

The PPP procurement process

The Public-Private Partnership (PPP) procurement process overlaps in many respects with the recently published Supply Chain Management (SCM) regulations. The overlap occurs where a proposed transaction is both a PPP and one of the matters to which the SCM regulations apply. Although the focus in this article is not on the SCM regulations, any attempt to discuss the PPP procurement process separately from the SCM regulations would be incomplete.

Requirements

If a municipality decides in principle that it wishes to proceed with a PPP, the procurement process can then start.

First, the municipality must prepare the bid documentation and submit the documents to National Treasury and the relevant provincial treasury for comments.

The regulations do not prescribe the documents that should form part of the bid documentation. However, in terms of regulation 21(a)(ii) of the SCM regulations, bid documentation must take any Treasury guidelines into account. The guidelines currently available on bid documentation are the National Treasury PPP Practice Notes issued in terms of the Public Finance Management Act, Act 1 of 1999. If these guidelines can indeed be used by municipalities in compiling bid documentation, then it would in some respects ease the work of anyone working on bid documentation as the PPP Practice notes provide clearly and comprehensively what the documents are and how they should be structured.

The documents include the request for qualification (RFQ), the request for proposals (RFP) and the draft PPP agreement.

A municipality is also required to submit to Treasury its plan for effective management of the PPP agreement after its conclusion. It would make sense for a municipality to submit this plan together with the RFP and the PPP agreement.

The PPP agreement itself is critical. The

key points

- **A municipality must submit to Treasury its plan for effective management of the PPP agreement after its conclusion.**
- **Municipal entities may not enter into PPPs but may only be party to PPPs initiated, procured and entered into by their parent municipality.**

agreement must set out the nature of the private party's role in the partnership and the performance management and monitoring by the municipality.

Other important provisions that should be included in the agreement are the financial management duties of the private party, conditions of termination and restraint provisions. Regulation 5 must be read together with section 81 of the Systems Act, which requires the municipality to regulate the provision of the service and monitor and assess the implementation of the agreement, including the performance of the service provider in accordance with a performance management system.

Public participation

Once comments on the RFP have been received from Treasury, the next stage is to advertise and invite proposals from interested persons.

Again, the regulations do not prescribe the process. However, read with the SCM regulations, the public invitation process must include advertisements in newspapers circulating locally, on the website of the municipality, or any other appropriate way.

The information in the advertisement must include the closure date for the submission of bids which, in the case of transactions of over R10 million, must allow at least 30 days, or 14 days in transactions of less than R10 million. Provision is made, however, for shorter periods in cases of urgency or emergency.

After receiving the bid proposals, the municipality evaluates them. The municipality must, at least 30 days before any award is made, again solicit the views and recommendations of Treasury on the evaluation bids received and on any preferred bidder.

A municipality must also solicit Treasury's views and recommendations on the preferred bidder's competency to enter into the PPP agreement and its capacity to comply with its obligations under the agreement.

The SCM regulations set out in detail the process that must be followed for handling, opening and recording the bids as well as negotiating with the preferred bidder, if necessary.

Once the agreement has been signed, it may only be amended after reasons for the proposed amendment have been tabled in the council of the municipality and after the public has been given sufficient notice of the intention to amend and has been invited to comment and make representations to the municipality. The municipality must also solicit comments from Treasury on the reasons for the amendment at least 60 days before the agreement is amended.

A municipality that enters into a PPP is also required to appoint a person - an employee or someone outside the municipality - as the project officer for the PPP. The project officer is responsible for managing the contracts relating to the PPP project as well as any other duties or powers delegated to him or her by the municipality.

Lastly, the regulations underline the ongoing relationship between municipalities and municipal entities by providing that municipal entities may not enter into PPPs but may only be party to PPPs initiated, procured and entered into by their parent municipality.



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