

# **Assessing Good Governance in Procurement at the Lejweleputswa District Municipality**

by

**Bulumko Mollman Stemele**



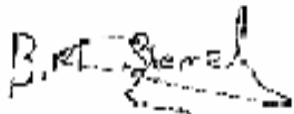
Thesis presented in partial fulfilment of the requirements for the degree of Master of Public Administration at Stellenbosch University

**Supervisor:** Professor APJ Burger

March 2009

## DECLARATION

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own, original work, that I am the owner of the copyright thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

A handwritten signature in black ink, appearing to read "B.M. Stemele". The signature is written in a cursive style with some loops and flourishes.

Signature: \_\_\_\_\_ Date: 2 March 2009

BM Stemele

## ABSTRACT OF THE THESIS

The thesis evaluates the extent to which good governance has influenced the procurement process at the Lejweleputswa District Municipality. Under good governance, the manner in which goods are procured or disposed of, is supposed to be unproblematic and conducted with the highest integrity, taking into account both the costs involved in the process and the benefits of the delivery of the services. Good governance should act as a “*decontaminator or antiseptic in a germ infested area*” (Cloete 2006:6–19). To extend the analogy further, this process of disinfecting the wound definitely requires some form of expertise and knowledge, as well as the participation of different role players, such as doctors and nurses; in addition, certain utensils to clean and cover the wound would be needed.

In the same way, the procurement process needs experts to handle and enforce correct procedure. The values of good governance alone are meaningless unless there are people who are willing and have the capacity to manage the required processes and procedures. In South Africa, a new procurement process was adopted in the public sector in 1994. To date it has been interpreted and implemented in favour of historically disadvantaged individuals, like black people, women and disabled people through a legislative framework, the Preferential Procurement Policy Framework Act, 2000 (RSA, Act 5 of 2000) and the Broad Based Black Economic Empowerment Act, 2003 (RSA, Act 53 of 2003).

It is crucial to point out, however, that the definitions given by these laws about black people differ or contradict each other. Challenges like this have turned the procurement process upside down. In an effort to attain uniformity in the procurement process in the local sphere of government, both National and Provincial Treasury Departments have instituted legislation and guidelines to steer the process. Despite all these efforts, municipalities are still associated with allegations of corruption and nepotism when awarding tenders to service providers.

The Lejweleputswa District Municipality has not been spared from such accusations, as shown by the spate of riots that occurred in the Free State (Mail and Guardian 2007:6–12). This research has therefore been undertaken with the general objective of determining whether the values of good governance have managed to sustain a good procurement process in the municipality or whether the values are being ignored

leading to procurement processes which do not fulfil the aims of the legislation and guidelines and remain open to allegations of corruption and maladministration. The specific objectives for the research were to investigate good governance in procurement in the municipality context and to make recommendations, if appropriate, on how to promote good governance in municipal procurement.

## SAMEVATTING VAN TESIS

Hierdie tesis evalueer die mate waartoe goeie bestuur die verkrygingsproses by die Lejweleputswa Munisipaliteit beïnvloed het. Onder goeie staatsbestuur is die manier hoe goedere verky word veronderstel om onproblematies te wees en te voldoen aan die hoogste standarde van integriteit, in ag genome die koste van die proses en die voordele van die verskaffing van die dienste. Goeie bestuur behoort soos ‘n “*ontsmettingsmiddel in ‘n kiembesmette area*” te werk (Cloete 2006:6–19). Om hierdie analogie verder uit te brei, verg die proses van wondontsmetting deskundigheid en kennis, sowel as die deelname van verskillende rolspelers soos dokters en verpleegsters; daarbenewens sal daar sekere implimente nodig wees om die wond skoon te maak.

Op dieselfde manier benodig die verkrygingsproses ook deskundiges om die proses te hanteer en die regte prosedure af te dwing. Die waardes van goeie staatsbestuur opsigself is betekeloos as daar nie mense is wat bereid is en die kapasiteit het om die prosedures te bestuur nie. In Suid-Afrika, in 1994, is ‘n nuwe verkrygingsproses in die openbare sektor aangeneem. Tot op hede is dit geïnterpreteer en geïmplimenteer deur middel van ‘n wetgewende raamwerk, die Wet op die Raamwerk vir Voorkeurverkrygingsbeleid, 2000 (RSA, Wet 5 van 2000) en die Broad Based Black Economic Empowerment Act, 2003 (RSA, Act 53 of 2003), tot voordeel van histories benadeelde individuee.

Dit is noodsaaklik om uit te wys dat die definisies in hierdie wetgewing, met betrekking to swart mense, van mekaar verskil of mekaar weerspreek. Sulke uitdagings het die verkrygingsproses omgedompel. In ‘n poging om ‘n uniforme uitgangspunt daar te stel in die verkrygingsproses het beide die Nasionale en Provinsiale Tesourie, wetgewing en riglyne daargestel om die proses te bestuur. Ten spyte hiervan word munisipaliteite nog steeds verbind met aantygings van korrupsie en nepotisme in die toekenning van tenders aan diensverskaffers.

Die Leweleputswa Distrikmunisipaliteit is nie soortgelyke aantygings gespaar nie, soos verbeeld deur die reeks onluste in die Oranje-Vrystaat (Mail and Guardian 2007:6–12). Hierdie navorsing is dus onderneem met die doel om vas te stel of die waardes van goeie staatsbestuur daarin slaag, of faal, om goeie verkrygingsprosesse in die munisipaliteit te ondersteun. Die spesifieke doelwitte van die navorsing was dan om die goeie bestuur in die verkrygingsproses te ondersoek, en om dan, waar toepaslik, aanbevelings te maak oor hoe goeie bestuur bevorder kan word.

## ACKNOWLEDGEMENTS

This research is dedicated to my wife Thumeka, my children, Lubabalo, Thembelihle, Khanyisa, Mandlakuye and Siyavuya for their support and faith in me. I am also thankful to my parents for their prayers and unwavering support, especially during my early school days.

Special thanks should go to my supervisor Professor Johan Burger of the School of Public Management and Planning in the University of Stellenbosch for his guidance, emotional and psychological support during this research. On the same token, I wish to extend my gratitude to Professor Fanie Cloete, Dr Belinda Ketel and Mr Karel van der Molen for their dedication in building my confidence as a public manager.

Special thanks should also go to Mr William Hofmeyr for identifying my potential and the risk he undertook in sending me to the University of Stellenbosch. I also wish to thank my colleagues at work, Mr Hebert Lubita for his role as my critic and advisor, our librarian Ms Nomalanga Nxitywa, Pam Makanda and Elsa du Toit. To the personnel at our training division Heila Dreyer and Roger Batty, I wish to say once again, *“You deserve a knighthood for your courage in removing all the impediments in my way”*. While conducting the research for this thesis, I had the privilege of sharing some thoughts with the Executive Mayor of the Lejweleputswa District Municipality, Mr Sebenzile Ngangelizwe. Without his support, the work would probably not have been completed. To Nabile and Mapule, your typing skills have made a valuable contribution especially in my first year.

Lastly, I would like to praise God the Almighty, for giving me the strength and his endless blessings.

**Bulumko Mollman Stemele**

**September 2008**

## LIST OF ABBREVIATIONS

|        |  |
|--------|--|
| ADP    | Auditing Profession Act  |
| AG     | Auditor General  |
| AJ     | Acting Judge   |
| CC     | Constitutional Court   |
| CFO    | Chief Financial Officer  |
| BBBEEA | RSA, Broad Based Black Economic Empowerment Act (BBBEEA), 2003 (Act 53 of 2003)  |
| IDASA  | Institute for Democratic in South Africa   |
| IDP    | Integrated Development Plan  |
| LDM    | Lejweleputswa District Municipality  |
| LGTA   | RSA, Local Government Transition Act (LGTA), 1993 (Act 209 of 1993)              |
| MFMA   | RSA, Municipal Finance Management Act (MFMA), 2003 (Act 56 of 2003)              |
| MSA    | RSA, Local Government Municipal Systems Act (MSA), 2000 (Act 32 of 2000)         |
| NC     | Northern Cape  |
| PFMA   | RSA, Public Finance Management Act (PMFA), 1999 (Act 1 of 1999)                  |
| POCA   | RSA, Prevention of Corrupt Activities Act (POCA), 2004 (Act 12 of 2004)          |
| PPFFA  | RSA, Preferential Procurement Policy Framework Act (PPFFA), 2000 (Act 5 of 2000) |
| PAIA   | RSA, Promotion of Access to Information Act (PAIA), 2000 (Act 3 of 2000)         |
| PAJA   | RSA, Promotion of Administrative Justice Act (PAJA), 2000 (Act 3 of 2000)        |
| PAPM   | Provisioning of Administration Procedural Manual                                 |
| PSAM   | Public Service Accounts Monitor  |
| PROPAC | Provincial Public Accounts Committee   |
| PSC    | Public Service Commission  |

|  |  |
|--|--|
| RSA  | Republic of South Africa                       |
| SAMDI  | South African Management Development Institute |
| SCA  | Supreme Court of Appeals                       |
| SCM  | Supply Chain Management                        |
| SCOPA  | Standing Committee on Public Accounts          |
| SOE  | State Owned Enterprise                         |
| SMME's   | Small Medium and Micro Enterprises             |
| STB  | State Tender Board                             |
| Final Constitution – Act (Final Constitution), 1996 (RSA, Act 108 of 1996)     |  |
| Interim Constitution – Act (Interim Constitution), 1993 (RSA, Act 200 of 1993) |  |



# TABLE OF CONTENTS

|   | Page      |
|---|-----------|
| <b>CHAPTER 1 BACKGROUND .....</b>   | <b>1</b>  |
| <b>1.1 Introduction</b>   | <b>1</b>  |
| <b>1.2 The Legal Nature of the District Municipality</b>  | <b>1</b>  |
| <i>1.2.1 The Constitutional obligations of the Municipality</i>   | <i>2</i>  |
| <i>1.2.2 Challenges faced by the Lejweleputswa Municipality in fulfilling its obligations</i>                                   | <i>2</i>  |
| <b>1.3 Good Governance</b>  | <b>4</b>  |
| <b>1.4 Procurement</b>  | <b>5</b>  |
| <b>1.5 Focus of the Research</b>  | <b>6</b>  |
| <b>1.6 Problem Statement</b>  | <b>6</b>  |
| <b>1.7 Methodology</b>  | <b>7</b>  |
| <b>1.8 Organisation and scope of the thesis</b>   | <b>7</b>  |
| <b>1.9 Summary</b>  | <b>8</b>  |
| <b>CHAPTER 2 THE CONCEPT OF GOOD GOVERNANCE AND<br/>PROCUREMENT .....</b>   | <b>9</b>  |
| <b>2.1 Introduction</b>   | <b>9</b>  |
| <b>2.2 The History of Governance</b>  | <b>9</b>  |
| <b>2.3 The Concept of Good Governance</b>   | <b>9</b>  |
| <b>2.4 The Concept of Good Governance from a South African Perspective</b>  | <b>11</b> |
| <i>2.4.1 The African National Congress Freedom Charter</i>  | <i>11</i> |
| <i>2.4.2 The King Committee Reports</i>   | <i>12</i> |
| <i>2.4.3 Legislation on Good Governance</i>   | <i>14</i> |
| <i>2.4.4 Other Schools of Thought on Good Governance</i>  | <i>15</i> |
| <b>2.5 The concept of procurement</b>   | <b>18</b> |
| <i>2.5.1 Introduction to procurement</i>  | <i>18</i> |
| <i>2.5.2 The history and the development of the legislative framework for public sector procurement process in South Africa</i> | <i>19</i> |
| <i>2.5.3 Value for money</i>  | <i>21</i> |
|   | viii      |

|  |   |           |
|--|---|-----------|
| 2.5.4  | <i>Open and effective competition</i>   | 23        |
| 2.5.5  | <i>Ethics and fair dealing</i>  | 26        |
| 2.5.6  | <i>Accountability and reporting</i>   | 29        |
| 2.5.7  | <i>Equity</i>   | 30        |
| <b>2.6</b>   | <b>The concept of Supply Chain Management</b>   | <b>31</b> |
| 2.6.1  | <i>The History of the Supply Chain Management in South Africa</i>   | 32        |
| 2.6.2  | <i>The execution of the Supply Chain Management process at municipal level in South Africa</i>            | 35        |
| <b>2.7</b>   | <b>Summary</b>  | <b>36</b> |
| <br>   |   |           |
| <b>CHAPTER 3 LEJWELEPUTSWA DISTRICT MUNICIPALITY – A CASE STUDY .....</b>              |   |           |
| <b>37</b>  |   |           |
| <b>3.1</b>   | <b>Introduction</b>   | <b>37</b> |
| <b>3.2</b>   | <b>General overview of Lejweleputswa District Municipality</b>  | <b>37</b> |
| <b>3.3</b>   | <b>The procurement system in the municipal context as it adheres to good governance principles</b>        | <b>39</b> |
| 3.3.1  | <i>Applicable laws</i>  | 39        |
| 3.3.2  | <i>Regulations</i>  | 41        |
| 3.3.3  | <i>Processes</i>  | 44        |
| 3.3.4  | <i>Process for tendering at the Lejweleputswa District Municipality</i>                                   | 45        |
| 3.3.5  | <i>Roles</i>  | 47        |
| 3.3.6  | <i>Empowerment</i>  | 49        |
| 3.3.7  | <i>Summary</i>  | 50        |
| <br>   |   |           |
| <b>CHAPTER 4 ANALYSING PROCUREMENT IN THE LEJWELEPUTSWA DISTRICT MUNICIPALITY.....</b> |   |           |
| <b>51</b>  |   |           |
| <b>4.1</b>   | <b>Introduction</b>   | <b>51</b> |
| 4.1.1  | <i>Selection of the Study Area</i>  | 51        |
| 4.1.2  | <i>Data Collection</i>  | 52        |
| 4.1.3  | <i>Document Analysis</i>  | 52        |
| 4.1.4  | <i>Data Analysis</i>  | 52        |
| 4.1.5  | <i>Tools for Assessing Good Governance in the Lejweleputswa District Municipality Procurement Process</i> | 52        |

|   |  |           |
|---|--|-----------|
| 4.1.6   | <i>Qualitative Research</i>                | 54        |
| <b>4.2</b>  | <b>Research findings</b>                   | <b>55</b> |
| 4.2.1   | <i>System of laws</i>                      | 56        |
| 4.2.2   | <i>Non-Compliance with Regulations</i>     | 58        |
| 4.2.3   | <i>Tendering Processes</i>                 | 58        |
| 4.2.4   | <i>Roles</i>                               | 59        |
| 4.2.5   | <i>Empowerment</i>                         | 60        |
| 4.2.6   | <i>Observations by the Auditor General</i> | 60        |
| 4.2.7   | <i>Value for Money</i>                     | 63        |
| 4.2.8   | <i>Summary</i>                             | 85        |
| <b>CHAPTER 5 CONCLUSIONS AND RECOMMENDATIONS.....</b> |  | <b>86</b> |
| <b>5.1</b>  | <b>Introduction</b>                        | <b>86</b> |
| <b>5.2</b>  | <b>Summary</b>                             | <b>99</b> |

## LIST OF ILLUSTRATIONS

### LIST OF TABLES

|   |    |
|---|----|
| Table 1: Summary of Financial Regulations dated 21 July 2002 .....  | 41 |
| Table 2: Non-compliance issues identified in Auditor General reports 2004–6.....  | 56 |
| Table 3: Table of Value for Money Accountability.....   | 64 |
| Table 4: Table of Ethics and fair dealings.....   | 65 |
| Table 5: Purchases that can be approved .....   | 67 |
| Table 6: Summary of analysis and findings of Good Governance in Procurement<br>at the Lejweleputswa District Municipality ..... | 69 |
| Table 7: Conclusions and Recommendations.....   | 87 |

### LIST OF FIGURES

|  |    |
|--|----|
| Figure 1: Role players in the Municipality.....  | 1  |
| Figure 2: Management and Leadership Pyramid: Adopted from Burger (2006) .....                                  | 16 |
| Figure 3: Governance Pyramid.....  | 17 |
| Figure 4: Procurement life cycle .....   | 18 |
| Figure 5: Public Integrity Index – Source: picture adapted from the Global Integrity<br>Report, 2006.....      | 27 |
| Figure 6: Maps locating the Lejweleputswa District Municipality in the Free State<br>Province .....            | 38 |
| Figure 7: Steps of tendering.....  | 46 |
| Figure 8: Municipal Structure.....   | 49 |
| Figure 9: Characteristics of Good Governance under the influence of skilled<br>Management and Leadership ..... | 54 |

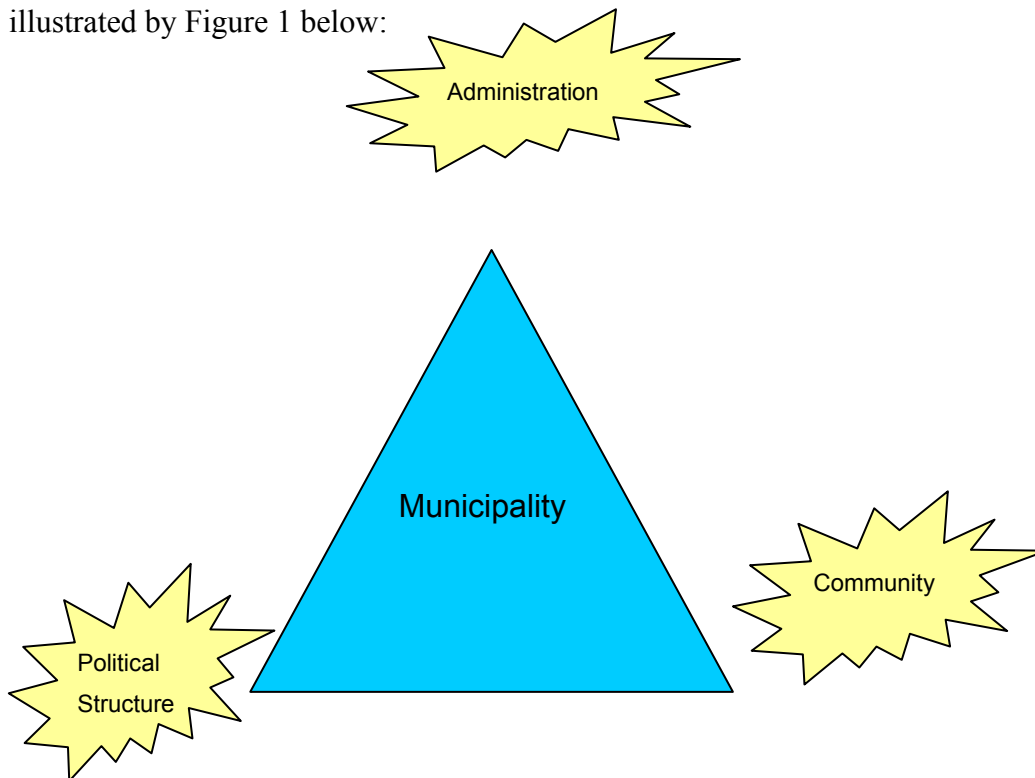
# CHAPTER 1 BACKGROUND

## 1.1 Introduction

This chapter discusses the theoretical background of the municipality in terms of its legal character and its constitutional obligations. It also outlines the challenges faced by the district municipality in implementing good governance and procurement-related legislation. Additionally, the chapter generally defines the concepts of procurement and governance. It further shows that municipalities are public bodies and, consequently, should comply with all legislation affecting such bodies.

## 1.2 The Legal Nature of the District Municipality

The legal character of a municipality is described in section 2 of the Local Government Municipal Systems Act (MSA), 2000 (RSA, Act 32 of 2000) as “an organ of state having legislative and executive powers in an area as specified by the Municipal Demarcation Act (MDA), 1998 (RSA, Act 27 of 1998)”. A “municipality” is defined in section 2(b) (i) and (ii) of the Municipal Systems Act as an entity that consists of an administration, a political structure and the community in a determined area. This is illustrated by Figure 1 below:



**Figure 1: Role players in the Municipality**

The structure depicted in Figure 1 shows that in terms of the Act, a municipality is supposed to be participative by nature in contrast to the formal fragmented system that was in place prior to 1994.

The Constitution of the Republic of South Africa, (the Constitution), (RSA, Act 108 of 1996), also confirms this position by indicating in section 151(3) that a local authority has a right to govern on its own initiative on matters affecting it, subject to both national and provincial Acts.

Section 60 of the Municipal Demarcation Act (MDA), 1998 (RSA, Act 27 of 1998) clearly sets out the criteria and procedures to be followed when demarcating the boundaries of a municipality. After its establishment, a municipality becomes an autonomous local sphere of the government of the Republic of South Africa, in terms of section 40(1) of the Constitution. Although the municipality becomes autonomous, it still has to adhere to the constitutional principles of good governance. In short, as a local sphere of government, a municipality is constitutionally obliged, in terms of section 40(2), to monitor and operate within the values and principles of cooperative governance (Devenish, GE, 1998:34).

### ***1.2.1 The Constitutional obligations of the Municipality***

The Constitution Act, 1996 also imposes obligations on a municipality to perform certain duties for the people under its jurisdiction. The first of these is to *structure* and *administer* the organisation to fulfil the budgeting and planning processes. Secondly, the municipality is expected to give precedence to the basic needs of the community, as well as to encourage the social and economic development of the community. Thirdly, a municipality is expected to take part in national and provincial development programmes (the Constitution, 1996:153); for example, the development programmes at the Lejweleputswa district municipality are used as poverty relief mechanisms in areas falling under the jurisdiction of the municipality.

### ***1.2.2 Challenges faced by the Lejweleputswa Municipality in fulfilling its obligations***

The income of the people living in the district of Lejweleputswa municipality is derived primarily from the mining and the agricultural sectors. In the past few years, the area

has been hit hard by retrenchments in the mining sector, which has led to an increase in the unemployment rate in the region. To worsen the situation, the agricultural sector is battling to cope with the severe droughts that have hit the region, the effects of which on the farms and the agricultural sector in the region have led to retrenchments of substantial numbers from the communities in the area. (Lejweleputswa district municipality website: 2007).

The municipality, together with Provincial and National Departments, has undertaken the initiative of creating employment by introducing projects in the area. In order to facilitate the planning and implementation of these projects, the municipality is frequently engaging both internal staff and external service providers. This in turn means that the municipality has to fulfil its constitutional obligation in terms of the Constitution Act, (1996:217) by tendering for those services. The skills of external service providers are in most cases vital, since consultants and experts can bring rare skills that are largely unavailable in the public sector. Before acquiring such services, however, the municipality has a constitutional obligation to procure goods and services in accordance with a process that is *fair, equitable, transparent, competitive and cost effective* in order to satisfy the needs of its communities (the Constitution, 1996:217). The five constitutional requirements listed in italics above, constitute the main principles of good governance and they will be discussed in Chapter 2.

In short, the municipality should at all times try to use procurement processes that are *just, understandable, democratic, clear and with due respect for the rule of the law*. Furthermore, the preamble of the Constitution states that, “*We, the people of South Africa, adopt this Constitution as the supreme law of the Republic*” (the Constitution, 1996).

Thus, based on this premise, the procurement process of the Lejweleputswa district municipality should be guided by the principles and values of good governance as stipulated in section 217 of the Constitution.

The introduction of the new procurement processes, in terms of section 10(G) of the Local Government Transitional Act (LGTA), 1993 (RSA, Act 209 of 1993) and section 110 of the Local Government Municipal Finance Management Act (MFMA), 2003 (RSA, Act 56 of 2003), in municipalities has substantively closed the loopholes which, in the past, were used to aid acts of corruption and maladministration.. This is the case,

because in some instances corruption and theft that took place during the transitional period of implementing these processes, especially in the Lejweleputswa district municipality (MacCarthy 2004:2–6). Nonetheless, in spite of the introduction of this legislation to regulate the procurement processes in the municipality, corruption and dishonesty in the procurement process have continued to manifest themselves (MacCarthy 2004:2–6).

To deal with corruption and dishonesty, all spheres of government have developed new strategies to regulate the conduct of municipal officials and councillors with regard to the procurement process. These strategies were guided by the promulgation of the Prevention and Combating of Corruption Activities Act, (POCA), 2004 (Act 12 of 2004), which strengthened measures both to prevent and fight corruption. This Act includes Councillors in its definition of “any person”; this means councillors involved in the irregular awarding of tenders or any other connected criminal activities can be charged under this Act. Secondly, the Supply Chain Management Regulations, 5 December 2005, forbid councillors from involving themselves in procurement processes. Thirdly, the Local Government Municipal Finance Management Act (MFMA), 2003, states in section 117, that Councillors should not be members of bid committees. There are also anti-corruption strategies that have been rolled out to all Project Consolidate municipalities. Given this, it may be necessary to define good governance as the overarching philosophy of the reforms discussed above as well as to the area under discussion as the specific problem.

### **1.3 Good Governance**

The concept of “good governance” has recently attracted much attention in administration and management, and there are many definitions that clearly explain it. However, what is noticeable is that the concept of “good governance” has evolved since its inception and it included a wider range of issues and values than perhaps some of the definitions originally envisaged. This broadening of the scope of the term of “good governance” is discussed below.

Murthy (2006:1) defines good corporate governance as “*maximising shareholder value legally, ethically and on a sustainable basis, while ensuring fairness to every stakeholder – the company’s customers, employees, investors, vendor’s partners, the government of the land and the community*”. Leautier (2004:2) summarised the



definition of the concept by indicating that there are universal principles that can be found in general definitions of good governance, namely:

- “Governance as a process, and institutions by which authority in a country is exercised.
- The process by which governments are selected, held accountable, monitored and replaced,
- The capacity of government to manage resources and provide services efficiently, and to formulate and implement sound policies and regulations.
- The respect for the institutions that govern economic and political interactions among them.”

Van der Merwe et al (2003: Appendix L) paraphrased the King Code (2002), which states that governance is about exercising control and management with regard to the interest of all stakeholders, which in turn means that structures, as stipulated in the King Committee report, must be put in place. With regard to the procurement section of the municipalities, bid committees, internal audit committees and risk management committees should work independently to ensure fairness, equitability, competition, transparency and accountability.

## **1.4 Procurement**

**Procurement** can be defined as, *“the acquisition of goods and /services at the best possible total cost of ownership, in the right quantity, at the right time, in the right place for the direct benefit or use of governments, corporations, or individuals generally via a contract”* (Wikipedia procurement website, 2007).

It is also defined as *“the act of procuring, obtaining; obtainment; attainment”* (Brainyquote procurement website, 2007); and as *“the process by which the State contracts for goods or services”* (Werkman’s Attorney website, 2007).

If the necessary legal processes are not followed by an organisation, then corruption and fraud always attempt to raise their head. In simple terms, procurement fraud is perpetrated by individuals in order to gain unfair benefits or rewards in the process of purchasing goods from external suppliers.

However, most procurement fraud involves conspiracy between both buyer and supplier, which makes it difficult to notice. Fraud therefore includes actions by

employees, such as signing on inflated, phantom or duplicate invoices and taking a cut; creating false companies; receiving goods and services for personal use in return for legitimate business (kickbacks); accepting cheaper goods than those specified and outright bribery. The greater the degree of trust placed on the employee, the greater the risk of serious fraud.

## **1.5 Focus of the Research**

This research focuses on the manner in which goods and services are acquired and disposed of at Lejweleputswa district municipality. This will be done by doing an in-depth study on how the municipality's procurement processes function, taking into account existing local government policies and legislations.

