



LIMPOPO

PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF TRANSPORT

ANTI-FRAUD AND CORRUPTION POLICY

VERSION 3

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ACRONYMS AND ABBREVIATIONS

1. AFC – Anti-Fraud and Corruption
2. AG – Auditor General
3. CFO – Chief Financial Officer
4. DPCI – Directorate for Priority Crime Investigation
5. DSO – Directorate for Special Operations
6. GITO – Government Information Technology Office
7. HoD – Head of Department
8. LDOT – Limpopo Department of Transport
9. MEC – Member of Executive Council
10. PFMA – Public Finance Management Act
11. SAPS – South African Police Service
12. SIU – Special Investigative Unit
13. SSA – State Security Agency

DEFINITIONS

1. Accounting Authority - the person referred to in section 49 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
2. Accounting Officer - the person referred to in section 36 of the Public Finance Management Act, 1999 (Act No.1 of 1999);
3. Department - the Limpopo Department of Transport (LDOT);
4. Designated officer - an officer in the Anti-Fraud and Corruption Unit designated by the Accounting authority Officer of that public entity or department respectively;
5. Disclosure - any disclosure of information regarding any conduct of an employer or an employee of that employer, made by any employee who has a reason to believe that information concerned shows or tends to show one or more of the following:
 - (a) That a criminal offences has been committed, is being committed or is likely to be committed;
 - (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
 - (c) That a miscarriage of justice has occurred, is occurring or is likely to occur;
 - (d) That the health or safety of an individual has been, is being or is likely to be endangered;
 - (e) That the environment has been, is being or is likely to be damaged,
 - (f) Unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act,2000 (Act No.4 of 2000); or
 - (g) That any matter referred to in paragraphs (a) to (g) has been, is being or is likely to be deliberately concealed,
6. **Employee** -
 - (a) A person who works for the states and who receive or is entitled to receive remuneration; or
 - (b) Any other person who in any manner assists in carrying on or conducting the business of the employer;

7. Employer -

- (a) The Limpopo Provincial Department of Transport (LDOT); or
- (b) A Public Entity listed in Schedule 3C and 3D of the Public Finance Management act, 1999 (Act No.1 of 1999);

8. Executing Authority in relation to-

- (a) A provincial department , the Member of the Executive Council responsible for such portfolio; and
- (b) The Office of the Premier, means the Premier;

9. Improper conduct that-

- (a) a criminal offence has been committed, is being committed or is likely to be committed;
- (b) a person has failed, is failing or is likely to comply with any legal obligation to which that person is subject;
- (c) a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) the health or safety of an individual has been, is being or is likely to occur;
- (e) the environment has been, is being or is likely to be damaged;
- (f) Unfair discrimination as contemplated in the Promotion of Equity and Prevention of Unfair Discrimination Act,2000 (Act No.4 of 2000); or
- (g) Any matter to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed: irrespective of whether or not-
 - i. The improper conduct occurs or occurred in the Republic of South Africa or elsewhere; or
 - ii. The law applying to the improper conduct is that of the Republic of South Africa or of another country;

10. Corruption

10.1 General offence of corruption

- a. Any person who directly or indirectly:-
Accepts, agrees or offers to accept any gratification from any other person whether for the benefit of himself/ herself or for the benefit of another person or
- b. Gives, agrees or offers to give to any other person any gratification whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act in manner
 - (i) That amounts to the:-
 - (a) Illegal, Dishonest Unauthorised, Incomplete, Biased or
 - (b) Misuse, selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation
 - (ii). that amounts to:-
 - (a) The abuse of a position of authority
 - (b) A breach of trust; or
 - (c) The violation of a legal duty or a set of rules:
 - (iii). that is designed to achieve an unjustified result: or
 - (iv). that amounts to any other unauthorised or improper inducement to do or not to do anything is guilty of the offence of corruption

10.2 Offences in respect of corrupt activities relating to public officers

10.2.1 Any:-

- i. Public officers who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or

- ii. Person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person,

In order to act, personally or by influencing another person so to act, in a manner

- (i). that amounts to the:-

- (a) Illegal, dishonest, unauthorised, incomplete, or biased: or

- (b) Misuse or selling of information or materials acquired in the course of exercise carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation.

- (ii) That amounts to

- (a) The abuse of a position of authority;

- (b) A breach of trust; or

- (c) The violation of a legal duty or a set of rules;

- (iii) Designed to achieve an unjustified result; or

- (iv). that amounts to any other unauthorised or improper inducement to do or not to anything is guilty of the offence of corrupt activities relating to public officers.

10.2.2 Without derogating from the generality of section 2(4), “to act” in subsection (1).

- (a) Voting at any meeting of a public body.

- (b) Performing or not adequately performing any official functions:

- (c) Expediting, delaying, hindering or preventing the performance of an official act.

- (d) Aiding, assisting or favouring any particular person in the transaction of any business with a public body.

- (e) Aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;
- (f) Showing any favour or disfavour to any person in performing a function as a public officer;
- (g) Diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or
- (h) Exerting any improper influence over the decision making of any person performing functions in a public body.

