

PO Box 3704, Bloemfontein, 9300
6th Floor, Bram Fischer Building, De Villiers Street, Bloemfontein
Tel: +27(0)51 405 8823, Fax: +27(0)51 405 8108

Your Ref:	Our	Ref:
Macrostructure		
Room 640, Bram Fischer Building	Date: 18 November 2022	

**THE SPEAKER OF COUNCIL
CLLR STEFANI LOCKMAN-NAIDOO**

APPOINTMENT OF SELECTION PANELS FOR THE RECRUITMENT, SELECTION AND APPOINTMENT OF MANAGERS ACCOUNTABLE TO THE MUNICIPAL MANAGER IN ACCORDANCE WITH THE LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT AS AMENDED AND REGULATIONS.

1. PURPOSE

The purpose of the report is for Council to:

- 1.1 Constitute and appoint persons to constitute the selection panel for the recruitment, selection and appointment of managers accountable to the Municipal Manager / City Manager (herein after referred as "Senior Managers") in accordance with the Municipal Systems Amendment Act, Act No 3 of 2022 (herein after referred to as the "Amendment Act" and the Local government: Regulations on Appointment and Conditions of Employment of Senior Managers (hereinafter referred to as the Regulations).
- 1.2 Ensure compliance and implementation of recommendations made by Ministers for CoGTA and Finance that vacant positions must be filled by end February 2023.

2. BACKGROUND

- 2.1 Council was previously advised that the recruitment, selection, and appointment of Senior Managers hinges upon the successful recruitment, selection and appointment of a person fit for purpose person as Municipal Manager (City Manager). Surrounded by this overwhelming body of knowledge, it goes to reason that any sound recruitment, selection and appointment plan must lay particular

emphasis on the successful conclusion of a process to appoint the City Manager for the municipality.

2.2 The assertion in 2.1 above is more truly so because legislation and/or local government regulatory framework designates the incumbent of the post of Municipal Manager (City Manager) must be the Chairperson of the selection panel in respect Senior Managers and that council must make those appointments in consultation with the such person reason being that it would be sensible for the Municipal Manager to form part of process of appointments of persons that her or she would work with if those positions are vacant.

2.3 Advice was also duly served to Council of the Local Government: Municipal Staff Regulations and the Amendment Act, with great implications for the "Prototype staff establishment in municipalities that come into effect on 01 July 2022 and 01 November 2022 respectively. Some of the legal implication upon council includes amongst others:

- That councils in consultation with Municipal Manager (City Manager) must appoint Senior Managers with at least have the skills, expertise, competencies, and qualifications determined by the Minister for CoGTA.
- Appointment of a Senior Manager will be declared *null* and *void* if the person appointed does not meet the competency requirements determined by the Minister for CoGTA and appointment such as advertisement in national newspaper to attract as wide as possible a pool of candidates must be adhered to, and the persons recommended for such appointment must be form the pool of candidates
- The conditions of appointment(s) of Senior Managers is now on permanent contract and lastly that If the MEC has any reason to believe that an appointment is made in contravention of the Act, he or she may request the municipal council to correct such an appointment or to invoke a declaratory order to force compliance with the Act.

2.4 On November 07, 2022, Council resolved and approved the macro-organisation structure which is the redesign of Executive Management Team to respond to service delivery. The Ministers for Finance and CoGTA also recommended that the recruitment, selection and appointment process of Senior Managers be fast pursued expeditiously and concluded by no later than end February 2023.

3 DISCUSSIONS

3.1 It remains sound advice to Council, that the institutional recruitment, selection, and appointment process of Municipal Manager and Senior Managers takes place within a clearly defined legislative context, a lot of time must, therefore, be spurred from doubt as to the soundness thereof and greater emphasis is placed on compliance by council.

