

ITEM (09/2013)

Municipal Manager's Report to Council on the Deviation from and ratification of breaches from the Procurement processes for the 2012/13 financial year as well as the period 1 July to 30 September 2013

PURPOSE

To submit a report to Council on the deviation from procurement processes for the 2012/13 financial year as well as for the quarter ending 30 September 2013.

BACKGROUND

In terms of Section 36 of the Supply Chain Management Policy: Deviation from, and ratification of minor breaches of, procurement processes:

- (1) *"The accounting officer may –*
- (a) *dispense with the official procurement processes established by this Policy and to procure any required goods or services through any convenient process, which may include direct negotiations, but only –*
- (i) *in an emergency;*
 - (ii) *if such goods or services are produced or available from a single provider only;*
 - (iii) *for the acquisition of special works of art or historical objects where specifications are difficult to compile;*
 - (iv) *acquisition of animals for zoos and/or nature and game reserves;*
 - (v) *in any other exceptional case where it is impractical or impossible to follow the official procurement processes; and*
- (b) *ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely of a technical nature.*
- (2) *The accounting officer must record the reasons for any deviations in terms of subparagraphs (1)(a) and (b) of this policy and report them to the next meeting of the council and include as a note to the annual financial statements."*

Attached as Annexure A (pp1) please find the instance for the quarter July to September 2013 where the prescribed procurement processes were not followed but approved in terms of the Municipal Manager's delegated powers.

Attached as Annexure B (pp2 -5) please find the instances for the 2012/13 financial year where the prescribed procurement processes were not followed but approved in terms of the Municipal Manager's delegated powers. In two of these instances the deviations followed the normal Bid Committee process and were not submitted directly to the Municipal Manager. There two deviations were subsequently reported as part of the tenders awarded for the quarter and not reported as part of the deviations. Both the deviations for 2012/13 were duly approved by the Municipal Manager; it was just not reported to the Council.

The third deviation for 2012/13 was an insurance claim for the repair of the bird aviary in the Krugersdorp Game Reserve. The claim was handled by our Insurer Sankofa and our Broker, Lion of Africa. They appointed the Loss Adjustor who subsequently obtained the quotes for this claim to Council's property. As the official tender process was not followed, the Auditor-General is of the opinion that this

should have been reported as a deviation for the 2012/13 financial year. In order to prevent that this expenditure be classified as irregular (although paid by the Broker) permission is requested from Council to condone this expenditure and procedure followed.

RECOMMENDED TO MUNICIPAL COUNCIL:

1. that Council takes note of the item as per Annexure A (pp1) where the official procurement process was dispensed with, for reasons as mentioned in the report, with the approval of the Municipal Manager, for the quarter ending 30 September 2013.
2. above be included by the Chief Financial Officer as a note to the 2013/2014 annual financial statements.
3. that Council takes note of the item as per Annexure B (pp2-5) where the official procurement process was dispensed with, for reasons as mentioned in the report, with the approval of the Municipal Manager, for the previous financial year 2012/13.
4. That the 2012/2013 annual financial statements be amended to include the three deviations not previously reported.

**D MASHITISHO
MUNICIPAL MANAGER**

DATE:

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DISPENSING WITH CALLING FOR TENDERS FOR THE PERIOD FROM 1 JULY TO 30 SEPTEMBER 2013

ANNEXURE A

Department	Description	Reason	Approved Company	Amount (including VAT)
Integrated Environmental Management	Temporary Management of the Krugersdorp Game Reserve	MCLM terminated the contract with Protea Eco Adventures in January 2013 following the outcome of investigations. At this time the municipality appointed Red Ant Security Company as interim management company over the day to day operations of the Game Reserve. Their current appointment expired on 30 June 2013. An extension is requested until 30 October 2013 or until the new procurement process has been finalized.	Red Ant Security Services Cnr Von Brandis & Kruger Street, Krugersdorp	R 125 000 per month

DISPENSING WITH CALLING FOR TENDERS FOR THE 2012/13 FINANCIAL YEAR

ANNEXURE B

The following two deviations were duly approved by the Municipal Manager, but due to an oversight not reported to Council as deviations during the 2012/13 financial year:

