



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

A G E N D A

I-AJENDA

DATE / DATUM / UMHLA : 29 JULY / JULIE / JULAYI 2020
VENUE / PLEK / INDAWO : VIRTUAL
TIME / TYD / IXESHA : 11:00

MUNICIPALITY / MUNISIPALITEIT / UMASIPALA WE-OVERSTRAND

Office of the Municipal
Manager
Municipal Offices
HERMANUS

24 July / Julie / Julayi 2020

NOTICE TO ALL ALDERMEN & COUNCILLORS

ORDINARY MEETING OF THE OVERSTRAND MUNICIPAL COUNCIL

NOTICE IS HEREBY GIVEN that, due to the Covid-19 Lockdown, an **ORDINARY MEETING** of the **OVERSTRAND MUNICIPAL COUNCIL** will be held by means of a virtual platform on **WEDNESDAY, 29 JULY 2020** at **11:00**, of which the agenda will be available on the Overstrand Website (www.overstrand.gov.za).

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 GESKIED HIERMEE dat, weens die Covid-19 grendeltydperk, 'n **GEWONE VERGADERING** van die **OVERSTRAND MUNISIPALE RAAD** gehou sal word by wyse van 'n virtuele platform op **WOENSDAG, 29 JULIE 2020** om **11:00**, welke agenda op die Overstrand Webtuiste (www.overstrand.gov.za) beskikbaar sal wees.

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, ngenxa yokuvakwa okubangelwe yintsolongwana i-COVID-19, **INTLANGANISO YESIQHELO yeBHUNGA LIKAMASIPALA WE-OVERSTRAND**, iyakubanjwa ngeqonga elibonakalisayo ngo**LWESITHATHU, Umhla we 29 JULAYI 2020 ngeye-11:00**. I-ajenda iya kufumaneka yona kwiwebhusayithi ye-Overstrand (www.overstrand.gov.za).

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 Council held on Wednesday, 24 June 2020 at 11:00**

- 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 29 July 2020 had formally sat.

5.1

SIGNED PERFORMANCE AGREEMENTS OF THE MUNICIPAL MANAGER AND SECTION 56 (DIRECTORS) APPOINTEES FOR 2020/21

(ITEM 7, PAGE 279 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)

RECOMMENDATION TO THE COUNCIL:

that the signed performance agreements of the Municipal Manager and Section 56 (Directors) appointees for 2020/21 **be noted**.

RESPONSIBLE OFFICIAL :

R LOUW

TARGET DATE FOR IMPLEMENTATION :

29 JULY 2020

5.2

**SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP)
FOURTH QUARTERLY REPORT: APRIL - JUNE 2020****(ITEM 8, PAGE 546 : MAYORAL COMMITTEE MEETING : 29 JULY
2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the content of the report for the fourth quarter of the 2019/2020 financial year on the top level Service Delivery and Budget Implementation Plan **be noted**; and
2. that the amendments to the Departmental and Top layer SDBIP for the fourth quarter of the 2019/2020 financial year **be approved**.

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

5.3**REVISED PERFORMANCE IN THE QUARTERLY SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP) REPORTS FOR 2019/20****(ITEM 9, PAGE 591 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the adjusted service delivery performance on the Departmental and Top layer Service Delivery and Budget Implementation Plan (SDBIP) for quarters 1 - 3 of the 2019/20 financial year **be approved**; and
2. that the adjusted service delivery performance on the Departmental and Top layer SDBIP for quarters 1 - 3 of the 2019/20 financial year be updated on the electronic performance management system.

RESPONSIBLE OFFICIAL :**RG LOUW****TARGET DATE FOR IMPLEMENTATION :****30 JULY 2020**

5.4**MONTHLY REPORT TO COUNCIL ON SUPPLY CHAIN MANAGEMENT (SCM)
POLICY: PARAGRAPH 36, 16(1)(b) AND 17(1)(c) FOR JUNE 2020****(ITEM 10, PAGE 594 : MAYORAL COMMITTEE MEETING : 29 JULY
2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the deviations from the procurement processes, approved in terms of the delegated authority for June 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 June 2020, **be noted**.