Adherence to the principles of good governance in a municipality can enhance a procurement process because it ensures that the manner in which it is conducted is efficient and effective. Services are efficient if they are delivered at minimum cost, and effective if they have an impact or achieve the desired consequences. The purchasing and disposing function of any municipality is an area that is particularly vulnerable to fraudulent activities as it usually involves the most contact between employees and external agents, and it is thus the primary risk area for misappropriation by both employees and bidders (Coderre, 1999:48). Bad governance can therefore be linked to inefficient controls, inadequate contracts, questionable procurement practices, policies and procedures.

## **1.6 Problem Statement**

The reason for undertaking this research is to determine the procurement process at the Lejweleputswa district municipality and to determine the extent to which this procurement process adheres to good governance.

The research question therefore is:

**To what extent does the procurement process at the Lejweleputswa District Municipality adhere to good governance principles?**

The research also seeks to establish whether Lejweleputswa district municipality can improve its procurement processes by adhering to good governance principles.

## **1.7 Methodology**

According to Mouton (2005:56), research methodology focuses on the process, the kind of tools and procedures to be used. Wemal et al (2005:281) depict research methodology as the procedure by which a researcher intends to investigate the stated problem.

This study uses the Lejweleputswa district municipality as a unit of analysis and the researcher will look for applicable policies in the procurement section of the municipality. Secondly, the researcher has obtained the municipality's organisational structure in order to verify whether it complies with good governance as stated in the King 2 Report of 2002. The researcher's focus is on the processes that are currently used to procure goods rather than on the outcomes of the processes.

## **1.8 Organisation and scope of the thesis**

This thesis is about exploring the extent to which the Lejweleputswa District Municipality adheres to the principles of good governance namely transparency, accountability, participation and predictability in its procurement process.

**Chapter 1** introduces and discusses the theoretical background of the municipality in terms of its legal character and its constitutional obligations. It also outlines the challenges faced by the district municipality in implementing good governance and procurement-related legislation.

**Chapter 2** discusses the concepts of good governance and procurement, their history, development and application in South Africa. Secondly, it analyses the different legislations, schools of thoughts and case studies relating to the concept of supply chain management, as well as their history and execution in the South African context.

**Chapter 3** discusses the Lejweleputswa District Municipality's procurement process in terms of its financial regulations.

**Chapter 4** discusses gives a detailed discussion of the Lejweleputswa procurement process in terms of good governance principles and values. The discussion also identifies the flaws or gaps in the procurement process at the municipality.

**Chapter 5** provides for possible solutions to address the gaps in the Lejweleputswa procurement process with due regard to the good governance in Chapter 2.

## **1.9 Summary**

This chapter has shown that the municipality is an institution formed on the basis of certain legislations and, as such, it should comply with the provisions of the Constitution of Republic of South Africa, 1996 (RSA, Act 108 of 1996). In order to fulfil the provisions of the Constitution, the municipality, as the sphere of government that is closest to the people, occasionally has to buy or sell services from third parties.

In doing so, certain laws and guidelines must be followed to ensure a just process. Secondly, since the municipality is a statutory body, all the decisions it makes can be reviewed by the South African courts in terms of the Promotion of Administration and Justice Act(PAJA), 2000 (RSA, Act 3 of 2000). The concepts of good governance and procurement are analysed by means of the literature study in the following four chapters.

## **CHAPTER 2 THE CONCEPT OF GOOD GOVERNANCE AND PROCUREMENT**

### **2.1 Introduction**

This chapter discusses the concepts of good governance and procurement, their history, development and application in South Africa. Secondly, it analyses the different legislations, schools of thoughts and case studies relating to the concept of supply chain management, as well as their history and execution in the South African context. With the introduction of increasingly more sophisticated technologies into management, the concept of governance has received more emphasis worldwide, resulting in global governance principles. This chapter also includes the context of procurement and it outlines what is explored in Chapter 3.

### **2.2 The History of Governance**

Governance initially emerged as a concept that was applicable to a company's corporate governance. The history of corporate governance originated in the Great Depression of 1930s in the United States of America, where citizens of that country believed that the sufferings they were undergoing were due to the mismanagement of corporations. Corporate governance failures occasionally resurfaced until about the 1970s and 1980s, when United States Securities Exchange introduced the codes that were later issued across the world. In the United States, the Treadway Commission and the SEC Blue Ribbon Committee both introduced these codes. Many corporations in the European countries followed the same route by introducing the code for good conduct (Murthy 2006:2).

### **2.3 The Concept of Good Governance**

In chapter one, the definitions of good governance indicated that it is a process which makes institutions account, formulate and implement sound policies. In this chapter, good governance is further explained, together with its history and development in the South African context.

Governance is a complex and confusing topic, as shown from the following definitions:

*“Governance may be defined as the exercise of authority, control, management and power of government.”* In specific terms, it may refer to “the manner in

which power is exercised in the management of a country's economic and social resources for development" (World Bank, 1992).

*Governance* is a complex concept that includes the state's institutional and structural arrangements, decision-making processes, implementation capacity and the relationship between government officials and the public (Landell-Mills and Serageldin 1992).

Osborne and Gaebler (1992) define *governance* in a more expansive manner as "the process by which we collectively solve our problems and meet our society's needs. Thus, governance is not simply about the manner in which the government conducts its business in its own sphere. It tells how well government has encouraged, facilitated and shaped the participation of civil society and private sector not only in service delivery but also in the evaluation and monitoring of government performance itself."

The World Bank (1994) defines governance as "the exercise of political authority and the use of institutional resources to manage society's problems and affairs". The World Bank has recognised three aspects of governance in its definition: (i) political authority (ii) institutional resource (iii) and to manage society's problems and affairs. In short, the bank acknowledges the use of power in managing resources to address social and economic needs.

Olowunski and Sasko (2002:37) define the notion of good governance as "a system of values, policies and institutions by which a society manages its economic, political and social affairs through interaction within and among the state, civil society and private sector".

When it comes to good governance for local government, services are delivered taking into account "transparency, accountability, participation and predictability" (Asian Development Bank, 2004). The Asian Development Bank statement suggests that even an entity like the Lejweleputswa district municipality should constantly check if these indicators are applied in its administration. Furthermore, the given definitions show that governance is a process that involves society and those wielding the power depending on their level of interaction.

The Institute on Governance (2004:1) defines good governance as "the process whereby power is exercised, decisions are made, citizens or stakeholders are given voice, and account is rendered on important issues."

The Ibrahim Index of African Governance (2007:1) defines governance as “the delivery of key political goods, capturing defined, measurable outcomes rather than subjective assessments”.

The above definitions have shown that researchers interpret governance in different ways although they are using the same terminology. Abdellatif (2003:3) summarised the different views as follows:

*“Governance as a theoretical construct, separate from the theory, is not only in an embryonic state, but its formulation also differs among the researchers depending on their ideological convictions”.*

Thus, a summary of the above definitions indicates that governance is a “ **a system of laws, regulations, processes, procedures, norms, standards, roles, rights, responsibilities, rules, authority, power, empowerment and leadership that functionally relates people and formal entities**” (Cornerstone MSC website, 2007).

In other words, governance is a structure or framework that is practised or adopted by an institution or a country to satisfy people or community requirements in social, economic and political spheres. The abovementioned systems, when applied in business or when shared by institutions, are called corporate governance.

## **2.4 The Concept of Good Governance from a South African Perspective**

Good governance in South Africa was acknowledged as far back as the 1955 Freedom Charter. It is currently integrated within the King Committee Reports and in various processes in the form of legislations, which are discussed below.

### ***2.4.1 The African National Congress Freedom Charter***

The concept of good governance in South Africa was initially mooted by the African National Congress’s Freedom Charter document, which was adopted by the Congress of the People in Kliptown in 1955. The most important aspects of good governance contained in the Freedom Charter are the following:

- **The people shall govern.** In terms of the Freedom Charter, governance is supposed to be implemented by allowing people to take part in the administration

of the country. In simple terms, this method promotes “**participation**” for people in matters that affect them.

- The Freedom Charter also allowed people to have **equal rights**. This is the basis of the **equality clause**, which we have in the present South African Constitution, Act 108 of 1996, in section 9.
- All **shall be equal before the law**. For a country to attain good governance, it means there must be adherence to the “**rule of law**”. If there is no rule of law, people might be treated arbitrarily (The African National Congress website: (2007)).

#### ***2.4.2 The King Committee Reports***

Judge Mervin King, in his King 1 Report, introduced this notion of good governance to the democratic South African’s corporate world in 1994, which in turn led to a code of corporate practice and good conduct. The purpose of the report was to enhance better and higher standards of corporate governance in the country (as quoted in King 2, 2002:2). King defined corporate governance as “**being a process to help directors discharge their duties and responsibilities**”.

What is conspicuous about King’s definition is that he agrees with other writers in believing that governance is a **process** driven by certain mechanisms or **systems**. The report took a bold step by stretching the concept of corporate governance from financial matters to include “**social, economic and environmental** impact of businesses into corporate governance”. In short, the King 1 Report managed to integrate both the global economic environment and the legislative framework as the key factors needed to run an institution.

In the King 2 Report, the King Committee emphasised the need for the **separation of roles** and **structures** in institutions. According to Judge King, the roles of the internal auditor, the risk, audit and remuneration committees are critical in the maintenance of good governance in an institution. Secondly, the report pointed out the need to develop human capital in order to address economic and social factors in our society.

In the latest development, the King 3 Report (Business Times, 2007:1), an update on the latest corporate governance codes in South Africa, has been described as another contribution from Judge Mervin King that is aimed at closing gaps which might arise



because of the impending new company law. The King 3 Report is also expected to address, among other issues, the following:

- risk management
- audit committees
- director's dealings/business
- stakeholder interests

The introduction of other legislation, like the Auditing Profession Act, (ADP) 2005 (Act 26 of 2005) and the Prevention of Corrupt Activities Act (POCA), 2004 (RSA, Act 12 of 2004) have also made it necessary for the King Committee on Corporate Governance to update the King 2 Report (The Times 2007:1).

The Times points out that if directors are to be personally liable for all company failures, then South Africa should expect a mass departure of directors when the new company law becomes applicable. As far as Judge King is concerned, the new law is good but to over-regulate corporate governance might lead to some unintended outcomes.

When the South African Constitution Act 108 of 1996, was promulgated, it included certain provisions that also contain the elements of good governance:

- **Section 33** deals with a *just administration action* that should be *lawful, reasonable* and procedurally *fair*. Further to that, the action is supposed to promote *efficient* administration.
- **Section 217** deals with procurement in state organs stating that they should be *fair, equitable, transparent, competitive and cost effective*.
- **Section 195(1) (d)** states that municipal services should be rendered *impartially, fairly, equitably and without bias*.
- **Section 195 (1) (a)** states that *professional ethics* should be promoted.
- **Section 195(1)(g)** states that *transparency* should be maintained at all times by providing accurate information to the public
- **Section 195(1) (i)** provides for a public administration that is *fully representative* of South African people. This section of the Constitution is obligatory and should be obeyed at all times. In other words, all spheres of government should account for transparency, representivity, impartiality, fairness and equitability.

### **2.4.3 Legislation on Good Governance**

The Protocol on Corporate Governance in the Public Sector (2002) indicated that, “The Code of Corporate Practices and Conduct as contained in the King Report applies, *inter alia*, to State Owned Enterprises (SOEs) and agencies that fall under the Public Finance Management Act (PMFA), 1999 (RSA, Act 1 of 1999.” At the time this article was drafted, the Municipal Finance and Management Act (MFMA), 2003 (RSA, Act 56 of 2003) (MFMA) was not applicable. When the Act became applicable, it put an obligation even on municipalities to conform to the requirements of the Code of Corporate Practices as it is incorporated in the Act. In other words, corporate governance in municipalities embodies *processes, systems, directing, control and accountability* by officials and the municipal institution.

In general, the systems or mechanisms that facilitate good governance in the public sector are systems of laws, regulations, processes, procedures, norms, standards, roles, rights, responsibilities, rules, authority, power, empowerment and leadership that functionally relate to people and formal entities. These systems or mechanisms are made by the legislature, the executive, the judiciary and any other offices where there is delegation and sub-delegation of authority. In companies, the systems are usually vested in the authority of the Chief Executive Officer or the authority of managers. In the case of the municipalities, the mechanisms are in the form of organisational structures as contained in Municipal Structures Act, 1998 (RSA, Act 117 of 1998), as amended by the Municipal Structures Amendment Act, 2000 (RSA, Act 33 of 2000).

Chapters 3 and 4 of the Local Government Municipal Structures Act, 1998 (RSA, Act 117 of 1998), as amended, provides for the establishment of the Council, the offices of the Mayor working together with the Speaker, Municipal Manager, Mayoral, Internal Audit, Risk Management and Ward Committees. The Municipal Systems Act (MSA), 2000 in sections 55 and 56 also confirms these positions. Furthermore, Chapter 7 of the Constitution of the Republic of South Africa Act, 1996 also supports the functioning of these structures. A Council’s structure is the fundamental base of corporate governance and the processes of good governance therefore are regulated by internal policies and the relevant legislations. In this regard, King (2006:1) stated that corporate governance emanates from investigations drawn from the world of corporate scandals. King emphasised that corporate governance is not only about prevailing conditions, he also puts emphasis on standards and quality of performance. Municipalities are strongly

urged to adhere to governance based on the values of *fairness, responsibility, accountability* and *transparency*.

#### **2.4.4 Other Schools of Thought on Good Governance**

The features as described by King above are mutually dependent and they are the cornerstone of good governance, even in local government institutions. Mr A Masondo, the National Chairperson of the South African Local Government Association (SALGA) (2007:2), indicated in his address to its congress that, by participation or interaction with other stakeholders, the body has in the past managed to work together with people in other spheres of government to make policies for the planning and implementation of local government development delivery programmes. Masondo said that as a result of this interaction, the process “engendered a sense of commitment and accountability”. The inference that can be drawn from this statement is that by allowing people to *participate* in local government processes stimulates allegiance and *accountability* or *responsibility*. *Accountability* is a broad term that encompasses both external and internal accountability (Hollis and Plokker, 1995:75). Internal accountability entails answerability to all the stakeholders within a municipality. These values are also contained in the Public Finance Management Act, 1999 and the Municipal Finance Management Act, 56 of 2003. The Municipal Finance Management Act has taken these values forward by separating the roles of municipal officials and municipal political heads.

Cloete (2006:10) quoting Graham, Amos, and Plumtree (2003), Saner and Wilson (2003:5), and Cloete (2000) summarises the attributes of good governance by including:

*“...representivity; equity and allocation of resources; participation; people-centred strategies; transparency; democratic rights; stability; political and financial accountability; legitimacy; developmental and focus growth; professionalism; ethical behaviour; flexibility; effective, efficient co-ordination, integration and holism; creative, competitive and entrepreneurial practices; literate, educated, empowered citizens and sustainable outcomes”*.

The next question therefore is: Can good governance stand on its own?

Burger (2006:8) believes that governance cannot stand on its own without being supported by a technical sophisticated management with the elements as shown in Figure 2.

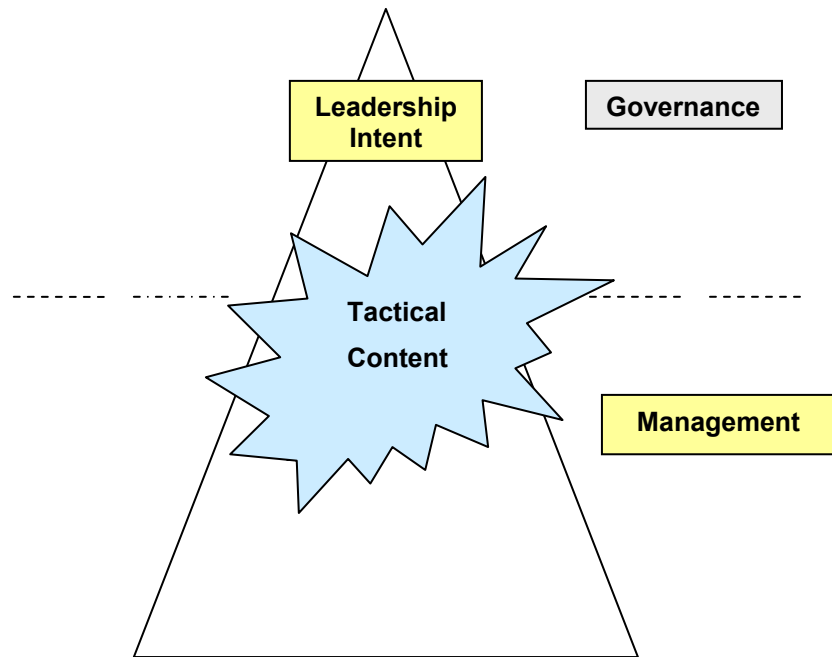


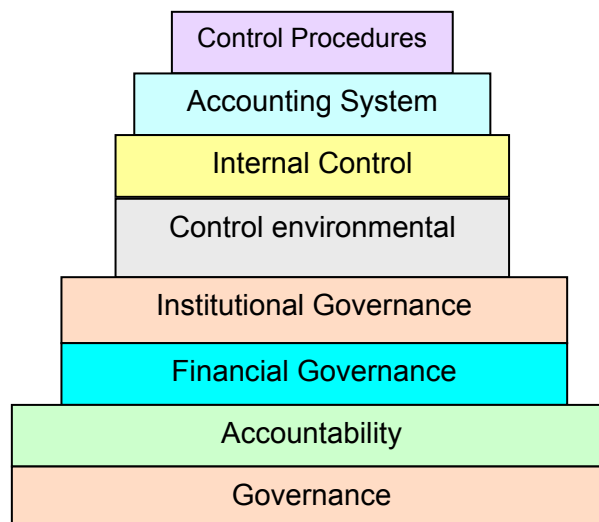
Figure 2: Management and Leadership Pyramid: Adopted from Burger (2006)

Figure 2 depicts that governance depends on *skilled management* with *good leadership acumen*. He is supported by Paul Streeten who quotes from the report by the Commission on Global Governance, which defines governance as “*the sum of many ways in which individuals, institutions, public and private companies manage their common affairs*”. Furthermore, he states that good governance values are those diverse interests that have been agreed upon by people or institutions (Streeten, 2007)

In short, Streeten, like Burger, believes that management is the medium of processing or the vehicle of conveying good governance. It is on this basis that the South African Government has decided to put good governance systems in place by means of legislation and regulations in municipalities. These characteristics taken together promote democracy in the sense that they minimise corruption and promote the views of the people. Thus, good governance in the South African perspective could be considered as a collection of efforts intended to strengthen democracy and fight racism. These

efforts are in the form of both formal and informal structures and institutions (North West Provincial Government website, 2007).

As indicated above, King suggested that the characteristics of good governance no longer apply only to financial matters but to *social, economical* and *political* spheres as well. It is on this basis that South Africa's final Constitution Act, 108 of 1996, requires that state organs like the national and provincial departments and municipalities must adhere to good governance principles when they are procuring for goods and services. Figure 3 depicts the systems in an institution that are required to support good governance.



**Figure 3: Governance Pyramid**

*Adapted from the Thesis: Financial Governance and Controls – The Government perspective from RAU (author unknown)*

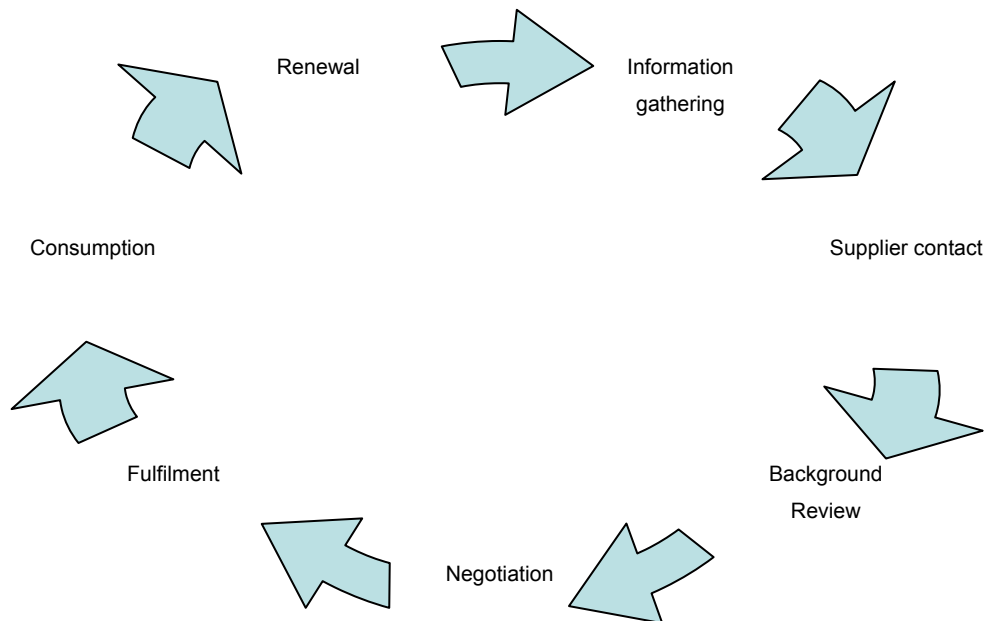
What then are the factors that should be considered at local government level to achieve good governance in procurement? The question warrants discussion of the concept of procurement.

Procurement as a process must conform to certain guidelines or values that enhance good governance. The values of good governance in the procurement process are meant to provide a framework for drafting policies, codes of conduct, processes, enforcement mechanisms, standards as well as to provide a framework for indicators of a good procurement process.

## 2.5 The concept of procurement

### 2.5.1 Introduction to procurement

A procurement process is defined as “*tendering, contracting, purchasing and stock management*” (Duncan 1996:123). A simple *procurement life cycle* can be illustrated as follows:



**Figure 4: Procurement life cycle**

The procurement process, as we know it today, emanates from the efforts of the Bar Association of America, which drafted a document in the mid 1970s to modernise the purchasing of services by state organs.

The system used to purchase the services was called the *Model Procurement Code*. The model also brought about a general *ethical policy* and *standards* to be followed when procuring goods and services. The ethical policy and standards that were set up signify that certain steps must be followed in order to ensure a good procurement process. The outcome of applying the Model Procurement Code was that public confidence was boosted to such an extent that private individuals and companies were prepared to do business with the state. The Commonwealth Procurement Code was then introduced between 1983 and 1992 by some Commonwealth Countries to deal with the procurement of goods in their countries, and this included South Africa (Commonwealth procurement website, 2007).

### ***2.5.2 The history and the development of the legislative framework for public sector procurement process in South Africa***

The development of the legislative procurement process in South Africa took place as far back as 1968 when the State Tender Board (STB) was established in terms of the State Tender Board Act (STB), 1968 (RSA, Act 86 of 1968).

The main aim was to regulate the procurement of goods and services, the disposal of property, the hiring or letting of anything and the acquisition of rights. In terms of this act, regions or provinces were to be regulated by their own Provincial Tender Boards (Knipe et al. 2002:292). The Act was followed by the promulgation of the State Tender Board Regulations of 1968 (SAMDI, 1999: Chapter 3).

State Tender Board Regulations (ST) provide for the *general conditions* and *procedures* in respect of awarding tenders, contracts and orders. By the year 2002, all nine provinces in South Africa had their own set of Regulations. A user guide manual developed in terms of ST 37 was also drafted and it dealt with the procurement process in the public sector in a logical order.

State Tender Board Circulars were used to update Government Departments about urgent issues regarding policy matters. Simultaneously, a document called the Provisioning of Administration Procedures Manual (PAPM) was drafted to deal with the process that should be followed when purchasing goods and services in the government sector. The new South African dispensation was then ushered in during 1994, and it brought about a new procurement system in the form of the “10-Point Plan for Public Sector Procurement Reform” which was published in November 1995 by the Department of Public Works.

When the Constitution was enacted, section 195(1) recognised the fact that public administration in South Africa should be governed by democratic values and principles. The democratic principles mentioned in the Act are *equity, fairness, accessibility, transparency* and *accountability*. Section 217 specified the way in which procurement should be conducted in South Africa. The Green Paper on Public Sector Procurement Reform promulgated in April 1997 was a milestone because it proposed certain principles that should be followed to accomplish good governance. (The South African National Department of Treasury website, 2007).

The South African Parliament in 1999 passed the Public Finance Management Act (PMFA), 1999 (RSA, Act 1 of 1999, as amended by Act (PMFA), 1999 (RSA, 29 of 1999). The Act deals with financial management in national and provincial spheres of governments. The Act also promoted a procurement system that is *fair, equitable, transparent, competitive* and *cost effective*. In March 2000, the National Treasury Regulations were promulgated and they deal with asset management and expenditure in the public sector. The regulations also apply to the general procurement that affects both provincial and national governments.

The Preferential Procurement Policy Framework Act (PPPFA), 2000 (RSA, Act 5 of 2000) was then enacted and it gives effect to the Constitution, section 217(3). In terms of section 2(1) of the PPPFA of 2000, a public entity must enact and implement its own policies as long as they conform to the provisions of section 217(2) of the Constitution. Moreover, the Act also introduced a system of evaluating tenders in terms of the points scored.

The Act provides for contracts with a value above R500 000, a 90/10 preference point system should be employed; a package of adjudication criteria is worked out with a maximum total of 100 points. Each bid is evaluated according to the number of points it scores for each criterion, with the highest point-scoring bid winning the tender.

Section 5 of the Promotion of Administration of Justice Act (PAJA), 2000 (RSA, Act 3 of 2000), allows an aggrieved party, affected by an administration decision, to ask for written reasons within ninety days. This provision therefore also applies to decisions taken by the Evaluation and Adjudication Committees in the procurement processes.

The promulgation of the Preferential Regulations of 2001 followed the enactment of the PPPFA. Another milestone in the legislative framework affecting procurement was achieved by means of the General Procurement Guidelines (2002:4).

These guidelines introduced five basic values or principles namely:

- value for money
- open and effective competition
- ethics and fair dealing
- accountability and reporting
- equity



The five mentioned values reflect the characteristics of good governance. In principle, these General Procurement Guidelines play a pivotal role in government procurement processes; even local governments or municipalities are bound to apply them when they are implementing the procurement process. A detailed explanation of the values follows.

### **2.5.3 Value for money**

This is an indispensable assessment against which a department or a municipality must rationalise a procurement outcome. In other words, costs and benefits over the procurement process are both rigorously considered. Value for money is important because it ensures that the internal processes of the institutions are efficient. The “test” in this regard is costs involved as opposed to delays from suppliers (General Procurement Guidelines 2002:4).

Value for money is also one of the crucial concepts of the Batho Pele principles. These principles require that public services be rendered in an *economic* and *efficient* manner in order to give people the *best possible value* (South African Government website, 2007).

Value for money also corresponds with the Municipal Finance Management Act (MFMA), 2003 (RSA, Act 56 of 2003). Section 120(4) (b) (iii) (aa) states that any agreement or public-private partnership entered into with a municipality should provide for *value for money*. As indicated above, a feasibility study should be conducted using the *costs involved versus delays* test. In addition, section 120(3) of the Municipal Finance Management Act (MFMA), 2003 provides that, if the public-private partnership involves a contract of rendering services to the municipality, then the whole of chapter eight of the Municipal Systems Act (MSA), 2000 becomes applicable. This chapter specifically provides for value for money because in terms of the general duties of the municipality, services rendered are supposed to be equitable and accessible (Section 73(1)).

In terms of these regulations, metropolitan, district and local municipalities are required to draw up their own procurement policies, which should conform to the Municipal Finance Management Act Supply Chain Management Regulations.

