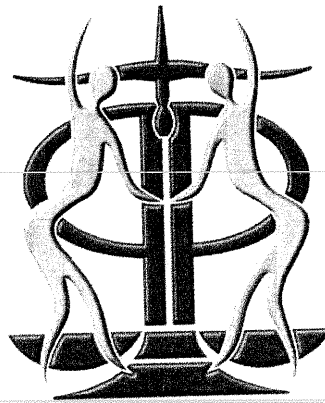


**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION
182(1)(b) OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH
AFRICA, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT,
1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 25 OF 2009/10

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF IRREGULAR
EXPENDITURE IN THE PROCUREMENT OF NEW FURNITURE FOR OFFICES OF
COUNCIL CHAMBERS, NKETOANA LOCAL MUNICIPALITY, FREE STATE
PROVINCE**

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Executive Summary

- (i) The Office of the Public Protector (OPP) investigated a complaint into allegations of maladministration and/or irregular procurement of office furniture, in contravention of the provisions of the Municipal Finance Management Act, 2003 (MFMA), and the Supply Chain Management (Draft) Policy by the Nketoana Local Municipality (Municipality).
- (ii) The complaint was received from an aggrieved registered service provider (the Complainant) who alleged that during the financial year 2006/7, office furniture was procured for the new Council office chambers. The Complainant alleged that the processes followed were contrary to the provisions of the above-mentioned legislation and draft policy.
- (iii) It is the Complainant's contention that the furniture that was procured amounted to R1 000 000.00 in terms of which a tender procedure was supposed to be followed.
- (iv) He alleged that no tender was advertised to allow any service providers to bid for same, and as such the procurement process lacked fairness, equity, transparency and competitiveness.
- (v) It was found that:
- (a) The Municipality does not have an approved Supply Chain Management (SCM) Policy in place with regard to procurement of goods or services. (Only a draft policy existed at the time of investigation);

- (b) This is in contravention of the provisions of the MFMA that require each Municipality to have and implement a SCM Policy which gives effect to the provisions of this Act;
 - (c) The Municipality did not follow any procedure prescribed by the MFMA and did not have any policy in place when acquiring the said furniture, and did not advertise for tenders for the said purchase; and
 - (d) Despite a Council resolution to reallocate an amount of R250 000.00 from other items budgeted for, where there were still some funds left, to increase the furniture budget, there was still an over expenditure of R497 569.68 on furniture bought.
- (vi) The Public Protector recommended that the Municipal Manager with the assistance of the Council should:
- (a) Inform the Provincial Treasury, in writing, of failure by the Municipality to adopt or implement the SCM policy;
 - (b) Finalise and implement the Municipal SCM draft policy;
 - (c) Train Municipal officials on the implementation of the SCM policy, SCM treasury guidelines and application of the MFMA;
 - (d) Inform the Mayor of the Municipality, the Member of the Executive Council responsible for Local Government and Housing in the Free State Provincial Government and the Auditor-General, in writing, of any unauthorised or irregular expenditure incurred by the Municipality and whether any person is responsible or under investigation for such unauthorised, irregular expenditure, plus the steps taken:



- (aa) To recover or rectify such expenditure; and
 - (bb) To prevent recurrence of such expenditure; and
 - (e) Implement the above-mentioned recommendations within 6 months from the date of this report.
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REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF IRREGULAR EXPENDITURE IN THE PROCUREMENT OF NEW FURNITURE FOR OFFICES OF COUNCIL CHAMBERS, NKETOANA LOCAL MUNICIPALITY, FREE STATE PROVINCE

1. INTRODUCTION

- 1.1 This report is submitted to the Member of the Executive Council (the MEC) responsible for Co-operative Governance, Traditional Leadership and Human Settlement in the Free State Provincial Government, the Head of the Free State Provincial Department of Local Government and Housing, the Mayor and the Municipal Manager of Nketoana Local Municipality by virtue of Section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and Section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- 1.2 It relates to an investigation by the Office of the Public Protector (OPP) into allegations of irregular procurement of goods or service in contravention of the provisions of the Municipal Finance Management Act, 2003 (MFMA). The fact that there is only a “draft” Supply Chain Management (SCM) Policy in place for the Nketoana Local Municipality (Municipality) also came to the attention of the OPP during the course of the investigation.

