



## NATIONAL TREASURY

### MFMA Circular No 110

## Municipal Finance Management Act No. 56 of 2003

## UNFAIR CRITERIA USED IN BIDDING PROCESSES RELATING TO INFRASTRUCTURE PROCUREMENT AND THE CHARGING OF EXCESSIVE FEES FOR TENDER DOCUMENTS

### PURPOSE

The purpose of this Treasury Circular is to inform accounting officers of municipalities and municipal entities that using membership of voluntary associations as a measure for eliminating bidders from an infrastructure procurement process, as well as charging excessive fees for tender documents, goes against the spirit and letter of the SCM regulatory framework.

### BACKGROUND AND DISCUSSION

It has come to the attention of the National Treasury that some municipalities are engaging in potentially discriminatory practices through the use of an unfair criterion in infrastructure procurement processes as well as charging excessive fees for tender documents.

In terms of section 112 (1) of the Municipal Supply Chain Management Act (MFMA), the supply chain management policy of a municipality or municipal entity must be fair, equitable, transparent, competitive and cost-effective and comply with a prescribed regulatory framework for municipal supply chain management.

### PROHIBITION OF UNFAIR PRACTICES

Section 4 of the Council for the Built Environment Act, Act 43 of 2000, provides for the recognition of any voluntary associations by the “councils for the professions” in terms of any of the following “professions’ Acts”:

- a) The Architectural Profession Act 44 of 2000
- b) Project and Construction Management Professions Act, 2000
- c) Engineering Profession Act, 2000
- d) Landscape Architectural Profession Act, 2000
- e) Property Valuers Profession Act, 2000
- f) Quantity Surveying Profession Act, 2000

Whilst voluntary associations represent the interest of professionally registered individuals, some institutions however, are using membership of voluntary associations as a criterion to unfairly eliminate bidders from procurement processes.

In keeping with the principles and the enabling supply chain management framework,

accounting officers must avoid using any criteria that are inconsistent with the above framework, for example, using membership of voluntary associations as a criterion to exclude bidders from consideration in an infrastructure procurement process.

With regard to the sale of bid documents, accounting officers may decide to charge a refundable or non-refundable fee for bidding documents if and when necessary, provided that:

- a) The fee should be reasonable and reflect only the cost of their printing and delivery to prospective bidders; and
- b) All monies received for the sale of bidding documents must be dealt with in accordance with section 8(2) and 85(2) of the MFMA in the case of municipalities and municipal entities.

## CONCLUSION

Accounting officers of municipalities and municipal entities are therefore advised to review their policies and bring them in line with the content of this Circular as well as to bring this to the attention of their respective administration, municipal councils, board of directors of municipal entities.

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