

## **GUIDELINES FOR THE APPOINTMENT OF THE MUNICIPAL MANAGER**

### Introduction:

Section 57(6) of the Local Government: Municipal Systems Act, 2000, provides that the employment contract for a municipal manager must be for a fixed term of employment up to a maximum of five years, not exceeding a period ending one year after the election of the next council of the municipality.

The council and the political executive would thus be in office for less than a year when the municipal manager position needs to be filled, and the guidelines herewith provided will guide the municipality in the process of appointment of a municipal manager.

### Broader principles applicable:

Section 54A of the Local Government: Municipal Systems Act, 2000, provides for the appointment of municipal managers and acting municipal managers, and provides inter alia as follows:

- (1) *The municipal council must appoint-*
  - (a) *a municipal manager as head of the administration of the municipal council; or*
  - (b) *an acting municipal manager under circumstances and for a period as prescribed.*
- (2) *A person appointed as municipal manager in terms of subsection (1) must at least have the skills, expertise, competencies and qualifications as prescribed.*
- (2A) *(a) A person appointed in terms of subsection (1) (b) may not be appointed to*
  - (b) *A municipal council may, in special circumstances and on good cause shown, apply in writing to the MEC for local government to extend the period of appointment contemplated in paragraph (a), for a further period that does not exceed three months.*
- (3) *A decision to appoint a person as municipal manager, and any contract concluded between the municipal council and that person in consequence of the decision, is null and void if-*

- (a) *the person appointed does not have the prescribed skills, expertise, competencies or qualifications; or*
- (b) *the appointment was otherwise made in contravention of this Act.*
- (4) *If the post of municipal manager becomes vacant, the municipal council must-*
  - (a) *advertise the post nationally to attract a pool of candidates nationwide; and*
  - (b) *select from the pool of candidates a suitable person who complies with the prescribed requirements for appointment to the post.*
- (5) *The municipal council must re-advertise the post if there is no suitable candidate who complies with the prescribed requirements.*
- (7) (a) *The municipal council must, within 14 days, inform the MEC for local government of the appointment process and outcome, as may be prescribed.*
- (b) *The MEC for local government must, within 14 days of receipt of the Information referred to in paragraph (a), submit a copy thereof to the Minister.*
- (10) *A municipal council may, in special circumstances and on good cause shown, apply in writing to the Minister to waive any of the requirements listed in subsection (2) if it is unable to attract suitable candidates.*

From the aforesaid section, the following is clear:

1. The position of the municipal manager must be advertised nationally.
2. The position must be filled with a person that had the required skills, expertise, qualifications and competencies required for the position and as prescribed by way of regulation. The Regulations on the Appointment of and Conditions of Service for Senior Managers published by the Minister of COGTA in 2014 are applicable in this regard and will be dealt with below.
3. If no suitable candidates apply for the position, it must be re-advertised.
4. A person appointed as acting municipal manager may only act for a period of three months, unless the period is extended by the MEC responsible for local government in the province.
5. The municipality must inform the MEC for Local Government in the province of the outcome of the process of filling of the position of the municipal manager.

Section 56A of the said Act contains the limitation of political rights of municipal managers and managers directly accountable to municipal managers and provides that a municipal manager may not hold political office in a political party, whether in a permanent, temporary or acting capacity.

Section 57 of the said Act deals with employment contracts for municipal managers and provides as follows:

- (1) *A person to be appointed as the municipal manager of a municipality, and a person to be appointed as a manager directly accountable to the municipal manager, may be appointed to that position only-*
  - (a) *in terms of a written employment contract with the municipality complying with the provisions of this section; and*

