

RESPOND ON PROF HE EGGERS LETTER, DATED 13 JULY 2021

(paragraph 6)

Question 1

The FQ provided only has a handwritten "Toncu (Pty) Ltd" on the last page, plus what looks like the signature of the director of Toncu, Elton Makovere. MSCMP paragraph 17(1)(a) requires that quotations must be obtained from at least three different providers. **What are the details of the other service providers and their quotations?**

Answer

The attendance register attached shows service providers that attended the site meeting.

(paragraph 7)

Question 2

MSCMP paragraph 17(1)(c) states that, if it is not possible to obtain at least three quotations, the reasons must be recorded and approved by the CFO. **Was this done, and what were the reasons given?**

Answer

The department approached SCM and had to urgently advertise on the website. Any further delays could result in potential loss in revenue for the municipality for (disposing of) the trees that fell due to the RUK WINDS.

The SCM regulation 40 was the only SCM process used at that time because the trees had already fallen flat and the municipality could have lost revenue, the longer it took to appoint a service provider to remove the trees. This particular regulation does not stipulate a process of reporting and threshold.

SCM Reg 40(2)(b)(11)

NB...movable assets may be sold either by way of written price quotations, a competitive bidding process, auction or at market related prices, whichever is the most advantageous to the municipality or municipal entity;

8 service providers attended the site meeting and 2 then gave a quotation to provide the service. This was an income received by the municipality and not an expense.

(paragraph 9)

Question 3

*Also, the FQ itself states in item 4b) that the work is to be completed within 7 days, ie by 15 October 2020, so the three signatories considered one week to be long enough to handle the emergency work. **Clearly there was no emergency after the end of November 2020 at the latest, by the text of the FQ itself.** If there really had been an emergency or the possibility of human injury or death after November 2020, then the municipal department should have sealed off the area for those four months rather than allowing thousands of people to cycle and walk through there.*

Answer

The qualifying criteria (para 4b stated in the attached specification) stated that work has to be completed in 7 days. This referred to the dangerous and dead trees that was affected by the storm. However due to unforeseen circumstances regarding the state of the trees, the (7) seven days were exceeded to both affected areas: Paradyskloof and Botmaskop Plantation. The area was closed off to the public during operations and forest guards were instructed to not allow any public near or around dangerous trees. Some areas were still safe for public access and as such it might have appeared as if the public had free access to the entire area. After hour activities were done illegally. Other factors that also delayed the operations was the inability to access certain “compartments” due to the inaccessible terrain. In addition, the contractor was only allowed to work during weekdays from 0800-1630.

(paragraph 10)

Question 4

*Given that there really was no emergency after the end of the 7 days referred to in the FQ, **why did logging then continue for a further four months until February or even March 2021 even while thousands of people walked around the plantation during that time?***

Answer

The appointed contractor conducted an inspection of the area and it was found that the integrity of other trees that was not adversely affected by the storm, were compromised as well. This posed a risk in terms of potential tree failure at any given time. The fallen trees were removed; however, several of the leaning and dead trees were identified during operations also had to be removed as they were considered to be dangerous. The user department had to clear roads so that the contractor could access the area. The contractor only removed trees in the “compartments” and not on the road.

(paragraph 11)

Question 5

An "emergency" is invoked by paragraph 36(1)(a)(i) in cases where it is necessary to "deviate" from normal SCM policy. Paragraph 19 of the MSCMP as well as the MFMA SCM regulations specify that any amount over R200,000 can only be awarded after a competitive bid process has been conducted, including open tendering and a bid adjudication committee as spelt out in detail in Paragraphs 19 to 28 of the MSCMP. The amount of R853,158.37 paid in by Toncu (Pty) Ltd into municipal accounts far exceeds the threshold of R200,000.

Answer

The department came to SCM with a specific request for the trees that fell down (or blown over by the storm winds), and because the trees tend to lose their value the longer it lies on the ground before it is used (PINE). SCM then advertised the FQ (for the trees that was blown over by the Ruk Winds) on the municipal website.

(paragraph 12)

Question 6

*The MSCMP Paragraphs 19 to 29 set out in detail the rules for competitive bidding processes which apply to all asset transfers and procurements above R200,000. **Was the process set out in paragraphs 19 to 29 followed? If so, why was a simple RFQ provided to the ward committee rather than a proper tender specification document?** The RFQ is clearly irrelevant given that there was no emergency and that the total amount far exceeded R200,000. The ward committee should see the competitive bid documentation related to the Paradyskloof and Botmaskop logging.*

Answer

Discussions held with the department and the attached specification from the department clearly states the nature of the request. An Emergency, copy attached.

