

Supply chain management and public-private partnership provisions

Chapter 11 of the Municipal Finance Management Act came into force on 1 July 2004. This Chapter contains provisions that strictly regulate both the acquiring of goods and services and the disposal of municipal assets. The objective behind it is to ensure accountable and corruption-proof procurement processes in line with those at national and provincial levels. A sound knowledge and understanding of its provisions is therefore an essential requirement for all municipalities and municipal entities.

Chapter 11 is divided into two parts. The first deals with supply chain management and the second with public-private partnerships. The subject of supply chain management was dealt with in some detail in our February 2004 issue and so only a brief overview of its provisions is provided here.

Supply chain management (SCM)

Chapter 11 applies to:

- the *procuring* of goods and services;
- the *disposal* of goods no longer needed;
- the *selection of contractors* in the provision of municipal services;
- the *selection of external mechanisms* for the provision of municipal services.

Each municipality and municipal entity must, as a first step, adopt and implement a supply chain

management policy (SCMP). This policy must be fair, equitable, transparent, competitive and cost-effective.

Framework for a SCMP

The SCMP of a municipality or municipal entity must comply with a prescribed framework. The framework sets down what issues the policy must, *at least*, cover. These minimum requirements include matters such as procedures for the opening and evaluation of tenders, negotiations surrounding the conclusion of the contract and approval of tenders, screening of prospective contractors and the compulsory disclosure of interests that prospective contractors may have in specific contracts.

People convicted of fraud or corruption in the previous five years are barred from tendering and the policy has to contain measures to both combat fraud and corruption *and* to promote the ethics of officials in the SCM.

SCM provisions also regulate unsolicited bids, the conclusion of agreements, the administration of contracts and the required competency levels of officials involved in the SCM. Of huge significance is that councillors are barred from serving on municipal tender committees. The Act expressly provides that “[n]o councillor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer”. The Act also prohibits anyone from interfering with the supply chain management system or amending or tampering with any tenders, quotations, contracts or bids after their submission.



key points

- Supply chain management policies must now be adopted and implemented.
- Councillors may not serve on municipal tender committees.
- Municipalities must be proactive in combating fraud and corruption in the supply chain process.
- Municipalities can enter into PPPs if value-for-money, affordability and appropriate risk transfer can be shown.
- Public participation, feasibility studies and soliciting of comment from various government departments are required when deciding on a PPP.
- The provisions of Chapter 8 of the Systems Act must also be complied with.

Public-private partnerships

Procurements involving public-private partnerships (PPPs) are covered by the SCM provisions but, given their inherently more complex nature, are subject to added protections and regulatory provisions.

A municipality is authorised to enter into a PPP agreement on condition that it provides value for money, is affordable and transfers appropriate technical, operational and financial risk to the private party. If the PPP agreement involves the provision of a municipal service, then it is important to note that Chapter 8 of the Municipal Systems Act 32 of 2000 (as amended by Act 44 of 2003) must also be complied with. As the Systems Act procedures also require a feasibility study and public commenting process, the municipality will have to consider the contents of both Acts carefully when wishing to pursue a PPP.

Feasibility studies

Before the conclusion of a PPP agreement, a municipality is obliged to conduct a feasibility study. The study must explain the strategic and operational benefits of the PPP agreement and describe in specific terms:

- the nature of the private party's role in the PPP;
- the extent to which this role can be performed by a private party; and
- how the proposed agreement will provide value for money, be affordable and transfer appropriate technical, operational and financial risks to the private party.

The study must also consider the impact of the PPP on the municipality's revenue flows and its current and future budgets.

The study must also take account of all relevant information and explain the capacity of the municipality to effectively monitor, manage and enforce the agreement. National government may assist municipalities in the conduct of feasibility studies.

Report on feasibility studies

On completion of a feasibility study, the municipality's accounting officer must submit a report on the study to the council for a decision on whether to continue with the proposed PPP. Public participation is built into the process as the municipality must give the public notice of the particulars of the proposed PPP together with a copy of the report on the feasibility study. This must be done to enable the local community and other interested parties to submit comments to the municipality on the proposed PPP.

Finally, the municipality must also solicit the views and recommendations of the national treasury and the national department responsible for local government. If the PPP involves the provision of water, sanitation, electricity (or any other service as may be prescribed), the views and recommendations of the responsible national department must be obtained.