1. INTRODUCTION AND BACKGROUND

The prevention and combating of corruption and related corrupt activities is a responsibility of all State Departments and requires mutual cooperation and involvement of individuals within and outside the public sector, groups such as organs of civil society, non-government and community-based organisations.

If their efforts in this area are to be efficient and effective they must take effective and concrete action to combat all forms of corruption and related corrupt practices.

this policy aims to provide for the strengthening of measures to prevent and combat corruption and activities, to provide for investigative measures in respect of corruption and related corrupt activities, to place a duty on any person holding a position of authority to report corrupt transactions and activities, and to provide for jurisdiction in respect of the offence of corruption and offences relating to corrupt activities.

The Constitution places a duty on the State to respect, protect, promote and fulfil all the rights as enshrined in the Bill of Rights.

Corruption and related corrupt activities undermine the said Rights, endanger the stability and security of societies, undermine the institutions and values of democracy and ethical values and morality, jeopardise sustainable development, the rule of law and the credibility of governments, and provide a breeding ground for organised crime.

The illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies, ethical values and the rules of laws.

There are links between corrupt activities and other forms of crime in particular organised crime and economic crime, including money-laundering.

The Public Finance Management Act (Act 1 of 1999) was introduced to eliminate hierarchical systems of management, poor information and weak accountability. One of the key objectives of the Act is to eliminate waste and corruption in the use of public assets.

2. PURPOSE AND OBJECTIVE

This policy establishes a framework in which corrupt conduction is not tolerated and encourages non-going development of a culture espousing the highest ethical and professional standards.

This policy places a duty on all staff to be vigilant in ensuring those standards are met and provides guidance for action if it is suspected that those standards are being breached

3. LEGAL FRAMEWORK

- 3.1 Protected Disclosure Act,2000 (Act No.26 of 2000);
- 3.2 Practical Guidelines for Employees issued in terms of section 10 of the Protected Disclosures Act, 2000 (Act No.26 of 2000);
- 3.3 Whistle-blowing Guide for Public Sector Managers provided by the Department of Public Service Administration;
- 3.4 Public Service act, 1994 (Proclamation No.103 of 1994) and Regulations made in terms thereof;
- 3.5 Rules for dealing with grievances in the Public Service as published in government Gazette No. 25209 of 25 July 2003;
- 3.6 Disciplinary Code and Procedures for the Public Service as contained in the Public Service Bargaining Resolution 2 of 1999;
- 3.7 Public Finance Management Act, 1999 (Act No.1 of 1999) and Treasury Regulations issued in terms thereof;
- 3.8 Prevention and Combating of Corrupt Activities Act, 2004 (Act no.12 of 2004).
- 3.9 Limpopo Protected disclosure Policy Framework.

- 3.10 National Road Traffic Act No. 93 Of 1996
- 3.11 Public Service Anti-Corruption Strategy
- 3.12 Limpopo Provincial Government Anti-Corruption Strategy
- 3.13 Justices of the Peace and Commissioners of Oath Act No. 16 of 1963
- 3.14 Criminal Procedure Act No. 51 of 19777
- 3.15 Organised Crime Act no. 121 of 1998
- 3.16 Minimum Anti-Corruption Capacity Requirements approved by Cabinet in 2003
- 3.17 The Republic of South Africa Constitution 1996

4. SCOPE OF THE APPLICATION

This policy will be applicable to all corruption activities involving the following persons or entities;

- (a) All officials/employees or entities involved in the administration of Department of Transport including but not limited to:-
 - (i) Employees/officials of the department
 - (ii) All statutory bodies and entities funded by the Department.
- (b) Consultants, suppliers, contractors and other providers of services to the department.

5. STRATEGIC CONSIDERATIONS

In order for the employer to effectively prevent and combat all corrupt activities, emphasis will be placed on the implementation of the strategic objectives from Public Service Anti-Corruption Strategy.

5.1 Increased Institutional Capacity

The employer must create minimum capacity to address corruption.

5.2 Improved Access to Report Wrong doing and Protection of Whistle-blowers

Employer must promote the reporting of corruption and the subsequent protection of the whistle-blowers.

5.3 Prohibition of Corrupt Individuals and Business

Employees and Service Providers that have been party to acts of Corruption often change employer within the Public Sector or, in the case of service providers, change name or the location in which they operated.

To remedy this situation and to raise integrity and ethics of the employer prohibition must be established by:-

- (a) Supply Chain must exclude from contracts, all owners and directors of businesses found criminally guilty of corruption and also listed on the National Treasury database of tender defaulters.
- (b) All defaulters must be reported to National Treasury for inclusion in the defaulter database.
- (c) Conducting vetting/probity check of all prospective employees and contractors.

5.4 Improved Management Policies, Practices and Standard Operating Procedures.

Management must be responsible for preventing corruption in their business units and this must be stipulated in their performance agreements. Good management is the first line of attack on corruption.

