



ORDINARY MEETING OF THE COUNCIL
GEWONE VERGADERING VAN DIE RAAD
INTLANGANISO YESIQHELO YEBHUNGA

A G E N D A

I-AJENDA

**DATE / DATUM / UMHLA : 25 MARCH / MAART / MATSHI
2020**
**VENUE / PLEK / INDAWO : BANQUETING HALL /
BANKETSAAL**
**CIVIC CENTRE / BURGERSENTRUM / IZIKO LOLUNTU
HERMANUS**
TIME / TYD / IXESHA : 11:00

MUNICIPALITY / MUNISIPALITEIT / UMASIPALA WE-OVERSTRAND

Office of the Municipal
Manager
Municipal Offices
HERMANUS

20 March / Maart / Matshi 2020

NOTICE TO ALL ALDERMEN & COUNCILLORS

ORDINARY MEETING OF THE OVERSTRAND MUNICIPAL COUNCIL

NOTICE IS HEREBY GIVEN that an **ORDINARY MEETING** of the **OVERSTRAND MUNICIPAL COUNCIL** will be held in the **Banqueting Hall, Civic Centre, Hermanus**, on **WEDNESDAY, 25 MARCH 2020** at **11:00** to consider the business set forth in the subjoined agenda.

The attention of Councillors is directed to the Code of Conduct for Councillors and Municipal Officials, Schedules 1 & 2 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

C GROENEWALD
MUNICIPAL MANAGER

KENNISGEWING AAN ALLE RAADSHERE & RAADSLEDE

GEWONE VERGADERING VAN DIE OVERSTRAND MUNISIPALE RAAD

KENNIS WORD HIERMEE GEGEE dat 'n **GEWONE VERGADERING** van die **OVERSTRAND MUNISIPALE RAAD** gehou sal word in die **Banketsaal, Burgersentrum, Hermanus**, op **WOENSDAG, 25 MARCH 2020** om **11:00** om die sake op meegaande sakelys te bespreek.

Raadslede se aandag word gevestig op die Gedragskode vir Raadslede en Munisipale Beampptes, Bylae 1 & 2 van die Wet op Plaaslike Regering : Munisipale Stelsels, 2000 (Wet 32 van 2000).

C GROENEWALD
MUNISIPALE BESTUURDER

ISAZISO ESIYA KUBO BONKE OOCEBAKHULU NOOCEBA

INTLANGANISO YESIQHELO YEBHUNGA LIKAMASIPALA WE-OVERSTRAND

OKU KUKWAZISA ukuba intlanganiso **YESIQHELO yeBHUNGA LIKAMASIPALA WE-OVERSTRAND**, iza kuba se **I-Banqueting Hall, kwiZiko LoLUNTU, eHermanus** ngo**LWESITHATHU, Umhla we 25 MATSHI 2020** ngeye-**11:00** ukuqwalasela imicimbi ekule ajenda iqhotyoshelwe apha.

OoCeba bayacelwa ukuba baqwalasele isikhokelo sokuziphatha sooCeba namaGosa kamasipala, amaXwebhu 1 & 2 kaRhulumente wooMasipala: uMthetho weeNkqubo zikaMasipala, 2000 (UMthetho 32 wowama-2000).

C GROENEWALD
UMPHATHI KAMASIPALA

AGENDA/...

1. **OPENING**

2. **APPLICATIONS FOR LEAVE OF ABSENCE**

3. **CONFIRMATION OF MINUTES**
 - 3.1 Minutes of an **Ordinary Meeting** of the Overstrand Municipal **Council** held on **Wednesday, 26 February 2020** at **15:00**
 - 3.2 Minutes of a **Special Meeting** of the Overstrand Municipal **Council** held on **Monday, 9 March 2020** at **16:00**
 - 3.3 Minutes of a **Special Meeting** of the Overstrand Municipal **Council** held on **Tuesday, 17 March 2020** at **12:00**

4. **STATEMENTS AND COMMUNICATIONS BROUGHT FORWARD BY THE SPEAKER / EXECUTIVE MAYOR**

5. CONSIDERATION OF RECOMMENDATIONS MADE BY THE EXECUTIVE MAYOR TO COUNCIL, IN TERMS OF SECTION 160(2) OF THE CONSTITUTION, 1996, AND SECTION 59(1)(a) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 2000 (ACT 32 OF 2000)

REMARK

Please note that the following recommendations contained in this agenda are subject to confirmation or amendment by the Executive Mayor in view of the fact that the **compilation of the Council agenda** was done before the Mayoral Committee of 25 March 2020 had formally sat.

5.1

AMENDMENTS TO THE 2019/2020 SUPPLY CHAIN MANAGEMENT POLICY

(ITEM 1, PAGE 1 : FINANCE PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

that the Supply Chain Management Policy **be amended** through the deletion of the sub-paragraph 36(1)(a)(v)(c) and the renumbering of sub-paragraphs (d) to (g), to sub-paragraphs (c) to (f).

RESPONSIBLE OFFICIAL :

C LE ROUX

TARGET DATE FOR IMPLEMENTATION :

01 APRIL 2020

**5.2
REVIEWED EXTERNAL BURSARY POLICY**

**(ITEM 1, PAGE 1 : MANAGEMENT SERVICES PORTFOLIO -
MAYORAL COMMITTEE MEETING : 25 MARCH 2020)**

RECOMMENDATION TO THE COUNCIL:

that the reviewed External Bursary Policy **be adopted**.

RESPONSIBLE OFFICIAL :

L BUCCHIANERI

TARGET DATE FOR IMPLEMENTATION :

01 APRIL 2020

5.3**TRANSFER: OVERSTRAND MUNICIPALITY TO RIAAN JOORST: ERF 691, HAWSTON****(ITEM 1, PAGE 1 : COMMUNITY SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 MARCH 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that permission **be granted** to transfer erf 691, Hawston to Mr Riaan Joorst (ID Number 7602185158082);
2. that the aforementioned approval furthermore be subject to Mr Riaan Joorst accepting responsibility for the outstanding municipal services account in respect of erf 691 Hawston; and
3. that the aforementioned consent to transfer be subject to a usufruct being granted in favour Ms Dinah Wilkinson.

RESPONSIBLE OFFICIAL :**FW FRANS****TARGET DATE FOR IMPLEMENTATION :****01 APRIL 2020**

5.4

TRANSFER: OVERSTRAND MUNICIPALITY TO MR OLANE ZANE SCHEEPERS, MS DAVILIN POOLE AND MS MATTLIN POOLE: ERF 6959, MOUNT PLEASANT, HERMANUS

(ITEM 2, PAGE 9 : COMMUNITY SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

1. that permission **be granted** to transfer erf 6959, Mount Pleasant, Hermanus to Mr Olane Zane Scheepers (ID Number 830609 5152 081), Ms Davilin Poole (ID Number 880514 0078 084) and Ms Mattlin Poole (ID Number 950511 0927 083); and
2. that the aforementioned approval furthermore be subject to Mr Olane Zane Scheepers, Ms Davilin and Ms Mattlin Poole accepting responsibility for the outstanding municipal services account in respect of erf 6959, Mount Pleasant.

RESPONSIBLE OFFICIAL :**FW FRANS****TARGET DATE FOR IMPLEMENTATION :****01 APRIL 2020**

5.5

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 6804 HERMANUS ADJACENT TO ERF 6516 HERMANUS (2 HEIDE STREET, MOUNT PLEASANT) SITUATED IN MOUNT PLEASANT TO AG APLON

(ITEM 2, PAGE 206 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 6804 Hermanus (adjacent to Erf 6516 Hermanus) situated in Mount Pleasant, $\pm 120\text{m}^2$ in extent, to the owner of the adjoining Erf 6516 Hermanus, AG Aplon, at an amount of R172.00/m² (ONE HUNDRED AND SEVENTY TWO RAND) (PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Erf 6804 Hermanus can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the applicant/purchaser;
4. that it be noted that a condition for the alienation will be that the said portion of Erf 6804 Hermanus must be consolidated with the adjoining property of AG Aplon, being Erf 6516 Hermanus;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 6804 Hermanus, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Erf 6804 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for the closure of the public road, subdivision, rezoning and consolidation;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of portion of public road, co, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser, AG Aplon; and
8. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL:	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION:	11 APRIL 2020
TARGET DATE TO INFORM APPLICANT:	30 APRIL 2020
TARGET DATE TO INFORM OBJECTOR:	N/A

5.6

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 6804 HERMANUS ADJACENT TO ERF 6515 HERMANUS SITUATED AT 72 KATJIEPIERING STREET, MOUNT PLEASANT TO DJ & MG COERT

(ITEM 3, PAGE 215 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 6804 Hermanus (adjacent to Erf 6515 Hermanus) situated in Mount Pleasant, $\pm 180\text{m}^2$ in extent, to the owner of the adjoining Erf 6515 Hermanus, DJ & MG Coert, at an amount of R172.00/m² (ONE HUNDRED AND SEVENTY TWO RAND) (PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Erf 6804 Hermanus can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the applicant/purchaser;
4. that it be noted that a condition for the alienation will be that the said portion of Erf 6804 Hermanus must be consolidated with the adjoining property of DJ & MG Coert, being Erf 6515 Hermanus;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 6804 Hermanus, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Erf 6804 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for the closure of the public road, subdivision, consolidation and rezoning and all related town planning approvals applicable;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of portion of public road, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser, DJ & MG Coert; and
8. that it be noted that the Municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	11 APRIL 2020
TARGET DATE TO INFORM APPLICANT:	30 APRIL 2020
TARGET DATE TO INFORM OBJECTOR:	N/A

5.7

IN PRINCIPLE AND TRANSFER APPROVAL FOR DIRECT ALIENATION OF A PORTION OF ERF 2430 GANSBAAI ADJACENT TO ERF 3425 GANSBAAI (ON THE CORNER OF KAMPEER AND VAN DYK STREET, GANSBAAI) TO THE WESTERN CAPE GOVERNMENT VIA ITS DEPARTMENT OF TRANSPORT AND PUBLIC WORKS (DEPARTMENT OF EDUCATION) FOR THE GANSBAAI ACADEMIA HIGH SCHOOL

(ITEM 7, PAGE 246 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 2430 Gansbaai (± 0.9 ha in extent) adjacent to Erf 3425 Gansbaai to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for the extension of the Gansbaai Academia High School and related purposes, **be approved in principle;**
2. that the transfer of a portion of Erf 2430 Gansbaai (± 0.9 ha in extent) adjacent to Erf 3425 Gansbaai to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for Gansbaai Academia High School and related purposes, **be approved;**
3. that it be noted that it is not necessary to follow a competitive process for the alienation and transfer as this transaction is exempted in terms of Regulation 20 of the Municipal Asset Transfer Regulations (R. 878 of 2008);
4. that it be noted that a condition for the alienation will be that the said portion of Erf 2430 Gansbaai must be consolidated with the adjoining property, being Erf 3425 Gansbaai;
5. that the alienation of said portion of Erf 2430 Gansbaai be subject to a suspensive condition that the Department obtains at own cost all required town planning approvals;
6. that all the costs pertaining to the transaction, e.g. subdivision and consolidation, closure of portion of public open space, rezoning, transfer and related costs, etc. be paid by the Department;
7. that a condition be registered against the title deed of the consolidated property that the property may only be used for educational purposes; and

8. that it be noted that the portion of municipal property herewith alienated and transferred is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL: N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION: 25 APRIL 2020

TARGET DATE TO INFORM APPLICANT: 9 APRIL 2020

TARGET DATE TO INFORM OBJECTOR: N/A

5.8

IN PRINCIPLE APPROVAL FOR THE ALIENATION OF ERF 1153 HAWSTON (SITUATED ON THE CORNER OF CHURCH STREET AND WOODLANDS ROAD, HAWSTON) BY MEANS OF A COMPETITIVE PROCESS

(ITEM 8, PAGE 258 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

1. that the alienation of Erf 1153 Hawston (1,980m² in extent) for church purposes by means of a competitive process at a market related purchase price be **approved in principle**;
2. that the costs pertaining to the transaction, e.g. transfer costs, water-, sewer and electricity connections, the section 14 advertisement, etc., but excluding the valuation costs, be paid by the successful bidder/purchaser; and
3. that it is confirmed that Council has taken cognisance of the fact that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

24 APRIL 2020

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

5.9

ERF 1153 HAWSTON (SITUATED ON THE CORNER OF CHURCH STREET AND WOODLANDS ROAD): WRITE BACK AND WRITE OFF OF AMOUNTS RAISED AND WAIVER OF RENTAL – “CALVYNSE PROTESTANTE KERK VAN SUID AFRIKA HAWSTON”

(ITEM 9, PAGE 266 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

that Council **approves** the:

1. writing back of the original balance on the municipal account number 205011530003 in the amount of R8,086.69 (EIGHT THOUSAND AND EIGHTY SIX RAND AND SIXTY NINE CENTS) representing the opening balance of the municipal account of the “Calvynse Protestante Kerk van Suid Afrika Hawston” (hereinafter called “the Church”) when the account was transferred to this Municipality from the previous Overberg Regional Council, being 1 September 1998;
2. writing back of the total amount of R73,206.16 (SEVENTY THREE THOUSAND TWO HUNDRED AND SIX RAND AND SIXTEEN CENTS) representing the monthly loan amounts levied on municipal account number 205011530003 of the Church for the period 1 September 1998 until 25 February 2020;
3. writing back of the total amount of R1,257.50 (ONE THOUSAND TWO HUNDRED AND FIFTY SEVEN RAND AND FIFTY CENTS) representing historic insurance charge levied on municipal account number 205011530003 of the Church;
4. writing back of the total amount of R289.26 (TWO HUNDRED AND EIGHTY NINE RAND AND TWENTY SIX CENTS) representing a services deposit levied on municipal account number 205011530003 of the Church;
5. writing back of the total amount of R11,189.47 (ELEVEN THOUSAND ONE HUNDRED AND EIGHTY NINE RAND AND FORTY SEVEN CENTS) representing administrative and collection costs levied on the municipal and handed over accounts of the Church for the period 1 September 1998 until 25 February 2020;
6. writing back of the total amount of R28,388.11 (TWENTY EIGHT THOUSAND THREE HUNDRED AND EIGHTY EIGHT RAND AND ELEVEN CENTS) representing interest levied on the municipal and handed over accounts of the Church;

7. writing back of all municipal services charges, interest, penalties and loan amounts levied on the municipal and handed over accounts of the Church as from billing on 25 February 2020 until the accounts are formally closed;
8. writing off the amount of R27,971.05 (TWENTY SEVEN THOUSAND NINE HUNDRED AND SEVENTY ONE RAND AND FIVE CENTS), representing the balance municipal services charges on the municipal account after the above is written back and the payments made by the Church is taken into account; and
9. waiving of any rental that could have been regarded as relevant to the use of the property on the reasons discussed in this report.

RESPONSIBLE OFFICIAL :

**A LE ROUX
E HOONEBERG**

TARGET DATE FOR IMPLEMENTATION :

29 APRIL 2020

TARGET DATE TO INFORM APPLICANT :

15 APRIL 2020

TARGET DATE TO INFORM OBJECTOR :

N/A

5.10**MONTHLY REPORT TO COUNCIL ON SUPPLY CHAIN MANAGEMENT (SCM)
POLICY: PARAGRAPH 36, 16(1)(b) AND 17(1)(c) FOR FEBRUARY 2020****(ITEM 5, PAGE 1 : MAYORAL COMMITTEE MEETING : 25 MARCH
2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the deviations from the procurement processes, approved in terms of the delegated authority for February 2020, **be noted**; and
2. that the awards made in terms of Paragraph 16(1)(b) and 17(1)(c), approved in terms of the delegated authority for February 2020, **be noted**.

RESPONSIBLE OFFICIAL :**C LE ROUX****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.11**ENTERING INTO A GRANT AGREEMENT WITH DEVELOPMENT BANK OF SOUTH AFRICA, WESTERN CAPE PROVINCIAL GOVERNMENT AND OVERSTRAND MUNICIPALITY****(ITEM 6, PAGE 8 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the Municipal Manager be hereby authorised to:
 - (a) negotiate the terms of the Grant Agreement for purposes of drafting a Capital Expenditure Framework;
 - (b) after acceptance of the terms of the agreement, sign the agreement;
 - (c) enter into any other agreements, deeds or documents which may be incidental or related to the Grant Agreement or the transactions contemplated by or the agreements referred to in the Grant Agreement and any addenda to the Grant Agreement required to amplify and/or amend any of the provisions of the Grant Agreement (collectively referred to as the "Relevant Documents"); and
 - (d) act as the Municipality's representative to give effect to the above resolutions.

RESPONSIBLE OFFICIAL :**R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****8 APRIL 2020****TARGET DATE TO INFORM APPLICANT :****N/A****TARGET DATE TO INFORM OBJECTOR :****N/A**

5.12**CONSIDERATION OF THE 2018/19 ANNUAL REPORT AND ADOPTION OF AN OVERSIGHT REPORT****(ITEM 7, PAGE 23 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)****RECOMMENDATION TO THE COUNCIL:**

that, in terms of Section 129 of the Local Government : Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA) and having duly considered the 2018/19 Annual Report of the Overstrand Municipality and the content of this item, the said report **be approved** without reservation.

RESPONSIBLE OFFICIAL :**R LOUW****TARGET DATE FOR IMPLEMENTATION :****NOT APPLICABLE**

5.13

DRAFT INTEGRATED DEVELOPMENT PLAN (IDP) REVIEW AND PROPOSED AMENDMENT FOR 2020/21**(ITEM 8, PAGE 59 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the draft IDP review and proposed amendment for 2020/21 **be noted**; and
2. that the draft IDP review and proposed amendment **be advertised** for public comment in order for Council to consider the final document during the May 2020 Council meeting.

RESPONSIBLE OFFICIAL :**R LOUW****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.14

INTEGRATED WASTE MANAGEMENT PLAN 2020/2021

(ITEM 9, PAGE 62 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

1. that the Draft Integrated Waste Management Plan (IWMP) for 2020/21 be **noted**; and
2. that it furthermore **be noted** that the Final Draft IWMP for 2020/21, with inputs from the public and other stakeholders taken into account, is to be considered for approval at the Council meeting in May 2020.

RESPONSIBLE OFFICIAL :**C MITCHELL****TARGET DATE FOR IMPLEMENTATION :****1 JULY 2020**

5.15

OVERSTRAND: REVIEW OF OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK AND SECTORAL PLANS: OVERSTRAND MUNICIPALITY**(ITEM 10, PAGE 64 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the Draft Spatial Development Framework and process for finalisation **be noted**; and
2. that the Final Spatial Development Framework be tabled to Council with the Final IDP and Budget during its May 2020 cycle.

RESPONSIBLE OFFICIAL :**R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****15 APRIL 2020****TARGET DATE TO INFORM APPLICANT :****N/A****TARGET DATE TO INFORM OBJECTOR :****N/A**

5.16

DRAFT BUDGET FOR 2020/2021, INDICATIVE BUDGET FORECASTS FOR 2021/2022 TO 2022/2023 AND DRAFT BUDGET RELATED POLICIES

(ITEM 11, PAGE 72 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

1. that the tabling of the Draft Budget for 2020/2021, indicative budget forecasts for 2021/2022 to 2022/2023 and the draft budget related policies **be noted**; and
2. that the tabling of the Draft Budget for 2020/2021 **be advertised** for public comment in order for Council to consider the final budget during the May 2020 Council meeting.

RESPONSIBLE OFFICIALS:**S REYNEKE-NAUDE
BA KING****TARGET DATE FOR IMPLEMENTATION:****TO BE NOTED**

5.17**DRAFT SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP)
FOR 2020/21****(ITEM 12, PAGE 74 : MAYORAL COMMITTEE MEETING : 25 MARCH
2020)****RECOMMENDATION TO THE COUNCIL:**

that the draft Service Delivery and Budget Implementation plan (SDBIP) for 2020/21
be noted.

RESPONSIBLE OFFICIAL :**R LOUW****TARGET DATE FOR IMPLEMENTATION :****NOT APPLICABLE**

5.18

SIGNED REVISED PERFORMANCE PLANS OF THE SECTION 54A AND 56 APPOINTEES FOR 2019/20

(ITEM 13, PAGE 76 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)

RECOMMENDATION TO THE COUNCIL:

that the signed revised performance plans of the Section 54A and 56 appointees for 2019/20 **be noted**.

RESPONSIBLE OFFICIAL :

R LOUW

TARGET DATE FOR IMPLEMENTATION :

1 APRIL 2020

5.19

APPLICATION FOR THE DETERMINATION OF A SPECIAL RATING AREA (SRA): HERMANUS SPECIAL RATING AREA (HSRA)**(ITEM 14, PAGE 146 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the area as reflected in the body of this report **be identified** as a special rating area (SRA), known as the Hermanus Special Rating Area (HSRA), in terms of the Overstrand Special Rating Area By-law, 2016;
2. that the application submitted by Mr Michael Farr, the registered owner of 84 Westcliff Road, Westcliff Hermanus (Erf 103 Westcliff), to establish the HSRA in terms of section 8.1(c) of the By-law, **be approved**;
3. that an additional rate **be levied** on properties in the HSRA from 1 July 2020 in terms of section 22(1)(b) of the Local Government Municipal Property Rates Act (MPRA), Act 6 of 2004;
4. that a Finance Agreement be concluded between the Overstrand Municipality and the HSRA Management Committee in terms of section 12(6) of the By-law prior to 1 July 2020;
5. that the Municipal Manager be authorised to sign all the necessary agreements and documents to give effect to the establishment of the Hermanus Special Rating Area (HSRA);
6. that the Hermanus Special Rating Area (HSRA) additional rate be calculated on the municipal valuation for properties within the HSRA mapped area, in accordance with the Overstrand Property Rates Policy, to enable the Municipality to collect the additional rates required for the HSRA's first year budget of R8 300 000.00, as well as for subsequent years in accordance with the 5-year budget period;
7. that payments to the HSRA be commenced with in accordance with the Finance Agreement once the following sections in chapter 2 of the SRA By-law as amended are met:
 - Section 10: Commencement with the Business Plan,
 - Section 11: Establishment Composition, Powers and Duties of the Management Body; and
 - Section 12: Finances (including the conclusion of a Finance Agreement); and

8. that the additional rate for the HSRA be considered by Council with the Municipality's 2020-2021 Budget and be implemented from 1 July 2020.

RESPONSIBLE OFFICIAL :

**S REYNEKE-NAUDE
E HOONEBERG
B KING**

TARGET DATE FOR IMPLEMENTATION :

1 JULY 2020

5.20

APPLICATION FOR THE DETERMINATION OF A SPECIAL RATING AREA (SRA): ONRUS-VERMONT SPECIAL RATING AREA (OVSRA)**(ITEM 15, PAGE 399 : MAYORAL COMMITTEE MEETING : 25 MARCH 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the area as reflected in the body of this report **be identified** as a special rating area (SRA), known as the Onrus-Vermont Special Rating Area (OVSRA), in terms of the Overstrand Special Rating Area By-law, 2016;
2. that the application submitted by Mr Abner Francois-Andre Inghels, the registered owner of 6 Radyn Street, Onrus River (Erf 3551 Onrus), to establish the OVSRA in terms of section 8.1(c) of the By-law, **be approved**;
3. that an additional rate **be levied** on properties in the OVSRA from 1 July 2020 in terms of section 22(1)(b) of the Local Government Municipal Property Rates Act (MPRA), Act 6 of 2004;
4. that a Finance Agreement be concluded between the Overstrand Municipality and the OVSRA Management Committee in terms of section 12(6) of the By-law prior to 1 July 2020;
5. that the Municipal Manager be authorised to sign all the necessary agreements and documents to give effect to the establishment of the Onrus-Vermont Special Rating Area (OVSRA);
6. that the Onrus-Vermont Special Rating Area (OVSRA) additional rate be calculated on the municipal valuation for properties within the OVSRA mapped area, in accordance with the Overstrand Property Rates Policy, to enable the Municipality to collect the additional rates required for the OVSRA's first year budget of R1 977 885.00, as well as for subsequent years in accordance with the 5-year budget period;
7. that payments to the OVSRA be commenced with in accordance with the Finance Agreement once the following sections in chapter 2 of the SRA By-law as amended are met:
 - Section 10: Commencement with the Business Plan,
 - Section 11: Establishment Composition, Powers and Duties of the Management Body; and
 - Section 12: Finances (including the conclusion of a Finance Agreement); and

8. that the additional rate for the OVSRA be considered by Council with the Municipality's 2020-2021 Budget and be implemented from 1 July 2020.

RESPONSIBLE OFFICIAL :

**S REYNEKE-NAUDE
E HOONEBERG
B KING**

TARGET DATE FOR IMPLEMENTATION :

1 JULY 2020

6. CONSIDERATION OF REPORTS**6.1****APPOINTMENT OF A SELECTION PANEL FOR THE RECRUITMENT AND SELECTION PROCESS, FOR THE APPOINTMENT OF A NEW MUNICIPAL MANAGER WITH EFFECT 1 NOVEMBER 2020**

4/3/R

D Arrison

6 February 2020

Director : Management Services

(028) 313 8001

1. Executive Summary

The purpose of this report is for Council to appoint a selection panel for the recruitment and selection process and for recommendations in the appointment of a Municipal Manager with effect 1 November 2020.

2. Service Delivery and Budget Implementation Plan Reference - IGNITE

Directorate: Management Services

3. Compliance with Strategic Priority

Provision of democratic and accountable governance

4. Delegated Authority

None.

5. Legal Requirements

1. Section 160(1)(d) of the Constitution of the Republic of South Africa, 1996
Sections 67, and 72 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)
2. Section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)
3. Chapter 3 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)
4. Local Government Regulations on Appointment and Conditions of Employment of Senior Managers (GN 21 dated 17 January 2014)

6. Discussion

The recruitment and selection process for the appointment of a Municipal Manager, following the retirement of the current Municipal Manager, Mr Coenie Groenewald, with effect 1 November 2020, has commenced.

Council, at its meeting on 26 February 2020, approved the filling of the envisaged vacancy. The post was advertised in the Rapport, Sunday Times, Burger, Cape Times as well as the Weekend Argus during the weekend of 29 February 2020. Advertisements were also placed in the local printed media and on the Municipality's Website.

Sub-regulation 12(1) of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000): Local Government Regulations on Appointment and Conditions of Employment of Senior Managers, (GN 21 dated 17 January 2014), provides for *a municipal council to appoint a selection panel to make recommendations for the appointment of candidates to vacant senior manager posts.*

Sub-regulation 12(2) further prescribes that *in deciding who to appoint to a selection panel, the following considerations must inform the decision:*

- (a) the nature of the post;*
- (b) the gender balance of the panel; and*
- (c) the skills, expertise, experience and availability of the persons to be involved.*

Sub-regulation 12(3) provides that the selection panel for a municipal manager to be appointed, must consist of at least three and not more than five members, and constitutes it as follows:

- (a) The mayor, who will be the chairperson, or his or her delegate,*
- (b) A councillor designated by the municipal council; and*
- (c) At least one other person, who is not a councillor or staff member of the municipality, and who has expertise or experience in the area of the advertised post.*

The Executive Mayor's inputs are as per the recommendation hereunder.

7. Financial Implications

Sufficient funds are available on the 2020/2021 salary budget for the funding of this post and for subsistence and travel allowances for visiting members of the panel.

8. Staff Implications

Vacancy of the position of Municipal Manager.

9. Comments from other Departments, Divisions and Administrations

Not applicable

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

1. that a selection panel for the recruitment and selection process and for recommendations to Council in the appointment of a new Municipal Manager with effect 1 November 2020, be instituted as follows:
 - Ald Dudley Coetzee, Executive Mayor – Chairperson
 - Cllr Elnora Gillion, Deputy Executive Mayor
 - Mr Graham Paulse, HOD Provincial Department of Local Government; and
 - Visiting Municipal Manager from a Municipality in the Western Cape (subject to resolution hereunder);
2. that it be noted that a member from the main opposition in Council, to be appointed by said party, is invited to observe the process; and
3. that the Executive Mayor be authorised to engage any Municipal Manager in the Western Cape to serve on the selection panel for the recruitment and selection process of a new Municipal Manager with effect 1 November 2020.

RESPONSIBLE OFFICIAL :**DS ARRISON****TARGET DATE FOR IMPLEMENTATION :****25 MARCH 2020**

6.2**COMPLAINT/ACCUSATION OF ALLEGED MISCONDUCT: MR CC GROENEWALD, MUNICIPAL MANAGER****4/3/R****D Arrison****Director : Management Services****19 March 2020****(028) 313 8001**

1. Executive Summary

The purpose of this report is for Council to consider a complaint/accusation of alleged misconduct brought by Mr Anton Kruger, on behalf of a group referred to as LiberTAS, against the Municipal Manager, Mr CC Groenewald.

2. Service Delivery and Budget Implementation Plan Reference - IGNITE

Municipal Manager

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

Local Government: Disciplinary Regulations for Senior Managers, 2010 (GN 344 in GG 34213 dated 21 April 2011)

Council's Unauthorised, Irregular or Fruitless and Wasteful Expenditure Policy

6. Discussion

Council resolved on 9 March 2020 with regard to the so-called M5 matter as follows:

“RESOLVED (SUPPORTED BY 23 COUNCILLORS):

that Council has found no evidence supporting the allegations of misconduct against the Municipal Manager, Mr C Groenewald. However, in the event that Council has overlooked anything, an independent investigator must be appointed to investigate the allegations and that the appointment of the investigator takes place within seven (7) days.”

For purpose of considering this item, Councillors are referred to Annexure A of the item which served before Council on said date, a copy of which is also attached as Annexure A to this item.

In an e-mail forwarded apparently to all Councillors on 17 March 2020, Mr Anton Kruger, on behalf of LiberTAS, questioned the fact that the so-called WSSA tender was not addressed (see Annexure B). This item thus serves for that purpose.

Regulation 5(1) of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (GN 344 in GG 34213 dated 21 April 2011) prescribes that *any allegation of misconduct against a senior manager must be brought to the attention of the municipal council.*

Regulation 5(2) determines that any allegation as referred to in sub-regulation (1) must be tabled by the Executive Mayor, before Council, *not later than 7 days after receipt thereof.*

The Council is then to deal with the matter in accordance with the provisions of Regulation 5(3), which provides as follows:

- 5(3) *if the municipal council is satisfied that -*
- (a) *there is a reasonable cause to believe that an act of misconduct has been committed by the senior manager, the municipal council must within seven [7] days appoint an independent investigator to investigate the allegation[s] of misconduct; and*
 - (b) *there is no evidence to support the allegation[s] of misconduct against the senior manager, the municipal council must within seven [7] days dismiss the allegation[s] of misconduct.*

The response from the Municipal Manager, Mr CC Groenewald, is attached as Annexure C.

7. Financial Implications

Costs related to an independent investigator, should it be necessary.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

- Annexure A: Annexure A which served before Council on 9 March 2020
Annexure B: E-mail from Mr Kruger dated 17 March 2020
Annexure C: Response received from the Municipal Manager, Mr CC Groenewald

RECOMMENDATION TO THE COUNCIL:

that, if Council is satisfied that: -

- (a) there is a reasonable cause to believe that an act of misconduct has been committed by the Municipal Manager, an independent investigator to investigate the allegation(s) of misconduct be appointed within seven (7) days; **OR**
(b) there is no evidence to support the allegation(s) of misconduct against the Municipal Manager, the allegation(s) of misconduct be dismissed.

RESPONSIBLE OFFICIAL :

DS ARRISON

TARGET DATE FOR IMPLEMENTATION :

IMMEDIATELY

Annexure A

P1/9

Coenie Groenewald - Re: Complaint against Municipal Manager

From: Anita Visser <legalrecordsa@gmail.com>
To: Mayor Overstrand <mayor@overstrand.gov.za>
Date: 05/03/2020 07:39 AM
Subject: Re: Complaint against Municipal Manager
Attachments: letter to mayor Dudley Coetzee.pdf; Complaint Against Municipal Manager Mr. Coenraad Groenewald.pdf

Honorable Mayor Dudley Coetzee.

Please find signed documents attached, as requested.

Yours Sincerely

LiberTAS

On Wed, Mar 4, 2020 at 10:14 AM Mayor Overstrand <mayor@overstrand.gov.za> wrote:
 Good day

I refer to your email first under.

In order for me to take this matter further I require an original document, signed by the person laying the complaint. I can not act on an unsigned document, which originates from a fictitious person.

Regards,

Ald / Rdh Dudley Coetzee

Executive Mayor / Uitvoerende Burgemeester / Usodolophu Olawulayo
 Overstrand Municipality / Munisipaliteit / Umasipala
 M: +27 (0) 82 574 4404 | T: +27 (0) 28 313 8058
 E: mayor@overstrand.gov.za

DISCLAIMER: Please note that all invitations/requests are accepted on the basis that they could be cancelled, due to emergencies which could arise and require the Mayor's attention.



Overstrand Municipality

A: 1 Magnolia Street, Hermanus, 7200 | P: P.O Box 20, Hermanus, 7200
 T: +27 (0) 28 313 8000 | F: +27 (0) 28 312 1894
 E: enquiries@overstrand.gov.za | W: www.overstrand.gov.za

Vision Statement: "To be a centre of excellence for the community"

Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: <http://www.overstrand.gov.za>. Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer.
 Please consider the environment before printing this correspondence.

>>> Anita Visser <legalrecordsa@gmail.com> 2020/03/03 07:38 AM >>>
 Honourable Mayor Dudley Coetzee

P2/9

Dear Mr. Coetzee.

There is nothing fictitious about LiberTAS.

We have been advised that it is our legal right to lay a complaint as a group or organization, which is exactly what we are doing right now.

So please fill in the word LiberTAS on your complaint form.

If you had a look at the petition we have been running, of which we provided the link in our formal complaint, you would see that our complaint is well in line with the demand for Transparency, Accountability and Sustainability(TAS) in the Overstrand, and you will see that it has already been signed by 390 people by 8am this morning.

My name is Anton Kruger, and I am an executive member of LiberTAS, with full authority to write this letter and sign the complaint on behalf of our Group.

We find it worrying that you seem more concerned about who we are, than about the merits of our complaint.

Please do your duty without further delay, as stipulated under the Overstrand's "UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE POLICY."

Yours Sincerely
Anton Kruger



On behalf of
LiberTAS

05/03/2020

Honourable Mayor Dudley Coetzee

P3/9

We are representing a growing group of concerned citizens, demanding Transparency, Accountability and Sustainability (TAS) in the Overstrand. See

https://www.change.org/p/overstrand-management-we-want-tas-79fe156a-9a1e-46ea-bf1d-a80ed2a7e89f7fbclid=IwAR2XqyfeFrL484v9oyM7qj0Oe6AxLjADTvc9cSm_ykNSb14EqpSEncCEq7E

In accordance with Overstrand's "UNAUTHORISED, IRREGULAR OR FRUITLESS AND WASTEFUL EXPENDITURE POLICY", we would hereby like to make a formal complaint against current Municipal Manager, Mr. Coenraad Groenewald, regarding the matter as reported in <https://showme.co.za/hermanus/news/tender-turmoil/>.

Our concerns regarding the above matter are that:

1. Mr. Groenewald demonstrated poor judgement in awarding this tender, occurring great costs to the Ratepayer, delaying (possibly even derailing) the project by his actions and putting a question mark behind Mr. Groenewald's suitability for making this type of decision, or performing this type of Managerial duty.
2. Ratepayers had nothing to gain from the court cases that followed. This matter could have been settled out of court, at a considerably reduced cost.
3. In this case, it seems Mr. Groenewald was using Municipal Money (i.e. Ratepayers Money) for a personal matter, namely trying to clear his own name.
4. Appealing and losing this case in the High Court, apparently against advice of advocate Werner Zybrands, emphasises just how bad Mr. Groenewald's judgement is, and how wasteful this exercise truly was.

Please note that we have already communicated our unhappiness with Mr. Groenewald regarding this matter to him, in the form of an email, but received no response.

We therefore ask that:

1. It be made Public how much was spent on this court case, appeal and reimbursement for the complainant.
2. That this amount be reimbursed to the Municipal Cooffers by Mr. Groenewald, after both interest and inflation has been taken into account.

We are also aware that this case is not isolated.

K

P49

We believe that the Municipality has quite recently been taken to court by Water and Sanitation Services South Africa Pty(Ltd) for another wrongful tender allocation. This matter was also apparently appealed and lost by the Municipality in the High court. Once again, Mr. Groenewald was the responsible person.

This is yet another matter with zero gain to the Ratepayers that could have been settled out of court at greatly reduced cost.

On the other hand, it has on several occasions been communicated to the Public that the Municipality cannot afford to construct an emergency sewage storage facility at the Onrus Main Pumping station right next to the Onrus Estuary. Please note that environmental protocol dictates the necessity of this storage facility in an environmental sensitive area. The reason we are bringing this up, is to point out that Mr. Groenewald's spending priorities seems to focus on personal priorities rather the best interest of the Ratepayers.

We find it questionable that Mr. Groenewald was appointed to the highly paid position of Municipal Manager shortly after the above mentioned tender incident, a position he still holds today.

We therefore ask that Mr. Groenewald be dismissed without further delay or pension benefits, after he has reimbursed the Municipality for unnecessary costs incurred, in a manner as stated above.

Please acknowledge receipt of this letter.

Yours Sincerely

Anton Kruger



On behalf of

LiberTAS

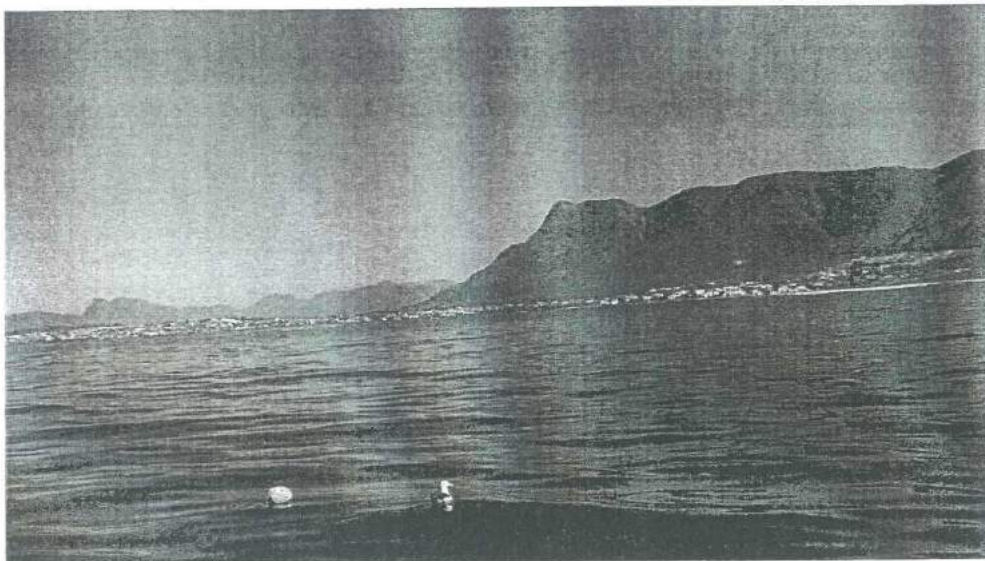
05/03/2020

P519
≡

change.org



We want TAS!!



385 have signed. Let's get to 500!

P6/9



We want TAS!! started this petition to Overstrand Management

TAS

Transparency

Accountability

Sustainability

In South Africa we have excellent laws and legislation protecting Us and our Environment. Most of the problems in our beautiful Overstrand can be traced back to some Department Not enforcing (or ignoring) these Laws.

When pressed on these issues, these Departments tend to become very tight lipped about relevant information. According to the PAIA act, there is very little information that we as the Public are Not entitled to peruse.

The other issue that needs to be addressed urgently is sustainability in the Overstrand. We are living in a water scarce area, with water restrictions being the norm. Yet, people are streaming into the Overstrand from the Eastern Cape and settling informally in huge numbers, putting even more pressure on limited resources.

P7/9

By signing this petition, you are pledging your support for Transparency, Accountability and Sustainability (TAS) in the Overstrand.

This document, together with a list of relevant concerns, will be presented to the different Departments, requesting that they start conforming to the law.

Start a petition of your own

Start a petition of your own

This petition starter stood up and took action. Will you do the same?

Start a petition

Updates

We want TAS!!

Thank you for taking the first step in getting Transparency, Accountability and Sustainability in the Overstrand.

...

We want TAS!!

Thank you for taking the first step in getting Transparency, Accountability and Sustainability in the Overstrand.

77 people have signed so far.

Please share this petition far and wide!

Your Favourites

Login / Register

P8/9

Where am I? ShowMe™ » Hermanus » News » Whale Coast Monitor » Tender Turmoil



Search for local businesses...



Search for i

Tender Turmoil

Date: May 1, 2012 | Posted in News | Whale Coast Monitor



In the wake of last month's story on housing, comes the news concerning the real reason why the provision of low-cost housing in the Overstrand is so appallingly slow.

At the beginning of 2007, the Municipality put out to tender a R600,000,000.00 contract for a "Turnkey Developer" to build low-cost housing in the Overstrand. Sixteen tender applications were received with only five regarded as bona fide, inclusive of M5, ASLA and Blue Whale Property CC.