3.2 As noted in the background above, the process to recruit, select and appoint persons fit for purpose Senior Managers is dependent on the timely appointment of Municipal Manager (City Manager) who is undoubtedly fit for purpose to provide

strategic leadership in dealing with challenges facing the municipality. This is so because Section 56 of the Amendments enjoins Council to "appoint managers reporting directly to the Municipal Manager (City Manager) in consultation with the Municipal Manager.

3.3 To be precise, Section 56(1) (a) of the MSA provides that: "A municipal Council, after consultation with the Municipal Manager, must appoint:

- (i) A manager directly accountable to the Municipal Manager; or
- (ii) An acting Manager Directly accountable to the Municipal Manager under circumstances and for a period as prescribed."

4 SELECTION PANEL

4.1 Stemming from the same advice as previously given where it was submitted that together with the resolve to initial the recruitment process, Council needs to show demonstrated commitment to uninterrupted and seamless recruitment, selection and appointment process by taking proactive steps in putting in place, a selection panel (s) to drive and steer the process forward.

4.2 Section 12 (4) of the Regulations provides that *council must appoint selection panel(s) for the appointment of a manager directly accountable to a municipal manager consisting of at least three and not more than five members constituted as follows:*

- (a) The Municipal Manager, who will be the Chairperson.*
- (b) A member of the Mayoral Committee or a Councillor who is the portfolio head of the relevant portfolio; and*
- (c) At least one other person, who is not councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.*

4.5 The Regulations are clear and precise on the composition of the selection panel for Senior Managers; therefore, it is recommended that the appointment of Municipal Manager / City Manager be expedited, and such an incumbent immediately be appointed to chairperson of the selection panel for Senior Managers as commanded in the legislative provisions.

4.6 Further, that MMC(s) responsible for each of the portfolios be appointed as Cllr(s) designated by the municipal Council to sit in only when candidates for the position falling within their relevant portfolios are shortlisted and interviewed. Lastly, council is advised that composition of panel be five (5) members (number within regulatory framework) and identifies three (3) persons of which one of the persons has expertise or experience in the advertised posts, and who is neither a councillor or staff member of the municipality. The Regulations does not prescribe the remaining two (2) persons to complement the five (5) number. Therefore, council is further advised to have balanced and independent selection panel(s) with persons having the requisite skills and knowledge and who are not councillors.

- 4.7 The Interim Executive Management Team (IEM) currently acting occupying these positions should play observers and technical support roles such as coordinating the selection panel of their respective portfolio for shortlisting, interviews and compilation of selection panel reports supported by Corporate Services for technical advice purposes. The IEM can only fulfil these roles on conditions that they have not applied for them. It is given that NCR must be observers for their respective portfolios namely finance, service delivery and governance with similar conditions applicable to IEM.
- 4.8 In accordance with the approved macro-organisational structure incorporating comments from National Treasury, council must appoint seven (6) selection panels, namely Corporate Services, Finance, Technical Services, Community Services, Planning, Economic Development and Human Settlement, Public Safety and Strategy, Planning, Compliance, Risk and Monitoring and Evaluations positions.
- 4.9 It is worth noting that the three (3) positions were advertised (Corporate Services, Technical Services and Finance) in City Press edition published on 20 November 2022, with closing date of 09 December 2022. The rest of the Heads of Departments once Finance Directorate has appointed response handling company approved by council on 31 August 2022 due to staff shortages in human capacity at the municipality. The Corporate Service is currently conducting response handling for the three advertised positions.


5. RECOMMENDATIONS

5.1 It is recommended that Council:


- (1) Constitute and appoint persons to constitute the selection panel for the recruitment, selection and appointment of managers accountable to the Municipal Manager / City Manager (herein after referred as "Senior Managers") in accordance with the Local Government: Municipal Systems Amendment Act, Act No 3 of 2022 (herein after referred to as the "Amendment Act" and the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers (hereinafter referred to as the Regulations).
- (2) Five (5) persons per selection panel for the six (6) Heads of Departments to be filled in accordance with the Regulations that the selection panel must consist of not less three (3) and not more than five (5) persons comprising of:
 - (a) The Municipal Manager as the Chairperson.
 - (b) A member of the Mayoral Committee or a councillor who is the portfolio head of the relevant portfolio; and
 - (c) At least one other person, who is not councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.
 - (d) The Regulations do not expressly indicate the two (2) panel members.

