

SOL PLAATJE LOCAL MUNICIPALITY



**DIRECTIVE 01: PROCUREMENT THROUGH DEVIATION – TO BE READ IN
CONJUNCTION WITH THE APPROVED SUPPLY CHAIN MANAGEMENT
POLICY**

14 March 2022

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PROCUREMENT THROUGH DEVIATION FROM NORMAL SUPPLY CHAIN MANAGEMENT PROCEDURES

1. LEGISLATIVE BACKGROUND TO DEVIATION FROM NORMAL SCM PROCEDURES

Chapter 11 of Municipal Finance Management Act (MFMA) refers to the procurement of goods and services. Section 112 of the act prescribes that the

1. 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, which must cover at least the following:
 - a) The range of supply chain management processes that municipalities and municipal entities may use, including tenders, quotations, auctions and other types of competitive bidding;
 - b) when a municipality or municipal entity may or must use a particular type of process;
 - c) procedures and mechanisms for each type of process;
 - d) procedures and mechanisms for more flexible processes where the value of a contract is below a prescribed amount;
 - e) open and transparent pre-qualification processes for tenders or other bids;
 - f) competitive bidding processes in which only pre-qualified persons may participate;
 - g) bid documentation, advertising of and invitations for contracts;
 - h) procedures and mechanisms for—
 - (i) the opening, registering and recording of bids in the presence of interested persons;
 - (ii) the evaluation of bids to ensure best value for money;
 - (iii) negotiating the final terms of contracts; and
 - (iv) the approval of bids;
 - i) screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;
 - j) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;
 - k) participation in the supply chain management system of persons who are not officials of the municipality or municipal entity, subject to section 117;
 - l) the barring of persons from participating in tendering or other bidding processes, including persons—
 - (i) who were convicted for fraud or corruption during the past five years;
 - (ii) who wilfully neglected, reneged on or failed to comply with a government contract during the past five years; or

- (iii) whose tax matters are not cleared by South African Revenue Service;
- m) measures for—
 - (i) combating fraud, corruption, favouritism and unfair and irregular practices in municipal supply chain management; and
 - (ii) promoting ethics of officials and other role players involved in municipal supply chain management;
- n) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by—
 - (i) councillors in contravention of item 5 or 6 of the Code of Conduct for Councillors set out in Schedule 1 to the Municipal Systems Act; or
 - (ii) municipal officials in contravention of item 4 or 5 of the Code of Conduct for Municipal Staff Members set out in Schedule 2 to that Act;
- o) the procurement of goods and services by municipalities or municipal entities through contracts procured by other organs of state;
- p) contract management and dispute settling procedures; and
- q) the delegation of municipal supply chain management powers and duties, including to officials.

2. REQUESTS TO DEVIATE FROM NORMAL SUPPLY CHAIN PROCEDURES AS PER THE FINANCIAL THRESHOLD OR COST ESTIMATE OF THE PROJECT

Requests from National departments, Public entities, Constitutional institutions and Provincial treasuries to deviate from standard bidding processes when procuring goods or services. Provincial institutions should direct their requests to the relevant treasuries.

2.1 Key points

1. An open bidding process is best practice to ensure that the services government receives are at a competitive price.
2. Project Managers may request approval to deviate from standard procurement processes. The Finance Department can support, support with conditions or not support the requests.
3. An example of a deviation request is asking for permission to contract another organ of state to do the work.
4. When a Line Manager requests permission to single source supplier of a good/service, it may be justified if the supplier has exceptional skill or is the only supplier capable of delivering the good/service, or that there is no other company registered for that service or commodity in the CSD.
5. Deviations should be the exception rather than the norm and should not be requested frequently.

If a section is frequently requesting approval to deviate from standard procurement processes, it can be an early warning sign that the procurement function is not planning its procurement adequately. It can also serve as an indication of possible poor governance practices and service delivery issues.

3. CONDITIONS/CIRCUMSTANCES THAT NECESSITATE DEVIATION

There are mandatory and extreme conditions that compels a Line Manager to urgently want to dispense of Supply Chain Management or procurement and these reasons should at least cover the following;

- a) Disastrous situation leading to loss or damage to public or private property
- b) Life threatening
- c) Environmental pollution
- d) Loss of revenue by the municipality

These circumstances may lead to emergency procurement to mitigate the risk anticipated from the eventuality, and in the case of an eventuality, minimize the impact on life, environment and property.

Emergency procurement in its nature is aimed to avert temporarily, whilst permanent strategies must be sought to address the situation.

