

**AGENDA of the
Portfolio Committee: Protection Services
16 February 2016
(Also the agenda for the Mayoral Committee Meeting: 24 February 2016)**

**2.
TRAFFIC SPEED AND MEASURING, CAMERAS AND BACK OFFICE FOR FINE
COLLECTION IN THE OVERSTRAND SC 1579/2015**

8/2/2

NJ Michaels

(028) 313 8054

Corporate Head Office

26 January 2016

1. Executive Summary

The purpose of this report is to, as is required by section 33 of the Local Government Municipal Finance Management Act, No 56 of 2003 (MFMA), table in Council to:

- Authorise the Municipal Manager (or delegated official) to sign the proposed Contract on behalf of Overstrand Municipality,
- Approve the entire contract exactly as it is to be executed, for traffic speed measuring, cameras and back office for fine collection in the Overstrand.

Duly awarded by the Bid Adjudication Committee on 6 November 2015, the Municipality has made public its intention to enter into a long term support contract in regard to traffic speed measuring, cameras and back office for fine collection in the Overstrand.

2. Service Delivery and Budget Implementation Plan - IGNITE

Protection & Security Services
Traffic 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: Municipality Management Act, 2003(Act 56 of 2003)
Protection & Security Services
Traffic Services

**AGENDA of the
Portfolio Committee: Protection Services
16 February 2016
(Also the agenda for the Mayoral Committee Meeting: 24 February 2016)**

Overstrand Municipality Supply Chain Management Policy, as amended
Overstrand Municipality Contract Management Policy
National Road Traffic Act 93/1996
National Land & Transport Act 5/2009

6. Background/Discussion/Conclusion

Background

Overstrand Municipality Supply Chain Management Policy, as amended.
Overstrand Municipality Contract Management Policy
National Road Traffic Act 93/1996
National Land & Transport Act 5/2009
beneficial to the municipality's potential income.

Discussion

Negotiations with the preferred bidder were successful. No specifications/scope of tender were changed, nor did any clarifications lead to the detriment of any other bidder, nor did negotiations lead to higher prices and nor did the negotiations give TMT an unfair second change/opportunity in any way. Written minutes of negotiations were kept for record purposes, as prescribed by the SCM regulation paragraph 24(2).

All legislative prescriptive requirements of section 33 have been adhered to, which can be summarised as follow:

- Provisions of section 21A of the Systems Act;
- 60 days prior to the council meeting made public the draft contract and information statement, summarising Overstrand Municipality's obligations into the proposed contract;
- Invited the local community and other interested persons to submit to the municipality recommendations or representations in respect of the proposed contract;
- Solicited views and recommendations of National Treasury; relevant Provincial Treasury and National Department responsible for local government.

The municipal council needs to take into account:

- The Municipality's projected financial obligations in terms of the proposed contract for each financial year covered by the contract (refer to paragraph 7). The expenditure is related to the income generated during the contract.

**AGENDA of the
Portfolio Committee: Protection Services
16 February 2016
(Also the agenda for the Mayoral Committee Meeting: 24 February 2016)**

- The impact of those financial obligations on the municipality's future municipal tariffs and revenue. This contract will not have an impact on tariffs. Expenditure will not increase without income generated.
- No comments were received by the community and other interested persons.
- No written views and recommendations were received by either National Treasury; relevant Provincial Treasury and National Department responsible for local government.

The economic and financial benefits for the Overstrand include:

- Capital benefits realises on equipment after 2 years of the contract, where Overstrand becomes owner of the equipment.
- The more the expenditure (price per fine) the higher the income for Overstrand Municipality.

Duration of contract will be for 5 financial years (2015/2016 until 2019/2020). Contract will commence on date of signing the contract. The preferred bidder was informed that a section 33 (MFMA) process needs to be followed to make provision for the expense beyond/longer than three financial years (dry run period).

Conclusion

Overstrand Municipality adhered to all requirements of section 33 of the MFMA.