The Housing Manager at the time, Mr Bobby von Doring, employed the services of consulting ICE Group, to make a recommendation as to whom the tender should be awarded. The evaluation tenders involves a prescribed points system with the company scoring the highest points being winner. The outcome of this process was that M5 was evaluated as the most suitable company. However, the evaluation process did not end there. All the documentation went on to an Evaluation Committee, who concurred with ICE in recommending M5 as the turnkey developer. The documentation then went on to the Adjudicating Committee, who once again recommended M5.

On the 20th of April 2007, M5 were notified of their appointment and the two other remaining companies were notified of their right to appeal this decision within 21 days. Blue Whale lodged an appeal, as did ASLA, but ASLA's appeal was not received within the legislated time period. Blue Whale's appeal then sat with the Municipality for some nine months without any progress.

Astoundingly, in February 2008, a decision was made by the then Acting Municipal Manager Coenie Groenewald, to change the scoring of the tender documents and award the tender to ASLA. Naturally, M5, who had originally won the tender, sued Groenewald and the Municipality in the Cape High Court. It emerged during court proceedings that the Overstrand Municipality did not even have a Supply Chain Management Policy as is prescribed by law.

P919

M5 prevailed in the case and the tender reverted back to them. In his ruling, Judge le Grange stated: 'The contention that Groenewald was in law obliged to, upon discovering an alleged scoring error, whilst considering Blue Whale's appeal, make a decision on the correct scoring and re-allocate the tender to Asla, is misconceived. Groenewald, in my view, erred and committed a serious misdirection to re-allocate the tender to Asla.'

More astoundingly, despite the recommendation of Mr Werner Zybrands, who had by then been appointed as the Municipal Manager, the Municipality decided to appeal the High Court's ruling. The matter was then retried by the Supreme Court of Appeal on the 12th of March 2010. This court overturned the High Court's decision and the Municipality was ordered to pay all of M5's costs. The Municipality requested from the Municipality the final cost of the two court cases, but to date this information has not been forthcoming.

In light of this situation, the Monitor posed the following questions to Mr Fanie Krige, Communication Manager of the Overstrand Municipality:

1. What events led to Mr Coennie Groenewald reversing a tender decision after it was approved by the tender Adjudication Committee?
2. When M5 sued Mr Groenewald and the Municipality, who took the decision to defend the matter?
3. When the case was lost in the High Court, who made the decision to appeal the decision?
4. What was the final cost of both the court cases including the costs of the applicant?
5. Where did this money come from?
6. Given that the Municipality was in the wrong, how is the Municipality planning to reimburse Overstrand ratepayers for this wasteful expenditure?
7. How was it that Mr Groenewald was appointed Municipal manager, even though he wasted a significant amount of public funds and set back the housing planning in the Overstrand by some 2 years?

In response to these questions the Monitor was invited to the Municipal offices to read through transcripts of the court cases as well as the confidential Legal Council's brief. Unfortunately, the documents shed no light on the questions posed. In fact, this episode simply raised the additional question as to why these documents were not part of the public record.

Of serious concern is the fact that the present Municipal Manager was appointed to his position even though he was found by two courts to have committed serious errors in exercising his responsibilities. Also, his position commands a salary that warrants a level of discretion beyond that displayed in this matter where ratepayers are left with massive legal costs and a housing plan in tatters.

The Monitor will keep its readers updated should the Municipality decide to answer the questions stated in this article.

Source: [Whale Coast FM](#)

Related Articles



Fishing rights allocations process on track

B₁/2**Coenie Groenewald - Re: Complaint against Municipal Manager**

From: Anita Visser <legalrecordsa@gmail.com>
To: Mayor Overstrand <mayor@overstrand.gov.za>, <dcoetzee@overstrand.gov.za>...
Date: 2020/03/17 05:47 AM
Subject: Re: Complaint against Municipal Manager
Attachments: IMAGE_4.jpeg

Dear Speaker/Mayor/Ward Councillors

With regard to the "request for further investigation" into our complaint, as agreed on unanimously in a special council meeting held on the 9th of March 2020, which agreement came after several private caucus sessions.

We are therefore assuming that there is a collective agreement that in spite of the councils finding of "no grounds" as also quoted by the Village news, that as a collective the council must then either: 1. not be convinced of this on the surface facts presented. Or, 2. they are wanting an independent investigation to consider all the facts and report back on their finding.

We presume then that this is to confirm or debunk the "no grounds" finding.

Please inform us on the Process that will be followed to ensure the Investigator is truly independent, and could not be influenced by Mr. Groenewald?

Having studied the documents regarding the M5 case submitted by Mr. Groenewald to the Special Ward Meeting on Monday 9 March 2020, we want to point out that the question that needs to be answered here is not if Mr. Groenewald was guilty of wrongdoing when awarding the tenders, although it should certainly be a consideration.

Our complaint was laid under the Unauthorised, Irregular or Fruitless and Wasteful Expenditure Policy, therefore the real question here is if these court cases and appeals, and of course the costs incurred by them, held any benefit to the Ratepayers, and if these costs could have been avoided by Mr. Groenewald?

Mayor Coetzee's revelation at the Special Council Meeting on Monday 9 March, that ASLA paid the cost for the Appeal Court Case in the M5 matter, should also receive special consideration.

We hereby request that Mayor Coetzee supply us with proof of this payment by ASLA, as well as allow us to peruse the tender and court documents for the M5/ASLA case and appeal.

Please keep in mind that a Municipality is supposed to award tenders impartially, using only the information supplied to them in the Tender Applications to make a fair and appropriate decision.

Also keep in mind that a Tender Applicant is not allowed to try and influence the outcome of the decision by paying the decision makers, or doing favors for them

By Mayor Coetzee's admission: ASLA, an unsuccessful Tender Applicant, paid the legal costs of the Municipality, the authority that decides who gets the tender.

Had this Appeal been successful, ASLA would therefore have influenced the Tender Decision by their payment.

It is also questionable why a highly paid Municipal Manager is spending his time doing Appeals on behalf of private tender companies, while he should be concerned with the day to day running of our Municipality.

Was Mr. Groenewald remunerated in any way for this service to ASLA?

The questions, why did Mr. Groenewald oversee a tender process that opened up the Municipality for expensive

Bz/z

legal action, who paid for the initial court case, how much did it cost and why was it not settled out of court, remains unanswered.

Furthermore, we are somewhat concerned that we have mentioned the Veolia/ Water and Sanitation Services South Africa Pty(Ltd) case and appeal (2015) in our original complaint, but it was never discussed at the Special Council Meeting on 9 March 2020. We request that it be included in this investigation.

We would like to know why Mr. Groenewald, as the responsible person, allowed yet another tender process to be concluded that could be successfully challenged in court, why this case was not settled out of court, and why it was unsuccessfully appealed after the case was lost.

We would like to know what the cost of both the case and the appeal was, and who paid for it. Were these efforts and expenditures really necessary, and in the Ratepayers' best interest?

If this turns out to be wasteful expenditure, it needs to be addressed, and Mr. Groenewald, as the responsible person, taken to task.

Next, we would like to draw your attention to all the court cases and legal actions done through the law firm Fairbridges in Cape Town on behalf of the Municipality, apparently Mr. Groenewald's preferred choice when it comes to legal matters.

Was it a council decision to primarily use Fairbridges, or was the decision left to the sole discretion of Mr. Groenewald?

Was any competitive or BEE procurement procedures followed in identifying Fairbridges as the preferred legal firm for the Overstrand Municipality?

Please clarify why a local law firm was not an option. We are aware that co respondent costs are often expensive. However, many local firms have good relationships with their Cape Town co respondent firms.

It would of course be beneficial to our local economy to keep the money circulating in our town, whenever possible. By all accounts, Fairbridges is not cheap; therefore giving them preference is questionable, and could well be wasteful expenditure.

Finally, in the interest of Transparency and Accountability, we, as the complainant, ask that we be allowed to liaise with the investigator and have access to his/her reports and findings throughout the process, and be allowed to request council to redirect, as deemed necessary.

Yours Sincerely
LiberTAS

On Mon, Mar 16, 2020 at 11:53 AM Mayor Overstrand <mayor@overstrand.gov.za> wrote:

Dear Mr Kruger

On behalf of the Mayor I herewith acknowledge receipt of your email below.

Regards,



Annexure C
1/194

Kantoor van die
Munisipale
Bestuurder

MEMORANDUM

Office of the
Municipal
Manager

e-mail/e-pos: cgroenewald@overstrand.gov.za
Tel: 028 313 8003
Faks/Fax: 028 313 8030 / 086 568 9726

WITHOUT PREJUDICE OF RIGHTS

20 March 2020

The Executive Mayor

COMPLAINT/ACCUSATION OF MISCONDUCT: MR ANTON KRUGER/LiberTAS

I refer to our discussion on 19 March 2020 in the above regard and specifically the e-mail dated 17 March 2020 regarding the so-called WSSA matter forwarded to all the Councillors by one Mr Anton Kruger, apparently on behalf of an organisation called LiberTAS.

I confirm that for the aforementioned matter to be considered by Council, it is necessary for it to do so in terms of the provisions of the Local Government: Disciplinary Regulations for Senior Managers, 2010 (GN 344 dated 21 April 2011).

I have not addressed the so-called WSSA matter in my memorandum dated 6 March 2020 in connection with the M5 matter to you as I was under the impression that the complaint followed the outcomes of the so-called M5 judgments (which had its origin some thirteen (13) years ago).

As far as the WSSA judgments are concerned I deny the allegations brought forward against me by said Mr Kruger. In fact I am of the opinion that his accusations stem from his apparent ignorance of the highly complex and regulated supply chain management processes which, if applied correctly (and I am confident that the Overstrand Municipality has across board highly qualified and skilled personnel dealing with supply chain management matters within the organisation as a whole), provides ample provisions for purposes of guarding against the misuse of the system. As a comment on the side, Mr Kruger's remark about the senseless conduct of the Municipal Manager to act as appeal authority is indicative of his, or his advisors', ignorance of the applicable local government law and High Court, Supreme Court of Appeal and Constitutional Court precedents.

I furthermore need to mention that Council was aware and kept informed of the whole process followed with regard to the appointment of a competent skilled and experienced operator to operate and maintain the Overstrand Municipality's water and waste water treatment works on behalf of the municipality. In this regard Councillors are referred, but not limited to, the items which served before Council on

2/194

2

- 29 July 2015 – Annexure 'CG1';
- 30 September 2015 – Annexure 'CG2';
- 30 May 2018 – Annexure 'CG3';
- 30 October 2019 – Annexure 'CG4'; and
- 28 November 2019 – Annexure 'CG5'.

The appointment of a competent and skilled operator furthermore took place in accordance with the Acquisition Management System as provided for in the municipality's Supply Chain Management Policy approved by Council on 25 June 2008 and amended from time to time – this includes a committee system for competitive bids and in terms of which the following committees for each transaction or cluster of transactions were established:

- a bid specification committee;
- a bid evaluation committee; and
- a bid adjudication committee.

As proof of the aforementioned, relevant minutes of the following committees are attached:

- Bid Specification Committee dated 14 August 2014 – Annexure 'CG6';
- Bid Evaluation Committee dated 30 October 2014 – Annexure 'CG7';
- Bid Adjudication Committee dated 7 November 2014 – Annexure 'CG8';
- Bid Specification Committee dated 27 November 2014 – Annexure 'CG9';
- Bid Evaluation Committee dated 26 February 2015 – Annexure 'CG10';
- Special Bid Evaluation Committee dated 27 February 2015 – Annexure 'CG11';
- Bid Adjudication Committee dated 6 March 2015 – Annexure 'CG12';
- Special Bid Adjudication Committee dated 9 March 2015 – Annexure 'CG13';
- Bid Evaluation Committee dated 9 July 2015 – Annexure 'CG14';
- Bid Evaluation Committee dated 15 July 2015 – Annexure 'CG15'; and
- Bid Adjudication Committee dated 17 July 2015 – Annexure 'CG16'.

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3

The proceedings of the rather technical lawsuits were, although reported to the Executive Management Team on a monthly basis, also reported to Council on 30 May 2018 (see Annexure 'CG3').

The judgments in said lawsuits are attached as follows:

- High Court of South Africa (Western Cape Division, Cape Town), 26 September 2016 – Annexure 'CG17';
- Supreme Court of Appeal, 29 March 2018 – Annexure 'CG18'; and
- Constitutional Court of South Africa, 7 June 2018 – Annexure 'CG19'.

Adv Paul Farlam, SC from the Cape Town Bar and who specialises *inter alia* in procurement/supply chain matters, was the municipality's advocate in the lawsuits above.

The reason for the matter being taken to the Appeal and Constitutional Courts is that the judgment of the High Court was irrational in that the court set aside the agreement between the municipality and Veolia, which setting aside was suspended for two (2) months from the date of the judgment. It was impossible for the municipality to follow all the legally prescribed processes for purposes of inviting new tenders and appoint a contractor within two (2) months of the date of the judgment - not even to mention the catastrophe of having water and waste water treatment works without competent, skilled, and experienced supervision.

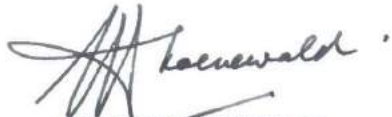
As for the questions raised in Mr Kruger's e-mail under discussion regarding WSSA, herewith my cryptic replies:

- The WSSA matter could not be settled out of court. The municipality had a binding contract with Veolia. The application was brought by WSSA without having depleted all its remedies before approaching the High Court. The latter unfortunately did not address this.
- The cost involved for all the court cases was R1 842 051,53.
- As far as I could establish Fairbridges was the Cape Town based attorney for the municipality dealing with specialised municipal related matters since 2003. The municipality brief local attorneys for purposes of debt recovery, conveyancing, etc.
- The municipality is in the process to procure the services of a panel of attorneys specialising in different fields. The bid specification process is underway and we foresee that tenders will be invited by no later than end April 2020.

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4

When regard is had to the aforementioned, it is now for Council to decide whether there is a reasonable cause to believe that an act of misconduct has been committed by me. Should this be the case, I reserve all my rights.



COENIE GROENEWALD
MUNICIPAL MANAGER

CGI 5/194
29 JULY 2015

AGENDA : SPECIAL MAYORAL COMMITTEE MEETING

**12.
WATER AND WASTE WATER TREATMENT OPERATIONS MANAGEMENT
CONTRACT: SC1508/2014**

8/2/2

S Muller/H Blignaut
17 July 2015

(028) 313 5047

Corporate Head Office

1. Executive Summary

The purpose of this report is to present Council with the Water and Waste Water Treatment Operations Management contract in its final form, and to seek Council resolution:

- To approve the contract as it is to be executed, and to authorise the Municipal Manager to sign the contract as is required by section 33 of the Local Government: Municipal Finance Management Act, No 56 of 2003 (MFMA); and
- To grant the right to use, control and manage of the water and waste water treatment works as set out in the Contract, as is required by the Municipal Asset Transfer Regulations No.R878 published in Government Gazette No. 31346 on 22 August 2008.

The Bid Adjudication Committee on 17 July 2015 recommended the award of the contract to the Accounting Officer. The latter awarded the contract on 22 July 2015.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorates: Infrastructure and Planning and Community Services
Water and Waste Water Services

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act, 56 of 2003 and its Regulations (MFMA)
Local Government: Municipal Systems Act, 32 of 2000 (MSA)
Labour Relations Act, 66 of 1995 (LRA)
Water Services Act, 108 of 1997

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Municipal Asset Transfer Regulations No R878
 Overstrand Municipality Supply Chain Management Policy
 Overstrand Municipality Contract Management Policy

6. Background/Discussion/Evaluation/Conclusion

Background

Triggered by significant investment by Overstrand Municipality in water and waste water treatment infrastructure in recent years, Council resolved in June 2011 in terms of section 77 of the MSA that the municipality must undertake an assessment in terms of MSA section 78(1) of the way in which it was structured to deliver water and sanitation services.

Following the MSA section 78(1) assessment, Council resolved on 22 January 2014 (refer to Annexure A) in terms of section 78(2) of the Act to continue to deliver water and sanitation services by way of an internal mechanism, but that a competently skilled and experienced operator should be contracted to operate and maintain the water and waste water treatment works.

The key driver of the contract is the need to secure focussed management of the operations and maintenance of the water and waste water treatment works, and to develop local skills in compliance with regulatory requirements of the operations. The outcomes sought from the contract are on-going assurance of supply of water, and treatment of waste water at the right quantity and quality, and asset preservation over the longer term.

Council delegated the Director: Infrastructure and Planning to undertake a more detailed study to inform the bid specifications, initiate the procurement process, and to report back with regard to the future financial commitments.

Discussion

The feasibility of the Contract was confirmed through a competitive bidding process in compliance with the Supply Chain Management Framework. There is acceptance of the risk proposed in the attached contract for a contract period of 15 years. The price of the Contract is affordable within the current municipal budget. Refer to Annexure G.

The economic and financial benefit to Overstrand Municipality includes:

- (1) The total estimated expenditure over the contract period of 15 years is estimated to be R 830 056 837, excluding VAT, compared to a total estimated expenditure of R 1 088 616 122, excluding VAT, if the Municipality was to fill the organogram as required by regulations. With escalation applied at 6% this reflects a saving of 23.7%;
- (2) Annual escalation of fixed operational and maintenance costs is limited to CPI for the contract period.

(3) Asset preservation in the long term is secured, combined with optimized treatment process efficiencies.

The contract will not have any negative impact on water services tariffs, as the cost is within the approved MTREF of the Municipality, and annual escalation over the contract period is limited to CPI and SALGBC agreed rates for the salary component.

In discussion, National and Provincial Treasury have confirmed that the transaction is not a public private partnership. Nor would the transaction constitute privatisation, as the assets remain with the Municipality, and the Municipality remains accountable for the function. Privatisation would in effect divest the Municipality from any responsibility in regard to the assets or function. In this case the Municipality has a vested interest in that it owns the assets and in order to ensure service delivery. It must take steps to ensure that the bulk works are operated and maintained optimally, and has step in rights if the operator does not perform in accordance with the Contract

Evaluation

The contract is structured to meet the needs of the Municipality and the long term objectives of assurance of supply and asset preservation.

The Contract will achieve the following:

- **Skills development and retention** – regulatory compliance;
- **Assurance of supply** – as Water Services Authority with a duty to ensure service delivery, and as Water Services Provider with direct accountability to the community and mandate to deliver water services, it is important that the Works are operated and maintained optimally;
- **Operations optimisation** – focussed management must optimise operations in order to ensure on-going effectiveness and efficiency within the current budget;
- **Asset preservation** – the Municipality has invested significantly in the infrastructure and it requires focussed management to ensure that the use of the assets can be optimised.

7. Financial Implications

Source of Funding eg. Capital/Operating Budget Provisions

The financial implications of the contract over its full duration are illustrated in Table 1 below. The estimated cost of the contract over the contract period of 15 years is R830 056 837, excluding VAT. The costs below assume a CPI increase of 6% for the operational costs and 6.1% for the salary contribution.

The cash flow takes into account that the Operator will use the existing supply contract of the Municipality for chemicals up to the end of June 2017, and thereafter its own suppliers, as instructed in the bidding process. The rates

tendered by the Operator for his own chemical supply will result in an estimated annual saving of R 845 000 (before escalation) to the municipality.

The table below compares the projected cost of the Operator with the projected cost of the municipality, if all required positions are created and filled to achieve complete regulatory compliance.

PROJECTED CASH FLOW				
			OPERATOR (VEOLIA)	MUNICIPALITY
Number	Year	Months	Amount pa	Amount pa
1	2015/16	10	R 27 969 966.14	R 37 034 301.67
2	2016/17	12	R 35 660 860.52	R 46 189 965.70
3	2017/18	12	R 37 162 255.01	R 48 821 538.72
4	2018/19	12	R 39 739 064.78	R 52 206 796.64
5	2019/20	12	R 42 506 131.20	R 55 842 002.32
6	2020/21	12	R 45 478 540.92	R 59 746 975.69
7	2021/22	12	R 48 672 664.73	R 63 943 223.73
8	2022/23	12	R 52 106 273.83	R 68 454 093.13
9	2023/24	12	R 55 798 667.01	R 73 304 937.53
10	2024/25	12	R 59 770 810.12	R 78 523 300.60
11	2025/26	12	R 64 045 488.74	R 84 139 116.64
12	2026/27	12	R 68 647 475.47	R 90 184 930.42
13	2027/28	12	R 73 603 713.35	R 96 696 138.07
14	2028/29	12	R 78 943 516.84	R 103 711 251.20
15	2029/30	12	R 84 698 792.29	R 111 272 186.44
16	2030/31	2	R 15 252 616.87	R 18 545 364.41
Total		180	R 830 056 837.79	R 1 088 616 122.91

Source of Funding: Operating Budget (all amounts in table below are excluding VAT)

In evaluating the financial implications the actual expected expenditure was compared with the current budgeted amounts for the Function. The comparison is shown below and indicates that there are sufficient funds in the budget.

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Table 2: Budget Required

YEAR	BUDGET	ACTUAL ESTIMATED	DIFFERENCE
2015/16	R 35 260 517.00	R 27 969 966.14	R 7 290 550.86
2016/17	R 36 458 482.00	R 35 660 860.52	R 797 621.48
2017/18	R 38 506 166.00	R 37 162 255.01	R 1 343 910.99

Asset Implications:

The water and waste water treatment works will be made available to the operator to operate and maintain for the duration of the contract. Whilst the operator will take operational risk in regard to the assets, the Municipality will remain the owner. No lease fee is required as the contract is a management contract and the Municipality pays the operator a management fee to operate the works. The granting of the right of use is made with the objective of achieving key economic objectives namely asset preservation and operations optimisation.

Because of the direct interface of the contract with the Municipality's water service provider obligations, the risk of non-performance or poor performance must be managed by the Municipality. The capital assets will not be required for the Municipality's own use during the contract period, other than for access to monitor the performance of the operator and to execute the planning and capital development function.

Conclusion:

The Contract is feasible, affordable and achieves the objectives of the Municipality

8. Staff Implications

If Council approves the contract, this will trigger the transfer of the function of operating and maintaining the water and waste water treatment works for a period of 15 years. This triggers section 197 of the LRA.

The Municipality has undertaken that there will be no job losses as a result of the contract. The contractor requires the human resource capacity to continue the undertaking of the operations of the water and waste water treatment works, which has a direct impact on the ability of the Municipality to execute its obligation to ensure service delivery.

The 50 municipal employees currently involved with the function have been identified to transfer. The affected employees will be transferred on terms and conditions in the whole not less favourable as their current benefits, from the effective date of the Contract.

The transferred employees will be paid out their accrued leave by the municipality.

The Local Labour Forum (LLF) has been kept advised of progress. A LLF Working Group was established by the LLF, with representation from the Municipality and IMATU and SAMWU. There was regional and local representation from the unions. The task of the working group was to ensure that there was information dissemination; identify potentially impacted employees; identify options for potentially impacted employees; identify legal consequences of options and implementation risks, and report back to the LLF. The working group has no decision making authority. Although both IMATU and SAMWU are in principle opposed to the transfer of the employees, no alternative agreements have been proposed by the Unions, and accordingly section 197 of the LRA applies, with its protection for the employees.

The Municipality is obliged to ensure capacity to manage the contract and monitor performance.

9. Comments from other Departments, Divisions and Administrations

Both section 33 of the MFMA and the Municipal Asset Transfer Regulations require that notice be given to the community and to relevant stakeholders.

In March 2015 a notice was published in regard to the municipality's obligations in terms of the proposed contract and the proposed granting of the right to operate and maintain the water and waste water treatment works. The community and other interested parties were invited to submit to the Municipality comments or representations in respect of the proposed contract and the granting of the right and obligation to operate and maintain the Bulk Works. No formal response in writing in the relevant tender box was received. A local newspaper independently reported on the matter.

See Annexure B: Notice and Information Statement.

A report on the contract and the granting of the right to operate and maintain the Bulk Works was sent to National Treasury, Provincial Treasury, the Department of Local Government and Department of Water & Sanitation. A working session was facilitated to discuss the report.

Written views were received only from the Western Cape Provincial Treasury, which in essence commended the Municipality on the initiative and raised the need to ensure procedural compliance regarding procurement and decision making and ensuring funds are available for the duration of the contract. The

Provincial Treasury "took note of and values the effort of Overstrand Municipality in securing the required institutional capacity to ensure long-term efficient operation and maintenance of water and waste water treatment works. Given that South Africa is a water scarce country, the Municipality is commended in exploring alternative service delivery mechanisms in the delivery of the service."

The Provincial Treasury concluded "given the current financial position of the Municipality, Treasury has, in principle, no objection against your intention, subject to the required Supply Chain Management processes being followed, the requirements of the MFMA (especially s33) being adhered to and the carry through implications over the MTREF be taken into account within the budgets of each of the affected years with the required budgetary provision to ensure affordability and sustainability over the new MTREF years."

Refer to Annexure D, Provincial Treasury Letter, and Annexure H, BAC report of 17 July 2015.

In terms of s19(4) of the Water Services Act 106 of 1997, the Operator has disclosed and provided information on any other interests it may have which are ancillary to or associated with the Municipality; and any rate of return on investment it will earn or will gain by entering into the agreement. (see Annexure E: Veolia Letter)

Once concluded, a copy of the contract must be supplied to the Western Cape Provincial Government and the Minister of Water & Sanitation.

10. Annexures

- Annexure A: Council Resolution of 22 January 2014 in terms of section 78(2) of the Municipal Systems Act
- Annexure B: Public Notice in English, Afrikaans and Xhosa and Information Statement
- Annexure C: Stakeholder Letter
- Annexure D: Comments received from Provincial Treasury
- Annexure E: Veolia Letter
- Annexure F: Draft Contract
- Annexure G: MFMA Section 33 Report by Worley Parsons
- Annexure H: BAC Report 17 July 2015

RECOMMENDATION TO THE COUNCIL:

1. that **cognisance be taken** of the responses received to the request for comments, representations, views and recommendations in respect of the contract and granting of the right to use the water and waste water treatment works;

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AGENDA : SPECIAL MAYORAL COMMITTEE MEETING

29 JULY 2015

2. that the right to use, control and manage the water and waste water treatment works for the contract period of 15 years to Veolia Water Solutions & Technologies (Pty) Ltd, **be granted**;
3. that the significant economic financial benefit from the contract for the Municipality, **be noted**;
4. that the Contract for the Management of the Operation and Maintenance of the Water and Waste Water Treatment Works in the jurisdiction of Overstrand Municipality, **be approved**; and
5. that the Municipal Manager be authorised to sign the contract on behalf of Overstrand Municipality.

RESPONSIBLE OFFICIAL :

S MÜLLER
H BLIGNAUT
M BARTMAN

TARGET DATE FOR IMPLEMENTATION :

1 SEPTEMBER 2015

TARGET DATE TO INFORM APPLICANT :

29 JULY 2015

CGZ 13/194

8.
**WATER AND WASTE WATER TREATMENT OPERATIONS MANAGEMENT
 CONTRACT: SC1508/2014 – PROPOSED AMENDMENTS**

8/2/2

Stephen Müller/ Hanré Blignaut (028) 313 5047

Corporate Head Office

22 September 2015

1. Executive Summary

On 29 July 2015 Council approved the contract for the management of the operation and maintenance of the water and waste water treatment works in the jurisdiction of Overstrand Municipality (the Contract) and authorised the Municipal Manager to sign the contract with Veolia Water Solutions & Technologies (Pty) Ltd (the Operator).

The purpose of this report is to advise Council regarding the process of implementation and to seek Council approval of proposed amendments to the Contract to address practical issues arising in the administrative processes involved with the implementation of the Contract and Council's resolution.

The proposed amendments can be summarized as follows: (1) to move the effective date of the contract from 1 September 2015 to 1 November 2015; (2) to permit that the accrued leave liability in respect of the Transferred Employees be paid to the Operator rather than the Transferred Employees; (3) to protect Council from excessive claims from the Operator in the case of a judgement being granted which sets aside the tender award to the Operator; and (4) to permit the Operator to delay the building of the new permanent offices until there is certainty about the outcome of the risk of judgment being grant to set aside the tender award to the Operator.

2. Service Delivery and Budget Implementation Plan – IGNITE

Infrastructure and Planning and Community Services
 Water and Waste Water Services

3. Compliance with Strategic Priorities

Creation and maintenance of a safe and healthy environment
 Management and conservation of the natural environment
 Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

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5. Legal Requirements

Local Government: Municipal Finance Management Act, 56 of 2003 and its regulations (MFMA)

Local Government: Municipal Systems Act, 32 of 2000 (MSA)

Labour Relations Act, 66 of 1995 (LRA)

Water Services Act, 108 of 1997 (WSA)

Municipal Asset Transfer Regulations No.R878

Overstrand Municipality Supply Chain Management Policy

Overstrand Municipality Contract Management Policy

6. Background/Discussion/Evaluation/Conclusion**Background**

Following an MSA section 78(1) assessment, Council resolved on 22 January 2014 in terms of MSA section 78(2) to continue to deliver water and sanitation services by way of an internal mechanism, but that a competently skilled and experienced operator be contracted to operate and maintain the water and waste water treatment works.

The feasibility of such a contract was confirmed through a competitive bidding process in compliance with the Supply Chain Management Framework. The Municipal Manager awarded the contract (Contract SC 1508/2014) to the Operator on 22 July 2015.

Following the prescribed process in terms of the MFMA and its regulations, including section 33 regarding future budgetary implications, the proposed long term contract was approved by Council on 29 July 2015, and Council authorised the Municipal Manager to sign the contract.

Since then, an application to the High Court to review Overstrand Municipality's decision of 10 March 2015 to identify Veolia as the preferred bidder on Contract SC 1508/2015, dated 7 September 2015, was received from the 2nd preferred bidder, Water and Sanitation Services South Africa (Pty) Ltd (WSSA).

Legal advice was obtained and an opposing affidavit is being compiled. Initial indications are that there are serious flaws in WSSA's review application. It is however necessary to protect the interest of the municipality, should the review succeed.

Specific amendments are therefore recommended to clauses regarding termination (clause 42) and effective date (clause 2.2.9 and 3.2), and also to address the practical issues arising in regard to the accrued leave liability. These are discussed in the following sections (not in chronological order).

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Discussion

The proposed amendments to the Contract are set out below, marked up for ease of reference.

1. Consequences on Termination

Clause 42 of the approved contract deals with termination of the contract. In order to protect Council in case of a successful review application, and to describe what happens if the review application succeeds and/or the award of the tender is set aside, it is proposed that a new clause 42.6 be added to clause 42, to limit the contingent liability of the Municipality towards the Operator:

42.6. Notwithstanding what is contained elsewhere in this Contract and more specifically this clause 42, the Parties record and agree for the sake of absolute certainty that the Municipality shall have the right to terminate this Contract, in the event of a judgment being granted (whether pursuant to WCHC Case No. 17203/2015 or any other case), which sets aside the tender award (Tender No. SC 1508/2014) to the Operator, and that judgment not being subject to appeal, or, if it is, where such an appeal is not pursued within the permissible allowed time: in which event neither party shall have any claim against the other for any loss or other damage arising from or connected to the conclusion or termination of the Contract, save that the Operator will have the right to be paid for services performed up until the date of termination as contemplated herein, and the Municipality will retain its rights in respect of any breach committed by the Operator during the duration of the Contract which has not yet been remedied or compensated. The termination of the Contract as contemplated in this clause 42 shall be without prejudice to any other rights that the Municipality may have at law.

Consequently, clause 42.1 needs to be amended to include reference to the new clause 42.6, as follows:

42.1. In addition to what is set out in clause 42.6 below, the termination of this Contract may occur at the instance of the Municipality and on a date specified in writing by the Municipality.

Clause 42.2 to 42.4 effectively allows for a transition or hand over phase of inter alia staff and assets in case of termination, until such time as control of the undertaking of the function is taken over by a new operator or the municipality (clause 42.4). Clause 42.5 needs to be amended to be aligned with clause 42.4, to allow for this transition phase until control of the undertaking of the function is taken over by a new operator or the municipality. The proposed amended wording of clause 42.5 is the

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following:

- 42.5. This Contract shall terminate on a date or an occurrence of an event agreed between the parties or if no such date or event is agreed between the parties when a new operator is appointed by the Municipality and where the Municipality or its nominee has taken control of the provision of the service.

Further, clause 22 dealing with the Operator's proposal to build new offices on the Municipality's property is updated by the insertion of 22.9 to confirm that the Operator needs not build the new offices after the legal process of review is finalised. Clause 22.8 is amended to clarify that there is no compensation due to the Operator for any building of offices on municipal land.

- 22.8 The new office building shall accede to the land of the Municipality without compensation to the Operator. On termination of the Contract risk in the new office building shall transfer to the Municipality at no cost to the Municipality.
- 22.9 The Operator will only be required to commence with the building of permanent new offices on the Municipality's property when the right to terminate referred to in clause 42.6 has come to an end and in the interim the Operator will provide temporary site offices.

2. Effective Date:

The effective date of the contract is defined in clause 2.2.9 as 1 September 2015. Due to the extent of administrative processes involved in e.g. the transfer of staff, and the legal review process, it is agreed between the parties that the effective date be moved to 1 November 2015 or as soon thereafter as is possible in the circumstances and agreed to by the parties. Clauses 2.2.9 and 3.2 therefore need to be amended as follows:

- 2.2.9. "Effective Date" means 1 November 2015, unless otherwise agreed between the parties.
- 3.2 The appointment shall commence on the Effective Date, notwithstanding date of signature of the Contract.

3. Transfer of Accrued Leave liability:

The Contract provided in clause 28.5.1 that the employees would be paid out accrued leave at the date of transfer to the Operator. Employees have indicated they may want to transfer with leave accrued. Accordingly the Municipality will transfer the contingent liability to the Operator rather

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than to the Transferred Employees, and the Operator and the Transferred Employee will agree what is to be paid out and what is to be taken as paid leave. There is no financial implication for the Municipality - it is an alternative payment mechanism to address the employees voiced concerns. Clause 28.5.1 therefore needs to be amended as follows:

28.5.1 the leave pay accrued to the Transferred Employees. The Municipality will transfer the value of the Transferred Employee's leave pay accrued up to the Effective Date to the Operator within 30 days of the Effective Date. The Operator agrees to execute the Transferred Employee's option to have the full or partial leave accrued as at the Effective Date paid to the Transferred Employee, less any tax due, provided that the Transferred Employee must have exercised the option in writing with the Operator within three months of the Effective Date. Payment shall be made by the Operator to the Transferred Employee based on the Transferred Employees election, within 30 days of the Transferred Employee making the election in writing and the Municipality having made the transfer to the Operator. The parties will disclose the agreement in this respect to the Transferred Employees;

4. Salary Contribution

Council to note that the salary increases as nationally negotiated at SALGBC have been confirmed at 7% effective 1 July 2015. The Salary Contribution will thus be adjusted from the assumption of 6.1% used to the actual, to reflect the actual escalation, as provided for in the Schedule: Salary Contribution Base 2015.

Evaluation

Approval of the proposed amendments will take steps to ensure that the Municipality is protected against excessive claims in the unlikely case of a successful review application, that the effective date can be practically implemented, and that the Municipal Manager signs the contract in its final form as approved by Council.

Conclusion

The proposed amendments to the contract will not affect the feasibility and affordability of the contract, nor the future budgetary implications as presented to Council on 29 July 2015.

7. Financial Implications

The proposed amendments to the Contract do not change the financial implications of the Contract as presented to and considered by Council on 29 July 2015, other than to protect the Municipality against a potential contingency subject to the outcome of the legal review process and to delay the effective date.

8. Asset Implications

The proposed amendments do not change the asset implications as presented to and considered by Council on 29 July 2015.

9. Employee Implications

The proposed amendments do not change the employee implications as presented to and considered by Council on 29 July 2015, other than to address the employee request that they have the option to transfer with accrued leave.

10. Comments from other Departments, Divisions, Administrations and relevant Organs of State**Senior Manager: Legal Services, Mr Lionel Wallace:**

Legal Services agree that the incorporation of an additional clause is needed in order to protect the Municipality's position in the event of an unfavourable outcome in the review application. In addition to ensure that section 42.5 tie in with section 42.4, an additional amendment was made to section 42.5. We can further advise that our office discussed both the merits of the review application, and the protection and mitigation of the Municipality against any risk flowing from an unfavourable court judgment with our attorneys. I further agree with the recommendations set forth in the agenda.

11. Annexures

- Annexure A: Council resolution of 29 July 2015
- Annexure B: Amended Contract as it is to be executed
- Annexure C: Contract as approved by Council on 29 July 2015

RECOMMENDATION TO THE COUNCIL:

1. that the proposed amendments to the approved contract, as contained in the report, for the management of the operation and maintenance of the water and waste water treatment works in the jurisdiction of Overstrand Municipality, **be approved**;

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30 MAY 2018

AGENDA OF A MAYORAL COMMITTEE MEETING:

12. LONG TERM BULK WATER SERVICES OPERATION AND MAINTENANCE CONTRACT: LITIGATION

13/1

H Blignaut

(028) 3135047

Corporate Head Office

14 May 2018

1. Executive Summary

The purpose of this report is to inform Council of progress in terms of the litigation processes involving Overstrand Municipality and Water and Sanitation Services South Africa (Pty) Ltd (WSSA), with regards to Overstrand Municipality's existing 15 year bulk water services operation and maintenance contract.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate Infrastructure & Planning
Department Engineering Planning: Water Services

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

National Water Act, Act 36 of 1998
Water Services Act, Act 108 of 1997
Local Government : Municipal Finance Management Act, Act 56 of 2003 (MFMA)
Preferential Procurement Policy Framework Act, Act 5 of 2000
Promotion of Administrative Justice Act, Act 3 of 2000

6. Background/Discussion/Evaluation/Conclusion

Background

Council resolved on 22 January 2014 that a competently skilled and experienced operator be contracted to operate and maintain the municipality's water and waste water treatment works (refer to Annexure A).

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30 MAY 2018

A two stage bidding process was subsequently followed in terms of the municipality's Supply Chain Management Policy, followed by an MFMA section 33 process, in order to inform Council of the future financial implications of the contract, and for Council to approve the contract.

A 15 year contract (Contract SC 1508/2014) was awarded to Veolia Water Solutions and Technologies South Africa (Pty) Ltd (Veolia) on 22 July 2015 (refer to Annexure B). Council approved the final contract, following an MFMA section 33 process, on 30 September 2015 (refer to Annexure C).

Veolia commenced with its duties in terms of the contract on 1 November 2015, and has performed very satisfactory to date, having implemented several treatment process and maintenance improvements, and embarked on intensive training programs for the operational staff (mainly ex-municipal staff).

Discussion

The bidder scoring the second highest points during the procurement process, WSSA, applied to the Cape High Court for review of the municipality's award of the contract to Veolia.

In summary, WSSA's review application was based on the staffing requirements at the different treatment plants, where the municipality allowed a period of 3 years for the successful bidder to comply with the relevant regulations (very few treatment plants in the country comply with these regulations, and the contract was viewed as a vehicle to improve compliance in Overstrand). Veolia included innovative ways to comply with the staffing requirements over the 3 year period, e.g. application to the Department of Water and Sanitation (DWS) for relaxation of the requirements at smaller automated plants, and therefore their tender price was the lowest. Veolia accepted in writing the risk to comply with legislation at their tendered price.

The Cape High Court delivered judgement on 26 September 2016. The Court ordered the municipality to re-consider the award to Veolia, based on the papers filed in the review application, and the Court set aside the contract with Veolia from the date that the tender is re-awarded, or within 2 months from judgment, whichever date is the earliest.

Overstrand Municipality subsequently applied for leave to appeal to the Supreme Court of Appeal (SCA). The appeal was heard by the SCA on 5 March 2018. The SCA delivered judgement on 29 March 2018, and amended the High Court order by ordering that the municipality complete a full new tender process within a period of 6 months from the date of the SCA judgement, where after the contract with Veolia is set aside.

The SCA did not entertain the argument that WSSA did not make use of the internal remedies available to them, i.e. the appeal processes in terms of the Supply Chain Regulations and the Municipal Systems Act. The SCA

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AGENDA OF A MAYORAL COMMITTEE MEETING:**30 MAY 2018**

maintained that the successful bidder had to comply with the legislative requirements from the commencement date of the contract, i.e. that the 3 year period allowed by the municipality for this purpose was problematic. The SCA derived that both Veolia's and WSSA's bids were therefore not compliant.

The municipality obtained legal advice, and applied for leave to appeal to the Constitutional Court on 23 April 2018, and is currently awaiting a decision in this regard. In the interim bid specifications were prepared, in order to be in a position to advertise for tenders immediately, should the Constitutional Court not approve the application for leave to appeal.

Evaluation

Overstrand Municipality has acted in the best interest of the public by awarding this long term contract to a skilled and experienced bidder whom accepted the risk of regulatory compliance at a bid price of R 4 million per year less than the 2nd lowest bid. The SCA did not entertain the argument that WSSA did not make use of the internal remedies available to them. Furthermore, the period of 6 months allowed by the SCA to complete a full new tender process is considered to be unrealistic, taking into account the lengthy supply chain management process involved with a contract of this nature, including the required process in terms of section 33 of the MFMA. For these reasons the municipality applied for leave to appeal to the Constitutional Court.

Conclusion

The municipality is currently awaiting a decision from the Constitutional Court with regard to the application for leave to appeal.

The Constitutional Court can either direct that the application for leave to appeal be set down for verbal argument, to cover the merits, or the Court can dismiss the application based on the papers filed, or the Court can vary the SCA order based on the papers filed.