The following definitions are contained in SCM Policy and are re-iterated here for ease of reference:

4. DEVIATIONS FROM SCM/PROCUREMENT PROCESS

Deviations from, and ratification of minor breaches of, procurement processes (Section 36 of the Municipal Supply Chain Management Regulations) Section 36 allows for the official policy to be dispensed with but only –

- a) in an emergency
- b) if such goods or services are produced or available from a single provider only
- c) for the acquisition of special works of art or historical objects where specifications are difficult to compile
- d) acquisition of animals for zoos; or
- e) in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and

The Accounting officer must record the reasons for any deviations in terms of sub regulation 1(a) and (b) and report them to the next meeting of the Council, and include as a note to the annual financial statement.

The following conditions do not necessitate deviation from normal supply chain management processes:

- a) Poor planning does not constitute an emergency. Known facts must be provided for in terms of operations and maintenance, or at least create a rotational database to appoint from when the need arises.

An emergency is defined as an unexpected and sudden event that must be dealt with urgently and where there is an immediate threat to revenue, to property, to life and limb.

In cases where it is impractical or impossible to follow the official procurement process it must be shown where and how the market was tested, why it is impractical to go to tender, the

provider chosen was undertaken in a fair manner so as not to prejudice other potential providers, etc. where it would be against the Municipality's best interest to follow the proper procurement process.

Requests that are submitted in accordance with Section 36 of the Supply Chain Management Regulations must be directed to the Municipal Manager, through the Chief Financial Officer or Head of Supply Chain Management Unit. The requests must also be submitted to the Bid Adjudication Committee, thereafter the report will be submitted to the Accounting Officer for approval.

All reports of this nature are to be signed by the Head: SCM or his delegate who will check:

- a) Is the motivation valid?***
- b) Is there sufficient reason for not going out to tender?***
- c) Is there adequate finance?***
- d) Is the process fair, equitable, as transparent as can be, cost effective?***
- e) Can the Municipality adequately account for making such a decision?***
- f) Is there no existing tender similar to the request?***

The Accounting Officer must record the reasons for any deviations as mentioned above, and report it to the next meeting of the council, or board of directors in the case of a municipal entity, and include as a note to the annual financial statements.

5. DETAILED DEFINITIONS OF INSTANCES GIVING RISE TO DEVIATION

5.1 Single supplier source

This is an instance defined as approaching a single supplier and obtaining a price quotation from that supplier. It is important that the basis for selecting the particular supplier over other similar or available suppliers is clearly documented. The most appropriate means of using single or limited sourcing is to establish a database of prospective suppliers (such a database must be established through a public invitation, specifying the nature of the goods or services that will be procured) or otherwise in a manner that is in the best interest of the municipality.

5.2 Exceptional cases where it is impractical or impossible to follow official procurement processes

5.2.1 It is common in the municipality that certain procurement procedures such as definition of the scope of work can be complex, complicated or there are uncertainties, for this to be considered the following must be prevalent in the motivation:

- i) Unknown specification
- ii) Receipts of no tender or inappropriate or unacceptable tenders
- iii) Best value
- iv) National security
- v) Professional advice

vi) Acquiring goods through an auction

Following are some practical examples that may apply:

5.2.1 Market conditions

In an instance where the market does not lend itself to a bidding process, whether owed to intellectual property rights, licencing privileges, lack of competition and/or lack of interest, care must be taken to prove with documented evidence that this is the case, otherwise the deviation will be classified as irregular. This definition also covers the term 'sole provider' whereby there is only one qualifying supplier for a given product of service, owed to location or intellectual property rights or licencing [Also see MFMA SCM Regulation 36 (a)(ii)].

5.2.3 Unclear specifications

Any instance where the product or service is not clearly definable in the terms of reference or specifications, to the point that a solution to a problem is being sought, constitutes an unclear specification. Such instances could result in inconsistent proposals or the outcome of the bidding process having to be negotiated. Care must be taken that this definition is not utilised when seeking to appoint consultants for advisory services (which is a definable service) or in instances where a specification could have been developed through other means (such as an expression of interest or hiring a subject matter expert) [Also See MFMA SCM Regulation 36 (a)(iii) & (iv)]

5.2.4 Security or confidentiality

These instances occur where the security or confidentiality of a matter is so sensitive that following the normal procurement process may compromise the security or confidentiality of the requirement. Only matters of National security, instances where the leaking of information could materially affect the operations (including its financial position) of government or prejudice a judicial position of government would fall into this category.

5.2.5 Legal reasons

A legal right created that supersedes the working of the prescripts any instance where international law or a legal obligation that was created outside the working of the prescripts supersedes the prescripts. Examples include international trade agreements, any rules or laws imposed on a process by another government (foreign transactions) or a court order/judgment.

Once a transaction has been classified as 'impractical' it becomes necessary to define 'the other means' through which the goods or services will be procured (including quotations, negotiations and time deviations):

6. PROCEDURE FOR DEVIATION

No department will be allowed to have a Deviation Form in their possession. Deviations will be issued by Head of SCM, prenumbered with the definition of services required as per the requestor of the form.