2. THE COMPLAINT

- 2.1 The complaint was received by the OPP in July 2007 from an aggrieved registered service provider (the Complainant).
- 2.2 The Complainant alleged that the procurement of office furniture by the Municipality was done in an irregular manner in that the MFMA and the SCM Policy provisions were not adhered to.

2.3 It was alleged that the value of the procured furniture amounted to R1 000 000.00 without following any prescribed tender procedures.

2.4. Furthermore, the Complainant alleged that no tender was advertised to allow other service providers to bid for same, and such procurement was lacking in fairness, equity, transparency and competitiveness.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution as one of the institutions supporting and strengthening constitutional democracy in the Republic of South Africa.

3.2 The Public Protector Act, 1994 (Public Protector Act) provides for the additional powers and operational requirements of the Public Protector. The Public Protector receives complaints from aggrieved persons and institutions against government agencies and officials.

3.3 He/She has the power to investigate these matters, to report on his/her findings and to take appropriate remedial actions.

3.4 In terms of section 182(1) of the Constitution the Public Protector has the power to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in any impropriety or prejudice.

3.5 The Public Protector therefore has jurisdiction to investigate the complaint.

4. THE INVESTIGATION

4.1 The investigation was conducted in terms of section 6 and 7 of the Public Protector Act and comprised:

4.1.1 Perusal of the complaint;

4.1.2 Written and telephone communication with the Municipal Manager;

4.1.3 Perusal and verification of information provided by the Municipality; and

4.1.4 Consideration and application of the relevant provisions of the Constitution, the MFMA and perusal of the Municipal draft SCM Policy.

5. RESPONSE FROM THE MUNICIPALITY

5.1 The Municipal Manager delayed in responding and delivered the following written response on 13 June 2008:

5.1.1 The SCM seems not to have been implemented, but no explanation was provided for the deviation;

5.1.2 The correct procedures seem not to have been implemented;

5.1.3 An amount of R500 000.00 was paid to the Complainant, and a copy of this payment voucher as well as copies of the quotations obtained from one service provider were attached; and

5.1.4 It was admitted that the correct procedure was not followed, but the Municipal Manager stated that the Council took a resolution on the matter on

20 March 2007 to approve it, and a copy of the Council Resolution was attached to prove this.

6. THE LEGISLATIVE PRESCRIPTS REGULATING ADMINISTRATION OF THE MUNICIPALITY

6.1 The Constitution

6.1.1 Section 216(1) of the Constitution provides that:

“National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing-

- (a) generally recognised accounting practice;*
- (b) uniform expenditure classifications; and*
- (c) uniform treasury norms and standards.”*

6.1.2 In terms of section 152 of the Constitution, the objects of local government are as follows:

- “(a) To provide democratic and accountable government for local communities;*
- (b) to ensure the provision of services to communities in a sustainable manner;*
- (c) to promote social and economic development;*

(d) *to promote a safe and healthy environment; and*

(e) *to encourage the involvement of communities and community organisations in the matter of local government.”*

6.2 The Local Government: Municipal Finance Management Act, 2003

6.2.1 Object of the MFMA

It is the object of the MFMA to secure sound and sustainable management of the fiscal and financial affairs of Municipalities by establishing norms and standards for, *inter alia*:

“Ensuring transparency, accountability and appropriate lines of responsibility; and

The management of revenues, expenditure, assets and liability.”

6.2.2 The Accounting Officer

6.2.2.1 Section 1, read with section 60, provides that although the MFMA recognises Council as the highest authority, and further makes a clear distinction between its oversight role and administrative function of the Accounting Officer; section 60 vests the accountability for implementation of the MFMA with the Municipal Manager. He/she is responsible and accountable for all expenditure incurred by the Municipality.