7. Financial Implications

The financial implications will eventually depend on the decision by the Constitutional Court. Should the Constitutional Court entertain the appeal, and decide in favour of the municipality, the contract with Veolia will continue for the next more than 12 years, with no additional financial implication to Council.

Should the Constitutional Court dismiss the municipality's application for leave to appeal, a full new tender process will have to be followed. The financial implications will only be known after completion of evaluation of bids received during the competitive bidding process. In this case Council will be informed of the financial implications through the MFMA section 33 process.

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AGENDA OF A MAYORAL COMMITTEE MEETING:**30 MAY 2018****8. Staff Implications**

All the staff involved with the operation of the municipality's treatment plants were transferred to Veolia on the commencement date of the contract. If a new tender process has to be followed eventually, and should Veolia not be the successful bidder, the ex-municipal personnel will be protected in terms of section 197 of the Labour Relations Act. They will have to be transferred to the new operator with conditions of employment no less favourable than their existing conditions of employment.

9. Comments from other Departments, Divisions and Administrations**Snr Manager, Legal Services : L Wallace (028 313 5031)**

In addition to the provided summary the original High Court order was amended to read that the matter be remitted to the municipality to retender afresh starting with a RFQ, and it must be completed within 6 months, with the contract with Veolia to be set aside, with the setting aside suspended for 6 months until, or until the tender is awarded, whichever is sooner.

Following the Supreme Court of Appeal, order papers were filed at the Constitutional Court to request, in the first instance, leave to appeal at the Constitutional Court against the whole of the judgment and order of the Supreme Court of Appeal, alternatively the municipality request that the substituted prayer 4 of the High Court order should be varied to read "In consequence of the order in paragraph 1, the contract between the first and second respondent is set aside, save that the setting aside of the contract is suspended for a period of nine months. In that eventuality, prayer 3 of the Supreme Court of Appeal order should also amended to refer to a nine month period which should commence running from the date of the order of the Constitutional Court.

10. Annexures

Annexure A: Council resolution of 22 January 2014
 Annexure B: Contract award to Veolia 22 July 2015
 Annexure C: Council resolution of 30 September 2015

RECOMMENDATION TO THE COUNCIL:

1. that cognisance be taken of the application for leave to appeal to the Constitutional Court to review the order by the Supreme Court of Appeal of 29 March 2018 that the existing Contract SC 1508/2014 with Veolia be set aside; and
2. that cognisance be taken of the new tender process to be followed in terms of Council Resolution 4.7. of 22 January 2014, should the application for leave to appeal to the Constitutional Court be unsuccessful.

23/194

AGENDA OF A MAYORAL COMMITTEE MEETING:

30 MAY 2018

RESPONSIBLE OFFICIAL :	H BLIGNAUT
TARGET DATE FOR IMPLEMENTATION :	DEPENDING ON DATE OF CONSTITUTIONAL COURT DECISION
TARGET DATE TO INFORM APPLICANT :	NOT APPLICABLE
TARGET DATE TO INFORM OBJECTOR :	NOT APPLICABLE

24/194
Annexure A
1/1

8

MINUTES : SPECIAL COUNCIL MEETING

22 JANUARY 2014

4.7
REPORT ON MUNICIPAL SYSTEMS ACT, SECTION 78, ASSESSMENT OF
WATER AND SANITATION SERVICE DELIVERY MECHANISMS

(ITEM 10, PAGE 144 : SPECIAL MAYORAL COMMITTEE MEETING :
22 JANUARY 2014)

MEMBERS OF THE ANC INDICATED THAT THEY ARE AGAINST
RECOMMENDATIONS 4 AND 5. CLLR M MSHENXISWA MADE A COUNTER
PROPOSAL TO THE EFFECT THAT THE MUNICIPALITY'S STAFF BE TRAINED
TO DO THE WORK.

WHEN PUT TO VOTE, 10 MEMBERS VOTED IN FAVOUR OF THE
RECOMMENDATION OF CLLR MSHENXISWA, AND 15 MEMBERS VOTED IN
FAVOUR OF THE RECOMMENDATION OF THE EXECUTIVE MAYOR.

THE RECOMMENDATION OF THE EXECUTIVE MAYOR WAS THUS CARRIED.

RESOLVED (UNANIMOUSLY):

1. that the outcomes of the independent assessment **be noted**;
2. that the comments received from organised labour **be noted**;
3. that the continuation of water services delivery by way of an internal mechanism **be approved**;

RESOLVED:

4. that it **be approved** in principle that a competently skilled and experienced operator be contracted to operate and maintain the Water Treatment Works and Waste Water Treatment Works; and
5. that the Director: Infrastructure & Planning **be delegated** to:
 - 5.1. Undertake a more detailed study to inform bid specifications;
 - 5.2. Initiate the procurement process;
 - 5.3. Report back with regard to the implications of future financial commitments in terms of section 33 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

RESPONSIBLE OFFICIAL

HANRE BLIGNAUT
MIKE BARTMAN

IMPLEMENTATION DATE:

1 FEBRUARY 2014

25/194
Annexure B 1/8

**Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.**

REMARK:

In terms of the prescriptive provisions of Paragraph 5(2)(a) of the Supply Chain Management Policy, tenders with a rand value above R 10 million (VAT included) must be approved by the Accounting Officer and may not be sub delegated

**5.4 TENDER NO. SC 1508/2014: WATER AND WASTE WATER TREATMENT OPERATIONS
MANAGEMENT CONTRACT**

Upon a proposal by the Director: Local Economic Development and Tourism, Mr. S Madikane duly seconded by the Senior Manager: Supply Chain Management, Ms. R La Cock, it was

RESOLVED TO RECOMMEND TO MUNICIPAL MANAGER:

- 1.1 that as they scored the highest points in terms of Council's Preferential Procurement Policy, Tender SC 1508/2014, Water & Waste Water Treatment Operation Management Contract, be awarded to:

Service Provider / Supplier:		Veolia Water Solutions & Technologies South Africa (Pty) Ltd		SCM Supplier #		
Service / Goods Provided:		Water and Waste Water Treatment Operations Management Contract				
Vote:	Item Description	Refer to Annexure G			Cost Code	N/A
	Cost Account	Refer to Annexure G				
	Unique Key	Refer to Annexure G				
Amount (Excl. VAT):		Fixed and variable rates and Salary Contribution and implementing agent fee %: refer to schedules below (year 1)			Contingency:	5%
Amount in words:		Fixed and variable rates and Salary Contribution and implementing agent fee %: refer to schedules below (year 1)				
Escalation Percentage:		CPI for Operator Fee and SALGBC increases for Salary Contribution		Escalation Date:	1 July Annually	
Contract Owner:		Stephen Muller & Roderick Williams		Contract Champion:	Hanre Bignaut & Mike Bartman	
CONTRACT PERIOD:						
Implementation date:		1 September 2015, subject to Council approval of the Contract in its final form		End date:	31 August 2030	Period: 15 years

- 1.2 That the contract only be signed after Council's approval of the final contract.

Schedule of Rates / ...

The Schedule of Rates consists of the Operator's submission of:

1. the Fixed Fee for undertaking the Function,
2. the Variable Fee for undertaking the Function
3. the Salary Contribution for undertaking the Function
4. The Municipality's budgeted provisional sums for the Large Repairs and Maintenance Projects and Emergency Repairs
5. Two schedules and summaries for the Variable Fee are namely Option 1 for the instance of using the existing OM chemicals contract which will be in force until 30 June 2017, and Option 2 for the instance of using own chemicals suppliers.

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26/194
B 2/8

Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

6. the Implementing Agent (IA) Fee (% mark up on costs to be charged to undertake IA Services).

1.3 The necessary budget provision be made for the leave pay accrued to the Transferred Employees. The Municipality will be responsible for paying the leave pay accrued to the Effective Date and undertakes to pay the Transferred Employees at the end of the third month after the Effective Date, less any tax due. The parties will disclose the agreement to the Transferred Employees;

Schedule of Rates: Veolia Water Solutions:

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A	GENERAL			
A.1	FIXED CHARGES WASTEWATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.1.1	Hawston WWTW: O&M	12	R 19 220.00	R 230 640.00
A.1.2	Hermanus WWTW: O&M	12	R 46 830.00	R 561 960.00
A.1.3	Stanford WWTW: O&M	12	R 18 225.00	R 218 700.00
A.1.4	Gansbaal WWTW: O&M	12	R 26 250.00	R 315 000.00
A.1.5	Kleinmond WWTW: O&M	12	R 23 170.00	R 278 040.00
A.1	SUBTOTAL A.1			R 1 604 340.00
A.2	FIXED CHARGES WATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.2.1	Preekstoel WTW: O&M	12	R 432 920.00	R 5 195 040.00
A.2.2	Buffels River WTW: O&M	12	R 17 680.00	R 212 160.00
A.2.3	Franskraal WTW: O&M	12	R 54 740.00	R 656 880.00
A.2.4	Pearly Beach WTW: O&M	12	R 3 760.00	R 45 120.00
A.2.5	De Kelders WTW: O&M	12	R 5 075.00	R 60 900.00
A.2.6	Stanford WTW: O&M	12	R 115.00	R 1 380.00
A.2.7	Baardskeerdersbos WTW: O&M	12	R 4 890.00	R 58 680.00
A.2.8	Kleinmond WTW: O&M	12	R 35 660.00	R 427 920.00
A.2.9	Buffeljags WTW: O&M	12	R 135.00	R 1 620.00
A.2	SUBTOTAL A.2			R 6 659 700.00

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3 3/8

Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.3	FIXED CHARGES SURFACE WATER SOURCES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.3.1	Monthly charge for all surface water sources combined	12	R 38 300.00	R 459 600.00
A.3	SUBTOTAL A.3			R 459 600.00
A.4	FIXED CHARGES BOREHOLE PUMPS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.4.1	Monthly charge for all borehole pumps combined	12	R 2 725.00	R 32 700.00
A.4	SUBTOTAL A.4			R 32 700.00
A.5	FIXED CHARGES SURFACE WATER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.5.1	Monthly charge for all surface water pump stations combined	12	R 22 810.00	R 273 720.00
A.5	SUBTOTAL A.5			R 273 720.00
A.6	FIXED CHARGES BULK WATER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.6.1	Monthly charge for all bulk water pipelines combined	12	R 74 210.00	R 890 520.00
A.6	SUBTOTAL A.6			R 890 520.00

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Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.7	FIXED CHARGES RESERVOIRS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.7.1	Monthly charge for all reservoirs combined	12	R 25 060.00	R 300 720.00
A.7	SUBTOTAL A.7			R 300 720.00
A.8	FIXED CHARGES SEWER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.8.1	Monthly charge for all sewer pumpstations	12	R 28 760.00	R 345 120.00
A.8	SUBTOTAL A.8			R 345 120.00
A.9	FIXED CHARGES BULK SEWER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.9.1	Monthly charge for all sewer pipelines combined	12	R 63 250.00	R 759 000.00
A.9	SUBTOTAL A.9			R 759 000.00

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Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

B) Variable Rates based on Overstrand Chemicals Contract					
Ref no	ITEM		No of months	Rate per kl (excluding VAT)	TOTAL (for year)
B	VARIABLE CHARGES (Based on OMI Chemicals contract)				
B.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received	
B.1.1	Hawston WWTW	10 490	12	R 0.36	R 45 316.80
B.1.2	Hermanus WWTW	227 490	12	R 0.20	R 545 976.00
B.1.3	Stanford WWTW	14 170	12	R 0.43	R 73 117.20
B.1.4	Gansbaai WWTW	35 190	12	R 0.18	R 76 010.40
B.1.5	Kleinmond WWTW	42 920	12	R 0.10	R 51 504.00
	SUBTOTAL B.1				R 791 924.40
B.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
B.2.1	Preekstoel WTW: O&M	334 340	12	R 0.24	R 962 899.20
B.2.2	Buffels River WTW: O&M	73 700	12	R 0.83	R 734 052.00
B.2.3	Franskraal WTW: O&M	81 610	12	R 4.13	R 4 044 591.60
B.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.94	R 178 788.00
B.2.5	De Kelders WTW: O&M	46 420	12	R 0.42	R 233 956.80
B.2.6	Stanford WTW: O&M	24 640	12	R 0.03	R 8 870.40
B.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.97	R 57 850.80
B.2.8	Kleinmond WTW: O&M	63 080	12	R 0.55	R 416 328.00
B.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL B.2				R 6 637 336.80

Note: if the cession of Overstrand Municipality's chemicals contract to Veolia for the remainder of the contract period is not successful, the amounts for chemicals supplied by Overstrand Municipality will be deducted from payments due to Veolia for the function.

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Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

C) Variable Rates based on Veolia's own chemical supply					
Ref no	ITEM		No of months	Rate per k (excluding VAT)	TOTAL (for year)
C	VARIABLE CHARGES (Based on own Chemicals supply)				
C.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received	
C.1.1	Hawston WWTW	10 490	12	R 0.28	R 35 246.40
C.1.2	Hermanus WWTW	227 490	12	R 0.18	R 491 378.40
C.1.3	Stanford WWTW	14 170	12	R 0.36	R 61 214.40
C.1.4	Gansbaai WWTW	35 190	12	R 0.15	R 63 342.00
C.1.5	Kleinmond WWTW	42 920	12	R 0.07	R 36 052.80
	SUBTOTAL C.1				R 687 234.00
C.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
C.2.1	Preekstoel WTW: O&M	334 340	12	R 0.22	R 882 657.60
C.2.2	Buffels River WTW: O&M	73 700	12	R 0.76	R 672 144.00
C.2.3	Franskraal WTW: O&M	81 610	12	R 3.73	R 3 652 863.60
C.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.82	R 155 964.00
C.2.5	De Kelders WTW: O&M	46 420	12	R 0.27	R 150 400.80
C.2.6	Stanford WTW: O&M	24 640	12	R 0.02	R 5 913.60
C.2.7	Baardskeedersbos WTW: O&M	970	12	R 4.22	R 49 120.80
C.2.8	Kleinmond WTW: O&M	63 080	12	R 0.52	R 393 619.20
C.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL C.2				R 5 962 683.60

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Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

D.1	PROVISIONAL SUMS		Veolia: Provisional Sum (excluding VAT)
D.1.1	Provisional capital sum for equipment or major repairs (in excess of R50 000 per incident) as may be required by the Employer	Sum	R 350 000.00
D.1.2	Provisional sum for upgrading of facilities	Sum	R 200 000.00
	SUBTOTAL (OM chemicals)		R 19 304 681.20
	Contingencies (5%)		R 965 234.06
	SUBTOTAL 1		R 20 269 915.26
E.	SALARY CONTRIBUTION (OM STAFF COSTS)	Sum	R 13 283 247
	SUB TOTAL 2 (Estimated value of contract for 2015/2016, excluding VAT)		R 33 553 162.26
	14% VAT ON SUBTOTAL 1		R 2 837 788.14
	TOTAL TENDER SUM FOR YEAR 1 (Estimated value of contract for 2015/2016, including VAT, for 12 months)		R 36 390 950.40

F. VEOLIA: TENDERED IMPLEMENTING AGENT FEE

Veolia % Implementing Agent Fee on all projects which maybe requested by the municipality in terms of the agreement	6 %
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32/194
B 8/8

Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

Notes:

1. The total is the annual amount for the period 2015/16. The Operator will only be paid from the Effective Date of the Contract for the remainder of the 2015/16 Financial Year.
2. The amounts in D.1.1 and D.1.2 are indicative amounts which will be drawn against as and when costs are incurred by the Operator and invoiced.
3. Provisional sum D.1.1. will be determined annually and budgeted for by the Municipality in accordance with the requirements of the Function as determined in the Annual Plan.
4. Provisional sum D.1.2 is only applicable in the first year.
5. The fixed cost contribution for salary costs of posts associated with the Function as at October 2014 (E) will be paid out monthly in 12 equal payments. This amount will be escalated yearly based on the SALGBC increases and the schedule below will be used for the calculation.
6. The Salary Contribution determination was based on the assumption that SALGBC will apply a 6.1 % average increase from 1 July 2015 and the amounts in the schedule reflects this assumption.

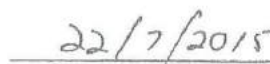
Note: That as this agreement may have an impact in terms of GRAP 32 (concession agreement) a copy of the signed contract be send to the Financial Services Department.

Certified as correct by:


Ms. R La Cock
Senior Manager: SCM

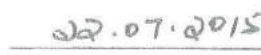

Date


Ms. SG Reyneke-Naude
Director: Finance (Chairperson)


Date

RECOMMENDATION APPROVED:


Mr. G Groenewald
Accounting Officer


Date

33/194
Annexure C
1/1

MINUTES : ORDINARY MEETING OF THE COUNCIL 30 SEPTEMBER 2015

**5.7
WATER AND WASTE WATER TREATMENT OPERATIONS MANAGEMENT
CONTRACT: SC1508/2014 – PROPOSED AMENDMENTS**

**(ITEM 8, PAGE 19 : - MAYORAL COMMITTEE MEETING :
30 SEPTEMBER 2015)**

**ALL MEMBERS OF THE ANC NOTED THEIR VOTE AGAINST THE
RECOMMENDATION AND STOOD BY THEIR PREVIOUS COUNTER PROPOSAL
MADE DURING THE SPECIAL COUNCIL MEETING OF 29 JULY 2015 TO THE
EFFECT THAT THE MATTER STAND OVER UNTIL PROPER CONSULTATION
WAS DONE**

RESOLVED:

1. that the proposed amendments to the approved contract, as contained in the report, for the management of the operation and maintenance of the water and waste water treatment works in the jurisdiction of Overstrand Municipality, be approved;
2. that the Municipal Manager be authorised to forthwith sign the contract, as amended herein, on behalf of the Overstrand Municipality.

RESPONSIBLE OFFICIALS :

**STEPHEN MÜLLER
HANRÉ BLIGNAUT
MIKE BARTMAN**

TARGET DATE FOR IMPLEMENTATION :

1 NOVEMBER 2015

TARGET DATE TO INFORM APPLICANT:

30 SEPTEMBER 2015

34/194

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AGENDA OF A MAYORAL COMMITTEE MEETING**30 OCTOBER 2019**

**10.
PROPOSED AMENDMENT OF LONG TERM CONTRACT NO. SC 1890/2018:
WATER AND WASTE WATER BULK WORKS OPERATION AND MAINTENANCE:**

8/3/1/SC1890/2018

H Blignaut

Deputy Director: Engineering Planning

11 October 2019

(028) 313 5047

1. Executive Summary

The purpose of this report is to provide the necessary information and motivation with regard to the proposed amendment of Contract SC1890/2018: Water and Waste Water Bulk Works Operations and Maintenance, in terms of the enabling provisions of sections 116(3) and 33 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA), to enable Council to make an informed decision whether to consent to the proposed amendment of the contract.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Infrastructure & Planning
Department: Engineering Planning (Bulk Water Services)

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA)
Water Services Act 108 of 1997
Overstrand Municipality Supply Chain Management Policy
Overstrand Municipality Contract Management Policy
National Treasury MFMA Circular no. 73

6. Background/Evaluation/Conclusion**Background**

A 15 year contract for the operation and maintenance of Overstrand Municipality's bulk water and waste water facilities was awarded to Veolia

Water Solutions & Technologies South Africa (Pty) Ltd on 4 September 2019. The long term contract was approved by the Overstrand Council on 28 November 2018, and the contract commenced on 8 December 2018.

The contract makes provision in clause 6 for adjustment or variation of the scope of the contract during the contract period, as a result of issues arising after the effective date of the contract, which may include e.g. changes in regulatory provisions, changes in the Bulk Works (either expansion or reduction), or change in raw water quality. The impact of such a variation has to be agreed between the parties, provided that it is related to the Bulk Works as defined in the contract. The municipality has the right to test or benchmark value for money of Veolia's proposed pricing for the proposed variation against their competitively tendered rates, as escalated, or the market. The pricing schedule shall then be adjusted with Veolia's quoted rates as agreed for the proposed variation. All other terms and conditions of the contract will remain the same.

Overstrand Municipality currently has no internal capacity to operate and maintain bulk water and waste water infrastructure, following the Council decision of 22 January 2014 to outsource the function, and the subsequent transfer of municipal staff to the appointed private operator.

The reason for this proposed amendment is to include the operation and maintenance of new bulk water and waste water facilities to the scope of work of the contract, in accordance with clause 6 of the contract between the municipality and Veolia. The proposed variation of the scope of the contract is twofold, i.e.: (A) the Stanford Waste Water Treatment Works (WWTW) being upgraded from 0.5 Mega liters per day (Ml/day) capacity to 1.2 Ml/day capacity, which includes new infrastructure and resource requirements, and (B) a water stabilization system being installed at the Stanford Water Treatment Works (WTW) to improve the quality of water supplied to consumers in Stanford.

Because the proposed amendment to the existing contract is for more than three years (up to 7 December 2033), the Municipality has to comply with sections 116(3) as well as 33 of the MFMA.

Evaluation

Section 116(3) of the MFMA provides as follows:

(3) A contract or agreement procured through the supply chain management policy of the municipality or municipal entity may be amended by the parties, but only after—

- (a) the reasons for the proposed amendment have been tabled in the council of the municipality or, in the case of a municipal entity, in the council of its parent municipality; and
- (b) the local community—
 - (i) has been given reasonable notice of the intention to amend the contract or agreement; and
 - (ii) has been invited to submit representations to the municipality or municipal entity.

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AGENDA OF A MAYORAL COMMITTEE MEETING

30 OCTOBER 2019

Section 33 of the MFMA provides as follows:

33. (1) A municipality may enter into a contract which will impose financial obligations on the municipality beyond a financial year, but if the contract will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year, it may do so only if—

- (a) the municipal manager, at least 60 days before the meeting of the municipal council at which the contract is to be approved—
 - (i) has, in accordance with section 21A of the Municipal Systems Act—
 - (aa) made public the draft contract and an information statement summarising the municipality's obligations in terms of the proposed contract; and
 - (bb) invited the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and
 - (ii) has solicited the views and recommendations of—
 - (aa) the National Treasury and the relevant provincial treasury;
 - (bb) the national department responsible for local government; and
 - (cc) if the contract involves the provision of water, sanitation, electricity, or any other service as may be prescribed, the responsible national department;
 - (b) the municipal council has taken into account—
 - (i) the municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
 - (ii) the impact of those financial obligations on the municipality's future municipal tariffs and revenue;
 - (iii) any comments or representations on the proposed contract received from the local community and other interested persons; and
 - (iv) any written views and recommendations on the proposed contract by the National Treasury, the relevant provincial treasury, the national department responsible for local government and any national department referred to in paragraph (a)(i)(cc); and
 - (c) the municipal council has adopted a resolution in which—
 - (i) it determines that the municipality will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;
 - (ii) it approves the entire contract exactly as it is to be executed; and
 - (iii) it authorises the municipal manager to sign the contract on behalf of the municipality.
- (2) The process set out in subsection (1) does not apply to—
- (a) contracts for long-term debt regulated in terms of section 46(3);
 - (b) employment contracts; or
 - (c) contracts—
 - (i) for categories of goods as may be prescribed; or
 - (ii) in terms of which the financial obligation on the municipality is below—
 - (aa) a prescribed value; or
 - (bb) a prescribed percentage of the municipality's approved budget for the year in which the contract is concluded.
- (3) (a) All contracts referred to in subsection (1) and all other contracts that impose a financial obligation on a municipality—
- (i) must be made available in their entirety to the municipal council; and
 - (ii) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- (b) Paragraph (a)(i) does not apply to contracts in respect of which the financial obligation on the municipality is below a prescribed value.
- (4) This section may not be read as exempting the municipality from the provisions of Chapter 11 to the extent that those provisions are applicable in a particular case.

Section 116(3) of the MFMA should be read together with MFMA Circular no. 73, issued by National Treasury in May 2013. In terms of the said circular,

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AGENDA OF A MAYORAL COMMITTEE MEETING

30 OCTOBER 2019

the following power/duty was conferred to Council, which is cited as follows (emphasis added):

"Considering the reasons for the proposed amendment of a contract or agreement and any representations that may have been received regarding the proposed amendment of a contract or an agreement procured through the supply chain management policy of the municipality and deciding whether to consent to the amendment of the contract or agreement." (emphasis added).

In terms of Sections 33 and 116(3) of the MFMA, due process has been followed, making provision for the contract having future budgetary implications.

The following activities were completed in accordance with Sections 33 and 116(3) of the MFMA:

- An advertisement, inviting comments from the local community and other interested persons was placed in the local newspapers on 23 August 2019 (i.e. more than 60 days before the Council meeting) – refer to Annexure B. No comment, input or inquiry was received from the public at the closing date of 23 September 2019.
- An Information Statement explaining the proposed amendment to the contract was made available to the public from 23 August 2019 – refer to Annexure A.
- The views and recommendations of the following stakeholders have been solicited: National Treasury; Western Cape Provincial Treasury, Department of Co-operative Governance & Traditional Affairs, and the Department of Water & Sanitation (Annexure C). Only National Treasury responded with comments, although it was received on 1 October 2019, i.e. after the closure date of 23 September 2019 (refer to Annexure D). They were under the impression that the required MFMA section 33 process was not followed for the original Contract SC 1890/2018 before final approval. The Municipal Manager responded to their query by providing proof of the relevant MFMA section 33 process that was followed during 2018 (refer to Annexure E).
- The proposed amendment of the contract served before the Overstrand Bid Adjudication Committee on 15 October 2019, where it was recommended to the Accounting Officer for approval.

The entire contract represents approximately 27.6% of the total expenditure for Water and 13.3% of the total expenditure for Sewerage Services.

Conclusion

All the processes required in terms of the MFMA for the amendment of the contract have been followed. No input opposing the proposed amendment of the contract was received from any stakeholder. The amended rates quoted by Veolia for the inclusion of the operation and maintenance of (A) the upgraded Stanford WWTW as well as (B) the water stabilization plant at Stanford in the contract are deemed to be fair and market related.

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7. Financial Implications

Source of Funding: Operating Budget Provision

The estimated Medium Term Expenditure Framework financial implications are summarised in the following table:

A: Stanford Upgraded WWTW	2019/20	2020/21	2021/22
mSCOA Description	Outsourced Services: Sewerage Servs: waste water	Outsourced Services: Sewerage Servs: waste water	Outsourced Services: Sewerage Servs: waste water
mSCOA Cost Account	12210200570000	12210200570000	12210200570000
mSCOA Business Key	20190624071401	20190624071401	20190624071401
Budget Provision	R 11 544 990	R 12 399 320	R 13 316 870
Balance Available	R3 544 990	R 12 399 320	R 13 316 870
Total Estimated Expenditure on Proposed Amendment A	R 234 969 (6 months)	R 505 418	R 543 678
Escalation (if any)	Clause 20 of Contract SC 1890/2018		
Escalation Date	Annually on 1 July		

B: Stanford Upgraded WTW	2019/20	2020/21	2021/22
mSCOA Description	Outsourced Services: Sewerage Servs: water	Outsourced Services: Sewerage Servs: water	Outsourced Services: Sewerage Servs: water
mSCOA Cost Account	12210200570000	12210200570000	12210200570000
mSCOA Business Key	20180705059772	20180705059772	20180705059772
Budget Provision (excl VAT)	R 36 722 290	R 39 439 740	R 42 358 280
Balance Available (excl VAT)	R 6 722 290	R 39 439 740	R 42 358 280
Total Estimated Expenditure on Proposed Amendment B	R 484 873 (6 months)	R 1 042 962	R 1 121 915
Escalation (if any)	Clause 20 of Contract SC 1890/2018		
Escalation Date	Annually on 1 July		

The projected financial implications of the long term contract including the proposed amendment are illustrated in Annexure F.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

- Annexure A: MFMA Section 33 Information Statement
- Annexure B: MFMA Section 33 Public Notice
- Annexure C: MFMA Section 33 Letter to Stakeholders
- Annexure D: Comments received from National Treasury
- Annexure E: Municipal Manager's response to National Treasury
- Annexure F: Projected financial implications of the long term contract

RECOMMENDATION TO THE COUNCIL:

1. that cognisance be taken of the reasons for the proposed amendment of Contract SC 1890/2018 between Overstrand Municipality and Veolia Water Solutions & Technologies South Africa (Pty) Ltd for the operation and maintenance of the bulk water and waste water infrastructure, in terms of the enabling provisions of Sections 33 and 116(3) of the Local Government: Municipal Finance Management Act 2003 (Act 56 of 2003);
2. that cognisance be taken of the comments received from National Treasury in respect of the proposed amendment of long term Contract SC 1890/2018 between Overstrand Municipality and Veolia Water Solutions & Technologies South Africa (Pty) Ltd for the operation and maintenance of the bulk water and waste water infrastructure, in terms of the enabling provisions of Sections 33 and 116(3) of the Local Government: Municipal Finance Management Act 2003 (Act 56 of 2003), as well as the Municipal Manager's response to National treasury; and
3. that the proposed amendment of Contract SC 1890/2018 between Overstrand Municipality and Veolia Water Solutions & Technologies South Africa (Pty) Ltd for the operation and maintenance of the bulk water and waste water infrastructure, be consented to.

RESPONSIBLE OFFICIAL:	H BLIGNAUT
TARGET DATE FOR IMPLEMENTATION :	1 NOVEMBER 2019
TARGET DATE TO INFORM APPLICANT :	N/A
TARGET DATE TO INFORM OBJECTOR :	N/A

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AGENDA OF A MAYORAL COMMITTEE MEETING**28 NOVEMBER 2018****7.
LONG TERM WATER AND WASTE WATER TREATMENT OPERATIONS
MANAGEMENT CONTRACT : CONTRACT SC 1890/2018****8/2/1/SC1890/2018****H Blignaut****(028) 313 5047****Hermanus Administration****9 November 2018****1. Executive Summary**

A long term water and waste water treatment operations management contract, Contract SC 1890/2018 (the Contract), was awarded to Veolia Water Solutions and Technologies South Africa (Pty) Ltd (the Operator) on 4 September 2018 by the Accounting Officer, following a recommendation by the Bid Adjudication Committee on 31 August 2018.

The purpose of this report is to present Council with the long term water and waste water treatment operations management contract, and to seek Council resolution:

- To approve the Contract in its final form as it is to be executed, and to authorise the Municipal Manager to sign the contract as is required by section 33 of the Local Government: Municipal Finance Management Act, Act no. 56 of 2003 (MFMA); and
- To grant to the Operator the right to use, control and manage the water and waste water treatment works as set out in the Contract, and as is required by the Municipal Asset Transfer Regulations No. R878, published in Government Gazette No. 31346 on 22 August 2008.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Infrastructure & Planning
Department: Engineering Planning (Bulk Water Services)

3. Compliance with Strategic Priority/ies

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA)

Local Government: Municipal Systems Act, Act 32 of 2000 (MSA)
 Labour Relations Act, Act 66 of 1995
 Water Services Act, Act 108 of 1997
 Municipal Asset Transfer Regulations, Regulation No. R878
 Overstrand Municipality Supply Chain Management Policy
 Overstrand Municipality Contract Management Policy

6. Background/Evaluation/Conclusion

Background

Triggered by significant investment by Overstrand Municipality in water and waste water treatment infrastructure in the preceding years, Council resolved in June 2011 in terms of section 77 of the MSA that the Municipality must undertake an assessment in terms of MSA section 78(1) of the way in which it was structured to deliver water and sanitation services.

Following the MSA section 78(1) assessment, Council resolved on 22 January 2014 (refer to Annexure A) in terms of section 78(2) of the MSA that the Municipality should continue to deliver municipal services by way of an internal water services provider mechanism, but that a competently skilled and experienced operator should be contracted to operate and maintain the water and waste water treatment works.

The key drivers of the decision to contract an operator include the need to secure focussed management of the operations and maintenance of the water and waste water treatment works, and to develop local skills in compliance with the regulatory requirements of the operations. The outcomes sought from the contract are on-going assurance of supply of water, treatment of water and waste water at the right quantity and quality, and asset preservation over the longer term, in order that as water services authority the Municipality can ensure effective and efficient municipal service delivery.

Subsequent to Council's resolution of 22 January 2014, Contract no. SC 1508/2014 (the Existing Contract) was awarded to Veolia Water Solutions and Technologies South Africa (Pty) Ltd (Veolia) for a period of 15 years, commencing on 1 November 2015 and terminating on 31 October 2030. The Existing Contract was approved by Council on 29 July 2015, after it was accepted that the Municipality will derive a significant financial economic benefit from the contract (refer to Annexure B).

The bidder who scored the second most points during this tender process, Water and Sanitation Services South Africa (Pty) Ltd (WSSA), lodged an application for review of the award of the Existing Contract to the Cape High Court. Their application was based on technicalities with regard to the regulatory staffing requirements at the treatment plants. The Cape High Court, the Supreme Court of Appeal, as well as the Constitutional Court ruled that it will be appropriate for the Municipality to commence with a complete

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new tender process, in order to make a new contract award within 6 months from the Constitutional Court's decision of 7 June 2018, at which date (i.e. 7 December 2018 latest) the Existing Contract SC 1508/2014 with Veolia has to terminate.

In compliance with Court Order and supply chain management regulation and procedures, tender documentation was compiled, with specific attention to the issues raised by the Court Order and on-going operational needs.

In response to the new competitive tender process, four tenders were received, including bids from Veolia and WSSA. Veolia scored the highest points in terms of Council's Supply Chain Management Policy, and the tender was thus awarded to them on 4 September 2018 (refer to Annexure C). The duration of the Contract will be 15 years, commencing on 8 December 2018 and ending on 7 December 2033, with the option for Council to extend the contract for another 5 years.

Evaluation

The long-term Contract which is the subject of this report is attached to this report as Annexure D. The Contract includes the following improvements and additions to the Existing Contract SC 1508/2014:

- The exact staffing requirements at all the treatment plants are described in detail;
- Security measures at high risk key bulk water services infrastructure are included;
- The operation and maintenance of the following additional infrastructure, which was constructed after commencement of the existing contract, have now been included in the scope of work of this contract:
 - the new Eluxolweni Waste Water Treatment Plant;
 - new Eluxolweni sewerage pump station;
 - 3 new sewerage pump stations in Stanford;
 - all new rising main sewer pipelines linked to the new pump stations;
 - the new Mount Pleasant reservoir and associated infrastructure;
 - the new Gansbaai bulk water supply pipeline;
 - 2 mobile generator sets.

Section 33 of the MFMA provides as follows:

33. (1) A municipality may enter into a contract which will impose financial obligations on the municipality beyond a financial year, but if the contract will impose financial obligations on the municipality beyond the three years covered in the annual budget for that financial year, it may do so only if—
- (a) the municipal manager, at least 60 days before the meeting of the municipal council at which the contract is to be approved—
 - (i) has, in accordance with section 21A of the Municipal Systems Act—
 - (aa) made public the draft contract and an information statement summarising the municipality's obligations in terms of the proposed contract; and
 - (bb) invited the local community and other interested persons to submit to the municipality comments or representations in respect of the proposed contract; and
 - (ii) has solicited the views and recommendations of—
 - (aa) the National Treasury and the relevant provincial treasury;
 - (bb) the national department responsible for local government; and
 - (cc) if the contract involves the provision of water, sanitation, electricity, or any other service as may be prescribed, the responsible national department;
 - (b) the municipal council has taken into account—
 - (i) the municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
 - (ii) the impact of those financial obligations on the municipality's future municipal tariffs and revenue;
 - (iii) any comments or representations on the proposed contract received from the local community and other interested persons; and
 - (iv) any written views and recommendations on the proposed contract by the National Treasury, the relevant provincial treasury, the national department responsible for local government and any national department referred to in paragraph (a)(ii)(cc); and
 - (c) the municipal council has adopted a resolution in which—
 - (i) it determines that the municipality will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;
 - (ii) it approves the entire contract exactly as it is to be executed; and
 - (iii) it authorises the municipal manager to sign the contract on behalf of the municipality.
- (2) The process set out in subsection (1) does not apply to—
- (a) contracts for long-term debt regulated in terms of section 46(3);
 - (b) employment contracts; or
 - (c) contracts—
 - (i) for categories of goods as may be prescribed; or
 - (ii) in terms of which the financial obligation on the municipality is below—
 - (aa) a prescribed value; or
 - (bb) a prescribed percentage of the municipality's approved budget for the year in which the contract is concluded.
- (3) (a) All contracts referred to in subsection (1) and all other contracts that impose a financial obligation on a municipality—
- (i) must be made available in their entirety to the municipal council; and
 - (ii) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- (b) Paragraph (a)(i) does not apply to contracts in respect of which the financial obligation on the municipality is below a prescribed value.
- (4) This section may not be read as exempting the municipality from the provisions of Chapter 11 to the extent that those provisions are applicable in a particular case.

The procedures prescribed by section 33 of the MFMA have been duly followed. This report to Council concludes the section 33 process and includes the projected financial obligations for each financial year and the impact of those financial obligations on the relevant tariffs.

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The following activities were completed, in accordance with section 33 of the MFMA:

- A public notice (refer to Annexure F) inviting comments from the local community and other interested persons was published in the local media and on the municipal web site on 14 September 2018 (i.e. more than 60 days before the Council meeting of 28 November 2018). No comment, input or inquiry was received before the closing date of 15 October 2018.
- An Information Statement (refer to Annexure E) discussing the proposed long term contract was made available to the public from 14 September 2018 on Overstrand Municipality's web site.
- The views and recommendations of the following stakeholders have been solicited from 13 September 2018 to 15 October 2018 (refer to Annexure G): National Treasury, Provincial Treasury, the Department of Co-operative Governance and Traditional Affairs, and the Department of Water and Sanitation. No comments were received from any of the stakeholders.

It is envisaged that the long term Contract will have the following financial and economic benefits for Overstrand Municipality:

- Value for money, with better balanced rates than those of the existing contract, which was previously proven to be feasible during the MSA section 78 process as well as during the previous MFMA section 33 process (refer to Annexures A and B). Even with the addition of newly completed infrastructure and security measures to the scope of works under this contract, the estimated expenditure remains within the available budget in the current Medium Term Revenue and Expenditure Framework (MTREF);
- Annual escalation is limited to Consumer Price Index (CPI) on the Fixed and Variable Charges, and South African Local Government Bargaining Council (SALGBC) wage agreements on the Salary Contribution, and the contract will therefore not have an adverse effect on future tariffs;
- An estimated R77 million worth of work will be sub-contracted to Exempt Micro Enterprises and Qualifying Small Enterprises over the 15-year contract period;
- 20 Permanent new jobs are created in the Overstrand under this contract, which did not exist when the function was performed in-house;
- A new office building will be constructed by the Operator, and the asset will be transferred to the Municipality at no cost at the end of the contract (only the successful bidder offered this initiative);
- Intensive training and development of staff and recognition of prior learning ("grand parenting") will be continued, with the aim of regulatory compliance in terms of staffing, which is not achieved at many plants countrywide;
- Focused high level expertise will be available on a continuous basis to improve and optimise treatment and maintenance processes, including professional chemical and electrical engineers, which are not available in-house;

- Full time locally based maintenance teams are employed under this contract to do daily inspections, preventative maintenance work, and immediate response in case of emergency situations. In the past these functions had to be sourced by the Municipality on an ad hoc basis from Cape Town. The numbers of pump station failures, sewerage spillages and water quality issues have already decreased significantly under the Existing Contract to date;
- Asset preservation in the long term is secured for the Municipality, combined with optimized treatment process efficiencies.

The water and waste water treatment works will be made available to the Operator to operate and maintain for the duration of the Contract. Whilst the Operator will take operational risk in regard to the assets, the Municipality will remain the owner. The granting of the right of use is made with the objective of achieving key economic objectives namely asset preservation and operations optimisation.

Because of the direct interface of the contract with the Municipality's water service provider obligations, the risk of non-performance or poor performance must be managed by the Municipality.

The capital assets will not be required for the Municipality's own use during the contract period, other than for access to monitor the performance of the Operator and to execute the planning and capital development function.

Conclusion

It can be concluded from the above and taking into consideration the financial implications in 7 below, that this long term Contract will secure a significant economic financial benefit for Overstrand Municipality. The contract is feasible, affordable, and achieves the objectives of the Municipality.

7. Financial Implications

Source of Funding: Operating Budget Provision

The estimated projected financial implications of the long term contract are illustrated in the table below. The annual escalation on the fixed and variable charges in the contract will be based on the CPI, and with regard to the Salary Contribution for the ex-municipal employees, escalation will be aligned with the annual SALGBC wage agreements. In the table below, the escalation factors were applied as set out in the Overstrand budget directive for 2019/20, i.e. CPI at 5.7% and Wage increases of 8.6% per year. Furthermore, a 3% annual growth in water and waste water produced was applied to the variable cost, to make provision for population growth and development. The same escalation factors would have applied should the function be executed in-house or by another contractor.