- (b) *subject to a separate performance agreement concluded annually as provided for in subsection (2).*
- (2) *The performance agreement referred to in subsection (1) (b) must-*
  - (a) *(i) be concluded within 60 days after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, failing which the appointment lapses: Provided that, upon good cause shown by such person to the satisfaction of the municipality, the appointment shall not lapse; and*
    - (ii) *be concluded annually, thereafter, within one month after the beginning of each financial year of the municipality;*
  - (b) *in the case of the municipal manager, be entered into with the municipality as represented by the mayor or executive mayor, as the case may be; and*
  - (c) *in the case of a manager directly accountable to the municipal manager, be entered into with the municipal manager.*
- (3) *The employment contract referred to in subsection (1) (a) must-*
  - (a) *Include details of duties, remuneration, benefits and other terms and conditions of employment as agreed to by the parties, subject to Consistency with-*
    - (i) *this Act;*
    - (ii) *any regulations as may be prescribed that are applicable to municipal managers or managers directly accountable to municipal managers; and*
    - (iii) *any applicable labour legislation; and*
  - (b) *be signed by both parties before the commencement of service.*
- (3A) *Any regulations that relate to the duties, remuneration, benefits and other terms and conditions of employment of municipal managers or managers directly accountable to municipal managers, must be regarded as forming part of an employment contract referred to in subsection (1) (a).*
- (4) *The performance agreement referred to in subsection (1) (b) must include-*
  - (a) *performance objectives and targets that must be met, and the time frames within which those performance objectives and targets must be met; and*
  - (c) *the consequences of substandard performance.*
- (4A) *The provisions of the Municipal Finance Management Act conferring responsibilities on the accounting officer of a municipality must be regarded as forming part of the performance agreement of a municipal manager.*
- (4B) *Bonuses based on performance may be awarded to a municipal manager or a manager directly accountable to the municipal manager after the end of the financial year and only after an evaluation of performance and approval of such evaluation by the municipal council concerned.*
- (4C) *Any regulations that relate to standards and procedures for evaluating performance of municipal managers or managers directly accountable to municipal managers, and intervals for evaluation, must be regarded as forming part of a performance agreement referred to in subsection (1) (b).*
- (5) *The performance objectives and targets referred to in subsection (4) (a) must be practical, measurable and based on the key performance indicators set out from time to time in the municipality's integrated development plan.*
- (6) *The employment contract for a municipal manager must-*

- (a) *be for a fixed term of employment up to a maximum of five years, not exceeding a period ending one year after the election of the next council of the municipality;*
- (b) *Include a provision for cancellation of the contract, in the case of non-compliance with the employment contract or, where applicable, the performance agreement;*
- (c) *stipulate the terms of the renewal of the employment contract, but only by agreement between the parties; and*
- (d) *reflect the values and principles referred to in section 50, the Code of Conduct set out in Schedule 2, and the management standards and practices contained in section 51.*

From the aforesaid, the following is clear:

1. The municipality and the municipal manager must enter into two separate contracts, being the contract of employment and a performance agreement.
2. The performance agreement must be entered into within 60 days after the person has been appointed, failing which the appointment lapses.
3. The employment contract must be signed before the commencement of service.
4. The conditions of service will be in accordance with the conditions provided for in The Regulations on the Appointment of and Conditions of Service for Senior Managers published by the Minister of COGTA in 2014, and the salary in accordance with the then applicable determination of salaries for senior managers published by the Minister of COGTA.
5. The employment contract for the municipal manager must be for a fixed term up to a maximum of five years, but not exceeding a period of one year after the election of the next council.
6. The agreement must stipulate the provisions applicable in the event of a renewal, which must be done by agreement between the two parties.
7. The agreement must be entered into between the incumbent and the mayor or executive mayor.
8. Bonuses are only awarded after the end of the financial year and only after an evaluation of performance by the Municipal Council. Local Government: Municipal Performance Regulations for Municipal Managers and Managers directly accountable to Municipal Managers, 2006

Section 57A of the said Act deals with the employment of dismissed staff and record of disciplinary proceedings, and provides as follows:

- (1) *Any staff member dismissed for misconduct may only be re-employed in any municipality after the expiry of a prescribed period.*
- (2) *The Minister must prescribe different periods of expiry, as contemplated in subsection (1), for different categories of misconduct.*
- (3) *Notwithstanding subsection (1) and (2), a staff member dismissed for financial misconduct contemplated in section 171 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), corruption or fraud, may not be re-employed in any municipality for a period of ten years.*

- (4) *Notwithstanding subsection (1), the Minister may prescribe acts of misconduct in respect of which no period need expire before a person may again be employed in any municipality.*
- (5) *Subject to subsection (1), a decision to employ a person dismissed for misconduct must be taken with due regard to the nature of the misconduct concerned.*

Municipalities, therefore, needs to ensure that preferred candidate are not excluded for being appointed based on previous misconduct and thorough background checks and verification of qualifications needs to be done.