- (3) That Section 80 committee for Corporate Services support council with identification government institutions relevant to the position to be filled to form part of each panel to ensure that right persons with required skills, expertise and competencies are identified and appointed.
- (4) Appoint current acting Heads of Department and NCR to provide technical support and observer status for shortlisting and interviews for transparency purposes.

Submitted by:


 Adv NG Mpangane
 Acting Head: Corporate Services
 Date: 28/11/2022

Approved / Not Approved


 Mr T Motlashuping
 Acting City Manager
 Date: 29/11/2022

Ratified / Not Ratified


 Ms G Malaza
 National Cabinet Representative
 Date: 14/11/2022


 Gllr-M Siyonzana
 Executive Mayor
 Date:

Ratified except (3) & (4)
 (3) It is the prerogative of Council to appoint panel members not the Section 80 committee
 - (4) Only HOD Corporate Service & NCR not other HODs

- (d) ensure that sufficient budgeted funds, including funds for the remaining period of the medium-term expenditure framework, are available for filling the post.

CHAPTER 3

RECRUITMENT, SELECTION AND APPOINTMENT

Principles of recruitment

6. (1) The recruitment, selection and appointment of senior managers must take place in accordance with the municipal systems and procedures contemplated in section 67 of the Act that are consistent with sections 54A, 56, 57A and 72 of the Act.
- (2) A senior manager post must be filled through public advertising, in accordance with the procedures contemplated in regulation 10.
- (3) Selection must be competence-based to enhance the quality of appointment decisions and to ensure the effective performance by municipalities of their functions.

Determination of recruitment needs

7. (1) When the post of a senior manager becomes vacant, or is due to become vacant, the mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must, upon receipt of official notification that the post of a senior manager will become vacant, obtain approval from the municipal council for the filling of such post in its next council meeting or as soon as it is reasonably possible to do so.
- (2) A vacant senior manager post may not be filled, unless—
- (a) approval to fill the post has been granted by the municipal council; and
- (b) the post has been budgeted for.
- (3) Notwithstanding subregulation (1), the speaker may convene a special meeting to obtain municipal council approval for the filling of a senior manager post.

General requirements for appointment of senior managers

8. (1) No person may be appointed as a senior manager on a fixed term contract, on a permanent basis or on probation, to any post on the approved staff establishment of a municipality, unless he or she—
- (a) is a South African citizen or permanent resident; and
- (b) possesses the relevant competencies, qualifications, experience, and knowledge set out in Annexures A and B to these regulations.
- (2) An appointment may not take effect before the first day of the month following the month during which the municipal council approved the appointment.

Competence requirements for senior managers

9. (1) A person appointed as a senior manager in terms of these regulations must have the competencies as set out in Annexure A.
- (2) A person appointed as a senior manager in terms of these regulations must comply with the minimum requirements for higher education qualification, work experience and knowledge as set out in Annexure B.

Advertising of vacant posts

10. (1) The municipal manager must, within 14 days of receipt of the approval referred to in regulation 7, ensure that the vacant post is advertised.
- (2) A vacant senior manager post must be advertised in a newspaper circulating nationally and in the province where the municipality is located.
- (3) An advertisement for a vacant senior manager post must specify the—
- (a) job title;
 - (b) term of appointment;
 - (c) place to be stationed;
 - (d) annual total remuneration package;
 - (e) competency requirements of the post, including minimum qualifications and experience required;
 - (f) core functions;
 - (g) need for signing of an employment contract, a performance agreement and disclosure of financial interest;
 - (h) the need to undergo security vetting;
 - (i) contact person;
 - (j) address where applications must be sent or delivered; and
 - (k) closing date which must be a minimum of 14 days from the date the advertisement appears in the newspaper and not more than 30 days after such date.
- (4) A municipality may utilise a recruitment agency to identify candidates for posts: Provided that the advertising, recruitment and selection procedures comply with these regulations.
- (5) The mayor, in the case of a municipal manager, or the municipal manager, in the case of a manager directly accountable to the municipal manager, must provide monthly reports to the executive committee regarding progress on the filling of the vacant senior manager post.

