition of irregular expenditure.
- This register must be kept up to date to track all irregular expenditure and for purposes of internal and external audit. This will also assist in ensuring that the irregular expenditure disclosure in the AFS is complete and accurate.

#### 9.2.6. Recording in the register of irregular expenditure

- On discovering **possible** irregular expenditure, the department must record the details of such in the register.
- The department must evaluate if the alleged irregular expenditure is valid, i.e. it falls within the definition of irregular expenditure in section 1 of the PFMA.
- If the irregular expenditure is valid, the register should be updated with confirmation that the expenditure in question is in fact irregular expenditure. These amounts must be included in the AFS disclosure notes.
- If the irregular expenditure is not valid, the register must be updated accordingly. Records of all the follow-up activities that take place once the alleged irregular






expenditure is discovered must be maintained and referenced in the relevant register.

- The departments must conclude all investigations and resolve all irregular expenditure as soon as practicable. If such investigations are not concluded by the date of publication of the annual financial statements, then a narrative must be included to this effect as part of the irregular expenditure note to the annual financial statements.
- Validity of irregular expenditure must be determined before submission of the annual financial statements for audit purposes. If irregular expenditure that occurred in the year under review is discovered during the audit, validity thereof must be determined before the audit is concluded. The above applies to any form of discovery made before the finalisation of the annual financial statements (including any findings made by the external auditors).

#### 9.2.7. Disclosure of irregular expenditure

- Treasury Regulations 9.1.5 and 28.2.1 require accounting officers and accounting authorities to disclose all irregular expenditure incurred by their respective institutions as a note to their annual financial statements. The disclosure of irregular expenditure incurred is a legal rather than an accounting requirement. It is the act that results in irregular expenditure that is of importance to the user of the financial statements. The amount does not add to its significance and focusing on the quantification of irregular expenditure, while it is important, may divert attention away from the act itself. The primary focus from an oversight perspective is ensuring that spending agencies abide by the law in executing their mandates.
- The annually issued Departmental Financial Reporting Framework provides the format that departments must use to disclose irregular expenditure as a note to the annual financial statements.
- The amount disclosed as irregular expenditure arising or discovered in a particular financial year, however, will allow the user to assess the extent to which that period's allocated funds were utilised in an irregular manner. The amount disclosed does not necessarily give a reliable measure of internal control weaknesses in an entity but the nature and or the regularity of the infraction.

- It is acknowledged that there may be instances where the irregular expenditure arose from fraudulent, corrupt and criminal activities or through actions that deprived the state of value for money and may result in the state instituting a civil claim against a third party. In such cases the institution would have to evaluate the impact of the infraction and the likelihood of someone being liable in law. The extent of the liability would thus have to be established. If the total amount could not be established by the date of approval for issue of the annual financial statements, the sub-notes must disclose this fact along with the reasons why.
- In instances other than the above, the accounting officer or accounting authority must quantify the total amount of irregular expenditure unless it is impracticable to do so. When the institution can demonstrate that it is impracticable to quantify the full amount, it should disclose this fact along with the reasons why.
- In summary, the disclosure requirements with regard to the identification and quantification of irregular expenditure are as follows:

| Stage  | Transgression took place in the current financial year  | Transgression took place in a previous financial year  |
|--|---|--|
| Suspected irregular expenditure identified and in process of investigation to confirm<br>   | Narrative in the irregular expenditure note   | Narrative in the irregular expenditure note  |
| Alleged irregularity confirmed as irregular expenditure and further investigated to determine the nature, extent and root cause of the transgression (where for example the department is in the process of establishing whether this is isolated).<br> | Disclose amount of irregular expenditure confirmed and note that further instances (the extent) of this type of irregular expenditure are under investigation.<br><br>Continue with process as described below.   | Disclose amount of irregular expenditure confirmed and note that further instances (the extent) of this type of irregular expenditure are under investigation.<br><br>Continue with process as described below.  |
| Institute a process to identify any fraudulent, corrupt and criminal activities or actions that deprived the state of value for money and may result in the state instituting a civil claim against a third party.<br>                                  | If confirmed criminal activities etc.: <ul style="list-style-type: none"> <li>• follow relevant steps required in chapter 4, 9 and 12 of the Treasury Regulations;</li> <li>• report in terms of section 34 of the Prevention and Combating of Corrupt Activities Act, 2003;</li> <li>• determine amount paid in current financial year;</li> <li>• disclose amount in the main note as "irregular</li> </ul> | If confirmed criminal activities etc.: <ul style="list-style-type: none"> <li>• follow relevant steps required in chapter 4, 9 and 12 of the Treasury</li> <li>• report in terms of section 34 of the Prevention and Combating of Corrupt Activities Act, 2003;</li> <li>• determine amount paid from date of transgression to end of reporting period;</li> <li>• disclose amount in the main note as "irregular</li> </ul> |

|  |   |   |
|--|---|---|
|  | <p>expenditure - relating to current year";</p> <ul style="list-style-type: none"> <li>include supplementary disclosure on the disciplinary steps taken/criminal proceedings instituted.</li> </ul>   | <p>expenditure - relating to prior year";</p> <ul style="list-style-type: none"> <li>include supplementary disclosure on the disciplinary steps taken/criminal proceedings instituted.</li> </ul>   |
| <p>Confirmation that the irregular expenditure was not the result of fraudulent, corrupt and criminal activities or actions that deprived the state of value for money that may result in the state instituting a civil claim against a third party.</p> | <p>If confirmed no criminal activities etc.:</p> <ul style="list-style-type: none"> <li>follow relevant steps required in chapter 4, 9 and 12 of the Treasury</li> <li>determine amount paid and disclose amount in the main note as "irregular expenditure - relating to current year";</li> <li>if can demonstrate that it is impracticable to determine the total irregular expenditure, disclose details of transgression and reasons why the amount</li> </ul> | <p>If confirmed no criminal activities etc.:</p> <ul style="list-style-type: none"> <li>follow relevant steps required in chapter 4, 9 and 12 of the Treasury;</li> <li>determine amount paid from date of transgression to end of reporting period and disclose amount in the main note as "irregular expenditure - relating to prior year";</li> <li>if can demonstrate that it is impracticable to estimate the total irregular expenditure, disclose details of transgression and reasons why the amount cannot be quantified.</li> </ul> |

#### 9.2.8. Condonation of Irregular Expenditure

- As part of the enclosed procedures, provision is made for the accounting to forward submissions to the National Treasury or the relevant authority to request condonation for non-compliance with the PFMA or other legislation respectively. The treasury to which the submission must be forwarded will depend on the provision that was contravened. These contraventions are discussed in detail in paragraph 7.2.6 and 7.2.7. The submissions requesting condonation for non-compliance must:
  - Contain detailed motivation as to why the irregular expenditure in question should be considered for condonation and,
  - Steps that have been taken to avoid a recurrence of this type of irregular expenditure.