Department	Description	Reason	Approved Company	Amount (including VAT)
Finance Department	F (R) 04/2013: Appointment of a service provider for the Collection of Payments for Municipal Services and Maintenance of Prepayment Electricity Vending System for a period of three years	<p>EasyPay was identified as the sole service provider for the provision of a third party cash collection agency for MCLM as well as the implementation and maintenance of a prepaid electricity vending system for MCLM for a period of three years. An official tender document was handed to Easypay as the sole provider and they complied with all the tender conditions.</p> <p>Due to the benefits that the new system (Itron) has brought to the municipality and to the community of Mogale City as a whole, due consideration had to be given regarding whether the system should be replaced as this is currently the best service in the market that can be provided to consumers. As the municipality owns the system, it is prudent to maintain the system and look for more cost efficient ways to maintain it. It is for this reason that the municipality investigated the feasibility of direct contracts for the services of iPay and EasyPay. The other reason for considering this option is that the municipality already has a contract with EasyPay for the receipt of payments for municipal services and it can be more cost effective to extend the service to include the</p>	<p>EasyPay (Pty) Ltd Belmont Road 14 Rondebosch Cape Town</p> <p>Officially appointed on 7 November 2012</p>	<p>According to the original report the amount was estimated at R 203 000 pm – actual figures have shown that the amount is R 175 000 pm.</p>

		electricity prepayment vending		
		Section 36 (1) (a)(i): Sole Service provider		
Infrastructure Services	I (FM) 34/2010: Termination of contract with Ngatana Trading Enterprise and appointment of an alternative contractor to complete the New Perimeter Security Fence around the Civic Centre as a matter of urgency	<p>The original tender for the construction of a new perimeter security fence around the Civic Centre was awarded to Ngatana Trading on 11 Oct 2010. After numerous meetings, warnings, legal advice and dispute resolutions the contract was terminated on 31 Aug 2012. On 21 Jan 2013 the contractor received another letter stating that they must remove from site their temporary buildings, plant, machinery and surplus material. The project was however unfinished and an eye-sore to everybody working in the Civic Centre, politicians and the public. The building rubble, disrupted gardens & half-built fence was considered to cause potential risks to the large number of people that daily visit the Civic Centre. Huge pressure was placed on the Building Maint Section to finalise this project as a matter of urgency</p> <p>Ultrasonic Express was on site working on a similar project: SS (SR) 14/2013: Construction of a new brick boundary wall and guardhouse around Kagiso Sport Complex</p> <p>Ultrasonic Express was then appointed as the main contractor to complete the outstanding and defects work in terms of tender I (FM) 34/2010</p> <p>Section 36 (1) (a)(v): Impractical to follow normal procurement process</p>	Ultrasonic Express cc 6652 Kagiso 2 East Park	R 2 863 215.73 (this amount include the outstanding work together with the electrical nominated sub-contractors outstanding work to be executed, including R 362 231.54 defects work and escalation to an approx. value of R 210 976.91

The following deviation was an Insurance Claim, and dealt with by Council's Insurance Broker, Lion of Africa during the 2012/13 financial year:

Department	Description	Reason	Approved Company	Amount (including VAT)
Integrated Environmental Manager	<p>Insurance Claim: Repair of the Bird Aviary at the Krugersdorp Game Reserve (DV 11024)</p> <p>On 22 November 2011 the bird aviary structure collapsed at the Krugersdorp Game Reserve as a result of hail storm damage.</p>	<p>The claim was referred to Councils Insurance Broker and due to the complexity and size of the structure a Civil Engineering Company (MDCC) was assigned to assess the damage, report on the cause of the structural failure and then design and cost a replacement structure for purposes of submitting an insurance claim.</p> <p>The following is the process that is followed in the instance of a property damage insurance claim:</p> <ol style="list-style-type: none"> 1. Mogale City will notify Sankofa Insurance Brokers as they are our intermediary (broker) /service provider for insurance. 2. Then Sankofa will notify Lion of Africa as they are the Insurer or risk carrier and ultimately settle claims. 3. Lion of Africa will then appoint an assessor or loss adjustor. At this point, it is Lion of Africa who have the right of appointing an assessor who works on Lion of Africa's behalf as Lion of Africa is the risk carrier or Insurer who will settle the claim. <p>The Quantity Surveyor as appointed by the Loss Adjustor of Lion of Africa approached six contractors to price the provisional Bills of Quantity as prepared by and subsequently received three responses. They recommended the lowest acceptable bid to Lion of Africa for appointment</p>	Alert Fencing PO Box 6636 Dunswart	R 375 326.64 (paid by Broker)

		Section 36 (1) (a)(v): Impossible to follow normal procurement process		
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RATIFICATION OF MINOR BREACH OF THE PROCUREMENT PROCESS

ANNEXURE C

Department	Description	Reason	Approved Company	Amount (including VAT)