6.2.2.2 The accounting officer must:

- (a) *act with fidelity, honesty, integrity and in the best interest of the municipality in managing its financial affairs;*
- (b) *seek, within the sphere of his/her influence, to prevent any prejudice to the financial interest of the municipality.”*

6.2.2.3 *in terms of section 52 (1) (a, b & d), the accounting officer is responsible for managing the financial administration of the municipality, and must for the purpose take all reasonable steps to ensure, inter alia,:*

- (a) *that the resources of the municipality are used effectively, efficiently and economically;*
- (b) *that full and proper records of financial affairs of the municipality are kept in accordance with any prescribed norms and standards; and*
- (c) *that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented.”*

6.2.3 *In terms of Section 111, “Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part.”*

6.2.4 Section 115(1) provides that the accounting officer of a municipality or municipal entity **must:**

- (a) *implement the supply chain management policy of the municipality or municipal entity; and*

- (b) *take reasonable steps to ensure the proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.*”

6.2.5 Section 73 provides that:

“The accounting officer must inform the provincial treasury, in writing, of-

- (a) *any failure by the council of the municipality to adopt or implement a budget- related policy or supply chain management policy referred to in section 111; or*
- (b) *any non-compliance by a political structure or office-bearer of the municipality with any such policy.”*

6.2.6 Liability for irregular or fruitless and wasteful expenditure

6.2.6.1 Section 32(1) (c-d) reads that:

“(1) Without limiting liability in terms of common law or other legislation-

...

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

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

6.2.6.2 Subsection (2) provides that *"A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure ..."*

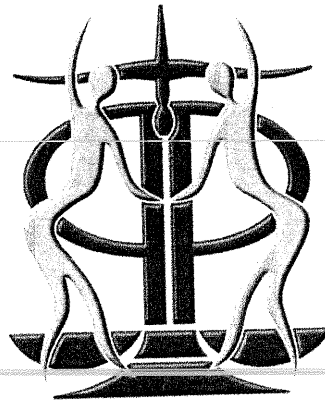
6.2.6.3 Subsection (3) provides that:

"If the accounting officer becomes aware that the council, the mayor or the executive committee of municipality, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the accounting officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the accounting officer has informed the council, the mayor or the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure".

6.2.6.4 In terms of section 32(4)(a-c), *"the Accounting Officer must inform the Mayor, the MEC for local government in the province and the Auditor-General, in writing, of –*

- (a) *any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;*
- (b) *whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and*
- (c) *the steps that have been taken-*

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION
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**PUBLIC PROTECTOR
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REPORT NO. 25 OF 2009/10

**REPORT ON AN INVESTIGATION INTO AN ALLEGATION OF IRREGULAR
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Executive Summary

- (i) The Office of the Public Protector (OPP) investigated a complaint into allegations of maladministration and/or irregular procurement of office furniture, in contravention of the provisions of the Municipal Finance Management Act, 2003 (MFMA), and the Supply Chain Management (Draft) Policy by the Nketoana Local Municipality (Municipality).
- (ii) The complaint was received from an aggrieved registered service provider (the Complainant) who alleged that during the financial year 2006/7, office furniture was procured for the new Council office chambers. The Complainant alleged that the processes followed were contrary to the provisions of the above-mentioned legislation and draft policy.
- (iii) It is the Complainant's contention that the furniture that was procured amounted to R1 000 000.00 in terms of which a tender procedure was supposed to be followed.
- (iv) He alleged that no tender was advertised to allow any service providers to bid for same, and as such the procurement process lacked fairness, equity, transparency and competitiveness.
- (v) It was found that:
- (a) The Municipality does not have an approved Supply Chain Management (SCM) Policy in place with regard to procurement of goods or services. (Only a draft policy existed at the time of investigation);

- (b) This is in contravention of the provisions of the MFMA that require each Municipality to have and implement a SCM Policy which gives effect to the provisions of this Act;
 - (c) The Municipality did not follow any procedure prescribed by the MFMA and did not have any policy in place when acquiring the said furniture, and did not advertise for tenders for the said purchase, and
 - (d) Despite a Council resolution to reallocate an amount of R250 000.00 from other items budgeted for, where there were still some funds left, to increase the furniture budget, there was still an over expenditure of R497 569.68 on furniture bought.
- (vi) The Public Protector recommended that the Municipal Manager with the assistance of the Council should:
- (a) Inform the Provincial Treasury, in writing, of failure by the Municipality to adopt or implement the SCM policy;
 - (b) Finalise and implement the Municipal SCM draft policy;
 - (c) Train Municipal officials on the implementation of the SCM policy, SCM treasury guidelines and application of the MFMA;
 - (d) Inform the Mayor of the Municipality, the Member of the Executive Council responsible for Local Government and Housing in the Free State Provincial Government and the Auditor-General, in writing, of any unauthorised or irregular expenditure incurred by the Municipality and whether any person is responsible or under investigation for such unauthorised, irregular expenditure, plus the steps taken:



