

# Supply chain management under the Municipal Finance Management Act

**M**unicipalities and municipal entities will have to tread carefully when acquiring goods or services, or when disposing of goods when the Municipal Finance Management Act (MFMA) comes into operation. Municipal procurement – or supply chain management in terms of the MFMA – will be strictly regulated and municipal accounting officers, officials and councillors may land in hot water should they fail to adhere to the legislation.

## What and why

Supply chain management involves the procurement and disposal of municipal goods and services. It also includes the selection of contractors to provide services in cases where Chapter 8 of the Systems Act does not apply, as well as the selection of external mechanisms that are subject to competitive bidding. It does not, however, apply to the disposal of municipal capital assets needed to provide a minimum level of basic services.

The current procurement systems are not well regulated and differ from province to province. The provisions of the MFMA bring municipal procurement practices in line with those at national and provincial government levels. The MFMA is intended to stamp out large-scale corruption and will enforce high-level accountability within the supply chain management cycle.

## Devising a policy

The first order of business is for a municipality/municipal entity to adopt and implement a supply chain management policy. The policy must comply with a prescribed regulatory framework, which must cover at least those items listed in section 112 of the Act, and must be fair, equitable, transparent, competitive and cost effective. If no regulatory framework is put in place, it appears that a failure by a municipality/municipal entity to adopt a supply chain management policy might not attract the sanctions contemplated in sections 171 or 173 of the Act. However, it is more than likely that the framework will be in place when the Act comes into operation, in which case the accounting officer will have to ensure that a supply chain management policy is adopted. The regulatory framework for supply chain management in terms of the PFMA was published in *Government Gazette* No. 25767, dated 5 December 2003. This might provide a useful insight as to what can be expected.

The supply chain management policy must cover, at least, and subject to the regulatory framework, the following matters:

- the range of supply chain management processes that the municipality may use;
- when a particular type of process must be used;
- procedures and mechanisms for each type of process;
- flexible processes where the value of a contract is below a prescribed amount;
- pre-qualification processes for tenders or other bids;
- competitive bidding processes relating to pre-qualified persons;
- bid documentation, advertising of and invitations for contracts;
- procedures and mechanisms for:

## key points

- opening, registering and recording bids;
- evaluating bids;
- negotiating final terms of contracts;
- approval of bids;
- screening processes and security clearances for prospective contractors for bids above a prescribed value;
- compulsory disclosure of any conflict of interest prospective contractors may have in specific tenders and their exclusion from such tenders;
- participation of non-municipal officials in the supply chain management system;
- the barring of certain persons from participating in tendering or bidding, including:
  - those convicted of fraud or corruption;
  - those who did not comply with a government contract;
  - those whose tax matters are not cleared by SARS;
- measures for:
  - combating fraud, corruption, favouritism, and unfair and irregular practices in supply chain management;
  - promoting sound ethics among officials and other role players;
- the invalidation of decisions or recommendations that were unlawfully and improperly made or influenced, especially by councillors and officials, in contravention of their respective Codes of Conduct;
- the procurement of goods and services through contracts procured by other organs of state;
- contract management and dispute settlement procedures; and
- the delegation of supply chain management powers to officials.

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### Unsolicited bids

For the first time, unsolicited bids are regulated in municipal finance legislation. The most important aspect is the requirement that a municipality may only consider an unsolicited bid in accordance with a prescribed framework. Such a framework will be forthcoming from the National Treasury and the Act stipulates its ambit by providing that it must “strictly regulate and limit the power of municipali-

- The supply chain management policy will enforce high-level accountability within the supply chain management cycle.
- Municipalities/municipal entities must first adopt and implement a supply chain management policy.
- The first and only time a councillor may deal with a tender is in Council when a tender is up for approval.
- Municipalities/municipal entities are compelled to provide resources or opportunities for staff training.

ties and municipal entities to approve unsolicited bids”. The Act, however, makes it clear that a municipality is not obliged to consider an unsolicited bid outside of its normal bidding processes.

### Tender approval

It will be possible for a tender to be approved contrary to a recommendation from the tender committee. If this happens, the accounting officer must give written notification thereof, with reasons, to the Auditor-General and the Provincial and National Treasuries. Where a municipal entity has deviated from a recommendation, it must also inform the parent municipality.

### Contract management

The Act makes the accounting officer responsible for ensuring that all contracts or agreements procured through the supply chain management policy are enforced and monitored. To achieve this, the Act makes provision for additional capacity in the administration to assist the accounting officer and to oversee the day-to-day management of the contract or agreement. It is clear that the Act envisages that contract management will be centralised in the office of the accounting officer.

All contracts or agreements procured through the policy must be in writing and must, at the very least, provide for:

- termination in the case of non- or under-performance;
- dispute resolution mechanisms;
- periodic review; and
- any matter that may be prescribed.

A contract or agreement may also be amended by the parties but only after the reasons for doing so have been tabled in the Council and the local community has been given the opportunity to submit representations.

## Role of councillors

The Act makes it abundantly clear that councillors may not participate, in any manner whatsoever, in any bid committee or any other committee evaluating or approving tenders, quotations, contracts, or other bids. It appears that the first – and only – time a councillor may deal with a tender is in Council when a tender is up for approval after having been recommended by the tender committee.

The Act is equally emphatic that no person (councillor, official, member of the public) may interfere with the supply chain management system of a municipality. Nor may anyone amend or tamper with any tenders, quotations, contracts or bids after their submission. If this occurs, it constitutes a criminal offence for which a person may be jailed for up to five years .

## Competency

A somewhat unusual – but quite necessary – provision in the Act is that the accounting officer and all officials who are involved with supply

chain management must meet the prescribed competency levels. If not, this may give rise to charges of financial misconduct in appropriate cases. The competency levels have not yet been prescribed but should be in place when the Act comes into operation. A municipality/municipal entity is compelled to provide resources or opportunities for staff training. The National or Provincial Treasuries may assist municipalities/municipal entities in the requisite training.

The Act makes it clear that councillors may not participate, in any manner whatsoever, in committee evaluating or approving tenders, quotations, contracts or other bids.

## Implementation of policy

It is the accounting officer's duty to implement the supply chain management policy of a municipality/municipal entity. She must also take steps to ensure that there are proper mechanisms in place to minimise the likelihood of fraud, corruption, favouritism and other irregular practices. Failure to comply with these implementation provisions may lead to charges of financial misconduct under the Code of Conduct. Any person who impedes

the accounting officer in implementing the system may be guilty of a criminal offence.

## Assessment

The provisions on supply chain management in the MFMA are intended to bring the procurement and disposal of goods and services at local level in line with similar processes at national and provincial levels. There is a high degree of prescription, with which accounting officers must ensure they are familiar. Failure to do this may result in grave consequences for officials and municipalities alike. As stated above, the first order of business is to devise a supply chain management policy in line with the anticipated regulatory framework.

The Act is expected to be signed into law by mid-February and will most likely come into effect on 1 July 2004.

See the next *Bulletin* or the website for further implementation details.



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