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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE

NO. 4259 **18 January 2024**

Draft 3
6 April 2023

INTEGRATED RENEWABLE ENERGY AND RESOURCE EFFICIENCY REGULATIONS

DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE

The Minister of Public Works and Infrastructure, in terms of section 20 of the Government Immovable Asset Management Act, 2007 (Act No. 19 of 2007), make the regulations set out in the Schedule.

These Regulations are developed for participants implementing the Programme for purposes of enabling energy and water efficiency in public buildings, the reduction of the production of waste by public buildings and their occupants, reducing the carbon footprint of Government immovable assets, expenditure on utilities and waste management and facilitating good governance of Government's assets.

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6 April 2023

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PART 1: DEFINITIONS AND APPLICATION

1. **Definitions**

In these regulations, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates:

"Act"	means the Government Immovable Asset Management Act, 2007 (Act No. 19 of 2007);
"Custodian Immovable Asset Management Plan"	means the Immovable Asset Management Plan prepared by the Department in accordance with section 6 of the Act, as a custodian in terms of the Act;
"Energy Efficiency"	means the ratio of output of performance, service, goods or energy, to input of energy;
"Facility"	means a facility located on Immovable Asset(s) which is used by a participating User which is part of a Project;
"Framework Agreement"	means an agreement between the Department and a participating User that records the participation of the User in the Programme, the obligations of implementation, Project timelines, financial mechanisms and procurement process;
"Government"	means the Government of the Republic of South Africa constituted in accordance with section 40 of the Constitution of the Republic of South Africa, 1996;
"Green Building Policy"	means: a) the Green Building Policy, 2015 issued by the Department with the primary purpose of articulating the Department's vision for sustainable building and construction known as 'green building' and to indicate strategic interventions to re-calibrate construction and property industries, particularly with regard to the environmental and social manner in which it forms immovable assets, with reference to the National Framework for Sustainable Development in South Africa; and/or

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b) such other policies of Government that are currently in place or may in future be updated or introduced to promote the objectives associated with the Project Elements;

"National Treasury"	has the meaning given to it in section 1 of the Public Finance Management Act;
"National User"	means a User in the national sphere of government;
"PPPFA"	means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
"Premier"	means the person in whom the executive authority of a province is vested in terms of section 125 of the Constitution of the Republic of South Africa, 1996;
"Provincial User"	means a User in the provincial sphere of government;
"Programme"	means the Integrated Renewable Energy and Resource Efficiency Programme established by the Department to secure and implement the Programme Elements in relation to Facility/ies in an economically and environmentally sustainable manner that; enables energy and water efficiency in public buildings and the reduction of the production of waste by public buildings and their occupants, reducing the carbon footprint of Government immovables assets, expenditure on utilities and facilitating good governance of Government assets;
"Programme Elements"	means the following components: (a) Renewable Energy; (b) Resource Efficiency, including: (i) Energy Efficiency; (ii) Water Efficiency; and (iii) alternative Waste Management; and (c) any other components that may be included by the Department for purposes of achieving alternative energy and/or Resource Efficiency or carbon reduction and climate change mitigation;

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"Programme Services"	means the services to be provided by the Service Provider on behalf of Department for the delivery of the Programme Utilities;
"Programme Utilities"	means utilities and/or part thereof pertaining to water and/or electricity and/or waste that are part of the Project(s) from time-to-time, including the services to be provided in relation thereto;
"Project"	means the design, finance, development, construction, installation, commissioning maintenance and operation of the Project assets for purposes of the Programme Elements by a Service Provider as a single management unit, at a single Project site or multiple Project sites;
"Provincial Treasury"	has the meaning given to it in section 1 of the PFMA;
"Renewable Energy"	means the harnessing of naturally occurring sources of energy that can be naturally replenished faster than being depleted, such as solar, wind, biomass, hydro, tidal, wave, ocean current and geothermal, to produce electricity, gaseous and liquid fuels, heat or a combination of these energy types, for purposes of generation of electricity;
"Resource Efficiency"	means the relationship between natural raw material or technical economic material and the benefits gained from their use, whether in production or consumption. Resource efficiency maximises the benefits of products or services while minimising consumption and waste, including energy and water;
"Service Provider"	means a party procured by the Department in terms of a procurement process under the Programme to conclude an agreement for the implementation of a Project(s);
"Trading Entity"	means an entity established in terms of the PFMA to be used for the implementation of the Programme;
"Treasury Regulation 16"	means regulation 16 of the regulations issued in terms of section 76 of the PFMA published in Government Gazette No.27388 dated 15

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	March 2005, for departments, trading entities, constitutional institutions and public entities, regulating public-private partnerships;
"Waste Management"	means those waste management activities and actions required to manage waste from its inception to its disposal;
"Water Efficiency"	means minimisation of the amount of water used to accomplish a function, task or result;

2. **Application of the Regulations**

These regulations apply to the implementation of the Programme and to all organs of state participating in the procurement, implementation and management of the Programme.