This consideration entails six elements that relate to:-

- (a) Procurement
- (b) Employment

- (c) Managing discipline
- (d) Risk management and
- (e) Management information systems.
- (f) Managing corporal resources

5.5 Managing Professional Ethics

Employer must promote the concept and practice of ethics management.

- (a) Establish a generic professional ethics statement for the department.
- (b) Professional ethics must be promoted through explanatory
- (c) Manuals, continuous training and education and establishing partnership with professional associations.
- (d) Senior Management must be developed to espouse professional ethics and to provide leadership to other employees.

5.6 Awareness, Training and Education

A comprehensive awareness campaign supported with education and training, needs to be established and implemented by Anti-Fraud and Corruption Unit in collaboration with Policy Coordination Unit.

6. POLICY PRONOUNCEMENT

Implementation of this policy will be guided by Batho Pele Principles.

7. REPORTING CORRUPTION

It is the responsibility of all employees, service providers, contractors and members of the public to report all corrupt activities when they come across such incidents.

The following documents details when and how corruption matters should be dealt with.

- (a) Protected Disclosures Act, 2000 (Act No.26 of 2000);

- (b) Practical Guidelines for employees issued in terms of section 10 of the Protected Disclosures Act, 2000 (Act No.26 of 2000);
- (c) Whistle-blowing Guide for Public Sector Managers provided by the Department of Public Service Administration
The employer must develop and implement a department whistle-blowing policy
The policy must include mechanisms for supporting officials and persons maliciously and falsely implicated.

8. CORRECTIVE ACTION AND DISCIPLINE

8.1 Disciplinary Action.

- 8.1.1 The employer must establish a capacity to institute disciplinary actions on cases of corruption against employees of the department.
- 8.1.2 All cases of fraud and corruption must be referred to the SAPS for investigations and criminal prosecution.
- 8.1.3 Disciplinary action must be taken against all offenders.
- 8.1.4 These two processes (criminal and disciplinary action) must be taken concurrently and their outcomes are not related (finding in the one does not have an influence on the finding of the other).

8.2 Recovery of losses.

An effort should be made to recover all monies and assets that have been obtained through corrupt activities.

The employer must undertake recovery of losses as part of its resolution of cases.

8.3 Forwarding Information to the relevant Agencies.

The employer will conduct preliminary investigations in all reported cases.
All corruption cases must be reported to relevant agencies:

8.3.1. In cases of serious corruption and maladministration, the Special Investigation Unit (SIU) should be requested to assist in the investigation.

8.3.2 In cases of criminal activities, the South African Police Services (SAPS) should be requested to assist in the investigation.

8.3.3 In cases involving organised crime and serious financial crimes, the Directorate for Priority Crime Investigation (DPCI) should be requested.

8.3.4 In matters relating to information, the State Security Agency should be requested to institute an investigation.

9. ESTABLISHMENT OF ANTI-FRAUD AND CORRUPTION COMMITTEE

The Department shall establish a risk management committee and members thereof appointed in writing will also serve in the Anti-Fraud and Corruption Committee.

The committee shall be constituted by:-

- (a) Chief Director: Corporate Services (chairperson)
- (b) Director: Labour Relation Services
- (c) Director: Compliance and Risk Management
- (d) Deputy Director: Anti-Fraud and Corruption (Secretariat)
- (e) Deputy Director: Security Services
- (f) Deputy Director: Legal Services
- (g) Deputy Director: Finance

10. CONFIDENTIALITY

10.1 The employer acknowledges that employees need to be assured that reported matters will be properly addressed.

10.2 Progression of investigations will be handled in a confidential manner and disclosed or discussed only with any persons who have a legitimate right to such information.

10.3 The reputation of whistle-blowers and suspected persons who are subsequently found innocent of wrongful conduct will always be protected.

10.4 Liaison with the media pertaining to Fraud, Corruption theft and Maladministration will only be done with the express authorization of the Head of Department.

11. REVIEW AND TERMINATION OF THE POLICY

The policy will be reviewed every 36 months based on the comments and inputs from the stakeholders and it will be terminated upon the inception of the new policy.

12. MONITORING AND EVALUATION

HoD's office will monitor the implementation of this policy. Monitoring and Evaluation Unit within the Department will also track progress and policy achievements in terms of the objectives.

13. DEFAULT

Employees who violate this policy will be disciplined in terms of measures contained in or published in one or more prescripts that are contained in the Legal Framework of this policy. Any party who has a contractual relationship with the Department and contravenes the provision of this policy will be dealt with in terms of the penalty clause of the agreement entered into by and between him/her and the Department.

14. INCEPTION DATE

The inception date of this policy will be within thirty (30) days after the approval by the Executive Authority.

15. ENQUIRIES

Enquiries regarding this policy should in the first instance be directed to the HoD's Office.

RECOMMENDED/ NOT RECOMMENDED

For approval

*CP
Kens*

ACCOUNTING OFFICER

18/8/17

DATE

APPROVED/ NOT APPROVED

N. Ndabane

MEMBER OF EXECUTIVE COUNCIL

21/08/17

DATE