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AGENDA OF A MAYORAL COMMITTEE MEETING

28 NOVEMBER 2018

	Fixed Cost	Variable Cost	Salary Contribution	Large Maintenance and Repairs	Total Estimated Cost	Average Increase
2018/19	R 8 751 604	R 4 321 383	R 9 450 000	R 787 500	R 23 310 487	7 Months only
2019/20	R 16 761 807	R 8 065 256	R 17 593 200	R 1 426 950	R 43 847 213	7.4%
2020/21	R 17 717 230	R 8 780 725	R 19 106 215	R 1 508 286	R 47 112 456	7.4%
2021/22	R 18 727 112	R 9 559 663	R 20 749 350	R 1 594 258	R 50 630 383	7.5%
2022/23	R 19 794 557	R 10 407 701	R 22 533 794	R 1 685 131	R 54 421 183	7.5%
2023/24	R 20 922 847	R 11 330 968	R 24 471 700	R 1 781 184	R 58 506 699	7.5%
2024/25	R 22 115 449	R 12 336 139	R 26 576 266	R 1 882 711	R 62 910 565	7.5%
2025/26	R 23 376 030	R 13 430 477	R 28 861 825	R 1 990 026	R 67 658 358	7.5%
2026/27	R 24 708 463	R 14 621 895	R 31 343 942	R 2 103 457	R 72 777 758	7.6%
2027/28	R 26 116 846	R 15 919 003	R 34 039 521	R 2 223 354	R 78 298 725	7.6%
2028/29	R 27 605 506	R 17 331 178	R 36 966 920	R 2 350 085	R 84 253 690	7.6%
2029/30	R 29 179 020	R 18 868 627	R 40 146 075	R 2 484 040	R 90 677 762	7.6%
2030/31	R 30 842 224	R 20 542 463	R 43 598 638	R 2 625 631	R 97 608 955	7.6%
2031/32	R 32 600 231	R 22 364 785	R 47 348 120	R 2 775 291	R 105 088 427	7.7%
2032/33	R 34 458 444	R 24 348 765	R 51 420 059	R 2 933 483	R 113 160 751	7.7%
2033/34	R 15 835 164	R 14 930 029	R 23 267 577	R 1 291 955	R 55 324 725	5 Months only
Total	R 369 512 532	R 227 159 059	R 477 473 202	R 31 443 343	R 1 105 588 136	
Total, Including 15% VAT					R 1 271 426 357	

The above table indicates that the long term Contract will not have an adverse effect on the Water and Sewerage operational budgets of the Overstrand Municipality and it can therefore be concluded that the contract will not contribute to excessive annual increases in tariffs.

The contract represents an estimated 26% of the total expenditure budget for Water, and 15% of the total expenditure budget for Sewerage Services.

8. Staff Implications

There are no implications for existing municipal staff. Management will allocate capacity to monitor and implement the Contract. Ex-municipal staff who were directly involved with the function at the time of the conclusion of the Existing Contract were transferred to the Operator at commencement of the Existing Contract, and their employment with the Operator will continue under the new Contract.

9. Comments from other Departments, Divisions and Administrations

None

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AGENDA OF A MAYORAL COMMITTEE MEETING28 NOVEMBER 2018**10. Annexures**

- Annexure A: Council Resolution 4.7 of 22 January 2014
- Annexure B: Council Resolution 4.9 of 29 July 2015
- Annexure C: Bid Adjudication Committee Minutes of 31 August 2018
- Annexure D: Long Term Contract SC 1890/2018
- Annexure E: MFMA Section 33 Information Statement
- Annexure F: MFMA Section 33 Public Notice
- Annexure G: MFMA Section 33 Letter to Stakeholders

RECOMMENDATION TO THE COUNCIL:

1. that **cognisance be taken** that no response was received from the public or any other stakeholder following the invitation for comments, representations, views and recommendations in respect of the long term contract and the right to use the water and waste water treatment works;
2. that the right to use, control and manage the water and waste water treatment works for the contract period of 15 years to Veolia Water Solutions & Technologies (Pty) Ltd **be granted**;
3. that the determination of significant economic financial benefit from the long term contract for the Overstrand Municipality **be noted**;
4. that the long term contract for the Management of the Operation and Maintenance of the Water and Waste Water Treatment Works under the jurisdiction of Overstrand Municipality **be approved**; and
5. that the Municipal Manager **be authorised** to sign the long term contract on behalf of Overstrand Municipality.

RESPONSIBLE OFFICIAL :	H BLIGNAUT
TARGET DATE FOR IMPLEMENTATION :	8 DECEMBER 2018
TARGET DATE TO INFORM APPLICANT :	N/A
TARGET DATE TO INFORM OBJECTOR :	N/A

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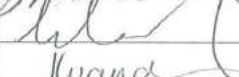
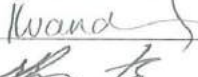

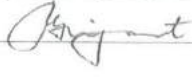
CG6

ATTENDANCE REGISTER & UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY

Date: 2014/08/14

I, the undersigned, hereby declare:

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
DR W POTGIETER	SCM	
B. D. ...	SCM	
	SCM	
C.J. LIEBENBERG	WORLEYPARADISE	
KOREN VAN DER MERWE	Advisor	
M. BARTMAN	OPERATIONALS	
HANRE BLIGNAUT	INFRA PLANNING	

h



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SC NUMBER: 1508/2014

BIN NUMBER: 6

Minutes of a Specification Committee Meeting held in the SCM Unit on: (date) 2014/08/14

TENDER / QUOTATION TITLE: Request for Qualification for Water & Waste Water Treatment Operation Management Contract

Responsible Official: H. Pligonski Tel. No: 028 313 5047

Contact person: Chris Liebenberg Tel. No: 0824698416

1. FINANCIAL INFORMATION											
	YEAR 1		YEAR 2		YEAR 3						
Estimated Expenditure (Incl. VAT):							Funding Source				
Budget 1							Vote No 1				
Budget 2							Vote No 2				
Budget 3							Vote No 3				
Contract Period	1 Year		2 Years		3 Years		Other	up to 15 years			
Points	80/20		90/10	X			Recurring	YES		NO	
Verification Certificate from the CFO in terms of MFMA Circular NO. 62 issued by National Treasury (bids in excess of R10M – all applicable taxes included) issued PRIOR to advertising.								YES		NO	
KPIs indicated on Specification Submission Form?									YES	X	NO

2. SITE MEETING

Date: 02/09/2014 Time: 11h00

Address: Auditorium Hermanus

Site meeting info provided to user – signature of official receiving briefing

3. ADVERTISEMENT 25/08/14

Date Advertised: 22/08/2014 Closing Date: 26/09/2014 Validity period: 60 days

< R200 000.00 (Advertise for 5 working days) > R10 000 000.00 (Advertise for a minimum of 22 working days)

> R200 000.00 (Advertise for a minimum of 10 working days) Banking Services (60 days)

> R 200 000.00 (CIBD) tender for minimum of 10 working days

TENDER FEE

< R200 000 FREE OF CHARGE

>R200 000 <20 pages = R28.40 >20 and <50 pages = R143.00 >50 pages = R572.00

Advertise in the following media: Rapport + Sunday Times

ADV.	SENT	NAME	ADV.	SENT	NAME	ADV.	SENT	NAME
✓		Notice Boards	✓	✓	Overstrand Website	✓		Purchasing Department
		Hermanus Times			Gansbaai Courant			Overstrand Herald
✓	✓	Cape Times	✓	✓	Die Burger			CIDB Website

DOCUMENT TO MAXITEC Date Sent

4. CIDB DETAILS CIDB tenders not within 5 working days after placement on i-tender At least a minimum of: N/A

CIDB GRADING

1	UP TO R200,000.00	2	UP TO R650,000.00	3	UP TO R2M	4	UP TO R4M	5	UP TO R6,5M
6	UP TO R13M	7	UP TO R40M	8	UP TO R130M	9	NO LIMIT		

SC NUMBER:

1508/2014/50194

PART B (Tender Document Compilation Checklist) (Marked "X" where applicable)

Section	Item No.	Description	Document Applicable	Compiled	Approved by
A.	1.	Cover page of a tender document	X		
	2.	Cover Page (with tender title, name, address, contact details, etc)	X		
	3.	Index	X		
	4.	Advert: English	X		
	5.	Site meeting Certificate (to be signed by chairperson of the meeting)	X		
	6.	AUTHORITY TO SIGN A BID	X		
	7.	JOINT VENTURE (authority and agreement)	—		
	8.	GENERAL Conditions of Contract	→ Consultant		
	9.	STANDARD Conditions of Tender (CIDB)	—		
	10.	GENERAL Conditions of Tender	X		
	11.	MBD 2 (Tax Clearance Certificate)	X		
	12.	MBD 4 (Declaration of Interest)	X		
	13.	MBD 5 (Declaration for Procurement exceeding R10m. including VAT)	—		
	14.	MBD 6.1 (Preference Points claim)	80/20 90/10	—	
	15.	MBD 8 (Declaration of Past Supply Chain Practices)	X		
	16.	MBD 9 (Certificate of Independent Bid Determination)	X		
	17.	MBD 15 (Certificate of Payment of Municipal Accounts)	X		
	18.	MBD 16 (Key Performance Areas)	—		
	19.	OHASA – Occupational Health & Safety Agreement → Amended	X		
	20.	FORM OF INDEMNITY	—		
B.	21.	TENDER SPECIFICATIONS	→ Consultant		
	22.	PRE QUALIFICATION CRITERIA	→ Consultant		
	23.	SCHEDULE of plant and equipment	} Consultant		
	24.	SCHEDULE OF EXPERIENCE – Project manager / manager / etc.			
	25.	SCHEDULE OF EXPERIENCE – Project supervisor / site foreman/ etc.			
	26.	LOCAL CONTENT:			
	26.1.	Clothing	—		
	26.2.	Furniture	—		
	26.3.	Set-Top Boxes	—		
	26.4.	Electrical and Telecom cables	—		
	27.	PRICING SCHEDULE	—		
28.	MBD 7.1 (Contract form – Purchase of Goods / Works)	—			
29.	MBD 7.2 (Contract form – Rendering of services)	—			
30.	MBD 7.3 (Contract form – Sale of Goods / Works)	—			
31.	FORM OF OFFER	—			
C.	32.	DATA BASE REGISTRATION	—		
	DATE		APPROVED (INIT.)		

5/1/14

SC NUMBER: 1508/2014

NOTES:

- * Advert: SAFCEC
 - ↳ Email the final advert to the consultants, for review as well.
 - ∴ To be placed in the Sunday Times.
- * Find out if the CIDB can advertise it without asking for a CIDB Grading
 - ↳ compulsory briefing session.
- * Site meeting venue to be confirmed by H. Blignaut.
- * Add that the document can be sent via email, free of charge, upon request to R. Neethling
- * Amend Authority to Sign a Bid.
 - ↳ Bring in a Consortium
- * ^{General} Standard Conditions of tender amended
- * Pre-qualification to be reviewed by Legal.
- * Declaration by tendered to be amended by consultant.
- * Send latest Tender document template to Hanra and consultant.
- * Hanra to get certification by the CFO
- * NB! Hanra to submit Spec verification form from Director.

← Ann

Ambed 10/1/25.

APPROVED	
Initials & surname	Date
Signature	

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TENDER NO. SC-1508/2014	TENDER NR. SC-1508/2014	ISINIKI-XABISO NO. SC 1508/2014
<p>Tenders are hereby invited for Request for Qualification for Water and Waste Water Treatment Operation Management Contract.</p> <p>Tender documents, in English, are obtainable from Monday, 25 August 2014, at the offices of the Supply Chain Management Unit, Overstrand Municipality, Magnolia Avenue, Hermanus, Tel. 028 313 8064 from Ms. Rita Neethling between 08h30 and 15h30, upon payment of a tender participation fee of R572.00 per set. Alternatively the documents can be downloaded free from the website: www.overstrand.gov.za</p> <p>Sealed tenders, with Tender No. SC1508/2014; Request for Qualification for Water and Waste Water Treatment Operation Management Contract, clearly enclosed on the envelope, must be deposited in Tender Box No. 6 at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus. Bids may only be submitted on the bid documentation provided by the Municipality.</p> <p>A compulsory briefing session will take place at 11h00 on 02 September 2014, Overstrand Municipality Auditorium, Hermanus.</p> <p>The closing date and time of the tender is on Friday, 26 September 2014 at 12h00 and will be opened in public immediately thereafter in the SCM Committee Room, Hermanus Administration.</p> <p>Tenders must be valid for 60 days after the closing date.</p> <p>The Overstrand Municipality does not bind itself to accept the lowest or any Tender and reserves the right to accept any tender, as it may deem expedient. Tenders are subject to the General Conditions of Contract and the Supply Chain Management Policy of the Overstrand Municipality.</p> <p>Please refer enquiries to Mr. C Liebenberg at telephone number: 082 469 8416.</p>	<p>Tenders word hiermee ingewag vir Versoek vir Kwalifikasie vir Water en Afvalwatersuiwering Bedryf Bestuurskontrak.</p> <p>Tenderdokumente, in Engels, is verkrygbaar vanaf Maandag, 25 Augustus 2014, by die kantoor van die Voorsieningskanaanbestuursseenheid, Overstrand Munisipaliteit, Magnoliaaan, Hermanus, Tel. 028 313 8064 vanaf Ms. Rita Neethling tussen 08h30 en 15h30 by betaling van 'n tender deelnamefooi van R572,00 per stel. Alternatiewelik kan die dokumente gratis afgelaai word vanaf die webblad: www.overstrand.gov.za</p> <p>Versieëde tenders duidelik gemerk Tender Nr. 1508/2014; "Versoek vir Kwalifikasie vir Water en Afvalwatersuiwering Bedryf Bestuurskontrak" op die oewert, moet geplaas word in Tender Bus Nr. 6 by die kantore van die Overstrand Munisipaliteit, Magnoliaaan, Hermanus. Tenders mag slegs ingedien word op die dokumentasie deur die Munisipaliteit uitgereik.</p> <p>'n Verpligte inligtingsessie sal gehou word om 11h00 op 02 September 2014, by die Overstrand Munisipaliteit Auditorium, Hermanus.</p> <p>Die sluitingsdatum en -tyd van die tender is Vrydag, 26 September 2014 om 12h00. Tenders sal direk na die sluitingsyd in die openbaar oorgemaak word in die VKB Komiteekamer, Hermanus Administrasie.</p> <p>Tenders moet geldig wees vir 60 dae na die sluitingsdatum.</p> <p>Die Munisipaliteit Overstrand is nie verplig om die laagste of enige tender wat ingedien word te aanvaar nie. Tenders is onderhandelig aan die Algemene Kontrakvoorwaardes en die Voorsieningskanaan Bestuursbeleid van Overstrand Munisipaliteit.</p> <p>Nawrae kan gery word aan Mnr. C Liebenberg by telefoonnummer 082 469 8416.</p>	<p>Kucelwa isiniki-xabiso: Isicelo sobume be Water and Waste water Treatment Operation Management Contract.</p> <p>Amazwebhu, abhalwe ngeengesi, ayafumaneka ukusukela Ngomulo nge 25 Agasti 2014, kwi-ofisi yoLawulo lweTyathanga iKubonelela, kuMasipala we-Overstrand, eMagoola Avenue, eHermanus isalela u 028 313 8064 ku Nkosazana Rita Neethling phakathi kweye-08h30 neye-15h30 usakuhlawula umhumo wokuthatha inxaxheba kwizinkwi-maxabiso orgama- R572.00. Iisheki mazerzwe zihlawuleke ku "Masipala we-Overstrand", kungenjalo Amazwebhu ayafumaneka mahala kwi-webhu sayiji ethi: www.overstrand.gov.za</p> <p>Isiniki-xabiso eshiyiniweyo kwabhalwa, isiniki-xabiso No. SC 1508/2014; Isicelo sobume be Water and Waste water Treatment Operation Management Contract, ibhalwe ngokucacileyo kwimulophu, mayifakwe kwi Bhokisi yeZinkwi-maxabiso No. 6 Kwii-ofisi zikaMasipala wase-Overstrand, Magoola Avenue, Hermanus. Amazwebhu Onkko xabiso anikezwa ngu nespipala maha buyiswe ngohlobo abhalwe ngale.</p> <p>Umjikelelo onyanzakekileyo wokubonisana uyakubanjelwa kwi Ofisi zika Masipala, eAuditorium, eHermanus ngomhla we 02 ku Septemba ngentsimbi yeShumi elinanye 11h00</p> <p>Umhla nosuku lokwala ngu mhla we 26 Septemba 2014 ngentsimbi ye 12h00 kwaye emva koko zya kuvulwa ngokubhalelwa kwigumbi lekomiti, kuLawulo wase Hermanus.</p> <p>Ithenda mazibesenithelweni kangangentsuku ezinganakhulu amashumi anisibhozo 60 emva komhla wokuvala.</p> <p>UMasipala we-Overstrand akazibopheleli ekwamkeleni iabiso elilona iphantsi okanye nasiphi isiniki-xabiso kwaye unelungelo lokwamkela nasiphi na isiniki-xabiso, njengoko ebona kufaneleke, izinkwi-maxabiso ziphantsi koMgangatho woLawulo lweZinkwi-maxabiso neNkqubo yoLawulo lweTyathanga iKubonelela katisipala we-Overstrand.</p> <p>Nceda ncebelenana no Nkosazana C Liebenberg kule nombolo ilandelayo 082 469 8416.</p>
<p>DIRECTOR: INFRASTRUCTURE & PLANNING</p>	<p>DIREKTEUR: INFRASTRUKTUUR EN BEPLANNING</p>	<p>MONGAMELI: WEZIBONELELO EZISISEKO NO CWANGCISO</p>

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Tender No. SC.... / 2014

BULK WORKS SUPPORT CONTRACT

PRE QUALIFICATION PROCUREMENT DOCUMENT

ANNEXURE A: DESCRIPTION OF BULK WORKS

WWTW + WWTW Operation & Maintenance Support Contract

RPO 2014/10/20.

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1. Introduction

This document is to be read with the Tender No. SC.../ 2014 BULK WORKS SUPPORT CONTRACT PRE QUALIFICATION PROCUREMENT DOCUMENT. In the event of conflict between the two, that document shall prevail.

The information contained in this document is intended to provide information sufficient to allow a submission to the request for pre-qualification.

Further information, opportunities for site visits and due diligence will be provided to pre-qualified bidders who are issued with the Request for Proposal.

1.1. Background

Overstrand Local Municipality is the water services authority and water services provider for its area of jurisdiction. To enable the Municipality to meet the growing demand for services, it has invested in upgrading infrastructure and technology associated with the bulk infrastructure.

Triggered by the significant upgrade, the Municipality undertook a S78 investigation into the way in which it is structured to deliver water services to its community. Council took a s78(2) decision to continue to deliver water services by way of an internal mechanism. In other words, the water services provide (WSP) mechanism continues to vest directly in Overstrand Municipality, who will be directly accountable to the community.

The investigation did however reveal some anticipated long-term challenges with regard to operating the bulk works, in particular, the need to sustain access to and affordability of the skills and expertise to operate the technology and bulk works. Council thus authorised further investigation into the procurement of a contract to support the municipality with the operation of the bulk works.

- The key driver is the need to secure focussed management of the operations of the bulk works for the medium term and to develop local skill (the right people with the right skills doing what is required).
- The key outcome sought is assurance of supply of water and treatment of sewerage at the right quality and quantity; and asset preservation.

This document (the RFQ) is an invitation to interested parties to express an interest in pre-qualifying as a bidder to operate for Overstrand's bulk works. If pre-qualified, the bidder will be required to respond in detail to the Municipality's request for proposal (RFP).

The intention of this RFQ process is to establish experience and credentials of interested parties. It is not intended that interested parties require detail, other than as is set out here and as is addressed at the bidder's briefing, to enable them to respond to this RFQ.

1.2. The Needs of the Municipality

The Municipality has identified the need to test the feasibility of the following:

- The procurement of a contractor to operate and maintain Municipality's existing bulk works;
- The contract will be for a period of up to 15 years;
- The existing technical/ operational staff directly associated with the bulk works will be given the opportunity to transfer and will remain with the asset on termination of the contract;

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- The municipality retaining all technical and financial risk in determining its needs and developing the infrastructure; and
- Transferring operational risk to the contractor for which a fee will be paid.

2. Contracting arrangements:

2.1. Contracting Party

The bidder must indicate who the contracting party with the Municipality will be.

2.2. Employees

The contractor will be required to take over existing municipal employees operating the bulk works. A list of potentially impacted employees and costs will be made available at RFP stage.

2.3. Remuneration

It is proposed to pay the contractor a fixed management fee to operate and undertake routine maintenance of the bulk works. There will also be a variable portion based on volumes if demand goes over a pre-determined level. The contractor will further be required to bid a % mark up on any non-routine maintenance and/ or infrastructure development it may be requested to undertake as agent of the Municipality, at the Municipality's discretion.

Although no financial proposal is made at this RFQ stage, Bidders are invited to indicate how they would propose to be remunerated (mechanism not quantum).

3. The Bulk Works:

The operation and maintenance of the bulk water and sewerage infrastructure described in 3.1 and 3.2 below will be included in the proposed Contract, distinguishing:

- Surface Water Resources
- Borehole Pumps
- Water Pump Stations
- Bulk Water Distribution Pipelines
- Water Treatment Works (WTWs)
- Reservoirs
- Sewer Pump Stations
- Waste water Treatment Works (WWTWs)

In the Request for Proposal (RFP) phase, the positioning of the bulk water and sewerage infrastructure for the various towns will be illustrated on Maps to be provided, as well future requirements of the Municipality and the Bulk Works. There will also be a more detailed specification of the scope of work required.

The scope of work excludes infrastructure planning and development which will remain a function of the municipality. It also excludes any reticulation services which will be undertaken by the Municipality.

3.1. Water Services Infrastructure

3.1.1. Surface Water Resources

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The Contractor will be responsible for:

Existing surface water resources			
Name	Information on Resource	Map No.	Item on Map
Buffels River	Buffels River Dam	2A	BR-SW1
Kleinmond	Palmiet River abstraction and Dorpsfontein	2C	KM-SW1, KM-SW2
Greater Hermanus	De Bos Dam	2E	GH-SW1
Greater Gansbaai	Franskraal Dam and Kraaibosch Dam and Klipgat and De Kelders Fountains.	2G	GG-SW1, GG-SW2, GG-SW3, GG-SW4
Pearly Beach	Pearly Beach Dam and Service Level Agreement for supply of 0.26 Ml/d from the Kockemoer Dam	2H	PB-SW1, PB-SW2
Baardskeedersbos	Boskloof Stream (Backup supply only)	2J	BB-SW1

3.1.2. Boreholes Pumps

Overstrand Municipality will continue with the implementation of their groundwater monitoring programme for all their boreholes. The Contractor will however be responsible for the operation and maintenance of the pumps for all the abstraction boreholes.

The existing number of boreholes monitored in Overstrand Municipality's Management Area is as follows:

Greater Hermanus:

Gateway Wellfield:

- Four production boreholes all with continuous water level and EC meters. All four boreholes are available for use. Three of the boreholes are pumped under normal operational procedures, with one borehole as standby.

The water level and EC are also connected to alarms which support an Early Warning System so that responses to sudden changes in water level or EC can be made rapidly. Maximum abstraction is currently limited to 1.6 million m³/a. Various monitoring boreholes (> 15) in and around the well-field.

Almost all the monitoring boreholes are equipped with continuous water level monitoring devices to monitor the response in the aquifer / response between aquifers. Key boreholes are also connected to a telemetry device to allow remote downloading of water level data. This allows the Professional Service Provider to support Overstrand Municipality remotely.

- Chemical sampling in selected boreholes
- An ecological monitoring programme to detect and manage potential impact in the Fernkloof Nature reserve.

Camphill and Volmoed Wellfields:

- Seven production boreholes all with continuous water level and EC meters. Only five of these boreholes are available for use.
- The water level and EC are also connected to alarms which support an Early Warning System so that responses to sudden changes in water level or EC can be made rapidly. Maximum abstraction is currently limited to 0.8 million m³/a.
- Various monitoring boreholes (7) in and around the well-field.

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- All the monitoring boreholes are equipped with continuous water level monitoring devices to monitor the response in the aquifer / response between aquifers. This allows the Professional Service Provider to support Overstrand Municipality remotely.
- Chemical sampling in selected boreholes
- An ecological monitoring programme to detect and manage potential impact in the Fernkloof Nature reserve.

Kleinmond:

- The Kleinmond Borehole HKM-BH2 is only used over periods when there is an increase in demand.

Stanford:

- The two newly drilled boreholes (KVE01 and KVE02) were fitted with continuous water level meters. Various private boreholes around the well-field are also used for monitoring purposes. It would be preferred if the abstraction from the boreholes is during the night, in order to save on electricity costs.
- The "Eye", with monitoring equipment as included in Table 3.1.1.2.7. To be utilised mainly during the day.

Baardskeerdersbos:

- Two new boreholes were drilled, both will be utilised as production boreholes. The proposed abstraction volume is 5 l/s for 24 hours a day. The boreholes are equipped with continuous water level dataloggers. The data is downloaded every four months.
- The first monitoring report was completed in July 2012. The monitoring spans from March 2009 to present.

Buffeljags Bay:

- Water level monitoring data is available since January 2010, with data gaps during the time of the pump installation. The borehole is equipped with continuous water level logger and flow meter and the data is downloaded every four months.

3.1.3. Water Pump Stations

Existing water pump stations							
Name	RW/TW	Capacity (l/s)	Pumps	Motors	Map No	Item on Map	Supply Area
BUFFELS RIVER							
Rooi Els Booster (Roella)	TW				2A	BR-WPS 1	Rooi Els
Rooi Els Reservoir	TW				2A	BR-WPS 2	Rooi Els Reservoir
Betty's Bay Booster	TW				2B	BR-WPS 3	Betty's Bay Sunny Seas
Pringle Bay Booster	TW				2A	BR-WPS 4	Pringle Bay HL zone
KLEINMOND							
Palmiet River Submersible	RW				2C	KM-WPS 1	Kleinmond WTW
Palmiet River Booster	RW				2C	KM-WPS 2	Kleinmond WTW
Dorpsfontein	RW				2C	KM-WPS 3	Kleinmond WTW
Riemsmaak Booster	TW				2C	KM-WPS 4	Kleinmond WTW
Sokkerveld Booster	TW				2C	KM-WPS 5	Kleinmond WTW
GREATER HERMANUS							
Fisherhaven HL	TW				2D	GH-WPS 1	Fisherhaven HL Reservoir
Onrus Manor / Chanteclair	TW				2D	GH-WPS 2	Chanteclair Booster Zone
Hermanus Heights	TW				2E	GH-WPS 3	Hermanus Heights HL Reservoir
Voëlklip HL	TW				2E	GH-WPS 4	Voëlklip HL Reservoir
Hemel & Aarde	TW				2E	GH-WPS 5	Sandbaai, Hemel &

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							Aardc Reservoir
Gateway Booster	RW				2E	GH-WPS 6	To Preekstoel WTW
Kidbrooke	TW				2D	GH-WPS 7	Kidbrooke development
STANFORD							
Stanford Springs	TW				2F	ST-WPS 1	Stanford Reservoirs
GREATER GANSBAAI							
Klipgat No.1 (Submersible)	TW				2G	GG-WPS 1	De Kelders WTW
Klipgat No.2 (Booster)	TW				2G	GG-WPS 2	De Kelders WTW
De Kelders Grotte No.1	TW				2G	GG-WPS 3	De Kelders WTW
Franskraal WTW No.1	TW				2G	GG-WPS 4	Franskraal WTW
Kraaibosch Dam	RW				2G	GG-WPS 5	Franskraal WTW
PEARLY BEACH							
Pearly Beach Booster	TW				2H	PB-WPS 1	Pearly Beach Booster Zone

3.1.4. Bulk Water Distribution Pipelines

Existing bulk water distribution pipelines						
Name	Distance (m)	Diameter (mm)	Supply Area	Map No	Item on Map	
BUFFELS RIVER						
Buffels River Dam - Buffels River WTW		400	Buffels River System	2A	BR-BWP 1	
Buffels River WTW - Rooi Els Reservoir		150	Rooi Els	2A	BR-BWP 2	
Buffels River WTW - Pringle Bay Reservoir			Pringle Bay	2A	BR-BWP 3	
Buffels River WTW - Betty's Bay Voorberg Reservoir			Betty's Bay	2A & 2B	BR-BWP 4	
Betty's Bay Voorberg Reservoir - Betty's Bay Sunny Scas Reservoir			Betty's Bay	2B	BR-BWP 5	
KLEINMOND						
Palmiet abstraction to Kleinmond WTW		300	Kleinmond	2C	KM-BWP 1	
Dorpsfontein and Borehole to Kleinmond WTW		160	Kleinmond	2C	KM-BWP 2	
Kleinmond WTW - Protearand Reservoirs			Kleinmond	2C	KM-BWP 3	
GREATER HERMANUS						
Boreholes GWP01, GWE06, GWP12, GWP02 - Preekstoel WTW			Greater Hermanus	2E	GH-BWP 1	
Boreholes HAV1, HAV2, HAV3, HAV4 - Preekstoel WTW			Greater Hermanus	2E	GH-BWP 2	
Boreholes T4/1, T4/2 and T4/4 - Preekstoel WTW			Greater Hermanus	2E	GH-BWP 3	
Preekstoel WTW - All bulk storage reservoirs on Coastal and Hermanus bulk pipelines			Greater Hermanus	2E	GH-BWP 4	
De Bos Dam - Preekstoel WTW			Greater Hermanus	2E	GH-BWP 5	
STANFORD						
Stanford Fountain - Stanford Reservoirs			Stanford	2F	SST-BWP 1	
Boreholes KVE1 and KVE2 to Reservoirs			Stanford	2F	ST-BWP 12	
GREATER GANSBAAI						
Klipgat and De Kelders Grotte - De Kelders WTW			De Kelders	2G	GG-BWP 1	
Kraaibosch Dam and Franskraal Dam - Franskraal WTW			Greater Gansbaai	2G	GG-BWP 2	
De Kelders WTW - De Kelders Reservoirs			De Kelders	2G	GG-BWP 3	
Franskraal WTW - All bulk storage Reservoirs			Greater Gansbaai	2G	GG-BWP 4	
PEARLY BEACH						
Koekemoer Dam and Pearly Beach Dam - Pearly Beach WTW			Pearly Beach	2H	PB-BWP 1	
Pearly Beach WTW - Pearly Beach Reservoir			Pearly Beach	2H	PB-BWP2	
BAARDSKEERDEBOS						
Two new Boreholes - New Baardskeerdersbos WTW			Baardskeerdersbos	2J	BB-BWP 1	
Baardskeerdersbos WTW - Reservoir			Baardskeerdersbos	2J	BB-BWP 2	
BUFFELJAGS BAY						
Borehole - Buffeljags Bay Reservoir			Buffeljags Bay	2I	BJB-BWP 1	

3.1.5. Water Treatment Works (WTWs)

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Class of existing Water Treatment Works (WTWs), design flows and existing 2012/2013 flows						
Name	Class	Hydraulic Design Capacity (ML/d)	Average Monthly Operating Capacity for 2012/2013 (ML/d)			Treatment Processes
			Min	Average	Max	
Buffels River	C	5.500	1.854	2.627	3.730	Chemical dosing (Alum and Soda Ash), flocculation, sedimentation, filtration (Rapid gravity sand filters), stabilization (Soda Ash) and disinfection (Chlorine Gas)
Kleinmond	C	5.800	2.009	2.568	3.668	Chemical dosing (Alum and Soda Ash), flocculation, sedimentation, filtration (Rapid gravity sand filters), stabilization (Soda Ash) and disinfection (Chlorine Gas).
Preekstoel	B	28.000	6.362	10.134	13.859	Chemical dosing (Alum, Poly-electrolyte and Lime), flocculation, sedimentation, filtration (Rapid gravity sand filters), stabilization (Lime) and Disinfection (Chlorine Gas or HTH Granules as back-up)
Hermanus Groundwater	C	10.000				Biological WTW for iron and manganese removal by contact filtration, Caustic Soda and Aeration
Stanford	D	N/A	0.529	0.812	1.074	Disinfection (Chlorine Gas)
Franskraal	C	6.500	1.759	2.598	4.265	Chemical dosing (Alum, Poly-electrolyte, Soda Ash), flocculation, sedimentation, filtration (Rapid gravity sand filters), disinfection (Chlorine Gas) and stabilization (Soda Ash)
De Kelders	C	1.600	0.838	1.472	1.850	Ultrafiltration plus Reverse Osmosis Plant and disinfection (Chlorine Gas)
Pearly Beach	C	1.440	0.206	0.441	0.788	Ultrafiltration Modules from Memcor, Chemical dosing, Carbon filters and disinfection (Chlorine Gas)
Baardskeerdersbos	D	0.192	0.016	0.030	0.052	Filtration (Pressure sand filters) and disinfection (Hypochlorite) New works will include Ultrafiltration.
Buffeljags Bay	E	N/A	0.006	0.009	0.013	Disinfection (Chlorine Gas)

3.1.6. Reservoirs

Existing reservoirs						
Name	Capacity	TWL	Supply Area	Map No	Item on Map	
BUFFELS RIVER						
Buffels River WTW	1.000	78.0	Bulk Storage for Buffels River system	2A	BR-R1	
Rooi Els	0.227	65.3	Bulk Storage for Rooi Els	2A	BR-R2	
New Rooi Els	0.500		Bulk Storage for Rooi Els	2A	BR-R3	
Pringle Bay	1.240	66.5	Bulk Storage for Pringle Bay	2A	BR-R4	
Betty's Bay Voorberg	1.800	65.5	Bulk Storage for Betty's Bay	2A & 2B	BR-R5	
Betty's Bay Sunny Seas	1.000	89.0	Bulk Storage for Betty's Bay	2B	BR-R6	
KLEINMOND						
Protearand Old Reservoir	2.300	90.5	Bulk Storage for Kleinmond	2C	KM-R1	
Protearand Old Reservoir	2.300	90.5	Bulk Storage for Kleinmond	2C	KM-R2	
Protearand New Reservoir	3.500	90.5	Bulk Storage for Kleinmond	2C	KM-R3	
GREATER HERMANUS						
Voelklip HL	0.910	99.0	Voelklip HL Zone	2E	GH-R1	
Voelklip HL	2.000	99.0	Voelklip LL Zone	2E	GH-R2	
Voelklip LL	4.540	87.0	Voelklip LL Zone	2E	GH-R3	
Hermanus Heights HL	0.050	93.0	Hermanus Heights HL Zone	2E	GH-R4	
Hermanus Heights LL	0.500	79.0	Hermanus Heights LL Zone	2E	GH-R5	
Hermanus Heights LL	2.600	79.0	Hermanus Heights LL Zone	2E	GH-R6	

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Northcliff	0.250	75.0	Northcliff	2E	GH-R7
Hermanus 1	4.500	61.0	Hermanus	2E	GH-R8
Hermanus 2	5.500	61.0	Hermanus	2E	GH-R9
Mount Pleasant	1.000	87.0	Mount Pleasant	2E	GH-R10
Sandbaai Hemel & Aarde	1.000	119.9	Sandbaai and Hemel & Aarde	2E	GH-R11
Sandbaai 2	0.450	64.9	Sandbaai	2E	GH-R12
Sandbaai 3	2.000	64.9	Sandbaai	2E	GH-R13
Kidbrooke 1	0.150	85.0	Onrus	2E	GH-R14
Onrus Manor / Chanteclair	1.000	143.8	Onrus Manor	2D	GH-R15
Onrus	1.800	78.0	Onrus	2D	GH-R16
Vermont 1	1.500	82.5	Vermont	2D	GH-R17
Vermont 2	2.000	82.5	Vermont	2D	GH-R18
Hawston	3.450	66.0	Hawston	2D	GH-R19
Fisherhaven LL	2.000	60.0	Fisherhaven LL	2D	GH-R20
Fisherhaven HL	0.636	108.0	Fisherhaven HL	2D	GH-R21
STANFORD					
Stanford	1.250	90.0	Stanford	2F	ST-R1
Stanford	1.500	90.0	Stanford	2F	ST-R2
GREATER GANSBAAI					
De Kelders New	2.000	97.5	De Kelders	2G	GG-R1
De Kelders Old	0.750	97.5	De Kelders	2G	GG-R2
Gansbaai New	3.000	62.5	Gansbaai	2G	GG-R3
Gansbaai Old	0.250	62.5	Gansbaai	2G	GG-R4
Kleinbaai Old	0.225	60.5	Kleinbaai	2G	GG-R5
Kleinbaai New	2.000	60.5	Kleinbaai	2G	GG-R6
Franskraal New	2.000	59.4	Franskraal	2G	GG-R7
Uilkraalsmond Old	0.225	59.4	Franskraal	2G	GG-R8
Uilkraalsmond New	0.600	59.4	Franskraal	2G	GG-R9
PEARLY BEACH					
Pearly Beach	2.000	19.1	Pearly Beach	2H	PB-R1
Pearly Beach Tower	0.295	31.2	Pearly Beach Booster Zone	2H	PB-R2
BAARDSKEERDERSBOS					
Baardskeerdersbos	0.150		Baardskeerdersbos	2J	BB-R1
BUFFELJAGS BAY					
Buffeljags Bay	0.096		Buffeljags Bay	2I	BJB-R1

3.2. Bulk Sewerage Infrastructure

3.2.1. Sewer Pump Stations

Existing sewer pump stations						
Name	Existing Capacity (l/s)	Pumps	Motors	Drainage Area	Map No	Item on Map
KLEINMOND						
Kleinmond PS1 (Private)	-			Kleinmond WWTW	2C	KM-SPS 1
Kleinmond PS2 (Tennis Club)	58			Kleinmond WWTW	2C	KM-SPS 2
Kleinmond PS3 (Begraafplaas)	11			Kleinmond WWTW	2C	KM-SPS 3
Kleinmond PS4 (Main PS)	95			Kleinmond WWTW	2C	KM-SPS 4
Kleinmond PS5 (Palmiet)	10			Kleinmond WWTW	2C	KM-SPS 5
Harbour PS	11			Kleinmond WWTW	2C	KM-SPS 6
GREATER HERMANUS						
Vermont PS1 (Bitou)	10			Hermanus WWTW	2D	GH-SPS 1
Sandbaai PS1	50			Hermanus WWTW	2E	GH-SPS 2
Sandbaai Hemel & Aarde PS	20			Hermanus WWTW	2E	GH-SPS 3
Hermanus PS1	20			Hermanus WWTW	2E	GH-SPS 4
Hermanus PS2	30			Hermanus WWTW	2E	GH-SPS 5
Hermanus PS3	10			Hermanus WWTW	2E	GH-SPS 6

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Hermanus PS4	65		Hermanus WWTW	2E	GH-SPS 7
Hermanus PS5 (Medi Clinic)	5		Hermanus WWTW	2E	GH-SPS 8
Hermanus PS6 (Peach House)	6		Hermanus WWTW	2E	GH-SPS 9
Hermanus PS7 (Zwelihle Sport)	14		Hermanus WWTW	2E	GH-SPS 10
Hermanus PS8 (Beach Club)	16		Hermanus WWTW	2E	GH-SPS 11
Hermanus PS9 (Zwelihle Main)	100		Hermanus WWTW	2E	GH-SPS 12
Hermanus PS10 (Whale Rock)	42		Hermanus WWTW	2E	GH-SPS 13
Paradise Park			Hermanus WWTW	2D	GH-SPS 14
Onrus PS1 (Main)	120		Hermanus WWTW	2D	GH-SPS 15
Onrus PS2 (Milkwood)	6		Hermanus WWTW	2D	GH-SPS 16
Onrus PS3 (Atlantic)	10		Hermanus WWTW	2D	GH-SPS 17
Onrus PS4 (Roome)	39		Hermanus WWTW	2E	GH-SPS 18
Voëlklip PS1 (Scout Camp)	27		Hermanus WWTW	2E	GH-SPS 19
Voëlklip PS2 (Piet se Bos)	5		Hermanus WWTW	2E	GH-SPS 20
Voëlklip PS3 (Grotto)	6		Hermanus WWTW	2E	GH-SPS 21
Voëlklip PS4 (Kammabaai)	5		Hermanus WWTW	2E	GH-SPS 22
Voëlklip PS5 (Mosssel River)	70		Hermanus WWTW	2E	GH-SPS 23
Fisherhaven	60		Hawston WWTW	2D	GH-SPS 24
Meerensee PS 1			Hawston WWTW	2D	GH-SPS 25
Meerensee PS 2			Hawston WWTW	2D	GH-SPS 26
Meerensee PS 3			Hawston WWTW	2D	GH-SPS 27
Meerensee PS 4			Hawston WWTW	2D	GH-SPS 28
STANFORD					
Stanford PS3 (Stanford)	61		Stanford WWTW	2E	ST-SPS 1
Stanford PS2 (Meent)			Stanford WWTW	2E	ST-SPS 2
GREATER GANSBAAI					
Gansbaai PS1 (Blompark 1)	6		Gansbaai WWTW	2G	GG-SPS 1
Gansbaai PS 2 (Blompark 2)	7		Gansbaai WWTW	2G	GG-SPS 2
Gansbaai PS 3 (Gansbaai Hawe)	85		Gansbaai WWTW	2G	GG-SPS 3
Kolgensbaai PS 1 (Not yet in use)	5		Gansbaai WWTW	2G	GG-SPS 4
Kolgensbaai PS 2 (Not yet in use)	15		Gansbaai WWTW	2G	GG-SPS 5
PEARLY BEACH					
Pearly Beach Re-Use (Not yet in use)			Pearly Beach WWTW	2H	PB-SPS 1
Pearly Beach Eluxolweni (Not yet in use)			Pearly Beach WWTW	2H	PB-SPS 2

Notes: Capacity remains as is, Existing capacity to be upgraded

3.2.2. Waste Water Treatment Works (WWTWs)

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Class of existing Waste Water Treatment Works (WWTWs), design hydraulic and organic flows and existing 2012/2013 flows and organic loads										
Name	Class	Hydraulic Design Capacity (ML/d)	Average Monthly Operating Capacity for 2012/2013 (ML/d)			Organic Design Capacity (kg COD/d)	Organic Load for 2012/2013 (kg COD/d)			Treatment Processes
			Min	Average	Max		Min	Average	Max	
Kleinmond	D	2.000	0.795	1.038	1.377	1 400	464	1 023	1 738	Inlet Works: Hand raked screen, two parallel grit channels, ultrasonic flow meter Secondary Treatment: One Bioreactor, Three Aerators, Two Sludge recycle pumps, One Settling tank Tertiary Treatment: UV Disinfection System Sludge Treatment: Sludge dewatering facility (Belt Press) Final Effluent: Wetland area to sea
Hawton	E	1.000	0.281	0.328	0.429	800	208	398	870	Inlet Works: Primary screen, two parallel grit channels, flow meter Secondary Treatment: One Bioreactor, Two Aerators, Three Submersible Sludge recycle pumps, One Settling tank Tertiary Treatment: Six Maturation Ponds and Chlorination Sludge Treatment: Sludge dewatering facility and sludge drying beds Final Effluent: Final effluent discharged to a Wetland area
Hermanus	B	12.000	2.245	4.597	7.284	9 000	1 277	2 717	4 013	Inlet Works: Huber front-rake screen, Odour control system, Vortex degitters Secondary Treatment: New Bioreactor, Aerators, New Sludge recycle pumps, Four Settling tanks Tertiary Treatment: Chlorination Sludge Treatment: New belt press sludge dewatering facility and sludge drying beds Final Effluent: Maturation ponds and sea
Stanford	E	0.600	0.337	0.421	0.548	350	213	387	644	Inlet Works: Front rake screen, grit channels, flow meter Secondary Treatment: Tecovoxer Biological reactor, Two Aerators, Sludge recycle pumps, One Settling tank Tertiary Treatment: Chlorination Sludge Treatment: New sludge dewatering machine, Polyelectrolyte dosing station, Two sludge lagoons Final Effluent: Reed bed system to river
Gansbaai	E	2.000	0.785	1.376	1.911	3 600	470	1 637	3 378	Inlet Works: Primary and Secondary screens (With timer control and differential head metering systems), Two Vortex degitters, Flow meter Balancing Tank: Secondary Treatment: Three sequential batch reactors, Aeration system, Blue Box and MCC systems Sludge Treatment: Old Tecovoxer Reactor, Sludge pumps, Sludge drying beds and Belt Press Final Effluent: Irrigation Pond or overflows into the reed bed system

Infrastructure for the re-use of treated effluent at the Hermanus and Gansbaai WWTW will be included in the contract, up to the off-take point on the bulk supply pipeline.