The contract is feasible, affordable and achieves the objectives of the municipality

7. Financial Implications

The financial implications of the contract over its full duration are illustrated in the Table below

	2015/16	2016/17	2017/18	2018/19	2019/20
SCOA Description		Contracted Services: Outsourced Services Traffic Fines Management			
SCOA Cost Account	10700200650000	10700200650000	10700200650000	10700200650000	10700200650000
SCOA Unique Key	20150212016251	20150212016251	20150212016251	20150212016251	20150212016251
Budget Provision	3,932,503 (amended)	4,205,554	4,457,887	4,680,781.35	4,914,820.41
Balance Available	3,613,799.32	4,205,554	4,457,887	4,680,781.35	4,914,820.41
Estimated expenditure in the case of tariffs	3,304,664.05	3,469,897.25	3,643,392.11	3,825,561.71	4,016,839.79
Estimate potential income	65,531,100.00	68,807,655.00	72,248,037.75	75,860,439.63	79,653,461.61
Estimate Total	R18,260,354.91				

**AGENDA of the
Portfolio Committee: Protection Services
16 February 2016
(Also the agenda for the Mayoral Committee Meeting: 24 February 2016)**

Project Cost	
Escalation	CPI (not exceeding 10% per year)
Escalation date	Annually from implementation date

The negotiations succeeded in arriving at a contract of which the financial compensation is in line with similar contracts in the Western Cape. The “dry run” period will enhance the opportunity to increase the municipal income further.

The expenditure is not a standalone figure and must be read with the income generated simultaneously.

Asset implication:

All equipment is procured by the service provider (TMT), although after 2 years of the contract, the camera equipment will be in the ownership of Overstrand Municipality.

Price Schedule

	Item	Price per Item (Excl. VAT)
1	Paid fine	R 72.90
2	Capture/Upload of AARTO infringement	R 40.00

**If AARTO legislation is rolled out, a fee of R40.00 will be applicable.
The tenderer made provision for this.**

The Operator will be paid a fixed rate per paid fine. Based on the competitive bids received, the cost of the Contract will not negatively impact the Municipality’s current budget provisions for the traffic speed measuring, cameras and back office for fine collection. The service provider will continue performance of issuing new traffic fines up to 3 years; thereafter they will only manage to secure payment of fines for an additional 18 months (dry run period) in order to stimulate income to Overstrand Municipality.

8. Staff Implications

None. The Municipality has identified the staff directly associated with traffic speed measuring, cameras and back office for fine collection. The Municipality has undertaken that no jobs will be lost as result of the Contract. Current benefits are protected in terms of law and will also be in terms of the contract.

**AGENDA of the
Portfolio Committee: Protection Services
16 February 2016
(Also the agenda for the Mayoral Committee Meeting: 24 February 2016)**

9. Comments from other Departments, Divisions and Administrations

Due to the fact that the agreement will be of a longer term nature, this additional Section 33 report has to serve before Council on 24 February 2016. The solicited views and recommendations from the community and other interested persons (advertised in 3 local newspapers and invited via e-mail) had to be submitted before 18 January 2016. No comments were received.

The invitations for recommendation and comments to other stakeholders, besides the community and interested persons, have been extended to 25 January 2016, which also resulted with no comments or representations from other departments and treasury.

In conclusion, no recommendations or representations were received from any relevant stakeholders.

10. Annexures

Annexure A: Draft contract

Annexure B: Information Statement & Report on Financial Implications iro the Contract

Annexure C: Advertisement inviting the local community and interested stakeholders for a period beyond three years

Annexure D: Minutes of BAC dated 12 November 2015

Annexure E: Invitation of solicited views and recommendations of National and Provincial Treasuries and departments. (Including extension granted).

RECOMMENDATION TO THE COUNCIL:

1. that the contract of SC 1579/2015 for the Traffic Speed Measuring, cameras and back office for fine collection in the Overstrand, be approved exactly as it is to be executed;
2. that the annual budget requirements for the contract period as set out in paragraph 7 be approved;
3. that the annual budget requirements for the contract period as set out in paragraph 7 be approved;
4. the Council take note that no recommendations were received in respect of the proposed long term contract SC 1579/2015 from the relevant provincial department or treasury; and
5. that the Council authorise the Municipal Manager to sign the contract on behalf of the Overstrand Municipality.

**AGENDA of the
Portfolio Committee: Protection Services
16 February 2016
(Also the agenda for the Mayoral Committee Meeting: 24 February 2016)**

RESPONSIBLE OFFICIAL :	N MICHAELS R FRASER M POTGIETER
TARGET DATE FOR IMPLEMENTATION :	1 MARCH 2016
TARGET DATE TO INFORM APPLICANT :	24 FEBRUARY 2016

**AGENDA of the
Portfolio Committee: Protection Services
16 February 2016
(Also the agenda for the Mayoral Committee Meeting: 24 February 2016)**

**2.
TRAFFIC SPEED AND MEASURING, CAMERAS AND BACK OFFICE FOR FINE
COLLECTION IN THE OVERSTRAND SC 1579/2015**

8/2/2

**NJ Michaels
26 January 2016**

(028) 313 8054

Corporate Head Office

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
16 FEBRUARY 2016, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the contract of SC 1579/2015 for the Traffic Speed Measuring, cameras and back office for fine collection in the Overstrand, be approved exactly as it is to be executed;
2. that the annual budget requirements for the contract period as set out in paragraph 7 be approved;
3. that the annual budget requirements for the contract period as set out in paragraph 7 be approved;
4. the Council take note that no recommendations were received in respect of the proposed long term contract SC 1579/2015 from the relevant provincial department or treasury; and
5. that the Council authorise the Municipal Manager to sign the contract on behalf of the Overstrand Municipality.