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

5.5 COVID-19 FINANCIAL RELIEF ARRANGEMENTS

(ITEM 11, PAGE 601 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)

RECOMMENDATION TO THE COUNCIL:

1. that the last receipt date for applications for rebates as per Section 7 of the Property Rates Policy, be temporarily extended from 30 September 2020 to 30 November 2020 to afford ratepayers more time to acquire and submit the necessary documentation required for the approval of applications;
2. that the period for businesses who find themselves under financial stress and cannot pay their accounts due, be extended to include accounts for July 2020 and August 2020 respectively, and that they may enter into an extended term of payment agreement in terms of the Overstrand Customer Care, Credit Control and Debt Collection Policy in order for their payments of the said amounts to be done in equal payments over a six-month period without the payment of a deposit;
3. that the period for residential customers who find themselves under financial stress and cannot pay their accounts due, be extended to include accounts for July 2020 and August 2020 respectively, and that they may enter into an extended term of payment agreement in terms of the Overstrand Customer Care, Credit Control and Debt Collection Policy in order for their payments of the said amounts to be done over a period of 12 (twelve) months without the payment of a deposit; and
4. that payment of the following fees for all notices given on arrear accounts during July 2020 and August 2020 respectively, be waived:

Tariff Code	Detail	2020/2021	
		Exclude VAT	Include VAT 15%
		R	R
S20	CREDIT CONTROL AND DEBT COLLECTION		
S20A1	Admin fee on arrear accounts Notices	315,65	363,00
S20A2	Admin fee on 24 hour Notices - Bulk users	315,65	363,00
S20C	SMS admin fee on arrear accounts Notices	21,74	25,00

RESPONSIBLE OFFICIAL :

E HOONEBERG

TARGET DATE FOR IMPLEMENTATION :

31 AUGUST 2020

5.6

KLEINMOND SPECIAL RATING AREA (KSRA): APPLICATION TO POSTPONE THE IMPLEMENTATION OF THE KSRA WITH ONE YEAR**(ITEM 12, PAGE 606 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)****RECOMMENDATION TO THE COUNCIL:**

that, following a request from the Kleinmond Special Rating Area Steering Committee, resolutions 3, 4, 6 and 8 of Council Resolution dated 17 March 2020, be amended to read as follows:

3. that an additional rate **be levied** on properties in the KSRA from **1 July 2021** 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 KSRA Management Committee in terms of section 12(6) of the By-law prior to **1 July 2021**;
6. that the Kleinmond Special Rating Area (KSRA) additional rate be calculated on the municipal valuation for properties within the KSRA mapped area, in accordance with the Overstrand Property Rates Policy, to enable the Municipality to collect the additional rates required for the KSRA's **second** year budget, as well as for subsequent years in accordance with the 5-year budget period;
8. that the additional rate for the KSRA be considered by Council with the Municipality's **2021-2022** Budget and be implemented from **1 July 2021**.

RESPONSIBLE OFFICIAL :**S REYNEKE-NAUDE
E HOONEBERG
B KING****TARGET DATE FOR IMPLEMENTATION :****31 JULY 2020**

5.7

ONRUS-VERMONT SPECIAL RATING AREA (OVSRA): APPLICATION TO POSTPONE THE IMPLEMENTATION OF THE OVSRA WITH ONE YEAR**(ITEM 13, PAGE 612 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)****RECOMMENDATION TO THE COUNCIL:**

that, following a request from the Onrus-Vermont Special Rating Area Steering Committee, resolutions 3, 4, 6 and 8 of Council Resolution dated 25 March 2020, be amended to read as follows:

3. that an additional rate **be levied** on properties in the OVSRA from **1 July 2021** 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 2021**;
6. that the 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 **second** year budget, as well as for subsequent years in accordance with the 5-year budget period;
8. that the additional rate for the OVSRA be considered by Council with the Municipality's **2021-2022** Budget and be implemented from **1 July 2021**.

RESPONSIBLE OFFICIAL :**S REYNEKE-NAUDE
E HOONEBERG
B KING****TARGET DATE FOR IMPLEMENTATION :****31 JULY 2020**

5.8**QUARTERLY BANK ACCOUNT WITHDRAWALS IN TERMS OF SECTION 11(4) OF THE MFMA FOR THE QUARTER ENDED JUNE 2020****(ITEM 14, PAGE 618 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)****RECOMMENDATION TO THE COUNCIL:**

that the consolidated quarterly report in respect of Bank Account Withdrawals in terms of Section 11(4) of the MFMA for the quarter ended June 2020, **be noted**.