3. **Date of Commencement of the Regulations**

These regulations shall take effect from the date of promulgation, unless otherwise indicated in the text.

PART 2: ESTABLISHMENT OF THE PROGRAMME AND OBJECTIVES OF THE REGULATIONS

4. **Establishment of the Programme**

4.1 The Minister hereby establishes the Programme as a Government programme in terms of section 19(3) of the Act to give effect to Immovable Asset Management in applying and achieving the goals of the Green Building Policy in relation to energy, water, and waste management in Government buildings.

4.2 The Programme is established to:

4.2.1 implement the Green Building Policy objectives in relation to the management of Programme Utilities;

4.2.2 support the achievement of efficient environmental sustainability, budget utilisation, socio-economic development, security of supply and appropriate management in relation to the use of Programme Utilities;

4.2.3 transition to low carbon emission in the use of the Programme Utilities by the Users; and

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4.2.4 achieve savings and efficiencies to the current cost to Users as a consequence of introduction and implementation of a Project.

5. **Objectives of the Regulations**

The objectives of these regulations are to:

5.1 formalise the implementation framework for the Programme by the Department, having regard to the Government Policies and the legislative powers, roles and responsibilities as applicable to the Department in relation to the Government's Immovable Assets;

5.2 set out the core principles of the Programme, including its design, standards, processes, standard operation procedures, procurement and implementation, which are to be compliant with applicable laws and Government policies;

5.3 regulate the participation of Users in the Programme;

5.4 facilitate the financing and financial management mechanisms of Projects under the Programme;

5.5 provide for the role of National Treasury and other Government departments (where applicable) in the Programme; and

5.6 promote co-operation between Government structures in all spheres of Government in relation to the Programme.

PART 3: IMPLEMENTATION MATTERS

6. **General Implementation Matters**

6.1 The Programme is designed to procure the following elements:

6.1.1 renewable energy, that shall procure the use of renewable energy technologies and services to reduce energy dependencies on non-renewable sources;

6.1.2 energy efficiency, which shall ensure energy savings through various technologies and services;

6.1.3 water efficiency, which shall ensure water savings and water conservation through various technologies and services; and

6.1.4 alternative waste management, which shall ensure waste management services that provide alternative solutions to the current waste management practices.

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6.2 The Department may include any other component to or vary the components referred to in regulation 6.1.

6.3 Implementation of the Programme is structured in terms of these regulations to include the following key steps:

6.3.1 structuring of Projects by the Department from time to time with reference to specific Facilities being part of such Project;

6.3.2 mandatory participation by a National User who occupy Facilities that are part of the Projects which are rolled out by the Department and related implementation matters;

6.3.3 developing of Projects to be implemented as part of the Programme;

6.3.4 procurement of and contracting with Service Providers in relation to the Projects implemented; and

6.3.5 use of the User budgets in relation to the Programme Utilities for the Project(s) in which the User is participating.

6.4 A Project shall be comprised of all elements provided for in regulation 6.1 and 6.3.

6.5 All those participating in the Programme or Project(s) must comply with these regulations.

7. Participation of Spheres of Government

7.1 These regulations enable and regulate participation, in the Programme, by departments in the national and provincial spheres of Government.

7.2 Where the Programme relates to the implementation of a Project involving a Facility occupied by a National User, the participation of such National User in the Programme and the relevant Project shall be mandatory and such National User shall become a participating User.

7.3 The accounting officer of a participating National User shall within 30 days upon written notice from the Department identify its authorised representative who shall liaise with the Department in the structuring, procurement and implementation of the Project, in accordance with regulations 6.1 and 6.3 herein.

7.4 The participation by Provincial User in the Programme shall not be mandatory, however, should a Provincial User Department opt to participate, it shall be subject to such terms and framework to be

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determined by the Department with the Province seeking to participate, including in relation to institutional competency on which the procurement and conclusion of the agreements with Service Providers will be structured. The participation of a Provincial User shall be subject to the provisions of these regulations, other than for regulations 11 and 16, unless to the extent that the excluded regulations are included as part of the terms and/or framework from participation by Provincial User, contemplated in this regulation 7.4.

7.5 A User whose participation is mandatory in terms of regulation 7.2 or has been confirmed in terms of regulation 7.2 shall comply with these regulations including the obligations imposed on a participating User by these regulations.