- (aa) To recover or rectify such expenditure; and
 - (bb) To prevent recurrence of such expenditure; and
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1. INTRODUCTION

- 1.1 This report is submitted to the Member of the Executive Council (the MEC) responsible for Co-operative Governance, Traditional Leadership and Human Settlement in the Free State Provincial Government, the Head of the Free State Provincial Department of Local Government and Housing, the Mayor and the Municipal Manager of Nketoana Local Municipality by virtue of Section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and Section 8(1) of the Public Protector Act, 1994 (Public Protector Act).
- 1.2 It relates to an investigation by the Office of the Public Protector (OPP) into allegations of irregular procurement of goods or service in contravention of the provisions of the Municipal Finance Management Act, 2003 (MFMA). The fact that there is only a “draft” Supply Chain Management (SCM) Policy in place for the Nketoana Local Municipality (Municipality) also came to the attention of the OPP during the course of the investigation.

2. THE COMPLAINT

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- 2.2 The Complainant alleged that the procurement of office furniture by the Municipality was done in an irregular manner in that the MFMA and the SCM Policy provisions were not adhered to.

2.3 It was alleged that the value of the procured furniture amounted to R1 000 000.00 without following any prescribed tender procedures.

2.4. Furthermore, the Complainant alleged that no tender was advertised to allow other service providers to bid for same, and such procurement was lacking in fairness, equity, transparency and competitiveness.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT

3.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution as one of the institutions supporting and strengthening constitutional democracy in the Republic of South Africa.

3.2 The Public Protector Act, 1994 (Public Protector Act) provides for the additional powers and operational requirements of the Public Protector. The Public Protector receives complaints from aggrieved persons and institutions against government agencies and officials.

3.3 He/She has the power to investigate these matters, to report on his/her findings and to take appropriate remedial actions.

3.4 In terms of section 182(1) of the Constitution the Public Protector has the power to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in any impropriety or prejudice.

3.5 The Public Protector therefore has jurisdiction to investigate the complaint.

4. THE INVESTIGATION

4.1 The investigation was conducted in terms of section 6 and 7 of the Public Protector Act and comprised:

4.1.1 Perusal of the complaint;

4.1.2 Written and telephone communication with the Municipal Manager;

4.1.3 Perusal and verification of information provided by the Municipality; and

4.1.4 Consideration and application of the relevant provisions of the Constitution, the MFMA and perusal of the Municipal draft SCM Policy.

5. RESPONSE FROM THE MUNICIPALITY

5.1 The Municipal Manager delayed in responding and delivered the following written response on 13 June 2008:

5.1.1 The SCM seems not to have been implemented, but no explanation was provided for the deviation;

5.1.2 The correct procedures seem not to have been implemented;

5.1.3 An amount of R500 000.00 was paid to the Complainant, and a copy of this payment voucher as well as copies of the quotations obtained from one service provider were attached; and

5.1.4 It was admitted that the correct procedure was not followed, but the Municipal Manager stated that the Council took a resolution on the matter on

20 March 2007 to approve it, and a copy of the Council Resolution was attached to prove this.

6. THE LEGISLATIVE PRESCRIPTS REGULATING ADMINISTRATION OF THE MUNICIPALITY

6.1 The Constitution

6.1.1 Section 216(1) of the Constitution provides that:

“National legislation must establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing-

- (a) generally recognised accounting practice;*
- (b) uniform expenditure classifications; and*
- (c) uniform treasury norms and standards.”*

6.1.2 In terms of section 152 of the Constitution, the objects of local government are as follows:

- “(a) To provide democratic and accountable government for local communities;*
- (b) to ensure the provision of services to communities in a sustainable manner;*
- (c) to promote social and economic development;*

(d) to promote a safe and healthy environment; and

(e) to encourage the involvement of communities and community organisations in the matter of local government.”

