

# Grooming local government for the final phase

## Gauteng one step ahead

Gauteng's Rationalisation of Local Government Affairs Act (RLGAA) 10 of 1998 came into effect on 19 March 1999 and brought local government in that province one step closer to the final phase of local government transformation. The stated purpose of the Act is to consolidate the existing legislative provisions regarding local government in Gauteng into one Act thereby creating a single legislative and administrative framework within which local government may conduct its affairs. The RLGAA further seeks to enhance the capacity of local government, improve standards of governance and service delivery, encourage public participation in local governance and foster a spirit of co-operation and shared responsibility between the local and the provincial spheres of government.

### The context of the RLGAA

The RLGAA was promulgated in an environment where the Local Government Transition Act (LGTA), read together with various pieces of national legislation, provincial ordinances and regulations, and local government by-laws map out the terrain in which local government will exercise its powers and perform its functions. This phase of local government development is recognised, in terms of the White Paper on Local Government, as being the interim phase. It is during this phase that the formal restructuring of local government must be legislated upon. This has, to a large extent, taken place with the enactment of two key pieces of legislation, namely the Municipal Demarcation Act and the Municipal Structures Act discussed elsewhere in this issue. The RLGAA thus adds to the institutional framework within which local government in Gauteng operates. The Act is, to a significant degree, a transitional piece of

legislation that repeals certain provincial legislation and assigns a host of powers to municipalities which were exercised by municipalities in terms of the local government ordinance relative to Gauteng.

### The importance of the RLGAA

The White Paper on Local Government recognised that many of the laws and regulations which supported the old system remained in effect and in one or other manner continued to impact on the operations of municipalities. The new democratic order requires a changed mandate for local government with additional developmental functions and new capacities, attitudes and approaches that are now emerging. There was thus clearly a need for the rationalisation of the body of inherited law in order to support the new vision and role

identified for local government. The role of the provincial sphere of government in this endeavour is firstly, to support and strengthen local government by increasing its capacity to perform its functions and secondly, to regulate the exercise of municipal executive authority.

### Specific features

#### Making by-laws

The procedure for making by-laws is fairly extensively prescribed with the emphasis being on adequate public notice and participation. In this regard, the Act prescribes that a municipal council must publish a notice in the *Provincial Gazette* and in at least one newspaper within the area, announcing its intention to make by-laws. This notice should specify:

- that comment is being sought on a draft by-law;
- a summary of what the draft by-law includes;

- to whom enquiries may be directed;
- where, when and how a copy of the draft may be obtained;
- the period for comment, which may be not less than one month from the notice date; and
- where comments on the draft may be lodged.

Furthermore, consultations with interest groups may precede the making of a by-law and, where consultations have taken place or comments have been received, those must be considered before the by-law is made. Should a council delay the making of a by-law for more than one year after the notice of its intention, the by-law cannot be made unless the entire procedure is repeated. Provision is, however, made for a situation where a by-law has to be made without delay – but this can only be done where public interest requires it.

Amendments to, or the repeal of by-laws are subject to the same public participation procedures outlined above, except where an amendment to correct a mere textual error is required. The Act, very progressively, places a developmental duty on municipal councils to develop and implement policies and programmes to assist members of the public to comment on the draft by-law. Provision is also made for the review of by-laws, especially those promulgated before the advent of the RLGAA. Those promulgated in terms of the RLGAA must be reviewed at ten yearly intervals.

#### Standard by-laws

As part of provincial government's obligation to assist municipalities, the Act makes provision for the drafting of standard by-laws by the MEC responsible for local government. The making of a standard by-law by the MEC is subject to the same public participation procedures as described above. Such by-laws would become applicable to a municipal council only if it makes a by-law to that effect. This is a fairly innovative development and is designed to empower councils when the LGTA is repealed and provincial government ceases to operate in a prescriptive manner, as is

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currently the case, in respect of local government competences.

### Guidelines

It is further provided that the MEC may issue guidelines to assist councils in the exercise of their powers, functions or duties or to give effect to the purpose of the RLGAA.