- Submissions requesting condonation of irregular expenditure may only be submitted to the relevant authority, where good reasons exist for condonation.
- If the irregular expenditure is subsequently condoned by the relevant authority, no further action is required and the expenditure remains in the books of the department. The register should be updated to reflect the condonation.
- In the event where irregular expenditure is not considered for condonation or where National Treasury or the relevant authority does not condone the irregular expenditure, immediate steps must be taken to recover the irregular expenditure from the responsible employee, if he/she is liable in law.
- If no person is liable in law for the irregular expenditure, an application must be submitted to the relevant authority for condonation of such expenditure. If condonation is not granted by the relevant authority, the department must follow the recommended actions in the letter rejecting condonation.
- If in doubt, the department must consult the State Attorney on the question of law.
- Submissions to the Provincial Treasury requesting condonation of irregular expenditure must be directed to the following functionaries:

| Irregular expenditure related to:  | Functionary  |
|--|--|
| Budget related matters   | Relevant Budget Analyst within the Public Finance Division who is responsible for the Department's budgetary matters |
| Accounting related matters   | Relevant official within the Office of the Accountant-General  |
| Supply Chain Management related matters (including matters related to the State Tender Board | Chief Director: Supply Chain Management (Norms )   |

#### 9.2.9. Guidance on Relevant Authority concerning irregular expenditure

In this policy the relevant authority refers to *"the person or department whose approval would have been required prior to entering into that transaction or incurring such expenditure or the department responsible for the relevant legislation"*

The detail regarding relevant authority is set out in the table in Paragraph 7.2.7. The following table provides examples of irregular and the relevant authority that can condone such expenditure:

| Categories of irregular expenditure  | Relevant Authority   |
|--|--|
| <p>Irregular expenditure incurred as a result of non-compliance with a Treasury Regulation where prior written approval was required from a relevant treasury. For example, a department, trading entity, constitutional department or public entity that incurred expenditure related to a public private partnership without obtaining the prior written approval of the relevant treasury, as required by Treasury Regulation 16.4.2.</p> | <p>Relevant provincial treasury in the case of provincial departments or provincial public entities.</p> |
| <p>Irregular expenditure incurred as a result of non-compliance with a Treasury Regulation which required cognisance to be taken of a National Treasury determination. For example, a department procured goods or services by means of price quotations where the value of the purchase exceeded the threshold values determined by the National Treasury for price quotations. (Contravention of Treasury Regulation 16A6.1)</p>           | <p>The National Treasury</p>   |
| <p>Irregular expenditure incurred as a result of departments procuring goods or services by means other than through competitive bids and where reasons for deviating from inviting competitive bids have not been recorded and approved by the functionary to whom the power has been delegated by the accounting officer. (Contravention of</p>  | <p>The Accounting Officer</p>  |

| Categories of irregular expenditure   | Relevant Authority   |
|---|--|
| Treasury Regulation 16A6.4)   |  |
| Irregular expenditure incurred as a result of non-compliance with a requirement of the department's delegations of authority issued in terms of the PFMA. For example: An official approves purchase of goods to the value of R35 000 however his limit in terms of delegation of authority is R30 000.                                       | The Accounting Officer   |
| Irregular expenditure incurred as a result of non-compliance with a provision contained in any applicable legislation. For example, a department grants performance rewards to personnel without maintaining and implementing a Performance Management and Development System, as required by Part VIII B of the Public Service Regulations). | The Dept responsible for the legislation concerned and in the case of this example, the Dept of Public Service and Administration. |

From the above it is clear that in certain instances the accounting officer have the power to condone irregular expenditure that was incurred as a result of transgressions by their respective officials.

If, however, the accounting officer is responsible for the transgression, only the National Treasury or the relevant treasury (whichever is applicable) may condone such a transgression.

**9.2.10. Deviation from legislation that constitute irregular expenditure or non-compliance to legislation**

The following are main categories of acts of non-compliance that can lead to irregular expenditure. The detail of the transgressions are set out in Annexure A and the table also makes reference to the relevant legislation and the relevant/applicable authority that is empowered to condone such expenditure:

- a) Procurement and contract management;
  - i. Awards to person in service of the department;
  - ii. Awards to close family members;
  - iii. Combatting the abuse of the SCM system and follow-up of previous reports, complaints and allegations
  - iv. Procurement need and strategy;
  - v. Procurement process and deviation;
  - vi. Bid specification and documentation;
  - vii. Invitation and receipt of quotations and bids;
  - viii. Evaluation and adjudication committees;
  - ix. Evaluation – General;
  - x. Evaluation – Preference points and functionality;
  - xi. Construction contracts;
  - xii. Contracts and contract management;
  - xiii. It related goods and services;
  - xiv. Unsolicited bids
  
- b) Human resources management;

- c) Transfers and conditional grants and
- d) Other PFMA and Treasury Regulation Provisions.

#### 9.2.11. Reporting of Irregular Expenditure

- If the investigation indicates that the expenditure is in fact irregular expenditure, the accounting officer must immediately report, in writing, the particulars of the expenditure to the relevant treasury. In the case of departments, the irregular expenditure must also be included in the monthly report on revenue and expenditure as submitted by the Accounting Officer to the relevant treasury, in terms of section 40(4)(b) of the PFMA.
- If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto must remain against the relevant programme/expenditure item, be disclosed as such in the note to the financial statements as per Treasury Regulations 9.1.5 and 28.2.1 and updated accordingly in the irregular expenditure register (no journal is passed).

