



Supply Chain Management

Many municipalities have requested guidance on how to proceed with supply chain management until the new regulatory framework takes effect on 1 December 2004. This circular has been prepared to assist municipalities in the interim period.

The Municipal Finance Management Act, No. 56 of 2003 (MFMA) became effective on 1 July 2004. In terms of section 180 of the MFMA, the Minister of Finance delayed the implementation of most of the supply chain management provisions (sections 110 to 116) until 1 December 2004.

A new framework for supply chain management for municipalities and municipal entities will be promulgated from 1 December 2004, to be phased in from this date.

1. Procurement and Service Delivery

1.1 The delay of the implementation of sections 110 to 116 is intended to assist municipalities to phase in the reforms required for supply chain management. For the interim period until 1 December 2004, the prescripts of the Local Government Transition Act, No. 209 of 1993 (LGTA) and its related regulations, continue in effect and should be adhered to until the framework for supply chain policy is promulgated from 1 December 2004. The LGTA prescribes thresholds for obtaining quotations, solicitation of competitive bids and how to act in a case of emergency.

2. Appointment of Tender Committees

2.1 Although the MFMA recognises council as the highest authority, and further makes a clear distinction between its oversight role and the administrative functions of the accounting officer, section 60 vests the accountability for the implementation of the MFMA with the municipal manager. For a municipal entity, section 93 prescribes that the chief executive officer of the entity will be the accounting officer.

2.2 Section 117 prohibits the involvement of councillors in any tender or bid committee. The accounting officer is responsible and accountable for all expenditure incurred by the municipality or municipal entity, within the approved budget. The responsibility to award bids (tenders) is with the accounting officer who acts within the policy direction of council and reports regularly to council. The implementation of section 117 is effective from 1 July 2004, as it has not been delayed nor exempted.

2.3 It follows that each municipality must review its existing tendering policy and ensure it complies with the MFMA and the LGTA. This necessitates the immediate removal of all councillors from tender or bid committees and delegation of appropriate decision making powers to the accounting officer. Where council has failed to do so, all bids approved after 1 July 2004 will need to be delayed until appropriate delegations are in place. From 1 July 2004, bids or tenders cannot be approved by a committee where a councillor is a member or observer.

2.4 Where a council is unable to comply with this requirement immediately, and for good reason, the council should immediately apply to the National Treasury for an exemption in complying with section 117 of the MFMA. An exemption may be granted until the next meeting of council at which time it is expected that the tendering and delegations policy will be reviewed. An application by a municipality for an exemption from section 117 must be in writing and signed by the mayor and municipal manager. The request must be fully motivated and include valid reasons for the failure to comply and the date of the next council meeting to address this matter.

3. **Delegations**

3.1 Section 79 of the Act empowers the accounting officer of a municipality to delegate decision-making powers to officials. The onus would be on the accounting officer to decide whether he/she delegates tendering decision-making powers and what the thresholds in this regard should be. The policy principle remains that decision-making should be delegated to senior managers only, but accountability cannot be delegated and will remain with the accounting officer. All delegations must be in writing.

4. **Participation of advisors**

4.1 The accounting officer may procure the services of advisors to assist in the execution of the supply chain management function. Obtaining these services should be through a competitive bidding process. No advisor may, however, form part of the final decision-making process regarding the award of bids, as this will counter the principle of vesting accountability with the accounting officer. The accounting officer should not delegate decision-making authority to a person other than a senior manager. Should the system be abused in any way, the accounting officer can act against the senior manager concerned in accordance with their conditions of employment, which he/she cannot do with an advisor or consultant.

5. **The oversight role of the council**

5.1 The council has an oversight role in ensuring that the accounting officer executes council's policy. The council is empowered to make supply chain policy within the ambit of the applicable legislation, such as the prescripts contained in the MFMA, the LGTA, the Preferential Procurement Act, No 5 of 2000 and the Broad-Based Black Economic Empowerment Act, No 53 of 2003.

5.2 The accounting officer should on a monthly basis report to the Executive Mayor/Exco and, on at least a quarterly basis, to Council on implementation of the supply chain management policy. This will include progress made in respect of achieving the objectives prescribed in the council's and government's policies.

5.3 Cognisance must be taken of section 33 the MFMA and contracts that impose a financial obligation on the municipality for a period beyond the three years contained in the annual budget. Such contracts must be done in terms of a public process and include appropriate scrutiny of financial obligations.

6. Interference

6.1 Section 118 of the MFMA took effect on 1 July 2004 and makes it an offence for a person to interfere in the supply chain management system or to tamper with any tenders, quotations, contracts or bids after their submission. We refer you to sections 171 to 174 in this regard.

7. Compilation and promulgation of the framework

7.1 The framework for supply chain management for municipalities and municipal entities will take effect on 1 December 2004. A draft will be available during August/September and a consultative workshop is planned to discuss the draft. Municipalities and key stakeholders will be invited to participate in this workshop and will be invited to submit comments for consideration in the finalisation of the framework and regulations.

Conclusion

This circular is issued to provide guidance to municipalities and municipal entities on interim tendering requirements and to assist with preparations to implement the broader supply chain provisions contained in the MFMA.

National Treasury urges all municipalities to apply the spirit of the legislation as soon as possible. The implementation strategy does allow adequate time for low and medium capacity municipalities to fully comply.

Requests for further information on the supply chain management provisions or any related matters are to be directed to the dedicated MFMA email address or website listed below.

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