



Supply Chain Management Issues

Municipalities and municipal entities are to be complimented for implementation of the supply chain management reforms. We have received several queries with respect to the following matters. Your cooperation is requested to ensure adequate safeguards are in place to address these matters:

- excluding certain categories of bidders
- the use of cost estimates as a threshold for short-listing bids
- measurables attached to specific goals for which preference points are awarded

The South African Revenue Services has also issued a new tax clearance certificate application form, which is attached and replaces the previous form issued in MFMA circular No. 25.

Excluding certain bidders

The National Treasury has received several enquiries that organs of state are inviting bids with conditions that promote set-asides or exclude certain categories of potential bidders from bidding for government contracts. This practice has to be reviewed and corrected.

Section 217 (2) of the Constitution allows for organs of state to implement a procurement policy that provides for categories of preference in the allocation of contracts and the protection or advancement of persons or categories or persons disadvantaged by unfair discrimination. Section 217 (3) of the Constitution makes provision for national legislation to prescribe a framework within which this policy must be implemented.

This national legislation was prescribed in the form of the Preferential Procurement Policy Framework Act (PPPFA), Act No. 5 of 2000. The preferences contemplated in the Constitution and PPPFA provide for the protection or advancement of categories of persons, disadvantaged by unfair discrimination without prohibiting any category of bidders from bidding for government contracts. An opinion received from the Office of the Chief State Law Advisor confirms that any bid condition that will exclude certain categories of potential bidders from bidding for contracts, is unconstitutional.

Municipalities and municipal entities are, therefore, required to give all potential suppliers an opportunity to bid for government contracts. The practice of issuing bid documents that contain conditions that promote set-asides or exclude certain categories of potential bidders from bidding for government contracts must be refrained from.

Cost estimate threshold to evaluate bids

It has also been brought to our attention that in some instances organs of state are incorrectly evaluating bids by using predetermined cost estimates as a threshold and bids

that exceed a certain range below or above that threshold are regarded as unacceptable or non-responsive.

The PPPFA prescribes that the lowest acceptable bid must receive 80/90 points for price. A bid is regarded as acceptable if:

- it complies in all respect with the specification and conditions of the bid;
- the bidder completed and signed all the prescribed bid forms to enable the principal to evaluate the submitted bid;
- the bidder submitted the required tax clearance certificate and other forms as prescribed by various Acts and in the bid documentation; and
- the bidder has the necessary capacity and ability to execute the contract.

Bids should only be evaluated in accordance with the evaluation criteria stipulated in the bid documentation. When any bid is passed over or regarded as non-responsive, the reasons for passing over such bid must be defensible in a court of law. Examples in this regard may include negative banking reports, non-submission of tax clearance certificates, not having the necessary capacity and/or capability and being listed on the Register for Tender Defaulters.

Deviation by more than a predetermined range from the cost estimates of the project or commodity is not a justifiable reason for the rejection of a bid and has, therefore, not been approved as an evaluation norm or criteria.

The use of a cost estimate threshold should not be confused with the annual budget allocation for the project or commodity, as all expenditure must be in terms of an approved budget.

Measurables for awarding preference points

It has also come to light that organs of state are inviting bids without clearly indicating in the bid documentation the goals to be promoted and the measurables for which preference points will be awarded for the promotions of such goals.

The PPPFA prescribes that any goals for which points are awarded must be measurable and clearly specified in the documentation accompanying the invitation to submit a bid. Municipal Supply Chain Management Regulation 21 (b) prescribes that bid documentation must include evaluation and adjudication criteria, including any criteria required by the PPPFA and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

To this end, accounting officers are required to ensure that when bids are invited, the specific goals to be promoted and the preference points allocated, together with measurables for the promotion of each goal, must form part of the bid documentation. These measurables must clearly indicate how the bidder will be awarded a score out of the maximum points allocated.

Tax Clearance Certificates

Revised application form for tax clearance certificate

South African Revenue Service (SARS) has introduced a revised form for the *Application for a Tax Clearance Certificate TCC 001* (attached). This form replaces the one that was attached to the municipal bidding document MBD 2 previously issued on 3 October 2005 as part of MFMA Circular No 25.

Accounting officers are required to utilize the attached municipal bidding document form MBD 2 (Tax Clearance Requirements) together with the SARS TCC 001 (Application for a Tax Clearance Certificate) on all future bid invitations. The standard wording of these forms should not be amended. Please ensure your records are updated accordingly.

The Application for a Tax Clearance Certificate, TCC 001, is also available at any SARS branch office nationwide and on their website www.sars.gov.za. The procedure to obtain a copy is as follows:

- When the website opens, click on the drop down box “Forms” on the left hand side;
- Then click on the word “Go”;
- Scroll down to “Tax Clearance” on the right hand side; and
- Click on “TCC 001”.

The tax clearance certificate issued by the SARS to the applicant will no longer contain a signature and date stamp. It will, among others, capture a unique tax clearance certificate number as well as an approval and expiry date. A tax clearance certificate is valid for a period of one year from the date of approval.

Prior to the award of a bid, the accounting officer should verify the tax clearance certificate submitted by a potential contractor at any SARS branch office nationwide. Enquiries in this regard can be directed to SARS at telephone number 0860 12 12 18. The SARS will confirm such verification by electronic mail or per facsimile. Records of all verifications should be kept for audit purposes.

Tax clearance certificates for price quotations and competitive bids

If a municipality / municipal entity is in possession of a supplier's original valid tax clearance certificate, it is not necessary to obtain a new tax clearance certificate each time a price quotation or bid is submitted from that specific supplier. This provision may be applied only if the closing date of the price quotation or bid falls within the expiry date of the tax clearance certificate that is in the municipality's / municipal entity's possession. Whenever this ruling is applied, cross-reference must be made to the original tax clearance certificate for audit purposes.

Threshold for obtaining tax clearance certificate

The tax clearance certificate requirements should be applicable to all transactions exceeding a value of R30 000 (thirty thousand rand, including VAT).

Conclusion

It is incumbent on the accounting officer to ensure this circular is brought to the attention of supply chain management officials and to confirm that appropriate systems are in place to comply with the legislation.

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