With regard to sale and letting, price is the deciding factor on whether a municipality should or should not enter into a contract in terms of the MFMA Supply Chain Management Regulations. Briefly, *price* is generally the most important criterion for the determination of value for money in sale and letting of immovable property. This is clearly illustrated in the following case:

The case of *Warrenton Munisipaliteit v Coetzee (1998) JOL1863 (NC)* demonstrates this point. In this case, Coetzee leased a plot of land from the municipality. When the lease contract expired, the municipality put the land out to tender.

The respondent tendered for the land but this time he was unsuccessful and as a result, he was evicted. Coetzee refused to vacate the land because he believed that his tender was the highest as compared to his competitors. In arriving at its decision the court considered the highest tender as providing “value for money” to the municipality. The judge found that Coetzee’s tender was not the highest and therefore he was asked to vacate the land.

There are exceptions to this case law because regulations 40(2) (b) (i) and 40(2) (c) (i) of the Supply Chain Management (SCM) Regulations provide that this can be done “*when the public interest or the plight of the poor demands otherwise*”.

The two following incidents that happened in the Cape Town Metropolitan Council’s procurement process also had some lessons to offer as they clearly show what negligence of value for money can do:

#### **BTH allegation**

In this matter, a multi million rand road construction contract was awarded by the Cape Town Metropolitan Council to a little known company called BTH. The main issue in this incident was that the chosen company, BTH, had no previous experience to do the job and, as time passed, it failed to complete the job resulting in loss of money (Edmunds 2006:1). The lesson that can be learned in this matter is that the municipality failed to do a feasibility study on the company regarding the costs involved versus delay (ie value for money).

The importance of this incident is that although “value for money” is not the single determining factor for ensuring good governance in the procurement process, it nonetheless provides a good basis for comparing alternatives for identifying bidders that meet the specific requirements of the client.

(Mail and Guardian: Edmunds 2006:3)

#### ***2.5.4 Open and effective competition***

In terms of section 112(1) of the Local Government (MFMA), “*the supply chain management policy of the municipality should be fair, equitable, transparent, competitive and cost effective*”. The issue of openness or transparency is one of the fundamentals of South Africa’s democracy, and it is found in section 1(d) of the Constitution Act, 1996 (RSA, Act 108 of 1996).

The issue is that procedures must be followed and the decisions and their enforcement carried out in a manner that takes into account the standing rules and regulations of the particular institution. Secondly, information should be disseminated to the people who are affected by the decisions or their enforcement (Wikipedia , 2007).

The underlying principle of the procurement process being open is to afford all stakeholders an opportunity to scrutinise the processes that are followed. The following case demonstrates clearly the point:

In the case of *Steenkamp NO v Provincial Tender Board Eastern Cape* 2007(3) SA 121(CC) at paragraph 35 the Judge emphasised that the Eastern Cape Provincial Tender Board should when awarding tenders comply with the provisions of section 195 of the Constitution Act,1996 (Act 108 of 1996) which stipulate that transparency and accountability should be considered.

On the issue of “effective competition”, the Judge also indicated that an institution like the Eastern Cape Tender Board has a discretion not to act recklessly by disregarding the interest of other tenders. In this case, the Court also acknowledge the fact that “effective competition” in public procurement is a constitutional requirement that provides others with a chance to compete for a particular contract.

Procurement processes that are clear and transparent encourage accountability and promote competition because interested parties are free to participate in the procurement process. A large pool of tender applicants can then ensure value for money.

Currently, the municipalities derive their mandate from the Municipal Finance Management Act (MFMA), 2003 (RSA, Act 56 of 2003) which provides for a competitive bidding process. The municipal mandate requires that the procurement process should be fair, impartial and independent. If the procurement process does not meet these requirements, any decision emanating from it might be subjected to section 33 of the Constitution, which provides for a just administration action.

This section lays down four basic requirements for a just administration act: *lawfulness*, *reasonableness*, *procedural fairness* and *reasons*. If the actions of a municipal official or any of its structures adversely affect the rights of any person, then such decision can be subjected to a review in terms of section 6 of the Promotion of Administration and Justice Act (PAJA), 2000 (RSA, Act 3 of 2000). The grounds for review listed in PAJA include the reviewing of authority, reasons, error and the residual categories as mentioned in following sections:

- Lack of proper authority (section 6(2)(a)(i),(ii))
- Acting beyond the scope of powers (ie ultra-vires) (sections 6(2)(f)(i))
- Rationality (section 6(2)(f)(ii))
- Unreasonableness (section 6(2)(h))

Section 8 of the Act provides for remedies in cases where the decision of a public official is biased. A decision made by a municipal official acting in one of the bid committees can also be challenged under the Regulations on Fair Administrative Procedures, 2002 and the common law.

Transparency in the procurement process can be illustrated by setting down clear criteria for the procedures to be followed, as provided by section 112(1) (e) of the (MFMA) 2003 (RSA, Act 56 2003). The set of criteria to be used in procurement processes could be in the form of *qualifications*, *registration of suppliers*, *maintenance of proper records*, *utilisation of information technology*, *minimising corruption and clear usage of language* (Zanamwe, 2003:7–8). The Constitution also provides for transparency to be maintained at all times by providing timely access to accurate information by the public (Section 195(1) (g)).

In order to ensure openness, in both the public and private sectors, the Promotion of Access to Information Act (PAIA), 2000 (RSA, Act 3 of 2000, was promulgated with the intention of helping the South African citizens to gain access to information and to

eradicate the secrecy that is starting to grip South Africa's public institutions (Global Integrity website, 2007). The following case demonstrates the importance of openness or transparency:

In the case of the *Eastern Cape Government and Others v Contractprops 25 (Pty) Ltd* 2001(4) SA 142 (SCA) in paragraph 29 the Judge indicated that “*The mischief that this public gaze seeks to avoid is nepotism patronage “or worse”. What it seeks is to provide members of the public with opportunities to tender to fulfil public needs and to ensure the fair impartial and independent exercise of the power to award these public contracts*”.

The Court in this case took a step further by stating that, “*Bidders who want to participate in the public procurement process should also avail themselves to public scrutiny*” [paragraph 30]. In short, the Judge in this case indicated that transparency or openness should be given consideration in public procurement by both the client and the tenderer.

The same principle of openness and transparency was again considered in the following incident that happened in the Western Cape.

### **Jama Security Company**

The issue in this matter was the alleged awarding of a security tender to the Western Cape ANC Provincial Secretary, Mr Mcebisi Skwatsha, by the Cape Metropolitan Council. The allegations revolve around the fact that information regarding the tender was *kept out* from the public knowledge. It is alleged that at the time of awarding the tender, the ANC dominated Council was in the habit of awarding tenders behind closed doors. This matter was exposed to the public by the Mail and Guardian for lack of openness and transparency.

(Mail and Guardian: Edmunds 2006:3)

Encouragement of effective competition can also be promoted by taking into account the Preferential Procurement Policy Framework Act (PPPFA), 2000 (RSA, Act 5 of 2000). The Batho Pele principles of transparency and openness also encourage national and provincial departments to inform people about the way in which such departments are administered (South African Government website, 2007).

### ***2.5.5 Ethics and fair dealing***

In a procurement process, all parties are expected to comply with ethical standards. This is particularly the case for all government staff associated with procurement, particularly those who are dealing directly with suppliers or potential suppliers. This statement confirms section 195(1) (a) of the Constitution, which requires professionalism and acceptable standards in public administration. In other words, Heads of Procurement and Senior Procurement directors are accountable for their actions. Secondly, individual procurement officers are accountable to Heads of Procurement.

Section 117 of the MFMA of 2003 (RSA, Act 56 of 2003) prohibits councillors from participating in tender committees. This is to ensure that there is no concession of the standing of the State by accepting contributions or hospitality (General Procurement Guidelines, 2002:6).

Despite the constant involvement of South African public officials in unethical behaviour, the image of South Africa is not as bad as many people might think in international standings. According to the Global Integrity Report in 2006, the Republic of South Africa's anti-corruption mechanisms were rated as follows:

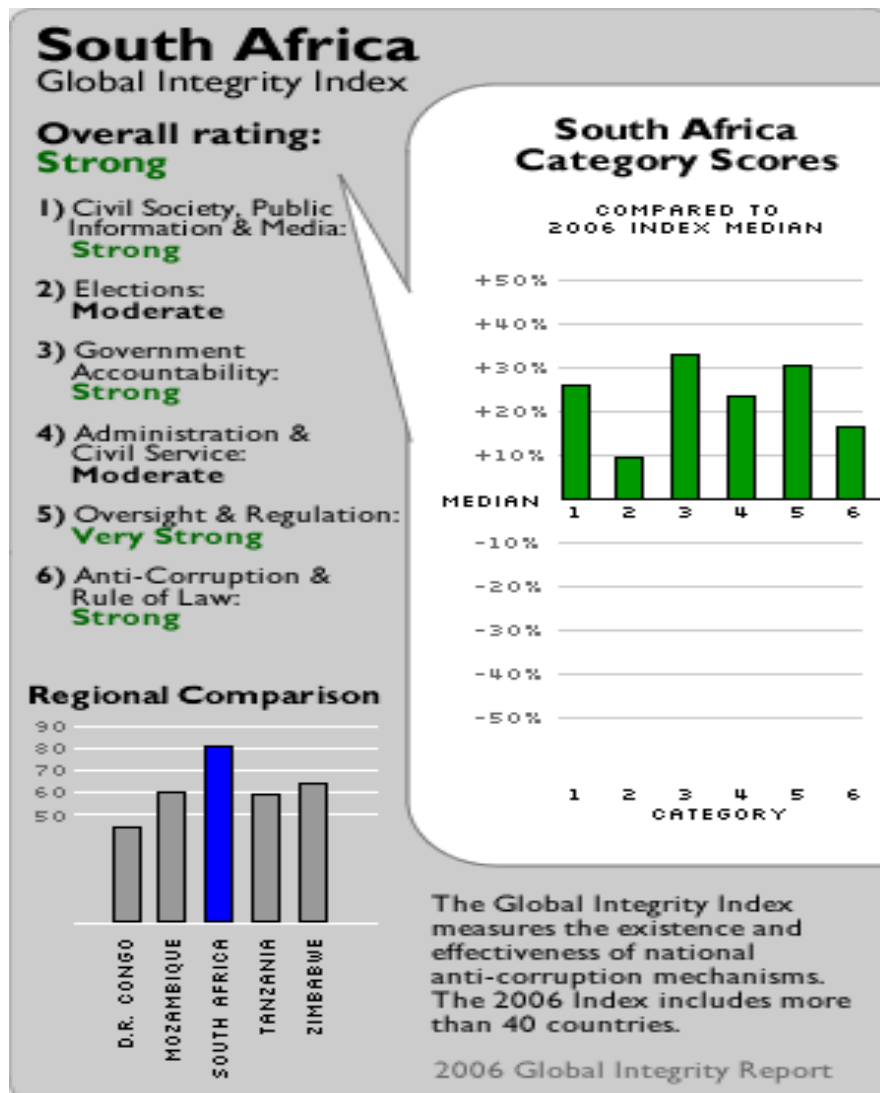


Figure 5: Public Integrity Index – Source: picture adapted from the Global Integrity Report, 2006

This is a good record for a country, which was allowed to participate in the international community activities in 1994. In administration generally, South Africa is perceived by the international community to have a moderate rating. A scrutiny of figure 5 reveals that although the country has been rated strongly in civil society, access to public information, accountability, setting up of anti-corruption mechanism, oversight and regulations, the highest percentage score is approximately 32%. This is not good enough especially if one takes into account the examples below of municipal officials who were allegedly involved in trying to influence the procurement process:

### **Mabela Satekga and Bathembu Lungwana**

The allegations in this matter were that Mr Mabela Satekga, the procurement director for the Cape Town Metropolitan Council allegedly forced his junior colleagues to buy goods at exorbitant prices as compared to those offered by competitors. Mr Bathembu Lungwana, his colleague was also alleged to have given his son a tender for entertainment worth R2 million from the mayoral budget. Like Mr Mabela Satekga, he resigned before disciplinary action could be taken against him.

The behaviour of these two public officers was unethical and failed to promote fair dealing and that is the reason why disciplinary action was contemplated against them.

(Edmunds 2006:3)

The next two incidents also demonstrate *unethical behaviour*:

### **Big Bay matter**

The issue in the Big Bay matter was that the former Mayor of the Cape Metropolitan Council, Ms Noma - India Mfeketho, was forced to stop the sale of prime land to comrades of the ANC Youth League after a newspaper article alleged that some of the top management in the Council stood to gain from the deal.

In short, the proposed sale of the land was considered by the public to be “unethical” and it failed to provide “fair dealing” because it did not conform to the provisions of the Municipal Finance Management Act, 2003 (Act 56 of 2003).

(Edmunds 2006:3)

### **Tsika dealings**

In this matter, the ex Buffalo City (i.e. East London) Manager, Mr Mxolisi Tsika was alleged to have awarded a R1.8 billion bank account tender to a certain bank in East London. When the procurement process was scrutinised, it emerged that his colleague, Mr Henderson Mdleleni, had approached the bank offering to assist it to secure the account. As this was the case in the two previousl described matters, it was discovered that there had been *interference* in the procurement process by certain individuals in the public institution.

(Special Investigating Unit: 2007).



In conclusion, part 1 of Chapter 8 of the Local Government Municipal Finance Management Act (MFMA), 2003 (RSA, Act 56 of 2003) provides for the tariffs of the municipality to be *equitable* to facilitate a sustainable finance for the municipality (Section 74). Part 2 of Chapter 8 provides for the mechanisms to be used to deliver services in a municipality in terms of section 76 of the Municipal Structures Act, 2000. Section 77 of the Act, provides for *review of the way decisions are taken* in the process of appointing the mechanisms that should render municipal services. The criteria and processes used to decide on the mechanisms to provide for services are dealt with by section 78.

Chapter 8 also applies to service delivery agreements involving competitive bidding (i.e. Part 3). The Municipal Systems Act, 2000, also regulates competitive bidding because it provides for a selection process that is fair, transparent, equitable and cost effective (Section 83(1) (a). The section provides for *empowerment of previously disadvantaged people* during the procurement process because it advocates the utilisation of the Preference Procurement Framework Act (PPFFA), 2000 (RSA, Act 5 of 2000). In spite of this fact, the Act provides that the process should not compromise the *quality, coverage, cost and developmental impact* of the services (section 83(2)).

### ***2.5.6 Accountability and reporting***

Accountability is a process, whereby institutions from civil society, the private sector and government are held responsible by the public or their stakeholders for their actions (Wikipedia website, 2007). As indicated above, accountability is a broad term that encompasses both external and internal accountability (Hollis and Plokker, 1995:75).

The Chief Executive Officer of a company then, is accountable both to the internal staff members and to the shareholders of the company. In other words, internal accountability is similar to horizontal accountability, which entails public mechanisms for enforcing accountability both before and during the exercise of public authority and it includes citizens' groups and a vibrant independent media.

External or vertical accountability, in contrast, entails setting up public policies and governmental procedures. This form of accountability promotes a greater understanding of good governance because of the interrelationship it creates between State and the society (World Bank, 2006:5–6). For example, in vertical accountability, the media,

ordinary citizens or civil societies can demand that the government should account for a specific issue.

In the South African context, the Public Service Accountability Monitor (PSAM) is a social organisation based in the Eastern Cape in South Africa. During its existence, it has challenged the Eastern Cape Government on several issues, including poor financial management, failed public service delivery and utilisation of funds by the provincial government (Public Service Accountability Monitor website, 2007).

Thus, accountability implies authority and capacity to deliver appropriately. In the South African legislatures, the Standing Committee on Public Accounts (SCOPA) at national level and the Provincial Public Accounts Committee (PROPAC) implement accountability, establishment, regulation and management of the Service District.

When the Municipal Finance Management Act became applicable in 2003 and it brought about changes in the procurement process at local government level as indicated above. In conclusion, Part 5 of Chapter 8 of the Municipal Finance Management Act, 2000 also provides for the National Minister for Local Government to make regulations and guidelines pertaining to the issue provided for in section 120 of the Act. It also affects the way in which Municipal Service districts perform (Part 4).

This is important because this fact relates to the development of a policy framework. A good policy framework will provide for accountability and reporting.

### **2.5.7 Equity**

This fifth pillar is vital to public sector procurement in South Africa, especially to micro enterprises and historically disadvantaged people.

*Equity* means inter alia “*the quality of being fair and impartial*” (South African Concise Oxford Dictionary). The practice of applying equity is called equitable. Thesaurus defines “*equitable*” as “fair or just “to all parties as dictated by reason and conscience”. “*Fair*” means free from favouritism, self-interest, bias or deception, confirming with established standards or rules. “*Just*” is used especially of what is legal or ethical, right, proper or fitting. “*Impartial*” is defined as showing lack of favouritism.

To address “equity” in the South African procurement process, the government has promulgated the Preferential Procurement Policy Framework Act (PPPFA), 2000 and

the public procurement system should be operated in accordance with it. In practical terms, it may be a complicated matter to apply, however we can draw lessons from the case below:

*Port Elizabeth Municipality v People Dialogue on Land and Shelter and Others 2000 (2) SA1074*

In this case, the Court was faced with the question of determining what was “just and equitable” for the illegal occupants of land who were in dire need of adequate accommodation on the one hand and the other hand the real right inherent in ownership reserving exclusive use and protection of property by the land owner

Horn AJ in this case discarded the purely legalistic approach when interpreting the words “*just and equitable*”. He suggested that consideration should be given to “morality, fairness, social values and implications and any other circumstances which would necessitate bringing out an equitable principled judgement”. The same “*equitable principled judgement*” can be applied to the public procurement processes by taking into consideration the interest of both public entities and tenderers.

In essence, the word “*equity*” was not interpreted to compare one racial group with the other, but rather to give meaning to other circumstances, as mentioned above.

## **2.6 The concept of Supply Chain Management**

The Supply Chain Management is a term that is used to show both the internal and the external processes that produce goods and services to customers (Hugo WMJ, Badenhorst-Weiss JA, Van Biljon EHB, (Eds) (2006:3). It is defined as, “the process of planning, implementing and controlling the operations of the supply chain as efficiently as possible.” (Wikipedia : 2007)

Hugo et al believe that supply chain management processes integrate both supply and demand management in organisations. The main aim of the supply chain management process is to manage, “the movement of raw materials into the organisation and the movement of the finished product out of the organisation toward the end consumer” (Wikipedia website, 2007). In short, the activities or processes of the supply chain management are grouped together into supply chain processes. These writers also

believe that this process was a result of finding a strategy to minimise costs by reducing time spent in the procedure and by improving forecasting strategies.

### ***2.6.1 The History of the Supply Chain Management in South Africa***

Prior to 1994, the municipal procurement process was conducted in terms of the ordinances of the different provinces, which were supported by internal regulations. In principle, that means there was no uniformity in the procurement process in South Africa because the different provinces used different laws and regulations. The procurement process was thus in the hands of the State Tender Boards, the Provincial Tender Boards and the Regional Tender Boards, which then delegated their powers to the consumer powers of the local municipalities. The procurement process at that time posed many challenges in the sense that the process was slow and the laws were subject to different interpretations.

After the democratic government took office in 1994, the procurement process was carried out in terms of section 10(G) (5) of the Local Government and Transition Act (LGTA), 1993 (RSA, Act 209 of 1993), and internal regulations.

As from February 1997, section 217 of the Constitution became applicable and it ushered in a new era in the state procurement process, in the sense that it promoted the values or characteristics of both good governance and affirmative procurement (South African Government website, 2007).

Since 1996, the development of the procurement process has been stepped up with several initiatives being introduced to promote good governance in procurement. As indicated above, these initiatives were in the following forms:

- Section 217 of the Constitution provides for the basis for procurement in the sense that it should be fair, equitable, transparent, competitive and cost effective.
- Section 217(3) requires preferential procurement to address previous social and economic imbalances of the past. This confirms King's position where he indicated that good governance no longer applies only to financial matters but also to social and economic issues. The Preferential Procurement Policy Framework Act 5 of 2000, its accompanying Preferential Procurement Regulations and the General Procurement regulations were then promulgated to achieve these goals.

- The Green Paper on Public Sector Procurement Reform, promulgated in April 1997, was a milestone because it proposed certain principles to be followed in order to accomplish good governance.
- The Supply Chain Management Regulations for both national and provincial departments were approved and promulgated in December 2003. In the case of Municipalities, the Municipal Supply Chain Regulations were approved and promulgated in March 2005.

These initiatives were designed to enhance best practice in order to improve financial management. This corresponds with section 195(1) of the Constitution, which says that, “*Public Administration in South Africa must be governed by democratic values and principles*”. The tendering process, therefore, should be conducted in a manner that conforms to the principles and values as indicated by the section.

Further, these initiatives were designed to replace outdated procurement processes and to introduce uniformity and the application of Supply Chain Management policies at all levels of government. The South African Government approved Integrated Supply Chain Management on 23 September 2003. Lastly, the Bid Committee system was introduced to deal with competitive bids.

The Bid Committee system consists of three committees namely:

|                                    |  |
|------------------------------------|--|
| <b>Bid Specification Committee</b> | This committee normally deals with technical specifications, bid conditions, market research and it determines preferential goals. The specifications contained in the invitation to tender should be the same as the specifications in the contract. The case law in this regard is, <b><i>Premier, Free State and Others v Firechem Free State and Others (Pty) Ltd 2000 (4) SA 413 (SCA) [paragraph 429G I]</i></b> . The court went on to say, “ <i>if the specifications in the invitation of the tender differ from those that are contained in the contract, that undermines the fairness of the tender process [paragraph 429 GI]</i> ”. |
| <b>Bid Evaluation Committee</b>    | The function of this committee is to evaluate bids using evaluation criteria and preferential regulations. It also checks the ability of the bidders to do or complete the job. After the evaluation, the committee drafts and submits a recommendation to the Adjudication Committee.   |
| <b>Bid Adjudication committee</b>  | After evaluation has been done, this committee makes the final award, although in some instances, it makes recommendations to the accounting officer. The initiatives as mentioned above are also  |

|  |   |
|--|---|
|  | <p>regulated in terms of the following documents (among others):</p> <ul style="list-style-type: none"> <li>• The policy document of incorporated Supply Chain Management as approved by Cabinet on 10 September 2003</li> <li>• Chapter 11, Part 1 of the Municipal Finance Management Act 56 of 2003</li> <li>• Public Finance Management Act 1 of 1999, as amended by Public Finance Management Act 29 of 1999</li> <li>• Treasury Regulations</li> <li>• Municipal Supply Chain Regulations of May 2005</li> <li>• Supply Chain Management: A Guide to Accounting Officers of Municipalities</li> <li>• The National Treasury's standard and generic bid documentation to promote and enhance Supply Chain Management uniformity</li> <li>• Circulars issued regularly to assist in the interpretation of government's Supply Chain Management</li> </ul> |
|--|---|

The criteria for adjudicating tenders are normally explained in the South African Government Tender documents, so bidders are able to adjust their bids accordingly.

The Supply Chain Management process is always supported by both the National and the Provincial Departments of Treasury, which oversee, promulgate and monitor the process. In 2005, the National Department of Treasury issued guidelines, general conditions and standard bid documents in order to guide government institutions.

In 2006, the Department of Trade and Industry issued codes of good practice, which were designed to deal with the adjudication of tenders. At local level, municipalities are guided and assisted by the Provincial Treasury in implementing, providing advice, building capacity, co-ordinating and monitoring policy implementation and policy outcomes.

The challenge that still needs to be dealt with is the generic term "black people". The Broad Based Black Economic Empowerment Act (BBBEA), 2003 (RSA, Act 53 of 2003) mentions seven ways of fulfilling the requirements of black empowerment, whereas the Preferential Procurement Policy Framework Act (PPPFA), 2000 (RSA, Act 5 of 2000) only mentions the point system (i.e. equity ownership).

The General Procurement Guidelines have been made available by the government to act as the basis of a framework for public institutions to draft their own procurement policies. It is on this basis, that the Lejweleputswa district municipality has managed to

draft some procurement policies for the municipality to be used in their procurement process as will be shown in Chapter 3.

### ***2.6.2 The execution of the Supply Chain Management process at municipal level in South Africa***

The introduction of Supply Chain Management at the local level of government was done to improve the ways in which municipalities deal with their finances. The Supply Chain Management process at local government level is regulated by the following instruments namely:

- Chapter 11, Part 1 of the Municipal Finance Management Act, 2003
- Municipal Supply Chain Management Regulations issued in terms of the Municipal Finance Management Act, 2003
- Municipal Supply Chain Model Policy issued by National Treasury to be adopted by a particular municipality
- Supply Chain Management: A Guide for Accounting Officers of the Municipalities and Municipal entities, which is aimed at assisting accounting officers compile their internal processes and operational manual
- National Treasury standard and generic bid documentation to promote and enhance Supply Chain Management uniformity.

The Supply Chain Management office, which is situated at the National Treasury, should, together with the Provincial Treasury, manage and administer the implementation of the Supply Chain Management process.

It is therefore of the utmost importance that municipalities establish their Supply Chain Management units (SCM units), and preferably under the Chief Financial Officer (Supply Chain Management: A Guide to Accounting Officers of Municipalities and Municipal Entities 2005:24).

The main role players in a municipality's Supply Chain Management process are the Council, tender bid committees; the Municipal Manager, who is the accounting officer; both National and Provincial Treasury Departments and the Municipal Supply Chain Management Units. As the Accounting Officer, the Municipal Manager is allowed, in terms of sections 79 and 106 of the Municipal Finance Management Act 56 of 2003, to

delegate some decision-making powers in the Supply Chain Management process to certain municipal officials involved in the bid adjudication committee. However, the delegation of the powers can only be made in writing (Supply Chain Management: A Guide to Accounting Officers of Municipalities and Municipal Entities 2005:25).

The members of the adjudication committee, who are supposed to be officials of the municipality, should be cleared or vetted to the level of “Confidential”. This measure is adopted to ensure that members are beyond reproach (Supply Chain Management: A Guide to the Accounting Officers of Municipalities and Municipal Entities 2005:26). The municipality must appoint the bid specification committee, which, in turn, lays down the specifications according to the Preferential Procurement Regulations in the procurement process. The Guide to Accounting Officers of Municipalities and Municipal Entities also recommends that the specification and the evaluation committees be composed of different members (2005:67).

## **2.7 Summary**

The chapter has defined and discussed governance as well as how it is applicable to the public sector procurement process in South Africa. The relationship between governance and management was also discussed, as it affects the procurement process.

The relevant case law was used to illustrate the intervention of courts in instances where the procurement process is flawed. The overview of Chapter 2 will be applied to the case study of the Lejweleputswa District Municipality in Chapter 3 and the results will be analysed and compared to the model process as discussed in Chapter 2.



## **CHAPTER 3 LEJWELEPUTSWA DISTRICT MUNICIPALITY – A CASE STUDY**

### **3.1 Introduction**

In Chapter 2, the concepts of good governance and procurement, their history, development and applications in the South African context were discussed. Secondly, an analysis of the different legislations, schools of thought, case studies, the concept of supply chain management and its history and execution in the South African context were outlined.

Chapter 3 explains the Lejweleputswa district municipality's procurement process and analyses it in terms of the procurement systems. Firstly, a general overview of the municipality is presented and then its procurement process is discussed.

### **3.2 General overview of Lejweleputswa District Municipality**

The Lejweleputswa District Municipality is one of the five district municipalities in the Free State province. The name Lejweleputswa means “*grey or white stone referring to the gold mining activities of the area*” (Gaffney's Local Government in South Africa, 2004–2006:447).