RESPONSIBLE OFFICIAL :

**N MICHAELS
R FRASER
M POTGIETER**

TARGET DATE FOR IMPLEMENTATION :

1 MARCH 2016

TARGET DATE TO INFORM APPLICANT :

24 FEBRUARY 2016

SERVICE LEVEL AGREEMENT

For the

**PROVISIONING OF TRAFFIC SPEED MEASURING, CAMERAS AND BACK OFFICE
FOR FINE COLLECTION**

Between

TMT SERVICES AND SUPPLIES (PTY) LTD

(Registration Number: 2000/022850/07)

(Herein after referred to as "TMT")

Herein represented by

Mr D G Davey

In his capacity as CEO

he being duly authorised thereto

And

OVERSTRAND MUNICIPALITY

(Herein after referred to as "the Local Authority")

Herein represented by

Mr C Groenewald

in his capacity as MUNICIPAL MANAGER

he being duly authorised thereto

(Individually referred to as "the Party" and collectively as "The Parties")

WHEREAS the Local Authority wishes to engage exclusively the Services of TMT as an independent contractor for the provisioning of traffic law enforcement equipment, back office systems and related services, subject to the terms and conditions contained in this Agreement, which agreement shall not be construed to amount to a relationship of employment, agency or partnership;

AND TMT has agreed to provide the operational support and maintenance of a Traffic Contravention System and the supply of Speed Cameras subject to the terms and conditions contained in this Agreement.

NOW THEREFORE the Parties agree as follows:

1. INTERPRETATION

- 1.1 Unless otherwise appears from the context, words in the singular may include the plural (and vice versa); and words signifying one gender may include the other gender as well as artificial persons such as companies, close corporation and trusts (and vice versa).
- 1.2 Headings to clauses are for reference purposes only and are not to be used in the interpretation of the meaning of any words or text.
- 1.3 This Agreement shall be binding on and enforceable by the executors, administrators, trustees, permitted assignees or liquidators of the Parties as fully and effectively as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's executors, administrators, trustees, permitted assignees or liquidators, as the case may be.
- 1.4 The rule of interpretation that an agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.
- 1.5 All amounts referred to in this Agreement are exclusive of VAT and the Party responsible for making payment of any such amount to another shall be obliged to

add VAT to the relevant payment at the relevant rate in accordance with the provisions of the Value Added Tax Act, No. 89 of 1991, as amended.

2. DEFINITIONS

The following words shall have the meaning as assigned to them:

- 2.1 "Agreement" means this service level agreement, the tender document and General conditions of contract;
- 2.2 "AARTO Act" means the Administration Adjudication of Road Traffic Offences Act, 1998 (Act 46 of 1998) and all subsequent amendments thereto;
- 2.3 "ANPR" means Automatic Number Plate Recognition;
- 2.4 "Commencement Date" is the date of the last signature of this contract; is
- 2.5 "Confidential Information" means information of a confidential nature including, but not limited to:
- (a) the details of the Services;
 - (b) price information of the Services;
 - (c) the terms of this Agreement;
 - (d) information or material proprietary to or deemed to be proprietary to that Party;
 - (e) information designated as confidential by that Party;
 - (f) information acquired by the other Party solely by virtue of the provision of the Services;
 - (g) trade secrets of that Party;
 - (h) intellectual property rights;
- 2.6 "Criminal Procedure Act" means the Criminal Procedure Act, 1977 (Act 51 of 1977) and all subsequent amendments thereto;