#### 9.2.12. Procedure for Raising Debt & Recovery of Irregular Expenditure not Condoned

- Receivables comprise amounts due to the department as a result of the sales of goods or provision of services or the recovery of expenditure incurred by the state. If an investigation into alleged irregular expenditure confirms that it is in fact irregular expenditure then a receivable (debtor) for the recovery of the amount must be raised by passing the following journal entry:

DR – Receivable for irregular expenditure (debtor)

CR – Expenditure (where irregular expenditure payment is located in the GL)

- The accounting officer must in terms of PFMA Section 38(1) (c) (i) and 51(1) (b) (i) take effective and appropriate steps to collect all money due to the department, hence every effort must be undertaken to recover irregular expenditure.
- The accounting officer must determine who the responsible party is from whom the amount should be recovered. This information would normally become evident while performing the investigation.



- The Accounting Officer must in writing, instructs the official concerned to pay within one month (30 days) the amount of irregular expenditure as determined. If the official concerned does not adhere to the request then the matter may handed over to the state attorney to start the legal process of recovering the said debt.
- If recovery is not possible, the accounting officer may write off the amount as a bad debt in accordance with Treasury Regulations 11.4 and disclose such in the relevant note to the financial statements.

### 9.3. GRIEVANCE HANDLING

If you consider that this policy has not been applied fairly or correctly, you should raise the matter initially with your immediate supervisor. If you subsequently remain dissatisfied by any response you receive, you may take up this matter with your employee representative, the human capital management department, or any member of senior management. Serious grievances may also ultimately be handled through the Department's formal grievance and disputes procedure.

## 10. ROLES AND RESPONSIBILITIES

| RESPONSIBLE PERSON  | RESPONSIBILITY   | TIME FRAME   |
|---|--|--------------|
| Employee  | If he comes aware of or suspects the occurrence of irregular expenditure must immediately report, in writing such expenditure to the Accounting Officer or his/her delegate  | Continuously |
|   | Prevent irregular expenditure  | Continuously |
|   | Where fraudulent activities are suspected, they should be reported immediately.  | Continuously |
| The Executive Authority / Member of the Executive Council (MEC) | The Executive Authority must investigate allegations of financial misconduct against the Accounting Officer and if necessary institute disciplinary proceedings  | As required  |
| The Accounting Officer / Head of Department                     | Must take effective and appropriate steps to prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct.  | Continuously |
|   | Must investigate allegations of financial misconduct and if necessary institute disciplinary proceedings.  | As required  |
|   | Sections 81 - 86 of the PFMA also make provisions for sanctions against non-compliance. Persons who are found responsible for non-compliance are liable to a charge of financial misconduct which may lead to a dismissal or suspension. | As required  |
| The Human Capital Management                                    | Labour Relation Officer will issue reports to Head of Department.  | As required  |
|   | The Human Resource section must consult with the Head of the Unit / Directorate when internal discipline involves suspension or termination of employee's service.   | As required  |
|   | Assist in ensuring that any action conforms to collective bargaining agreements and departmental policies, as well as informed on employee rights including those related to compensation and benefits.                                  | As required  |
| The Financial Misconduct Committee                              | Facilitate the development of the department's procedures on handling cases of possible financial misconduct/ losses or damages as a result of negligence.   | As required  |
|   | Establish criteria for the evaluation of possible financial misconduct, losses or damages.   | As required  |
|   | Evaluate all cases of possible financial misconduct, which may result in irregular   | Per schedule |

| RESPONSIBLE PERSON   | RESPONSIBILITY   | TIME FRAME                                |
|----------------------|--|---|
|                      | expenditure.   |   |
|                      | Make recommendations to the HOD on appropriate control processes to be implemented to avoid future recurrence.   | As required                               |
|                      | Make recommendations to the AO, AA, NT or PT on condonement of irregular expenditure.  | Per schedule                              |
|                      | Make recommendations to the HOD on appropriate disciplinary action against an official/s who had committed financial misconduct, is responsible for a loss to the Agency or has caused damage to the Agency's property/ asset. | Per schedule                              |
|                      | Establish whether appropriate processes were followed to determine liability on the part of the official.  | Per schedule                              |
|                      | Make recommendations to the HOD on the writing off of losses.  | Per schedule                              |
| Financial Accounting | Reporting alleged irregular to AO  | As required                               |
|                      | Record alleged irregular in register   | Five working days after reported          |
|                      | Report confirmed IR to Provincial Treasury   | Five working days after updating register |
|                      | Update Register with IR not confirmed  | One working day after confirmation        |
|                      | Include in monthly report  | Monthly                                   |
|                      | Take debt for IR confirmed onto system and follow debt procedures  | Five working days after updating register |
| Loss Control Officer | Investigate alleged irregular expenditure  | As required                               |
|                      | Make recommendations to FMC on condonement, disciplinary action and recoupment of IR.  | As per schedule                           |
| National Treasury    | Issue guidance and guidelines on irregular expenditure.  | As per schedule                           |
|                      | Study the report recommending the Condonement of irregular expenditure that is in breach of the PFMA, Treasury Regulations and   | As per schedule                           |

| RESPONSIBLE PERSON                | RESPONSIBILITY  | TIME FRAME      |
|-----------------------------------|---|-----------------|
|                                   | Treasury Practice Notes.  |                 |
|                                   | Condone the irregular; where necessary if not provide good reasons as to why condoning was rejected.  | As per schedule |
| Provincial Treasury               | Study the report recommending the Condonement of irregular expenditure that is in breach of the provincial treasury guidelines and Practice Notes.  | As per schedule |
|                                   | Condone the irregular; where necessary if not provide good reasons as to why condoning was rejected.  | As per schedule |
| Public Service and Administration | Study the report recommending the Condonement of irregular expenditure that is in breach of the Public Service Act, Public Service Regulations, Treasury Regulations, Code of Conduct and other labour related matters. | As per schedule |
|                                   | Condone the irregular; where necessary if not provide good reasons as to why condoning was rejected.  | As per schedule |
| SITA                              | Study the report recommending the Condonement of irregular expenditure that is in breach of the SITA Regulations, Treasury Regulations and Practice Notes.  | As per schedule |
|                                   | Condone the irregular; where necessary if not provide good reasons as to why condoning was rejected.  | As per schedule |
| CIDB                              | Study the report recommending the Condonement of irregular expenditure that is in breach of the CIDB Act & Regulations, Treasury Regulations and Practice Notes.  | As per schedule |
|                                   | Condone the irregular; where necessary if not provide good reasons as to why condoning was rejected.  | As per schedule |

## **11. RESOURCE IMPLICATIONS**

### **11.1 An Enabling Environment**

- Protection of whistle-blowers through the establishment of a whistle blowing policy in line with the Protected Disclosure Act, Act 6 of 2000.
- Political will in fighting corruptions.
- Strengthening public / private discourse.
- Talking freely about issues relating to fraud, corruption and related activities
- Consider the establishment of a well-publicized means; (i.e. fraud hotlines, government meet the people programs) to receive and process information from the public on perceived irregularities.