RESPONSIBLE OFFICIAL :**BA KING****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.9**ANNUAL STOCK TAKING FOR 2019/2020: MUNICIPAL STORES****(ITEM 15, PAGE 621 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the surplus stock be accounted against the appropriate vote numbers; and permission granted to correct stock values;
2. that the stock identified as obsolescent be **approved** for write-off; and
3. that the stock as recorded on 30 June 2020 be taken as the starting balance of the 2020/2021 stock register.

RESPONSIBLE OFFICIAL :**C ROETS****TARGET DATE FOR IMPLEMENTATION :****07 AUGUST 2020**

5.10**SUPPLY CHAIN MANAGEMENT IMPLEMENTATION REPORT – 2019/2020:****4th QUARTER: 01 APRIL 2020 – 30 JUNE 2020****(ITEM 16, PAGE 671 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)****RECOMMENDATION TO THE COUNCIL:**

that the activities undertaken and outcomes achieved in the implementation of the Overstrand Municipality's Supply Chain Management Policy for the 4th Quarter of 2019/2020 **be noted**.

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

5.11

ANNUAL SUPPLY CHAIN MANAGEMENT IMPLEMENTATION REPORT IN TERMS OF PARAGRAPH 6(2)(a) OF THE POLICY: 2019/2020**(ITEM 17, PAGE 688 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)****RECOMMENDATION TO THE COUNCIL:**

1. that the Supply Chain Management Implementation Report for the 2019/2020 financial year submitted in terms of Paragraph 6 of the Supply Chain Management Policy, **be noted**;
2. that, following the provisions of paragraph 6 of the Supply Chain Management Policy, **the report be made public** in accordance with Section 21A of the Local Government: Municipal Systems Act, No. 32 of 2000; and
3. that the schedules of Deviations and Irregular Expenditure **be disclosed** as a note to the Annual Financial Statements for the 2019/2020 financial year.

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

5.12**BUDGET REPORT FOR THE QUARTER ENDED JUNE 2020****(ITEM 18, PAGE 737 : MAYORAL COMMITTEE MEETING : 29 JULY 2020)****RECOMMENDATION TO THE COUNCIL:**

that the Budget Report for the quarter ended June 2020, prepared as part of the financial reporting obligations arising from the Local Government: Municipal Finance Management Act, 2003 and additional information, **be noted**.

RESPONSIBLE OFFICIAL :**BA KING****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

6. CONSIDERATION OF REPORTS

6.1

INVESTIGATION INTO THE INSTANCE OF IRREGULAR EXPENDITURE: SCIE 2018/0003: NON-COMPLIANCE WITH SUPPLY CHAIN MANAGEMENT POLICY WITH REGARDS TO: HIRING OF VENUE FOR TRAINING WITHOUT AN OFFICIAL ORDER

3/2/3/8

S Madikane

19 June 2020

Director : Economic Development & Tourism

(028) 316 - 8066

1. Executive Summary

The purpose of this report is to request Council to approve the writing off of irregular expenditure in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), for services rendered by Learn to Earn for hiring of a venue for training without an official order

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Local Economic and Social Development & Tourism

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

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

Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The LED in partnership with the Department of Public Works arranged capacity building training for Emerging Contractors at a venue referred to as Learn to Earn over a 15-day period during 20 – 24 November 2017, 4 – 8

December 2017 and 29 January 2018 to 02 February 2018 at a total cost of R8,550.00.

No official procurement process was followed for the hiring of the venue where the capacity building training were held despite the fact that a requisition was captured on the system in this regard.

The official at the municipality who gave the “go-ahead” to staff at Learn to Earn to allow and accommodate the contractors at the venue was a contract worker employed under the Extended Public Works Programme. The contract worker subsequently resigned on 22 June 2018.

The requisition was captured on the SAMRAS system by the contract worker on 16 November 2017, but was not authorised by the Manager: LED.

An electronic notification was delivered to the “inbox” of the Manager: LED on 16 November 2017 with the following subject: “Please Authorize Request 82151 for Zoliswa Poyo.”

The system administrator conceded that the requisition was authorised by the Manager: LED on 16 November 2017, however the system administrator was unable to provide any reason as to why the status of this requisition reflected “Awaiting Authorisation” despite the SCM Audit list report indicating that the requisition was indeed authorised. It was later established through an investigation that the requisition revert back to Awaiting Authorization, in the instance where an order was not issued and the requisition subsequently cancelled at the financial year-end in accordance with year-end procedures. This matter was reported to the service provider.

Council warranted on 29 May 2019 a full investigation into the allegation of financial misconduct levelled against the Manager: LED by the disciplinary board after considering a report tabled in this regard.