- 2.7 "Day" shall be any business day excluding public holidays, Saturdays and Sundays;
- 2.8 "Duties and Functions" means those obligations and responsibilities that have to be provided by the Parties in terms of this Agreement; by TMT as stipulated in **Schedule 1: Duties and Functions of TMT** and by the Local Authority as stipulated in **Schedule 2: Duties and Functions of the Local Authority**;
- 2.9 "Initial Period" means the period from 1 July 2015 to 30 June 2018 of this agreement, commencing from the Commencement Date;
- 2.10 "Intellectual Property Rights" means any and all intellectual and industrial property rights including rights of or in connection with:
- (a) any confidential information;
 - (b) copying (including future copyright);
 - (c) inventions (including patents);
 - (d) trademarks and service marks;
- Whether or not now existing, and whether or not registered and includes any rights to apply for the registration, renewal or extension of such rights and includes all renewals and extensions of such rights.
- 2.11 "Local Authority" means the Overstrand Local Municipality, a local authority with its offices and *domicilium citandi et executandi* situated at Overstrand Civic Centre, Harmony Street, Hermanus, 7200.
- Telephone – 028 313 8000
Fax – 028 312 1894
E-Mail – cgroenewald@overstrand.gov.za
Contact Person – Mr. C Groenewald (MM)
- 2.12 "Parties" shall be TMT and the Local Authority;
- 2.13 "Run-off Period" means that period following the Initial Period of this Agreement

and during which Run-off Period TMT will deliver only the finalization of the processes of fines generated in the Initial Period and the Service Fees will be payable only in respect of the infringement notices generated during the Initial period.

- 2.14 **"Responsible Person"** means the project manager appointed by each party in terms of clause 4.3.20.1.1 of the tender document
- 2.15 **"Schedule"** will refer to any of the Schedules attached to this agreement.
- 2.16 **"Section 54"** or **"Section 56"** or **"Section 341"** will refer to the corresponding sections in the Criminal Procedure Act;
- 2.17 **"Service Fee"** means the payment of a fee to TMT by the Local Authority for the Services rendered and as set out in detail in **Schedule 3: Service Fees**;
- 2.18 **"Successfully finalised case"** means the finalisation of a case by the payment or withdrawal in a court of law after tracing the offender, after all the actions as described in the tender documentation were executed and which inter alia include the following: all criminal processes from the capturing the offence, issuing 341 notices, summoning, tracing of offender and insuring the presence of the offender at court. This will include any case that has been initiated through the TMT system and has been finalised by any municipal or justice official.
- 2.19 **"Systems"** means those systems provided by TMT in terms of **Schedule 1: Duties and Functions of TMT**;
- 2.20 **"TCSP Guidelines"** means those guidelines as published from time to time by the Technical Committee for Standards and Procedures for Traffic Control and Traffic Control Equipment;
- 2.21 **"the Services"** means those services to be provided by TMT to the Local Authority and are set out in detail in **Schedule 1: Duties and Functions of TMT**;
- 2.22 **"Traffic Contravention System"** means the TMT Local Contravention Management System;

2.23 "TMT" means TMT Services & Supplies (Pty) Ltd, a company with limited liability duly incorporated in terms of the laws of the Republic of South Africa with registration number 2000/022850/07 with its registered office and *domicilium citandi et executandi* situated at Ground Floor, Building D, Platteklouf Park, Blouelie Crescent, Platteklouf, 7500

Telephone – 021 929 5300

Fax – 021 929 5394

E-Mail – info@tmtservices.co.za

Contact Person – Douglas Davey (CEO)

3. CONTRACT VARIATION

3.1 The documents submitted during the course of the tender process and the letter of appointment will be read with this Agreement should any clarity be required in respect of the work to be performed or any obligation relating to either party.

3.2 For the purpose of interpretation and in any event of conflict or inconsistency between the services level agreement and any other document mentioned here below, the priority of documents shall be in accordance with the following sequence:

- (a) The tender document;
- (b) The General conditions of contract;
- (c) The service level agreement

4. PAYMENT OF THE SERVICE FEE

In consideration for TMT carrying out its obligations under the Agreement, the Local Authority shall pay TMT the Service Fees as agreed and set out in **Schedule 3: Service Fees**.