Section 155(1) of the Constitution establishes three categories of municipalities namely: A, B and C. The Lejweleputswa District Municipality falls under category “C” because it has a municipality with an executive and a legislative authority in an area that includes more than one municipality and its mayor holds the executive authority.

The population living in the district Municipality is estimated at 657 013, with 184 470 households (Lejweleputswa District Municipality profile website, 2007:1). Its area of jurisdiction covers the northern side of Bloemfontein and comprises five local municipalities: Masilonyana, Matjhabeng, Nala, Tswelopele and Tokolokgo local municipalities. Matjhabeng local municipality is the largest within the district municipality and its economy is largely dependent on mining. The other four municipalities' economies depend on the agricultural sector.

Figure 6 below indicates the location of the Lejweleputswa District Municipality within the Free State province.



### **Lejweleputswa**



### **Free State Province**

**Figure 6: Maps locating the Lejweleputswa District Municipality in the Free State Province**

The district municipality's Integrated Development Plan (IDP), which was adopted in 2003, fulfils its goals by integrating diverse sectors like housing, land use and agriculture with the economic and social sizes of its local municipalities (Lejweleputswa district municipality Integrated Development Plan website, 2007:1).

The different economies of the local municipalities create the initial challenge for the municipality, as the people living in them have opposing needs (Gaffney's Local Government in South Africa, 2004–2006:447). The district municipality's second challenge is the shortage of housing, although the Municipal Structures Act, 32 of 2000, does not place an obligation on the district municipality for housing delivery (section 84).

With regard to service delivery by the municipality, the Constitution firstly imposes obligations on the municipality to perform certain duties for the people under its control, which requires the municipality to structure, administer, organise, budget and plan. Secondly, the municipality is expected to give precedence to the basic needs of the community and to encourage social and economic development of the community. Thirdly, declining road conditions, congestion in hospitals, high levels of illiteracy and crime are some of the other challenges facing the municipality. Fourthly, the municipality is expected to take part in national and provincial development programmes, which are used as poverty relief mechanisms in the areas falling under the jurisdiction of the municipality (South African Constitution, 1996:153). Presently, this is the situation because the income of the people living in the district municipality is derived from mining and the agricultural sectors.

Progress in the delivery of essential services in the Lejweleputswa district municipality is currently overshadowed by continuous allegations of corruption and maladministration in the procurement of services and this has tarnished the image of the municipality (MaCarthy, NG:2005–2007) and (Mail and Guardian, 2007:6–12).

### **3.3 The procurement system in the municipal context as it adheres to good governance principles**

A summary of the definitions in Chapter Two indicates that governance is:

*“A system of laws, regulations, processes , procedures, norms, standards, roles, rights, responsibilities, rules, authority, power, empowerment and leadership that functionally relates people and formal entities.”* (Cornerstone MSC website, 2007).

The elements contained in this definition will be used to analyse governance of the procurement system of the Lejweleputswa District Municipality.

#### **3.3.1 Applicable laws**

The applicable laws in the Lejweleputswa District Municipality’s procurement system are as follows:

**The Interim Constitution Act, 1993 (RSA, Act 200 of 1993)**, laid down a procurement policy framework in terms of section 187, which deals with procurement

administration. Section 187 of the Constitution provides for a procurement administration that must be conducted in terms of parliamentary or provincial legislation. The Local Government Transitional Act, 209 of 1993, (LGTA) was then promulgated to regulate the procurement process across *all spheres* of government (section 187 (1)).

**Section 10G (5) of the LGTA**, at local government level, provided for the awarding of contracts in a fair, equitable, transparent, competitive and cost effective manner. The final Constitution Act 108 of 1996 was then promulgated and section 217 provided for procurement to be conducted in a fair, equitable, transparent, competitive and cost effective manner. Section 217(3) requires preferential procurement to address the previous social and economic imbalances of the past.

**The Preferential Procurement Policy Framework, 2000 (RSA, Act 5 of 2000)**, then laid down the procedural guidelines for the implementation of preferential procurement policies. It also specified the goals and obligations that must be met and the accompanying Preferential Procurement Regulations of 2001 were promulgated to help to achieve these goals. The preferential procurement procedure was laid down by the Act and the regulation combines both the price and the criteria for selecting the disadvantaged group. Service providers who do not meet the criteria set out by the Preferential Procurement Act are not excluded from the bidding process but they are penalised for not fulfilling the requirements. Section 153(a) of the Constitution provides for the municipality to structure and manage its affairs, while giving priority to the needs of the people.

**The Lejweleputswa District Municipality Financial Regulations 1/3/2/3/3** were made in 2002 and adopted by the Council on 21 July 2002, to guide the procurement systems at the municipality. One of the key aspects of the regulations is that they were intended to establish a procurement policy for the municipality that would advance and protect previously disadvantaged people; this was to be achieved by advancing their participation in the economy of the region through government financed contracts. The choice of a preferred bidder in terms of the procurement process regulations in the municipality should be done in a fair, equitable, transparent and cost effective.

The most important aspects of the regulations are summarised in Table 1. The table briefly outlines the steps to be followed before engaging a service provider. The roles of

the people in the municipality who are supposed to handle the process are also discussed.

### 3.3.2 Regulations

The financial regulations used in the procurement process at the Lejweleputswa Municipality were intended to improve the internal controls and to promote financial planning, reporting and accountability at the municipality. Table 1 summarises the stages of the procurement process and the regulations affecting them as shown below:

**Table 1: Summary of Financial Regulations dated 21 July 2002**

| <b>PROCUREMENT THEME</b>     | <b>REGULATIONS</b>  | <b>DESCRIPTION</b>   |
|------------------------------|---|--|
| <b>Invitations to Tender</b> | Regulation 13:1 and 13:2 of the Lejweleputswa Municipal Financial Regulations | Regulations 13:1 and 13:2 require the Head of Department seeking services to send a written request to the Director of Administration in the event of the tendered amount probable exceeding the stipulated amount set out in the Local Government Transitional Act 209 of 1993.<br><br>In terms of regulation 13:1 the stipulated amount can be disregarded only if authorised by Council.<br><br>These regulations apply only to tenders received. |
| <b>Receiving of Tenders</b>  | Regulations 13:2:1 and 13:2:2   | These regulations require that all tenders be put in a sealed envelope and deposited in a sealed tender box belonging to the Council. The application to tender should specify the nature of the job tendered for and it must reach the municipality before the closing period.  |
|                              | Regulations 13:2:3 and 13:2:4   | A tender received by means other than those explained above (13:2:2) should comply with the provisions of Regulation 13:2:4 in that it should contain the date and time of receipt, the nature of goods it refers to and the state in which the tender is received.<br><br>The tender should then be placed in the tender box.   |

|                                |                                     |   |
|--------------------------------|-------------------------------------|---|
|                                |                                     |   |
|                                | Regulation 13:2:5                   | If the tender received by other means does not comply with requirements, the person dealing with the tenders should outline the shortcomings of such tender.  |
|                                | Regulation 13:2:6                   | Regulation 13:2:6 deals with tenders received by a telegram. In this particular instance, the tender is not finally recognised unless it has been reduced into writing.   |
|                                | Regulations 13:3:1 and 13:3:2       | Regulation 13:3:1 provides that the tender box be opened in public by the Director of Administration, or any person delegated by him. The names of the applicant tenders are read out and the amounts if possible. After opening the tenders, the tender forms are stamped, entered into the register and the official handling them puts a signature on every changed amount.                    |
| <b>Evaluation of Tenders</b>   | Regulations 13:3:3 & 13:3:4         | After the registration of the tenders, they are handed over to the Treasurer or to the representative of the section seeking the services, who must acknowledge their receipt (13:3:3). The Head of Department must draft and submit written recommendations together with a deposit or security to the Treasurer (13:3:4).   |
| <b>Adjudication of Tenders</b> | Regulations 13:4, 13:5:1 and 13:5:2 | These regulations prohibits participants (i.e. officials or council members) dealing with the tenders from divulging any information about the tender process, except when they submit a report to the Council. The contents of the contracts which have been identified are then discussed with the Treasurer, who thereafter keeps the details of the financial rights and obligations (13:5:2) |

|  |  |  |
|--|--|--|
|  |  |  |
| <b>Approval of Tenders</b>                 | Regulations 13:6, 13:7, 13:8, 13:9 and 13:10 | <p>If the Municipal Manager decides not to make a decision and diverts from the original tender, then invitations for new tenders should be done in accordance with Council’s tender conditions.</p> <p>Regulation 13:8 indicates that the tender recommended by the head of department should be the “lowest and the cheapest”.</p> <p>Regulation 13:9 provides that contracts with amounts that do not correspond to Regulation 13:11 should not be approved.</p>  |
| <b>Management of Contracts</b>             | Regulations 13:12, 13:13 and 13:14           | <p>Regulation 13:12 is opposed to the splitting of tenders in order to avoid the calling of new tenders. Extra or hidden costs should form part of the original tender; otherwise, a new approval of the Council should be sought (13:13).</p> <p>Regulation 13:14 provides for the manner in which a contract should be handled prior to its authorisation. It requires that it should be in writing and signed by an official delegated by the Council.</p>  |
| <b>Payment of Tenderers</b>                | Regulations 13:15 and 14                     | <p>Regulation 13:15 indicates that no payment should be effected by the Treasurer in cases where the amount exceeds the amount approved by the Council.</p> <p>If there is a need to make such payment, a written report should be submitted to the Council indicating the reasons for the excess expenditure.</p> <p>Regulation 14 provides for the manner in which authorisation of payments should take place. Cheques distributed by the Municipality should be signed by one of the following people: the Treasurer, the Deputy Treasurer, the Chief Accountant or the Municipal Manager.</p> |
| <b>Amendments to Financial Regulations</b> | Regulations 14:1:2 to 14:2:3                 | These Regulations deal with the manner in which amendments can be made to them.  |

|                                 |         |  |
|---------------------------------|---------|--|
| <b>Annexures to Regulations</b> | A and B | Annexure A contains specimens of the signatures of the people mentioned in Regulation 14 and Annexure B. |
|---------------------------------|---------|--|

### 3.3.3 Processes

The procurement process is fully supported at a high level because of the involvement of the Mayoral Committee and the member of the Council (regulation 13:4). The regulations also mention the few people who are supposed to participate in the procurement process namely, the Municipal Manager, the Treasurer, the Deputy Treasurer, the Chief Accountant Expenditure, the members of the Tender Committee and the Heads of Sections (regulations 13:1 to 13:15). A member of the Mayoral Committee also participates in the procurement process.

Section 10G (5) (a) of the Local Government Transition Act, 1993 is also applicable to the procurement process because the municipality is expected to award contracts in a transparent manner. Section 10G (5) (a) also emphasises the fact that even when tenders are awarded giving preference to the disadvantaged, such preference should be made *public* in a manner determined by the Council.

The regulations, as they apply in the municipality, indicate that the people involved in the procurement process account to the Municipal Manager, the Treasurer and the Council for their decisions (13:5:2 and 13:6) and the procurement process decisions that bind the municipality are taken at Council meetings.

However, the Procurement Regulations of the Lejweleputswa District Municipality, Section 10G(5)(a) of the Local Government Transition Act 209 of 1993, the Local Government Regulations No. R1224, dated 2 October 1998, Local Government Regulation No. R387, dated 26 March 1999 are all silent about the creativity, entrepreneurship and competitiveness involved in the procurement process. The regulations only mention that if the value of the contract exceeds the amount agreed upon by the Council then new quotations should be invited (13:2).

The procurement process should also be efficient. The test for efficiency, as indicated in Chapter Two, is the real costs versus the benefits. In other words, the “test” in this regard is the costs involved as opposed to delays from suppliers. Using this test against the internal procurement process of the Lejweleputswa district Municipality,



**Annexure A** of the Financial Regulations adopted by the Council on 27 June 2002 mentions the thresholds for when goods are procured (see sub-headings purchases and approval of purchases below).

Regulations 13:2 and 13:9 of the procurement system at Lejweleputswa only mention that if the costs of the tender increase, the Head of the Department wishing to buy the services and goods should make a written request to the Director of Administration requesting a further increase or an invitation for two more quotes.

The Council approves applications for tenders and their payment in terms of **Annexure A**, which deals with *purchases* and *approvals*. Annexure A stipulates the following procedure to follow when acquiring services or goods.

#### **“Purchases**

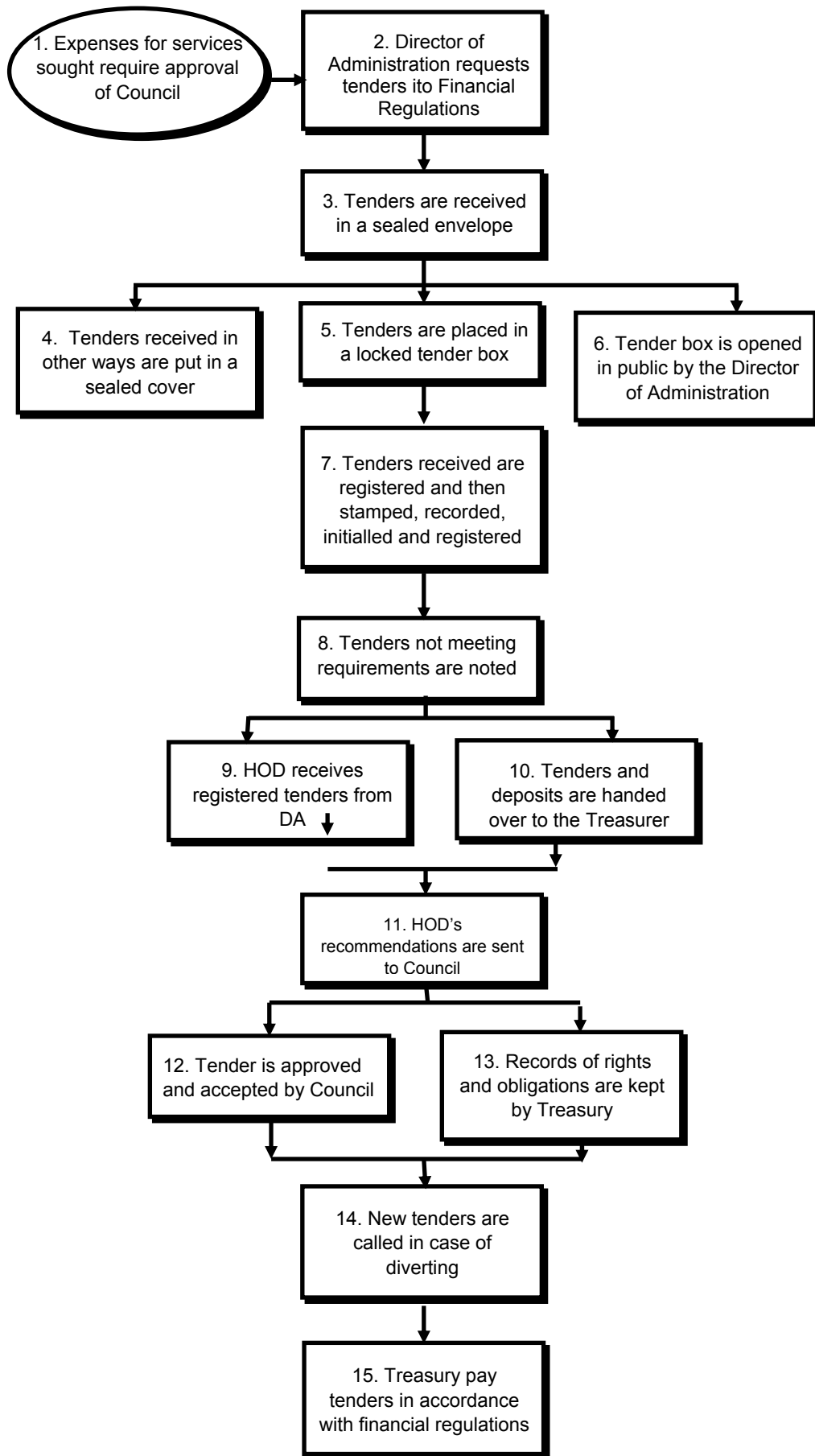
- Between R0 and R499 – no quotations required
- Between R500 and R1 499 – two telephonic quotations and the details of the one not accepted to appear on requisition
- Between R1 500 and R120 000 – at least two written quotations
- Above R120 000 – formal tenders as determined by legislation.

#### **Approval of purchases**

- Up to R39 999 – Departmental Heads
- R40 000 to R119 999 – Mayoral Committee
- Above R120 000 – Tender Committee to submit proposal to MC”.

#### ***3.3.4 Process for tendering at the Lejweleputswa District Municipality***

Figure 7 below is flowchart that depicts the fifteen different kinds of actions that are involved in the process of tendering at the Lejweleputswa District Municipality’s tendering process:



**Figure 7: Steps of tendering process at Lejweleputswa District Municipality**

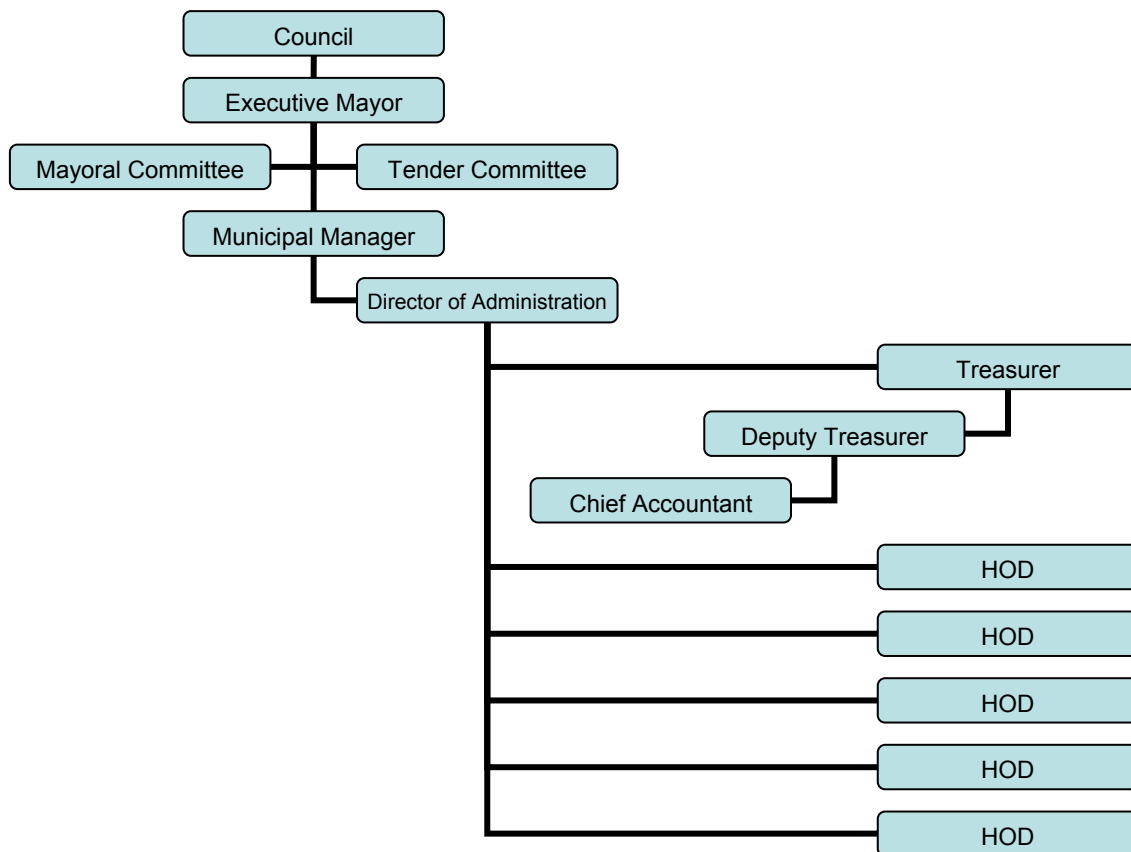
### 3.3.5 Roles

The regulations indicate that the procurement process is handled by the following people:

| Position                                      | Role in process   | Action(s) in Figure 7 |
|---|---|-----------------------|
| Heads of Departments or their deputies (13:1) | Make requisition leading to specifications to the Director of Administration to request tenders               | 2                     |
|   | In the absence of the Director of Administration, may open the tender box in public.                          | 6                     |
|   | Receives registered tenders from Director of Administration and acknowledges receipt by signing the register. | 9                     |
|   | Hands over any deposit received   | 10                    |
| Treasurer and the deputy (14:1:2)             | In the absence of the Director of Administration, may open the tender box in public.                          | 6                     |
|   | Receives registered tenders from Director of Administration and acknowledges receipt by signing the register  | 10                    |
|   | Manages contracts entered into by Council   | 13                    |
|   | Pay tenderers for work done in accordance with their financial obligations                                    | 15                    |
|   | Co- approves payments   | 15                    |
| Director of Administration (13:2)             | <u>Requests</u> tenders in accordance with financial regulations  | 2                     |
|   | <u>Receives</u> tender requisitions from the Heads of Department  | 3                     |
|   | <u>Opens</u> the tender box in public   | 6                     |

|   |  |    |
|---|--|----|
|   | <u>Stamps ,records, initials and registers</u> tenders received                    | 7  |
|   | Tenders registered are handed over to the Head of Department concerned or Treasury | 9  |
| Chief Accountant Expenditure (14:1:2)   | Co- approves payments  | 15 |
| Member or Officer of the Council (13:4) |  |    |
| Municipal Manager (13:6)                | Can authorise re – tendering   | 14 |
|   | Co- approves payments  | 15 |
| Council (13:1)                          | Procurement of tenders must be approved by the Council (Above R120 000)            | 1  |
|   | Authorises signing of contracts before they are binding                            | 16 |
|   | Refers contracts entered into by Council to Treasurer                              | 12 |
| All officials                           | Preserve the confidentiality of the tenders  | 11 |

The financial regulations do not however expressly state the specific roles of the tender committee. They also do not clarify the clear role of the Municipal Manager or the Mayor, yet in practice, they are the main drivers of the procurement process. Figure 8 below shows the Lejweleputswa District Municipality organisational structure and the role players in the procurement process under the old Financial Regulations 1/3/2/3/3 of July 2002:



**Figure 8: Municipal Structure**

At the Lejweleputswa District Municipality, the Council is the supreme organ in the in the tendering process. The lesser role that the tender committee played can also be displayed by the structure above in Figure 8. This structure shows that the Tender Committee is reporting to the Mayor instead of the Municipal Manager who is the overall accounting officer. Furthermore, the structure illustrates that the municipal employees who have been identified and mandated to drive the procurement process, appear to have less powers than their political heads at the top of the structure.

### ***3.3.6 Empowerment***

The online dictionary defines empowerment as “to invest with power, especially legal power or official authority”. It can also mean, “to equip or supply with an ability or enable”. Furthermore, it can mean the giving or delegation of power or authority”.

In the South African context, it is defined as the “semi official slogan for empowering of previously disadvantaged populations” (Online Dictionary). Section 10G(5)(a) of the Local Government Act, 1993, which is applicable to the municipality, allows contracts to be awarded taking into account categories of persons who were previously disadvantaged by unfair discrimination. Although, the Lejweleputswa District

Municipality financial regulations do not give clear criteria as to how to apply empowerment, it has become the buzzword in their procurement process. Empowerment at the municipality is therefore recklessly applied to the tendering process at the discretion of the municipal official.

### **3.3.7 Summary**

Chapter 3 has shown that the Lejweleputswa District Municipality's procurement process still uses the old financial regulations rather than the New Supply Chain Management system in terms of the Municipal Finance Management Act, 2003. The new Act repeals the provisions of the Local Government Transition Act and other related legislations.

In this chapter, the procurement process as it is, practiced at the Lejweleputswa District Municipality with specific emphasise on tenders was discussed in terms of the municipality's financial regulation, organisational structure, role of the players and their specific roles and the application of empowerment. In chapter 4, a critical analysis of the Lejweleputswa District Municipality procurement process will be done in the light of the good governance principles.

## **CHAPTER 4 ANALYSING PROCUREMENT IN THE LEJWELEPUTSWA DISTRICT MUNICIPALITY**

### **4.1 Introduction**

Chapter Three, explored the procurement process at the municipality and determined the extent to which it adheres to good governance in general. This study is based on a qualitative research methodology and the question asked is:

*“To what extent does the procurement process at the Lejweleputswa District Municipality adhere to good governance?”*

In order to respond to this question, the following instruments were used namely:

- The entity called Lejweleputswa District Municipality;
- Documents and reports.

This chapter further discusses the tools, methodology and procedures used to determine the way the procurement process adheres to good governance at the Lejweleputswa District Municipality. This chapter also draws results from the previous chapters and discusses the assessment methods used to determine good governance in the procurement process. The findings of the procurement process in the context of the municipality are also evaluated to determine the extent to which the process adheres to good governance principles.

#### ***4.1.1 Selection of the Study Area***

The Lejweleputswa District Municipality was selected because of its geographical position in the northern part of the Free State province. This area was hit hard by a spate of riots resulting in a murder of a councillor because the people believed that the municipality was corrupt. They felt that bad governance in the procurement process perpetuated the alleged corruption. Bearing this in mind, the purpose of the research is to examine the procurement process in the Lejweleputswa District Municipality.

#### ***4.1.2 Data Collection***

Data collection and compilation took place at the researcher's place of work in Bloemfontein and it involved the study and textual analysis of documents and newspaper reports.

#### ***4.1.3 Document Analysis***

The researcher used documents relating to the procurement process in the municipality in the form of Auditor-General's annual reports, internet documents, policies and regulations governing procurement in the municipality, as well as print and electronic media. The information gathered was used to provide answers to the research question, as well as to fulfil the objectives of this research.

#### ***4.1.4 Data Analysis***

The exposition of good governance as indicated by the different researchers was compared to the procurement process data gathered from the Auditor-General's reports, newspaper articles, documents on the procurement process and standing policies affecting the municipality.

#### ***4.1.5 Tools for Assessing Good Governance in the Lejweleputswa District Municipality Procurement Process***

Measuring good governance in the procurement process was a challenge because governance itself is a subtle and a conceptual item like communication. Beside this, governance, as shown in Chapter Two, can be defined and interpreted in different ways. The parameters measuring good governance in the procurement process at the Lejweleputswa District Municipality revolved around a summary of the definitions in Chapter Two, which indicate that governance is "*a system of laws, regulations, processes, procedures, norms, standards, roles, rights, responsibilities, rules, authority, power, empowerment and leadership that functionally relates people and formal entities*" (Cornerstone MSC website, 2007).

When it comes to determining good governance for the municipality, its procurement systems and processes should function by taking into account **transparency, accountability, participation, and predictability** (Asian Development Bank, 2004).

