

Municipal Finance Improvement Programme (MFIP III)

CIGFARO SEMINAR SECTION 217

Eastern Cape

PRESENTER: MISS B DANI



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



National Treasury
REPUBLIC OF SOUTH AFRICA

Section 217 of the Constitution

Sub-Section 1

When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

Section 217 of the Constitution

Sub-Section 2

Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for

- a. categories of preference in the allocation of contracts; and
- b. the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination

Sub-Section 3

National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.

Basic Requirements of A System That is Fair

- (a) The process of offer and acceptance is conducted impartially without bias and provides participating parties simultaneous and timely access to the same information.
- (b) Terms and conditions for performing the work do not unfairly prejudice the interests of the parties.

Basic Requirements of A System That is Equitable

- (a) The only grounds for not awarding a contract to a tenderer who complies with all requirements are:
 - a. restrictions from doing business with the organization
 - b. lack of capability or capacity
 - c. legal impediments and
 - d. conflicts of interest.

Basic Requirement of a System that is Transparent

- (a) The procurement process and criteria upon which decisions are to be made shall be publicized.
- (b) Decisions (award and intermediate) are made publicly available together with reasons for those decisions.
- (c) It is possible to verify that criteria were applied.
- (d) The requirements of procurement documents are presented in a clear, unambiguous, comprehensive and understandable manner.

Basic Requirement of a System that is Competitive

- (a) The system provides for appropriate levels of competition to ensure cost-effective and best value outcomes.

Basic Requirement of a System that is Cost Effective

- (a) The processes, procedures and methods are standardized with sufficient flexibility to attain best value outcomes in respect of quality, timing and price, and the least resources to effectively manage and control procurement processes.

Promotion of other objectives

- (a) The system may incorporate measures to promote objectives associated with a secondary procurement policy subject to qualified tenderers not being excluded and deliverables or preferencing criteria being measurable, quantifiable and monitored for compliance.

MFMA SECTION 116 – CONTRACT MANAGEMENT



(1) A contract or agreement procured through the supply chain management system of a municipality or municipal entity must—

a) be in writing

- a. We need to take note that that contract or agreement procured through supply chain management policy is separated from other contracts
- b. The word ‘must’ has been used. Therefore if there is no written contract or agreement there is no contract or agreement
- c. The terms of reference, the specification, a letter of award or a bid document or a bill of quantities is not a contract
- d. These however, do qualify as contract documentation
- e. This means that in the process of preparing a contract reference shall be made to these documents

MFMA SECTION 116 – CONTRACT MANAGEMENT



(b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for

- (i) the termination of the contract or agreement in the case of non- or underperformance;
 - a. This requires that the contract document must stipulate the deliverables under the contract as well as timeframes for such deliverables.
 - b. If the contract document is not detailed to this level it is very difficult to detect non- performance and under-performance.
 - c. This call for continuous monitoring of performance. The contract or an agreement must stipulate the intervals for conducting monitoring and evaluation of the contract

MFMA SECTION 116 – CONTRACT MANAGEMENT



- (i) dispute resolution mechanisms to settle disputes between the parties;
 - a. Because two parties are coming together, disputes are inevitable.
 - b. Therefore procedures for lodging disputes should be detailed in the contract or in the agreement
 - c. At all times, disputes should be in writing
 - d. The contract should mention the official to whom the disputes should be directed to within the municipality as well as the timelines for resolution of disputes which timelines should be specified for both the service provider as well as the municipality
 - e. The contract or an agreement should further indicate procedures where the two parties are failing to resolve the dispute

MFMA SECTION 116 – CONTRACT MANAGEMENT



- (i) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years; and
 - a. a review of a contract should assist the municipality to decide whether contract should continue or not
 - b. for the purpose of the review it is important that the municipality should develop standard templates which shall be used for reporting as well as for reviewing the contract

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- a. the outline of officials or individuals who are responsible for conducting the review as well as signing for review should be consistent with the system of delegations and sub-delegations as adopted in the municipality and the designations as arranged within the municipality as well as the assertion as made by the service provider in the bid submissions.
- b. These templates should be annexed to the contract as signed by and between the municipality and the service provider.
- c. The templates must be signed as an acknowledgement that both parties are aware.
 - (i) any other matters that may be prescribed.