7.6 An Organ of State that is not in the national or provincial spheres of Government, or that is a public entity may, subject to legislation and regulations applicable to such Organs of State or such public entities, structure their projects or the procurement process that are aimed at achieving or realising the objectives of these regulations by having regard to the structure of procurement process and procurement documents that may be developed pursuant to these regulations.

7.7 In the event of regulation 7.6, the Department may, on request, assist such entities in the structuring and procurement of their projects. The Department and the organs of state and public entities in regulation 7.6 shall co-operate in their procurement on such terms that they agree.

8. **National Treasury Instruction Note or Guidelines on the Procurement of the Programme**

8.1 National Treasury may, from time to time issue instructions notes or guidelines in terms of section 76 of the PFMA, to regulate any matter relating to the Programme, the procurement process or a Project and the exercise of powers in these regulations that are in the competency of National Treasury, including:

8.1.1 exemptions issued to the Department from any or all the provisions of PPPFA in terms of section 3 thereof, including in respect of any preferential procurement elements developed for the Programme;

8.1.2 application of Treasury Regulation 16 promulgated under the PFMA;

8.1.3 recognition of a bespoke procurement regime as developed by or on behalf of the Department for the Programme; and

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8.1.4 matters relating to the application of section 33 of the PFMA, as contemplated in these regulations for withholding funds appropriated for User for Programme Utilities and allocation thereof to the Department.

8.2 The provision of regulation 16 shall apply to confirm to National Treasury, the User's transfer of the functions relating to the Programme Utilities and that funds appropriated for the functions relating to the management and payment for the Programme Utilities may in terms of section 33 of the PFMA be withheld from the User and shall thereupon be allocated to the Department to be received and applied in terms of these regulations.

PART 4: FEASIBILITY

9. **Pre-Feasibility**

9.1 All National Users shall ensure that information relating to their use of utilities and management of waste is properly kept and made available to the Department for purposes of the Department being able to structure and develop the Programme and Projects from time to time.

9.2 The Department, with the assistance of the participating User, shall conduct a pre-feasibility study to assess the current energy and water use and consumption and waste production at the Facility, and use and consumption relating to any other activity that is intended to be part of the Project.

9.3 The pre-feasibility study shall identify the potential for reducing the energy consumption, water consumption and waste produced at a Facility or any other components that may be included for purposes of achieving alternative energy and/or Resource Efficiency or carbon reduction and climate change mitigation.

9.4 The User using the identified Facility/ies shall co-operate with the Department in relation to the pre-feasibility being carried out by or on behalf of the Department, including in relation to allowing the Department and its assignees reasonable access to such Facilities and making available to the Department such information that the Department may reasonably require to carry out the pre-feasibility study.

9.5 The Department shall prepare or procure the preparation of a pre-feasibility study report attaching therewith the observations, results and conclusions drawn from the activities in regulations 9.1 to **Error! Reference source not found.**.

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9.6 The Department shall solicit comments from a participating User and the National Treasury on any aspect addressed in the pre-feasibility study and any other party, whose comments the Department deems necessary.

9.7 The Department shall consider comments from Users provided in terms of regulation 9.6 and may update and finalise the pre-feasibility study based on or upon considering comments from Users.

10. **Feasibility**

10.1 Following the outcome of the pre-feasibility study, conducted in terms of regulation 9, the Accounting Officer of a User shall consider the outcome of the pre-feasibility study and may thereafter decide to proceed with a feasibility study conducted in terms of this regulation 10.

10.2 The accounting officer of the Department shall upon having decided to proceed with the feasibility study, advise the accounting officer of the User of its intention to proceed with a feasibility study in terms of this regulation. A feasibility study undertaken by the Department must:

10.2.1 determine the strategic and operational costs and benefits of the Project for the participating User;

10.2.2 describe in specific terms:

(a) the nature of the institutional function concerned with the provision and use of the Programme Utilities;

(b) the extent to which this function, or the use of a Facility as the case may be, may both legally and by nature, be performed by a Service Provider in terms of an agreement to be concluded with the Service Provider;

(c) the extent to which the implementation of the Project will achieve the objectives of the Programme; and

(d) the forms of agreements considered, the recommended form of agreement and how the proposed form was selected;

10.2.3 assess having regard to the needs of the User and the Department whether the Project on its implementation will:

(a) be affordable for the User and/or the Department; and

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(b) transfer appropriate technical, operational and financial risk to the Service Provider;

10.2.4 evaluate, amongst others, energy and water consumption, potential energy unit and cost savings, water volume and cost savings, waste volume and waste handling cost savings, building conditions, and hours of use or occupancy;

10.2.5 identify available budget(s); and

10.2.6 define the scope of the Project, which shall give a brief definition of the proposed scope of the Project.