### **11.2 Human Capital Requirements**

- Recruitment of suitably qualified financial misconduct investigators or re-training of inspectorate officials to deal with cases of financial misconduct.
- Training of all departmental employees on issues relating to irregular expenditure, through the attendance workshops and seminars.
- Induction of the Financial Misconduct Board members.

### **11.3 Financial Resources**

- The Chief Financial Officer shall ensure that the Financial Misconduct Committee is adequately funded, with a dedicated budget to ensure the sustainability of the programme.

## 12. MONITORING AND EVALUATION

The effectiveness of the program will be monitored closely by the Financial Misconduct Board in conjunction with the departmental units such as Labour Relations, Legal Services, Finance and Risk and Internal Control Unit.

All reports that relates to the issues concerning financial misconduct will be dealt with confidentially by all relevant parties.

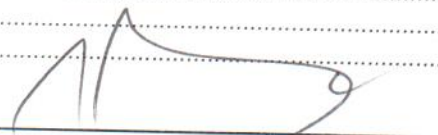
## 13. POLICY REVIEW

This policy will become effective and applicable after the approval by the Head of Department and is subject to review and amendment on an annual basis. In the event that the policy is amended, the amended policy or provisions thereof will supersede the previous one.

## 14. APPROVAL

Approved /  Not Approved  
Comments:

.....  
.....  
.....  
.....

  
\_\_\_\_\_  
HEAD OF DEPARTMENT

30/01/2015  
\_\_\_\_\_  
DATE

**15. Annexure A: Deviation from legislation that constitute irregular expenditure or non-compliance to legislation**

**PROCUREMENT AND CONTRACT MANAGEMENT**

| Compliance deviation   | Reference to legislation  | Impact of deviation                      | Relevant authority |
|--|---|--|--------------------|
| <b>A1. Awards to person in service of the department and other state departments</b>   |   |  |                    |
| 1<br>Suppliers to whom awards were made did not submit declarations to declare that they are in the service of the department or that a director/member/ principal shareholder/ stakeholder is in the service of the department.   | PN 7 of 2009/10   | Irregular Expenditure                    | National Treasury  |
| 2<br>An official in the service of the department did not disclose his/her conflict of interest in the bid and/or did not recuse himself/herself from the adjudication of the bid which was NOT awarded to the company in which he/she has business interests in.                          | TR 16A8.4PFMA sec. 50(3)(a) [in the case of public entities]PSR III/C1A | Non-compliance with laws and regulations | Not Applicable     |
| 3<br>An official in the service of the department did not disclose his/her conflict of interest in the bid and/or did not recuse himself/herself from the adjudication of the bid which was awarded to the company in which he/she has business interests in and expenditure was incurred. | TR 16A8.4PFMA sec. 50(3)(a) [in the case of public entities]PSR III/C1A | Irregular Expenditure                    | National Treasury  |
| Persons in service of the department who had interest in suppliers of the department and/or other state departments did not have approval to perform additional remunerative work  | Section 30(1) of the PSA(for departments)                               | Non-compliance with laws and regulations | Not Applicable     |



| Compliance deviation   | Reference to legislation                   | Impact of deviation                      | Relevant authority |
|--|--|--|--------------------|
| <b>A2. Awards to close family members of persons in service of the department</b>  |  |  |                    |
| Suppliers to whom awards were made did not submit declarations to declare that they are in the service of the department or that a director/ member/ shareholder/ stakeholder is in the service of the department and expenditure was incurred.  | PN 7 of 2009/10 and TR 16A 6.3 (a) (i) and | Irregular expenditure                    | National Treasury  |
| A person in the employ of an department did not disclose the interest of his/ her close family members, a partner or associate and/or did not withdraw from participating in the award of the bid and expenditure has been incurred  | TR 16A8.4PFMA section 50(3)(a)             | Irregular expenditure                    | National Treasury  |
| Payments made to incorrect or fictitious suppliers   |  |  |                    |
| Payments made into an incorrect banking account  |  |  |                    |
| Payments not certified for correctness and/or goods and services not delivered or rendered as required   | TR 8.2.1                                   | Irregular expenditure                    | National Treasury  |
| Incorrect authorisation of transactions (delegations not complied with)<br>An department awarded a bid to a supplier who was found to have abused the department's SCM system, committed fraud or another form of improper conduct in relation to such a system and/or failed to perform on a previous contract. This was detected prior to the department | TR 16A 9.2 (a)                             | Non-compliance with laws and regulations | Not applicable     |

| Compliance deviation  | Reference to legislation | Impact of deviation   | Relevant authority |
|---|--------------------------|-----------------------|--------------------|
| incurring any expenditure in relation to this bid.  |                          |                       |                    |
| Notwithstanding the above, the bid was awarded and the expenditure was incurred.  | TR 16A 9.2 (a)           | Irregular             | National Treasury  |
| 8 An department knowingly awarded a contract to a recommended bidder who is known to have committed a corrupt or fraudulent act in competing for that particular contract and expenditure was incurred.   | TR16A9.1(e)              | Irregular             | National Treasury  |
| 9 The accounting officer failed to cancel the contract awarded to a supplier after identifying that the supplier, any official or other role player committed a corrupt or fraudulent act during the bidding process or the execution of that contract that benefited the supplier. | TR16A9.1(f)              | Irregular             | National Treasury  |
| 10 Awards were made to suppliers who are listed on the National Treasury's database as persons prohibited from doing business with the public sector. Expenditure was incurred on the awards  | TR 16A9.1(c)             |                       |                    |
| <b>A3. Procurement need and economy</b>   |                          |                       |                    |
| 11 The department procured goods or services through means other than through a transversal contract arranged by the relevant treasury which the department agreed to participate in.   | TR 16A6.5                | Irregular Expenditure | National Treasury  |