(paragraph 13)

Question 7

*Alternatively, if no such competitive bid process was followed: Section 36(1)(b) of the MSCMP allows the Municipal Manager to ratify any "minor breaches of the procurement processes... which are purely of a technical nature". **Does the Municipality claim that the use of a RFQ with a 7-day limit to do logging over four months to a total value of at least R853,158.37 constitutes a minor breach" which is purely technical in nature"?***

Answer

This is was an emergency and advertised as such. The removal will be done as soon as the resources are available. The department is in the process of procuring a truck to remove the biomass and to perform other functions. The total estimated costs of this work cannot be predicted at this stage due to a range of variables that impact on the costs. The land owner carries the cost of the removal.

(paragraph 14)

Question 8

*Both paragraph 36(2) of the MSCMP as well as Regulation 12 of the MFMA Municipal Asset Transfer Regulations of 2008 require that the Municipal Manager must record the reasons for any deviation in terms of subparagraph (1)(a) or (b) must be reported to the next meeting of the council." I can _nd no such report of a deviation in the council agendas between November 2020 and May 2021. **Was a deviation regarding the misuse of the RFQ for non-emergency purposes ever reported to Council, and if so, where and when?***

Answer

At the time of the FQ request from the department, it was not a deviation because we advertised the FQ request on website and there were bidders attended.

(paragraph 15)

Question 9

*have pointed out several times by email, including on 1 November 2020 and 7 March 2021, that not only fallen or damaged pine trees were being logged but also healthy ones. Photos were sent. There is also clear evidence that often the thickest healthy trees were logged while nearby thin ones were left standing. **How can the logging of a large number of non-fallen non-damaged pines be justified in terms of the RFQ?***

Answer

A competent company was appointed to conduct the work as per the specification, and this regard sound decisions was to be taken to manage the operation that requires skill and competence. A compulsory site meeting took place, and the company that was awarded the RFQ submitted the highest bid in terms of value for the timber. No healthy trees were logged. There were trees that was uprooted that was healthy, but still a danger to users of the facility.

(paragraph 16)

Question 10

*According to the spreadhseet supplied and the RFQ, the total volume of wood that was removed was equal to R853,158.37 divided by the Toncu quoted rate of R667/m³, in other words 1279 cubic metres of wood was logged by Toncu. **Is this the correct total volume of wood taken out in the course of both Paradyskloof and Botmaskop logging? Where are these volumes recorded, and who recorded them?***

Answer

This information was provided as stated in the letter and was verified by the Finance Department. The volumes were recorded by the contractor and verified by the section Environmental Management. This is internal information that is handled with due diligence as this was handed to the Finance Department for further verification.

(paragraph 17)

Question 11

Why was the RFQ written in _rst place, given that there are standard municipal tariffs in place for small amounts of logging?

Answer

The RFQ was written to ensure that the sale of timber is fair and transparent as RFQ's are advertised on the municipal website for all to see/view. The RFQ was open to any interested company and individual to submit their bids fairly and justifiably. The information that was recorded by the service provider and the measurements of the logs is a technical skill that requires vast experience i.e. 3 years as stated in the specifications. Furthermore, the company/ individual had to be in possession of/or equipped with, the specified equipment and competency levels as stated in the qualifying criteria, para 4c-j, in the specifications. This type of work requires specialised skills and competencies, considering the Occupational Health and Safety requirements to perform these types of operations.

(paragraph 18)

Question 12

Biomass removal: Contrary to the claims in the email by T Leibrandt of 12 April 2021,

no biomass has been removed at all even now in June 2021. There are hundreds of tons of biomass still lying around everywhere, including large logs. With regard to this biomass:

. When will that removal be carried out?

. What is the total estimated cost of such removal?

. Who carries the cost of such biomass removal?

Why does the Municipality not make use of its chippers which it used to have to do the job? Must such removal costs be deducted from the net pro_t of the logging sale?

Answer

The removal will be done as soon as the resources are available. The department is in the process of procuring a truck to remove the biomass and to perform other functions. The total estimated costs of this work cannot be predicted at this stage due to a range of variables that impact on the costs. The land owner carries the cost of the removal.