



coghsta

Cooperative Governance, Human
Settlements and Traditional Affairs
North West Provincial Government
REPUBLIC OF SOUTH AFRICA



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TO : TSWAING MUNICIPAL COUNCIL

THROUGH : THE MAYOR

**FROM : HON. M.G. KEGAKILWE
MEC: COGHSTA**

DATE : 08 APRIL 2020

**SUBJECT : REPORT ON INVESTIGATION AND ANALYSIS OF
CONTRACTS – TSWAING LOCAL MUNICIPALITY**

1. PURPOSE

To report on investigations and analysis of contracts at Tswaing Local Municipality and advise Council on consequence management.

2. BACKGROUND

The MEC for Cooperative Governance, Human Settlements and Traditional Affairs after intervening in Tswaing Local Municipality resolved to constitute a Departmental team led by Mr. Seth Ramagaga to verify allegations of maladministration raised within the Municipality.

The appointed Administrator and his team were temporarily put on special leave, pending the finalization of the verification process and the subsequent recommendation report to the MEC.

3. DISCUSSIONS (Contracts entered into on behalf of the Municipality)

3.1 Tedka (PTY) LTD: There is a Service Level Agreement entered between the Service Provider and the Municipality on the 05 November 2018. To date, **R2.5m** has been paid for services rendered. The Service Provider was appointed for a period of 36 months effective from 2018/19 to 2020/21 financial years with the contract value of R6, 918,132.66. No advert was submitted to verify if competitive bidding process was followed.

No collusion or maladministration could be established due to the absence of supporting documents.

3.2 Kuyalunga is a Section 32 Contract, the team only received one Service Level Agreement between Tswaing and Kuyalunga and the other one is not as it is alleged that the file got missing in the accident, payment of R3 081 174.88 was done in accordance with the award given by the Court.

No collusion or maladministration could be established due to absence of supporting documents.

3.3 Security Services- (Mafoko Consulting): There is a Service Level Agreement entered between the Service Provider and the Municipality, the contract ended, and has been extended on a three months basis which amounts to an irregular expenditure.

This amounts to an irregular expenditure or an unfunded mandate.

The Accounting Officer has contravened Section 32 of the MFMA, in that he has authorized payment in the absence of an SLA, which expenditure constitutes unauthorized expenditure.

3.4 Lesedi Contract- No Service Level agreement was produced, however there is an ad-hoc agreements to help with honey sucking at Ottosdal, and the agreement states that Supply Chain Process could not be followed to appoint a Service Provider nor buy honey sucker trucks.

According to the expenditure report, the most frequently paid supplier is Lesedi Civil construction to the value of R5.3 million for 2019/20 financial year. There was no contract submitted to verify the appointment. The municipality is incurring an irregular expenditure as it is not the municipality's function to provide such a service, SCM process was not followed.

- According to **Municipal Finance Management Act , Section 172 (1)** The accounting officer of a municipal entity commits an act of financial misconduct if that accounting officer deliberately or negligently—

(a) contravenes a provision of this Act;

(b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipal entity;

(c) makes or permits, or instructs another official of the municipal entity to make,an irregular or fruitless and wasteful expenditure.

3.5 Cigicell contract – appointed through SCM Regulation 32 through Gasegonyana Municipality contract with its terms and conditions. The contract period is for two (2) years effective from September 2018 and is expected to expire in September 2020.

No collusion or maladministration could be established.

The municipality was advised to closely monitor the contract and be considerate of plans going forward to follow the normal procurement process.

3.6. K20 SAPTY(LTD)-There is a Service Level Agreement entered between the Service Provider and the Municipality on the 17 April 2019.

- The Service Provider was paid before rendering the service, to date service has not been rendered.
- The Accounting Officer has equally contravened Section 32 of the MFMA.

3.7. Verification process was conducted and financial mismanagement was established in a sense that Supply Chain processes were flawed, in other instances only one quotation was sought.

Municipal Finance Management Act, Section 32 (1) stipulates:

(c) any political office-bearer or official of a municipality who deliberately or negligently committed, made or authorized an irregular expenditure, is liable for that expenditure; or

(d) any political office-bearer or official of a municipality who deliberately or negligently made or authorized a fruitless and wasteful expenditure is liable for that expenditure.

(2) A municipality must recover unauthorized, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure—

Financial misconduct by municipal officials

- **171.** (1) The accounting officer of a municipality commits an act of financial misconduct if that accounting officer deliberately or negligently—
- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a municipality;

- (c) makes or permits, or instructs another official of the municipality to make, an
- unauthorized, irregular or fruitless and wasteful expenditure; or

Supply Chain processes were not followed for purchasing of tractors and Ford vehicle. Tractors to the value **R 1 759 500.00** were purchased with one quotation by the instruction of the Administrator. The Administrator also contravened the MFMA by not going on an open tender. The Department must consider pursuing further action against Mr Mose.

Four (4) vehicles were purchased through the instructions of the Administrator, using quotation system to the value of **R 940 000-00**. The municipality has deviated from the Supply Chain Management processes.

- It must be noted that according to SCM processes any procurement of goods or services to the value above **R500 000** must be subjected to the tender process.

EXCEPTION

It must however be noted that in terms of purchases of Ford Vehicles, an item was tabled before council detailing unavailability of fleet or vehicles in the municipality to render basic services like water, electricity and sewerage. Council resolution was provided to the team with its recommendations permitting the Municipal Manager to urgently purchase three (3) bakkies for water at Delareyville and Sannieshof. Four (4) vehicles were purchased using quotation system to the value of R940 000. The municipality has deviated from the Supply Chain Management processes.

It is important to mention that a Council resolution cannot supersede an Act of Parliament and therefore it does not make the purchase regular.

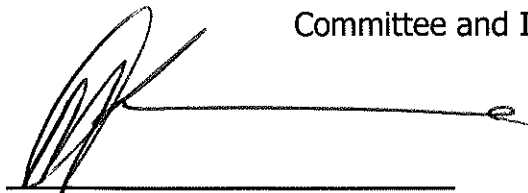
- **Verify whether the municipality has financial misconduct board (Disciplinary Board) is in place;**

- In terms of Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings of May 2014, the municipality should have established a Disciplinary Board. The municipality has not yet established Disciplinary Board

4. RECOMMENDATIONS

4.1 That disciplinary action be instituted against the Municipal Manager and CFO.

- 4.1.1 Finance/CFO to consider making payments only on files with Service Level agreements and/or legal contracts to avoid irregular expenditures.
- 4.1.2. It is recommended that Council convenes to consider investigating any further acts of misconduct against the Accounting Officer, CFO and any other Senior Manager who might be found to have committed acts of misconduct.
- 4.1.3 The municipality must establish a DB which is in compliant with the Regulations to investigate all allegations of financial misconduct. According to the regulations, composition of the Disciplinary Board should also constitute Audit committee member and Internal Audit office. It is imperative for the municipality to establish Audit Committee and Internal Audit office (MFMA Sec 165 and 166).



HON. M.G. KEGAKILWE

MEC: COGHSTA

08/04/2020

DATE