No evidence which support and/or suggest that the Manager: LED committed an act of financial misconduct could be found when his conduct was analysed and evaluated against:

- (1) the elements of financial misconduct (individually or combined) as per section 171 (3) of the MFMA (refer to paragraph 3), and
- (2) his delegated powers and duties, which he accepted on 23 September 2015.

Conclusion

On 24 June 2020 the Municipal Public Accounts Committee (MPAC) consisting of Cllrs S Tebele, D Botha, B Molefe, L Ntsabo and R Nutt considered a detailed report on the matter and came to the conclusion that

the municipality received value for money and was unanimous in its decision to recommend to Council that the irregular expenditure to the amount of R8 550,00 (Vat Incl) for the hiring of a venue for training at Learn to Earn, be certified as irrecoverable and be written off.

7. Financial Implications

R8 550,00 (Vat Incl)

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that, in view of the fact that the municipality has received value for money, the irregular expenditure to the amount of R8 550,00 (Vat Incl) for the hiring of a venue for training at Learn to Earn, be certified as irrecoverable and **written off** in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

RESPONSIBLE OFFICIALS :**B KING
C LE ROUX****TARGET DATE FOR IMPLEMENTATION :****31 AUGUST 2020**

6.2**INVESTIGATION INTO THE INSTANCE OF IRREGULAR EXPENDITURE:
SCIE 2019/20.07: NON-COMPLIANCE WITH SUPPLY CHAIN MANAGEMENT
POLICY WITH REGARDS TO: APPOINTMENT OF ATTORNEYS**

3/2/3/8

L Wallace

19 June 2020

Legal Advisor

(028) 313 - 5031

1. Executive Summary

The purpose of this report is to request Council to approve the writing off of irregular expenditure in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), for services rendered with regard to the appointment of attorneys for legal services as deviations, however, these reasons are not deemed to be justifiable and reasonable and resulted in non-compliance with the SCM regulations.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Management Services
Department: Legal Services

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act 2003, (Act 56 of 2003)
Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

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

Paragraph 36 of the Supply Chain Management (SCM) Policy of the Overstrand Municipality provides for the Accounting Officer to dispense with the official procurement process to procure required services when it is impractical or impossible to follow the official procurement processes

included, but not limited to, the acquisition of services of attorneys, subject that the acquisition of such services to be dealt with in terms of the Overstrand Municipality's Delegation of Powers and Duties.

During the annual audit for the 2018/19 financial year the Auditor-General however identified these transactions as irregular expenditure and stated the finding in the Management Report, formulated as follows:

"Issue no 2: procurement of legal services through a deviation process - It was identified that the municipality procured legal services from law firms/attorneys through a deviation process during the current and prior year the year. It was noted that the Overstrand Municipality does not have active contract with any attorneys or law firms and the municipality follow a deviation process each and every time when the need for legal services arise.

The municipality provided Management Response on the transactions identified.

But, regardless of this, the Auditor-General upheld its opinion and included the following as irregular expenditure incurred by the municipality:

SCMIE #	Description	Type of Prohibited Expenditure	Awarded to	Respon-sible Directorate	Amount Operational	VAT @ 15%	Value of the Irregular Expenditure Incurred (Incl.	Total
2019.20.07	Appointment of Attorneys	Clause 19	Fairbridges Wertheim Becker Attorneys	Management Services	R 221 602,68	R 33 240,40	R 254 843,08	R 254 843,08
		Clause 19	Vermaak EW	Management Services	R 36 730,43	R 5 509,57	R 42 240,00	R 42 240,00
		Clause 19	Potgieter L	Management Services	R 10 156,52	R 1 523,48	R 11 680,00	R 11 680,00
		Clause 19	Van der Spuy & Partners	Management Services	R 27 826,09	R 4 173,91	R 32 000,00	R 32 000,00

Conclusion

The municipality attended to comprehensive research with related to similar processes in compiling specifications for tenders for legal and advisory

services. Tenders received are to be evaluated based on the essential requirements, pre-qualification and price.

On 24 June 2020 the Municipal Public Accounts Committee (MPAC) consisting of Cllrs S Tebele, D Botha, B Molefe, L Ntsabo and R Nutt considered a detailed report on the matter and came to the conclusion that the municipality received value for money and was unanimous in its decision to recommend to Council that the irregular expenditure to the amount of R340 763,08 (Vat Incl) for legal services, be certified as irrecoverable and be written off.

