



KWAZULU-NATAL PROVINCE

**HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA**

**REVISED GUIDELINE ON THE IMPLEMENTATION
OF PROJECTS AND TERMS AND CONDITIONS FOR
A TRIPARTITE AGREEMENT**

FEBRUARY 2023

CONTENTS

ABBREVIATIONS/ACRONOYMS:	3
DEFINITIONS:	4
1. INTRODUCTION	5
2. OBJECTIVE OF THE GUIDELINE	5
3. LEGISLATIVE FRAMEWORK	5
4. CONCLUSION OF A TRIPARTITE AGREEMENT	6
5. ROLES AND RESPONSIBILITIES	7
5.1 Municipality	7
5.2 Department of Human Settlements	7
5.3 Project Manager/Implementing Agent	8
6. KEY RESPONSIBILITIES	8
7. EFFECTIVE DATE	8
8. MONITORING AND EVALUATION	8

ABBREVIATIONS/ACRONOYMS:

DOHS: DEPARTMENT OF HUMAN SETTLEMENTS

NHBRC: NATIONAL HOME BUILDERS REGISTRATION COUNCIL

IA: IMPLEMENTNG AGENT

SPLUMA: SPATIAL PLANNING AND LAND USE MANAGEMENT ACT

MEC: MEMBER OF EXCUTIVE COUNCIL

SDF's: SPATIAL DEVELOPMENT FRAMEWORKS

MOA: MEMORANDUM OF AGREEMENT

CRO: COMMUNITY RESOURCE ORGANISATION

TEC: TECHNICAL EVALUATION COMMITTEE

DEFINITIONS:

Project Manager: Refers to a person responsible for the project including the implementing agent or the developer

Performance: An act of doing that which is required by a contract. the effect of successful performance is to discharge the person bound to do the act from any future contractual liability

1. INTRODUCTION

The Tripartite Agreement Guidelines introduced in 2005, amended the roles and responsibilities of the Department, Municipality and Project Manager/Implementing Agent (IA) as follows:

The municipality/project manager/implementing agent together with the Department would appoint professionals. Tender adjudication was done by the municipality jointly with the Department. The appointment of project managers/professionals/emerging developers was done from the Department's database. The project agreement was between the Department, Municipality, and the Project Manager/Implementing Agent

Since 2005, municipalities undertook the implementation of human settlements projects by outsourcing their work to external service providers through their supply chain management processes. A tripartite agreement was entered into to clarify the roles and responsibilities of all stakeholders in the housing delivery process. However, during 2016 it was revealed that Municipalities were not undertaking their roles as per the agreement in respect of Supply Chain Management (SCM) compliance resulting in the tripartite agreements being changed to bi-laterals to ensure accountability by municipalities.

In 2020, Cabinet supported the Province to assume the role of developer on a per project basis. As a result, the tripartite agreements have been reinstated to enable the Department to disburse funds directly to service provider as required, on the value of work done. The Department together with the municipality and in some cases, the project manager/IA will monitor and manage the performance of service providers.

2. OBJECTIVE OF THE GUIDELINE

The purpose of the tripartite agreement is to address the following factors:

- a) Define the roles & responsibilities of the Department of Human Settlements (DoHS), Municipalities and Project Manager/IA. The defined roles and responsibilities will facilitate remedial measures against parties who do not comply with their obligations.
- b) Address the issue of strengthening the capacity of Municipalities: guidance, advice and transfer of skills will be provided by the Project Management Component where required in the implementation of projects.
- c) Alleviate the problem associated with blocked projects: the obligation of being part of the tripartite agreement will enforce the proper monitoring and management of the performance of those involved in the project process and ensure that activities are performed within the projected time frames.
- d) The effective use of funds to ensure value for money.
- e) The DoHS will be involved in the adjudication of tenders and the appointment of the required built environment professionals.

3. LEGISLATIVE FRAMEWORK

The Policy is informed by the following Legislation:

- 3.1 **Section 139 (1) of the Constitution of the Republic of South Africa of 1996 provides that:**
When a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation.

3.2 The National Housing Act 107 of 1997, Republic of South Africa provides for:

The facilitation of a sustainable housing process and thus outlines the general principles applicable to housing development in all spheres of government. This Act further defines the functions of national, provincial and local governments in respect of housing development.

3.3 Section 7 (2) F of the National Housing Act 107 of 1997 provides that:

- (2) Every provincial government must through its MEC
- (a) determine provincial policy in respect of housing development;
- (b) promote the adoption of provincial legislation to ensure effective housing delivery;
- (c) take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties in respect of housing development;
- (d) co-ordinate housing development in the province;
- (e) take all reasonable and necessary steps to support municipalities in the exercise of their powers and the performance of their duties in respect of housing development;
- (f) when a municipality cannot or does not perform a duty imposed by this Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution to ensure the performance of such duty.

3.4 Section 15 3 (d) of the KwaZulu-Natal Housing Act 18 of 1998 provides that:

The Department may carry out housing duties and responsibilities of a municipality in terms of this act whenever such municipality itself is unable to do so or where no municipality exists.