6.2 The Local Government: Municipal Finance Management Act, 2003

6.2.1 Object of the MFMA

It is the object of the MFMA to secure sound and sustainable management of the fiscal and financial affairs of Municipalities by establishing norms and standards for, *inter alia*:

“Ensuring transparency, accountability and appropriate lines of responsibility; and

The management of revenues, expenditure, assets and liability.”

6.2.2 The Accounting Officer

6.2.2.1 Section 1, read with section 60, provides that although the MFMA recognises Council as the highest authority, and further makes a clear distinction between its oversight role and administrative function of the Accounting Officer; section 60 vests the accountability for implementation of the MFMA with the Municipal Manager. He/she is responsible and accountable for all expenditure incurred by the Municipality.

6.2.2.2 The accounting officer must:

“(a) act with fidelity, honesty, integrity and in the best interest of the municipality in managing its financial affairs;

(b) seek, within the sphere of his/her influence, to prevent any prejudice to the financial interest of the municipality.”

6.2.2.3 In terms of section 62 (1) (a, b & d), the accounting officer is responsible for managing the financial administration of the municipality, and must for the purpose take all reasonable steps to ensure, *inter alia*,:

“(a) that the resources of the municipality are used effectively, efficiently and economically;

(b) that full and proper records of financial affairs of the municipality are kept in accordance with any prescribed norms and standards; and

(c) that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented.”

6.2.3 In terms of Section 111, “Each municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part.”

6.2.4 Section 115(1) provides that the accounting officer of a municipality or municipal entity **must**:

“(a) implement the supply chain management policy of the municipality or municipal entity; and

- (b) *take reasonable steps to ensure the proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.”*

6.2.5 Section 73 provides that:

“The accounting officer must inform the provincial treasury, in writing, of-

- (a) *any failure by the council of the municipality to adopt or implement a budget- related policy or supply chain management policy referred to in section 111; or*
- (b) *any non-compliance by a political structure or office-bearer of the municipality with any such policy.”*

6.2.6 Liability for irregular or fruitless and wasteful expenditure

6.2.6.1 Section 32(1) (c-d) reads that:

“(1) Without limiting liability in terms of common law or other legislation-

...

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

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

6.2.6.2 Subsection (2) provides that *"A municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure ..."*

6.2.6.3 Subsection (3) provides that:

"If the accounting officer becomes aware that the council, the mayor or the executive committee of municipality, as the case may be, has taken a decision which, if implemented, is likely to result in unauthorised, irregular or fruitless and wasteful expenditure, the accounting officer is not liable for any ensuing unauthorised, irregular or fruitless and wasteful expenditure provided that the accounting officer has informed the council, the mayor or the executive committee, in writing, that the expenditure is likely to be unauthorised, irregular or fruitless and wasteful expenditure".

6.2.6.4 In terms of section 32(4)(a-c), *"the Accounting Officer must inform the Mayor, the MEC for local government in the province and the Auditor-General, in writing, of –*

- (a) *any unauthorised, irregular or fruitless and wasteful expenditure incurred by the municipality;*
- (b) *whether any person is responsible or under investigation for such unauthorised, irregular or fruitless and wasteful expenditure; and*
- (c) *the steps that have been taken-*

- (i) *to recover or rectify such expenditure; and*
- (ii) *to prevent recurrence of such expenditure.”*

6.3 The Municipal SCM Draft Policy

6.3.1 The Municipality could only produce a draft and/or incomplete SCM Policy, and it reads as follows:

“Should a need arise for any kind of expenditure then the following steps must be adhered to:

- (a) *Please note that if any uncertainty exist it remains the responsibility of the relevant official/councilor to determine beforehand what must be done and/or how it must be done as the decision maker will be held liable at the end of the day;*
- (b) *It remains the responsibility of the Departmental head to ensure that the officials under his/her command strictly adhere to the relevant rules/regulations;*
- (c) *All discrepancies will be referred directly, and only, to the Departmental head with the copy to the Municipal Manager as to ensure that the lines of communication are obtained.*

Any expenditure starts with a need for service, material, etc. and must be referred to the Head of Department for decision making.

Once the Head of Department (manager) or his/ her authorized official decides that the expenditure is acceptable, he/she will confirm that the relevant funds are available on the budget.