The skills, expertise, qualifications and competencies required for the position of Municipal Manager is also clearly set out in the Regulations on the Appointment of and Conditions of Service for Senior Managers and municipalities must ensure that a proper competency assessment is done in terms of the competencies as required.

The Municipal Regulations on Minimum Competency Levels, 2007, issued in terms of Local Government: Municipal Finance Management Act 2003, provides that every accounting officer of a municipality and municipal entity must meet the minimum competency requirements in four categories.

The said four categories are as follows:

1. Financial and supply chain management competencies, as prescribed in the Regulations and described in these guidelines.
2. Core managerial and occupational competencies, as described in the Municipal Performance Regulations issued in terms of the Municipal Systems Act.
3. Higher education qualification at NQF Level 6 or a Certificate in Municipal Financial Management.
4. Minimum five years' work experience at a senior management level.

All the units standards prescribed must have been completed, failing which the incumbent will be deemed not to be qualified for appointment to the position of municipal manager.

The actual recruitment process for municipal managers is determined in the Regulations on the Appointment of and Conditions of Service for Senior Managers. The most critical aspects to be complied with in the process are set out below:

#### Advertisement

- Mayor / Executive Mayor must obtain approval from the council to fill the position
- Position to be advertised within 14 days from approval
- Notice to contain the following:
  - Job title
  - Term of appointment
  - Place to be stationed
  - Annual remuneration package

- Competency requirement, including qualifications required
  - Core functions
  - Need for signing employment contract, performance agreement and disclosure of financial interest
  - Need to undergo security vetting
  - Contact person
  - Addresses where applications must be send / delivered
  - Closing date – between 14 and 30 days from date of advertisement
- Mayor / Executive Mayor to provide monthly reports to council on progress of the process to the council

#### Applicants:

- Application must be on official, prescribed form and be accompanied by a CV
- Application must disclose:
  - Academic qualifications, proven experience and competencies
  - Contactable references
  - Full detail of dismissal for any misconduct
  - Any disciplinary procedures instituted at previous employment
- Municipality must compile a record of all applications received

#### Selection process:

- Selection panel:
  - 3-5 members
  - Mayor / Executive Mayor or delegate
  - A councillor designated by the council
  - At least one more member, not an employee or councillor, with expertise in the area of a municipal manager
  - Must sign a declaration of confidentiality
  - The panel must remain the same for the whole process
- Mayor / Executive Mayor in consultation with selection panel compile a list of all applicants, as well as a shortlist – shortlist to be done within 30 days from closing date
- Screening must take place within 21 days from date of finalisation of short list – the Mayor / Executive Mayor must compile a report on the outcomes of the screening before interviews take place
- Interviews must take place within 21 days from date of screening
- Panel must keep a record of each panel members' individual assessment of each candidate
- Recommendation by consensus, if no consensus, dissenting member may record dissent
- Panel must also recommend 2<sup>nd</sup> and 3<sup>rd</sup> suitable candidate
- Recommended candidates must undergo competency assessment
- Selection panel must submit report and recommendation to the municipal council

Council makes the appointment:

- Council must ensure that the candidate:
  - Meet minimum competency requirements
  - Screening of candidates have been done
  - Candidate does not appear on list of staff members dismissed for misconduct
- Council must report appointment to the MEC

In the event of the municipality resolving to renew the contract of the current incumbent, such must be done prior to the termination of the current agreement. In the event of an agreement being renewed, the provisions of the Regulations on the Appointment of and Conditions of Service for Senior Managers as well as the determination of upper limits for the salaries of municipal managers, as determined from time to time, will apply.