Application for vacant post

11. (1) An application for the vacant post of a senior manager must be submitted on an official application form, attached as Annexure C, accompanied by a detailed curriculum vitae.
- (2) Notwithstanding subregulation (1), a municipality that has on-line application procedures in place may use an on-line application form: Provided that the on-line application form substantially corresponds to the application form in Annexure C, and complies with these regulations.
- (3) An application not made on the official form, as contemplated in subregulations (1) or (2) must not be considered.
- (4) An applicant for a senior manager post must disclose—
- (a) his or her academic qualifications, proven experience and competencies;
 - (b) his or her contactable references;
 - (c) registration with a relevant professional body;
 - (d) full details of any dismissal for misconduct; and
 - (e) any disciplinary actions, whether pending or finalised, instituted against such applicant in his or her current or previous employment.
- (5) Any misrepresentation or failure to disclose information contemplated in subregulation (3) and (4) is a breach of the Code of Conduct for Municipal Staff as provided for in Schedule 2 to the Act and shall be dealt with in terms of the Disciplinary Regulations.

(6) The municipality must compile and maintain a record of all applications received, which must contain—

- (a) the applicants' biographical details and contact information;
- (b) the details of the post for which the applicants were applying;
- (c) the applicants' qualifications; and
- (d) any other requirements outlined in the application form.

Selection panel

12. (1) A municipal council must appoint a selection panel to make recommendations for the appointment of candidates to vacant senior manager posts.

(2) In deciding who to appoint to a selection panel, the following considerations must inform the decision:

- (a) the nature of the post;
- (b) the gender balance of the panel; and
- (c) the skills, expertise, experience and availability of the persons to be involved.

(3) The selection panel for the appointment of a municipal manager must consist of at least three and not more than five members, constituted as follows:

- (a) the mayor, who will be the chairperson, or his or her delegate;
- (b) a councillor designated by the municipal council; and
- (c) at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

(4) The selection panel for the appointment of a manager directly accountable to a municipal manager must consist of at least three and not more than five members, constituted as follows:

- (a) the municipal manager, who will be the chairperson;
- (b) a member of the mayoral committee or councillor who is the portfolio head of the relevant portfolio; and
- (c) at least one other person, who is not a councillor or a staff member of the municipality, and who has expertise or experience in the area of the advertised post.

(5) A panel member must disclose any interest or relationship with shortlisted candidates during the shortlisting process.

(6) A panel member contemplated in subregulations (3) and (4) must recuse himself or herself from the selection panel if—

- (a) his or her spouse, partner, close family member or close friend has been shortlisted for the post;
- (b) the panel member has some form of indebtedness to a short-listed candidate or *vice versa*; or
- (c) he or she has any other conflict of interest.

(7) A panel member and staff member must sign a declaration of confidentiality as set out in Annexure D to these regulations, to avert the disclosure of information to unauthorised persons.

(8) A staff member may provide secretarial or advisory services during the selection process, but may not form part of the selection panel.

Compiling shortlist of applicants

13. (1) A mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, in consultation with the selection panel, must compile—

- (a) a list of all applicants who applied for an advertised post; and

- (b) a shortlist consisting of all applications received for a specific post, evaluated against the relevant competency requirements, as set out in Annexures A and B to these regulations.
- (2) The shortlisting must be finalised within 30 days of the closing date of the advertisement.
- (3) The municipality must keep a record of all the applicants who applied for vacant posts.
- (4) The municipal manager must ensure that the information contained in the applications is kept confidential and stored in a secure site on the municipality's premises.
- (5) The lists contemplated in subregulation (1) must be submitted, together with the shortlisted applications, to the selection panel before the interviews.