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The capacity of the Hermanus WWTW was upgraded from 7.3 Ml/d to 12 Ml/d. The upgrading included a new inlet works, refurbishment of the existing aeration and settling tanks, new anaerobic and anoxic basins and settling tank, mechanical sludge dewatering and a new chlorination system.

The sludge handling facilities at the Kleinmond and Gansbaai WWTW were also upgraded during 2012/2013.

The capacity of the Stanford WWTW will be upgraded during 2016/2017.

4. Minimum Requirements of Bidders

In addition to the compulsory documentation required, bidders will be evaluated according to the Pre-Qualification Evaluation Criteria as set out in the bid documentation, and should address:

4.1. Bidder or Bidder's Consortium:

- Proposed consortium structure with roles of members clearly spelt out.
- Consortium capability and strength.
- Skills and experience of relevant organisations and sub-contractors in projects of a similar nature.
- Experience of similar projects successfully executed for local government.
- Proof of company legal status and valid tax clearance certificate.

If bidders are bidding in consortium, the party which will contract with the Municipality must be identified.

Bidders will need to indicate who the Project Manager will be, provide a CV and confirmation of availability to be situated in the contract area. Further CVs of other key staff must also be provided.

4.2. Operations, Technical, Social and B-BBEE

Demonstrate and explain:

- And understanding of key project demands by referral to other similar projects undertaken showing duration, value and key performance areas.
- Approach to social responsibility and demonstration of staff training experience.
- B-BBEE status level of Contribution.

4.3. Management Processes:

Project management and risk management capability must be demonstrated.

In addition to demonstration of the evaluation criteria, please identify key risks perceived to be relevant to the RFP process and explain your perception.

4.4. Financial Management Processes:

- Prove financial sustainability by providing at least the last 2 years audited financial statements of the key contracting party.
- Prove the ability to fund/ raise the operational cash flow that will be required.

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APPENDIX 1

MUNISIPALITEIT



MUNICIPALITY

CGT

BID EVALUATION COMMITTEE MEETING

ATTENDANCE REGISTER & UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY

Date: 2011.10.30

I, the undersigned, hereby declare:

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
S. Immanuel	SCM	<i>[Signature]</i>
L. DE WET	SCM	<i>[Signature]</i>
P. BURGER	OPERATIONAL	<i>[Signature]</i>
T. SAMPSON	EMS: WFW	<i>[Signature]</i>
H. BLIGNAUT	INFRA PLANNING	<i>[Signature]</i>
M. BACHMAN	COMMUNITY SERVICES	<i>[Signature]</i>
B. D'OLIVEIRA	SCM	<i>[Signature]</i>
H.C. POLYSTER	Legal Services	<i>[Signature]</i>
M. MODMAN	Office of Area Manager	<i>[Signature]</i>
Clint Le Roux	Finance	<i>[Signature]</i>
R. DE JAGER	SCM	<i>[Signature]</i>

[Handwritten mark]

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 30 OCTOBER 2014.

4.2 TENDER NO. SC 1508/2014: WATER AND WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT: PHASE 1: REQUEST FOR
QUALIFICATION

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RESOLVED TO RECOMMEND TO BID ADJUDICATION COMMITTEE:

That, as they scored more than the minimum pre-qualification points as specified in the bid document for all criteria separately, as well as in total, the following bidders for Tender no. SC 1508/2014: Water and Waste Water Treatment Operation Management Contract, Phase 1: Request for Qualification be shortlisted, to be issued with the phase 2 procurement specifications, i.e. Request for Proposal:

Service Providers / Suppliers:	1. Water & Sanitation Services South Africa (Pty) Ltd; 2. Sembcorp Utilities South Africa (Pty) Ltd t/a Sembcorp Silulumanzi; 3. Bosch Munitech (Pty) Ltd; 4. Veolia Water Solutions & Technology South Africa (Pty) Ltd	SCM#	
Service / Goods Provided:	To be invited to bid for Water and Waste Water Treatment Operation Management Contract, Phase 2: Request for Proposal		
Vote:	Not applicable	Cost Code:	
Amount (Excluding VAT):	Not applicable	Contingency:	Not applicable
Amount In words:	Not applicable		
Contract Owner:	No contract applicable for phase 1 (RFQ)	Contract Champion:	No contract applicable for phase 1 (RFQ)
CONTRACT COMPLETION PERIOD			
Completion period	Not applicable	End date:	Not applicable

Certified as correct by:



Mr. C Le Roux
Deputy Director: Finance (Chairperson)

05 November 2014

Date

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CG8

BID ADJUDICATION COMMITTEE MEETING

ATTENDANCE REGISTER & UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY

Date: 2014.11.07

I, the undersigned, hereby declare:

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
Sq. Regaete-Abude	Finance	[Signature]
M. BARTMAN	Community Services	[Signature] (Acting)
V.S. Michaels	Port Area	[Signature]
DS ARRISON	Man Serv	[Signature]
S. Müller	Infra & Plan	[Signature]
D. Kearney	Area Management	[Signature]
HANRÉ BLIGNANT	INFRA + PLANNING	[Signature]
IRACY SAMPSON	EMTS - WFW	[Signature]
J.H. Du Plessis	Water - DOP	[Signature]
L. J. Wallace	Legal Services	[Signature]
Clint Le Roux	Finance	[Signature]
Selazi Madikane	Econ Dev.	[Signature]
Zita Malcook	JM	[Signature]
S. Immanuel	SCM	[Signature]
R. DE JAGER.	SCM	[Signature]
B.D'Oliveira	SCM	[Signature]
DRY POTGIETER	SCM	[Signature]
		?

Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the ^{69/194}
SCM Committee Room, Hermanus Administration, on Friday, 7 November 2014 at 08:00.

REMARK:

In terms of the prescriptive provisions of Regulation 5(2)(a) of the Supply Chain Management Regulations promulgated in Government Gazette No. 27636 dated 30 May 2005, tenders with a rand value above R 10 million (VAT included) must be approved by the Accounting Officer and may not be sub delegated

6.4 TENDER NO. SC1508/2014: WATER AND WASTE WATER TREATMENT OPERATION MANAGEMENT CONTRACT: PHASE 1: REQUEST FOR QUALIFICATION

Upon a proposal by the Director, Mangement Services, Ms. D Arrison duly seconded by the Director: Protection Services, Mr. N Michaels, it was

RESOLVED TO RECOMMEND TO THE ACCOUNTING OFFICER:

That, as they scored more than the minimum pre-qualification points as specified in the bid document for all criteria separately, as well as in total, the following bidders for **Tender no. SC 1508/2014: Water and Waste Water Treatment Operation Management Contract, Phase 1: Request for Qualification** be shortlisted, to be issued with the phase 2 procurement specifications, i.e. Request for Proposal:

Service Providers / Suppliers:	1. Water & Sanitation Services South Africa (Pty) Ltd; 2. Sembcorp Utilities South Africa (Pty) Ltd t/a Sembcorp Silulumanzi; 3. Bosch Munitech (Pty) Ltd; 4. Veolia Water Solutions & Technology South Africa (Pty) Ltd	SCM#	
Service / Goods Provided:	Water and Waste Water Treatment Operation Management Contract		
Vote:	Not applicable	Cost Code:	
Amount (Excluding VAT):	Not applicable	Contingency:	Not applicable
Amount in words:	Not applicable		
Contract Owner:	No contract applicable for phase 1 (RFQ)	Contract Champion:	No contract applicable for phase 1 (RFQ)
CONTRACT COMPLETION PERIOD			
Completion period	Not applicable	End date:	Not applicable

De Cock
12/11/2014.

Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the ^{70/194}
SCM Committee Room, Hermanus Administration, on Friday, 7 November 2014 at 08:00.

6.4 TENDER NO. SC1508/2014: WATER AND WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT: PHASE 1: REQUEST FOR
QUALIFICATION

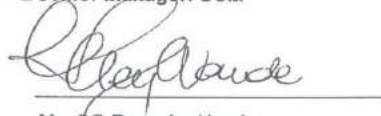
Certified as correct by:



Ms. R La Cock
Senior Manager: SCM



Date



Ms. SG Reyneke-Naude
Director: Finance (Chairperson)

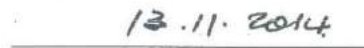


Date

RECOMMENDATION APPROVED:



Mr. C Groenewald
Accounting Officer



Date

O F E D N I V



SC NUMBER: 72194 / SCIS08/2014
 BIN NUMBER: 3

Minutes of a Specification Committee Meeting held in the SCM Unit on: (date) 27 Nov 2014.

TENDER / QUOTATION TITLE: Water & Waste Water Treatment Operation Management Contract - Phase 2 Request for Proposal.

Responsible Official: Harrie Bignault. Tel. No: [Redacted]

Contact person: [Redacted] Tel. No: 028 31 3504

1. FINANCIAL INFORMATION					
	YEAR 1	YEAR 2	YEAR 3		
Estimated Expenditure (Incl. VAT):	R36062910	R3646350	R4000000	Funding Source:	Income
Budget 1				Vote No 1	
Budget 2				Vote No 2	
Budget 3				Vote No 3	
Contract Period	1 Year	2 Years	3 Years	Other	15 Years. Section 33
Points	80/20	90/10	<input checked="" type="checkbox"/>	Recurring	YES NO
Verification Certificate from the CFO in terms of MFMA Circular NO. 62 issued by National Treasury (bids in excess of R10M - all applicable taxes included) issued PRIOR to advertising.					YES NO
KPIs indicated on Specification Submission Form?					YES NO

2. SITE MEETING *Compulsory:*

Date: 1) 10 Dec '14 | 13-14/01/15 | 10 Apr.

Address: Bantshat Hermannus.

Site meeting info provided to user - signature of official receiving briefing

3. ADVERTISEMENT

Date Advertised: 03 Dec '14 Closing Date: 30 Jan 2015 Validity period: 90 days.

< R200 000.00 (Advertise for 5 working days) > R10 000 000.00 (Advertise for a minimum of 22 working days)

> R200 000.00 (Advertise for a minimum of 10 working days) Banking Services (60 days)

> R 200 000.00 (CIDB) tender for minimum of 10 working days

TENDER FEE

< R200 000 FREE OF CHARGE

>R200 000 <20 pages = R26.40 >20 and <50 pages = R143.00 >50 pages = R572.00

Advertise in the following media:

ADV.	SENT	NAME	ADV.	SENT	NAME	ADV.	SENT	NAME
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Notice Boards	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Overstrand Website	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Department
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Hermanus Times	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Gansbaai Courant	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Overstrand Herald
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Cape Times	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Die Burger	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	CIDB Website

DOCUMENT TO MAXITEC Date Sent

4. CIDB DETAILS CIDB tenders not within 5 working days after placement on i-tender At least a minimum of:

CIDB GRADING

1	UP TO R200,000.00	2	UP TO R650,000.00	3	UP TO R2M	4	UP TO R4M	5	UP TO R6,5M
6	UP TO R13M	7	UP TO R40M	8	UP TO R130M	9	NO LIMIT		

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SC NUMBER: 1508/2014

PART B (Tender Document Compilation Checklist) (Marked "X" where applicable)

Section	Item No.	Description	Document Applicable	Compiled	Approved by
A.	1.	Cover page of a tender document	✓	✓	
	2.	Cover Page (with tender title, name, address, contact details, etc)	✓	✓	
	3.	Index	✓	✓	
	4.	Advert: English	✓	✓	
	5.	Site meeting Certificate (to be signed by chairperson of the meeting)	✓	✓	
	6.	AUTHORITY TO SIGN A BID	✓	✓	
	7.	JOINT VENTURE (authority and agreement)	✓	✓	
	8.	GENERAL Conditions of Contract <i>must be added</i>	✓	✓	Previous RFQ
	9.	STANDARD Conditions of Tender (CIDB)	✓	✓	"
	10.	GENERAL Conditions of Tender	✓	✓	
	11.	MBD 2 (Tax Clearance Certificate)	✓	✓	Previous RFQ
	12.	MBD 4 (Declaration of Interest)	✓	✓	Previous RFQ
	13.	MBD 5 (Declaration for Procurement exceeding R10m. including VAT)	✓	✓	
	14.	MBD 6.1 (Preference Points claim) 80/20 — 90/10 90/10	✓	✓	
	15.	MBD 8 (Declaration of Past Supply Chain Practices)	✓	✓	"
	16.	MBD 9 (Certificate of Independent Bid Determination)	✓	✓	"
	17.	MBD 15 (Certificate of Payment of Municipal Accounts)	✓	✓	
	18.	MBD 16 (Key Performance Areas)	✓	✓	
	19.	OHASA – Occupational Health & Safety Agreement	✓	✓	
	20.	FORM OF INDEMNITY	✓	✓	
B.	21.	TENDER SPECIFICATIONS	✓	✓	Consultant
	22.	PRE QUALIFICATION CRITERIA	✓	✓	Have -
	23.	SCHEDULE of plant and equipment	✓	✓	Consultant
	24.	SCHEDULE OF EXPERIENCE – Project manager / manager / etc.	✓	✓	
	25.	SCHEDULE OF EXPERIENCE – Project supervisor / site foreman/ etc.	✓	✓	
	26.	LOCAL CONTENT:			
	26.1.	Clothing	✓	✓	
	26.2.	Furniture	✓	✓	
	26.3.	Set-Top Boxes	✓	✓	
	26.4.	Electrical and Telecom cables	✓	✓	
	27.	PRICING SCHEDULE	✓	✓	Consultant subject template
28.	MBD 7.1 (Contract form – Purchase of Goods / Works)	✓	✓		
29.	MBD 7.2 (Contract form – Rendering of services)	✓	✓		
30.	MBD 7.3 (Contract form – Sale of Goods / Works)	✓	✓		
31.	FORM OF OFFER	✓	✓		
C.	32.	DATA BASE REGISTRATION	✓	✓	
DATE		2014/11/28	APPROVED (INIT.)		

SC NUMBER:

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1508/2014

NOTES:

RFQ doc duplicated in RFP - one copy.

SM-Harré stuur - by stuur via Worley Parsons.

Paragraph to be added on the MFMA = Sect 33.

Harré will provide the final document -

Edit → Pricing Schedule

Stephen to re-sign final document.

APPROVED

Initials & surname

B D'Oliveira

Date

2014/11/28

Signature



for SCM documentation sent to
H. Blignaut for final document.

75/194



TENDER NO. SC 1506/2014

The Pre-Qualified bidders are hereby invited for: **Water & Waste Water Treatment Operation Management Contract – Phase 2: Request for Proposal.**

X

Tender documents, in English, are obtainable as of *from* Wednesday, 03 December 2014, from H Bignaut at telephone number: 028 313 5047, between 08h30 and 15h30.

Sealed tenders, with "Tender No. SC1508/2014: Water & Waste Water Treatment Operation Management Contract – Phase 2: Request for Proposal." clearly endorsed on the envelope, must be deposited in **Tender Box No. 3** at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus. Bids may only be submitted on the bid documentation provided by the Municipality.

X

Compulsory briefing sessions will take place at 10h00 on the following dates: 10 December 2014 and again on ~~the~~ 13+14 January 2015 at the ~~Overstrand Municipality~~ Auditorium, Hermanus.

Civic Centre, Magnolia Avenue,

The closing date and time of the tender is on **Friday, 30 January 2015** at 12h00 and will be opened in public immediately thereafter in the SCM Committee Room, Hermanus Administration.

Tenders must be valid for 90 days after the closing date.

The Overstrand Municipality does not bind itself to accept the lowest or any Tender and reserves the right to accept any tender, as it may deem expedient. Tenders are subject to the General Conditions of Contract and the Supply Chain Management Policy of the Overstrand Municipality.

Please refer enquiries to Mr. H Bignaut at telephone number: 028 313 5047.

DIRECTOR: INFRASTRUCTURE & PLANNING

[Signature]
28/11/2014



Blaker, Rita 76/194
Mike, Harke, 90/11
27/11

TO:	THE SENIOR MANAGER: SUPPLY CHAIN MANAGEMENT		
DATE:	11 November 2014	ENQUIRIES:	Hanré Blignaut (ext. 5047)
SUBJECT:	SUBMISSION OF SPECIFICATIONS APPROVED IN TERMS OF CLAUSE 27(2)(g) OF THE SUPPLY CHAIN MANAGEMENT POLICY		

NAME OF TENDER	SC 1508/2014: Water & Waste Water Treatment Operation Management Contract – Phase 2: Request for Proposal
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1. FINANCIAL INFORMATION (also refer to Verification certificates A1 and A2 attached)							
	YEAR 1 (2015/16)	YEAR 2 (2016/17)	YEAR 3 (2017/18)	Funding Source	Income		
Estimated Expenditure (incl. VAT):	R 36 062 910	R 36 460 350	R 40 000 000				
Budget 1	R 36 062 910	R 36 460 350	Not available yet	Vote No 1	405-409, 456, 459, 460, 462, 497		
Budget 2				Vote No 2			
Budget 3				Vote No 3			
Contract Period	1 Year	2 Years	3 Years	Other	15 Years		
Points	80/20	90/10	X	Recurring	YES	X	NO
Verification Certificate from the CFO in terms of MFMA Circular NO. 62 issued by National Treasury (bids in excess of R10M – all applicable taxes included) issued PRIOR to advertising.							
					YES	X	NO

2. GENERAL INFORMATION								
a.	Estimated CIDB Classification & Rating (for Construction related projects)					Not applicable		
b.	Previous tender/quotation information							
1.	Is there an existing tender in place?					Y	N	X
1.1.	If yes, when will it expire?							
2.	In case of a cancelled tender, has the previous tender already been cancelled?					Y	N	

3. KEY PERFORMANCE INDICATORS (KPIs)								
a.	Work(s) performed / goods delivered within timeframes specified					Y	X	N
b.	Work(s) performed / goods delivered within financial framework specified					Y	X	N
c.	Acceptable quality of work(s) performed / goods delivered					Y	X	N
d.	OTHER:							
1.	Water quality compliance to SANS 0241 standards							
2.	Waste water quality compliance to DWS General Standards							
3.	Staff compliment compliance with WSA Regulation 17 (to be phased in)							

4. ADDITIONAL INFORMATION	
a.	SC 1508 Request for Qualification was adjudicated on 7 November 2014, resulting in a shortlist of 4 companies to be issued with phase 2 document, Request for Proposal
b.	DCC AVAILABLE 1/12; 1st BRIEFING 10/12; 2nd BRIEFING 13-14/01; BIDS CLUSE 30/01

CERTIFICATION BY MANAGER / PROJECT MANAGER

In the capacity as : (Designation)	Deputy Director: Engineering Planning	
I hereby certify that the attached draft specifications have been prepared, duly considering the requirements of Clause 27(2) of Council's Supply Chain Management Policy (Annexure A), that the project has been duly budgeted for and that the estimated budget for the project is a reasonable reflection of what might be expected in the current market conditions cognisant of the requirements of Clause 8 of Council's Preferential Procurement Policy (Annexure B).		
In terms of my duties as technical expert I hereby recommend that the attached specifications be approved.		
Hanré Blignaut		11 November 2014
Name	Signed	Date

CERTIFICATION BY DIRECTOR

I hereby approve the attached bid specification as recommended above (Paragraph 27.1.g of the Supply Chain Management Policy states that the appropriate bid specification committee must compile the specifications for each procurement transaction for goods or services by the Municipality, depending on the department involved. The specifications must be approved by the relevant senior manager prior to publication of the invitation for bids in terms of clause 22 of this Policy.)		
Stephen Müller		11 November 2014
Name	Signed	Date

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20/11/14

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY,
26 FEBRUARY 2015.

78/194

4.2 TENDER NO. SC 1508/2014:

WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT – PHASE 2

RESOLVED:

Item referred back for changes to report.

Certified as correct by:



Mr. R de Jager

2 MARCH 2015
Date

Senior Admin Officer: SCM (Acting Chairperson)

Meeting Adjourned: 15:17

Compiled by: S Immelman

19/194
CG11

Special


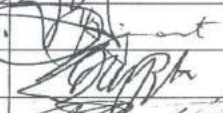
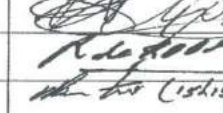
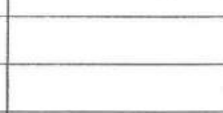
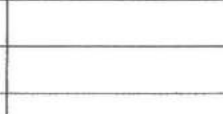

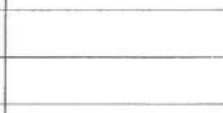
BID EVALUATION COMMITTEE MEETING

ATTENDANCE REGISTER & UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY

Date: 2015-02-27

I, the undersigned, hereby declare:

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
S. Immelman	SCM	
L.D Wallace	Legal Services	
H. BLIGNAUT	INFRA PLANNING	
DRM POTGIETER	SCM	
L.L. De W. d	SCM	
R. de Jager	SCM	
W. BARTMAN	Community Services	



MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 26 FEBRUARY 2015.

80/194

4: EVALUATION OF TENDERS:

4.1 TENDER NO. SC 1508/2014: WATER & WASTE WATER TREATMENT OPERATION MANAGEMENT CONTRACT – PHASE 2

RESOLVED TO RECOMMEND TO BID ADJUDICATION COMMITTEE/ACCOUNTING OFFICER:

1. That, as they scored the highest points in terms of Council's Preferential Procurement Policy, preference point system, Messrs. Veolia Water Solutions & Technologies South Africa (Pty) Ltd be recommended to the Accounting Officer to be appointed as the preferred bidder on **Contract SC 1508/2014 Phase 2, Request for Proposal: Water & Waste Water Treatment Operation Management Contract;**
2. That Water and Sanitation Services South Africa (Pty) Ltd be recommended to the Accounting Officer to be appointed as the reserve preferred bidder, and that in the event of contract negotiations with the preferred bidder being not successful, that the reserve preferred bidder be called upon by the Municipality to negotiate the conclusion of the contract on the terms and conditions as proposed in its bid submission, and
3. That negotiations with Veolia Water Solutions & Technologies South Africa (Pty) Ltd be commenced with, in order that the contract be finalised, to serve before Council for approval in terms of section 33 of the Municipal Finance Management Act and its regulations, followed by signing of the contract by the Municipal Manager;

Service Provider / Supplier:	Veolia Water Solutions & Technologies South Africa (Pty) Ltd	SCM Supplier #	In process of registration on Supplier data base
Service / Goods Provided:	Water and Waste Water Treatment Operations Management Contract		
Votes:	Refer to Annexure G	Cost Code:	
Amount (Excl. VAT):	Fixed and variable rates for Year 1: refer to schedule below	Contingency:	
Escalation Percentage:	CPIX	Escalation Date:	1 July
Contract Owner:	Stephen Muller & Roderick Williams	Contract Champion:	Hanre Blignaut & Mike Bartman
CONTRACT PERIOD:			
Implementation date:	1 July 2015	End date:	30 June 2030
		Period:	15 years, with option to extend for 5 years

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 15:00 ON FRIDAY,
27 FEBRUARY 2015.

81/194

TENDER NO. SC 1508/2014: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT – PHASE 2

Schedule of Rates: Veolia Water Solutions:

Ref no	ITEM	No of months	Veolia: Fixed Monthly Rates	
			Fixed rate pm (excluding VAT)	TOTAL
A	GENERAL			
A.1	FIXED CHARGES WASTEWATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.1.1	Hawston WWTW: O&M	12	R 19 220.00	R 230 640.00
A.1.2	Hermanus WWTW: O&M	12	R 46 830.00	R 561 960.00
A.1.3	Stanford WWTW: O&M	12	R 18 225.00	R 218 700.00
A.1.4	Gansbaai WWTW: O&M	12	R 26 250.00	R 315 000.00
A.1.5	Kleinmond WWTW: O&M	12	R 23 170.00	R 278 040.00
A.1	SUBTOTAL A.1 (carried forward to summary)			R 1 604 340.00
A.2	FIXED CHARGES WATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.2.1	Preekstoel WTW: O&M	12	R 432 920.00	R 5 195 040.00
A.2.2	Buffels River WTW: O&M	12	R 17 680.00	R 212 160.00
A.2.3	Franskraal WTW: O&M	12	R 54 740.00	R 656 880.00
A.2.4	Pearly Beach WTW: O&M	12	R 3 760.00	R 45 120.00
A.2.5	De Kelders WTW: O&M	12	R 5 075.00	R 60 900.00
A.2.6	Stanford WTW: O&M	12	R 115.00	R 1 380.00
A.2.7	Baardskeerdersbos WTW: O&M	12	R 4 890.00	R 58 680.00
A.2.8	Kleinmond WTW: O&M	12	R 35 660.00	R 427 920.00
A.2.9	Buffeljags WTW: O&M	12	R 135.00	R 1 620.00
A.2	SUBTOTAL A.2 (carried forward to summary)			R 6 659 700.00

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 15:00 ON FRIDAY,
27 FEBRUARY 2015.

82/194

TENDER NO. SC 1508/2014:		WATER & WASTE WATER TREATMENT OPERATION MANAGEMENT CONTRACT – PHASE 2		
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.3	FIXED CHARGES SURFACE WATER			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.3.1	Monthly charge for all surface water sources combined	12	R 38 300.00	R 459 600.00
A.3	SUBTOTAL A.3 (carried forward to summary)			R 459 600.00
A.4	FIXED CHARGES BOREHOLE PUMPS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.4.1	Monthly charge for all borehole pumps combined	12	R 2 725.00	R 32 700.00
A.4	SUBTOTAL A.4 (carried forward to summary)			R 32 700.00
A.5	FIXED CHARGES SURFACE WATER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.5.1	Monthly charge for all surface water pump stations combined	12	R 22 810.00	R 273 720.00
A.5	SUBTOTAL A.5 (carried forward to summary)			R 273 720.00
A.6	FIXED CHARGES BULK WATER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.6.1	Monthly charge for all bulk water pipelines combined	12	R 74 210.00	R 890 520.00
A.6	SUBTOTAL A.6(carried forward to summary)			R 890 520.00

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 15:00 ON FRIDAY,
27 FEBRUARY 2015.

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TENDER NO. SC 1508/2014:		WATER & WASTE WATER TREATMENT OPERATION MANAGEMENT CONTRACT – PHASE 2		
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.7	FIXED CHARGES RESERVOIRS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.7.1	Monthly charge for all reservoirs combined	12	R 25 060.00	R 300 720.00
A.7	SUBTOTAL A.7 (carried forward to summary)			R 300 720.00
A.8	FIXED CHARGES SEWER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.8.1	Monthly charge for all sewer pumpstations	12	R 28 760.00	R 345 120.00
A.8	SUBTOTAL A.8 (carried forward to summary)			R 345 120.00
A.9	FIXED CHARGES BULK SEWER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.9.1	Monthly charge for all sewer pipelines combined	12	R 63 250.00	R 759 000.00
A.9	SUBTOTAL A.9 (carried forward to summary)			R 759 000.00

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 15:00 ON FRIDAY,
27 FEBRUARY 2015.

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TENDER NO. SC 1508/2014: WATER & WASTE WATER TREATMENT OPERATION MANAGEMENT CONTRACT – PHASE 2

Ref no	ITEM		No of months	Veolia: Variable Rates based on own chemical supply	
				Rate per kl (excluding VAT)	TOTAL (for year)
C	VARIABLE CHARGES (Based on own Chemicals supply)				
C.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received (note: to be adjusted for extraordinary storm water)	
C.1.1	Hawston WWTW	10 490	12	R 0.28	R 35 246.40
C.1.2	Hermanus WWTW	227 490	12	R 0.18	R 491 378.40
C.1.3	Stanford WWTW	14 170	12	R 0.36	R 61 214.40
C.1.4	Gansbaai WWTW	35 190	12	R 0.15	R 63 342.00
C.1.5	Kleinmond WWTW	42 920	12	R 0.07	R 36 052.80
	SUBTOTAL C.1 (carried forward to summary)				R 687 234.00
C.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
C.2.1	Preekstoel WTW: O&M	334 340	12	R 0.22	R 882 657.60
C.2.2	Buffels River WTW: O&M	73 700	12	R 0.76	R 672 144.00
C.2.3	Franskraal WTW: O&M	81 610	12	R 3.73	R 3 652 863.60
C.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.82	R 155 964.00
C.2.5	De Kelders WTW: O&M	46 420	12	R 0.27	R 150 400.80
C.2.6	Stanford WTW: O&M	24 640	12	R 0.02	R 5 913.60
C.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.22	R 49 120.80
C.2.8	Kleinmond WTW: O&M	63 080	12	R 0.52	R 393 619.20
C.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL C.2 (carried forward to summary)				R 5 962 683.60

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 15:00 ON FRIDAY,
27 FEBRUARY 2015.

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TENDER NO. SC 1508/2014: WATER & WASTE WATER TREATMENT OPERATION MANAGE-
MENT CONTRACT – PHASE 2

					Veolia: Variable Rates based on Overstrand Chemicals Contract	
Ref no	ITEM		No of months	Rate per kl (excluding VAT)	TOTAL (for year)	
B	VARIABLE CHARGES (Based on OM Chemicals contract)					
B.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per KI received (note: to be adjusted for extraordinary storm water)		
B.1.1	Hawston WWTW	10 490	12	R 0.36	R 45 316.80	
B.1.2	Hermanus WWTW	227 490	12	R 0.20	R 545 976.00	
B.1.3	Stanford WWTW	14 170	12	R 0.43	R 73 117.20	
B.1.4	Gansbaai WWTW	35 190	12	R 0.18	R 76 010.40	
B.1.5	Kleinmond WWTW	42 920	12	R 0.10	R 51 504.00	
	SUBTOTAL B.1 (carried forward to summary)				R 791 924.40	
B.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per KI treated water received by Overstrand		
B.2.1	Preekstoel WTW: O&M	334 340	12	R 0.24	R 962 899.20	
B.2.2	Buffels River WTW: O&M	73 700	12	R 0.83	R 734 052.00	
B.2.3	Franskraal WTW: O&M	81 610	12	R 4.13	R 4 044 591.60	
B.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.94	R 178 788.00	
B.2.5	De Kelders WTW: O&M	46 420	12	R 0.42	R 233 956.80	
B.2.6	Stanford WTW: O&M	24 640	12	R 0.03	R 8 870.40	
B.2.7	Baardskeedersbos WTW: O&M	970	12	R 4.97	R 57 850.80	
B.2.8	Kleinmond WTW: O&M	63 080	12	R 0.55	R 416 328.00	
B.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00	
	SUBTOTAL B.2 (carried forward to summary)				R 6 637 336.80	

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 15:00 ON FRIDAY,
27 FEBRUARY 2015.

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TENDER NO. SC 1508/2014: WATER & WASTE WATER TREATMENT OPERATION MANAGE-
MENT CONTRACT – PHASE 2

D.1	PROVISIONAL SUMS		Veolia: Provisional Sums (excluding VAT)
D.1.1	Provisional capital sum for equipment or major repairs (in excess of R50 000 per incident) as may be required by the Employer	Sum	R 1 000 000.00
D.1.1.2	Provisional sum for upgrading of facilities	Sum	R 1 000 000.00
	SUBTOTAL		R 19 975 337.60
	Contingencies (10%)		R 1 997 533.76
	SUBTOTAL		R 21 972 871.36
	14% VAT		R 3 076 201.99
	TOTAL TENDER SUM FOR YEAR 1 (Estimated value of contract for 2015/2016, excluding staff costs)		R 25 049 073.35

POSITION	Veolia: cost of additional staff when required Monthly cost to company, excluding night shift allowance, Sunday shift allowance, Overtime allowance and Travel cost
Plant Supervisor	R 17 000
Class V Operator	R 14 800
Class IV Operator	R 11 000
Class III Operator	R 8 500
Class II Operator	R 8 000
Class I Operator	R 7 500
Driver	R 6 500
General assistant	R 6 000
Security guard	R 6 000

Veolia % Implementing Agent Fee

6 %

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 15:00 ON FRIDAY,
27 FEBRUARY 2015.

87/194

TENDER NO. SC 1508/2014: WATER & WASTE WATER TREATMENT OPERATION MANAGE-
MENT CONTRACT – PHASE 2

Certified as correct by:



Mr. R de Jager

2 MARCH 2015

Date

Senior Admin Officer: SCM (Acting Chairperson)

Meeting Adjourned: 15:27

Compiled by: S Immelman

88/194
C.G.12









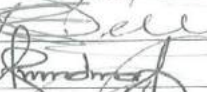
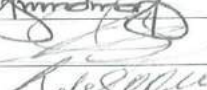
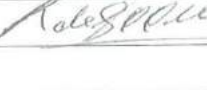




BID ADJUDICATION COMMITTEE MEETING

ATTENDANCE REGISTER & UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY

Date: 2015-03-06.

I, the undersigned, hereby declare:

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
M. BARTMAN	Community Services	
M.S. Mchale	Port. Dev.	
Desiree Arnsen	Man. Serv.	
Stephen Müller	Int. & Pla.	
HANRÉ BLIGNAUT	"	
DRM POITRIER	SCM	
K.S. Wallace	Legal Services	
Clint Le Roux	Finance	
Sizomzi Madibane	Econ. Dev.	
Liza LaCoet	SCM	
S.J. Reyneke-Maule	Finance	
L.L. De Wet	SCM	
S. Immelman	SCM	
B. D'Oliveria	SCM	
R. de Jager	SCM	

Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the ^{89/194}
SCM Committee Room, Hermanus Administration, on Friday, 6 March 2015 at 08:00.

5. ADJUDICATION OF TENDERS

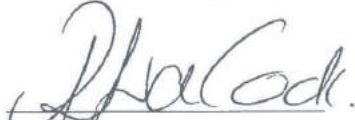
5.1 TENDER NO. SC1508/2014: PHASE 2 RFP: WATER & WASTE WATER TREATMENT
OPERATION MANAGEMENT CONTRACT

RESOLVED:

1. That the item be referred to a special meeting of the Bid Adjudication Committee, to afford the responsible official the opportunity to amend the evaluation report.

Responsible Person: Mr. H Blignaut

Certified as correct by:



Ms. R La Cock
Senior Manager: SCM

10/3/2015
Date



Ms. SG Reyneke-Naude
Director: Finance (Chairperson)

10/3/2015
Date

CONFIDENTIAL

90/194

C G B

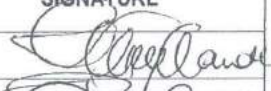
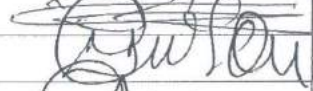


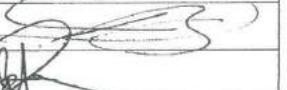


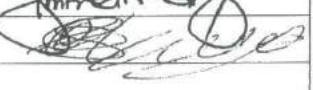
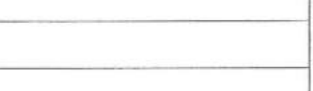





Special. BID ADJUDICATION COMMITTEE MEETING

ATTENDANCE REGISTER & UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY

Date: 2015.03.09

I, the undersigned, hereby declare:

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
SJ Reynolds-Naudé	Finance	
R. Williams	Comm Serv	
DSARRISON	Man Serv	
N.S. Michaels	Procl. Serv	
S. Mulo	Intra x Pla	
H. BLIGNANT	"	
M BARTMAN	OPERATIONAL	
B. D'Oliveira	SCM	
A Moxee	SCM	
L.A Wallace	Legal Services	
D. Madikane	Econ. Dev.	
Jha Cook	SCM	
S. Immedman	SCM	
LL De Wet	SCM	

Minutes of the Proceedings of a special Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Monday, 9 March 2015 at 14:00.

91/194

5. ADJUDICATION OF TENDERS

5.1 TENDER NO. SC1508/2014: PHASE 2 RFP: WATER & WASTE WATER TREATMENT
OPERATION MANAGEMENT CONTRACT

Upon a proposal by the Director: Protection Services, Mr. N Michaels duly seconded by the
Director: Local Economic Development and Tourism, Mr. S Madikane, it was

RESOLVED TO RECOMMEND TO THE ACCOUNTING OFFICER:

- 1 That, as they scored the highest points in terms of Council's Preferential Procurement Policy, preference point system, Messrs. Veolia Water Solutions & Technologies South Africa (Pty) Ltd be recommended to the Accounting Officer to be identified as the preferred bidder on **Contract SC 1508/2014 Phase 2, Request for Proposal: Water & Waste Water Treatment Operation Management Contract**;
2. That negotiations with Veolia Water Solutions & Technologies South Africa (Pty) Ltd be commenced with in accordance with section 24(1) of the Overstrand Supply Chain Management Policy, in order that the terms of the contract be negotiated, to serve before the Bid Adjudication Committee for a recommendation to the Accounting Officer.
3. That Water and Sanitation Services South Africa (Pty) Ltd.... see page 10 of 12


Service Provider / Supplier:	Veolia Water Solutions & Technologies South Africa (Pty) Ltd	SCM Supplier #	In process of registration on Supplier data base
Service / Goods Provided:	Water and Waste Water Treatment Operations Management Contract		
Votes:	Refer to Annexure G	Cost Code:	
Amount (Excl. VAT):	Fixed and variable rates and staff rates and implementing agent %: refer to schedules below (year 1)	Contingency:	
Escalation Percentage:	Relevant Industry Index, to be finalized during negotiation stage	Escalation Date:	1 July
Contract Owner:	Stephen Muller & Roderick Williams	Contract Champion:	Hanre Bignaut & Mike Bartman
CONTRACT PERIOD:			
Implementation date:	1 July 2015	End date:	30 June 2030
Period:	15 years, with the option to extend for 5 years		

Minutes of the Proceedings of a special Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Monday, 9 March 2015 at 14:00.