MFMA SECTION 116 – CONTRACT MANAGEMENT



- (2) The accounting officer of a municipality or municipal entity must—
- (a) *take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the municipality or municipal entity is properly enforced;*
 - a. the accounting officer should review the contract management framework and prepare a report to council which report shall detail the institutional arrangements which are necessary for the implementation of a contract management function
 - b. the adoption of contract management policy by council shall serve as a permission by council for the accounting officer to implement the contract management function

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- a. consequently, the contract management function must be resourced like any other function which is implemented in the municipality. It shall therefore be reflected in the IDP review and further quantified in the budget

MFMA SECTION 116 – CONTRACT MANAGEMENT



- a. the process of dealing with institutional arrangements shall be sealed with developing a system of delegations and sub-delegations as well as services standards which system and standards shall be adopted by council
- b. the ability of the accounting officer to properly enforce contracts is dependent on these
- c. enforcing contracts call for recognition of each contract individually
- d. in other words the municipality cannot work with sample population.
- e. Each contract must be enforced and an account must be given for each contract.
- f. Enforcing the contract also means ensuring that when payments are due and valid they are released timeously by the municipality

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- (b) monitor on a monthly basis the performance of the contractor under the contract or agreement
- a) A monthly performance report should be prepared for each contract
 - b) The preparation of the report should be consistent with the reporting framework as was agreed during contracting phase as also outlined in the contract.
 - c) Therefore, there shall be no surprises
 - d) It will serve the municipality well to translate the contents of the contract or agreement into a monitoring and evaluation template, which template shall be annexed to the contract and shall be signed by both parties.
 - e) This template should be developed for each contract or agreement

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- (c) *establish capacity in the administration of the municipality or municipal entity*
- (i) *to assist the accounting officer in carrying out the duties set out in paragraphs (a) and (b); and*
- (ii) *to oversee the day-to-day management of the contract or agreement; and*
- a. at the point of taking a decision to implement contract management function, one of the institutional arrangement is that of review of organogram.
- b. Of the officials that are required to participate in contract management, there are those which are already in the employ of the municipality and there are those who must be recruited afresh.

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- a. With regards to those that are in the employ there will be a need profile them in terms of qualification and experience. Where it is evident that they lack in terms of understanding of contract management, develop a training plan and further implement it
- b. With regards to those that are still to be recruited, factor knowledge of contract management as part of job description as well as, as one of the requirements for the job
 1. Contract management should also be included as part of performance agreements and work plans

MFMA SECTION 116 – CONTRACT MANAGEMENT



(d) regularly report to the council of the municipality or the board of directors of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.

- a. Preparation of individual performance report for each contract or agreement
- b. The accounting officer must establish a contract performance committee
- c. The committee shall be exclusively composed of officials from the municipality
- d. The service provider shall also be invited to make representations

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- (3) *A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after—*
- a) *the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and*
 - a. Request for amendment should be supported by a performance report for the contract under consideration
 - b. All amendments should be directed to the accounting officer
 - c. All amendments shall be dealt with within a committee system
 - d) The accounting officer shall refer the request for amendment to the evaluation committee for assessment

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- d) The evaluation committee shall examine the request taking into consideration the performance report for the contract or agreement as well as the provisions of the contract as was signed
- e) The evaluation committee shall prepare the report and submit it to the adjudication committee
- f) The adjudication committee shall after considering the report of the evaluation committee, prepare the report and submit it to the accounting officer
- g) Consequently, the accounting officer shall prepare a submission and table it to the council
- h) This means that the shall take a decision as to whether the amendment should be accepted also taking into consideration the representations which have been submitted by the local community

EXPENDITURE MANAGEMENT



- (1) The accounting officer of a municipality is responsible for the management of the expenditure of the municipality.
- (2) The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure—
 - (a) that the municipality has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds;
 - (b) that the municipality has and maintains a management, accounting and information system which—
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the municipality; and
 - (iii) accounts for payments made by the municipality;
 - (c) that the municipality has and maintains a system of internal control in respect of creditors and payments;
 - (d) that payments by the municipality are made—
 - (i) directly to the person to whom it is due unless agreed otherwise for reasons as may be prescribed; and
 - (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only, and only up to a prescribed limit;

EXPENDITURE MANAGEMENT



- (e) that all money owing by the municipality be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure;
- (f) that the municipality complies with its tax, levy, duty, pension, medical aid, audit fees and other statutory commitments;
- (g) that any dispute concerning payments due by the municipality to another organ of state is disposed of in terms of legislation regulating disputes between organs of state;
- (h) that the municipality's available working capital is managed effectively and economically in terms of the prescribed cash management and investment framework;
- (i) that the municipality's supply chain management policy referred to in section 111 is implemented in a way that is fair, equitable, transparent, competitive and cost-effective; and
- (j) that all financial accounts of the municipality are closed at the end of each month and reconciled with its records.

Thank You