Screening of candidates

14. (1) Screening of the shortlisted candidates must take place within 21 days of the finalisation of the shortlisting by—
- (a) conducting the necessary reference checks;
 - (b) contacting a candidate's current or previous employer;
 - (c) determining the validity of a candidate's qualifications; and
 - (d) verifying whether a candidate has been dismissed previously for misconduct or poor performance by another employer.
- (2) A written report on the outcome of the screening process must be compiled by the mayor, in the case of the municipal manager, or the municipal manager, in the case of the manager directly accountable to the municipal manager, before the interviews take place.

Interviews

15. (1) The selection panel must conduct interviews within 21 days of screening the candidates.
- (2) The selection panel for a specific post must remain the same throughout the screening and interviewing process.
 - (3) The selection panel must keep records of every panel member's individual assessment of the interviewed candidates.
 - (4) The determination of candidates to be recommended for appointment must be considered by way of consensus between the members of the selection panel.
 - (5) If consensus cannot be reached, a dissenting member may record his or her concerns in the minutes, whereafter the issue may be voted upon, with each member of the selection panel entitled to one vote.
 - (6) The selection panel must recommend the second and third suitable candidates to minimise delays that may arise in the filling of the post if the first choice candidate declines or does not accept the offer of employment.

Selection

16. (1) The candidates recommended for appointment to the post of a senior manager must undergo a competency assessment.
- (2) The competency assessment tools must—
 - (a) be capable of being applied fairly; and
 - (b) not be biased against any person or group of persons.
 - (3) A municipality must provide in its medium term budget, funding for purposes of competency assessment and testing.

(4) Notwithstanding subregulation (3) and upon good cause shown, a municipality encountering cash flow problems may apply to the Local Government Sector Education and Training Authority to make use of the discretionary grants to fund the competency assessment for purposes of filling a vacant senior manager post.

(5) The selection panel must submit a report and recommendation on the selection process to the municipal council on the suitability of candidates who comply with the relevant competency requirements of the post as set out in Annexures A and B, in order of preference.

Resolution of municipal council on appointment of senior managers and reporting

17. (1) Before making a decision on an appointment, a municipal council must satisfy itself that—

- (a) the candidate meets the relevant competency requirements for the post, as set out in Annexures A and B to these regulations;
- (b) screening of the candidates has been conducted in terms of regulation 14; and
- (c) the candidate does not appear on the record of staff members dismissed for misconduct as set out in Schedule 2 to these regulations.

(2) A municipal council must, subject to subregulation (1), take a decision on the appointment of a suitable candidate.

(3) A municipal council must—

- (a) inform all interviewed candidates, including applicants who were unsuccessful, of the outcome of the interview; and
- (b) within 14 days of the decision referred to in subregulation (2), submit a written report to the MEC for local government regarding the appointment process and outcome.

(4) The report contemplated in subregulation (3)(b) must contain—

- (a) details of the advertisement, including date of issue and the name of newspapers in which the advert was published, and proof of the advertisement or a copy thereof;
- (b) a list of all applicants;
- (c) a report contemplated in regulation 14(2) on the screening process and the outcome thereof;
- (d) the municipal council's resolution approving the selection panel and the shortlisted candidates;
- (e) competency assessment results;
- (f) the minutes of the shortlisting meeting;
- (g) the minutes of interviews, including scoring;
- (h) the recommendations of the selection panel submitted to the municipal council;
- (i) the details of executive committee members and recommendations, if the selection panel comprised of all members of the executive committee;
- (j) the recommendation of the executive committee or executive mayor to the municipal council, if any;
- (k) the municipal council resolution approving the appointment of the successful candidate;
- (l) the application form, curriculum vitae, proof of qualifications and other supporting documentation of the successful candidate;
- (m) a written confirmation by the successful candidate that he or she does not hold political office as contemplated in section 56A of the Act, as at the date of appointment;