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

Schedule of Rates: Veolia Water Solutions:

Ref no	ITEM	No of months	Veolia: Fixed Monthly Rates	
			Fixed rate pm (excluding VAT)	TOTAL
A	GENERAL			
A.1	FIXED CHARGES WASTEWATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.1.1	Hawston WWTW: O&M	12	R 19 220.00	R 230 640.00
A.1.2	Hermanus WWTW: O&M	12	R 46 830.00	R 561 960.00
A.1.3	Stanford WWTW: O&M	12	R 18 225.00	R 218 700.00
A.1.4	Gansbaai WWTW: O&M	12	R 26 250.00	R 315 000.00
A.1.5	Kleinmond WWTWL O&M	12	R 23 170.00	R 278 040.00
A.1	SUBTOTAL A.1 (carried forward to summary)			R 1 604 340.00
A.2	FIXED CHARGES WATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.2.1	Preekstoel WTW: O&M	12	R 432 920.00	R 5 195 040.00
A.2.2	Buffels River WTW: O&M	12	R 17 680.00	R 212 160.00
A.2.3	Franskraal WTW: O&M	12	R 54 740.00	R 656 880.00
A.2.4	Pearly Beach WTW: O&M	12	R 3 760.00	R 45 120.00
A.2.5	De Kelders WTW: O&M	12	R 5 075.00	R 60 900.00
A.2.6	Stanford WTW: O&M	12	R 115.00	R 1 380.00
A.2.7	Baardskeerdersbos WTW: O&M	12	R 4 890.00	R 58 680.00
A.2.8	Kleinmond WTW: O&M	12	R 35 660.00	R 427 920.00
A.2.9	Buffeljags WTW: O&M	12	R 135.00	R 1 620.00
A.2	SUBTOTAL A.2 (carried forward to summary)			R 6 659 700.00
				

Minutes of the Proceedings of a special Bid Adjudication Committee Meeting held in the
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TENDER NO.		SC 1508/2014 Phase WATER & WASTE WATER TREATMENT OPERATION 2 RFP: MANAGEMENT CONTRACT		
		Veolia: Fixed Monthly Rates		
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.3	FIXED CHARGES SURFACE WATER			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.3.1	Monthly charge for all surface water sources combined	12	R 38 300.00	R 459 600.00
A.3	SUBTOTAL A.3 (carried forward to summary)			R 459 600.00
A.4	FIXED CHARGES BOREHOLE PUMPS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.4.1	Monthly charge for all borehole pumps combined	12	R 2 725.00	R 32 700.00
A.4	SUBTOTAL A.4 (carried forward to summary)			R 32 700.00
A.5	FIXED CHARGES SURFACE WATER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.5.1	Monthly charge for all surface water pump stations combined	12	R 22 810.00	R 273 720.00
A.5	SUBTOTAL A.5 (carried forward to summary)			R 273 720.00
A.6	FIXED CHARGES BULK WATER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.6.1	Monthly charge for all bulk water pipelines combined	12	R 74 210.00	R 890 520.00
A.6	SUBTOTAL A.6 (carried forward to summary)			R 890 520.00


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TENDER NO.		SC 1508/2014 Phase 2 WATER & WASTE WATER TREATMENT OPERATION RFP: MANAGEMENT CONTRACT		
		Veolia: Fixed Monthly Rates		
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.7	FIXED CHARGES RESERVOIRS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.7.1	Monthly charge for all reservoirs combined	12	R 25 060.00	R 300 720.00
A.7	SUBTOTAL A.7 (carried forward to summary)			R 300 720.00
A.8	FIXED CHARGES SEWER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.8.1	Monthly charge for all sewer pumpstations	12	R 28 760.00	R 345 120.00
A.8	SUBTOTAL A.8 (carried forward to summary)			R 345 120.00
A.9	FIXED CHARGES BULK SEWER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.9.1	Monthly charge for all sewer pipelines combined	12	R 63 250.00	R 759 000.00
A.9	SUBTOTAL A.9 (carried forward to summary)			R 759 000.00

Minutes of the Proceedings of a special Bid Adjudication Committee Meeting held in the
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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

Ref no	ITEM		No of months	Rate per k (excluding VAT)	TOTAL (for year)
C	VARIABLE CHARGES (Based on own Chemicals supply)				
C.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received (note: to be adjusted for extraordinary storm water)	
C.1.1	Hawston WWTW	10 490	12	R 0.28	R 35 246.40
C.1.2	Hermanus WWTW	227 490	12	R 0.18	R 491 378.40
C.1.3	Stanford WWTW	14 170	12	R 0.36	R 61 214.40
C.1.4	Gansbaai WWTW	35 190	12	R 0.15	R 63 342.00
C.1.5	Kleinmond WWTW	42 920	12	R 0.07	R 36 052.80
	SUBTOTAL C.1 (carried forward to summary)				R 687 234.00
C.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
C.2.1	Preekstoel WTW: O&M	334 340	12	R 0.22	R 882 657.60
C.2.2	Buffels River WTW: O&M	73 700	12	R 0.76	R 672 144.00
C.2.3	Franskraal WTW: O&M	81 610	12	R 3.73	R 3 652 863.60
C.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.82	R 155 964.00
C.2.5	De Kelders WTW: O&M	46 420	12	R 0.27	R 150 400.80
C.2.6	Stanford WTW: O&M	24 640	12	R 0.02	R 5 913.60
C.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.22	R 49 120.80
C.2.8	Kleinmond WTW: O&M	63 080	12	R 0.52	R 393 619.20
C.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL C.2 (carried forward to summary)				R 5 962 683.60

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

				Veolia: Variable Rates based on Overstrand Chemicals Contract	
Ref no	ITEM		No of months	Rate per kl (excluding VAT)	TOTAL (for year)
B	VARIABLE CHARGES (Based on OM Chemicals contract)				
B.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received (note: to be adjusted for extraordinary storm water)	
B.1.1	Hawston WWTW	10 490	12	R 0.36	R 45 316.80
B.1.2	Hermanus WWTW	227 490	12	R 0.20	R 545 976.00
B.1.3	Stanford WWTW	14 170	12	R 0.43	R 73 117.20
B.1.4	Gansbaai WWTW	35 190	12	R 0.18	R 76 010.40
B.1.5	Kleinmond WWTW	42 920	12	R 0.10	R 51 504.00
	SUBTOTAL B.1 (carried forward to summary)				R 791 924.40
B.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
B.2.1	Preekstoel WTW: O&M	334 340	12	R 0.24	R 962 899.20
B.2.2	Buffels River WTW: O&M	73 700	12	R 0.83	R 734 052.00
B.2.3	Franskraal WTW: O&M	81 610	12	R 4.13	R 4 044 591.60
B.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.94	R 178 788.00
B.2.5	De Kelders WTW: O&M	46 420	12	R 0.42	R 233 956.80
B.2.6	Stanford WTW: O&M	24 640	12	R 0.03	R 8 870.40
B.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.97	R 57 850.80
B.2.8	Kleinmond WTW: O&M	63 080	12	R 0.55	R 416 328.00
B.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL B.2 (carried forward to summary)				R 6 637 336.80

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

D.1	PROVISIONAL SUMS		Veolia: Provisional Sum (excluding VAT)
D.1.1	Provisional capital sum for equipment or major repairs (in excess of R50 000 per incident) as may be required by the Employer	Sum	R 1 000 000.00
D.1.2	Provisional sum for upgrading of facilities	Sum	R 1 000 000.00
	SUBTOTAL		R 19 975 337.60
	Contingencies (10%)		R 1 997 533.76
	SUBTOTAL 1		R 21 972 871.36
E.	COST OF MUNICIPAL STAFF TO BE TRANSFERRED (MAXIMUM COST)	Sum	R 14 300 000
	SUB TOTAL 2 (Estimated value of contract for 2015/2016, excluding VAT)		R 36 272 871.36
	14% VAT ON SUBTOTAL 1		R 3 076 201.99
	TOTAL TENDER SUM FOR YEAR 1 (Estimated value of contract for 2015/2016, including VAT)		R 39 349 073.35

F. VEOLIA: TENDERED RATES FOR ADDITIONAL STAFF WHEN REQUIRED	
POSITION	Monthly cost to company, excluding night shift allowance, Sunday shift allowance, Overtime allowance and Travel cost
Plant Supervisor	R 17 000
Class V Operator	R 14 800
Class IV Operator	R 11 000
Class III Operator	R 8 500
Class II Operator	R 8 000
Class I Operator	R 7 500
Driver	R 6 500
General assistant	R 6 000
Security guard	R 6 000

The tendered amounts exclude the cost of taking over the existing 53 municipal employees, which is estimated at 14.3 million rand.

G. VEOLIA: TENDERED IMPLEMENTING AGENT FEE	
Veolia % Implementing Agent Fee on all projects which maybe requested by the municipality in terms of the agreement	6 %

Minutes of the Proceedings of a special Bid Adjudication Committee Meeting held in the
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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT
OPERATION MANAGEMENT CONTRACT

3. That Water and Sanitation Services South Africa (Pty) Ltd be recommended to the Accounting Officer to be identified the reserve preferred bidder, as they scored the second highest points and that in the event of contract negotiations with the preferred bidder being not successful, that the reserve preferred bidder be called upon by the Municipality to negotiate the conclusion of the contract on the terms and conditions as proposed in its bid submission.

Certified as correct by:


Ms. R La Cock
Senior Manager: SCM

10/3/2015
Date


Ms. SG Reyneke-Naude
Director: Finance (Chairperson)

10/3/2015
Date

RECOMMENDATION APPROVED:


Mr. C. Groenewald
Accounting Officer


10.03.2015
Date

Minutes of the Proceedings of a special Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Monday, 9 March 2015 at 14:00. 99/194

6. MATTERS OF EXIGENCY

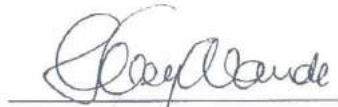
None

Certified as correct by:



MS. R La Cock
Senior Manager: SCM

10/3/2015
Date



Ms. SG Reyneke-Naude
Director: Finance (Chairperson)

10/3/2015
Date

CANCELLED



100/194
CG 14

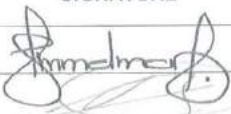


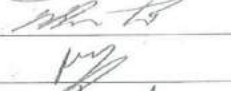
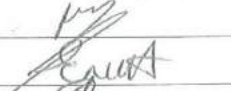
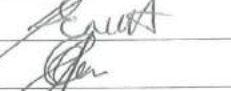
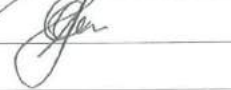
BID EVALUATION COMMITTEE MEETING

ATTENDANCE REGISTER & UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY

Date: 2015.07.09

I, the undersigned, hereby declare:

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
S. Immelman	SCM	
B. Oliveira	SCM	
P. Robinson	Planning	
M. Berman	Operational Services	
R. Fenton	Traffic	
E. Hooneberg	Finance: Revenue	
C. Johnson	Management Services	

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 9
JULY 2015.

101/194

4.4 TENDER NO. SC 1508/2015: WATER AND WASTE WATER TREATMENT OPERATIONS
MANAGEMENT CONTRACT

RESOLVED TO RECOMMEND TO THE BID ADJUDICATION COMMITTEE:

- 1.1 that as they scored the highest points in terms of Council's Preferential Procurement Policy, Contract SC 1508/2014, Water & Waste Water Treatment Operation Management Contract, be awarded to:

Service Provider / Supplier:		Veolia Water Solutions & Technologies South Africa (Pty) Ltd		SCM Supplier #		
Service / Goods Provided:		Water and Waste Water Treatment Operations Management Contract				
Vote:	Item Description	Refer to Annexure G		Cost Code	N/A	
	Cost Account	Refer to Annexure G				
	Unique Key	Refer to Annexure G				
Amount (Excl. VAT):		Fixed and variable rates and Salary Contribution and implementing agent fee %: refer to schedules below (year 1)		Contingency:	5%	
Amount in words:		Fixed and variable rates and Salary Contribution and implementing agent fee %: refer to schedules below (year 1)				
Escalation Percentage:		CPI for Operator Fee and SALGBC increases for Salary Contribution	Escalation Date:	1 July Annually		
Contract Owner:		Stephen Muller & Roderick Williams	Contract Champion:	Hanre Biignaut & Mike Bartman		
CONTRACT PERIOD:						
Implementation date:		1 September 2015, subject to Council approval of the Contract in its final form	End date:	31 August 2030	Period:	15 Years

Schedule of Rates / ...

The Schedule of Rates consists of the Operator's submission of:

1. the Fixed Fee for undertaking the Function,
2. the Variable Fee for undertaking the Function
3. the Salary Contribution for undertaking the Function
4. The Municipality's budgeted provisional sums for the Large Repairs and Maintenance Projects and Emergency Repairs
5. Two schedules and summaries for the Variable Fee are namely Option 1 for the instance of using the existing OM chemicals contract which will be in force until 30 June 2017, and Option 2 for the instance of using own chemicals suppliers.
6. the Implementing Agent (IA) Fee (% mark up on costs to be charged to undertake IA Services),
7. Agreed schedule informing the Salary Contribution and for future use of applying escalation on the Salary Contribution

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 9
JULY 2015.

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4.4 TENDER NO. SC 1508/2015: WATER AND WASTE WATER TREATMENT OPERATIONS
MANAGEMENT CONTRACT

Schedule of Rates: Veolia Water Solutions:

Ref no	ITEM	No of months	Veolia: Fixed Monthly Rates	
			Fixed rate pm (excluding VAT)	TOTAL
A	GENERAL			
A.1	FIXED CHARGES WASTEWATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.1.1	Hawston WWTW: O&M	12	R 19 220.00	R 230 640.00
A.1.2	Hermanus WWTW: O&M	12	R 46 830.00	R 561 960.00
A.1.3	Stanford WWTW: O&M	12	R 18 225.00	R 218 700.00
A.1.4	Gansbaai WWTW: O&M	12	R 26 250.00	R 315 000.00
A.1.5	Kleinmond WWTWL O&M	12	R 23 170.00	R 278 040.00
A.1	SUBTOTAL A.1			R 1 604 340.0
A.2	FIXED CHARGES WATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.2.1	Preekstoel WTW: O&M	12	R 432 920.00	R 5 195 040.00
A.2.2	Buffels River WTW: O&M	12	R 17 680.00	R 212 160.00
A.2.3	Franskraal WTW: O&M	12	R 54 740.00	R 656 880.00
A.2.4	Pearly Beach WTW: O&M	12	R 3 760.00	R 45 120.00
A.2.5	De Kelders WTW: O&M	12	R 5 075.00	R 60 900.00
A.2.6	Stanford WTW: O&M	12	R 115.00	R 1 380.00
A.2.7	Baardskeedersbos WTW: O&M	12	R 4 890.00	R 58 680.00
A.2.8	Kleinmond WTW: O&M	12	R 35 660.00	R 427 920.00
A.2.9	Buffeljags WTW: O&M	12	R 135.00	R 1 620.00
A.2	SUBTOTAL A.2			R 6 659 700.0

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 9
JULY 2015.

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TENDER NO.		SC 1508/2014 Phase 2 RFP:	WATER & WASTE WATER TREATMENT OPERATION MANAGEMENT CONTRACT	
			Veolia: Fixed Monthly Rates	
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.3	FIXED CHARGES SURFACE WATER SOURCES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.3.1	Monthly charge for all surface water sources combined	12	R 38 300.00	R 459 600.00
A.3	SUBTOTAL A.3			R 459 600.00
A.4	FIXED CHARGES BOREHOLE PUMPS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.4.1	Monthly charge for all borehole pumps combined	12	R 2 725.00	R 32 700.00
A.4	SUBTOTAL A.4			R 32 700.00
A.5	FIXED CHARGES SURFACE WATER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.5.1	Monthly charge for all surface water pump stations combined	12	R 22 810.00	R 273 720.00
A.5	SUBTOTAL A.5			R 273 720.00
A.6	FIXED CHARGES BULK WATER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.6.1	Monthly charge for all bulk water pipelines combined	12	R 74 210.00	R 890 520.00
A.6	SUBTOTAL A.6			R 890 520.00

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 9
JULY 2015.

TENDER NO.		SC 1508/2014 Phase 2 RFP:	WATER & WASTE WATER TREATMENT OPERATION MANAGEMENT CONTRACT	
			Veolia: Fixed Monthly Rates	
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.7	FIXED CHARGES RESERVOIRS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.7.1	Monthly charge for all reservoirs combined	12	R 25 060.00	R 300 720.00
A.7	SUBTOTAL A.7			R 300 720.00
A.8	FIXED CHARGES SEWER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.8.1	Monthly charge for all sewer pumpstations	12	R 28 760.00	R 345 120.00
A.8	SUBTOTAL A.8			R 345 120.00
A.9	FIXED CHARGES BULK SEWER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.9.1	Monthly charge for all sewer pipelines combined	12	R 63 250.00	R 759 000.00
A.9	SUBTOTAL A.9			R 759 000.00

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 9
JULY 2015.

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

Ref no	ITEM		No of months	Veolia: Variable Rates based on Overstrand Chemicals Contract	
				Rate per kl (excluding VAT)	TOTAL (for year)
B	VARIABLE CHARGES (Based on OM Chemicals contract)				
B.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received (note: to be adjusted for extraordinary storm water)	
B.1.1	Hawston WWTW	10 490	12	R 0.36	R 45 316.80
B.1.2	Hermanus WWTW	227 490	12	R 0.20	R 545 976.00
B.1.3	Stanford WWTW	14 170	12	R 0.43	R 73 117.20
B.1.4	Gansbaai WWTW	35 190	12	R 0.18	R 76 010.40
B.1.5	Kleinmond WWTW	42 920	12	R 0.10	R 51 504.00
	SUBTOTAL B.1				R 791 924.40
B.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
B.2.1	Preekstoel WTW: O&M	334 340	12	R 0.24	R 962 899.20
B.2.2	Buffels River WTW: O&M	73 700	12	R 0.83	R 734 052.00
B.2.3	Franskraal WTW: O&M	81 610	12	R 4.13	R 4 044 591.60
B.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.94	R 178 788.00
B.2.5	De Kelders WTW: O&M	46 420	12	R 0.42	R 233 956.80
B.2.6	Stanford WTW: O&M	24 640	12	R 0.03	R 8 870.40
B.2.7	Baardskeedersbos WTW: O&M	970	12	R 4.97	R 57 850.80
B.2.8	Kleinmond WTW: O&M	63 080	12	R 0.55	R 416 328.00
B.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL B.2				R 6 637 336.80

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 9
JULY 2015.

106/194

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

Ref no	ITEM		No of months	Veolia: Variable Rates based on own chemical supply	
				Rate per k (excluding VAT)	TOTAL (for year)
C	VARIABLE CHARGES (Based on own Chemicals supply)				
C.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received (note: to be adjusted for extraordinary storm water)	
C.1.1	Hawston WWTW	10 490	12	R 0.28	R 35 246.40
C.1.2	Hermanus WWTW	227 490	12	R 0.18	R 491 378.40
C.1.3	Stanford WWTW	14 170	12	R 0.36	R 61 214.40
C.1.4	Gansbaai WWTW	35 190	12	R 0.15	R 63 342.00
C.1.5	Kleinmond WWTW	42 920	12	R 0.07	R 36 052.80
	SUBTOTAL C.1				R 687 234.00
C.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
C.2.1	Preekstoel WTW: O&M	334 340	12	R 0.22	R 882 657.60
C.2.2	Buffels River WTW: O&M	73 700	12	R 0.76	R 672 144.00
C.2.3	Franskraal WTW: O&M	81 610	12	R 3.73	R 3 652 863.60
C.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.82	R 155 964.00
C.2.5	De Kelders WTW: O&M	46 420	12	R 0.27	R 150 400.80
C.2.6	Stanford WTW: O&M	24 640	12	R 0.02	R 5 913.60
C.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.22	R 49 120.80
C.2.8	Kleinmond WTW: O&M	63 080	12	R 0.52	R 393 619.20
C.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL C.2				R 5 962 683.60

MINUTES OF A BID EVALUATION COMMITTEE MEETING HELD AT 14:00 ON THURSDAY, 9
JULY 2015.

107/194

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

D.1	PROVISIONAL SUMS		Veolia: Provisional Sum (excluding VAT)
D.1.1	Provisional capital sum for equipment or major repairs (in excess of R50 000 per incident) as may be required by the Employer	Sum	R 350 000.00
D.1.2	Provisional sum for upgrading of facilities	Sum	R 200 000.00
	SUBTOTAL (OM chemicals)		R 19 304 681.20
	Contingencies (5%)		R 965 234.06
	SUBTOTAL 1		R 20 269 915.26
E.	SALARY CONTRIBUTION (OM STAFF COSTS)	Sum	R 13 283 247
	SUB TOTAL 2 (Estimated value of contract for 2015/2016, excluding VAT)		R 33 553 162.26
	14% VAT ON SUBTOTAL 1		R 2 837 788.14
	TOTAL TENDER SUM FOR YEAR 1 (Estimated value of contract for 2015/2016, including VAT, for 12 months)		R 36 390 950.40

F. VEOLIA: TENDERED IMPLEMENTING AGENT FEE	
Veolia % Implementing Agent Fee	6 %

Notes:

1. The total is the annual amount for the period 2015/16. The Operator will only be paid from the Effective Date of the Contract for the remainder of the 2015/16 Financial Year.
2. The amounts in D.1.1 and D.1.2 are indicative amounts which will be drawn against as and when costs are incurred by the Operator and invoiced.
3. Provisional sum D.1.1. will be determined annually and budgeted for by the Municipality in accordance with the requirements of the Function as determined in the Annual Plan.
4. Provisional sum D.1.2 is only applicable in the first year.
5. The fixed cost contribution for salary costs of posts associated with the Function as at October 2014 (E) will be paid out monthly in 12 equal payments. This amount will be escalated yearly based on the SALGBC increases and the schedule below will be used for the calculation.

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 11:00 ON WEDNESDAY, 15 JULY 2015.

4.2 TENDER NO. SC 1508/2014: WATER AND WASTE WATER TREATMENT OPERATIONS MANAGEMENT CONTRACT

110/194

RESOLVED TO RECOMMEND TO THE BID ADJUDICATION COMMITTEE/MUNICIPAL MANAGER:

- 1.1 that it be recommended to the Accounting Officer that as they scored the highest points in terms of Council's Preferential Procurement Policy, Contract SC 1508/2014, Water & Waste Water Treatment Operation Management Contract, be awarded to:

Service Provider / Supplier:		Veolia Water Solutions & Technologies South Africa (Pty) Ltd		SCM Supplier #		
Service / Goods Provided:		Water and Waste Water Treatment Operations Management Contract				
Vote:	Item Description	Refer to Annexure G			Cost Code	N/A
	Cost Account	Refer to Annexure G				
	Unique Key	Refer to Annexure G				
Amount (Excl. VAT):		Fixed and variable rates and Salary Contribution and implementing agent fee %: refer to schedules below (year 1)			Contingency:	5%
Amount in words:		Fixed and variable rates and Salary Contribution and implementing agent fee %: refer to schedules below (year 1)				
Escalation Percentage:		CPI for Operator Fee and SALGBC increases for Salary Contribution		Escalation Date:	1 July Annually	
Contract Owner:		Stephen Muller & Roderick Williams		Contract Champion:	Hanre Blignaut & Mike Bartman	
CONTRACT PERIOD:						
Implementation date:		1 September 2015, subject to Council approval of the Contract in its final form	End date:	31 August 2030	Period:	15 Years

- 1.2 That the contract only be signed after Council approval of the final contract.

Schedule of Rates / ...

The Schedule of Rates consists of the Operator's submission of:

- the Fixed Fee for undertaking the Function,
- the Variable Fee for undertaking the Function
- the Salary Contribution for undertaking the Function
- The Municipality's budgeted provisional sums for the Large Repairs and Maintenance Projects and Emergency Repairs
- Two schedules and summaries for the Variable Fee are namely Option 1 for the instance of using the existing OM chemicals contract which will be in force until 30 June 2017, and Option 2 for the instance of using own chemicals suppliers.
- the Implementing Agent (IA) Fee (% mark up on costs to be charged to undertake IA Services).

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 11:00 ON
WEDNESDAY, 15 JULY 2015.

111/194

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

Schedule of Rates: Veolia Water Solutions:

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A	GENERAL			
A.1	FIXED CHARGES WASTEWATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.1.1	Hawston WWTW: O&M	12	R 19 220.00	R 230 640.00
A.1.2	Hermanus WWTW: O&M	12	R 46 830.00	R 561 960.00
A.1.3	Stanford WWTW: O&M	12	R 18 225.00	R 218 700.00
A.1.4	Gansbaai WWTW: O&M	12	R 26 250.00	R 315 000.00
A.1.5	Kleinmond WWTWL O&M	12	R 23 170.00	R 278 040.00
A.1	SUBTOTAL A.1			R 1 604 340.00
A.2	FIXED CHARGES WATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.2.1	Preekstoel WTW: O&M	12	R 432 920.00	R 5 195 040.00
A.2.2	Buffels River WTW: O&M	12	R 17 680.00	R 212 160.00
A.2.3	Franskraal WTW: O&M	12	R 54 740.00	R 656 880.00
A.2.4	Pearly Beach WTW: O&M	12	R 3 760.00	R 45 120.00
A.2.5	De Kelders WTW: O&M	12	R 5 075.00	R 60 900.00
A.2.6	Stanford WTW: O&M	12	R 115.00	R 1 380.00
A.2.7	Baardskeerdersbos WTW: O&M	12	R 4 890.00	R 58 680.00
A.2.8	Kleinmond WTW: O&M	12	R 35 660.00	R 427 920.00
A.2.9	Buffeljags WTW: O&M	12	R 135.00	R 1 620.00
A.2	SUBTOTAL A.2			R 6 659 700.00

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 11:00 ON
WEDNESDAY, 15 JULY 2015.

112/194

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.3	FIXED CHARGES SURFACE WATER SOURCES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.3.1	Monthly charge for all surface water sources combined	12	R 38 300.00	R 459 600.00
A.3	SUBTOTAL A.3			R 459 600.00
A.4	FIXED CHARGES BOREHOLE PUMPS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.4.1	Monthly charge for all borehole pumps combined	12	R 2 725.00	R 32 700.00
A.4	SUBTOTAL A.4			R 32 700.00
A.5	FIXED CHARGES SURFACE WATER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.5.1	Monthly charge for all surface water pump stations combined	12	R 22 810.00	R 273 720.00
A.5	SUBTOTAL A.5			R 273 720.00
A.6	FIXED CHARGES BULK WATER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.6.1	Monthly charge for all bulk water pipelines combined	12	R 74 210.00	R 890 520.00
A.6	SUBTOTAL A.6			R 890 520.00

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 11:00 ON
WEDNESDAY, 15 JULY 2015.

113/194

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.7	FIXED CHARGES RESERVOIRS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.7.1	Monthly charge for all reservoirs combined	12	R 25 060.00	R 300 720.00
A.7	SUBTOTAL A.7			R 300 720.00
A.8	FIXED CHARGES SEWER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.8.1	Monthly charge for all sewer pumpstations	12	R 28 760.00	R 345 120.00
A.8	SUBTOTAL A.8			R 345 120.00
A.9	FIXED CHARGES BULK SEWER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.9.1	Monthly charge for all sewer pipelines combined	12	R 63 250.00	R 759 000.00
A.9	SUBTOTAL A.9			R 759 000.00

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 11:00 ON
WEDNESDAY, 15 JULY 2015.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

B) Variable Rates based on Overstrand Chemicals Contract					
Ref no	ITEM		No of months	Rate per kl (excluding VAT)	TOTAL (for year)
B	VARIABLE CHARGES (Based on OM Chemicals contract)				
B.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received	
B.1.1	Hawston WWTW	10 490	12	R 0.36	R 45 316.80
B.1.2	Hermanus WWTW	227 490	12	R 0.20	R 545 976.00
B.1.3	Stanford WWTW	14 170	12	R 0.43	R 73 117.20
B.1.4	Gansbaai WWTW	35 190	12	R 0.18	R 76 010.40
B.1.5	Kleinmond WWTW	42 920	12	R 0.10	R 51 504.00
	SUBTOTAL B.1				R 791 924.40
B.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
B.2.1	Preekstoel WTW: O&M	334 340	12	R 0.24	R 962 899.20
B.2.2	Buffels River WTW: O&M	73 700	12	R 0.83	R 734 052.00
B.2.3	Franskraal WTW: O&M	81 610	12	R 4.13	R 4 044 591.60
B.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.94	R 178 788.00
B.2.5	De Kelders WTW: O&M	46 420	12	R 0.42	R 233 956.80
B.2.6	Stanford WTW: O&M	24 640	12	R 0.03	R 8 870.40
B.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.97	R 57 850.80
B.2.8	Kleinmond WTW: O&M	63 080	12	R 0.55	R 416 328.00
B.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL B.2				R 6 637 336.80

Note: if the cession of Overstrand Municipality's chemicals contract to Veolia for the remainder of the contract period is not successful, the amounts for chemicals supplied by Overstrand Municipality will be deducted from payments due to Veolia for the function.

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 11:00 ON
WEDNESDAY, 15 JULY 2015.

115/194

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

C) Variable Rates based on Veolia's own chemical supply					
Ref no	ITEM		No of months	Rate per k (excluding VAT)	TOTAL (for year)
C	VARIABLE CHARGES (Based on own Chemicals supply)				
C.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per KI received	
C.1.1	Hawston WWTW	10 490	12	R 0.28	R 35 246.40
C.1.2	Hermanus WWTW	227 490	12	R 0.18	R 491 378.40
C.1.3	Stanford WWTW	14 170	12	R 0.36	R 61 214.40
C.1.4	Gansbaai WWTW	35 190	12	R 0.15	R 63 342.00
C.1.5	Kleinmond WWTW	42 920	12	R 0.07	R 36 052.80
	SUBTOTAL C.1				R 687 234.00
C.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per KI treated water received by Overstrand	
C.2.1	Preekstoel WTW: O&M	334 340	12	R 0.22	R 882 657.60
C.2.2	Buffels River WTW: O&M	73 700	12	R 0.76	R 672 144.00
C.2.3	Franskraal WTW: O&M	81 610	12	R 3.73	R 3 652 863.60
C.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.82	R 155 964.00
C.2.5	De Kelders WTW: O&M	46 420	12	R 0.27	R 150 400.80
C.2.6	Stanford WTW: O&M	24 640	12	R 0.02	R 5 913.60
C.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.22	R 49 120.80
C.2.8	Kleinmond WTW: O&M	63 080	12	R 0.52	R 393 619.20
C.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL C.2				R 5 962 683.60

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 11:00 ON
WEDNESDAY, 15 JULY 2015.

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

D.1	PROVISIONAL SUMS		Veolia: Provisional Sum (excluding VAT)
D.1.1	Provisional capital sum for equipment or major repairs (in excess of R50 000 per incident) as may be required by the Employer	Sum	R 350 000.00
D.1.2	Provisional sum for upgrading of facilities	Sum	R 200 000.00
	SUBTOTAL (OM chemicals)		R 19 304 681.20
	Contingencies (5%)		R 965 234.06
	SUBTOTAL 1		R 20 269 915.26
E.	SALARY CONTRIBUTION (OM STAFF COSTS)	Sum	R 13 283 247
	SUB TOTAL 2 (Estimated value of contract for 2015/2016, excluding VAT)		R 33 553 162.26
	14% VAT ON SUBTOTAL 1		R 2 837 788.14
	TOTAL TENDER SUM FOR YEAR 1 (Estimated value of contract for 2015/2016, including VAT, for 12 months)		R 36 390 950.40

F. VEOLIA: TENDERED IMPLEMENTING AGENT FEE	
Veolia % Implementing Agent Fee	6 %

Notes:

- The total is the annual amount for the period 2015/16. The Operator will only be paid from the Effective Date of the Contract for the remainder of the 2015/16 Financial Year.
- The amounts in D.1.1 and D.1.2 are indicative amounts which will be drawn against as and when costs are incurred by the Operator and invoiced.
- Provisional sum D.1.1. will be determined annually and budgeted for by the Municipality in accordance with the requirements of the Function as determined in the Annual Plan.
- Provisional sum D.1.2 is only applicable in the first year.
- The fixed cost contribution for salary costs of posts associated with the Function as at October 2014 (E) will be paid out monthly in 12 equal payments. This amount will be escalated yearly based on the SALGBC increases and the schedule below will be used for the calculation.
- The Salary Contribution determination was based on the assumption that SALGBC will apply a 6.1 % average increase from 1 July 2015 and the amounts in the schedule reflects this assumption.

MINUTES OF A SPECIAL BID EVALUATION COMMITTEE MEETING HELD AT 11:00 ON
WEDNESDAY, 15 JULY 2015.

117/194

4.2 TENDER NO. SC 1508/2014: WATER AND WASTE WATER TREATMENT OPERATIONS
MANAGEMENT CONTRACT

Certified as correct by:



Mr. B D'Oliveira

Senior Accountant: SCM (Chairperson)

2015/07/15

Date

Meeting adjourned: 12:10

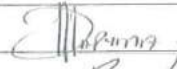





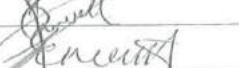








Compiled by: S Immelman

BID ADJUDICATION COMMITTEE MEETING
ATTENDANCE REGISTER & UNDERTAKING OF CONFIDENTIALITY AND IMPARTIALITY

 Date: 11 July 2015

I, the undersigned, hereby declare:

- that all information, documentation and decisions regarding any matter before the committee are confidential and undertake not to make known anything in this regard
- that I will treat all providers and potential providers equitably and will not purposefully favour or prejudice anybody
- that I will make known details of any private or business interest which I, or any close family member, partner or associate may have in any proposed procurement or disposal process of, or in any award or contract and that I will immediately withdraw from participating in any manner whatsoever

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
Zoliswa Mphahlele	SCM	
M. Barmann	COMMUNITY SERVICES	
V. J. Michaels	HR & Admin.	
Su Mülle	Infra + Plan	
A Kotze	Prop Admin's	
Clint Le Roux	Finance	
HANRE BLIGNIER	INFRA + PLANNING	
Morne Potgieter		
LESTER SMITH	FIRE & DISASTER	
Elmarie Hoeneberg	Finance: Revenue	
L. A. Wallaie	Legal Services	
S. Madikane	Econ. Dev.	
A. Ood	SCM	
R. Williams	Long Term Serv.	
S. G. Reynolds	Finance	
B. D'Oliveira	SCM	

Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the 119/194
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00.

REMARK:

In terms of the prescriptive provisions of Paragraph 5(2)(a) of the Supply Chain Management Policy, tenders with a rand value above R 10 million (VAT included) must be approved by the Accounting Officer and may not be sub delegated

5.4 TENDER NO. SC 1508/2014: WATER AND WASTE WATER TREATMENT OPERATIONS MANAGEMENT CONTRACT

Upon a proposal by the Director: Local Economic Development and Tourism, Mr. S Madikane duly seconded by the Senior Manager: Supply Chain Management, Ms. R La Cock, it was

RESOLVED TO RECOMMEND TO MUNICIPAL MANAGER:

- 1.1 that as they scored the highest points in terms of Council's Preferential Procurement Policy, Tender SC 1508/2014, Water & Waste Water Treatment Operation Management Contract, be awarded to:

Service Provider / Supplier:		Veolia Water Solutions & Technologies South Africa (Pty) Ltd		SCM Supplier #			
Service / Goods Provided:		Water and Waste Water Treatment Operations Management Contract					
Vote:	Item Description	Refer to Annexure G		Cost Code	N/A		
	Cost Account	Refer to Annexure G					
	Unique Key	Refer to Annexure G					
Amount (Excl. VAT):		Fixed and variable rates and Salary Contribution and implementing agent fee %: refer to schedules below (year 1)		Contingency:		5%	
Amount in words:		Fixed and variable rates and Salary Contribution and implementing agent fee %: refer to schedules below (year 1)					
Escalation Percentage:		CPI for Operator Fee and SALGBC increases for Salary Contribution		Escalation Date:		1 July Annually	
Contract Owner:		Stephen Muller & Roderick Williams		Contract Champion:		Hanre Bignaut & Mike Bartman	
CONTRACT PERIOD:							
Implementation date:		1 September 2015, subject to Council approval of the Contract in its final form		End date:		31 August 2030	
				Period:		15 years	

- 1.2 That the contract only be signed after Council's approval of the final contract.

Schedule of Rates / ...

The Schedule of Rates consists of the Operator's submission of:

1. the Fixed Fee for undertaking the Function,
2. the Variable Fee for undertaking the Function
3. the Salary Contribution for undertaking the Function
4. The Municipality's budgeted provisional sums for the Large Repairs and Maintenance Projects and Emergency Repairs
5. Two schedules and summaries for the Variable Fee are namely Option 1 for the instance of using the existing OM chemicals contract which will be in force until 30 June 2017, and Option 2 for the instance of using own chemicals suppliers.

Handwritten signature/initials

Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
SCM Committee Room, Hermanus Administration, on Friday, 17 July 2015 at 08:00. 120/194

TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

6. the Implementing Agent (IA) Fee (% mark up on costs to be charged to undertake IA Services).

1.3 The necessary budget provision be made for the leave pay accrued to the Transferred Employees. The Municipality will be responsible for paying the leave pay accrued to the Effective Date and undertakes to pay the Transferred Employees at the end of the third month after the Effective Date, less any tax due. The parties will disclose the agreement to the Transferred Employees;

Schedule of Rates: Veolia Water Solutions:

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A	GENERAL			
A.1	FIXED CHARGES WASTEWATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.1.1	Hawston WWTW: O&M	12	R 19 220.00	R 230 640.00
A.1.2	Hermanus WWTW: O&M	12	R 46 830.00	R 561 960.00
A.1.3	Stanford WWTW: O&M	12	R 18 225.00	R 218 700.00
A.1.4	Gansbaai WWTW: O&M	12	R 26 250.00	R 315 000.00
A.1.5	Kleinmond WWTW: O&M	12	R 23 170.00	R 278 040.00
A.1	SUBTOTAL A.1			R 1 604 340.00
A.2	FIXED CHARGES WATER TREATMENT WORKS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.2.1	Preekstoel WTW: O&M	12	R 432 920.00	R 5 195 040.00
A.2.2	Buffels River WTW: O&M	12	R 17 680.00	R 212 160.00
A.2.3	Franskraal WTW: O&M	12	R 54 740.00	R 656 880.00
A.2.4	Pearly Beach WTW: O&M	12	R 3 760.00	R 45 120.00
A.2.5	De Kelders WTW: O&M	12	R 5 075.00	R 60 900.00
A.2.6	Stanford WTW: O&M	12	R 115.00	R 1 380.00
A.2.7	Baardskeerdersbos WTW: O&M	12	R 4 890.00	R 58 680.00
A.2.8	Kleinmond WTW: O&M	12	R 35 660.00	R 427 920.00
A.2.9	Buffeljags WTW: O&M	12	R 135.00	R 1 620.00
A.2	SUBTOTAL A.2			R 6 659 700.00

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Minutes of the Proceedings of a Bid Adjudication Committee Meeting held in the
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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.3	FIXED CHARGES SURFACE WATER SOURCES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.3.1	Monthly charge for all surface water sources combined	12	R 38 300.00	R 459 600.00
A.3	SUBTOTAL A.3			R 459 600.00
A.4	FIXED CHARGES BOREHOLE PUMPS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.4.1	Monthly charge for all borehole pumps combined	12	R 2 725.00	R 32 700.00
A.4	SUBTOTAL A.4			R 32 700.00
A.5	FIXED CHARGES SURFACE WATER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.5.1	Monthly charge for all surface water pump stations combined	12	R 22 810.00	R 273 720.00
A.5	SUBTOTAL A.5			R 273 720.00
A.6	FIXED CHARGES BULK WATER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.6.1	Monthly charge for all bulk water pipelines combined	12	R 74 210.00	R 890 520.00
A.6	SUBTOTAL A.6			R 890 520.00

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

A) Fixed Monthly Rates				
Ref no	ITEM	No of months	Fixed rate pm (excluding VAT)	TOTAL
A.7	FIXED CHARGES RESERVOIRS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.7.1	Monthly charge for all reservoirs combined	12	R 25 060.00	R 300 720.00
A.7	SUBTOTAL A.7			R 300 720.00
A.8	FIXED CHARGES SEWER PUMPSTATIONS			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.8.1	Monthly charge for all sewer pumpstations	12	R 28 760.00	R 345 120.00
A.8	SUBTOTAL A.8			R 345 120.00
A.9	FIXED CHARGES BULK SEWER PIPELINES			
	Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)			
A.9.1	Monthly charge for all sewer pipelines combined	12	R 63 250.00	R 759 000.00
A.9	SUBTOTAL A.9			R 759 000.00

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

B) Variable Rates based on Overstrand Chemicals Contract					
Ref no	ITEM		No of months	Rate per kl (excluding VAT)	TOTAL (for year)
B	VARIABLE CHARGES (Based on OM Chemicals contract)				
B.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl received	
B.1.1	Hawston WWTW	10 490	12	R 0.36	R 45 316.80
B.1.2	Hermanus WWTW	227 490	12	R 0.20	R 545 976.00
B.1.3	Stanford WWTW	14 170	12	R 0.43	R 73 117.20
B.1.4	Gansbaai WWTW	35 190	12	R 0.18	R 76 010.40
B.1.5	Kleinmond WWTW	42 920	12	R 0.10	R 51 504.00
	SUBTOTAL B.1				R 791 924.40
B.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to deliver undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per Kl treated water received by Overstrand	
B.2.1	Preekstoel WTW: O&M	334 340	12	R 0.24	R 962 899.20
B.2.2	Buffels River WTW: O&M	73 700	12	R 0.83	R 734 052.00
B.2.3	Franskraal WTW: O&M	81 610	12	R 4.13	R 4 044 591.60
B.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.94	R 178 788.00
B.2.5	De Kelders WTW: O&M	46 420	12	R 0.42	R 233 956.80
B.2.6	Stanford WTW: O&M	24 640	12	R 0.03	R 8 870.40
B.2.7	Baardskeedersbos WTW: O&M	970	12	R 4.97	R 57 850.80
B.2.8	Kleinmond WTW: O&M	63 080	12	R 0.55	R 416 328.00
B.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL B.2				R 6 637 336.80

Note: if the cession of Overstrand Municipality's chemicals contract to Veolia for the remainder of the contract period is not successful, the amounts for chemicals supplied by Overstrand Municipality will be deducted from payments due to Veolia for the function.