PART 5: PROCUREMENT AND CONTRACTING

11. Procuring entity for the Programme

11.1 The procuring entity in relation to the Programme is the Department.

11.2 The Department may establish a dedicated ring-fenced structure that is permissible by law, to manage the funds for the Programme and Projects, including a Trading Entity, through which the Department shall implement and manage the Programme.

11.3 The Department may request and make appropriate arrangements with National Treasury to provide professional and technical advisory services, project management and transaction support, including in the appointment of transaction advisors to assist the Department in the structuring and implementation of the Programme, structuring of Projects and structuring and managing the competitive bidding process to procure a Service Provider to implement a Project and contract management following conclusion of agreements with a Service Provider.

12. Framework for the procurement of the Programme

12.1 The procurement process shall comply with the applicable legal requirements including in relation to implementing preferential elements or preferences to the advancement of previously disadvantaged individuals.

12.2 The Department may initiate a procurement process under the Programme to implement a Project comprising of a single Facility, or to comprise of a number of Facilities grouped together having regard to a number of factors to be determined by the Department, at its discretion, including, amongst others, the commercial, technical, and geographical viability of such immovable assets.

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12.3 The Department shall at its discretion, structure the procurement process and bid documents in implementing the procurement for Programme or Projects.

12.4 Prior to the commencement of the procurement process as detailed in regulation 12.3, the Department may issue a request for information to gather information from potential suppliers, that will be useful in structuring the procurement process or documents.

12.5 The procurement process shall be subject to any an Instruction Notes issued by National Treasury in accordance with regulation 8 or otherwise as may be enabled through the PFMA or Treasury regulations.

13. **Obligations and Responsibilities of Participating Users and the Department**

13.1 The participating User shall:

13.1.1 assist the Department with information pertaining to the User's use of the intended Programme Utilities to enable the Department to determine the scope, level and requirements for the Programme Utilities and Programme. Information required would include, but not limited to, monthly utility invoices/statements, facility plans, title deed confirmations, green building initiatives undertaken;

13.1.2 co-operate with the Department and National Treasury, in the case of a National User, or Provincial Treasury, in the case of a Provincial User (where applicable), to allocate and pay the participating User's appropriated utilities funds relating to the Programme Utilities to the Department;

13.1.3 pay to the Department a management fee referred to in regulation 13.2.8;

13.1.4 provide access to the Facility/ies, the site on which the Facility/ies are located or any Immovable Asset relating to the Facility/ies, to resources, information and personnel necessary for the timely and effective development, implementation and completion of the activities referred to in regulations 9 and 10, 13.1.1 and Chapter 5 of these regulations;

13.1.5 communicate any concerns on the procurement process of a Project or on the Programme to the Department;

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13.1.6 appoint a representative who shall interact periodically with the representative of the Department on the development and implementation of a Project relating to a Facility used by it; and

13.1.7 provide such general and specialised support as may be requested by Department in respect of the structuring of the Project relating to a Facility used by it and the procurement process, relating to such Project.

13.2 The Department shall:

13.2.1 develop the Programme and Projects to be implemented under, and in accordance with, the Programme objectives and these regulations;

13.2.2 coordinate the required inter-ministerial interaction and the exercise of the Minister's powers in terms of the Act, to implement the Programme;

13.2.3 engage the Minister of Finance and/or National Treasury for purposes of obtaining any approvals, guidelines or instruction notes to enable the implementation of the Programme;

13.2.4 obtain various approvals and/or agreements from relevant organs of state;

13.2.5 identify areas of support to be provided by other organs of state;

13.2.6 nominate a representative of the Department to interact periodically with the Users on the Programme;

13.2.7 engage sufficient resources, including external Service Providers, to undertake the Programme;

13.2.8 charge and recover from the User a management fee for services provided on the Programme. This fee may include direct and indirect costs as well as fixed and variable costs incurred by Department in fulfilling its obligations pertaining to the Programme Services;

13.2.9 negotiate and enter into the agreements with Service Providers in respect of the Projects;

13.2.10 oversee the implementation and performance of the Programme and Projects, including where applicable the

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agreements concluded by the Department with Service Providers in relation to Projects;

13.2.11 develop and issue guidelines relating to any of the matters referred to in regulations 9, 10 and Chapter 5 in relation their implementation;

13.2.12 implement a monitoring regime as contemplated in these regulations for the Department to report to the participating User the implementation of the Programme insofar as it pertains to the User and on other matters that fall to be monitored as part of a Project;

13.2.13 inform the User of any risks in not fulfilling timelines for the Programme and/or the Project and to take reasonable measures, in consultation with the User, to alleviate or mitigate the risks so identified;

13.2.14 raise funding for the Programme, including required development costs and capital;

13.2.15 deposit, manage, monitor and report on all funds raised or received by the Department relating to the Programme into a ring-fenced account held through a structure contemplated in regulation 11.2,

13.2.16 create a reporting framework, that will include monitoring and evaluation, auditing and knowledge management; and

13.2.17 provide such general support to the User in respect of the Programme and the Projects as may be required from time to time.