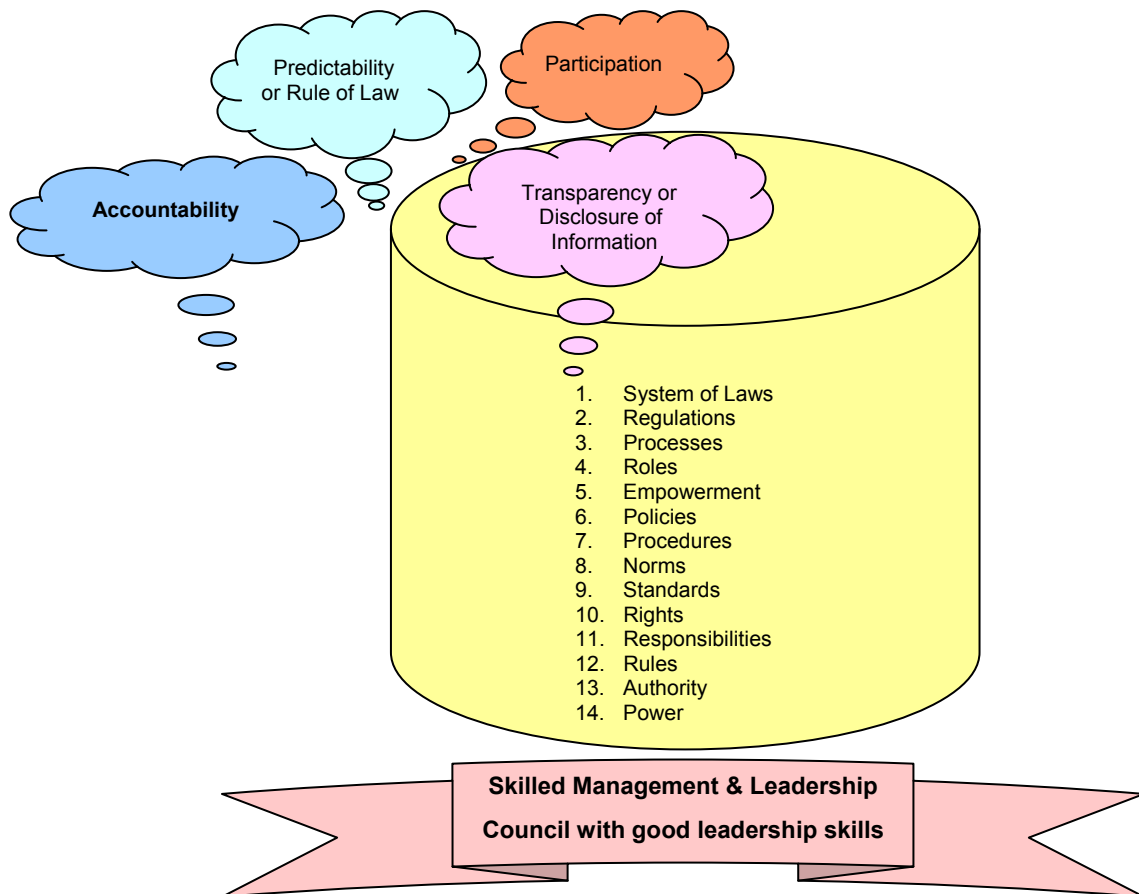


The researcher will discuss the findings of the research at the municipality taking into account the good governance variables as mentioned by the Asian Bank.

For the purpose of this research, only four policy guide indicators were used to measure good governance as it affects the procurement process at Lejweleputswa namely:

- Transparency
- Accountability
- Participation
- Predictability

The researcher checked the four policy guide indicators against the system of laws, regulations, processes, procedures, norms, standards, roles, rights, responsibilities, rules, authority, power, empowerment and leadership. In instances where one or all the four policy guide indicators are not present, it constitutes a gap or vacuum, which will be presented in the Table 6 below. As indicated by Burger (2006:6–7), governance is dependent on the variable of management. For good governance to apply in a certain institution, skilled management with good leadership are needed. This is clearly illustrated in Figure 9. The leadership mentioned here should have integrity, responsibility and transparency.



**Figure 9: Characteristics of Good Governance under the influence of skilled Management and Leadership**

#### ***4.1.6 Qualitative Research***

The practical evidence for this thesis was gathered taking into consideration the theories presented by the different researchers and after having read and analysed the policies, legislation and guidelines affecting the municipality. The data that emerged from the research was then compared to the current procurement process of the Lejweleputswa District Municipality. The case study therefore was carried out using qualitative data drawn from the Auditor General’s reports, newspaper articles, and documents on the procurement process, and from standing laws and policies as they affect the procurement process at local government level. Furthermore, the research attempted to meet the following research objectives:

#### **General objectives**

The focus of the thesis was to examine good governance as it affects the procurement process of the Lejweleputswa District Municipality. The literature review has shown consensus among the researchers that good governance in the procurement process

restores service provider confidence. The general objectives of the study therefore were to determine whether good governance has actually managed to sustain or uphold a good procurement process in the municipality.

### **Specific objectives**

The specific objectives will be to:

- investigate good governance in the municipality context
- investigate procurement in the municipality context
- make recommendations on good governance

In terms of the specific objectives, the researcher investigated the procurement process and good governance in a municipality context. This was achieved by taking into account the following:

- **Parameters:** the extent of rights, roles and powers of the people involved in the procurement process
- **Process:** whether the course of action or procedure followed during the procurement process was in terms of standing legislations, policies and regulations
- **Decision-making and consensus building:** determining the variables and levels used in decision-making. The roles played by individuals or groups involved in the tender process were also scrutinised – furthermore, variables of the decision-making process like the drivers or people involved, characteristics, constraints and their style were also considered.
- **Feedback:** determining whether the stakeholders were updated on the administration action taken.

The result of such investigations has enabled the researcher to draw some conclusions and make some recommendations. At the time of the research, the municipality was in the process of reorganising its structure.

## **4.2 Research findings**

In presenting the findings, the researcher would like to point out that during the financial audits (i.e. 2003/2004, 2004/2005 and 2005/2006 financial years), the Lejweleputswa District Municipality received qualified audit opinions due to the following *serious internal control weaknesses*:

- absence of adequate monitoring policy and reviewing

- absence of properly recognised and accepted policy and procedure framework
- failure to uphold policies and procedures
- absence of an efficient internal control system
- absence of proper adequate financial accounting standards and policies.

These shortcomings can be illustrated in the following areas:

#### 4.2.1 *System of laws*

##### **Non-compliance with laws**

The Financial Regulations as applied by the municipality were not updated with the provisions of the Municipal Finance Management Act, 2003 (Act 56 of 2003). This omission is the result of the deficiency of proper suitable-written and approved policies and a procedure framework to ensure compliance with all relevant laws and procedures. The office of the Auditor General Free State, in their annual audits in the 2004–2006 financial years, discovered that there was non-compliance with certain laws in the following areas:

| <b>Table 2: Non-compliance issues identified in Auditor General reports 2004–6</b> |   |
|--|---|
| <b>Law</b>   | <b>Non-compliance</b>   |
| <b>The Local Government Transition Act, 1993 (RSA, Act 209 of 1993)</b>            | <ul style="list-style-type: none"> <li>• The office of the Auditor General (MacCarthy NG, 2004:4) discovered that a Performance Management System was not implemented as envisaged in section 10(G) (10) of the Act. This is a requisite for municipalities to ensure their performance.</li> <li>• The Auditor also found that the Lejweleputswa district municipality had no internal audit function for the year 2004 (McCarthy NG 2004:4).</li> <li>• Financial statements for the year under review were submitted late to the office of the Auditor General (MacCarthy NG 2004:5). The impact of this omission was that the municipality’s procurement process is not audited on a yearly basis. This also indicates that the objectives of the procurement process are not aligned to the Integrated Development Plan of the municipality. Compliance with the performance management system can also be used as a tool to measure performance of the Heads of Department in the Lejweleputswa district municipality.</li> </ul> |
| <b>Municipal Finance Management Act, 2003 (RSA, Act 56 of 2003)</b>                | <ul style="list-style-type: none"> <li>• The Auditor General found that the municipality had disregarded sections 8(5) and 9 of the Act in that both the national and provincial treasuries were not informed about</li> </ul>  |

|  |  |
|--|--|
| <p>2003)</p>   | <p>cash at bank as required (MacCarthy NG, 2005:5).</p> <ul style="list-style-type: none"> <li>• Bad Governance was discovered when the office of the Auditor General unearthed a loan scheme that took place in the Lejweleputswa district municipality offices during office hours using Council resources (MacCarthy NG, 2006:6). This is in contravention to section 78(1) of the Act, which provides for effective, efficient and economical utilisation of the Municipality's resources.</li> <li>• Proof indicating that the municipality had complied with the needs of chapter 4 of the Act was not submitted in full to the office of the Auditor General (MacCarthy NG, 2005:5).</li> <li>• In terms of section 65(2) (e) of the Act, creditors were not paid within the stipulated time after the receipt of the invoices (MacCarthy NG, 2006:4).</li> <li>• The regulation of councillors' remuneration in terms of section 124(a) of the Act was also ignored, resulting in a failure to differentiate between salaries, allowances and benefits of councillors as stipulated by the section (MacCarthy NG, 2006:4).</li> <li>• Section 123 of the Act was again overlooked because financial statements for the financial year 2005/2006 were not available for auditing by the office of the Auditor General in the Free State (MacCarthy NG, 2006:4).</li> </ul> <p>The above-mentioned omissions indicate that there is no implementation plan that focuses on what the municipality intends to implement and achieve in a financial year. The implementation plan should include implementation issues that must be aligned with the amendments of the Municipal Systems Act 32 of 2000. The implementation plan designed in terms of the Municipal Finance Management Act 56 of 2003 should reflect targets that are realistic and achievable, as well as target dates, responsible person(s) and records of progress.</p> |
| <p><b>The Municipal Systems Act , 2000 (RSA, Act 32 of 2000)</b></p> | <ul style="list-style-type: none"> <li>• During the 2004/2005 financial audit, there was no evidence indicating that certain councillors had declared their financial interest as required by section 54 of the Act (MacCarthy NG, 2004:5).</li> <li>• Section 7 of the Act provides for declarations of interest by municipal officials and councillors. In 2006, it was again discovered that the Lejweleputswa District Municipality had failed to ensure that councillors declared their interest as required by section 7 of the Municipal Systems Act 32 of 2000 (MacCarthy, 2006:5).</li> <li>• Sections 69 and 70 of the Local Government Municipal Systems Act 32 of 2000 were again disregarded in that, there was no indication of promulgation of the <i>Code of Conduct for Councillors</i> by the management of the municipality (MacCarthy, 2006:5). This is contrary to section 70 of the</li> </ul>   |

|   |  |
|---|--|
|   | <p>Local Government Municipal Systems Act, 2000, that requires the drafting of a document compelling councillors to divulge their interests (McCarthy NG, 2006:5).</p> <ul style="list-style-type: none"> <li>• The office of the Auditor General discovered that section 66 of the Act was disregarded in that there was no evidence to prove preparation of job descriptions for all positions (MacCarthy, 2005:5).</li> </ul> |
| <p><b>Division of Revenue Act (DORA), 2005 (RSA, Act 1 of 2005)</b></p> | <ul style="list-style-type: none"> <li>• Section 22 of the Division of Revenue Act (DORA) provides for the submission of certain reports within a stipulated time. The Auditor General's audit in 2006 shows that reports were not submitted timeously (MacCarthy, 2006:5).</li> </ul>   |

#### ***4.2.2 Non-Compliance with Regulations***

The financial regulations as approved by the Council at the Lejweleputswa District Municipality on 27 June 2002 have not been updated where necessary with the provisions of Municipal Finance Management Act, 2003 (RSA, Act 56 of 2003). This has resulted in some shortcomings when it comes to financial accountability as indicated in section 5.1.8 below. The office of the Auditor General has also discovered that the municipality has not complied with certain provisions of the regulations as shown below:

#### **Lejweleputswa District Municipality Financial Regulations 1/3/2/3/3 of 27 June 2002**

- In the 2005/2006 financial audit, the office of the Auditor General discovered that purchase requisitions were not signed by the Director of Finance, as required in terms of paragraph 6.6 and 6.3 of the district municipality's Financial Regulations (MacCarthy NG, 2005:6).
- Requisition orders were not attached to expenditure vouchers as contemplated in paragraph 6.3 of the financial regulations.

#### ***4.2.3 Tendering Processes***

In terms of the financial regulations, prices for goods procured are supposed to be in accordance with the contract or quotation approved by the Council. The Auditor General reported (MacCarthy, 2005:2) that there was an instance where a certification of goods received was unavailable. The report also indicated that there was an instance where completeness of tenders could not be confirmed due to an incomplete tender register (MacCarthy, 2005:4). The Auditor General further pointed out that in another

case expenditure vouchers were not approved by the Municipal Manager, and further the money paid out was not authorised by the Director of Finance as required by the financial regulations. The procurement process at the municipality was also violated when the costs per page for the 2004 report of the Lejweleputswa district municipality exceeded the price quoted per page (MacCarthy, 2005:3).

#### **4.2.4 Roles**

The Auditor General reported that in the financial year 2004/2005, the office of the Internal Auditor was still vacant. This is contrary to section 10G(2)(c) of the Local Government Transition Act, 1993 (RSA, Act 209 of 1993), which requires municipalities to institute an internal audit function as an independent function (MacCarthy, 2004:4). The old Municipal structure of the District Municipality as shown in figure 8 confirms this finding. Sections 165 and 166 the Municipal Finance Management Act require each municipality to have both an internal audit and an audit committee. The Lejweleputswa District Municipality is lacking in this regard.

There was no indication that job descriptions were prepared for positions at the municipality as required by section 69 of Municipal Systems Act, 2000 (RSA, Act 32 of 2000). Section 67(1)(a) of the Municipal Systems Act, 2000 also provides for the advertisement of positions needing to be filled in a municipality. The Auditor General, in the 2004/2005 report indicated that certain positions were not advertised as required by the Act (MacCarthy, 2005:5). The roles of the accounting officer were also not clearly listed in terms of chapter eight of the Municipal Finance Management Act, 2003 (RSA, Act 56 of 2003). Section 60 of the Act, allows the accounting officer of a municipality to exercise his powers and functions in accordance with the provisions of the Act. Before allocating powers and functions to the accounting officer, a report must be tabled before the Council to create awareness about the roles and responsibilities of the accounting officer. Thereafter the Municipal Manager is required to establish a top management team that will help him to execute his duties. This is provided for in section 77 of the Municipal Finance Management Act, 2003. The senior managers appointed in this regard should have their performance agreements reviewed on annual basis. The allocation of the appropriate responsibilities and the establishment of a senior management team as discussed above is currently lacking at the municipality.

Regulations 9.1 and 9.3 of the financial regulations also mention that the Municipal Manager is responsible for auditing. As indicated above, the position of the Internal Auditor is still vacant. Regulation 9:2 also mentioned the Audit Committee, but in terms of the municipal structure, the position is also still vacant.

#### ***4.2.5 Empowerment***

Section 10G(5) of the Local Government Transitional Act, 1993 (RSA, Act 209 of 1993) makes provision for a municipality to award contracts giving preference to the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination. This section enabled the implementation of the Preferential Procurement Policy Framework Act 5 of 2000.

#### ***4.2.6 Observations by the Auditor General***

The procurement regulatory framework of a municipality consists of a range of legislation and policy documents. In essence, the procurement process of each municipality must comply with the provisions of such legislations and policy documents. With regard to procurement, the procurement regulations of a municipality should:

- ascribe to a procurement system that complies with section 217 of the Constitution Act 108 of 1996
- be enshrined in chapter eleven of the local Government Municipal Finance Management Act 56 of 2003
- adhere to the best practices in Supply Chain Management
- conform to the principles of the Broad Based Black Economic Empowerment
- ascribe to uniformity in Supply Chain Management systems between organs of state in all spheres of government
- The Auditor General's report revealed that most instances of non-compliance with the laws and regulations at the municipality are the result of a failure to draft and approve new policies and procedures in terms of the Municipal Finance Management Act 56 of 2003, which would ensure compliance with relevant laws and regulations (MacCarthy, 2006:6)

The regulations at the municipality do not provide for a fraud prevention plan. There were no policies regulating gifts or declaration of interests by employees or councillors



of the municipality (MacCarthy, 2006:5). This is also contrary to the provisions of schedule 1 and section 7 of the Local Government Municipal Systems Act (MSA), 2000 (Act 32 of 2000) (MacCarthy, 2006:6). A Code of Conduct regulating the conduct of officials and councillors could also not be produced as required in terms of section 70 of the Local Government Municipal Systems Act, 32 of 2000 (MacCarthy, 2006:5).

Declaration of interests and gifts in the public service can enhance *transparency*, which is one of the principles of good governance. If municipal officials and councillors declare their interests, it builds confidence and encourages *participation* by communities in municipal affairs because the issue becomes a matter of public interest (MacCarthy, 2005:2). The report revealed that in one instance, a sum of money was paid to a councillor, in November 2003, for a certain project; the irony of the incident was that there were no documents to support the expenses incurred (MacCarthy, 2005:2).

According to the Auditor-General's report (MacCarthy, 2005:2), the issue of corporate gifts in the municipality had the effect of depriving the entity *value for money* when the goods were procured. This happened after the council purchased certain gifts from a specific supplier without inviting quotes or having approved tender order forms. These goods were bought at an excessively high price (MacCarthy, 2005:2). *Value for money*, which is one of the good governance principles, is an indispensable assessment against which a department or municipality must rationalise a procurement outcome. In other words, **costs** and **benefits** over the procurement process should be rigorously considered. The best of value for money is determined after **costs** and **benefits** over the procurement process are considered.

This requirement is important because it ensures that the internal processes of the institutions are *efficient*. The “**test**” in this regard is the **costs** involved as opposed to **delays** from suppliers (General Procurement Guidelines, 2002:4).

As indicated above, the ultimate result of the municipality ignoring this test when it procured for the corporate gifts was that they bought such goods at an excessively high price without having the opportunity to negotiate the price (MacCarthy, 2005:2).

The Auditor General's report also indicated that there was no fixed asset register and further that assets were not numbered (MacCarthy, 2006:5) and the costs of all the

assets were not explained in a separate in a register (MacCarthy, 2005:4). Finally, there was no provision for writing-off bad debt (MacCarthy, 2006:5).

The office of the Auditor General Free State identified a large sum of money that exceeded the tendered amount in terms of a contract signed (MacCarthy, 2006:3). According to him, such expenses were irregular because the council, in terms of financial regulations, did not approve them.

The declaration by the office of the Auditor General in terms of this report that the expenditure was exceeded in this regard shows that the municipality did not function within the accountability framework, which is one of the key attributes of good governance. In normal circumstances, the Chief Financial Officer is supposed to oversee and control the entire municipality's financial transactions on behalf of the Municipal Manager.

The report also revealed that a certain amount of money was written off without following the provisions of the Municipal Finance Management, 2003 (RSA, Act 56 of 2003), which allows for such action to be taken after an investigation has been done in terms of section 32(2). There were also payments of salaries and allowances made to certain managers although there were no employment or performance contracts. The expenses incurred in this respect were again considered irregular in terms of the section 32 of the Municipal Finance Act, 2003.

- The Auditor General's report also shows an overpayment of more than a million rand in respect of the Lejweleputswa Bucket Eradication System although the work done was below standard in terms of a technical report that was released (MacCarthy, 2004:3). These examples again show a lack of accountability by the municipality's Chief Financial Officer. The Chief Financial Officer is supposed to provide effective internal financial procedures. Another typical example of his failure to implement effective financial procedures is the expenditure that was approved after payments had already been made (MacCarthy, 2005:2).

Good governance, as it relates to financial management, requires sound financial policies that can provide a control framework to fixed assets, budgeting, credit control, revenue allocation, supply chain management, rates and tariffs, banking and investment, indigence management, subsistence and travelling allowances. Dependable financial

systems like credit control, revenue and expenses, budgetary management and cash management need to be developed.

If there were no regulations governing financial management, it would mean there is no basis for the council officials to account for their actions. This was clearly illustrated by an incident where an advance payment to a catering company was effected, although there were no quotations invited. In 2005, the Auditor General's report identified the following instances of financial mismanagement namely:

- VAT was paid certain to companies although they did not have a VAT registration number on their invoices
- There was no control over fixed assets because there was no asset register.

Good governance values in the form of ethical standards that assure justice, truthfulness, thoroughness and fidelity should form the basic pillars in the procurement process at the Lejweleputswa District Municipality. If any of these pillars is missing, the fairness of the process will always be questionable. In the 2004 report, the Auditor General discovered, in a certain project, a lack of supporting documents to verify expenses incurred (MacCarthy, 2004:4) showing failure on part of the Chief Financial Officer to keep proper records.

Furthermore, the law, policies and regulations, can play a pivotal role in guaranteeing that such standards exist, but for *high ethical standards* to become a custom, they must be lived and practised, rather than merely be legislated for. In order to live and practise this norm, all role players must take it as their responsibility to implement a credible procurement process based on *value for money and accountability* as shown below:

#### ***4.2.7 Value for Money***

Value for money, as discussed above, is an essential assessment instrument of the procurement process outcome, because the costs and benefits across it are meticulously considered.

Table 3 outlines some instances involving value for money:

**Table 3: Table of Value for Money Accountability**

| Finding according to Auditor General's report  | Governing principle at the municipality  |
|--|--|
| 1 (MacCarthy, 2004:2) revealed in his report that stationery and certain gifts were bought by the Lejweleputswa District Municipality from one specific supplier without proof that quotations were invited. | Regulation 13.1 requires at least two quotes before entering in a contract. A contract in which the municipality plans to be a party to, should be referred to the Treasury (13.5.1). Section 10G(5)(a) of the Local Government Transition Act 209 1993 allows dispensing of tenders in cases of emergency or sole supplier or within limits of prescribed national legislation  |
| 2 The procurement process was violated when it was found that the prices of the items were extremely high (MacCarthy, 2004:2).   | This was in contrast to the municipal financial regulations regulating the procurement process (13.8). This regulation provides that the municipality will accept the lowest and cheapest tender unless a Departmental Head concerned can provide reasons for recommending the other tender. Regulation 13.9 provides for the calling of at least two quotes where the costs of services or materials have exceeded the amount agreed upon by the Council in 13.1. |

The municipality ignored the *costs* against the *benefits* test as indicated in section 120(4)(b)(iii) of the Municipal Finance Management Act, 2003 (RSA, Act 56 of 2003). This was in direct opposition to the fact that the Act requires public-private partnerships to be conducted taking into consideration value for money. Thirdly, there were instances where expenses were incurred without certificates to the effect that the goods were received or that the services were indeed rendered (MacCarthy, 2004:2).

Section 83 of the Municipal Systems Act 32 of 2000 also provides, inter alia, that bidding should be conducted in a manner that is *transparent*, *equitable* and *cost effective*. Furthermore, one of the principles of Batho Pele also requires that services should be conducted in a manner that is *economic* and efficient in order to provide citizens with the best possible value. The requirement of costs versus benefit is vital because it ensures that the internal processes of the institutions are efficient as envisaged in the General Procurement Guidelines (2002:4).

## Ethics and Fair dealings

**Table 4: Table of Ethics and fair dealings**

| Finding according to the Auditor General's report  | Governing principle at the municipality   |
|--|---|
| 1 The same report drafted by MacCarthy also indicates that the council paid a certain amount of money to a councillor for a 2003 project without supporting documents for work done. (MacCarthy, 2004:2).  | Annexure A of the financial regulations allows approval of the following purchases <ul style="list-style-type: none"> <li>• R0 to R39 999 – Departmental Heads</li> <li>• R40 000 to R119 999 – Mayoral Committee</li> <li>• Above R120 000 – Tender Committee to submit proposal to Municipal Council</li> </ul>   |
| 2 In contrast to the financial regulations governing the procurement process at the Lejweleputswa District Municipality, a catering company was paid a large amount of money in advance, although there were no quotations submitted for such service. | Again, regulation 13.1 requires the calling for at least two quotes before entering in a contract. A contract in which the municipality plans to be a party, should be referred to the Treasurer (13.5.1). Section 10G(5)(a) of the Local Government Transition Act 209 1993 allows for the dispensing of tenders in cases of emergency, sole supplier or within limits of prescribed national legislation. |
| 3 In some instances, expenditure was incurred before payments were approved, contrary to the principles of financial accountability and reporting (MacCarthy, 2004:3).   | The regulations are silent in this respect and they constitute a gap.   |
| 4 There is no evidence that councillors declared their interests (MacCarthy, 2004:5).  | The regulations are silent on this issue except for regulation 13.4, which provides that no member of the Council or an official may reveal information about tender processes, except in instances where they are reporting to the Council. This constitutes a gap.  |

Schedule 1 of the Code of Conduct for Councillors governs the conduct of Councillors in the following ways:

- Councillors should constantly maintain the *integrity* and *credibility* of the municipality (Section 2)
- Councillors should disclose private business, direct or any indirect personal interest of business a councillor might have before the council (section 5(1))
- Section 6(1) forbids councillors from using confidential information for personal gain

- Section 7 demands that councillors should, within 60 days of election, submit in writing a declaration of interests to the Municipal Manager.

The failure to disclose interests by officials in the public service has been an ongoing problem in South Africa, as shown by the National Auditor General's report of 2003/2004 financial year (website of the Institute for Security Studies, 2007). The King 3 report is now suggesting that organisations should not concern themselves with *ethics* only, but should also take a step further by signalling that *core values* or *standards* must be maintained (Landman WA 2007:1).

What the office of the Auditor General has discovered indicates that the suggestion put forward in the King 3 report is correct, because management of core values by the organisation would minimise the involvement of councillors in the municipal procurement process. In short, all officials and other role players involved in the procurement process of the Lejweleputswa district municipality should comply with the provisions of the Code of Conduct for staff members contained in Schedule 2 of the Local Government Municipal Systems Act, 2000 (RSA, Act 32 of 2000).

### **Openness and Transparency**

With regard to the openness of the tender process, decisions taken by the Lejweleputswa district municipality do not appear to be freely available or accessible to other bidders who participated in the process, yet this is a pre-requisite of good governance because such bidders have an interest in the evaluation and adjudication processes. The danger of overlooking this aspect is that disgruntled bidders can use the Promotion of Access to Information Act (PAIA), 2000 (RSA, Act 2 of 2000, as amended by the Promotion of Access to Information Act, 2002, to get the information about the reasons for the decisions. That step may lead to litigation, which in turn may lead to a delay in the procurement process.

The municipality also does not strictly adhere to financial management and tender regulations that would strengthen transparency. The municipal financial regulations also do not clearly provide guidelines for reporting unethical behaviour. Public reporting on municipal financial expenditures is not conducted regularly. These last two omissions show a lack of transparency or openness at the Lejweleputswa district municipality.

## **Responsiveness and Accountability**

Another value of good governance missing in the Lejweleputswa district municipality procurement process is responsiveness. It was clear from the Auditor-General's reports that there are no indications that the municipality has in the past been able to furnish the stakeholders with reasons for decisions *within a reasonable time*. The systems for accountability at the municipality are also insufficient because there is a lack of access to municipal budgeting and financial management.

Performance indicators are also not in place. The Local Government Municipal Systems Act (MSA), 1998 (RSA, Act 117 of 1998) as amended in 2000 has a peremptory provision in section 6(2)(a), in that those who are in administrative positions at the municipality *must* "be responsive to the needs of the community". The Act does not dictate the structure to the municipality for providing an efficient and effective method of control but has left that to its discretion.

## **Reporting and Independence**

The financial regulations at the Lejweleputswa District Municipality do not describe the reporting requirements that should be used by the Municipal Manager when reporting to the Council. The reporting requirements should be followed using proper and established channels.

Furthermore, the tender processes in terms of the old financial regulations and the currently proposed new procurement process at the Lejweleputswa district municipality are *not independent and free* from the influence of council. This is contrary to the suggestions made by Judge Mervin King in his King 2 report. This is illustrated by the fact that Departmental Heads, the Mayoral Committee and the Municipal Council are expected to approve the following purchases:

**Table 5: Purchases that can be approved**

|   |                  |
|---|------------------|
| Departmental Heads                        | R0–R39 999       |
| Mayoral Committee                         | R40 000–R119 999 |
| Tender Committee to submit proposal to MC | Above R120 000   |

This position compromised the procurement process in the municipality, as shown in the matter of the Councillor in Table 4 who received funds destined for a certain project (MacCarthy, 2004:5).