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

C) Variable Rates based on Veolia's own chemical supply					
Ref no	ITEM		No of months	Rate per k (excluding VAT)	TOTAL (for year)
C	VARIABLE CHARGES (Based on own Chemicals supply)				
C.1	VARIABLE CHARGES WASTEWATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per KI received	
C.1.1	Hawston WWTW	10 490	12	R 0.28	R 35 246.40
C.1.2	Hermanus WWTW	227 490	12	R 0.18	R 491 378.40
C.1.3	Stanford WWTW	14 170	12	R 0.36	R 61 214.40
C.1.4	Gansbaai WWTW	35 190	12	R 0.15	R 63 342.00
C.1.5	Kleinmond WWTW	42 920	12	R 0.07	R 36 052.80
	SUBTOTAL C.1				R 687 234.00
C.2	VARIABLE CHARGES WATER TREATMENT WORKS Contractual Requirements (includes all costs required to undertake the Function as per Technical Specifications)	Assume monthly demand (kl/m) for bidding purpose		Rate per KI treated water received by Overstrand	
C.2.1	Preekstoel WTW: O&M	334 340	12	R 0.22	R 882 657.60
C.2.2	Buffels River WTW: O&M	73 700	12	R 0.76	R 672 144.00
C.2.3	Franskraal WTW: O&M	81 610	12	R 3.73	R 3 652 863.60
C.2.4	Pearly Beach WTW: O&M	15 850	12	R 0.82	R 155 964.00
C.2.5	De Kelders WTW: O&M	46 420	12	R 0.27	R 150 400.80
C.2.6	Stanford WTW: O&M	24 640	12	R 0.02	R 5 913.60
C.2.7	Baardskeerdersbos WTW: O&M	970	12	R 4.22	R 49 120.80
C.2.8	Kleinmond WTW: O&M	63 080	12	R 0.52	R 393 619.20
C.2.9	Buffelsjags Bay	140	12	R 0.00	R 0.00
	SUBTOTAL C.2				R 5 962 683.60

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

D.1	PROVISIONAL SUMS		Veolia: Provi- sional Sum (ex- cluding VAT)
D.1.1	Provisional capital sum for equipment or major repairs (in excess of R50 000 per incident) as may be required by the Employer	Sum	R 350 000.00
D.1.2	Provisional sum for upgrading of facilities	Sum	R 200 000.00
	SUBTOTAL (OM chemicals)		R 19 304 681.20
	Contingencies (5%)		R 965 234.06
	SUBTOTAL 1		R 20 269 915.26
E.	SALARY CONTRIBUTION (OM STAFF COSTS)	Sum	R 13 283 247
	SUB TOTAL 2 (Estimated value of contract for 2015/2016, excluding VAT)		R 33 553 162.26
	14% VAT ON SUBTOTAL 1		R 2 837 788.14
	TOTAL TENDER SUM FOR YEAR 1 (Estimated value of contract for 2015/2016, including VAT, for 12 months)		R 36 390 950.40

F. VEOLIA: TENDERED IMPLEMENTING AGENT FEE	
Veolia % Implementing Agent Fee on all projects which maybe requested by the municipality in terms of the agreement	6 %

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TENDER NO. SC 1508/2014 Phase 2 RFP: WATER & WASTE WATER TREATMENT OPERATION
MANAGEMENT CONTRACT

Notes:


1. The total is the annual amount for the period 2015/16. The Operator will only be paid from the Effective Date of the Contract for the remainder of the 2015/16 Financial Year.
2. The amounts in D.1.1 and D.1.2 are indicative amounts which will be drawn against as and when costs are incurred by the Operator and invoiced.
3. Provisional sum D.1.1. will be determined annually and budgeted for by the Municipality in accordance with the requirements of the Function as determined in the Annual Plan.
4. Provisional sum D.1.2 is only applicable in the first year.
5. The fixed cost contribution for salary costs of posts associated with the Function as at October 2014 (E) will be paid out monthly in 12 equal payments. This amount will be escalated yearly based on the SALGBC increases and the schedule below will be used for the calculation.
6. The Salary Contribution determination was based on the assumption that SALGBC will apply a 6.1 % average increase from 1 July 2015 and the amounts in the schedule reflects this assumption.

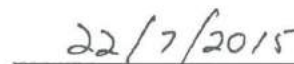
Note: That as this agreement may have an impact in terms of GRAP 32 (concession agreement) a copy of the signed contract be send to the Financial Services Department.

Certified as correct by:


Ms. R La Cock
Senior Manager: SCM



Date


Ms. SG Reyneke-Naude
Director: Finance (Chairperson)


Date

RECOMMENDATION APPROVED:


Mr. C Groenewald
Accounting Officer


Date

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CG17



IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: 17203/2015

In the matter between:

WATER AND SANITATION SERVICES
SOUTH AFRICA (PTY) LTD

Applicant

and

OVERSTRAND MUNICIPALITY
VEOLA WATER SOLUTIONS AND TECHNOLOGIES
SOUTH AFRICA (PTY) LTD
BOSCH MUNITECH (PTY) LTD

First Respondent

Second Respondent

Third Respondent

Heard on : 06 & 07 June 2016

Delivered on : 26 September 2016

JUDGMENT

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MAGONA, AJ

1. The Applicant seeks an Order for the review and setting aside of the decision made, at first, by the First Respondent (Overstrand/Municipality) on or about 16 March 2015, where the Second Respondent (Veolia) was identified as the preferred bidder, and in respect of the award of Tender number: SC 1508/2014: Water and Waste Water Treatment Operation Management.
2. Subsequent to receiving the Rule 53 record the Applicant further filed an Amended Notice of Motion dated 20 October 2015 with a Supplementary Affidavit where it sought to also review and set aside the decision made by Overstrand on 31 July 2015 giving the tender award to Veolia.
3. In this application the Second and Third Respondents were sighted only for any interest they may have in the proceedings, there was no relief sought against them, nor is there any cost order sought against them, save in the event of their opposition. There was no opposition by these Respondents. Overstrand is the only party opposing this application.
4. The appearance was as follows: On behalf of the Applicant; Advocates Joubert SC and Augustine, and for the Respondent: Advocates Farlam and Mangu-Lockwood appeared.

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3FACTUAL BACKGROUND

5. To better understand the issues in this matter it is best for one to be aversed of the history and circumstances that eventually led to the application before me. Overstrand is responsible for the delivering of water services to the residents of its areas within its jurisdiction. To carry out this function the municipality established an operated bulk works for the provision of water and the treatment of waste water. It was decided by Overstrand that a competently skilled and experienced operator be contracted to operate and maintain their bulk water and waste water treatment works (the works) within its jurisdiction, for a period of about 15 years.

6. A Director of the infra-structure and planning was delegated to undertake a more detailed study to inform and meet specifications, to initiate the procurement process, to report back with regards to implications of future financial commitments in terms of Section 33 of the local Government Municipal Finance Management Act, 2003 (Act 56 of 2003) MFMA Act.

7. On 25 August 2014, Overstrand Municipality invited bidders in a Request for Qualification document to express an interest to be pre-qualified for the works. This was the first phase and it brought about the issue of a request for qualification for Tender number SC1508/2015, which was to identify and to shortlist suitable contractors from the market for the purpose of starting the implementation and delivery of its services. There were four shortlisted

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candidates/bidders. These included the Applicant as well as Veolia, the Third Respondent and one other. The latter two are not relevant for the purpose of this application. This was the first phase of the tender process.

8. The second phase related to checking whether the bidder complied with The Request for Proposal which included functionality, price and preference points.

8.1 On 3rd December 2014 the municipality issued the Request for Proposal to four shortlisted bidders identified during the Request for Qualification Process.

8.2 The Request for Proposal contained various clauses in its Annexure B, this document is marked on top on each page as "*Bulk Works RFP: Annexure Technical Specifications*"; of importance for the purposes of this application is Clause 2.11 which provides as follows:

"2.11 STAFFING

The operator shall at all times provide sufficient numbers of staff, with sufficient experience and qualifications to meet or exceed all the requirements of the contract. The minimum requirements for the operation of the various classes of works are given in the table below but this does not include laboratory personnel. The operator needs to comply with the current legislated regulation 2834 requirements, or any new classification requirements from the Department of Water and Sanitation, e.g. Regulation 17, which is expected to be promulgated soon."

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9. Clause 2.11.2 of The Request for Proposal provides:

"2.11.2 Minimum Levels

In addition to the correct Class of Process Controller and Supervisor per Class of plant the Operator shall also provide the following key staff as an absolute minimum:

1. One Overall Manager - who shall have an appropriate degree and professional qualification plus a minimum of 15 years postgraduate experience of which at least 8 years must be relevant to water services operation and maintenance management.
2. The Head of Maintenance – who shall have an appropriate technical qualification and a minimum of 10 years working experience, of which at least must be in maintenance of mechanical and electrical equipment.
3. The Head of Operation – who shall have an appropriate technical qualification and a minimum of 10 years working experience of which at least 5 years must be in the operation of process plants.
4. One QA/QC Engineer – who shall have an appropriate technical qualification with a relevant training in QA plus a minimum of 10 years working experience of which at least 5 must be related to QA experience.
5. One senior Safety, Health and Environment (SHE) who shall have an appropriate technical qualification with a relevant training on safety and a minimum of 10 years working experience of which at least 5 years must be related to safety

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- management. A deputy safety officer shall be provided full time reporting to the senior SHE officer.
6. Process Controllers and Supervisors per Class of Plant in compliance with Regulation 17 or any new requirements from the Department of Water and Sanitation.
 7. Foremen shall be suitably experienced with a relevant technical qualification, an ability to read and write in English, and at least 5 years relevant experience in the field.”
-
10. Regulation 17 provides for the process that must be followed within a period of three years from the workers to achieve the full status of being Process Controllers, hence the skills development approach and methodology had to be complied with Regulation 17 a draft regulation in terms of the Water Services Act, 108 of 1997.
 11. This Regulation gives details in respect of the experience and qualifications necessary.
 12. On 16 January 2015 an addendum to the Request for Proposal was furnished to the bidders. This addendum also identified that eleven additional process controllers were required to be appointed to achieve compliance with Regulation 2834 over and above the 53 posts already filled that needed to be filled for compliance.

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13. By the closing date of the bid period on 30 January 2015, only three of the shortlisted candidates have submitted their bid.

THE BIDDING PROCESS

14. It was argued for the Applicant that the Request for Proposal permitted bidders to meet the requirements of Draft Regulation 17 over three years and to train transferred municipal employees to meet this, but compliance with Regulation 2834 was on different footing as stated above. The final estimated shortfall of Process Controllers, we expected to be supplied or trained up out of the existing municipal employees to be transferred.

15. In short, in terms of Section 26 of the *Municipalities Supply Chain Management policy* (adopted in terms of Section 111 of the local government; Municipal Finance Management Act, No. 56 of 2003 and the Municipal Supply Chain Management Regulations, Notice 868 of 30 May 2005) (The SCM Policy). Three committees are established, namely the Bid Specification Committee (BSC) which is responsible for compiling the specifications for each procurement transaction for goods or services in accordance with Section 27 of the SCM Policy; the Bid Evaluation committee (BEC), which evaluates all bids for procurement exceeding R30,000 in accordance with Section 28 of the SCM policy and further makes recommendations to the Bid Adjudication Committee (BAC), which considers the reports and recommendations of the BEC in accordance with Section 29 of the SCM policy and further makes

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recommendations to the Accounting Officer in his discretion to either make the final award or not.

16. The planning and stipulation of preference point system was used to evaluate tenders on functionality in terms of the Preferential Procurement Policy Framework Act, 2000: Preferential Procurement Regulations, 2011(PFFFA Act). It is unnecessary to set out the formula used it being sufficient for present purposes to state that it involved a scoring of the tender out of a maximum of 100 points, 10 of which related to those goals set out in S2(1) (d) of the PFFFA Act .

17. The bid and points allocated from the onset I must state that, Veolia, because of its price for the first year of the contract which amounted to R21 972 871.36 excluding vat; compared to that of the Applicant which amounted to R26 279 346.20 excluding vat was regarded as the preferred bidder. Veolia's bid due to its bid price it was considered to be ostensibly the lowest and was awarded for such a price a 90/100 for functionality and 0 (zero) points on BBBEE, whilst the Applicant for its bid price which was higher than Veolia's was awarded 77.36/100 made up from 72.36/100 for functionality and a 5 (five) points for the BBBEE status.

- 17.1 Bids were evaluated by the Supply Chain Management as well as the technical team from the Municipality. Veolia was awarded the preferred bidder status and the Applicant the reserve preferred bidder status.

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The Identified Shortfalls And Costs implications

18. On 17 February 2015 letters of clarification were sent to both the Applicant and Overstrand, regarding staffing costs, I will focus to those sent to Veolia for the purpose of the issues before me it was stated:

Starting from Query Number 2

18.1 "2. Staffing costs: your suggestion that the full staff budget of Overstrand municipality be transferred to the operator is not acceptable; the budget only for staff actually transferring will be added to this contract. Any shortfall in staff will have to be supplied by the operator, and the cost adjustment for them will be based on the schedule of staff costs supplied by the operator. Also note that irrespective of staff organograms and other related submissions in your bid, it will be in the remain the responsibility of the operator to supply all required staff, as will be legally and operationally required to operate the works that they attend that rates. The staff complement provided must ensure that the DWS regulatory requirements. The plant will be attained, including the impact of Regulation 17. It is also assumed that your pricing allows for all additional staff required, including all support staff. Please confirm your acceptance of this interpretation."

Veolias' Response to Query Number 2:

"We remove our qualification that the full staff budget of the Municipality is transferred to Veolia and accept that the Schedule of Employee costs will apply for

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the shortfall of staff that does not transfer to Veolia. That current staff compliment of 53 is sufficient for Veolia to provide the service and this is the basis of our offer. Our offer excludes the cost to employ more than 53 staff to meet the impact of Regulation 17. The Veolia offered mechanism is that additional staff (more than 53) is employed over several years in accordance with the approved Annual Plan and available municipal budget using the Schedule of Employee Costs to determine the additional cost."

Query Number 3 :

18.2 "3. Schedule of staff costs: it appears that the costs supplied by you in the schedule of staff costs are very low compared to the market. Please confirm that you are aware of that fact."

Veolia's Response to Query Number 3:

"...the rates provided are the Total Cost to Company in our employment contracts and travel and overtime costs are not included in the schedule of staff costs. Please refer to below table for typical staff cost where travel and overtime included."

Veolia then continues to give the relevant figure and staff supplement some to be used on a part-time basis.

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Query Number 4 was:

18.4 "4. Please indicate in detail in the table below, the exact full-time human resources that are included in your price that will be allocated to this contract on a full-time basis"

Response to Query Number 4:

"As per your qualification, the rates provided are the total cost to Veolia our employment contracts and travel and overtime costs are not included in the Schedule of Staff costs. please refer to table below for typical Staff cost where travel and overtime are included."

19. An organogram was included which listed amongst others Process Controllers of various classes, Plant Supervisor, Driver, General Assistant and Security guard with costs implication for various shifts including public holiday costs.
20. A report obtained from Worley Parsons RSA (Pty) Ltd (Worley Parsons) dated 23 February 2015 stated as follows:

“Veolia stated that the aim would be to train the existing staff so as to ensure regulatory compliance in the initial three-year period, but that they may need to negotiate in this period. For additional money to appoint more people should that be required. (There RFP required that regulatory compliance can be achieved over a period of three years that municipal staff that must be trained to achieve regulatory compliance where possible). It is difficult to quantify any cost implications at this stage as it is not only a matter of allowing for the cost of additional staff is some existing staff should have the potential to be trained up and then some positions may become redundant as operational efficiency improves. It must however be noted that this is an area of concern and will need special attention during the negotiations with the preferred bidder, should that be Veolia.”

21. The bid adjudication committee minutes reflect that a meeting was held by this Committee on 26 February 2015, where Veolia was recommended as the preferred bidder. The bid evaluation committee Minutes also reflect that this committee held its own meeting on 06 March 2015 confirming the recommended bidder Veolia. In these committee’s combined minutes they also recognised that Veolia did not indicate the gap analysis between the existing staff in the regulatory requirements, and held that:

“Veolia clarified that in their current costing proposal that they are proposing that Veolia deploys an additional eleven (11) persons to supplement the 53 municipal staff members. They have also provided a list of staff costs to be used, should they need to supply additional staff to adjust their price if some, or all, of the municipal

staff not transfer to them.(sic) It appears that Veolia endeavoured in their submission to provide for the Function to be performed with the smallest possible team of people, concentrating on improved efficiencies and operational management. This approach is fully in line with the stated objective of the municipality with this project, namely to improve operational efficiencies at a lower cost."

22. On 09 March 2010 the BAC recommended Veolia to the accounting officer as the preferred bidder on the basis that it had scored the highest points. Negotiations with Veolia commenced in accordance with section 24 (1) of the Overstrand supply chain management policy in order that the contract be finalised to serve before council approval in terms of section 33 of the municipal Finance Management act and the regulations promulgated in terms of section 168 of the said Act, followed by signing of the contract by the Municipal Manager.
23. On 10 March 2015 the recommendation was approved by Overstrand's Municipal Manager.
24. On 16 March 2016 the Applicant was notified that Veolia was the preferred bidder and the applicant the reserve preferred bidder. Further that the award of the contract to Veolia was subject to the successful negotiation of the final terms and conditions of the contract which was proposed to be concluded. The applicant was also informed that it would remain the reserve preferred bidder in the event of contract negotiations with

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Veolia were not successful and they would then be called upon to negotiate the conclusion of the contract on the terms and conditions proposed in its bid submissions.

25. The bidders were then requested to agree to extend the date for which the tenders were valid until 29 July 2015 to provide for time to negotiate .

26. Negotiations between Veolia and Overstrand began, meetings were held in March and July 2016 where consensus was reached. A preferred bidder evaluation report dated 14 July 2015 was then compiled by WorleyParsons. The report highlights the terms and issues that were discussed during negotiations between the parties in the following was cited:

“3.2.1 Organogram to execute the function:

Veolia did not highlight the number of posts per function and they were requested to provide this insignificant detail during the negotiations in order that the municipality could satisfy itself that regulatory compliance over a three-year period could be achieved within the tender price... Veolia indicated and confirmed that they will be able to attend regulatory compliance with their proposed 11 additional staff members as well as the municipal staff, which will be transferred by them, and given the necessary training where required. Veolia has confirmed that they take the full risk as far as the trainability of the existing staff is concerned. It will also be necessary to move some staff to balance the requirement that each works, and again they have confirmed that

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they will manage this process and take the full risk in terms of the transferability of the staff.

The operations manager and the maintenance manager will operate out of Hermanus, in offices which they will finance and build the Preekstoel site, and the facilities will revert to OM without any cost at the termination of the contract. This matter was added to the Contract, as it was not an RFP requirement."

Clause 3.3 of this report further states:

"3.3 Contract

The contract is attached as Annexure C. The contract reflects the changes, as per Annexure B: Contract Drafting Memorandum. Careful attention was paid to the any proposed changes to ensure that the status quo or the competitive position of the tender process would not change. Changes were mostly to clarify the drafting address comments by Provincial Treasury. These would have applied equally to all bidders. This response to Veolia's specific bid offers did not change the tender specification or Veolia's price schedule."

27. I could find no documents furnished by Overstrand which reflected the deliberations during negotiations save the actual contract attached to the Worley Parsons report which seems to reflect what had taken place during the negotiations. I will elaborate more on this further in this judgment.

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28. The issue arose as the Applicant felt that there was non-compliance by Veolia with the specific requirements of the Request for Proposal. That they were elevated to preferred bidder, and awarded the tender even though the queries sent to them clearly showed that even Overstrand was concerned about the issue of non-compliance at one stage, but chose to accept the assurance given by Veolia that they will deliver even though they could not provide the necessary staffing as per Regulations in particular Regulation 2834.

29. More on this in the discussion below.

REVIEW GROUNDS

30. I turn now to look at the merits of the application for review. In essence the Applicant claims its Constitutional right to a procedurally fair administrative action¹ has been infringed and therefore contrary to the provisions of Section 3(1) of the Promotion of Just Administrative Action Act 3 of 2000("PAJA").

¹ S33(1) of the Republic of South Africa Constitution Act 108, 1996: S33 provides that " (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair."

THE APPLICANT'S CASE

31. The Applicant's Director Mr Anthony Sanders (Mr Sanders) deposed to the founding and supplementary affidavit what emerges from these are the following grounds of review:
32. The first ground of review being brought by the applicants is that bidders were required to comply with the requirements of the Regulation 2834 to the Water Act of 1956 which prescribes a number of qualified personnel (Process Controllers) required to mend the works.
- 32.1 Mr Sanders avers that a certain number of Process Controllers already employed by the municipality would transfer to the contractor. The contractor was required to supplement any short-fall to ensure compliance with the regulation. That Veolia's bid reflected a short-fall of at least 12 Process Controllers required for compliance. Its bid was therefore not an "*acceptable tender*" under the (Procurement Act) the Preferential Procurement Policy Framework Act, of 2000; Preferential Procurement Regulations of 2011), and ought to have been disqualified.

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33. The Applicant's second ground of review is that Veolia's tendered price excluded certain specified costs. That it indicated that those costs were to be for Overstrand's account.
- 33.1 Veolia was selected as preferred bidder on the basis of this price. The evidence is that, during contract negotiations Veolia changed and agreed to absorb the costs which it had previously excluded. Its bid and its price were now on a different footing to its original tender. The result is a failure of procedural fairness and non-compliance with Overstrand's Supply Chain Management Policy.
34. The third ground of review tendered by the Applicant was that it was evident Overstrand had not had sufficient material during evaluation to satisfy it-self that Veolia's bid would achieve compliance with the regulatory requirements.
- 34.1 That the matter was only settled during contract negotiations (i.e. after Veolia had been selected as the preferred bidder on the basis of its score and evaluation). This is not permitted by the Procurement Act; the Act requires that only compliant bids may be scored.
35. The fourth ground of review raised by the Applicant was that the request for proposal required certain key managers to be employed on a full-time basis. Veolia provided these, but on part-time basis. Its bid was therefore non-compliant with the request for proposal and ought to have been disqualified.

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19THE FIRST RESPONDENT'S CASE

36. In answer to the Applicant's case, Overstrand's Municipal Manager and Accounting Officer Mr Coenraad Cornelius Groenewald (Mr Groenewald), deposed to an answering affidavit.
37. Mr Groenewald stated that the Applicant's attack on its Notice of Motion as well as its Amended Notice of Motion to the 10 March decision is a moot point, because that decision was not an administrative action in terms of PAJA and cannot be reviewed. That only the 22 July 2015 decision to award the contract to Veolia is an administrative action and therefore stands to be reviewed. That in any event Veolia did meet the requirements of the tenders and was correctly identified as the preferred bidder because it scored the highest number of preference points.
38. Secondly, that even so the Applicant had failed to exhaust the internal remedies provided for in The Municipalities Supply Chain Management Policy.
39. Thirdly, the tender awarded to Veolia has been acted upon by both the municipality and Veolia, with staff having being transferred, assets acquired by Veolia, and contracts concluded. That it is too late for the Applicant to seek to impugn the impugned decision, and even whether to be considered to be any deficient in the award it would not be just and equitable for the tender award to be set aside.

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40. That the attack on the selection of Veolia as the preferred bidder was misguided and misconceived, as such a decision was preliminary. The award of the tender was only awarded during July 2015 after successful negotiations of the contract for the tender. there was no administrative action taken during March in terms of PAJA which could be subjected to being reviewed. If it was reviewable Applicant brought the review application in September when a final decision awarding the tender to Veolia was made in July 2015, leaving the March decision a moot point to take on review.

ISSUES

41. Whether the administrative decisions made by the Respondent in particular that made on 22 July 2015 in awarding the above mentioned tender to Veolia was procedurally fair in terms of the provision of Section 3(1)(c) of PAJA or is it reviewable in terms of Section 6(2)(c) of PAJA..

LEGAL PRINCIPLES

42. The Constitution of the Republic of South Africa, 1996, provides, in the Bill of Rights as follows in Section 33:

“(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

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(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons."

43. The Promotion of Administrative Justice Act 2000. (PAJA)

An administrative action is defined:

"administrative action" means any decision taken, or any failure to take a decision, by-

- (a) an organ of state, when –
 - (i) exercising a power in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation; or

44. Section 3(1) of PAJA provides that :

(1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair."

with regards to a procedurally fair administrative action affecting any person

Section 6 of PAJA provides that :

- (1) Any person may institute proceedings in a court or a tribunal for the judicial review of an administrative action.
- (2) A court or tribunal has the power to judicially review an administrative action if –
- (a) the administrator who took it –
 - (i) was not authorised to do so by the empowering provision;
 - (ii) acted under a delegation of power which was not authorised by the empowering provision ?
 - (iii) was biased or reasonably suspected of bias;
 - (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 - (c) the action was procedurally unfair;
 - (d) the action was materially influenced by an error of law;
 - (e) the action was taken –

45. Section 7 (2) (c) of PAJA provides that:

"A court or tribunal may in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice."

46. Procurement Framework and PAJA

It is a long-held principle of our administrative law that The primary focus in scrutinising administrative action is on the fairness of the process, not the substantive correctness of the outcome.

47. In Allpay Consolidated Investment v CEO, Social Security Agency²

Froneman J held :

"[33] The requirements of a constitutionally fair, equitable, transparent, competitive and cost-effective procurement system will thus inform, enrich and give particular content to the applicable grounds of review under PAJA in a given case. The facts of each case will determine what any shortfall in the requirements of the procurement system – unfairness, inequity, lack of transparency, lack of competitiveness or cost-efficiency may lead to: procedural unfairness, irrationality, unreasonableness or any other review ground under PAJA.

I held further that –

The central focus of the court's enquiry is not whether the decision was correct, but whether the process is reviewable on the grounds set out in PAJA.

"Once a finding of invalidity under PAJA review grounds is made, the affected decision or conduct must be declared unlawful and a just and equitable order must be made. It is at this stage that the possible inevitability of a similar outcome, if the decision is retaken, may be one of

² 2014(4) SA 179 CC page 16 referring to the para 56 of the merits judgment.

the factors that will have to be considered. Any contract that flows from the constitutional and statutory procurement framework is concluded not on the state entity's behalf, but on the public's behalf. The interests of those most closely associated with the benefits of that contract must be given due weight."³

In the Allpay Consolidated decision-relief decision⁴

48. It is a long-held principle of our administrative law that the primary focus in scrutinising administrative action is on the fairness of the process, not the substantive correctness of the outcome.
49. Section 217 of the Constitution, the Procurement Act and the Public Finance Management Act provide the constitutional and legislative framework within which administrative action may be taken in the procurement process. The lens for judicial review of these actions, as with other administrative action, is found in PAJA. The central focus of this enquiry is not whether the decision was correct, but whether the process is reviewable on the grounds set out in PAJA.

³ Allpay Consolidated supra para [56]

⁴ 2014 (1) SA 604 (CC)

50. If a court finds that there are valid grounds for review, it is obliged to enter into an enquiry with a view to formulating a just and equitable remedy. That enquiry must entail weighing all relevant factors, after the objective grounds for review have been established.
51. First, tenderers have a right to a fair tender process, irrespective of whether they are ultimately awarded the tender. In *Grey's Marine* it was stated, with reference to the phrase 'adversely affect the rights of any person' in s 1 of PAJA, that what was probably intended [was] rather to convey that administrative action is action *that has the capacity to affect legal rights*. Irregularities in the process, which may also affect the fairness of the outcome, certainly have the capacity to affect legal rights.

Procurement

52. Part A of the SCM Policy clause 28 partly provides :

28 Bid Evaluation Committee

1) A Bid Evaluation Committee must –

(a) evaluate all bids for procurement exceeding R30, 000 in accordance with-

(i) the specifications for a specific procurement; and

(ii) the points system set out in terms of the Preferential Procurement Policy

Regulations

53. Clause 7 of Regulation 2834 requirements provides as follows;

"7. EMPLOYMENT OF PERSONS

The owner of a water care works shall, as from the date fixed in terms of Section 12A (2) of the Act, employ for the operation of such work the minimum number of persons of the class as described in schedule IV in respect of the work concerned: Provided that the Director-General may allow fewer persons with lower educational qualifications to be employed for the operation of any particular water care work for the period and subject to the conditions determined by him, if he is of the opinion that, in the particular circumstances the attainment of the objectives of these regulations will not be frustrated by such employment."

54. Regulation 17 contains the following definitions:

" "process controller" means any natural person who has achieved the relevant competencies to effectively operate a unit process at a water services work or who is Qualified and authorised to design and supervise the construction , installation, operation and maintenance of any water services work and who is employed by either a water services institution, water services work owner , or a company actively involved with the treatment and professional monitoring of water services works of water containing waste in some way or the other."

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55. In sub regulation 3 entitled :

"Standards for classification of process controllers

3. (3) All persons desiring to become process controllers must obtain a learner process controller certificate."

56. The Short title of the sub-regulation 7 provides as follows:

"7. These regulations are called the Regulations relating to Compulsory National Standards for Process Controllers and Water Services Works."

ANALYSIS

57. There is no doubt that the conduct of the Municipality amounts to administrative action and that its decisions affect the legal rights of the Applicant. I elaborate further on this below.

58. In *Millenium Waste case the Supreme Court of Appeal*, per Joffa JA

" the...Constitution lays down minimum requirements for a valid tender process and contracts into following an award of tender to a successful tenderer(s 217).The section requires that the tender process, preceding the conclusion of contracts for the supply

of goods and services, must be "fair, equitable, transparent, competitive and cost effective".⁵

59. National legislation prescribing the framework within which procurement policy must be implemented is the Procurement Act⁶, and the Public Finance Management Act.⁷

60. In *Steenkamp, Moseneke DJP* stated that compliance with the requirements for a valid tender process, issued in accordance with the constitutional and legislative procurement framework is legally required, and thus cannot be disregarded at whim.

61. It was argued for the Applicant that the Municipality failed to comply with Request for Proposal as follows:

Accepting Veolia's bid even though it was not an acceptable tender

62. The Applicant argued that an acceptable tender is defined in the Procurement Act as the one which in all respects complies with the specification and conditions of tender as set out in the tender document. That Overstrand's evidence shows that it did not have sufficient information from Veolia during the evaluation process with regard to the

⁵ Also followed in Allpay page 617

⁶ 5 of 2000

⁷ 1 of 1999

number of posts per function as they were requested to provide , despite all of this it evaluated Veolia's bid and selected it as a preferred bidder;

63. Mr Joubert's argument that the Procurement Act is structured that only acceptable tenders are permitted to be scored, and those tenders that are not acceptable tenders ought not to be scored, in this case Veolia's. The bid ought to have been assessed before the scoring to see if it complied with the Request for Proposal, and not after the bid has been scored .
64. According to Overstrand, it was aware of that the bid did not include the personnel required to comply with Regulation 2834(to be discussed further below in this judgment).In his answering affidavit Mr Groenewald states that "The Municipality had not dictated to bidders how they should perform the function once outsourced, or how many staff members they should employ, and there were good reasons for assuming that Veolia would be able to ensure a more efficient and streamlined performance of the function so the Municipality(and thus carry out the same work with fewer members)".
65. In my view this approach by Overstrand shows that it deviated with the material and mandatory requirements stipulated in Regulation 2834 and therefore against the Procurement processes as well as the Request for Proposal. An operator was supposed to do their own gap analysis in order for them to ascertain the details of the requirements. Schedules to Regulation 2834 specify the details and Regulation 17

specifies its own details as to their number and the qualifications. All of this an Operator was expected to ascertain, calculate and include in its bid from the onset.

66. In *Chairperson: Standing Tender Committee and Others v JFE Sapela Electronics (Pty) Ltd and Others*⁸

Scott JA said (para 14)

The definition of "acceptable tender" on the Preferential Act must be construed against the background of the system envisaged by section 217(1) of the Constitution, namely one which is fair, equitable, transparent, competitive and cost-effective". In other words, whether "the tender in all respects complies with the specifications and conditions set out in the contract documents must be judged against these values."

67. I therefore also find that even this process in my view that the Municipality's action in this regard was procedurally unfair as Veolia did not qualify as an acceptable tender as defined in the Procurement Act⁹, right from the start.

⁸ [2005]4All SA 487 (SCA)

⁹ Acceptable tender: "any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document."

Review Ground: Failure to comply with the Request for Proposal and the Requirements in terms of the Regulations

68. In my view there are two Regulations that needed to be complied in terms of the Request for Proposal that are relevant. The bidders were required to provide staff sufficient in numbers, experience and qualifications to meet the skills requirements under the Water Act and Regulations, in respect of the categories of individual works in which the tender was issued. These staff members were referred to during argument as the Process Controllers distinguishing them from the rest that are required to be provided.

Regulation 2834 to the Water Act, 1956 .

Specific number of Process Controllers requirement

69. It was argued for the Applicant that Regulation 2384 provides for the number of qualified personnel (process controllers) required to man the works. A certain number of process controllers were already in the employ of the municipality and a shortfall was expected to be supplemented by the Second Respondent to ensure compliance with the Request for Proposal.

70. Overstrand's response was that compliance with Regulation 2834 was not required to be achieved immediately, but could be attained over three years, therefore deferred and municipal staff would have to be trained to achieve regulatory compliance.
71. The answer in my view can be found on the terms of the request for proposal and the actions of the various parties during the bidding stage, it provides as follows:

" the Operator shall at all times provide sufficient numbers of staff, with sufficient experience and qualifications to meet or exceed all the requirements of the Contract. The Operator was also expected to comply with Regulation 2834 requirements or any new classification requirements from the Department of Water & Sanitation e.g. Regulation 17 which is expected to be regulated soon."¹⁰

I turn now to look at Regulation 17 first and thereafter Regulation 2834.

Regulation 17

72. The requirements of this regulation are not in dispute and non-compliance with it is not an issue. Much of the First Respondent's answer, as I understand focuses on its requirements as if same must be read as that of Regulation 2834. This I note from Mr Groenewald as he averred that the requirements in terms of this Regulation would

¹⁰ Request for Proposal's Annexure B-titled "Technical Specifications Operation and Maintenance of Bulk Works" para 2.11

mean that the 53 Municipal workers to be assumed by an Operator, the Regulation requires they be trained according to its terms and timeline of three years . That the three year gradual process of compliance was practical as any new operator assuming control of the functions would need to ensure that staff could achieve compliance with Regulation 2834 and Regulation 17.

Regulation 2834

73. Regulation 2834 was promulgated in an attempt to ensure that operators with relevant qualifications were running the different classes of water care works to ensure plant effluents comply with water quality.

74. In its replying papers the Applicant demonstrated that Regulation 2834 required 59 process controllers, 35 of which could be supplied out of the 53 municipal employees there would then be a shortfall of 24. That because the latter number was likely to be exempted by the Director General in terms of the Regulation due to the fact that some of the water treatment plants being automated plants would result with requirement of Process controllers being reduced to an estimation of 13, from this number a deduction of 3 surplus process controllers from Class IV and Class V which can be used to meet the Class III requirements as per Regulations 2834 can be made. A total of about 10 Process Controllers therefore were left out from Veolia's pricing at the bidding stage.

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75. My numbers might be wrong the estimate is merely a guiding line. The point I am trying to make is that it is correct therefore that the Request for Proposal had a prescribed methodology and specific requirement that needed to be complied with by all bidders. This is also the basis of the Applicant's case, that Veolia never complied with this requirement but was given a preferrent bidder status which later landed them with the tender being awarded to them.
76. Nowhere is it mentioned in Regulation 2834 that the required number of process controllers can simply not be complied with .On the argument by Overstrand that Regulation 2834 required a deferment of up to three years to comply with its requirement, based on the aforesaid I could find no such stipulated requirement in the said Regulation. It is only the terms of Regulation 17 provisions which stipulate progressive development of Employees as Process Controllers for compliance over a period of three years.
77. In the submissions made before me, the Municipality had formed an opinion that both Veolia's bid and that of the Applicant complied with Regulation 2834 and provided with all the classes mentioned in Schedule IV of Regulation 2834 therefore progressive development of three years as a requirement for both.
78. In my view this opinion does not support queries made to Veolia and their response thereto in which the Municipality basically brought to Veolia's attention that their bid reflects that they were under staffed(therefore the bidding price did not include the

required staff complement and therefore not in compliance with Regulation 2834 requirements).

79. Veolia's response at first stated that the current staff compliment of 53 was sufficient (therefore ignoring Regulation 2834's requirements) and that it will simply thereafter comply with Regulation 17 requirements in accordance with approved annual plan and available Municipal budget though not accepted led to its bid to be processed still.

Noncompliance evident-staffing

80. WorsleyParsons report dated March 2015 report which was drawn up on behalf of Overstrand in terms of the Municipal Finance Management Act(MFMA)was meant to be utilised to solicit comments from various government departments, provincial, national and the treasury and all other relevant stakeholders highlighted the following:

"There are posts in the municipal structure which are vacant and are required to be filled in *order to achieve regulatory compliance*. This vacant post[s] will increase the cost of undertaking the function and needs to be added to the budget. The estimated value of these positions could be in the region of R4 million per annum."

81. Overstrand in its answering papers highlights the deficiencies and inaccuracies to the WorleyParsons report claiming that :

“ Worley Parsons ignored or overlooked the fact that Veolia’s tender did not simply involve taking over the 53 existing municipal employees; it also involved the addition of eleven full-time staff members and three further part time staff members. It was therefore inaccurate of WorleyParsons to proceed on the basis that there was a realistic likelihood that the filling of a further eleven identified positions would-as in a scenario in which the Municipality performed the function-result in an extra cost on top of Veolia’s existing tender price. The reality was that those eleven positions , and three further management positions. had already been included within Veolia’s tendered price, and the need to fill those posts had thus already been addressed, and budgeted for , in Veolia’s tender.”

82. Looking at the March report and if I understood the argument correctly Warley Parsons stipulates the key positions that needed to be filled and they are:

82.1 Three plant operators; three assistant operators; three works operators including a grade 2 works operator; a purification supervisor; and a senior superintendent: waste water.

82.2 The 14 additional staff tendered by Veolia that Overstrand refers to however include:

A maintenance manager; an operations manager; an administrative assistant; a maintenance planner; a fitter; an electrician; a controls and instrument technician; a general assistant; a deputy SHE officer; a human resources

officer; a procurement and finance officer; a plants manager(part-time);a QA/QC inspector(part-time); and a SHE officer(part time).

83. Mr Joubert argued that even the fourteen staff members mentioned by Overstrand tendered by Veolia (though it was disputed that their pricing was included in the bidding price)do not fall under those classified under the Regulation. therefore there was still non-compliance with the provision of Regulation 2834 still. Having familiarise myself with the Schedule of Regulation 2834, I am persuaded by this argument .

84. Processing the bid and taking administrative actions therefore with this deficiency resulted in a procedurally unfair process contrary to Section 6(2) (c) of PAJA.

85. Further, the fact that Veolia was allowed during negotiations (as per Warley Parsons report¹¹) that it will add staff(the fourteen mentioned above) and absorb the costs resulted was an unfair process. I agree with Mr Joubert that this was certainly a way of bringing in terms that amended the Request for Proposal which was specific to the amount of staff needed as a minimum requirement at the time of the bid and not during negotiations.

86. In *Allpay Consolidated case Froneman J at para 28 held that*

“[28] Under the Constitution there is no reason to conflate procedure and merit. The proper approach is to establish , factually whether an irregularity occurred. The

¹¹ Page 72 to 73 of the papers

irregularity must be legally evaluated to determine whether it amounts to a ground of review under PAJA. This legal evaluation must, where appropriate, take into account the materiality of any deviance from legal requirements, by linking the question of compliance to the purpose of the provision, before concluding that a review ground under PAJA has been established.”

87. Due to all this we know Veolia's bidding price was less and as shown that it was during negotiations that Veolia undertook to absorb the costs of the further staff to comply with the Regulation requirements. All such information never formed part of its bid, and nowhere does the Regulation provide that the required staffing and their costs can be borne by an Operator to limit its bidding price.
88. In my view therefore taking administrative action to a tender with such a deficiency was an unfair administrative action that prejudiced the rights of other bidders who followed the letter of the Regulation and therefore it stands to be reviewed in terms of PAJA.

Interpreting the two Regulations

89. One must look at the intention of the lawgiver when it comes to analysing the construction of a provision, this we can ascertain from the language, scope and purpose of an enactment as a whole. In this matter clearly seeking a competently skilled and experienced operator to be contracted to operate and maintain the works. This is in the public's interest and has to be executed in a safe manner. In my view the

importance of suitably qualified personnel over the various plants at all times is paramount.

90. Finally, to reiterate the above, it is my view therefore that the consideration of Veolia's bid and the administrative decisions taken by the Municipality through the various stages of the bidding process whilst Veolia was none compliant with the specific requirements of the Request for proposal as demonstrated above was irregular. I have taken into account in passing that these include the decision Veolia's bid being acknowledged as an acceptable tender, the 10 March 2015 as a preferrent bidder and the main contended decision of 22 July 2015 where the tender was awarded to Veolia. Each preliminary decision formed part of a multi-stage process which had serious consequences and affected the rights of other bidders.¹²

90.1 I therefore hold that Overstrand's conduct in all respect was procedurally unfair, contrary to the terms of Section 3(1) a stand to be reviewed in terms of Section 6(2)(c) of PAJA.

Public Interest

91. Therefore as it is in the public interest that proper administrative processes are complied with when dealing with public funds and all parties taking part in the tender

¹² See: *Earthlife Africa (Cape Town) v Director-General, Department of Environmental Affairs and Tourism and Another* 2005(3) SA 156

be treated equally. Bidders have the right to a fair tender process, regardless of whether they are ultimately awarded the tender.