| Compliance deviation  | Reference to legislation  | Impact of deviation                      | Relevant authority |
|---|---|--|--------------------|
| <p>Prior written approval for deviation from procuring through the transversal was not obtained from the relevant treasury.</p> | TR 16A6.5   | Irregular Expenditure                    | National Treasury  |
| 12  | An department does not have a system to adequately evaluate major capital projects.   | Non Compliance with laws and regulations | Not applicable     |
| 13  | Consultants were contracted in to perform in a project, perform a duty or study for which skills were available within the department or the department had sufficient time to recruit and train people within the available time to perform such.  | Non Compliance with laws and regulations | Not applicable     |
| <b>A4. Procurement process deviation</b>  |   |  |                    |
| 14  | The department incurred expenditure after entering into a public private partnership agreement without the prior written approval of the relevant treasury.   | Irregular expenditure                    | Relevant Treasury  |
| 15  | The method of procurement is inconsistent with those prescribed in terms of PN 8 of 2007/2008. For example, an department procured the services of a service provider for goods and/or services in excess of R500 000 by means of three written price quotations instead of advertising the bid in the Government Gazette | Irregular expenditure                    | National Treasury  |

| Compliance deviation   | Reference to legislation                       | Impact of deviation          | Relevant authority        |
|--|--|------------------------------|---------------------------|
| <p>16</p> <p>Supply chain management processes were deviated from for the purchase of goods and/or services in terms of TR16A.6.4 even though it was possible to comply with the requirement to procure these goods and/or services by means of the normal competitive bidding process.</p> <p>Deviations from competitive bidding were approved on the basis of it being an emergency even though immediate action was not necessary and/or sufficient time was available to follow a normal competitive bidding process.</p> | <p>TR16A6.4 and PN 6 of 2007/2008</p>          | <p>Irregular expenditure</p> | <p>National Treasury</p>  |
| <p>17</p> <p>An department deviated from the prescribed procurement processes and the reasons were not documented approved by the accounting officer/ authority or a delegated person...</p>   | <p>TR16A6.4 and PN 6 of 2007/2008</p>          | <p>Irregular Expenditure</p> | <p>National Treasury</p>  |
| <p>18</p> <p>Deliberate splitting into parts or items of smaller value merely to avoid complying with the requirements of the SCM policy and legislation.</p> <p>The decision to award the bid as made by an employee or the holder of a particular post who did have the appropriate delegation to award the bid.</p>   | <p>TR 16A 9.1 and PN 8 of 2007/08</p>          | <p>Irregular expenditure</p> | <p>National Treasury</p>  |
|  | <p>Section 44(2)(c) of the PFMA and TR 8.2</p> | <p>Irregular</p>             | <p>Accounting Officer</p> |

| Compliance deviation  | Reference to legislation                             | Impact of deviation   | Relevant authority |
|---|--|---|--------------------|
| 19<br>Deviations from competitive bidding were approved on the basis of the goods and services only being produced by, or available from, a sole service supplier   | NTR16A6.4(as defined PN 6 of 2007/08)                | Irregular expenditure, unless the department is able to provide factual evidence that the goods and/or services can only be procured from the supplier to whom the bid was awarded. | National Treasury  |
| 20<br>Goods and services with transaction values between R2 000 and R10 000 were procured through verbal quotations without obtaining the written confirmation from the selected service provider.                          | TR16A 3.2(a) and PN 8 of 2007/2008                   | Non Compliance with laws and regulations  | Not Applicable     |
| 21<br>Deviations from competitive bidding processes with transaction values above R1 million were not reported to the relevant treasury and the Auditor-General and/or such report was not submitted within 10 working days | Sec 41 of the PFMA, TR 16A 6.4 and PN 6 of 2007/2008 | Non Compliance with laws and regulations  | Not Applicable     |
| <b>A5. Bid specification and documentation</b>  |  |   |                    |
| 22<br>The bid specification committee did not always draft the department's bid specifications in accordance with its SCM policy  | TR 16A.2 (b)   | Non Compliance with laws and regulations  | Not Applicable     |
| 23<br>Bid specifications were not always drafted by bid specification committees which were constituted in accordance with the SCM policy   | TR16A3.2 (fairness & competition)SCM guide par 3.4.2 | Irregular Expenditure if transgression supported by factual findings  | National Treasury  |
| <b>A6. Invitation and receipt of quotations and bids</b>  |  |   |                    |
| 24<br>Public invitations for the competitive bids were advertised for a period shorter than the required 21 days and the deviation was not approved in  | TR16A6.3(c)  | Irregular expenditure   | National Treasury  |

| Compliance deviation   | Reference to legislation  | Impact of deviation  | Relevant authority   |
|--|---------------------------|--|--|
| accordance with the SCM policy requirements.   |                           |  |  |
| Public invitations for competitive bids were advertised in the media but such an invitation was not published in the Government Tender Bulletin.                             | TR16A6.3(c)               | Irregular expenditure  | If the accounting officer has delegated the power to a shorter advertising period, then the accounting officer concerned shall be the relevant authority.<br>National Treasury |
| The employee that authorized the shortened period of advertising did not possess the delegated authority from the accounting officer to grant such approval.                 | TR16A6.3(c)               | Irregular expenditure  | If the accounting officer has delegated the power to a shorter advertising period, then the accounting officer concerned shall be the relevant authority.<br>National Treasury |
| 25<br>Appropriate approval was granted to advertise a bid for a period shorter than the prescribed 21 days even though the goods and/or services were not urgently required. | TR16A6.3(c)               | Irregular expenditure if transgression supported by factual evidence | National Treasury  |
| 26<br>A contract was awarded to bidders whose bid was received after the closing date for the bid in question.   | TR 16A 3.2 (a) [fairness] | Irregular expenditure  | National Treasury  |

| Compliance deviation                              | Reference to legislation   | Impact of deviation   | Relevant authority  |
|---|--|---|---|
| 27  | An department does not have in place a list of prospective suppliers from whom price quotations can be invited   | PN 8 of 2007/2008   | Not Applicable  |
| 28  | The list of prospective suppliers was not updated at least quarterly   | PN 8 of 2007/2008   | Not Applicable  |
| 29  | The department did not publish the names of successfully bidders on its website  | PPR 4(3) of 8 June 2011<br>NT Instruction note 15 Sep 2010. Par 3.3 | Not Applicable  |
| <b>A7. Evaluation and adjudication committees</b> |  |   |   |
| 30  | Final awards and/or recommendation of awards to the accounting officer were not always made by the adjudication committee.<br><br>The bid adjudication committee was not constituted in accordance with the department's SCM policy and its delegation of authority. | TR 16A6.2(b) & (c)  | National Treasury   |
| 31  | The department awarded a bid to a supplier that was not recommended by the bid adjudication committee and the deviation was not justifiable and/or not approved in terms of the SCM policy.  | TR16A6.2(b)   | National Treasury<br><br>If the accounting officer has delegated the power to approve the final award of bids, then the accounting officer concerned shall be the relevant authority. |