Step by step process:

1. Line Manager/User shall request the deviation form from the Head of SCM and define the services required and the motivation for deviation. The motivation must meet the definition as expanded on above.
2. The Line Manager/User must provide the pre-valuation criteria that must be complied with, this shall include CIDB Grading or Voluntary Association Membership or any that applies
3. Once the nature of work/ goods/commodities or industry has been defined, Demand Manager will draw a list of registered service providers on CSD accordingly, and provide the list to the Head of SCM. The list will be in three forms, service providers within

| No# | Criteria | Minimum Baseline for Points allocation |
|-----|---|--|
| 1. | Offices within the vicinity of SPM | 10 |
| 2. | Offices within the vicinity of Francis Baard District | 7 |
| 3. | Offices within the Northern Cape Province | 5 |
| 4. | Offices within the Republic of South Africa | 3 |

4. The Head of SCM shall provide a deviation certificate, prenumbered to the Line Manager, populated with the type of procurement, the motivation and list of service providers
5. The Line Manager/User will obtain at least 5 quotations for the service required by - email all 5 service providers and give timelines for the closing of submission of quotes. The Head of SCM shall be copied in the communication.
6. SCM will evaluated the 5 quotations received and give feedback to the Line Manager/User
7. Once concurred upon with the Line Manager, the deviation template is further completed and authorization process begins
8. The CFO or the Executive Director concerned presents the deviation to the Municipal Manager for authorization
9. Once deviation is signed, the CFO submits the authorized deviation to Head of SCM for issuing of the order, the project is assigned a contract reference number
10. No work must be done prior to the issuing of an official order and appointment letter.
11. A letter of appointment is prepared by the Head of SCM and issued with the order to the appointed service provider.

7. ANNEXURE A. PROCUREMENT DEVIATION CERTIFICATE

SOL PLAATJE MUNICIPALITY

PROCUREMENT DEVIATION CERTIFICATE

| 1. DEVIATION INFORMATION | |
|---|---------------|
| Project Name/ Description of Deviation: | |
| Prepared by Line / Project Manager: | Cell No: |
| | Ext. No: |
| Official Order Number: | |
| Date: | XX March 2022 |

Deviation procurement process in terms of the Supply Chain Management Policy Sections 36 (1) and (2) and the, Municipal Supply Chain Management Regulations, Gazette No. 27636 of 30 May 2005, Section 36 for the following reasons:

| 2. TYPE OF DEVIATION APPLICATION | |
|--|-------------------------------|
| <i>Mark with an X on type of deviation for application</i> | |
| 1) An Emergency: | Yes: <input type="checkbox"/> |
| 2) Sole Provider: | Yes: <input type="checkbox"/> |
| 3) Work of Art or Historical Object: | Yes: <input type="checkbox"/> |
| 4) Acquisition of animals: | Yes: <input type="checkbox"/> |
| 5) Exception cases: | Yes: <input type="checkbox"/> |

No work should be done prior to the approval of the deviation, and an official order. Only SCM would advise the accounting officer on issuing appointment letters once the order number is generated.

3. PROCUREMENT DEFINITION / SERVICE REQUIRED

Describe, in specific terms, what items will be procured and under what conditions or type of Service required:

4. DESCRIBE DETAILED REASONS:

Describe, in specific terms, what are the reasons for procurement / service required

1. Background of Project

2. Costs of Project

3. Reasons for the deviation of the project

5. ESTIMATED COST / BUDGET CONSIDERATION

Provide an estimated total cost of all procurements in this product type / service required. Example: R1,567,000

1. Capital / Operational SCOA Vote:
2. Budget Vote Number:
3. Budget Amount:
4. Required Estimated Amount:
5. Budget Amount Spend:
6. Budget Amount Available:
7. Term of Deviation Contract

| | |
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Verification by the Chief Financial Officer / Delegate prior to Deviation (circle with pen)

Confirmed funds available or not available by BTO:

Name of BTO Officials:

Signature:

Date:

GO40 SCOA Printout Attached as “ANNEXURE A” on last page”

Verification from the Chief Financial Officer prior to the award of contracts above the value of R10 million, in line with MFMA Circular No. 62.

6. PROJECT PROCUREMENT PLAN / SIGNATURES

AUTHORITY APPROVAL

Name/ Description of project or deviation:
Order Number:
Council Resolution Number:

I have reviewed the information contained in this deviation application and agree / disagree:

| Print Name | Name and Surname | Signature | Date | Comments |
|--------------------------|------------------|-----------|------|----------|
| Project / Line Manager | | | | |
| Executive Director | | | | |
| BTO / Financial Manager | | | | |
| General Manager SCM | | | | |
| CFO | | | | |
| Acting Municipal Manager | | | | |

Verification from the Chief Financial Officer prior to the award of contracts above the value of R10 million, in line with MFMA Circular No. 62.

ANNEXURE A

| 7. GO40 SCOA PRINTOUT ATTACHED HERE |
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