The applicable limits to the expenditure (VAT inclusive) are as follows:

- (a) Nil- R1499.99 Approval by Manager and the Chief Financial Officer (CFO) (at least one quotation to cover Manager);
- (b) R1500.00 –R9 999.99 Approval by Municipal Manager, Manager and CFO (x 3 written quotations);
- (c) R10 000.00-R99 999.99 Approval by Council, Municipal Manager and CFO (x 3 written quotations); and
- (d) R100 000.00 – upwards Approval by Council, Municipal Manager and CFO (Written tenders)."

7. OBSERVATIONS

- 7.1 Although all procedures to comply with were clearly stated in section 62(1)(d) of the MFMA the Municipality failed and/or neglected to comply with this statutory provision without any valid reasons being provided for such deviation.
- 7.2 Section 111 of the MFMA provides that "each Municipality and each municipal entity must have and implement a supply chain management policy which gives effect to the provisions of this Part", but in this instance the Municipality did not have such in place.

- 7.3 Furthermore it was also noted that the value of the procured furniture amounted to R997 569.68 of which only R250 000.00 was budgeted for the furniture of the new Council Chambers.
- 7.4 A resolution was taken by the Council at the meeting held on 20 March 2007 that an additional R250 000.00 be moved from other budget votes, which still had the funds, to increase this furniture budget to an amount of R500 000.00.
- 7.5 On 22 March 2007 an order form was authorised by the Municipal Manager for an amount of R997 569.68, contrary to the amount of R500 000.00 that was last budgeted for by the earlier Council resolution, resulting in an over expenditure of R497 569.68.
- 7.6 On the same day on which the order form was approved by the Municipal Manager, an amount of R500 000.00 was payable to the service provider for the said furniture, and an amount of R497 569.68 was still outstanding. No explanation could be obtained on how this outstanding amount would be payable.
- 7.7 The MFMA also provides that where a municipality failed to comply and/or implement the SCM policy, a written report has to be submitted to the provincial treasury and this provision was not complied with in this case.
- 7.8 Failure by the Municipality to adopt or implement the SCM Policy has the potential of promoting corruption and nepotism.

8. FINDINGS

- 8.1 Although the MFMA recognises Municipal Council as the highest authority, and further makes a distinction between its oversight role and administrative

function of the accounting officer, section 60 vests the accountability for implementation of the MFMA with the Municipal Manager. He/She is responsible and accountable for all expenditure incurred by the municipality.

8.2 The Municipality does not have an approved SCM Policy.

8.3 The Municipality acted contrary to the provisions of the MFMA, which requires that each Municipality must have and implement a supply chain management policy.

8.4 Despite the Council resolution that was taken on 20 March 2007 that an additional amount of R250 000.00 be moved from other votes (which still had funds available) to increase the furniture budget to an amount of R500 000.00, there was an over expenditure of R497 569.68.

8.5 The Municipality did not comply with any procedure prescribed by sections 62, 111 and 115 of the MFMA when acquiring the said furniture.

9. RECOMMENDATIONS

9.1 In terms of the provisions of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of Public Protector Act it is recommended that the Municipal Manager with the assistance of the Municipal Council:

9.1.1 Inform the Provincial Treasury, in writing, of failure by the Municipality to adopt or implement the SCM policy as required by the provisions of Section 111 of the MFMA;

9.1.2 Finalise and implement the Municipal SCM draft policy;

9.1.3 Train Municipal officials on the implementation of the SCM policy, SCM treasury guidelines and application of MFMA;

9.1.4 Inform the Mayor of the Municipality, the MEC for Local Government and Housing in the Free State Provincial Government and the Auditor-General, in writing, of any unauthorised or irregular expenditure incurred by the Municipality and whether any person is responsible or under investigation for such unauthorised, irregular expenditure, plus the steps taken:


9.1.4.1 To recover or rectify such expenditure; and

9.1.4.2 To prevent recurrence of such expenditure; and

9.1.5 Implement the above-mentioned recommendations within 6 months from the date of this report.

10. CONCLUSION

10.1 The OPP will monitor the implementation of these recommendations on a quarterly basis.



ADV ML MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 09/10/2019

Assisted by: Mr Qabang Eric Mofokeng, Investigator, Free State Provincial Office