

10. LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, NO.32 OF 2000, DELEGATION OF POWERS CONFERRED ON THE EXECUTIVE MAYOR IN RESPECT OF SECTION 62 APPEALS

8/2/2

**C Le Roux
18 October 2017**

(028) 313 8107

Corporate Head Office

1. Executive Summary

The purpose of this report is to appoint an appropriate appeals authority to deal with section 62 appeals arising from the implementation of Overstrand Municipality's Supply Chain Management Policy.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Finance
Department: Supply Chain Management

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act 2003, (Act 56 of 2003)
Local Government: Municipal Systems Act 2000, (Act 32 of 2000)
Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

6. Background/Discussion/Evaluation/Conclusion

Background

Section 62 of the Local Government: Municipal Systems Act 2000, (Act 32 of 2000) (MSA) states:

"62. **Appeals** - (1) A person whose rights are affected by a decision of a political structure, political office bearer, councillor or staff member in terms of a power or duty delegated or sub-delegated by a delegating authority to the political structure, political office bearer, councillor, or staff member, may appeal against that decision by giving written notice of the appeal and reasons

to the municipal manager within 21 days of the date of the notification of the decision.

- (2) The municipal manager must promptly submit the appeal to the appropriate appeal authority mentioned in subsection (4).
- (3) The appeal authority must consider the appeal, and confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.
- (4) When the appeal is against a decision taken by-
 - (a) a staff member other than the municipal manager, the municipal manager is the appeal authority;
 - (b) the municipal manager, executive committee or executive mayor is the appeal authority, or if the municipality does not have an executive committee or an executive mayor, the council of the municipality is the appeal authority; or
 - (c) ...
- (5) ...
- (6) ...”

Discussion

It is clear that the municipal manager is the appeal authority for all appeals received where supply chain management awards have been made by officials duly delegated or the bid adjudication committee for tenders between R200 000 and R10 million.

Where the municipal manager has made the award for tenders in excess of R10 million, section 62 of the MSA states that the appeal authority is the executive mayor.

However, as Section 117 of the Local Government: Municipal Finance Management Act, (Act 56 of 2003 (MFMA) states:

117. Councillors barred from serving on municipal tender committees -
No 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 first consideration is whether this prevents the executive mayor from being the appeal authority in a tender dispute.

The second consideration is whether that power may be delegated to an official of the municipality if the executive mayor may not be the appeal authority.

Legal advice was obtained on the matter, as other municipalities are all dealing with it differently. Legal opinion advised that:

1. the Executive Mayor, is disqualified through an analysis of the context and purpose of s 117 of the MFMA from acting as the appeal authority in terms of section 62(4)(b) of the Systems Act in tender matters;
2. the power to act as appeal authority in such matters may be delegated to an official of the Council, but not to a councillor;
3. the delegation should be made by the Executive Mayor with the approval of the Council;
4. any such delegation should expressly stipulate that the Executive Mayor retains no power to make a decision with regard to such matters, or to override the decision made by the delegated authority.

Conclusion

It is recommended that the executive mayor delegates his powers in terms of Section 62 of the MSA to an appeal committee consisting of the following officials:

1. Deputy Director: Engineering Planning
2. Deputy Director: Operational Services
3. Senior Manager: Kleinmond Administration

It is furthermore recommended that the Senior Manager: Kleinmond Administration be appointed as the chairperson, and the Deputy Director: Engineering Services as Deputy Chairperson, of the appeal committee and that a quorum for this committee is two members. Where a stalemate is reached, the chairperson has a casting vote.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

1. that, in view of the limitation brought forward by section 117 of the Municipal Finance Management Act 2003, (Act 56 of 2003) on the function of the Executive Mayor in terms of section 62 of the Municipal Systems Act 2000, (Act 32 of 2000), the Executive Mayor **be authorised to delegate** the consideration of appeals for tenders in excess of R10 million, in implementation of the municipality's Supply Chain Management Policy, to an appeal committee consisting of the following officials:
 - a) Deputy Director: Engineering Planning
 - b) Deputy Director: Operational Services
 - c) Senior Manager: Kleinmond Administration
2. that the Executive Mayor retains no power to make a decision with regard to appeals against the implementation of Council's Supply Chain Management Policy, or to override the decision made by the delegated authority; and
3. that the Senior Manager: Kleinmond Administration be appointed as the Chairperson and the Deputy Director: Engineering Services as Deputy Chairperson of the appeal committee.

RESPONSIBLE OFFICIAL :**C LE ROUX****TARGET DATE FOR IMPLEMENTATION :****25 OCTOBER 2017**