Participation by non-members of the council in the Bid Committee system would minimise the influence of council or municipal officials in the procurement process. As indicated in previous chapters, the researcher has discovered that there is no bid committee system in the municipality.

### **Lack of Coordination**

Contrary to the values of good governance, the Finance Section at the municipality has no co-ordination or integration of services with the procurement section. This was exposed by the incident where purchase requisitions were not approved by the Director of Finance due to non-adherence to paragraph 6.3 and 6.6 of the financial regulations (MacCarthy, 2006:7).

The independence of the procurement section at the Lejweleputswa Municipality structure is also questionable. There is neither a separate or independent Audit Committee, nor a Risk Management Committee at the municipality.

In conclusion, the existence of all these committees would ensure the perpetuation of good governance even in the municipal process.

The researcher would like to indicate that, at the time of conducting the research, the Municipality was in the process of moving away from the procurement process that was conducted in terms of the financial regulations promulgated under the Local Government Transition Act 209 of 1993. This has left *some gaps* in the current procurement process as shown in Table 6.

In Table 6, a detailed analysis of the gaps in the procurement process at the Lejweleputswa District Municipality will be made on the basis of the principles of good governance.



**Table 6: Summary of analysis and findings of Good Governance in Procurement at the Lejweleputswa District Municipality**

| <b>System of laws</b>  | <b>Transparency</b>   | <b>Accountability</b>  | <b>Participation</b>  | <b>Predictability</b>   |
|--|---|--|---|---|
| <i>The laws that are applicable or have a bearing in the procurement process at the municipality are as follows:</i>   | <b>Transparency</b> means that information about an organisation’s activities should be made available to the relevant stakeholders. This step enables members of the public to get clarity about decisions, rules and regulations. It also supports and improves transparency.   | <b>Accountability</b> is a process, whereby institutions like the civil society, private sector and government are <i>held responsible by the public or their stakeholders for their actions</i> (Good Governance on Wikipedia website, 2007:2)  | <b>Participation</b> has people as its focus. It allows local people to take part in the decision making process by including them in decision-making structures. It can also be done through effective, legitimate, intermediate institutions or by representations. | <b>Predictability</b> is about the certainty and logicity of the procurement process. It ensures stability in an organisation. The basis of predictability therefore is a legal framework by means of laws and regulations.                                 |
| <b>Legislation</b>   | <b>Gap in Policies Transparency</b>   | <b>Gap in Policies Accountability</b>  | <b>Gap in Policies Participation</b>  | <b>Gap in Policies Predictability</b>   |
| <b><i>The Interim Constitution Act 200 of 1993 laid down a procurement policy framework in terms of section 187, which deals with procurement administration. Section 187 of Constitution Act, 1993 provides for a procurement administration that must be conducted in terms of parliamentary or provincial legislation. A parliamentary legislation that was enacted thereafter was the Local Government Transition Act 209 of 1993.</i></b> | There is no gap in legislation in terms of <i>transparency</i> because the financial regulation policies governing procurement at the municipality take into account the Interim Constitution Act 200 of 1993.<br><br>The interim Constitution, which enabled the drafting of section 10G(5)(a) of the Local Government Transition Act 209 of 1993 (LGTA), which requires the awarding of tenders in accordance with a system that is <i>fair, equitable, transparent, competitive and cost effective</i> . | The Interim Constitution and its accompanying parliamentary legislation and the LGTA in section 10G(5)(a) require procurement to be done taking into account fairness.<br><br>The officials responsible for procurement in the municipality are supposed to account for their decisions because the financial regulations were drafted and are in accordance with the LGTA, 209 of 1993 when it comes to accountability. | The Interim Constitution has not in any way influenced participation in the policies of Lejweleputswa Municipality.<br><br>This has made a gap in the policies of the municipality.   | The Interim Constitution and the LGTA give guidelines, but are silent about the procurement <b>structures</b> to carry on with the mandate.<br><br>This omission creates a gap in the process, which eventually leads to an <b>unpredictable</b> situation. |

| <b>System of Laws</b>   | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>  |
|---|---|--|--|--|
| <p><b><i>The Republic of South Africa Final Constitution Act 108 of 1996, section 217, is supposed to provide for the basis of procurement process at the municipality.</i></b></p>   | <p>Like the Interim Constitution, the Final Constitution Act, 108 of 1996 in section 217 provides for procurement that is <i>fair, equitable, transparent, competitive and cost effective</i>.</p> <p>The Constitution therefore provides for a procurement process where information is readily available to stakeholders.</p> <p>The issue of transparency is addressed because tender applications submitted to the municipality must be opened in public.</p>             | <p>There is no gap in policies in terms of the Final Constitution, as the Interim Constitution Act 108 of 1996 has laid down certain requirements for procurement.</p> <p>Failure to adhere to them will result in the relevant officials being held accountable for non-implementation.</p> <p>The question of accountability is addressed by the policies of the municipality.</p> | <p>Equity is mentioned by section 217 of Act 108 of 1996.</p> <p>The procurement policies at the municipality contain a provision for equal treatment for people tendering for the contracts</p>                 | <p>The procurement policies at the municipality are supported by the legislative framework, of the Preferential Procurement Policy Framework Act 5 of 2000 and other laws.</p> <p>The fact that there is legislation in place to regulate the procurement process has made them predictable.</p> |
| <b>System of Laws</b>   | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>  |
| <p><b><i>The Preferential Procurement Policy Framework Act 5 of 2000 laid down the procedural guidelines for the implementation of preferential procurement policies. It also specified the goals and obligations that must be met.</i></b></p> | <p>The procurement policies at the municipality have a gap in this regard.</p> <p>They are not transparent or open on how the points system should be calculated as required by the Act.</p> <p>They only mention previously disadvantaged persons, but are not clear how their procurement applications should be treated.</p> <p>Section 2 of the Preferential Procurement Policy Framework, Act 5 of 2000 (PPPFA) states that an organ of the State must determine its</p> | <p>The financial regulations used by the municipality in its procurement process are clear on the responsibilities of the municipal administration and on who should handle the process in order to achieve accountability.</p> <p>In short, there is no gap in this regard.</p>   | <p>The procurement policies at the municipality allow for preferential treatment of the historically disadvantaged persons, but do not mention the procedure to be followed when dealing with the challenge.</p> | <p>As indicated, the gap in the policies of the municipality exists only in as far as the calculating of the points system in terms of the PPPFA when awarding tenders.</p> <p>This gap has resulted in some unpredictability in its procurement process.</p>                                    |

|  |  |  |  |   |
|--|--|--|--|---|
|  | <p>preferential procurement policy within the framework laid down by the Act.</p> <p>In this regard, the Act makes it peremptory even for a municipality to make its policies in terms of the spirit of the Act.</p>   |  |  |   |
| <b>System of laws</b>  | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>   |
| <p><i>The accompanying <b>Preferential Procurement Regulations of 2001</b> were also promulgated to achieve these goals. The preferential procurement procedure laid down by the Act and the regulations combines price and the criteria selecting the disadvantaged group. Service providers who do not meet the criteria set out by the Preferential Procurement Act, 2000 are not excluded from the bidding process but are penalised for not fulfilling the requirements. Section 153(a) of the Constitution Act, 1996 provides for the municipality to structure and manage its affairs giving priority to the needs of the people.</i></p> | <p>The accompanying Preferential Procurement Regulations of 2001 contained in the policies of the municipality provide for transparency in giving guidance on price and the selection of people from the disadvantaged group.</p> <p>The application of the regulations with regard to promoting of South African enterprises, creation of new jobs and promotion of enterprises in the Lejweleputswa District has not been made clear in the municipal policies as required by the Act.</p> | <p>By setting down certain criteria to be followed when choosing tenders from a disadvantaged group, the Preferential Procurement Regulations, as contained in the municipal policies, has managed to set down the basis of holding municipal officials to account.</p> <p>In short, there is no gap in the municipal policies in this regard.</p> | <p>When it comes to participation, the Preferential Procurement Regulations have influenced the policies of the municipality. This is shown by the fact that the municipality's procurement procedures allow participation of previously disadvantaged groups.</p> | <p>The policies of the municipality are predictable in this regard because the Preferential Regulations have laid down a solid foundation about the certainty and logicity of the processes to be followed.</p> |
| <b>System of Laws</b>  | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>   |
| <p><i>In 2002, the <b>Lejweleputswa District Municipality Financial Regulations 1/3/2/3/3</b> were made and adopted by the Council on</i></p>  | <p>The Lejweleputswa Financial Regulations governing procurement policies at the municipality have clearly explained the method used to</p>  | <p>The absence of an explanation of the method used to count points when using the Preference Procurement Policy Framework Act means that no</p>   | <p>Again, the absence of a clear explanation of how to implement the PPPFA means that full participation by the previously or historically</p>   | <p>The fact that PPPFA is not clearly explained by the Lejweleputswa Financial Regulations means that the actions or steps followed by the</p>  |

|   |  |  |   |   |
|---|--|--|---|---|
| <p><i>21 July 2002, to guide the procurement systems at the municipality.</i></p> <p><i>One of the key aspects of the regulations was that, they were intended to establish a procurement policy for the municipality that would advance and protect the previously disadvantaged groups of people.</i></p> <p><i>This was to be achieved by advancing their participation in the economy of the region through government financed contracts.</i></p> <p><i>The act of choosing a preferred bidder in terms of the regulations regulating procurement process at the municipality should be done in a fair, equitable, transparent and cost effective manner.</i></p> <p><i>The most important aspects of the regulations are summarised in Tale 1. The table briefly explains the steps to be followed before engaging the a service provider.</i></p> <p><i>The roles of the people in the municipality who are supposed to handle the process are also discussed.</i></p> | <p>calculate points when awarding tenders to the previously disadvantaged persons.</p> | <p>specific person can be held accountable for not applying the PPPFA in its entirety.</p> | <p>disadvantaged people cannot not be attained.</p> | <p>municipality cannot be fully understandable.</p> |
|---|--|--|---|---|

| <b>System of laws</b>  | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>  | <b>Predictability Gap in Policies</b>   |
|--|--|--|---|---|
| <p><b><i>The Local Government Municipal Systems Act 32 of 2000</i></b></p> | <p>The fact that the Local Government Municipal Systems Act 32 of 2000 allowed the establishment of Council, Standing Committee and other Sub-Committees participating in the administration of procurement at the municipality means that there is a form of limited transparency in the municipality's procurement process.</p> <p>The introduction of the Bid System in the procurement process introduces almost full transparency.</p> <p>Section 20 of the Municipal Systems Act provides that municipal meetings should be open to the public.</p> <p>At the Lejweleputswa Municipality, most meetings are closed to the public.</p> <p>Section 53(1) of the Act provides for the description of the roles of the municipal manager, and the political or office bearers of the municipality.</p> <p>The roles and areas of responsibility of the bid committees are not clearly spelt out in the procurement policies.</p> | <p>Since Committees and Sub-Committees are established in terms of the Act, they should account for the decisions they took.</p> | <p>Participation by Standing Committees and Sub-Committees in the municipality means that sometimes there are open sessions where members of the public are invited to observe.</p> <p>Certain instances sometimes exist where the sessions are closed to the public.</p> <p>When the municipality wants to enter into a contract with the aim of forming Public Private Partnership (PPP), the municipality in terms of sections 78(1) and 78(3) is expected to conduct an assessment.</p> <p>Participation in the municipality is sometimes lacking due to failure by municipal officials to report back to the community their failure to receive petitions.</p> <p>The policies have a gap because they do not allow participation by communities in the municipal Performance Management System.</p> | <p>The Local Government Municipal Systems Act has legally allowed the establishment of the Committees and Sub-Committees, and it mentions their specific functions, which makes them predictable.</p> |

| System of Laws   | Transparency Gap in Policies  | Accountability Gap in Policies  | Participation Gap in Policies  | Predictability Gap in Policies  |
|--|---|---|--|---|
| <p><b><i>The Municipal Finance Management Act 56 of 2003 in general attempts to control the auditing, financial, accounting, borrowing and reporting of the municipalities.</i></b></p> <p><i>The Act also guides municipalities on how to deal with service tariffs and credit control policies.</i></p> <p><i>Chapter Eleven of the Act deals with the procurement of Goods and Services and it regulates municipal procurement.</i></p> <p><i>In short, the Act maximises the capacity of municipalities to deliver services.</i></p> | <p>There is no clear policy with regarding the remuneration of Councillors as contemplated in section 124(a) of the MFMA.</p> <p>At Lejweleputswa District Municipality, this omission is because there are no appropriately documented policies.</p> <p>Intergovernmental allocation in the financial statements of 2006 was not made as required by section 123 of the MFMA (MacCarthy, 2006:4).</p> <p>There was also a gap in the municipality's policies with regard to the handling of cash in bank as contemplated in section 9 and 8(5) of the MFMA. The reason for this gap is that this aspect is not well-covered by municipal policies.</p> <p>Lastly, there is no clear and well-documented Supply Chain Management policy at the municipality.</p> <p>Section 114 requires that unusual awards are reported to the Auditor General (AG). Although the AG's reports from 2004–2006 have reported on some of the unusual awards, there are no instances in which they were reported as contemplated in section 114 of the</p> | <p>The fact that there were no well-documented and approved policies containing the provisions of the Act means that there is no legal framework to hold the Municipal Manager and other officials accountable for their actions.</p> | <p>The MFMA provides for many ways of tendering for goods and services; it does this by introducing the bidding process.</p> <p>The different committees of the Bid System allow more participation in the procurement processes.</p> <p>The absence of a Bid System in the procurement process is a gap at the Lejweleputswa Municipality.</p> <p>The reason for the absence of a Bid System is because it is not contained in their policies.</p> <p>Further, communities are allowed to participate in municipal budgets, yet at Lejweleputswa Municipality, the communities are not allowed to participate in this process.</p> <p>Communities are supposed to participate in development of the municipal budget but there is gap in the policies of the municipalities because they do provide for such a process.</p> <p>Sections 22 and 23 of the MFMA indicate the procedures to be followed when giving people the opportunity to participate in this process.</p> <p>Participants in this process should be</p> | <p>The fact that the Legal framework of the municipal procurement does contain the provisions of the MFMA makes their procurement predictable when it comes to errors.</p> <p>The AG's 2004-2006 reports bear testimony in this regard.</p> |

|  |   |  |  |   |
|--|---|--|--|---|
|  | <p>Act.</p> <p>The reason is that the provisions of section 114 are not incorporated in the municipal policies. The MFMA provides for the creation of a credible and accredited supplier database of prospective providers of goods and services by a municipality.</p>   |  | <p>selected by means of ward committees, notices in public boards, municipal websites, local newspapers and ward councillors.</p>  |   |
| <b>System of Laws</b>  | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>   |
| <b><i>The Municipal Structures Act 117 of 1998 as amended by the Municipal Structures Amendment Act 33 of 2000</i></b> | <p>The Municipal Structures Act, 1998 states that municipalities must carry out their affairs in an open and transparent way whenever possible.</p> <p>This Act is well-known in the in Lejweleputswa Municipality, yet they tend to ignore the provision. Again, the fact that all the spoken languages in the area are not used to make the procurement process accessible to everybody does not promote or enhance accessibility.</p> <p>The omission is a gap in their procurement process.</p> | <p>The Act requires the Lejweleputswa District Municipality to meet quarterly.</p> <p>In these meetings, municipal officials and Councillors serving on sub-committees are expected to account for their actions.</p> <p>The Council tables the decisions taken by the relevant committee or sub-committees for adoption.</p> <p>In this respect, the Lejweleputswa Municipality's procurement process has provided for some form of accountability.</p> | <p>Section 19(2) of the Act provides for the mechanisms of public participation.</p> <p>At the Lejweleputswa Municipality, public participation has been implemented through the establishment and functioning of ward committees.</p> <p>In the procurement process, use of languages that are not spoken in the area does not promote participation by all people living in the region.</p> <p>That is a gap in their procurement process.</p> | <p>If mechanisms for public participation are established in terms of the Municipal Structures Act 117 of 1998, predictability as to who is expected to participate in the procurement process becomes easier, thereby promoting good governance.</p> |
| <b>System of Laws</b>  | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>   |
| <b><i>The Broad Based Black Economic Empowerment Act 53 of 2003 (BBBEA)</i></b>  | <p>The application of the BBBEA is not transparent in the policies of the municipality. Normally, the provisions of the Act make it clear as to what should be taken onto account and how to apply codes of good</p>  | <p>As the provisions of the BBBEA are not well-documented in the municipality's procurement policies, it is difficult to hold officers responsible for the procurement policy and thus accountable for non-</p>  | <p>The BBBEA by its nature, promotes broad participation in the procurement process.</p> <p>At the Lejweleputswa District municipality, the awarding of tenders to historically disadvantaged</p>  | <p>Predictability as to the outcome of the procurement process at the municipality can also not be confirmed because of the code of the good practice as contained in the Act.</p>  |

|   |  |  |  |  |
|---|--|--|--|--|
|   | <p>practice for BEE.</p> <p>These two issues are missing in the municipal procurement process and as result transparency cannot be guaranteed. Again, the reason for the gap is that Lejweleputswa District Municipality's policies are not well documented.</p>   | <p>compliance with the Act.</p>  | <p>individuals cannot be said to be influenced by the Act, because the policies are unclear in this regard.</p>  | <p>The reason is that the policies are not properly formulated.</p>  |
| <b>Regulations</b>  | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Participation Gap in Policies</b>   |
| <p><i>The Financial Regulations as approved by the Lejweleputswa District Council on 27 June 2002 were used in the procurement process.</i></p> <p><b>Local Government Transition Act Regulations No. R 1224 dated 2 October 1998</b></p> <p><i>The regulations apply to contracts that relate to the publication of notices and advertisements by or on behalf of the municipality and any purchase that is done on behalf of the municipality at a public auction or by a competitive tender. They also relate to any purchase by or on behalf of the municipality for works of art that the Council has consented to <b>LGTA Regulation No. R387 dated 26 March 1999</b>.</i></p> <p><i>On 26 March 1999, the then Minister for Provincial Affairs and Constitutional Development,</i></p> | <p>The Financial Regulations as approved by the Council at the Lejweleputswa District Municipality on 27 June 2002 <i>were not updated</i> where necessary with the provisions of MFMA, with the aim of adopting Supply Chain Management Systems.</p> <p>The Absence of a Supply Chain Management System means there were no bid committees that lead to transparency. This is caused by the fact that the regulations were not updated with the provisions of the MFMA.</p> <p>The Supply Chain Management introduced in terms of the M intends to close the gap between the traditional method of procuring goods and services and the balance introduced by the Supply Chain thereby addressing procurement related matters, which are of strategic importance.</p> | <p>The absence of a Supply Chain Management System means there were no <b>Bid Committees</b> as provided for by the MFMA.</p> <p>This has resulted in a gap when it comes to <i>accountability</i>.</p> <p>This situation is clear if one takes into account the roles played by the <b>Director of Finance, the Director of Administration and the Municipal Manager</b>.</p> <p>The absence of an <b>Internal Auditor and the Audit Committees</b> also promotes a lack of <b>accountability</b> by people participating in the procurement process (MacCarthy, 2004:4).</p> | <p>The absence of the Supply Chain Management System means that there are no <b>Bid Committees</b> to ensure a <b>high level of participation</b>.</p> <p>This is the case because the same members are both inviting tenders and evaluating and adjudicating to determine the winning tenders.</p> <p>This is caused by the fact that the regulations were not updated with the provisions of the MFMA.</p> | <p>A clear definition of roles also ensures the <b>predictability or certainty</b> of the persons who will be handling the procurement process. In Lejweleputswa, this does not take place.</p> <p>This gap is caused by the fact that the regulations were not updated in the Lejweleputswa District Municipality with the provisions of the MFMA.</p> <p>Furthermore, the municipal regulations do not provide for accreditation of suppliers.</p> |



|  |  |   |  |  |
|--|--|---|--|--|
| <p><i>gazetted amendments to the Regulations pertaining to the Dispensing of Tender Regulations contained in the Schedule of Government Gazette Notice No. R. 1224, dated 2 October 1998.</i></p>  |  |   |  |  |
| <p><b>Processes</b></p>  | <p><b>Transparency Gap in Policies</b></p>   | <p><b>Accountability Gap in Policies</b></p>  | <p><b>Participation Gap in Policies</b></p>  | <p><b>Predictability Gap in Policies</b></p>   |
| <p><i>The procurement process as conducted based on the <b>Financial Regulations promulgated in 2002.</b></i></p>  | <p>The fact that the Head of the Department concerned, the Director of Finance, the Municipal Manger, the Director of Administration and the Council are involved in the procurement process <b>does not encourage transparency</b> because the <b>same officials are involved in specifications, evaluation and adjudication</b> of the tender.</p> <p>In short, the Lejweleputswa Municipality has closed the tendering system as quotes are submitted in closed envelopes as per the Financial Regulations.</p> | <p>Since the procurement process is based on the Financial Regulations of 2002, it means the policies are old and they were not updated to improve performance (MacCarthy, 2004:4). This is a clear non-compliance with laws and regulations.</p> <p>In terms of the municipal Financial Regulations, there is no expenditure analysis based on past experience.</p> <p>Adopting a needs assessment will enable the municipality to account for finances spent on procuring goods and services.</p> | <p>The regulations also have a gap when it comes to participation because their tender invitations are advertised in one official language (ie English) and that excludes the majority of the people.</p> <p>The gap in the policies is that they should at least use two additional languages that are spoken in the area (eg Afrikaans and Sotho).</p> <p>The financial regulations also do not provide for an integrated systematic approach to the appointment of consultants.</p> | <p>The gap in the municipality policies is that the financial Regulations are old and they need to be updated in order to be logical with the current trends in procurement for municipalities.</p>                                |
| <p><b>Roles</b></p>  | <p><b>Transparency Gap in Policies</b></p>   | <p><b>Accountability Gap in Policies</b></p>  | <p><b>Participation Gap in Policies</b></p>  | <p><b>Predictability Gap in Policies</b></p>   |
| <p><i>The Financial Regulations indicate that the procurement process is handled by the following people:</i></p> <ul style="list-style-type: none"> <li>• <i>Heads of Departments or their deputies (13.1)</i></li> <li>• <i>Treasurer and the deputy (14.1.2)</i></li> </ul> | <p>The Financial Regulations do not provide for <b>independent</b> roles in the handling of the procurement process.</p> <p>A clear example is that the Director of Administration in terms of Regulation 13.2 is the person who <u>invites</u> tenders and is also the person</p>   | <p>Regarding roles, <b>accountability</b> is the acknowledgement and assumption of responsibility for actions, policies and decisions taken.</p> <p>In this regard, the Auditor General Free State's Office reported that in the financial year 2004/ 2005, the</p>   | <p>Participation in the procurement process at the municipality is <i>limited</i> to the people whose names appear under the role columns.</p> <p>The current institutional arrangement or procurement structure at the municipality does not provide for the</p>  | <p>Predictability is difficult to establish because the Financial regulations are based upon the terms of the Interim Constitution Act, 1993 and NOT the terms of the (MFMA), which allows the application of the Supply Chain</p> |

|  |  |   |  |  |
|--|--|---|--|--|
| <ul style="list-style-type: none"> <li>• <i>Director of Administration (13.2.2)</i></li> <li>• <i>Chief Accountant Expenditure (14.1.2)</i></li> <li>• <i>Member or officer of the Council (13.4)</i></li> <li>• <i>Municipal Manager (13.6)</i></li> <li>• <i>Mayoral and Tender Committees (13.4)</i></li> </ul> | <p>who <u>receives</u> and enters them into the register.</p> <p>This has opened a gap for other tenders to be overlooked if the Director of Administration so desires.</p> <p>The reason for the above submission is that transparency enables a feedback before and during the decision-making process.</p> <p>In terms of the Financial Regulations, there is no obligation on the Director of Administration to compile a report about applications received and registered.</p> <p>The absence of the Office of the Internal Auditor means that it is not easy to establish the presence or absence of transparency.</p> <p>The presence of the Internal Auditor would allow an <i>independent appraisal function</i> (McCarthy NG, 2004:5). Good Governance also depends on <i>clearly defined roles</i> for municipal councillors and the municipal management officials.</p> | <p>office of the <b><i>Internal Auditor was not in existence</i></b> as expected in terms of section 10G(2)(c) of the Local Government Transitional Act 209 of 1993 (MacCarthy, 2004:4 – see also Municipal structure under the old regulations).</p> <p>The financial regulations as approved by the Council at the Lejweleputswa District Municipality on 27 June 2002 were not updated in terms of the provisions of the Supply Chain Management Guidelines.</p> <p>This has resulted in some shortcomings when it comes to financial accountability as indicated Table 3.</p> <p>The gap in the policies is that the Head of Administration is not party to the procurement but only signs projects for processing.</p> | <p>objectives of the preferential procurement.</p>   | <p>Management System.</p>  |
| <p><b>Empowerment</b></p>  | <p><b>Transparency Gap in Policies</b></p>   | <p><b>Accountability Gap in Policies</b></p>  | <p><b>Participation Gap in Policies</b></p>  | <p><b>Predictability Gap in Policies</b></p>   |
| <p><i>Section 10G(5) of the Local Government Transitional Act 209 of 1993 provides for a procurement system that takes into account “equity”.</i></p>  | <p>The financial Regulations mention the application of the Preferential Procurement Policy Framework Act, 2000, but they do not clearly specify the calculation of its points system.</p>   | <p>The omission of the provision of calculation of the points system in the Financial Regulations of 2002 makes it easy for the people awarding the tenders not to explain</p>  | <p>The policies at the municipality do not provide for incentives to traditional suppliers who implement Black Economic Empowerment by pro-actively using BEE support as</p> | <p>If the Financial regulations are silent or do not explain how the points system should be calculated when dealing with a tender application coming from</p> |

| <p><i>To do justice to previously disadvantaged persons, the section provides for the awarding of tenders in accordance with national legislation.</i></p> <p><i>The Lejweleputswa District Municipality has adopted the Preferential Procurement Policy Framework Act 5 of 2000 as a guiding law in this regard.</i></p> |   | <p>how they arrived at their decisions.</p>   | <p>criteria for evaluating suppliers.</p> <p>The policies are also silent about how suppliers are accredited.</p>  | <p>previously disadvantaged people, then predictability will be difficult to establish.</p>  |
|---|---|---|--|--|
| <b>Policies</b>   | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>   | <b>Participation Gap in Policies</b>   | <b>Predictability Gap Policies</b>   |
| <p><i>In this regard, the municipality's Financial Regulations dealing with the procurement process are used and they are therefore supposed to be readily available to all parties.</i></p>  | <p>The problem with the policies at the municipality is that they are not readily available or accessible to everyone</p> <p>This has deprived people of <i>openness</i> to the procurement process.</p> <p>The policies do not make it obligatory for unsuccessful tenders to be advised in writing of the reasons for not being awarded the tender.</p> <p>The absence of an independent review panel for tenders above a certain amount also does not improve transparency.</p> <p>When awarding tenders, the Lejweleputswa Municipality does not award contracts using cross business teams that would encourage new suppliers.</p> <p>Information sessions are not</p> | <p>Openness or transparency is the flip side of accountability.</p> <p>The absence of transparency means that there is no framework to make people account for their actions.</p> <p>The Financial Regulations demand that Heads of Departments recommending a particular tender should also make a report to the Treasurer or to the Council.</p> <p>In essence, the regulations provide for internal accountability <b>only</b> to the exclusion of the general public (ie lack of horizontal accountability).</p> <p>The policies provide for a deposit to be paid when applying for the tender but it <b>requires no surety (ie by means of performance bonds)</b> as a means of reducing risk.</p> <p>Procurement needs are not aligned to</p> | <p>Openness to the policies encourages effective competition.</p> <p>The Financial Regulations, laws or policies received from the municipality do not show sincerity when it comes to the provision of the policies to the public.</p> <p>The Lejweleputswa Municipality procurement policy is not pro-active.</p> <p>There are no procurement initiatives to ensure constructive participation by South African black people at all levels.</p> <p>The municipality does not facilitate enough access to their procurement activities to enable previously disadvantaged suppliers to participate in the mainstream economy.</p> | <p>Lack of openness in making the policies, laws and procedures available does not improve predictability in the municipality.</p> |