14. **Preferential Procurement Framework**

The Minister may develop preferential procurement policy and preferential policy framework and elements applicable for the Programme and Projects from time-to-time.

15. **Negotiation and Conclusion Agreements with Service Providers**

15.1 The Department shall have the right to negotiate agreements to be concluded with a Service Provider appointed as a preferred bidder to implement a Project provided that the agreements finally concluded:

15.1.1 are affordable to the Department and/or User;

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15.1.2 provide value for money to the Government; and

15.1.3 result in appropriate technical, operational and financial risk transfer to the Service Provider.

15.2 The Department may, at its election, limit the scope of any negotiations to be conducted with the Service Provider during the procurement process.

16. **Ring-Fencing of Utility Budgets**

16.1 Participating Users in the Programme shall through their participation commit the funds appropriated for Programme Utilities towards the cost to the Department in managing the Project(s) and in relation to the payment of a Service Provider for Programme Services relevant to the Project(s) in which the User Department participates, under management by the Department.

16.2 Participation by a User in the Programme transfers the function to manage, procure and pay for the Programme Utilities to the Department.

16.3 The User by its participation in the Programme acknowledges that funds appropriated for payment for Programme Utilities and allocated to a participating User:

16.3.1 may be withheld by the relevant Treasury from the participating User; and

16.3.2 shall upon so being withheld, be allocated to the Department,

as contemplated in section 33 of the PFMA.

17. **Management of the Agreements with Service Providers**

17.1 The Accounting Officer of the Department must, in respect of the agreement concluded with a Service Provider to undertake a Project, which is managed by the Department, in terms of these regulations:

17.1.1 take all reasonable steps to ensure that the agreement with a Service Provider is properly enforced;

17.1.2 monitor the performance of a Service Provider in accordance with the terms of the agreement;

17.1.3 establish capacity in the Department:

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(a) to assist the Accounting Officer in carrying out the duties set out in regulations 17.1.1 and 17.1.2; and

(b) to oversee the day-to-day management of the agreement.

17.1.4 regularly report to the User on the management of the agreement and performance of a Service Provider;

17.1.5 assist the User when so requested by the Users to do so, with information that the User may be required relating to the management of the Project, for purposes of compiling the User's asset management plan, pursuant to section 5 of the Act; and

17.1.6 may include the management of the Project as part of the custodian immovable assets management plan in terms of section 7 of the Act.

17.2 In complying with regulation 17.1, the accounting officer of the Department shall:

17.2.1 prepare a plan for effective management of the agreement after its conclusion with a Service Provider;

17.2.2 take steps to ensure that the Department has contract management and monitoring capacity; and

17.2.3 include the management of the Programme Utilities in terms of its participation in the Programme as part of its immovable assets management plan, pursuant to section 5 of the Act.

PART 6: TRANSITIONAL PROVISIONS

18. **Status of Framework Agreements with Users and Activities undertaken in terms of Framework Agreements**

18.1 Prior to the commencement of these regulations, the Department concluded Framework Agreements or entered into an arrangements with some of the participating Users dealing with matters regulated by these regulations.

18.2 The following are the activities performed by participating Users under the Framework Agreements:

18.2.1 collating, making available or providing utilities information including the costs thereof;

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18.2.2 granting the Department access to the Facilities and the sites on which the Facilities or Immovable Assets are located for purposes of inspection.

18.3 The following are the activities performed by the Department under the Framework Agreements:

18.3.1 receipt and consideration of utilities information received from participating Users for purposes of structuring Projects;

18.3.2 attended to site visits to undertake inspection of the Facilities and assessment of equipment installed in those Facilities; and

18.4 Any Framework Agreement or arrangement between the Department and a participating User relating to the Programme before the commencement of these regulations shall expire on the date that these regulations take effect.

18.5 These regulations shall, upon expiry of the Framework Agreement in terms of regulation 18.4, apply in relation to any activity undertaken in terms of any agreement or arrangement referred to in regulation 18.1 as if such activity was undertaken under these regulations.

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