### Procurement

A municipal council has executive authority to, among other things, procure goods and services in the exercise of its powers and the performance of its functions. A provincial government has the right to regulate such an exercise of a council's executive authority. In that vein, the Act stipulates that a MEC must prescribe the tender value of goods or services in respect of which the contemplated procurement procedure would apply. This procedure would, however, not be applicable in the case where goods or services have to be procured as a matter of emergency, as a matter of necessity, or from a sole supplier. Goods or services falling outside the net must be dealt with in accordance with the applicable financial regulations of a municipality. When a municipality intends to procure prescribed goods or services, the procedure is as follows:

- the decision to procure must be contained in a notice that is published in a local newspaper and displayed in a prominent designated place;
- the notice must contain the requirements and specifications of the goods or services, an indication of where, when and how the official tender document will be displayed for inspection or acquisition, the cut-off time for applications and the procedure for submitting an application;
- all tender applications must be properly completed, failing which the application may be disqualified;
- after the cut-off time, the municipality must enter certain details of all applicants in a register;
- members of the public may be present to witness the registration process and to inspect the register at the council's convenience;
- when a council considers which tender to accept, it must have due regard to, among other things, factors specified in any other law, policy made by a competent organ of state, only those tender applicants referred to in the register, the promotion of small and medium sized enterprises, any affirmative action policy in respect of preferred categories of persons, bodies, organisations or corpora-

tions as the council may determine from time to time, employment generation or the transfer of skills, effective and efficient delivery of municipal services, the capacity and ability of applicants to perform as required and the cost-effectiveness of the application without necessarily favouring the lowest tender;

- the decision to accept, reject or disqualify an application rests with the municipal council unless this function is assigned or delegated to a committee;
- the decision of the council or the committee is final and binding;
- the decision of the council or the committee must be conveyed in writing to the relevant applicant and reasons must be provided in the event of a disqualification or rejection of an application.

The Act makes further provision for an expedited procurement procedure in respect of prescribed goods or services where the municipal council takes a resolution to this effect. In this event, the council must publish and display the reasons for dispensing with the procurement procedure, a summary of the requirements of the prescribed goods or services, indicating where, when and how the document containing the requirements or specifications may be inspected or acquired, and the details of the person, body, organisation or corporation supplying the goods or services. This function may not be assigned or delegated by a council.

Provision is also made for extending or varying a tender agreement but, this may not be done more than once, or for a period exceeding the duration of the original agreement or for an amount exceeding twenty percent of the original tender value. Similar notification requirements apply as in the case of an expedited procurement procedure and similarly this function of the council may not be delegated or assigned.

As mentioned above, a council may establish a committee responsible for procurement or confer this responsibility onto any of its committees. This committee may, in addition, recommend policies, procedures and practices to enable the council to exercise its powers, functions or duties in an effective, efficient and transparent manner. It may also make recommendations concerning the criteria for determining the categories persons,

bodies, organisations or corporations to be affirmed as contemplated in the Act.

### Credit control

Regarding a council's credit control measures, it is provided that all municipalities must make by-laws to regulate its credit control measures. Furthermore, the MEC may prescribe requirements that must be incorporated in the council's by-laws on credit control. All credit control measures must make provision for:

- the listing of services and products in respect of which taxes, rates, levies, fees, charges or surcharges may be imposed, and on whom they may be imposed;
- the circumstances and manner of payment for the above taxes, etc;
- the consequences of non-payment including discontinuance of any service, the

circumstances, manner and duration of such discontinuance, any recovery mechanism the municipality may employ and the steps a municipal council may take to protect its property in the event of a discontinuance; and

- the prevention and termination of all services or the recovery of all products which were acquired in an illegal or unauthorised manner.

To be commended is the shift away from *ad hoc* decisions on credit control, which have been the subject of many a court case, to an approach which is rule-based, clear and predictable.

### Conclusion

The RLGAA comes at a time when provincial governments are on the verge of shedding their prescriptive role in respect of local government and replacing it with a regulatory one, where the distinctiveness of local government as a sphere of government will be respected. The Gauteng Legislature has taken the lead by creating the space for local government to come into its own. Just as much as this move is to be applauded, so too must local government in Gauteng be encouraged and supported to take this opportunity to carve for itself a place in the local government sphere.

Johann Mettler  
Local Government Project  
Community Law Centre, UWC

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