| Compliance deviation            |  | Reference to legislation                      | Impact of deviation  | Relevant authority                         |
|---------------------------------|--|---|--|--|
| <b>A8. Evaluation - General</b> |  |   |  |  |
| 32                              | The evaluation criteria applied to evaluate bids differed from those provided in the original request for quotation or documentation.<br>Awards were made to a supplier who did not have a valid tax clearance certificate from SARS to indicate that the supplier's tax matters are in order nor has the supplier made arrangements with SARS to meet their tax obligations | TR16A3.2 (fairness)<br><br>TR16A9.1(d)PPPR 14 | Irregular expenditure<br><br>Irregular expenditure   | National Treasury<br><br>National Treasury |
| 34                              | A bid was awarded to a bidder who has committed a corrupt or fraudulent act when competing for a particular bid  | TR 16A 3.2 (a)PN 8 of 2007/2008               | Irregular expenditure if it can be factually proven (with evidence) that the bidder committed a corrupt or fraudulent act when competing for a bid | National Treasury                          |
| 35                              | The department did not include the consultant's experience and qualifications as part of the evaluation criteria   | TR 16A 6.3(g)                                 | Non-compliance with laws and regulations   | Not applicable                             |
| 36                              | There was non-disclosure of conflict of interest in that persons in service of the department whose close family members/ partners/ associates had a private or business interest in contracts awarded by the department failed to disclose such interest.<br>Conflict detected, contract awarded and expenditure incurred   | TR 16A 6.3 (a)PN 7 of 2009/2010               | Non Compliance with laws and regulations   | Not applicable<br><br>National Treasury    |



| Compliance deviation  |   | Reference to legislation   | Impact of deviation   | Relevant authority |
|---|---|--|---|--------------------|
| <b>A9. Evaluation - Preference points and functionality</b> |   |  |   |                    |
| 37  | The preference point system was not applied in the procurement of goods and services above R30 000 (Vat included).  | PPPF Act section 2(a)  | Irregular expenditure   | National Treasury  |
| 38  | Evaluation criteria applied in evaluating quotations/ bids for functionality, price and/or preference points were not stipulated in the request for quotations.   | PPPFA Sec 2(1)(e); PPPR 4 (3) Para 3.3 of NT Instruction Note September 2010 | Irregular expenditure   | National Treasury  |
| 39  | The calculation and allocation of preference points were not correctly performed in accordance with the requirements of the PPPF Act, 2000 and its subordinate PPPR. The non-compliance has resulted in the award of a bid to the incorrect bidder. | PPPF Act and its Regulations PPPR 3 (a) and (b); 5 and 6                     | Irregular expenditure if the bid was awarded to the incorrect bidder  | National Treasury  |
| 40  | Awards were made to the quotations/ bids not scoring the highest points. Objective criterion was NOT used to justify that reasonable grounds existed not to select the quotation with the highest points.   | PPPFA Sec 2(1)(f) PPPR 7 (1)   | Irregular expenditure if it can be proven with evidence that objective criteria were not used in the award of the bid | National Treasury  |
| <b>A10. Construction contracts</b>                          |   |  |   |                    |
| 41  | Construction contracts were awarded to contractors who are not registered with the CIDB   | CIDB Act section 18(1)   | Irregular expenditure   | CIDB               |

| Compliance deviation                          |   | Reference to legislation  | Impact of deviation                      | Relevant authority |
|---|---|---|--|--------------------|
| 42  | Construction contracts were awarded to contractor whose CIDB grading is not suitable for the value of contract.   | CIDB regulation 17;<br>CIDB regulation 25 (7A)                              | Irregular expenditure                    | CIDB               |
| 43  | Construction contracts were awarded to contractors who are not registered in the class of construction works that the projects relate to.                                     | CIDB regulation 17  | Irregular expenditure                    | CIDB               |
| 44  | The bid invitations or request for quotations did not stipulate the minimum category which the bidders must be registered at with the CIDB in order to qualify for evaluation | CIDB regulation 25(1); CIDB standard for uniformity (SFU) 4.5.4             | Non-compliance to laws & regulations     | Not applicable     |
| 45  | Failure to advertise the invitations for bids or calls for expression of interest on the CIDB website.  | CIDB regulation 24  | Non-compliance to laws & regulations     | Not applicable     |
| 46  | Failure to register construction projects above the value of R200 000.00 on the CIDB's register of construction contracts.  | CIDB Act section 22(3) and CIDB regulation 18(1A), (1)                      | Non-compliance to laws & regulations     | Not applicable     |
| <b>A11. Contracts and contract management</b> |   |   |  |                    |
| 47  | The final decision on which quotation to accept was not made by an appropriately delegated official or committee.   | NTR 8.2 Instruction Note 31 dated 31 May 2012                               | Irregular expenditure                    | Accounting Officer |
| 48  | Payments were made to the suppliers in excess of the approved contract or quoted amount.  | NTR 8.2   | Irregular expenditure                    | Accounting Officer |
| 49  | Goods and services were supplied by the supplier and paid for without a valid written signed contract   | Sec 38 of the PFMA (internal controls) and Para 1.2 and 2.3 of PN 1 of 2003 | Non Compliance with laws and regulations | Not applicable     |
| 50  | Conditions contained in a contracts were in conflict with the General Conditions of Contract, as issued by National Treasury  | NTR 16A6.3(a) and (e)   | Non Compliance with laws and regulations | Not applicable     |
| 51  | No action was taken against the suppliers who failed to perform in accordance with standards agreed upon in the contract  | PPPPFR 13 (1) (b)GCC Clause 22 & 23   | Non Compliance with laws and regulations | Not applicable     |