|   |   |  |  |  |
|---|---|--|--|--|
|   | conducted by the municipality to clarify procedures and requirements prior to the advertisement of tenders.   | the IDP of the Lejweleputswa District Municipality.<br>This has made it difficult for the municipality to quantify and account for funds used. The policies also do not provide for the holding of post award debriefing meetings with unsuccessful suppliers to enhance future success.   |  |  |
| <b>Leadership</b>   | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>  |
| <i>Burger (2006:16) describes leadership as “an intent concerned with what to achieve”. This is the guidance and management skill.</i>      | The fact that no one knows the criteria used by the Treasurer to motivate for winning tenders shows that there is no transparency in leadership.  | In leadership, accountability is the <b>acknowledgement and assumption of responsibility for actions, products, decisions and policies</b> (Wikipedia accountability website, 2007:1–7).<br><br>In the Lejweleputswa District Municipality, the accountability of the procurement process is vested in the Treasurer who should be briefed before any tender decision is tabled before the Council.<br><br>In short, his opinion is important. | Leadership over the procurement process is vested in the Head of the Financial section who is the Treasurer.<br><br>The researcher finds no gap in this respect.   | Predictability is easy to establish because the leadership of every procurement process is vested in the Financial section.  |
| <b>Procedures</b>   | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>  |
| <i>Procedures followed when it comes to the procurement process at the municipality are indicated in the financial regulations of 2002.</i> | The problem when it comes to transparency is that the regulations do not give guidelines as to what the procedure is when a dissatisfied tender applicant wants a matter to be reviewed or go appeal. | In the absence of review or appeal procedures, accountability for actions when it comes to the two processes will be difficult to establish.<br><br>A set of internal and external procedures ensures full   | The absence of the Bid Committees means that there is a gap in <b>broad participation</b> in the Lejweleputswa District Municipality.<br><br>The role of the <b>Ward Committees</b> , in participation is to monitor and review the municipality’s | Predictability is based on the legal framework.<br><br>If the regulations are silent about <b>review and appeal procedures</b> then that means there is a gap in predictability. |

|  |   |   |   |  |
|--|---|---|---|--|
|  |   | <p>accountability.</p> <p>The absence of the office of the Internal Auditor does not augur well in this regard.</p>   | <p>performance and to help prepare the municipality's budget.</p> <p>The Local Government Municipal Structures Act, 1998, in section 72(3) gives guidelines concerning the function of the Ward Committees.</p>   |  |
| <b>Norms</b>   | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>   | <b>Participation Gap in Policies</b>  | <b>Predictability Gap in Policies</b>  |
| <p><i>This is the origin of all kinds of accountability.</i></p> <p><i>This type of accountability is based on <b>traditional and societal norms of behaviour.</b></i></p> <p><b>Section 10G(2) of the LGTA, which was supposed to be applicable at the municipality, provides for action to be taken by the Accounting Officer against any person in the employ of the municipality who causes it to suffer losses.</b></p> | <p>In short, accountability in terms of the norms <b>cannot impose answerability and enforcement.</b></p> <p>The gap is that the municipality does not have strict policies that hold its officials accountable if they show some interest in the procurement process.</p> <p>Another gap in the policies is that there is no prohibition of people working for the state to apply for municipal tenders.</p> | <p>The absence of the Declaration Form of Interest has opened the way for members of the Council and officials to participate in the procurement process.</p> <p>At the Lejweleputswa District Municipality, the procedures to be followed in the procurement process are written down in form of Financial Regulations.</p> <p>In short, accountability in terms of the norms <b>cannot impose answerability and enforcement.</b></p> <p>The lack of Supply Chain Management performance at Lejweleputswa has led to inadequate compliance with norms and standards.</p> | <p>Participation normally takes into account legitimate institutions or formally appointed representation.</p> <p>At the Lejweleputswa District Municipality, there are no legitimate institutions (ie Bid Committees) operating in the procurement process other than the Municipal Council itself.</p> <p>This is the expression of the <b>technocratic approach.</b></p> | <p>Since there are no legitimate institutions other than the Council operating in the procurement process, there is gap when it comes to predictability.</p> |
| <b>Standards</b>   | <b>Transparency Gap in Policies</b>   | <b>Accountability Gap in Policies</b>   | <b>Participation Gap in Policies</b>  | <b>Predictability Gap in Policies</b>  |
| <p><i>This is about <b>values and principles that should be maintained</b> in the procurement process at the municipality.</i></p>   | <p>In choosing a winning tender in terms of the financial regulations, the <b>history of the applicant is not checked</b> (ie credit worthiness, ability to perform, experience, commitments</p>  | <p>The regulations do not set out clear values and principles and thus accountability in terms of standards is difficult to establish at the</p>  | <p>If there is no clear set of values for participation by the applicants in the procurement process, then there will be minimum improvement in the way</p>   | <p>Because predictability is based on the legislative framework, the absence of such a framework at the municipality means that there is a</p>               |

|  |  |  |  |   |
|--|--|--|--|---|
|  | and financial stability.)<br>There is no requirement for tax clearance.<br>There is no requirement for a clearance certificate for municipal levies or services.   | municipality.<br>For instance, there is no prohibition on awarding tenders to persons to whose tax matters are not in order.   | the process is conducted.  | gap in this regard.   |
| <b>Rights</b>  | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>   | <b>Predictability Gap in Policies</b>   |
| <i>A right is a “dual relationship between the holder and object of his right”. It can also be defined as a “dual relationship between the holder of the right and the other legal persons in respect of the object of right” (Church J, Ball C, Delport E, Hutchings S, 1990: 9). In terms of the procurement process, the municipality has a right to get quality services, whereas the tender applicants have a right to fair treatment during the procurement process.</i> | The rights of the parties are not clearly spelled out in the Financial Regulations.<br>For example, the right to <b>appeal or to get a review</b> of the proceedings is not outlined.<br>When it comes to the awarding of contracts, section 10G(5)(a) of the Local Government Transition Act 209 of 1993 has used the word “shall” when awarding tenders.<br>The section therefore has made it peremptory to award tenders in a <i>fair, equitable, transparent, competitive and cost-effective</i> manner.<br>In other words, <b>the tender applicants have a right to a fair tender process</b> and anything contrary to that can result in court action. | The procurement policies do not make it obligatory to impose <b>penalty clauses</b> on contracts that are signed by the municipality and a third party who is not performing after the awarding of the tender.<br>This omission does not impose accountability on the part of the winning tenderers. | The absence of rights for losing tenderer(s) minimises participation in the procurement process.<br>Applicants who failed to get tenders have a right to be informed of the outcome of the tender process and also to be furnished with the reasons thereof. | The absence of rights in the procurement process for the third parties also minimises predictability. |

| <b>Responsibilities</b>  | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>   | <b>Participation Gap in Policies</b>  | <b>Predictability Gap in Policies</b>   |
|--|--|---|---|---|
| <i>This is the <b>ability to furnish stakeholders with required information in time.</b> Financial regulations are <b>silent</b> when it comes to giving stakeholders information.</i>           | Since the Financial regulations are silent in this regard, transparency is difficult to establish.   | Again, as indicated, without clear guidelines it would be difficult to hold anyone responsible.   | If regulations are silent about responsiveness, then the establishment of participation will be difficult except for those people mentioned in municipal regulations.   | Any gap in the legislative framework will make predictability unlikely.   |
| <b>Rules</b>   | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>   | <b>Participation Gap in Policies</b>  | <b>Predictability Gap in Policies</b>   |
| <i>Rules and regulations were made on the basis of the Interim Constitution Act 200 of 1993, the Local Government Transitional Act 209 of 1993 and the LGTA regulations No 1224 of 1998.</i>     | Again, the same problem as with policies, the rules at the municipality are not readily available or accessible to everyone.<br><br>This has deprived people of openness in the procurement process.<br><br>The policies also do not make it obligatory for unsuccessful tenderers to be advised in writing of the reasons for not being awarded the tender.               | The LGTA, in section 10G is very clear about the omission to carry out one's duties regarding the correct procedures to be followed.<br><br>The municipal regulations are not clear about what constitute an unauthorised expenditure in situations where the Executive Mayor as not condoned an emergence situation. | The rules allowed participation in the procurement process by participants and stakeholders who complied with rules laid down by the Financial regulations adopted in 2002.   | Predictability is difficult to establish because of some gaps in the LGTA regulations, the Transitional Act 209 of 1993 and the environment the municipality is currently expected to operate in. |
| <b>Authority</b>   | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>   | <b>Participation Gap in Policies</b>  | <b>Predictability Gap in Policies</b>   |
| <i>In terms of the Financial Regulations, the authority of the procurement process is vested in the <b>Council</b> which delegates such authority to the Municipal Manager and the Treasurer</i> | Transparency is the opposite of privacy. Authority that is exercised in the municipality means that its done in terms of standing regulations and laws.<br><br>In the procurement process at the Municipality, what is lacking is the <b>information</b> that should be made available to the stakeholders about it, and such information is not always readily available. | In leadership, accountability is the acknowledgement and assumption of responsibility for actions, products, decisions and policies (Wikipedia accountability website, 2007:1-7).   | Authority in the procurement process is vested in the role players as indicated above. In short, participation is limited to individuals, excluding bodies like Bid Committees, as is the case under the Municipal Finance Management Act 56 of 2003. | The predictability of the procurement process is difficult to establish because of the involvement of Council aligned persons.  |

| <b>Power</b>  | <b>Transparency Gap in Policies</b>  | <b>Accountability Gap in Policies</b>  | <b>Participation Gap in Policies</b>  | <b>Predictability Gap in Policies</b>  |
|---|--|--|---|--|
| <p><i>Power is about control, supremacy or command.</i></p> <p><i>The regulations vest power of procurement in the Council, the Municipal Manager, the Treasurer, the Director of Administration, the Mayoral Committee and the Heads of Departments.</i></p> | <p>As indicated above, the concentration of power is vested in the Council which delegates specific powers to the Mayor, the Municipal Manager, the Treasurer, the Director of Administration and the Heads of Departments.</p> <p>The gap is that the power is concentrated in Municipal officials or Councillors.</p> <p>In short, there is not enough <b>separation of powers</b> in the procurement process.</p> <p>The role players mentioned above carry out specifications, evaluation and adjudication.</p> <p>The absence of separation of powers at the municipality shows a lack of transparency in conducting the procurement process.</p> | <p>Again, as indicated, accountability and transparency are the same side of a coin.</p> <p>Since the allocation of powers is almost to the same people or body then that makes it difficult for the people or body to be accountable.</p> | <p>Participation in terms of powers is limited to those people mentioned above as role players.</p> | <p>Powers concentrated in the same people gives them the ability to make people do as they want.</p> |



#### **4.2.8 Summary**

The findings of the analysis have shown the absence of the four values of good governance namely: transparency, accountability, participation and predictability. Furthermore, the absence of the principles mentioned above clearly indicates that the applicable legislation applicable to the procurement process are not implemented by the municipality as discussed in Chapter 3.

The four values as mentioned were analysed in terms of systems of laws, regulation, processes, roles, policies, empowerment, leadership, procedures, norms, standards, rights, responsibilities, rules authority and power. In chapter five, the possible solutions to the gaps identified in the process will be discussed.

## **CHAPTER 5 CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 Introduction**

The analysis of the procurement process at the Lejweleputswa District Municipality revealed control weaknesses in monitoring, non-adherence and to systems of laws promoting good governance. This Chapter will discuss possible solutions to the gaps identified in Chapter 4.

**Table 7: Conclusions and Recommendations**

|                              | Transparency   | Accountability   | Participation  | Predictability  |
|------------------------------|--|--|--|---|
| Auditor General Free State   | The office of the Auditor General Free State (MacCarthy, 2006: 4) has made some recommendations to the Lejweleputswa District Municipality to change its law(s) and introduce the Supply Chain Management System in terms of standing laws and regulations applicable at municipal level as shown below.   |  |  |   |
| <i>System of laws</i>        | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>  | <b>Solution Predictability</b>  |
| Constitution Act 108 of 1996 | <p><i>Section 217</i> deals with a procurement process that is based on good governance and it addresses the socio-economic imbalances of the past.</p> <p>The section introduces tendering, which must be fair, equitable, <b>transparent</b>, competitive and cost effective</p> <p>Furthermore, Chapter 7 of the Constitution of the Republic of South Africa Act, 1996, also supports the functioning of these structures.</p> <p>A Council's structure is the fundamental base of corporate governance and the processes of good governance therefore are regulated by the internal policies and the relevant legislation.</p> <p>In this regard, King (2006:1) stated that corporate governance emanates from investigations drawn from the world of corporate scandals.</p> <p>King emphasised that corporate governance is not only about prevailing conditions but it also puts emphasis on standards and quality of performance.</p> | <p><i>Section 217</i> deals with a procurement process that is based on good governance and it addresses the socio-economic imbalances of the past.</p> <p>The section introduces tendering which must be <b>fair</b>, equitable, transparent, competitive and cost effective.</p> | <p><i>Section 217</i> deals with a procurement process that is based on good governance and it addresses the socio-economic imbalances of the past.</p> <p>The section introduces tendering which must be fair, <b>equitable</b>, transparent, competitive and cost effective.</p> | <p><i>Section 217</i> deals with a procurement process that is based on good governance and it addresses the socio-economic imbalances of the past.</p> <p>The section introduces tendering which must be <b>fair, equitable, transparent, competitive</b> and <b>cost effective</b>.</p> |

|  |   |  |   |  |
|--|---|--|---|--|
| <p><i>System of laws (continued)</i></p> | <p><b>The Preferential Procurement Policy Framework Act, 2000 (Act 56 of 2000) (PPPFA)</b> together with the <b>Preferential Regulations of 2001</b> should be applied in their entirety. The South African Government policy provides for Small Medium Enterprises (SMMEs) and historically disadvantaged individuals (HDIs) to play an important role in the economy of the country. Tendering processes and documents at the Lejweleputswa Municipality should promote empowerment in following focus areas namely: <i>affirmative action in employment, shareholding, training and economic empowerment</i> when subcontracting work.</p> <p>The municipal procurement policy should in future outline formal requirements evaluating bids strictly in terms of the PPPFA.</p> <p><b>The Broad Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) (BBBEA)</b> and the <b>PPPFA</b> should be applied in their entirety. In applying the Acts, the municipality's policies should comply with the provisions of Promotion of Access to Justice Administration Act, 2000 (Act 3 of 2000) (PAJA).</p> <p>The application of this law in the procurement process at the municipality will minimise risk of civil or administrative actions against the municipality.</p> |  |   |  |
| <p><i>System of laws</i></p>             | <p><b>Solution Transparency</b></p>   | <p><b>Solution Accountability</b></p>  | <p><b>Solution Participation</b></p>  | <p><b>Solution Predictability</b></p>  |
|  | <p>The calculation of the points in terms of the Preferential Procurement Policy Framework Act 5 of 2000 as amended should be incorporated into the procurement policies of the municipality.</p>   | <p>As indicated in Table 6 above, the policies of the municipality clearly indicate the lines of accountability and responsibility. The municipality only needs to update its policies to incorporate the structures indicated in the Municipal Structures Act and the MFMA in its procurement policies.</p> | <p>The implementation of the Preferential Procurement Policy Framework Act 56 of 2000 and the Broad Based Black Economic Empowerment Act 53 of 2003 also ensures participation by people with disabilities, females and any persons who could not vote due to apartheid.</p> <p>The minimum implementation of the laws has minimised participation by all people in the area. Again, it is recommended that the Municipality apply the laws in full in their procurement process,</p> | <p>The only solution to predictability is to implement the provisions of the MFMA in the municipality's procurement policies as suggested by the provincial Auditor General of the free State.</p> |

|  |   |
|--|---|
| <p><i>System of laws (continued)</i></p> | <p><b>The Local Government Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA)</b> should be introduced into the tendering process of the municipality. This Act is currently the most important legislation dealing with procurement at municipal level. Chapter eleven of the Act dealing with goods and services (<b>read with MFMA, circular No 22</b>) regulates all aspects of procurement at municipal level.</p> <p>The chapter compels each municipality to introduce a Supply Chain Management policy to deal with procurement of goods and services. The Act also improves and updates budgets or financial practices which will eventually lead to sustainability in local government financing. The reforms that can be introduced by the Act at the municipality include financial and fiscal reforms. This act should also be implemented in conjunction with other complementary legislations, namely the yearly Division of Revenue Act (DORA), the Local Government Municipal Systems Act 32 of 2000 (as amended by Act 44 of 2003), sections 230A and 139 of the Constitution. The Supply Chain Management System introduced by the Act will include the following systems in the Lejweleputswa Municipality:</p> <ul style="list-style-type: none"> <li>• Demand Management</li> <li>• Systems Acquisition Management</li> <li>• Logistic Management</li> <li>• Disposal Management</li> <li>• Performance Management</li> <li>• Process and Contract Management</li> <li>• Preference Management</li> </ul> <p>The MFMA, if it is introduced in its entirety, can bring forward provisions on <i>transparency</i> like the following:</p> <ul style="list-style-type: none"> <li>• The Act requires that awards that are unusual during the procurement process should be reported to the Auditor General and the National Treasury (section 114(1)).</li> <li>• Proper mechanisms should be introduced by the accounting office to minimise fraud, corruption, favouritism and unfair or irregular practices (section 115(b))</li> <li>• Section 117 of the Act also prohibits Councillors from being members of the tender committee.</li> <li>• After submission of the tenders, no person is allowed to interfere with the procurement process (section 118).</li> </ul> <p>The responsibilities of the officials of the municipality should be allocated in terms of the Chapter 8 of the Act. The systems of the municipality should be controlled in terms of the Chapter 3 of the MFMA. The senior management at the municipality should be appointed in terms of section 77 of the Act, read with the provisions of the Municipal Systems Act 32 of 2003 (as amended) and its regulations in relation to annual staff performance agreements. Sections 71 and 72 of the MFMA deal with reporting mechanisms.</p> |
|--|---|

| <i>System of laws</i>                    | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>   | <b>Solution Predictability</b>  |
|--|--|--|---|---|
|  | <p>Municipalities are strongly urged to adhere to governance based on the value of transparency. Transparency should be maintained at all times by providing accurate information to the public in terms of section 195(1)(g) of the Municipal Finance Management Act 56 of 2003.</p> <p>In terms of section 112(1) of the Local Government Municipal Finance Management Act 56 2003, "<i>the supply chain management policy of the municipality should be fair, equitable, transparent, competitive and cost effective.</i>"</p> <p>The Office of the Speaker in a Municipality has the function of holding and maintaining ethics among the Councillors.</p> <p>The presence of the ethics also encourages transparency.</p> <p>The creation of registers of consultants and supplier databases also ensures transparency.</p> | <p>Accountability is a process, whereby institutions like the civil society, the private sector and government <i>are held responsible by the public or their stakeholders for their actions</i> (Wikipedia website, 2007).</p> <p>The absence of the Bidding Committee System has minimised the accountability of the procurement process at the municipality.</p> <p>It should be introduced at the municipality with the aim of dealing with competitive bids.</p> <p>Besides that, the system also introduces accountability because each system is responsible for its own function without outside interference.</p> | <p>The presence of the Bid Committees in the procurement process would also ensure participation by the different structures and many people.</p> <p>Bidding Committees allow a competitive bidding process by inviting all people meeting the requirements to participate in the tender process.</p> <p>The composition of the Bid Specification Committee usually comprises one or more officials (ie cross-functional).</p> <p>It is therefore recommended that the Bidding Committee System is introduced without delay.</p> <p>Participation by Councillors in Bid Committees is prohibited in terms of section 117 of the Municipal Finance Management Act, 2000.</p> <p>In this regard, the provisions of the Municipal Handbook for Councillors should be applied to regulate the conduct of the Councillors.</p> | <p>At present, as shown in the table dealing with findings, there is no predictability in the procurement process at the municipality.</p> <p>The introduction of the new Supply Chain Management in their procurement process with all its clear, well-documented laws and regulations will ensure certainty in the process.</p> |
| <b><i>System of laws (continued)</i></b> | <p><b>The Local Government Municipal Structures Act, 1998 (Act 117 of 1998)</b> (as amended by the Municipal Structures Amendment Act, 2000 (Act 33 of 2000). The Act deals with structures and roles of the both Councillors and officials of the municipality.</p>   |  |   |   |

| <i>System of laws</i>             | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>   | <b>Solution Predictability</b>   |
|-----------------------------------|--|--|---|--|
|                                   | <p>In the case of the municipalities, the mechanisms that promote transparency are organisational structures as contained in the Local Government Municipal Structures Act, 1998 (Act 117 of 1998) as amended by the Municipal Structures Amendment Act, 2000 (Act 33 of 2000).</p> <p>Section 83(1) of the Act, demands that a procurement process in the municipality should be fair, transparent, equitable and cost effective.</p> <p>Chapters 3 and 4 of the Local Government Municipal Structures Act, 1998, as amended, provides for the establishment of the Council, the offices of the Mayor working together with the Speaker, Municipal Manager, Mayoral, Internal Audit, Risk Management and Ward Committees.</p> <p>The Local Government Municipal Systems Act, 2000 in sections 55 and 56 also confirms the position.</p> | <p>Again, structures like the Internal Audit, Risk Management, as envisaged in the Municipal Structures Act, 2000, are also absent.</p> <p>The Municipal Systems Act, 2000 gives credibility to these structures by supporting the functioning of them. The presence of such structures would improve vertical accountability within the organisation.</p> | <p>The policies of the municipality should acknowledge or incorporate the roles of the people who participate in the procurement process of the municipality.</p> | <p>The introduction of new structures in terms of the MFMA, Local Government Structures Act and municipal Systems Act with clear roles will enhance predictability</p> |
| <i>System of laws (continued)</i> | <p><b>The Local Government Municipal Systems Act, 2000 (Act 32 of 2000)</b> should also be implemented fully. This Act, amongst other matters, addresses procurement as it relates to public- private partnerships. Section 78 of the Act requires a municipality to do an assessment prior to the procurement process.</p> <p>If the municipality fails to do an assessment process, the procurement process that follows afterwards is invalid in terms of sections 78 and 78(3).</p>  |  |   |  |
| <i>System of laws</i>             | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>   | <b>Solution Predictability</b>   |
|                                   | <p>Transparency in terms of the Local Government Systems Act is promoted by sections 5(2), 4(2) and 20(2) respectively which empowers community to observe Council proceedings when it exercises its legislative and executive authority.</p>  | <p>If sections 20(2), 4(2) and 5(2) of the Municipal Systems Act, 2000 are incorporated in the municipal's procurement policies then the</p>   | <p>Section 4(2) of the Local Government Systems Act emphasise the fact that a municipality should exercise <i>legislative and executive</i> authority</p>         | <p>The fact that community members have a right to observe Council proceedings in terms of section 5(2) of the Local Government Municipal Systems Act, 2000</p>        |

|  |  |  |   |   |
|--|--|--|---|---|
|  | These sections should be incorporated in the procurement policies of the municipality.   | municipality will by doing so promote accountability.  | to the best interest of the local community. This means that regular consultation with the communities should be done frequently.<br>The municipality's procurement policies should therefore provide for a similar provision.<br>Section 5(2) furthermore empowers communities to exercise their rights by observing the mechanisms, processes and procedures of the municipality This provision should be added in the municipality's policies. Section 20(2) of the Act also allows public and the media to observe Council proceedings when voting or considering a matter under prescribed by regulation | allows the them to be able to predict processes and procedures.<br><br>The procurement policies at the municipality should also provide for the community to observe the procurement processes. |
| <b>Regulations</b>   | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>   | <b>Solution Predictability</b>  |
| <i>The Supply Chain Management Regulations of March 2005 should be implemented.</i>                            | The introduction of the Supply Chain Management regulations will help to establish Bid Committees that will ensure transparency because of the different structures that will be introduced by the system. | The different structures introduced by the Bid Committee System under the Supply Chain Management Regulations of March 2005 will improve accountability. | The different Committees to be introduced will improve participation.   | Again, as indicated, the introduction of the Supply Chain Management Regulations will ensure predictability because almost every person will know the procedures to be followed.                |
| <b>Processes</b>   | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>   | <b>Solution Predictability</b>  |
| <i>Section 112 of the Municipal Finance Management Act, 2003, which introduces the Supply Chain Management</i> | The introduction of competitive bidding through the Supply Chain Management System will help because the process involves consultation, soliciting views, comments and voting by the                       | Introducing a Supply Chain Management performance system in the municipality's procurement process will enhance the                                      | The Bid systems as provided for in the MFMA should be introduced in the municipality. This will promote more representation and enhance   | Again, as indicated, the introduction of the Supply Chain Management Regulations will ensure predictability because   |



|  |  |  |   |  |
|--|--|--|---|--|
| <p><i>System in municipalities, should be introduced.</i></p> <p><i>A Supply Chain Management policy based on the Supply Chain Management Systems should be drafted as suggested by the Auditor General (MacCarthy, 2006:4).</i></p> | <p>different role players. This in turn, results in transparency on how the procurement process works.</p>   | <p>monitoring process, which eventually can lead to proper processes being followed.</p> <p>The monitoring process can also determine whether the desired objectives have been met.</p> <p>In all negotiated contracts, the Lejweleputswa Municipality should set targets to be reached and time-frames for performance management.</p> <p>The contractor whose services are engaged should be required to report timely manner.</p> <p>The contract should also contain penalties for non-compliance with the conditions that were laid down.</p> | <p>participation in the municipality's procurement process.</p>   | <p>almost every person will know the processes that are followed.</p>  |
| <b>Roles</b>   | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>   | <b>Solution Predictability</b>   |
| <p><i>The Bid Committee System, as recommended by the Municipal Finance Management Act, 2003, should be introduced.</i></p>  | <p>The municipality has no Bid Committee System allowing separation of roles, which eventually does promote transparency and thus the introduction of the Bid Committee system will eventually enhance transparency.</p> <p>This will be accomplished since the different role players will be able to complement each other's work.</p> | <p>The introduction of the Bid Committee system will promote separation of roles, which will eventually enhance accountability.</p>  | <p>The more roles the Bidding Committee creates, the more participation will be enhanced.</p>                                       | <p>Again, as indicated above, the Bid Committee System, if introduced, will clarify the roles of the people involved in the procurement process.</p> |
| <b>Empowerment</b>   | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>   | <b>Solution Predictability</b>   |
| <p><i>Although both the Preferential Procurement Policy Framework Act 56 of 2000 and the Broad Based Black</i></p>   | <p>The proper introduction of the Preferential Procurement Policy Framework Act 56 of 2000 and the Broad Based Black Empowerment Act 53 of 2003 will ensure transparency because both</p>  | <p>A proper introduction of the Acts will enable the municipality to account to the stakeholders in procurement regarding the reasons</p>  | <p>Again in this regard, a proper introduction of the Acts will enable the municipality to give opportunity to the historically</p> | <p>An appropriate application of both Acts will make the procurement process predictable.</p>  |

