

**AGENDA of the
Portfolio Committee : Finance & Tourism
24 April 2023
(Also the agenda for the Mayoral Committee Meeting : 24 April 2023)**

**7.
REQUEST FOR EXEMPTION FROM PARAGRAPH 29(4)(b) OF THE SCM POLICY**

**C Le Roux
21 April 2023**

Deputy Director: Finance & SCM

(028) 313 8107

1. Executive Summary

The purpose of this report is to request Council to consider approving an exemption from paragraph 29(4)(b) of the SCM 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 June 2008, as amended.

6. Background/Discussion/Evaluation/Conclusion

Background

On 03 April 2023 a judgement was handed down by the Western Cape High Court of South Africa in the matter between the Western Cape Provincial Minister of Local Government, Environmental Affairs and Development Planning V Central Karoo District Municipality and Others (4835/2023 [2023] ZAWCH 66 ("the judgement").

The case deals with the appointment of a municipal manager (which includes the position of acting municipal manager) which is governed by section 54A of the Local Government: Municipal Systems Act, 32 of 2000 and is governed by specific criteria in respect of qualifications.

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The court found in favour of the applicant in that the respondent did not meet the requirements of the Local Government: Regulations on Appointment and Conditions of Employment of Senior Managers.

Discussion

Regulations 5 and 7 of the Local Government: Municipal Regulations on Minimum Competency Levels, 2007 deals with the minimum competency levels for the CFO and senior managers respectively. The non-compliance relates to the work-related experience for municipalities with an annual budget equal to or above R1 billion. The requirement for both regulations is that the person must have a minimum of 7 years at senior and middle management level, of which at least 2 years must be at senior management level.

The regulations requires that the municipality only appoint persons to senior management level who have already been appointed as senior managers. This is also applicable for persons acting in these positions. And herein lies the problem. The municipality has assessed its current situation and looked at its acting appointments that have occurred in the past. The municipality concluded that in almost all instances where an individual has acted in the position of a senior manager for various periods, be it 1 day or 1 month, in most instances that official did not have 2 years senior management experience.

This creates an operational challenge as senior managers may not be able to take leave. The municipality can consider appointing senior managers to act on behalf of other senior managers but may still be in breach of the minimum competency requirements where that person does not meet the higher educational qualification requirement or the experience in a particular field. The only other option at this point is that all delegations of a director on leave be exercised by the Municipal Manager.

Paragraph 29(4)(b) of the SCM policy reads as follows:

- b) the Director of the department that called for the tender must be present at the meeting where the particular tender is considered.

The Municipal Manager is the delegated authority for awards more than R10m and is the appeals authority for all other awards. As such he is unable to participate at the Bid Adjudication Committee meetings. This creates an operational challenge as tenders are not able to be adjudicated for items where the Director is not present.

With the vacancy for the Director: Community Services, there is no official that qualifies to act in that position. Therefore, all tenders for Community Services are not able to be adjudicated. This will also be the case in the instance where other

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Directors will either be on leave or resign without a suitable official available to act as Director.

In order to remedy this, it hereby requested that Council considers approving an exemption from paragraph 29(4)(b) of the SCM policy until such time that this matter is clarified with National Treasury and the Department of Cooperative Governance and Traditional Affairs, and a solution is implemented.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that Council **approves** an exemption from paragraph 29(4)(b) of the SCM policy until such time that this matter is clarified with National Treasury and the Department of Cooperative Governance and Traditional Affairs, and a solution is implemented.

RESPONSIBLE OFFICIAL :

C LE ROUX

TARGET DATE FOR IMPLEMENTATION :

24 APRIL 2023