5. WARRANTIES, LIMITATION OF LIABILITY AND INSURANCE

- 5.1 Both Parties warrant that it has not relied on any term, condition, warranty, undertaking, inducement or representation made by or on behalf of the other Party which has not been stated expressly in this Agreement.
- 5.2 Subject to paragraph 1(d) of Schedule 2, neither Party will be liable to the other Party for any claim or demand against the other, its officers, managers, partners, principals, employees, agents, or for any amounts representing loss of profit, loss of business or special, indirect, incidental, consequential or punitive damages of any nature whatsoever, including, without limitation, any damages arising out of or in connection with any malfunctions, delays, loss of data, interruption of service or loss of business or anticipatory profits, even if either has been advised of the possibility of such damages.
- 5.3 If either Party is held or found liable to the other Party for any matter relating to or arising in connection with this Agreement or the provision of the Services, whether based on action or claim in contract, negligence, delict or otherwise, the amount of damages that shall be entitled to be recovered shall be limited to the amount payable for the Services.
- 5.4 Both Parties shall be under a duty to mitigate any costs suffered or incurred as a result of any breach of this Agreement by the other Party.
- 5.5 TMT agrees to take out and maintain public liability insurance cover in respect of any claim or series of claims arising out of any one event, unlimited as to the number of claims and events made by any member of the public against either/both Parties for malicious prosecutions, wrongful arrests or any similar activity related to this contract. The costs of this insurance will be borne by TMT and shall be for the duration of this agreement. This insurance will only be utilized where it is evident that TMT was solely responsible for the cause of action, any claim is based on .

6. CONFIDENTIALITY

- 6.1 Both Parties agree that Confidential Information disclosed to the other Party by the disclosing Party shall be used by the other Party solely in connection with the provision of the Services.
- 6.2 Neither Party shall use the Confidential Information of the other Party for any purpose other than in the lawful carrying out of its obligations under this Agreement.
- 6.3 Either Party may only disclose the other Party's Confidential Information to any third party, except to those third parties expressly excluded otherwise in this Agreement, with the prior written consent of that Party.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Parties acknowledge that each Party has certain and specific Intellectual Property Rights and that neither Party shall seek to exploit or use any such material for its own purposes.
- 7.2 TMT covenants and agrees with the Local Authority that the use of material by TMT does not and will not infringe the Intellectual Property Rights of any other person.
- 7.3 The Local Authority will retain ownership of the contents of the database.

8. OWNERSHIP OF EQUIPMENT

- 8.1 Ownership of equipment and any other property supplied under this Agreement by TMT shall remain vested at all times in TMT.
- 8.2 After the Initial Period the following equipment will be transferred to the Local Authority:
- Any camera systems in use for longer than 2½ (two and a half) years

- 8.3 TMT shall arrange for appropriate insurance cover in respect of the equipment and property so supplied during the period of the contract up and until the equipment is transferred to the local authority

9. PERIOD OF CONTRACT

This Agreement will commence on _____ and will continue in effect until the initial period has expired on 30 June 2018 and the run-off period has run its course, as stipulated in Schedule 4: Duration of Contract.

10. TERMINATION OF CONTRACT

- 10.1 In addition to any rights of cancellation which either Party may have at Common Law, and subject to the provisions of Clause 13.2 having been complied with, this Agreement may be cancelled as follows namely:

- (a) By either Party ("the Innocent Party") in the event of the other Party ("the offending Party") committing a material breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of written notice given by the innocent Party to the offending Party drawing attention to the breach and demanding that it be remedied;
- (b) By either Party if the one Party ("the offending Party") is at any time placed in liquidation, whether provisional or final, or if it compromises with its creditors, or if it has had any judgement given against it and such judgement is final or becomes final and is not satisfied within 21 (twenty one) days;

- 10.2 Termination of this Agreement for whatsoever reason shall not affect the rights of either Party's outstanding debts and/or obligations in terms of the Agreement. Each Party acknowledges and agrees with the other that the undertakings given in relation to Confidential Information and Intellectual Property Rights shall survive the

termination of this Agreement.

11. NOTICES

- 11.1 The Parties choose as *domicilium citandi et executandi* for the purpose of giving any notice, service of any process and for any other purpose arising from the Agreement, at their respective addresses referred to in Clause 2.10 of this Agreement.
- 11.2 Each of the Parties shall be entitled from time to time to give written notice to amend the *domicilium citandi et executandi* by giving notice to the other party of any other address within the Republic of South Africa, which shall not be a post office box or poste restante.
- 11.3 All notices given in terms of this Agreement shall be valid and effective only if in writing.
- 11.4 Any notice which:
- (a) Is delivered by hand during normal business hours at the *domicilium citandi et executandi*, shall be presumed, until the contrary is proven, to have been received at the time of the hand delivery; or
 - (b) Is posted by prepaid registered post from any address within the Republic of South Africa to the addressee's *domicilium citandi et executandi* shall be presumed, until the contrary is proven, to have been received by the addressee on the 4th (fourth) Day after the date of posting; or
 - (c) Is transmitted by facsimile or electronic mail shall be deemed in the absence of proof to the contrary, to have been received within 1 (one) hour of transmission where it is transmitted during normal business hours or within 24 (twenty four) hours of transmission where it is transmitted outside normal business hours.