92. Fairness is always contextual but whatever is done may not cause the process to lose the attribute of fairness. Procedural and substantive fairness cannot be completely separated: procedural requirements may have substantive consequences, and procedural irregularities may affect the fairness of the outcome. Fairness requires that bidders be treated fairly in relation to each other. As already stated the administrative processes in this tender from the onset were unfair.
93. Adjudication of tenders constitutes administrative action and the process must be conducted in a manner that promotes the administrative-justice rights while satisfying the requirements of PAJA.¹³ The decision by the Municipality in overlooking the request for proposal's specific requirements was, as indicated above, procedurally unfair.
94. Having made such findings I find it not necessary for me to deal with the other grounds of review raised by the Applicant and the objections of the Respondents in this matter.

¹³ Du Toit v Minister of Transport 2006 (1) SA 297 (CC) (2005 (11) BCLR 1053)

The next important point is to look at the way forward .

95. Mr Farlam had argued that the tender award had been acted upon by both Veolia and the Municipality, and it is therefore too late to seek to impugn the impugned decisions; even if there were deficiencies in the tender award it would not be just and equitable for the tender award to be set aside.

96. I do understand that invalid administrative actions that are being brought on review are almost always acted on by the time a matter gets to court , from the time the tender is awarded to a party. Various interests however must weighed which include Veolia, the Applicant's and in my view that of the public too.

97. It was demonstrated that Veolia assumed full authority for the functions from the Municipality on 01 November 2015, 48 employees responsible for the works were transferred to Veolia. This means there has been changes to their medical aids, pension schemes, as well as establishment of new reporting lines for the staff in question. The Municipality already paid over accrues leave of transferred staff to Veolia and the staff was given a choice as to whether to take the accrued leave in cash or to utilise it. The Municipality has ceded its existing supply contracts for the functions to Veolia, Veolia has also appointed several additional staff members, at senior and lower levels. That Veolia bought new vehicles and equipment to perform the functions and subcontracted support contractors, and has erected temporary offices in one of the plants and is busy installing ITC infrastructure and management systems.

98. Lastly, *Froneman J in Allpay Consolidated case cited and followed Moseneke DCJ* (as he then was) in the *Steenkamp judgment* as he stated as follows:

"It goes without saying that every improper performance of an administrative function would implicate the Constitution and entitle the aggrieved party to appropriate relief. In each case the remedy must fit the injury. The remedy must be fair to those affected by it and yet vindicate effectively the right violated. It must be just and equitable in the light of the facts, the implicated constitutional principles, if any, and the controlling law. It is nonetheless appropriate to note that ordinarily a breach of administrative justice attracts public-law remedies and not private-law remedies. The purpose of a public-law remedy is to pre-empt or correct or reverse an improper administrative function...Ultimately the purpose of a public remedy is to afford the prejudiced party administrative justice, to advance efficient and effective public administration compelled by constitutional precepts and at a broader level, to entrench the rule of law."

99. In my view therefore taking into account the interests of the public also and that the contract is one for operation and maintenance which is set for a period of about 15 years there are costs involved and expectation of consistent service from the Municipality by members of the public and the decision to make must be with minimal to less disruptions.
100. The issue of employers .I accept that they remain protected under Section 197 of the Labour Relations Act which provides for the transfer of all affected existing personnel

on equal or better terms, with no retrenchments. The usual business practice would have to be followed when it comes to the sub-contractors as well as new vehicles that have been bought and all other sundry equipment.

101. I now turn to consider a suitable relief, firstly I do find that there was no culpable delay on the part of the Applicant, as shown above their attempt were to first appeal the March 2015 decision to which they could not due to their application for access being refused by the Municipality and the further process they took as far as that decision was made. They proceeded with the review proceedings within 180 days period in terms of Section 7 of PAJA .

102. It was whilst processing an appeal against the decision not to grant them access to information¹⁴ the award of the tender was granted to Veolia in July 2015. That also closed all chances of any appeal the Applicant might have decided to take as the parties had already signed an agreement resulting in the rights accruing to Veolia. In any event Regulation 50(7) of the SCM Policy also grants the Applicant to approach this court at any time.

¹⁴ Pages 291- 693 of the papers

103. Returning to what a suitable order will be, it has been held that any order that this court must make in terms of s 8 of PAJA must be "just and equitable", the section lists a range of remedies¹⁵ for a court to choose from when applying its discretion.

104. The correction and reversal of invalid administrative action is grounded in the Constitution s172(1)(b) where it is stated that an order of suspension of a declaration of invalidity may be made to allow the competent authority to correct the defect. Remedial correction is also a logical consequence flowing from invalid and rescinded contracts¹⁶ and enrichment law generally.¹⁷

105. In my view a rerun of the tender process involving the two responsive bidders (the Applicant and Vcolia) would not be a major prejudice if temporary arrangements are put in place, this would fit in with the protection of the Constitutional rights of the members of the public benefiting from the services where the works are being

¹⁵ S8(1)(a) directing the administrator-(i) to give reasons; or (ii) to act in a manner the court or tribunal requires;(b) prohibiting the administrator from acting in a particular manner;(c) setting aside the administrative action and -(i) remitting the matter for reconsideration by the administrator, with or without directions; or (ii) in exceptional cases-(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or (bb) directing the administrator or any other party to the proceedings to pay compensation;(d) declaring the rights of the parties in respect of any matter to which the administrative action relates;(e)granting a temporary interdict or other temporary relief; or(f) as to costs."

¹⁶ *National Credit Regulator v Opperman and Others* [2012] ZACC 29; 2013 (2) SA 1 (CC); 2013 (2) BCLR 170 (CC) (*Opperman*) at para 101. See Van der Merwe et al *Contract General Principles* 4 ed (Juta & Co, Cape Town 2012) at 176-7.

¹⁷ *Opperman* id at para 15. See Visser *Unjustified Enrichment* (Juta & Co, Cape Town 2008) at 4 and 442 where he describes the basic function of the law of unjustified enrichment as —to restore economic benefits to the plaintiff, at whose expense they were obtained, and for the retention of which by the defendant there is no legal justification. See further Du Plessis *The South African Law of Unjustified Enrichment* (Juta & Co, Cape Town 2012) at 113.

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performed in the Overstrand area. Diminishing their enjoyment of socio –economic rights would not benefit anyone.

106. I also take into account that Veolia only started performing its duties for a very short period of time having taken over from the Municipality in November 2015. The duration of the contract of for a 15 year period of more, therefore the issue of this tender needs to be relooked and resolved whilst it is still fresh.


107. As to costs, I am of the view that costs should follow the cause.

108. In the circumstances the following order is made:

1. The Application succeeds;
2. The First Respondent's decision to award Tender No .SC 1508/2014 for the operation of maintenance of the First Respondent's bulk water and sewerage infrastructure to the Second Respondent is reviewed and set aside;
3. The decision is remitted to the First Respondent for reconsideration taking into account the papers filed in this application;
4. In consequence of the order in paragraph 2, the contract between the First and Second Respondents is, as a matter of law, set aside; save that the setting aside of the contract is suspended until the tender is re-awarded or on the lapse of a period of two months, whichever is earlier.

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5. The First Respondent is ordered to bear the Applicant's costs including the costs of two counsels.

A handwritten signature in black ink, appearing to read 'AJ Magona', written over a horizontal line.

MAGONA, AJ

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CG18

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no.: 143/2017

In the matter between:

OVERSTRAND MUNICIPALITY

APPELLANT

and

WATER AND SANITATION SERVICES

SOUTH AFRICA (PTY) LTD

RESPONDENT

Neutral citation: *Overstrand Municipality v Water and Sanitation Services South Africa (Pty) Ltd (143/2017) [2018] ZASCA 50 (29 March 2018)*

Coram: Navsa, Leach and Mocumie JJA and Davis and Makgoka AJJA

Heard: 5 March 2018

Delivered: 29 March 2018

Summary: Tender evaluation and adjudication : challenges based, inter alia, on s 6(2)(b) of the Promotion of Administrative Justice Act 3 of 2000 : whether acceptable tender in terms of s 7 of the Preferential Procurement Policy Framework Act 5 of 2000 read with applicable regulation : whether regulation dealing with minimum staffing of water works endures despite repeal of a number of statutes regulating the provision of water to the public : savings provisions examined and applied.

ORDER

On appeal from: Western Cape Division of the High Court, Cape Town (Magona AJ sitting as court of first instance):

1 The appeal is dismissed with costs, including the costs of two counsel. The order of the court below is, however, amended to the limited extent reflected below.

2 Paras 3, 4 and 5 of the order of the court below are set aside and substituted as follows

3 The decision is remitted to the first respondent for a full new tender process commencing with an RFQ to be started and completed;

4 In consequence of the order in paragraph 1, the contract between the first and second respondents is set aside; save that the setting aside of the contract is suspended until the tender is re-awarded or on the lapse of a period of six months, whichever is earlier.

5 The first respondent is ordered to bear the applicant's costs including the costs of two counsel.'

3 The six month period of suspension referred to in the substituted order is to commence running from the date of this judgment.

JUDGMENT

Navsa JA (Leach and Mocomie JJA and Davis and Makgoka AJJA concurring):

[1] This is an appeal, with the leave of this court, against an order of the Western Cape Division of the High Court, Cape Town, in terms of which a decision of the appellant, the Overstrand Municipality (the Municipality), 'to award Tender No SC 1508/2014 for the operation and maintenance of the [Municipality's] bulk water and sewerage infrastructure' to the second respondent, Veolia Water Solutions and Technologies South Africa (Pty) Ltd (Veolia), was reviewed and set aside. The court below, having set aside the decision, remitted the matter to the Municipality for reconsideration. In addition the court made the following consequential orders:

'4. In consequence of the order in paragraph 1, the contract between the First and Second Respondents is, as a matter of law, set aside; save that the setting aside of the contract is suspended until the tender is re-awarded or on the lapse of a period of two months, whichever is earlier.

5. The First Respondent is ordered to bear the Applicant's costs including the costs of two counsel.'

The background is set out hereafter.

[2] The Municipality's area of jurisdiction includes the villages of Rooi-Els, Pringle Bay, Betty's Bay, Kleinmond, Hawston, Onrus, Sandbaai, Hermanus, De Kelders, Gansbaai, Kleinbaai, Franskraal, Pearly Beach, Buffeljagsbaai, Preekstoel, Stanford and Baardskeerdersbos. It is required to deliver bulk water services to residents of these areas. To that end it established and conducted bulk water delivery and treatment works. In 2014 the Municipality decided to outsource the operation and maintenance of the works to the private sector.

[3] On 25 August 2014 the Municipality invited bidders, in a Request for Qualification (RFQ), to express interest to be pre-qualified in order to compete for the award of a tender in relation to bulk water service delivery and treatment. The RFQ was designed to enable scrutiny of the skills, capacity, experience and credentials of interested parties. Upon completion of that process, four interested parties, that included the respondent, Water and Sanitation Services South Africa (Pty) Ltd (WSSA), and Veolia, were shortlisted. Those who qualified were invited to submit bids in response to a Request for Proposal (RFP), issued by the Municipality on 3 December 2014.

[4] Veolia, WSSA and one of the two remaining qualifying parties, submitted bids. At this stage it is necessary to record some of the material requirements of the RFP. Clause 2.11 of Annexure B of the RFP specifies:

2.11 STAFFING

The Operator shall at all times provide sufficient numbers of staff, with sufficient experience and qualifications to meet or exceed all the requirements of the Contract. The minimum requirements for the operation of the various classes of works are given in the table below but this does not include laboratory personnel. The Operator needs to comply with the current legislated Regulation 2834 requirements, or any new classification requirements from the

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Department of Water & Sanitation, e.g. [Draft] Regulation 17, which is expected to be promulgated soon.'

[5] Regulation 2834¹ was promulgated in terms of the Water Act 54 of 1956. It sets out the minimum number of persons holding the operator classifications prescribed in Schedule IV thereto, who *must* be employed within a specific class of water works. This refers to what everyone now understands to be 'process controllers'. The RFP also required minimum levels of other key staff members with attendant technical qualifications. The introductory sentence to clause 2.11.2 of the RFP reads as follows: 'In addition to the correct Class of Process Controller and Supervisor per Class of plant the Operator shall also provide the following key staff as an absolute minimum:.'

It then goes on to set out the minimum staff requirements for those positions, such as an overall manager, the head of maintenance, etc. I note that bidders were required to assimilate existing municipal staff as part of its full staff complement.

[6] Subsequent to a briefing session with bidders, on 16 January 2015, the Municipality dispatched an e-mail to bidders which indicated process controller vacancies within the municipal staffing structure that would need to be filled to ensure compliance with applicable legislation.

[7] The bidding period expired on 30 January 2015 by which time the three bidders, including Veolia and WSSA, had all submitted their bids. The Municipality, purportedly in accordance with the provisions of the Overstrand Municipality Supply Chain Management Policy, adopted in terms of section 11 of The Local Government Municipal Financial Management Act 56 of 2003, assisted by its technical advisor WorleyParsons RSA (Pty) Ltd (WorleyParsons), proceeded to evaluate the bids.

[8] On 17 February 2015 the Municipality addressed certain written questions to the three bidders, requesting clarification on certain issues. WSSA responded the next day. I shall, in due course, set out the clarification sought and the relevant responses.

¹ GNR. 2834 of 27 December 1985: Regulations in terms of section 26 read in conjunction with section 12A of the Water Act, 1956 (Act 54 of 1956), for the erection, enlargement, operation and registration of water care works.

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[9] On 16 March 2015 the Municipality advised WSSA that Veolia was the preferred bidder. It also advised that the award of the tender to Veolia was subject to the successful negotiation of the final terms of a contract. In the event of that being unsuccessful WSSA would be invited to negotiate with the Municipality to conclude a contract. On 31 July 2016 WSSA was informed by the Municipality that the tender had been awarded to Veolia.

[10] WSSA resorted to the provisions of the Promotion of Access to Information Act 2 of 2000 (PAIA) to obtain the evaluative and adjudicative material on which the award of the tender had been based. The litigation that followed was based on the information so received, as well as on parts of the record of decision supplied pursuant to Uniform Rule 53.

[11] It was contended on behalf of WSSA that the material supplied by the Municipality revealed that Veolia had *not* supplied its full costing of the necessary personnel to ensure regulatory compliance. Thus, WSSA's submission was that there was no comparable pricing on which the competing bids could be evaluated. That notwithstanding, the Municipality went on to score the competing bids, having regard to the scoring system prescribed by way of The Preferential Procurement Policy Framework Act 5 of 2000 (the Procurement Act) and the regulations thereunder. In terms of the prescribed scoring system, maximum points are awarded for the lowest comparable prices and the others are then scored proportionally. Furthermore, Broad-Based Black Economic Empowerment (B-BBEE) credentials are compared and scored.

[12] Veolia had offered a global price of about R22 million for the first year of the contract and WSSA had offered a global price of approximately R26,3 million. Veolia were thus awarded the maximum score of 90. WSSA was awarded a score of 72.36 and came in second place. The final component of the scoring and its details are dealt with later in this judgment at para 30. In its founding affidavit WSSA complained that the comparative scoring was unsustainable in the absence of proper pricing of personnel by Veolia.

[13] It was asserted on behalf of WSSA that it was evident from the documentary material supplied by the Municipality, pursuant to the request in term of the provisions of PAIA, that a further amount of approximately R4 million had to be added to Veolia's price for the filling of posts to meet the minimum regulatory requirements. That would approximate the amount bid by WSSA, albeit with a slight marginal difference in favour of Veolia. The score awarded to WSSA in respect of its B-BBEE credentials was higher and the end result, if WSSA is correct on this aspect, would mean that the latter's score could ultimately have been the higher.

[14] In a supplementary affidavit, filed pursuant to a record provided in terms of Uniform Rule 53, WSSA raised further factual grounds of review, including specifications relating to certain key personnel necessary for regulatory and technical compliance that Veolia allegedly had not met. This additional ground of complaint was, in essence, that Veolia's bid was non-compliant with the RFP. WSSA also complained that Veolia had been allowed to alter its rates subsequent to the bid being awarded, as evidenced by the completed contract. This, it was contended, was procedurally unfair. For all these reasons, WSSA submitted it was entitled to the orders of the court below set out in para 1.

[15] I turn to deal with the Municipality's case. The Municipality referred to WSSA's amended notice of motion, in which not only the decision to select Veolia as the preferred bidder was attacked, but also the decision to award the tender. It regarded the attack on the first decision as misconceived, in that it was merely preliminary to the award of the tender subject to successful negotiations. It contended that the decision was not administrative action and reviewable in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). Even if it were administrative action, there had been an undue delay in taking it on review, by which time the negotiations had been concluded and been given effect.

[16] In any event, so the Municipality asserted, Veolia's bid was properly assessed and there had been no change in price or rates in the contract eventually concluded with Veolia. The bid, so it said, was compliant with the RFP.

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[17] Insofar as the costing of personnel was concerned, more specifically in relation to the absorption of municipal staff, the Municipality referred to a tender information meeting held on 10 December 2014, at which the following was conveyed:

'The Bidders must price as if all 53 employees will be taken over. There is a schedule of own staff costs which the bidders must complete with the costs that they used in pricing the bid. This may be used when the actual numbers change to adjust the price.'

At that meeting the Municipality stated, in response to a question, that a maximum of three years would be allowed within which to have all staff fully skilled, but that a skills development plan had to be submitted within the first 3 months. In a further information session bidders were reminded that they were to assume that all 53 municipal posts were to be transferred and that the price for the 53 is to be excluded from the bid price.

[18] Veolia and WSSA had each supplied a staffing schedule. Veolia's amounted to R85 300 whilst WSSA's amounted to R241 730.00. The letter seeking clarification from Veolia, foreshadowed in para 8 above, contained the following:

'2. Staffing costs: Your suggestion that the full staff budget of Overstrand Municipality be transferred to the Operator is not acceptable; the budget only for staff actually transferring will be added to this contract. Any shortfall in staff will have to be supplied by the Operator, and the cost adjustment for them will be based on the schedule of staff costs supplied by the Operator. Also note that irrespective of staff organograms and other related submissions in your bid, it will be and remain the responsibility of the Operator to supply all required staff as will be legally and operationally required to operate the works at their tendered rates. The staff complement provided must ensure that the DWS regulatory requirements per plans will be attained including the impact of Regulation 17. It is also assumed that your pricing allows for all additional staff required including all support staff. Please confirm your acceptance of this interpretation.

3. Schedule of staff costs: It appears that the costs supplied by you in the schedule of staff costs are very low compared to the market. Please confirm that you are aware of that fact.

4. Please indicate in detail in the table below the exact full-time Human Resources that are included in your price that will be allocated to this contract on a full time basis.'

[19] Veolia responded as follows:

'We remove our qualification that the full staff budget of the Municipality is transferred to Veolia and accept that the Schedule of Employee costs will apply for the shortfall of staff that does not transfer to Veolia.

That current staff complement of 53 is sufficient for Veolia to provide the service and this is the basis of our offer. Our offer excludes the cost to employ more than 53 staff to meet the impact of Regulation 17. The Veolia offered mechanism is that additional staff (more than 53) is employed over several years in accordance with the approved Annual Plan and available municipal budget using the Schedule of Employee Costs to determine the additional cost.'

In addition, Veolia provided the following information:

'As per our qualification, the rates provided are the Total Cost to Company in our employment contracts and travel and overtime costs are not included in the schedule of staff costs. Please refer to below table for typical staff cost where travel and overtime are included.'

[20] According to the Municipality, Veolia supplied full details of human resources in its bid, indicating the precise number of part-time and full-time staff. They provided for eleven full time employees and three part-time employees, in addition to the staff to be taken over from the Municipality. They indicated that the staff costs were included in the submitted bid price.

[21] Veolia had stated that, although they considered that full regulatory compliance could be achieved with the 53 posts to be transferred from the Municipality, it had, nevertheless, made provision for the aforementioned additional 14 staff members. WorleyParsons reported on Veolia's staffing proposal as follows:

'It appears that Veolia endeavoured in their submission to provide for the Function to be performed with the smallest possible team of people, concentrating on improved efficiencies and operational management. This approach is fully in line with the stated objective of the municipality with this project namely to improve operational efficiencies at a lower cost. The matter of if they will definitely obtain regulatory compliance within the stated time on this basis will have to be confirmed during the contract negotiation stage should they be selected as preferred bidder.'

[22] WSSA was afforded a similar opportunity to clarify its bid on these issues. The Municipality stated, somewhat surprisingly, in its opposition to the relief claimed, that the need for clarification arose because the RFP did not expressly request bidders to specify the details of their staff compliment. For present purposes it is not necessary to deal with its response. The competitive positions of WSSA and Veolia is summarised as follows in para 37 of the Municipality's answering affidavit:

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'The observation regarding WSSA that has been emphasised above was justified taking into account that ultimately Veolia proposed to add only 11 full-time employees and 3 part-time employees to the 53 municipal workers, whereas WSSA was proposing an additional 41 workers on top of the 53 municipal workers.'

[23] WorleyParsons in the Bid Evaluation Report considered whether the limited staff that Veolia intended to provide would meet regulatory requirements and stated the following:

'Veolia stated that their aim would be to train the existing staff so as to ensure regulatory compliance in the initial three year period but that they may need to negotiate in this period for additional money to appoint more people should that be required. (The RFP required that regulatory compliance can be achieved over a period of three years and that municipal staff ... must be trained to achieve regulatory compliance where possible[]) It is difficult to quantify any cost implications at this stage as it is not only a matter of allowing for the cost of additional staff as some existing staff should have the potential to be trained up and then some positions may become redundant as operational efficiency improves. It must however be noted that this is an area of concern and will need special attention during the negotiations with the preferred bidder, should that be Veolia.'

[24] The maximum scoring for B-BBEE was 10 and for pricing was 90. Veolia scored 90 for pricing and 0 for B-BBEE contribution. WSSA scored 72.36 for pricing and 5 points for B-BBEE contribution; hence Veolia was the successful bidder.

[25] Ultimately, the Municipality asserted, 'WSSA was 20% more expensive than Veolia'. The Municipality said that one explanation for the cost difference was the fixed charge which was based on the clarification sought and provided. The Municipality stated that both bids were, for the reasons set out above, treated as firm bids.

[26] Thereafter Veolia was selected as the preferred bidder with which negotiations were to be entered into for the conclusion of a contract. This was to be conducted by the accounting officer in terms of prevailing legislation and policy on behalf of the Municipality. In this regard s 24(1) of the Overstrand Municipality Supply Chain Management Policy provides, inter alia:

'Negotiations with preferred bidders and communication with prospective providers and bidders

- 1) The Accounting Officer may negotiate the final terms of a contract with bidders identified through a competitive bidding process as preferred bidders, provided that such negotiation –
 - a) does not allow any preferred bidder a second or unfair opportunity;
 - b) is not to the detriment of any other bidder; and
 - c) does not lead to a higher price than the bid as submitted;
 - d) does not lead to a lower price in respect of sale of land / goods.
- 2) Minutes of such negotiations must be kept for record purposes and as far as practical be made part of the final contract.'

[27] The Municipality interpreted the Supply Chain Management Policy to mean that until negotiations were successfully completed there could be no talk of the final award of the tender. This explains the communications to WSSA, referred to in para 9 above.

[28] The Municipality was adamant that during the negotiations, care was taken that technical specifications and pricing remained unaffected and that the competitive nature of the bids was not impinged upon. The final cost of the municipal staff to be absorbed, which was not included in the bid price, was negotiated after a due diligence exercise. This was determined at about R13,2 million. That amount applied to all bidders and was thus neutral. The Municipality insisted that Veolia's price was properly assessed against the other competing bids and was found to be appropriate and relevant to the scope and purpose of the services to be rendered. The Municipality was satisfied that the objectives of the tender would be met; namely skills development and retention, assurance of water supply at the right quality and quantity, operations optimisation and asset preservation.

[29] The Municipality noted that an internal appeal process had not been followed by WSSA, which chose, instead, to launch the litigation culminating in the present appeal. According to the Municipality, Veolia commenced with performance under the contract on 1 November 2015, when it assumed full authority for the functioning of the works.

[30] Veolia apparently added additional staff members, acquired assets and procured the services of sub-contractors. It also constructed an office at Hermanus to enable it to provide the services to the public within the Municipality's area of

jurisdiction. It was submitted on behalf of the Municipality that the tender could not now be set aside, without serious disruption to the services being provided.

[31] The court below (Magona AJ), held that there was no doubt that, insofar as the evaluation of the bids and the award of the tender was concerned, the Municipality engaged in administrative action as contemplated in PAJA. The court below found that the Municipality deviated from the regulatory framework that specified skills thresholds and that Veolia's bid was not in compliance with the RFP. It went on to conclude that the Municipality's action in this regard was procedurally unfair as Veolia did not qualify as an acceptable tender as defined in the Procurement Act, right from the start'. (Footnotes omitted.)

[32] More specifically the court below held that regulation 2834 provided for the number of qualified process controllers to operate the works and that there had been a shortfall in Veolia's bid. It had regard to the submission on behalf of the Municipality that compliance with the regulatory framework did not have to be met immediately but could be achieved in 3 years. This did not find favour with the court below. The court below considered the report by WorleyParsons that vacant municipal posts had to be filled to ensure regulatory compliance. It also took into account the explanation by the Municipality that WorleyParsons had overlooked the additional staff for which Veolia had provided. The court concluded that the additional staff did not fall within the personnel prescribed by the regulation, and went on to hold that it this was procedurally unfair.

[33] The court below also held that, in the negotiating process Veolia had been permitted to vary the terms of its bid, by adding an additional 14 posts and absorbing the costs. It considered this unfair and further rendered the award of the tender liable to be set aside.

[34] The court below did not consider that the implementation of the negotiated contract between the Municipality and Veolia militated against remitting the matter for consideration anew. It took the view that the contract was one that extended to 15 years and that remitting the matter for a re-run of the tender process was a just and equitable remedy. It went on to make the orders set out at the commencement of this

judgment. It is against those orders and the conclusions on which they were based that the present appeal is directed. Veolia did not participate in the proceedings in the court below nor in the present appeal. The disputants were and are the Municipality and WSSA.

[35] Despite the asserted intricacies of the present dispute and the various grounds of review on which WSSA's claim for relief in the court below was based, the appeal turns on the primary question of whether the bid by Veolia in all respects complied with the specifications of tender, the RFP. It has long been laid down and accepted that the evaluation and award of a tender constitutes an administrative action.² The primary challenge by WSSA is based on s 6(2)(b) of PAJA, which provides:

'(2) A court or tribunal has the power to judicially review an administrative action if –

...

(b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with'.

[36] Procurement of goods and services by an organ of state must be carried out in terms of the principles set out in s 217(1) of the Constitution, which reads:

'(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.'

Section 217(3) of the Constitution reads:

'(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented.'

The Procurement Act is legislation pursuant to s 217(3). It sets out a framework for the implementation of a procurement policy. Section 1 thereof defines 'acceptable tender' as follows:

"acceptable tender" means any tender which, in all respects, complies with the specifications and conditions of tender set out in the tender document ...'

[37] It will be recalled that the RFP, in clause 2.11, set out in para 4 above, specified the minimum staffing requirements particularly as relates to process controllers for the

² See *Steenkamp NO v Provincial Tender Board, Eastern Cape* 2007 (3) SA 121 (CC) para 21 and the authorities there cited.

operation of the various classes of the works. Regulation 2834 specifies in table form the minimum staffing requirements (particularly as relates to process controllers) across various classes of works. At this stage it is necessary to have regard to section 7 of Regulation 2834, which provides:

'7. Employment of persons. – The owner of a water care work shall, as from the date fixed in terms of section 12A (2) of the Act, employ for the operation of such work the minimum number of persons of the classes prescribed in Schedule IV in respect of the work concerned: Provided that the Director-General may allow fewer persons or persons with lower educational qualifications to be employed for the operation of any particular water care work for the period and subject to the conditions determined by him, if he is of opinion that, in the particular circumstances, the attainment of the objectives of these regulations will not be frustrated by such employment.'

[38] In oral argument before us, counsel on behalf of both parties, were uncertain about the legislative thread pertaining to the continued existence or otherwise of Regulation 2834.³ Since Regulation 2834 is central to the bid specification and is relied on by WSSA, as prescribing the minimum number of process controllers, it is necessary to start with a consideration of whether it continued in existence despite the repeal of related legislative enactments.

[39] As stated earlier, Regulation 2834 was promulgated in terms of s 26, read with s 12A of the WA.⁴ The Water Services Act 108 of 1997 (the WSA) repealed a number of provisions of the WA, but not ss 26 and 12A. This must mean that Regulation 2834 continued in existence as the statutory provisions in terms of which it was promulgated remained intact. Section 84 of the WSA, which is a savings provision, did not at that stage, in my view, intrude upon the question of the validity of Regulation 2834. Section 84(6) reads as follows:

³ Counsel were invited to make written submissions on this question, which we received.

⁴ Section 26 of the WA enabled the Minister to make regulations relating to the prevention of the pollution of water. The Minister was generally empowered to make regulations on any matter which, in the Minister's opinion, was necessary or expedient for the attainment of the objects of the Act. Section 12A dealt with 'Water care works'. Section 12A(2), which is pertinent, reads as follows:

'No person shall after a date fixed by the Minister by notice in the *Gazette* in general or in respect of an area defined in the notice, use a water care work unless the minimum number of persons with the minimum qualifications and experience prescribed by regulation under section 26 is employed for the operating thereof and that work and those persons have been registered in the manner prescribed by the said regulation with the department, or otherwise than in accordance with any condition subject to which that work or those persons are so registered.'

'Anything done before the commencement of this Act by an organisation contemplated in subsection (2) and any regulation made or condition set under or in terms of any law repealed by subsection (1) remains valid and is deemed to have been done, made or set under or in terms of the corresponding provision of this Act if –

(a) it is capable of being done, made or set under or in terms of this Act; and

(b) it is not in conflict with the main objects of this Act as set out in section 2.'

Simply put, sections 26 and 12A of the WA, under which Regulation 2834 was promulgated, remained in force and continued to be its statutory support.

[40] The National Water Act 36 of 1998 (NWA), however, repealed the remaining provisions of the WA, including sections 26 and 12A. Section 163(4) of the NWA, which is a savings provision, provides:

'(4) Any regulation made under a law repealed by this Act remains in force and is considered to have been made under this Act –

(a) to the extent that it is not inconsistent with this Act; and

(b) until it is repealed by the Minister under this Act.'

Sections 2(d) and (h) of the NWA set out, *inter alia*, the purposes of the NWA as follows:

'(d) promoting the efficient, sustainable and beneficial use of water in the public interest;

...

(h) reducing and preventing pollution and degradation of water resources'.

[41] Section 26 of the NWA enables the Minister to make regulations in relation to a host of matters, including the following:

'26(1)(e) regulating the design, construction, installation, operation and maintenance of any waterwork, where it is necessary or desirable to monitor any water use or to protect a water resource;

(f) requiring qualifications for and registration of persons authorised to design, construct, install, operate and maintain any waterwork, in order to protect the public and to safeguard human life and property'.

Regulation 2834 was not specifically repealed by the Minister under the NWA and, from what is set out above, is not inconsistent therewith.

[42] I disagree, for the reasons set out above, with the submission on behalf of the Municipality, that the savings provision in the NWA applied before the WSA repealed

the remaining provisions of the WA. I also disagree with the further submission that, since the WSA has processes for the making of regulations that differ from the manner in which regulations were made under the WA, Regulation 2834 would be inconsistent therewith and that the savings provision as per s 163(4) of that Act does not apply. These submissions on behalf of the Municipality were intended to support the argument that there was no existing binding provision in terms of Regulation 2834 in relation to minimum staffing of water works and their qualifications. Section 69 of the NWA provides for public participation in relation to regulations contemplated under the Act. That does not detract from the fact that Regulation 2834 is not inconsistent with the objects of the NWA. Even if the savings provision in the NWA had applied before the remaining sections of the WA were repealed by the WSA, Regulation 2834 would be consistent with the objectives of the NWA and would thus have continued in existence.

[43] A further submission on behalf of the Municipality, in relation to the continuing validity of Regulation 2834, was that the NWA does not confer on the Minister the power to prescribe national standards for process controllers and water service works. In this regard, it was submitted that s 9 of the WSA is applicable and dictates how standards ought to be dealt with rather than through Regulation 2834. Section 9 of the WSA provides, inter alia:

'(1) The Minister may, from time to time, prescribe compulsory national standards relating to-

(a) the provision of water services;

...

(d) the nature, operation, sustainability, operational efficiency and economic viability of water services;

(e) requirements for persons who install and operate water services works;

(f) the construction and functioning of water services works and consumer installations.'

I fail to understand how, in the absence of a repeal of Regulation 2834, the Minister's power to make other regulations, which has not yet been finally employed, detracts from the continuing validity of Regulation 2834 on the basis set out above. In my view, this is a strained and desperate attempt to avoid the consequences of the bid by Veolia being declared invalid.

[44] I now turn to deal with the bid specification. The staffing requirements of the RFP are set out in mandatory terms. The 'minimum [staffing] requirements for the operation of the various classes of works' are set out in the RFP, which must be read with Regulation 2834, specifying the minimum number of process controllers across various classes of works. The bid specification goes on to state that the 'operator' (the successful tenderer), 'needs to comply with the current legislated Regulation 2834 requirements, or any new classification requirements from the Department of Water and Sanitation, e.g. [Draft] Regulation 17, which is expected to be promulgated soon'.

[45] It is true that the Municipality assured bidders that the required skills could be developed over a three-year period. That could only relate to 'Draft' Regulation 17, in respect of which compliance could rightly be thought to be prospective. The same does not apply in relation to Regulation 2834. The purpose of Regulation 2834, in relation to water works, in line with the empowering statutes, was aimed at assurance of water supply at the right quality and quantity as well as operations optimisation and asset preservation. The RFP, in terms, sought to achieve the same.

[46] For reasons that will become apparent, it is not necessary to resolve the apparent differences in the decisions of this court in *Millennium Waste Management (Pty) Ltd v Chairperson, Tender Board: Limpopo Province & others* 2008 (2) SA 481 (SCA) and *Dr J S Moroka Municipality v Betram (Pty) Ltd & another* 2014 (1) SA 545 (SCA). This court, in *Millennium*, said at para 17:

'[O]ur law permits condonation of non-compliance with peremptory requirements in cases where condonation is not incompatible with public interest and if such condonation is granted by the body in whose benefit the provision was enacted.' (Citation omitted.)

Under the heading 'A flexible approach', P Volmink described the effect of the decision in *Moroka Municipality*, as follows:

'[A]dministrative bodies do not enjoy a blanket discretion to condone non-compliance with mandatory bid requirements in all instances. Rather, they have the power to condone non-compliance with mandatory provisions only when they have been afforded the discretion to do so in the RFP document or some other enabling provision.'⁵

⁵ P Volmink, 'Legal Consequences of Non Compliance with Bid Requirements' (2014) 1 *African Public Procurement Law Journal* 41, 49. See also paras 16 and 18 of *Moroka Municipality*.

[47] Veolia's bid did not make provision for the minimum number of process controllers across all classes of works – there was a substantial shortfall. It was never the Municipality's case that the additional 14 members of staff Veolia intended to employ included the process controllers in question. It will be recalled that the Municipality, advised by WorleyParsons, adopted the attitude that regulatory compliance could be achieved in the initial three-year period. In this regard it might well have had draft regulation 17 in mind, but this caused it to be less mindful of compliance with its own stated minimum staffing requirements, more particularly, in relation to process controllers and the provisions of Regulation 2834.

[48] WSSA accepted that, in terms of Regulation 2834, the Director-General in the Department of Water and Sanitation could allow fewer persons or persons with lower educational qualifications to be employed for the operation of any particular water care work, subject to conditions, if he/she is of the opinion that, in the particular circumstances, the attainment of the objectives of these regulations would not be frustrated by such employment.⁶ However, WSSA contended, taking into account that the Director-General might be inclined to relax the numbers and qualification requirements, in that three of the water works were automated and not likely to require full-time process controllers, it would still leave a shortfall of 12 process controllers. There was a measure of disagreement concerning the actual shortfall of process controllers, with the Municipality criticising WSSA for changing its initial assertion that Veolia's bid had a shortfall of 11 process controllers, to later stating that there was a shortfall of 12 process controllers and further for not discounting three process controllers due to automated works. Whatever the difference, the ineluctable conclusion is that there was a shortfall of approximately 10 process controllers. The Municipality accepted that, in the event that Regulation 2834 was to be strictly applied, WSSA's own bid would fall short in relation to process controllers. There appears to be some substance to that contention, but it is not an issue we have been called upon to address. It does, however, underscore the need for the remittal for a bid process to be started afresh with the issue by the Municipality of an RFQ.

⁶ See section 7 set out in para 44 above.

[49] Regulation 2834 was in place and it required, in peremptory terms, as did the RFP, a minimum required number of process controllers. Thus, Veolia's bid did not meet this requirement. Nothing in the bid specifications or the regulations nor in any other legislation that I am aware of affords the Municipality the power to condone non-compliance with the mandatory and material requirements set out in the RFP, based as it is on Regulation 2834. Furthermore, as explored and explained above, Regulation 2834 in setting the minimum requirements was aimed at protecting the public interest. Condoning the material non-compliance in the present case would be inimical to that interest. The Municipality, in my view, was not as attentive, as it should have been, to bid specifications because it was impressed by Veolia's lower bid.

[50] I am alert to the debate concerning the possible sufficiency of substantial or adequate compliance with what, in conventional terms, is described as mandatory requirements. One should also guard against invalidating a tender that contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set out in tender documents.⁷ In the present case the non-compliance is not of a trivial or minor nature. The tender by Veolia was not an 'acceptable' one in terms of the Procurement Act, in that it did not 'in all respects' comply with the specifications and conditions set out in the RFP. Thus, the challenge in terms of s 6(2)(b) of PAJA, namely that a 'mandatory and material procedure or condition prescribed by an empowering provision, was not complied with'. In my view, for all the reasons set out above, WSSA has made out a case for setting aside the decision by the Municipality to award the tender to Veolia and the consequent contract.

[51] The bid was for a lengthy period of 15 years. It is in the public interest, as well as in the interest of persons interested in providing the services required by the Municipality, as well as in the interest of both Veolia and WSSA that the tender process be started anew, in line with the principles set out in s 217 of the Constitution and in line with the provisions of the Procurement Act.⁸ The best course to follow is the setting aside of the award of the tender to Veolia coupled with a remittal for a full bid process

⁷ In this regard see C Hoexter *Administrative Law in South Africa* 2 ed (2012) at 292-295 and P Bolton 'Disqualification for non-compliance with public tender conditions' (2014) 17(6) Potchefstroom Electronic Law Journal 2313, 2344.

⁸ See *Allpay Consolidated Investment Holdings (Pty) Ltd & others v Chief Executive Officer, South African Social Security Agency & others* 2014 (4) SA 179 (CC) at 32-33.

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to be started anew with an RFQ, without interrupting the operations at the works, resulting in prejudice to the residents of the areas referred to in para 2 above. The Municipality is urged to finalise and not subvert a full tender process within the time limit attached to the order of suspension made. In the event of further litigation, the Municipality and its officials are forewarned of likely costs and other implications. The appeal is liable to be dismissed, save that the order made by the court below, because of the time-lapse and because of considerations of fairness to bidders, the Municipality and the public, is amended to the extent reflected in the substituted order that follows.

[52] The following order is made:

1 The appeal is dismissed with costs, including the costs of two counsel. The order of the court below is, however, amended to the limited extent reflected below.

2 Paras 3, 4 and 5 of the order of the court below are set aside and substituted as follows

3 The decision is remitted to the first respondent for a full new tender process commencing with an RFQ to be started and completed;

4 In consequence of the order in paragraph 1, the contract between the first and second respondents is set aside; save that the setting aside of the contract is suspended until the tender is re-awarded or on the lapse of a period of six months, whichever is earlier.

5 The first respondent is ordered to bear the applicant's costs including the costs of two counsel.'

3 The six month period of suspension referred to in the substituted order is to commence running from the date of this judgment.



M S Navsa
Judge of Appeal

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Appearances:

For the Appellant:

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For the Respondent:

A P Joubert SC (with him D Gintner)
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Honey Attorneys, Bloemfontein

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CG19



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 101/18

In the matter between:

OVERSTRAND MUNICIPALITY

Applicant

and

WATER AND SANITATION SERVICES
SOUTH AFRICA (PTY) LIMITED

First Respondent

VEOLIA WATER SOLUTIONS AND
TECHNOLOGIES SOUTH AFRICA
(PTY) LIMITED

Second Respondent

ORDER DATED 7 JUNE 2018

CORAM: Mogoeng CJ, Zondo DCJ, Cachalia AJ, Dlodlo AJ, Froneman J, Goliath AJ, Jafta J, Khampepe J, Madlanga J, Petse AJ and Theron J.

The Constitutional Court has considered this application for leave to appeal. It has concluded that the application should be dismissed as it bears no prospects of success.

Order: The application for leave to appeal is dismissed with costs.

Makgaka
MR/KGWADI MAKGAKGA
REGISTRAR
CONSTITUTIONAL COURT



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7. URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER (IF ANY)

8. CONSIDERATION OF NOTICES OF MOTIONS / QUESTIONS

At the time of the closing of the agenda, no notices of motions/questions were received.

9. CONSIDERATION OF MOTIONS OF EXIGENCY (IF ANY)