3.5 Public Finance Management Act of 1999, Republic of South Africa:

Section 38 and 45 of the Act deals with general responsibilities of the accounting officers. The said responsibilities include the effective, efficient, economic and transparent use of the resources of the Department.

4. CONCLUSION OF A TRIPARTITE AGREEMENT

The following is a summary of the project process reflecting when the conclusion of a tripartite agreement takes place:

- a) MEC receives provincial subsidy allocation from National Housing Fund.
- b) Municipality applies for reservation of subsidies in terms of their approved Spatial Development Framework (SDF's)/Housing Sector Plan/ Council Resolution/approved & agreed priorities.
- c) Municipality calls for land availability proposals where required
- d) Developer undertakes prefeasibility/ Risk assessment: Planning, Land Audit, EIA, Bulks, Social. Geotech prepares project description and compiles acquisition agreements. Municipality secures land
- e) Municipality finalizes acquisition of land
- f) Municipality/Project Manager and DoHS compile the pre-feasibility report for approval. This report is submitted to the MEC via Technical Evaluation Committee (TEC) for approval. Tripartite Agreement is entered into if the municipality lacks the capacity and appoints a project manager/IA to conduct prefeasibility investigations.
- g) **First Tripartite Agreement** entered into by the DoHS, Municipality and IA.
- h) Municipality submits application to NHBRC for project enrolment
- i) Municipality/project manager undertakes preliminary engineering design and costs
- j) Municipality submits application to NHBRC for home enrolment, applicable in rural projects
- k) Submitted by the municipality via DoHS for final approval based on the relevant reports
- l) **Second Tripartite Agreement** entered into by the DoHS, Municipality and IA.

- m) Implementation of the project
- n) Project is closed out

*The flowchart attached as **Annexure 1**, highlights the project process that is followed as well as points at which the Tripartite Agreement is entered into by the relevant parties.*

5. ROLES AND RESPONSIBILITIES

5.1 Municipality

- a) Adjudication of proposals in relation to SDF's/Housing Sector Plan/ Council Resolution/approved & agreed priorities
- b) Secure the land for project development and finalizing land acquisition agreement.
- c) Manage the project manager/IA and other professionals.
- d) Jointly with the DoHS, select and appoint professionals required.
- e) Registration with the NHBRC.
- f) Oversee socio-survey.
- g) Preparation of feasibility report.
- h) Prepare preliminary town planning layout/preliminary engineering design and costs.
- i) Preparation of planning and development plan.
- j) Undertaking SPLUMA compliance processes.
- k) Engineering Design.
- l) Procurement of professionals.
- m) Completion and verification of handover certificates.
- n) Manage and monitor the appointed project manager/IA and professionals.
- o) Training and selection of local builders.
- p) Building inspection.
- q) Issuing of foundation certificate, structural certificates, and occupation certificates.

5.2 Department of Human Settlements

- a) Provide funding.
- b) Provide guidance and advice on project description and pre-feasibility report for approval.
- c) Manage and monitor the appointed project manager/IA and other professionals.
- d) Jointly with the municipality, select and appoint professionals required.
- e) Assessment of integrated planning.
- f) Make payment to professionals.
- g) Prepare service level agreements/MOA
- h) Approval of planning and development plan.
- i) Verification of SPLUMA compliance processes.
- j) Verification and issuing of handover certificates.
- k) Procurement of professionals.
- l) Prepare tripartite agreements
- m) Training and selection of local builders Beneficiaries sign building agreements with Community Resource Organisation (CRO), if applicable.
- n) Ensure that all terms and obligations have been discharged in respect of the Department, Municipality, IA, Beneficiary Committee and Community Resource Organisation (CRO) Memorandum of Understanding, if applicable.

5.3 Project Manager/Implementing Agent

- a) Prepare project description where municipality lacks capacity and provide guidance and advice on pre-feasibility report for approval.
- b) Manage professionals appointed.
- c) Compile feasibility report where municipality lacks capacity.
- d) Ensure project is compliant with the development programme in terms of time frames.

6. KEY RESPONSIBILITIES

The following are key responsibilities that will be undertaken by all parties contracted to a Tripartite Agreement:

- a) Ensure overall compliance in terms of undertaken obligations, duties and role as per the agreement.
- b) To assess the performance of the contracted parties as per the agreed timeframes of the agreement.
- c) To monitor the performance of the contracted parties in providing the services specified in the agreement and to enforce the payment or penalty mechanism associated with the performance monitoring.
- d) To liaise with the relevant stakeholder/s and contracted party in achieving the project objectives.
- e) To manage any disputes that may arise under the agreement.
- f) To manage the changes, variations, and amendments to the agreement in accordance with the relevant legislation.
- g) To oversee the management of the project and ensure the objectives are being realised.
- h) To report on the financial performance of the project in accordance with generally accepted accounting practices applicable.
- i) To monitor, evaluate, and report on the progress of the project as per the agreement.

7. EFFECTIVE DATE

The effective date of this Guideline will be the date of signature by the MEC.

8. MONITORING AND EVALUATION

The Policy, Research and Product Development Directorate will undertake the monitoring and evaluation of the Guideline and will undertake a review as and when required.