| Compliance deviation                      | Reference to legislation                    | Impact of deviation                      | Relevant authority |
|---|---|--|--------------------|
| <b>A12. IT related goods and services</b> |   |  |                    |
| 52  | NTR 16A6.3(e)                               | Irregular expenditure                    | SITA               |
| 53  | NTR 16A6.3(e)                               | Non Compliance with laws and regulations | Not applicable     |
| 54  | NTR 16A6.3 (e)SITA Regulation 9             | Irregular expenditure                    | SITA               |
| 55  | SITA Regulations 8, 13, 14PN 5 of 2009/2010 | Irregular expenditure                    | SITA               |

| Compliance deviation   | Reference to legislation    | Impact of deviation                      | Relevant authority |
|--|-----------------------------|--|--------------------|
| 56<br>The department purchased a new computerized system to record its inventories without obtaining prior written approval from the National Treasury.  | NTR 17.3.1                  | Irregular expenditure                    | SITA               |
| 57<br>The department did not follow the under-mentioned prescripts relating to the procurement of an departmental specific IT contract via SITA:<br><ul style="list-style-type: none"> <li>• the department did not appoint a designated official to administer the contract;</li> <li>• IT related goods and services were procured without an approved business case;</li> <li>• a contract for IT related goods and services was awarded to a bidder other than the one recommended and the reason for such deviation was not submitted to the AGSA and the relevant treasury within 10 working days.</li> </ul> <b>A13. Unsolicited bids</b> | SITA Regulation 8, 13, 14   | Non Compliance with laws and regulations | Not applicable     |
| 58<br>An department accepted an unsolicited bid without a comprehensive and relevant project feasibility study and accompanying business case.   | PN 11 of 2008/09 par 2.1(a) | Irregular expenditure                    | National Treasury  |
| 59<br>Unsolicited bids were accepted and awarded to bidders who did not have tax clearance from SARS confirming that their tax matters are in order.   | PN 11 of 2008/09 par 2.2(d) | Irregular expenditure                    | National Treasury  |

| Compliance deviation | Reference to legislation   | Impact of deviation         | Relevant authority  |
|----------------------|--|-----------------------------|---|
| 60                   | Unsolicited bids were accepted for goods/ services which are generally available from other suppliers.   | PN 11 of 2008/09 par 3.1(b) | Irregular expenditure if transgression supported by factual evidence<br>National Treasury |
| 61                   | Unsolicited bids were accepted from bidders who did not declare their past SCM practices.  | PN 11 of 2008/09 par 2.2(f) | Non Compliance with laws and regulations<br>Not applicable                                |
| 62                   | Unsolicited bids were accepted from bidders who did not declare the following:<br>(i) whether the bidder or any person connected to the bidder is employed by the state<br>(ii) whether the bidder or any person connected with the bidder, has any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid | PN 11 of 2008/09 par 2.2(e) | Non Compliance with laws and regulations<br>Not applicable                                |

**B: HUMAN RESOURCES MANAGEMENT**

| Compliance deviation | Reference to legislation   | Impact of deviation                              | Relevant authority |
|----------------------|--|--|--------------------|
| 63                   | Overtime paid to employees even though the department does not have an overtime policy   | PSR 1/V/D2(b)                                    | DPSA               |
| 64                   | Employees received salary increases to higher salary range without a job evaluation to prove that the post was incorrectly graded.   | PSR 1/V/C5                                       | DPSA               |
| 65                   | Employees received overtime payments in excess of 30% of their monthly salaries, without justification.  | PSR 1/V/D2(d)                                    | DPSA               |
| 66                   | Employees worked and received payments for overtime without prior written authorization.   | PSR 1/V/D2(c)                                    | DPSA               |
| 67                   | Performance bonuses were paid to employees even though the department does not have a policy for financial incentive scheme.   | PSR 1/V/III/F1                                   | DPSA               |
| 68                   | The department awarded performance bonuses to SMS employees who are not entitled to the bonus in terms of the rules of the departmental financial incentive scheme and the SMS handbook.           | PSR 4/III/B3<br>Chapter 4 of SMS handbook - 2003 | DPSA               |
| 69                   | Acting allowance was paid to employees who acted in higher positions for periods less than the minimum six weeks provided for in the DPSA Policy on Acting Allowance                               | PSR 1/V/II/B5.1                                  | DPSA               |
| 70                   | Employees acted in higher vacant posts for an uninterrupted period exceeding 12 months without the necessary approval from the delegated authority.  | PSR 1/V/II/B.5.3                                 | DPSA               |
| 71                   | SMS members acted on higher positions for periods exceeding six months without prior approval from the relevant executive authority as provided for in the DPSA Policy on Acting Allowance for SMS | PSR 1/V/II/B5.1                                  | DPSA               |
| 72                   | Employees were compensated for acting in posts which [were not vacant and/or resulted in more than two employees simultaneously being  | PSR 1/V/II/B.5.1 and 5.2                         | DPSA               |

| Compliance deviation                         | Reference to legislation | Impact of deviation   | Relevant authority |
|--|--------------------------|-----------------------|--------------------|
| compensated as a result of a single vacancy] |                          |                       |                    |
| 73 Overtime was paid to SMS employees        | PSR 1/V/D2(a)            | Irregular expenditure | DPSA               |

**C. TRANSFERS AND CONDITIONAL GRANTS**

| Compliance deviation  | Reference to legislation                        | Impact of deviation                      | Relevant authority |
|---|---|--|--------------------|
| Transfer by a transferring national officer to a bank account of a province or municipality that is not:-<br>(i) the primary bank account;<br>(ii) in respect of provinces, a corporation for public deposits account; or<br>(iii) in respect of the Gautrain Rapid Rail Link Grant, the dedicated banking account configuration established for the transfer of the Gautrain Rapid Rail Link Grant in accordance with the directive issued by the National Treasury. | DoRA sec. 33<br>DoRA sec. 9(1)<br>section 10(1) | Irregular expenditure                    | National Treasury  |
| Transfers were made to other entities without [obtaining a written assurance that that entity implements effective, efficient and transparent financial management and internal control systems / or rendering the transfer of funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems].   | PFMA sec 38(1)(j)                               | Non Compliance with laws and regulations | Not applicable     |

| Compliance deviation   | Reference to legislation         | Impact of deviation   | Relevant authority |
|--|----------------------------------|-----------------------|--------------------|
| 76<br>Schedule 5 and 6 transfers were made without an approved business plan for the utilization of funds by the province or municipality.   | DoRA sec 10(1)(a)(iii)&(iv)      | Irregular expenditure | National Treasury  |
| 77<br>The schedule 4, 5, 7 or 8 allocation was utilized for purposes other than those stipulated in the schedule or in accordance with the framework published for the allocation. | DoRA sec 11(1)(a), 12(1) & 15(1) | Irregular expenditure | National Treasury  |
| 78<br>The accounting officer transferred a schedule 5, 7 or 8 allocation portion of the allocation to another entity without entering into a payment schedule with the entity.     | DoRA sec 15(2)                   | Irregular expenditure | National Treasury  |

