

THE ROLES AND FUNCTIONS OF



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Bid committees

When a municipality uses competitive bidding to procure goods or services, it must at least have the following committees in place to oversee the process:

- a bid specification committee;
- a bid evaluation committee; and
- a bid adjudication committee.

In recent months the courts have stressed the importance of the roles and functions of these committees. Contracts have been set aside because bid committees were not properly constituted, proper procedures were not followed at meetings or bids were evaluated based on specifications different from those initially advertised. With reference to the case law, it is particularly important for municipalities to comply with the following rules, as failing to do so leads to costly litigation.

The members of the bid evaluation committee must as far as possible be officials of the department concerned.

The contract in *Actaris South Africa v Sol Plaatje Municipality, Intelligent Metering Systems* (1357 / 2007) [2008] ZANHC 73 (12 December

2008) (*Actaris*) concerned the supply of prepayment vending software and hardware for the provision of electricity. The Court set aside the contract concluded with the preferred bidder for a number of reasons. One was that the evaluation committee did not include an official from the electricity department. The two persons who represented the electricity department at the meeting had no voting power and could not participate in the decision-making process.

The bid specifications bind the municipality. The evaluation committee must evaluate bids with reference to the specifications advertised.

In *Nelson Mandela Bay Municipality v Afrisec Strategic Solutions* 2008 JDR 1014 (SE) the Court set aside contracts concluded with the

key points

successful bidder because they exceeded the scope of the bid invitation and specifications advertised. The successful bidder's initial bid was in the region of R2.7 million, but the final contracts amounted to roughly R12 million. The bid invitation was moreover for the design of a security plan, but the concluded contracts also made provision for the implementation of the plan.

Caution must be exercised before excluding bidders for unsatisfactory performance under a previous contract.

In *Renaissance Security and Cleaning Services v Rustenburg Local Municipality* (1811/2007) [2008] ZANWHC 29 (19 August 2008) the Court set aside the decision to exclude a bid, because the municipality was unable to prove that (i) the bidder in question had a poor track record; (ii) it had been given written notification of its poor performance under a previous contract; and (iii) it had received or could reasonably be expected to have received such notification.

The evaluation committee must prepare a written report and recommendations for consideration by the bid adjudication committee.

The Court in *Actaris* emphasised that unless the bid adjudication committee is provided with a written report and recommendations, it is unable to properly apply its mind to the award decision. It is not sufficient for a member of the evaluation committee to appear before the adjudication committee and give it a verbal summary of the report and recommendations of the evaluation committee.

The adjudication committee must properly consider the report and recommendations of the evaluation committee.

In *Actaris* the meeting of the adjudication committee was conducted with undue and inexplicable haste. The Court found that the evaluation committee met on the same day as the adjudication committee and the proceedings of the latter concluded after normal office hours. The members of the adjudication committee were moreover led to believe that they had to come to a decision urgently, but from the facts of the case it was not clear to the Court why this was done.

- Legislation spells out the roles and functions of the committees involved in the awarding of contracts.
- The officials who serve on the committees must be familiar with the applicable rules.
- The courts have set aside contracts where
 - bid committees were not properly constituted;
 - fair and proper procedures were not followed at meetings; or
 - bids were not evaluated according to the specifications advertised.

The adjudication committee must have a technical expert as a member where such expert exists in the municipality.

The bids in *Actaris* were of a highly technical and specialised nature. The municipality, however, failed to put forward to the Court any reason or explanation for why an official with relevant technical expertise was not a member of the adjudication committee, and the Court refused to condone the irregularity.

Comment

It is important for officials who serve on the bid committees to be familiar with and adhere to the rules that apply to the roles and functions of those committees. The case law discussed serves as a warning to municipalities to uphold and strictly comply with the applicable rules, as failing to do so can result in very costly litigation.



Phoebe Bolton
Associate Professor
Law Faculty, UWC