|   |  |  |  |  |
|---|--|--|--|--|
| <p><i>Empowerment Act 53 of 2003 are used at the municipality, what is lacking is a proper and full introduction of the provisions of the laws.</i></p> <p><i>The municipality's procurement process does not have a full affirmative procurement system, or a verification and reporting mechanism in its procurement process.</i></p> <p><i>This has opened the way for fronting.</i></p>   | <p>Acts are clear as to how they should be introduced.</p> <p>The absence of the verification and reporting structures in the municipality's procurement system has encouraged fronting in the procurement process.</p> <p>Transparency in this regard is lacking and the immediate implementation of such mechanism should be done immediately.</p> | <p>why the municipality have chosen and approved a tender to the exclusion of the others.</p>  | <p>disadvantaged people, thereby allowing them to participate in the procurement process.</p> <p>Nonetheless, participation by previously <i>advantaged</i> people is still possible in the municipality because the municipality's procurement policies have no verification and reporting mechanisms in relation to tendering by applicants.</p>                               |  |
| <p><b>Policies</b></p>  | <p><b>Solution Transparency</b></p>  | <p><b>Solution Accountability</b></p>  | <p><b>Solution Participation</b></p>   | <p><b>Solution Predictability</b></p>  |
| <p><i>As indicated above, the Auditor General (MacCarthy, 2006:4) has recommended a change in the procurement policies by updating them to include the:</i></p> <ul style="list-style-type: none"> <li>• <i>Constitution of the Republic of South Africa, Municipal Finance Management Act, 2003,</i></li> <li>• <i>Preferential Procurement Policy Framework Act 56 of 2000,</i></li> <li>• <i>Broad Based Black Empowerment Act 53 of 2003 and their enabling regulations.</i></li> </ul> | <p>After the application of all the laws and regulations as indicated, transparency will be enhanced because policies and procedures will be documented and included in the municipality's procurement policies.</p>   | <p>Updating the policies to include all the laws and regulations mentioned will make the Accounting Officer explain his actions in future, on matters pertaining to procurement.</p> <p>The proposal to introduce the Supply Chain Management practices at Lejweleputswa District Municipality should form part of the Integrated Development Plan (IDP)..</p> | <p>Updating policies by including the Preferential Procurement Policy Framework Act 56 of 2000 and the Broad Based Black Empowerment Act 53 of 2003 will ensure participation by all people.</p> <p>The municipality should also create a tender register for tender defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act 12 of 2004.</p> | <p>Clear procurement policies will enhance predictability at the municipality.</p> |

| Leadership   | Solution Transparency  | Solution Accountability   | Solution Participation  | Solution Predictability  |
|--|--|---|---|--|
| <i>As indicated above, the policies procedures at the municipality need to be updated in order to encompass the spirit of the Constitution (Act 108 of 1996)</i>   | <p>Clear and updated policies are needed at the municipality in order to enhance both knowledge and awareness of what is happening in the municipality's procurement section.</p> <p>Furthermore, the adoption of new and updated policies will address negative perceptions about the procurement process and build satisfaction.</p> | <p>Updated and clear procedures will make people more accountable to the expectations of the public.</p> <p>At the municipality, updating the policies is required as indicated by the Auditor General's office.</p>  | <p>Introducing clear policies will encourage participation because the people involved will have a better knowledge of what is happening.</p>       | <p>The introduction of clear policies will promote predictability in the process.</p>  |
| <b>Procedures</b>  | <b>Solution Transparency</b>   | <b>Solution Accountability</b>  | <b>Solution Participation</b>   | <b>Solution Predictability</b>   |
|  | <p>Procurement policies of the municipality should provide for communities under the municipality to observe procurement processes when necessary. The stipulations of the PPPFA should be drafted into the municipality's procurement policies when allocating points in terms of the Act.</p>  | <p>The fact that there were gaps in terms of the procurement policies of the municipality has made the Accounting policy to be less accountable for his actions.</p> <p>The procurement policies should be updated frequently when the need arises as suggested by the Free State Provincial Auditor General.</p> | <p>The procurement procedures at the municipality should encourage participation by women and disabled people in terms of the PPPFA and BBBEEA.</p> | <p>There is a need to update the current procurement policies in order to promote or encourage predictability at the municipality.</p> |
| <b>Norms</b>   | <b>Solution Transparency</b>   | <b>Solution Accountability</b>  | <b>Solution Participation</b>   | <b>Solution Predictability</b>   |
| <p><i>This is the type of accountability that is based on traditional norms and societal behaviour.</i></p> <p><i>Development of Integrity Management plans is needed in order to establish a code of conduct for people handling the procurement process.</i></p> | <p>The creation of a Directorate of Supply Chain Management within the structure of the municipality will enhance norms and standards</p> <p>This is needed in order to monitor and maintain compliance with rules and procedures.</p> <p>This Directorate should fall under the office of Supply Chain Management.</p>                | <p>The creation of a Directorate will make role players account for non-compliance.</p> <p>People working for the State should be barred from applying for tenders within the municipality.</p>   | <p>The creation of the Directorate will promote participation by people.</p>  | <p>If compliance is constantly monitored, then a norm will be established in the procurement process.</p>                              |

| <b>Standards</b>  | <b>Solution Transparency</b>  | <b>Solution Accountability</b>   | <b>Solution Participation</b>  | <b>Solution Predictability</b>  |
|---|---|--|--|---|
| <p><i>The creation of a sub-committee (Directorate) to act as a watchdog to maintain standards is needed in the municipality.</i></p> <p><i>In this regard, there are no standardised bidding documents with guiding notes at the municipality procurement section. The solution therefore will be to draft or develop such document.</i></p> <p><i>Procurement officials should continuously update their qualifications in order maintain required standards.</i></p> | <p>If the sub-committee is able to maintain standards based on standing rules and regulations, then there will be transparency.</p>                                     | <p>Standards must be set for each project run by the procurement section at the municipality.</p> <p>Tax clearance should be a pre-requisite for all people applying for tenders at the municipality.</p>  | <p>Participation must not be reserved for the Directorate of Norms and Standards only as the Office of the Auditor General should also be involved in full.</p> <p>Procurement officials should be allowed to participate fully in the procurement process because it will give them in-service training and the experience they need.</p> | <p>Creation of a service provider database will help maintain standards and predictability.</p> <p>This could be done by obligatory registration for service providers.</p> |
| <b>Rights</b>   | <b>Solution Transparency</b>  | <b>Solution Accountability</b>   | <b>Solution Participation</b>  | <b>Solution Predictability</b>  |
| <p><i>Bidders who apply for tenders have a right to know about the outcome of the process and the reason for their failure to win a tender under the Promotion of Justice and Administration, Act 3 of 2000 (PAJA).</i></p>   | <p>Review mechanisms after tenders are awarded should be introduced.</p> <p>This step will minimise corruption and promote transparency in the procurement process.</p> | <p>The development of procurement policies to include the provisions of PAJA will improve the accountability of the officials involved.</p> <p>If the policies of the municipality provide for the review of its decisions, it will improve the rights of the bidders.</p> | <p>If the policies are improved to encompass the rights of bidders, it will promote greater participation by the public.</p>   | <p>Rights providing access to review decisions taken will enhance predictability.</p>   |

| <b>Responsibilities</b>  | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>  | <b>Solution Predictability</b>   |
|--|--|--|--|--|
| <i>Senior municipal officials should delegate their powers or authority, but not their responsibilities as is the case in Lejweleputswa District Municipality.</i> | <p>It is senior management's responsibility to manage contracts and risks.</p> <p>The continuation of monitoring and managing risks will enhance transparency throughout the process.</p> <p>It is therefore recommended that contract management is introduced to manage risk.</p> <p>The creation of the Bid Committee System will clarify responsibilities.</p> | <p>If roles are clarified, then it will be possible to account for actions. Again, it is recommended that roles are clearly defined in the municipality's policies in order to be able to identify the people responsible for a particular task.</p> <p>For example, there must be a gift register for record keeping of all declarations of business interests held by the employees, family members and business transactions where there is conflict of interest.</p> | <p>The Accounting Officer at the municipality should always review strategies affecting the procurement process in order to ensure full participation by the public and other stakeholders in the process.</p>                             | <p>Establishing and creation of a Supply Chain Management Office will make it easy to identify the personnel staff responsible for the procurement process.</p>  |
| <b>Rules</b>   | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>  | <b>Solution Predictability</b>   |
| <i>Rules at the municipality need to be revised and updated.</i>   | <p>Rules at the municipality should be both well documented and accessible to the public.</p> <p>The rules should also provide for systematic data collection on contracts awarded and completed.</p> <p>This will prevent delay in contract payment as mentioned in the AG's report.</p>  | <p>The new rules to be drafted need to ensure that the officials involved in the procurement process are not just accountable to the Council but to the public as a whole for their actions.</p>   | <p>In order to achieve maximum participation, a database of businesses belonging to the disadvantaged should be created, based on a standard of definitions.</p>   | <p>Updating the rules will make them able to be monitored, which in turn will improve predictability.</p>  |
| <b>Authority</b>   | <b>Solution Transparency</b>   | <b>Solution Accountability</b>   | <b>Solution Participation</b>  | <b>Solution Predictability</b>   |
| <i>Authority should not be used arbitrarily; minorities should also have a say in the procurement process.</i>   | <p>Greater participation by many people should result in greater transparency.</p> <p>What is needed at the municipality is for authority to be exercised with care, taking into account minority views.</p>   | <p>A clear delegation of powers will ensure that authority is not used arbitrarily.</p> <p>The municipality needs to formulate a clear format for delegating power, which eventually will also lead to accountability for the people exercising the authority.</p>   | <p>The key issue is that each role player or member of the community should participate equally, with everyone having a role in the procurement process and decision making, despite the fact that they do not have all the authority.</p> | <p>Clear delegation of authority is needed at the municipality in order to achieve predictability.</p> <p>Presently, there is no clarity as to what should be done by the procurement or what should be done by the finance section.</p> |

| <b>Power</b>   | <b>Solution Transparency</b>  | <b>Solution Accountability</b>   | <b>Solution Participation</b>   | <b>Solution Predictability</b>  |
|--|---|--|---|---|
| <p><i>Power is about supremacy, control and command.</i></p> <p><i>A format showing clear delegation of power is needed at the municipality.</i></p> | <p>Power at the municipality is vested in the Council.</p> <p>What is needed is clear policies on delegation of powers because it will indicate procedures to be followed in the procurement process and transparency will be enhanced.</p> | <p>The introduction of the Bid Committee System into procurement policies at the municipality will ensure that power is not allocated to the same people.</p> <p>Separation of powers therefore will promote accountability.</p> | <p>Decentralisation of power to the different Bid Committees is needed at the municipality to enhance participation by many people.</p> | <p>The municipality needs to decentralise or delegate its powers to the bid committees, which will lead to better management of resources and policies.</p> <p>Good policies will in turn lead to predictability.</p> |

## 5.2 Summary

If the municipality wishes to restore investor confidence, the organisation should immediately adopt the new Supply Chain Management system together with the Code of Ethics for municipal councillors and officials, as suggested by the office of the Auditor General Free State in the Lejweleputswa District Municipality 2004–2006 audit reports.

The fact that the Lejweleputswa District Municipality is still using the outdated procurement process in the form of the old financial regulations was raised by the Auditor General, who in turn suggested an updated approach to include the new Supply Chain Management process as envisaged by the Municipal Finance Management Act, 2006 (MacCarthy, 2006:4).

Furthermore, the indications are that the completeness of tender documents is difficult to verify because the tender register itself is incomplete (MacCarthy, 2006:4). In short, the financial regulations governing procurement in the municipality currently have no strategic goals and they are inconsistent with the General Procurement Guidelines of Supply Chain Management Regulations. This problem can be cured by implementing the Supply Chain Management system, as indicated above.

When it comes to good governance in terms of *transparency, participation, accountability* and *predictability*, the establishment of the bid committee system as suggested in the Supply Chain Management system is an imperative. A step taken in that direction will ensure that the rights, as contained in South Africa's Bill of Rights of the South African Constitution Act, 1996 are protected by section 217.

In addition, the lack of capacity and knowledge to handle the procurement process tasks also contributes to the bad governance image the municipality is currently experiencing. An effective internal audit is needed. At the time of writing this report, the position of the internal auditor is not provided for in Figure 8 in Chapter 3.

In short, this chapter reveals that the lack of good governance in the Lejweleputswa district municipality indicates that there are not enough checks and balances in the procurement process to minimise corruption, to ensure that the views of the emergent bidders are taken into consideration and to ensure that the voices of susceptible bidders are heard in decision-making.

## LIST OF REFERENCES

- Abdellatif, A. (2003) Good Governance and its relationship to Democracy & Economic Development, *Global Forum III on Fighting Corruption and Safeguarding Integrity*. Seoul, May 2003.
- Asian Development Bank (2004) Government: Sound development Management. [Available online] (<http://www.adb.org>) Click on governance [Accessed 18 May 2007].
- Basson, D. (1994) *South Africa's Interim Constitution* (Text and Notes). Kenwyn: Juta p.240.
- Bati, A. (2007) Limitations of Effective Corporate Governance in State Owned Enterprises and How to Deal with Them. [Available online] <http://www.salans.com/Fileserver.aspx?oID=165&ID=o> [Accessed 30 May 2007].
- Bekink, B. (2006) *Principles of South African Local Government Law*. Lexis Nexis, Butterworths: Durban.
- Booyens, T. (2006) Good Governance, *Forge Ahead's ITC in Local Government Summit* pp.1–2. [Available online] [www.ictachievers.co.za](http://www.ictachievers.co.za) [Accessed 23 May 2007].
- Burger, A P (2006) *Transform, Perform...or Just Conform? Evaluating SA Public Management Reform Initiatives* pp. 1–17.
- Coliver, S (2006): The importance of the right of access to information held by public authorities, and the need for the United Nations to take steps to further elaborate, Codify, protect and promote this right. Talk presented at *UN Conference on Anti-Corruption Measures, Good Governance and Human Rights Warsaw* 8–9 November 2006. [Available online] <http://www.ohchr.org/english/issues/development/governance/docs/Coliver.pdf> [Accessed 29 May 2007].
- Church, J., Ball, C., Delpont, E. & Hutchings, S. (1990) *Workbook for introduction to the law*; Digma Workbook Series. Pretoria: Digma Publications (Pty) Ltd p.9.



- Coderre, D. (1999) *Using Data Analysis Techniques to Detect Fraud*. Canada: Global Audit Publications
- Cloete, F. (2001) Improving Effective Performance in Developing Countries with Electronic Decision Support Tools, *Public Futures 2<sup>nd</sup> Annual Conference*, 28 September 2001, London, pp. 3–4.
- Cloete, F. (2004) Local Government Transformation in South Africa in De Villiers, B. (ed), *Birth of the Constitution (First Edition)*. Pretoria: Juta pp. 294–308.
- Cloete, F., Wissink, H. & de Coning, C. (2006) *Improving Public Policy: from Theory to Practice*, 2<sup>nd</sup> edition. Pretoria: Van Schaik Publishers, pp. 260–282.
- Cloete, F. (2006) Measuring Transparency in public governance: Lessons from South Africa, *Annual Congress of the International Institute of Administrative Sciences (IIAS)* pp. 9–21.
- Devenish, G.E. (1998) *A Commentary on the South African Constitution*. Durban: Butterworths
- Calland, R. & Graham, P. (Eds) (2005) *Democracy in the Time of Mbeki*, Cape Town: Institute for Democracy in South Africa (IDASA).
- Duncan, R.W. (1996) *A Guide to the Project Management Body of Knowledge*, Maryland: PMI Publishing Division p. 123
- English J, Fielding, M, Howard E, Van der Merwe (2002) *Professional Communication: How to deliver effective written and spoken messages*, Cape Town: Juta.
- Gaffney's Local Government in South Africa 2004–2006: Official Yearbook*, (1909) Department of Provincial and Local Government South Africa, p. 447
- Good Governance – Wikipedia, the free encyclopaedia [Available online] ([http://en.wikipedia.org/wiki/Good\\_governance](http://en.wikipedia.org/wiki/Good_governance)) pp.1–3 [Accessed 23 May 2007].
- The General Procurement Guidelines 2002*. Government of the Republic of South Africa.

- Handbook for Municipalities* (2006): Councillor Introduction Programme: South African Local Government Association and GTZ
- Henning, E., Gravett, S. & Van Rensburg, W. (2005) *Finding your way in Academic Writing*, 2<sup>nd</sup> edition, Pretoria: Van Schaik Publishers
- Hollis, G. & Plokker, K. (1995): *Towards democratic decentralization: Transforming Regional and Local Government in the new Europe*. Brussels: Tacis services DG (A) European Commission.
- Hugo, W.M.J., Badenhorst, J.A. & Van Biljon, E.H.B. (Eds) (2006) *Supply Chain Management: Logistics in Perspective*. Pretoria: Van Schaik Publishers.
- Introduction to selected writings on the Freedom Charter*. (2005) A Sechaba Commemorative Publication on the 30<sup>th</sup> Anniversary of the Freedom Charter, London 1985 [Available online]  
<http://www.anc.org.za/ancdocs/history/campaigns/cop/introduction.html>  
 [Accessed 15 May 2007].
- King, M. (2002) King Report on Corporate Governance for South Africa: What it means to you.; Cliff Dekker Attorneys, [Available online]  
[www.cliffeddekker.com](http://www.cliffeddekker.com) [Accessed 12 May 2007].
- King Committee King II Report on Corporate Governance 2002 (2002)
- Knipe, A., Van der Walt, G., Van Niekerk, D., Burger, D. & Nell, K. (2002) *Project Management for Success*. Sandown: Heinemann, pp. 287–327
- Landman, W.A. (2007) “The next King Corporate Governance Code: A State of Mind” (Business Times, 3 August 2007, (pp. 1–3)
- Leautier, F. & Larry, C. Round Table on Good Governance Principles: International and Aboriginal Perspectives, *Summary of the Inaugural IOG Aboriginal Governance Round Table* (pp. 2–7) [Available online]  
[http://www.iog.ca/publications/2004\\_tananga\\_summary.pdf](http://www.iog.ca/publications/2004_tananga_summary.pdf) [Accessed 30 May 2006].

- Lejweleputswa District Municipality website (2007): [Available online]  
[http://www.lejwe.co.za/Data/Profile\\_1310.asp](http://www.lejwe.co.za/Data/Profile_1310.asp) [Accessed 23 August 2007].
- MacCarthy, N.G. (2004), *Report of the Auditor-General, Free State, Bloemfontein, 30 June 2004* (pp 1–5)
- MacCarthy N.G. (2005), *Report of the Auditor General, Free State, Bloemfontein, 30 June 2005* (pp 1–7)
- MacCarthy N.G. (2006), *Report of the Auditor-General, Free State, Bloemfontein, 30 June 2006* (pp 1–7)
- Macneil, M. & Mumvuma, T. (2006) *Demanding Good Governance: A Stocktaking of Social Accountability Initiatives by Civil Society in Anglophone Africa*, World Bank report. Washington DC: World Bank Institute.
- Mail and Guardian (2007): July 6–12, Volume 23:1037.
- Mouton, J. (2005) *How to succeed in your Master's and Doctoral Studies*, A South African Guide and Resource Book. Pretoria: Van Schaik Publishers.
- Morris, R. (2007) Index will guide selection of winners of new Mo Ibrahim Prize for Achievement in African Leadership; *Business Report International*, Wednesday, 26 September 2007, p.23 [Available online]  
<http://www.moibrahimfoundation.org/index/index.asp> p1–2 [Accessed 26 September 2007].
- Murthy, N.N.R. & Robert, P. (2006): *Good Corporate Governance – A Checklist or a Mindset?* [Available online]  
<http://www.gwu.edu/business/global/Maxom/Lecture> [Accessed 30 May 2007]
- National Treasury (March 2006) *A Guide to Municipal Finance Management for Councillor*. Republic of South Africa.
- New Regulations to Modernize Procurement in Municipalities and to Reduce Corruption and Fraud*. National Treasury, Press Release, November 2004

Njoko, T. & Mervin, K. (2006) *Corporate Sins hampering good governance*. [Available online] [http://www.imfo.co.za/summarise\\_FORDIST.doc](http://www.imfo.co.za/summarise_FORDIST.doc) [Accessed 6 July 2007].

Protocol on Governance in the Public Sector; Department of Public Enterprises  
*Maximising Shareholder Value*: September 2002 [Available online]  
[http://www.dpe.gov.za/res/Protocol\\_Corporate/Governance in the public sector](http://www.dpe.gov.za/res/Protocol_Corporate/Governance_in_the_public_sector)  
[Accessed 30 August 2008].

Promotion of Administrative Justice Act 3 of 2000 (Section 1–11) [Available online]  
(<http://www.polity.org.za>) [Click on Acts](#) [Accessed 08 August 2008].

Public Service Commission on Annual State of the Public Service Report (2007): The  
Public Service Commission Releases its 6<sup>th</sup> Annual State of the Public Service  
Report: Promoting Growth and Development through an Effective Public Service,  
17 May 2007 (pp. 1–12) [Available online] (<http://www.info.gov.za>) [Click on  
speeches](#) [Accessed 27 June 2007].

Procurement Law History, [Available online] ([www.dgs.state.pa.us](http://www.dgs.state.pa.us)) [Click on  
procurement](#) [Accessed 27 June 2007].

Quarterly Report of the Auditor General (2006): *On the submission of the financial  
statements by municipalities and the status of audit reports, 31 December 2005*  
[Available online] (<http://www.agsa.co.za>) [Click on Reports](#) [Accessed 7 June  
2007].

RSA, Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)  
[Available online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August  
2008]

RSA, Broad Based Black Economic Empowerment Act, 2003 (Act 53 of 2003)  
[Available online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August  
2008]

RSA, Local Government Municipal Demarcation Act, 1998 (Act 27 of 1998) [Available  
online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August 2008]

RSA, Local Government Municipal Finance Management Act, 2003 (Act 56 of 2003)  
[Available online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August 2008]

RSA, Local Government Supply Chain Management Regulations of 2005 [Available online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August 2008]

RSA, Local Government Municipal Systems Act, 2000 (RSA, Act 32 of 2000)  
[Available online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August 2008]

RSA, Local Government Municipal Structures Act (MSA), 2000 (Act 117 of 2000)  
[Available online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August 2008]

RSA, Prevention and Combating of Corruption Activities Act (POCA), 2004 (Act 12 of 2004) [Available online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August 2008]

RSA, Promotion of Administrative Justice Act (PAJA), 2000 (Act 3 of 2000) [Available online] (<http://www.polity.org.za>) [click on Acts](#) [Accessed 08 August 2008]

Ramachandran & Ang, S. Measuring Governance in the Sphere of Local Government: Issues and Challenges in the Information Age [Available online] [http://www.cornerstone-msc.net/infosockk/day1session4/FSean&Rama's as 30/08/2007](http://www.cornerstone-msc.net/infosockk/day1session4/FSean&Rama's%20as%2030/08/2007) [Accessed 30 August 2007].

Rautenbach, I.M. & Malherbe, E.F.J. (1999) *Constitutional Law* (3<sup>rd</sup> edition), Durban: Butterworths.

Republic of South African Final Constitution Act 108 of 1996, [Available online] ([http://www.doj.gov.za/2004dojsite/legislation/sacn/052004\\_cn\\_2.pdf](http://www.doj.gov.za/2004dojsite/legislation/sacn/052004_cn_2.pdf))

Republic of South Africa, Act 108, 1996, The Constitution of the Republic of South Africa. Pretoria: Government Printer.

Rose, R. (2007) *The Next King Corporate Governance Code: A State of Mind*. Financial Mail, 20 July 2007 pp. 1–4.

- Rose, R. & Wilmot, J. (2007) *Mervin King: Is he Worthy of the Name?* Financial Mail, 20 July 2007 (pp. 1–4)
- Siugzdiniene J. (2006): Good Governance. *Forge Ahead's ICT in Local Government Summit* pp. 1–4 [Available online] <http://www.ictachievers.co.za> [Accessed 30 May 2007].
- South African Management Development Institute (1999): *Chapter 3; Provisioning Administration II Training Manual*. Pretoria: Department of Public Service and Administration.
- State of the Public Service Report (2007) Public Service Commission, Custodian of Good Governance.
- Streeten, P. (2007) Good Governance: History and Development of the concept. Paper delivered at a symposium [Available online] [http://www.novartisfoundation.com/pdf/symposia/rede\\_streeten06122002.pdf](http://www.novartisfoundation.com/pdf/symposia/rede_streeten06122002.pdf) [Accessed 30 May 2007].
- Supply Chain Management: A Guide for Accounting Officers/Authorities*. National Treasury; February 2004, pp. 1–150 [Available online] <http://www.treasury.gov.za/mfma/circula> [Accessed 9 July 2007].
- The Dictionary Unit for South African English (Eds): Fourth Impression 2005; South African Concise Oxford Dictionary: Oxford University Press
- The Freedom Charter (1995) pp. 1–4 [Available online] (<http://scnc.udw.ac.za/doc/HIst/freedomchart/freedomch.html>) [Accessed 25 June 2007].
- The role good governance in the promotion and protection of human rights*. Human Rights Resolution 2005/68, pp. 1–4 [Available online] ([http://www.ohchr.org/englishissue/development/governance/warsaw\\_conference-documents.htm](http://www.ohchr.org/englishissue/development/governance/warsaw_conference-documents.htm)) [Accessed 30 August 2007].
- The Free Dictionary: Farlex: (<http://www.thefreedictionary.com>) [Accessed 9 September 2008].

- The Ibrahim Index for African governance p1–2 [Available online]  
<http://www.moibrahimfoundation.org/the-index.asp> [Accessed 26 September 2007].
- Umqol'uphandle (2006): AG reveals non-disclosures, [Available online]  
[http://www.wiss.co.za/dynamic/administration/file\\_manager/file\\_links/ISSUe2606.HTM](http://www.wiss.co.za/dynamic/administration/file_manager/file_links/ISSUe2606.HTM) 6 July 2007)
- Waldner, M. (2007) *Red card for public servants: Report reveals range of shortcomings*. City Press, 20 May 2007
- Wakefield, R. (2006) *Procurement in South Africa*. Werkmans Attorneys, News, 14 August 2006 [Available online] [www.werkmans.co.za/news/20](http://www.werkmans.co.za/news/20) [Accessed 27 June 2007].
- Welman, J.C., Kruger, S.J. & Mitchell, B. (2007) *Research Methodology*, 3rd Ed, Cape Town: Oxford University Press Southern Africa.
- Wilmot, J. (2007) *The World of Corporate Governance: Is Force Necessary?* Financial Mail, 20 July 2007, pp. 1–4

## **TABLE OF CASES**

### **SOUTH AFRICAN**

#### **E**

Eastern Cape Government and Others v Contractprops 25 (Pty) Ltd 2001 (4) SA 142  
(SCA)

#### **P**

Premier, Free State and Others v Firecham Free State and Others (Pty) Ltd 2000 (4)  
(SCA)

Port Elizabeth Municipality v People Dialogue on Land and Shelter and Others 2000(2)  
SA 1074 (SE)

#### **S**

Steenkamp NO v Provincial Tender Board, Eastern Cape 2007(3) SA 121(CC)

#### **W**

Warrenton Munisipaliteit v Coetzee (1998) JOL 1863 (NC)