**D. OTHER**

|  |  |  |                   |
|--|--|--|-------------------|
| 79<br>The department did not obtain written assurance to the effect that the entity to which it transferred funds implements effective, efficient and transparent financial management and internal control systems. | Section 38(1)(i) of the PFMA                   | Non Compliance with laws and regulations | Not applicable    |
| 80<br>The department utilized a saving in an amount that was specifically and exclusively appropriated for a purpose mentioned under a main division within a vote   | Section 43(4)(a) of the PFMA                   | Irregular expenditure                    | Relevant Treasury |
| 81<br>The department utilized a saving in an amount that was appropriated for transfer to another organ of state without approval of the National Treasury   | Section 5(1)(a) of the Appropriation Act, 2012 | Irregular expenditure                    | National Treasury |
| 82<br>The department utilized a saving in an amount appropriated for capital assets without approval of the National Treasury  | Section 5(1)(b) of the Appropriation Act, 2012 | Irregular expenditure                    | National Treasury |



DEPARTMENT OF PUBLIC WORKS AND ROADS  
DEPARTMENTAL POLICY AND PROCEDURES ON IRREGULAR EXPENDITURE

| Compliance deviation  | Reference to legislation                                      | Impact of deviation                      | Relevant authority |
|---|---|--|--------------------|
| 83<br>Members of an audit committee who are appointed from outside the public service are remunerated at tariffs inconsistent with those prescribed by the National Treasury and SAICA in terms of Treasury Regulations 20.2.2 and 20.2.3 respectively. | Treasury Regulation (TR) 3.1.6 read with TR 20.2.2 and 20.2.3 | Irregular expenditure                    | National Treasury  |
| 84<br>The department/public entity contracted out its internal audit function to an external organization with specialist audit expertise without following a competitive bidding process   | TR 3.2.4 and TR 27.2.4  | Irregular expenditure                    | National Treasury  |
| 85<br>A department increased its compensation of employees without obtaining the approval of the relevant treasury  | TR 6.3.1(a)   | Irregular expenditure                    | Relevant Treasury  |
| 86<br>A department introduced a new transfer and subsidy without obtaining the approval of the relevant treasury  | TR 6.3.1(b)   | Irregular expenditure                    | Relevant Treasury  |
| 87<br>A department utilized an allocation that was earmarked by the relevant treasury for a specific purpose for another purpose without obtaining its approval   | TR 6.3.1(c)   | Irregular expenditure                    | Relevant Treasury  |
| 88<br>An official in a department has authorized payments for processing with being in receipt of a delegation of authority to do so  |   | Irregular expenditure                    | Accounting Officer |
| 89<br>A department paid an invoice after the required period of 30 days from receipt thereof  | TR 8.2.3  | Non-compliance with laws and regulations | Not applicable     |
| 90<br>An official in a department approved the appointment of a new employee on the payroll system and authorized the payment of this person's salary as well on the system   | TR 8.3.1  | Irregular expenditure                    | Accounting officer |
| 91<br>A department insured movable assets and incurred expenses related thereto which exceeded R250 000 without obtaining the approval of the relevant treasury   | TR 12.1.2   | Irregular expenditure                    | Relevant Treasury  |

| Compliance deviation   | Reference to legislation | Impact of deviation                    | Relevant authority   |
|--|--------------------------|--|--|
| 92<br>The State Attorney obligated funds of a department without the prior written approval of the accounting officer  | TR 12.2.4                | Irregular expenditure                  | Accounting Officer   |
| 93<br>An official in a department approved a warrant voucher/cheque without the accounting officer having assigned him the power to do so  | TR 15.12.1               | Irregular expenditure                  | Accounting Officer   |
| 94<br>An official signed a hand drawn warrant voucher/cheque without having the authority to do so   | TR 15.12.2               | Irregular expenditure                  | Accounting Officer   |
| 95<br>An official in a department processed a hand drawn warrant voucher/cheque to the value of R2500  | TR 15.12.3               | Non-compliance to laws and regulations | Not applicable   |
| 96<br>The Chief Operating Officer of an department entered into a Public Private Partnership (PPP) agreement on behalf of that department after which payments were effected in relation to that PPP agreement | TR 16.2.1                | Irregular expenditure                  | Accounting Officer   |
| 97<br>Material amendments were effected to a PPP agreement without obtaining the approval of the relevant treasury   | TR 16.8.1                | Irregular expenditure                  | Relevant Treasury  |
| 98<br>An department procured goods and services by way of quotations without taking cognizance of the threshold values determined by the National Treasury   | TR 16A.6.1               | Irregular expenditure                  | National Treasury  |
| 99<br>An department that opted to participate in a transversal contract procured goods outside the contract at a higher price  | TR 16A6.5                | Irregular expenditure                  | National Treasury or relevant treasury if the transversal contract was arranged by the provincial treasury |
| 100<br>An department processed payments in favour of a supplier without having authentic and verifiable source documents   | TR 17.1.1                | Irregular expenditure                  | National Treasury  |

| Compliance deviation   | Reference to legislation            | Impact of deviation   | Relevant authority |
|--|-------------------------------------|-----------------------|--------------------|
| 101<br>A department instituted a new computerized financial management system without the prior written approval of the National Treasury                            | TR 17.3.1                           | Irregular expenditure | National Treasury  |
| 102<br>An official member serving on a Committee of Enquiry received remuneration for his participation in the Committee   | TR 20.2.1 and Section 38 of the PSA | Irregular expenditure | DPSA               |
| 103<br>A department granted a cash donation to a welfare organization amounting to R150 000 without obtaining the appropriate approval from the relevant legislature | TR 21.1.1                           | Irregular expenditure | Relevant Treasury  |