7. Financial Implications

R340 763.08 (Vat Incl)

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that, in view of the fact that the municipality has received value for money, the irregular expenditure in the amount of R340 763.08 (Vat Incl) for legal services, be certified as irrecoverable and **written off** in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

RESPONSIBLE OFFICIALS :

**C LE ROUX
B KING**

TARGET DATE FOR IMPLEMENTATION :

31 AUGUST 2020

6.3

INVESTIGATION INTO THE IRREGULAR EXPENDITURE SCIE 2019/20.08: NON-COMPLIANCE WITH SUPPLY CHAIN MANAGEMENT POLICY WITH REGARDS TO PROCUREMENT OF GOODS OF SERVICES UNDER CONTRACTS SECURED BY OTHER ORGANS OF STATE - PROTECTIVE CLOTHING SC1738/2016:

3/2/3/8**L Smith Senior Manager: Fire, Rescue, Disaster Management & Security****19 February 2020****028 313 5041**

1. Executive Summary

The purpose of this report is to request Council to approve the writing off of irregular expenditure in terms of Section 32(2)(b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), which occurred to Tender 104G/2015/16: Supply and Delivery of Human Protection Clothing and Articles for the Fire and Rescue Services

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Protection Services
Fire and Rescue, Disaster Management and Security Services

3. Compliance with Strategic Priorities

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

4. Delegated Authority

Not applicable

5. Legal Requirements

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)
Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

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

On 19 October 2016, the Overstrand Municipality applied for consent from City of Cape Town to procure services via Tender 104G/2015/16: Supply

and Delivery of Human Protection Clothing and Articles for the Fire and Rescue Services. Permission was subsequently granted on 10 November 2016 to procure goods from successful bidders. Overstrand Municipality opted to follow a transversal process due the quantities which are minimal compared to other organs of state. The quantities have a direct impact on price per unit; it also extends the lead delivery time. Suppliers of uniform and protective clothing / equipment first complete large orders before fulfilling smaller orders. The uniform, PPE (Personal Protective Equipment) and PPC (Personal Protective Clothing) of the Fire Services are standardised across South Africa, therefore making a transversal agreement an optimal option.

Discussion

Section 32 of the Supply Chain Management Policy makes provision for the *Procurement of goods and services under contracts secured by other organs of state*

- 1) *The accounting Officer may procure goods or services under a contract secured by another organ of state, but only if-*
 - a) *The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;*
 - b) *There is no reason to believe that such contract was not validly procured;*
 - c) *There are demonstrable discounts or benefits to do so; and*
 - d) *That other organ of state and the provider have consented to such procurement in writing*

The Overstrand Municipality obtained all documents as required by Section 32(1) and henceforth proceeded with the transversal agreement. SC 1738/2016 was therefore awarded on the same items and contract end date (6 October 2019). The Overstrand Municipality was thus left with own interpretations of Section 32, that all due processes were followed to legally award tender SC1738/2016.

On 24 July 2019 National Treasury issued Circular 96 “SCM Regulations 32: Procurement of Goods and Services under contracts secured by other organs of state”, which provided more clarification in terms of such procurement contracts.

The legal interpretation of regulation 32 means that the accounting officer of the original contracting organ of state is willing to forfeit a portion of its contract that has not already been utilised to the accounting officer who is requesting to procure under that contract, in terms of contract value and quantity that has not been utilised.

The legal interpretation of regulation 32 only became evident after the commencement of the Overstrand award as SC1738/2016, which subsequently commenced in November 2016 ended on 30 June 2019. The irregular expenditure had thus occurred unintendedly to the Overstrand Municipality, in only became aware of the implications of entering such agreement after the release of Circular 96 “SCM Regulations 32: Procurement of Goods and Services under contracts secured by other organs of state” and the subsequent annual audit where this matter was raised as a finding in the management report.

Conclusion

Overstrand Municipality and any number of other municipality's did not agree with the interpretation of the relevant section of the MFMA but the AG based their finding on an interpretation of a judgment by the Kwazulu Natal High Court and notwithstanding local government's arguments to the contrarily, the AG suffice with their professional opinion. The matter was also only addressed with regard to clarity, for the first time by NT on 24 July 2019 in their MFMA Circular 96 of 2019 (Implementation of SCM Regulation 32).

Management reviewed its implementation of SCM Regulation 32. The submission of this irregular expenditure report to the MPAC also states that the municipality did not suffer a financial loss as the municipality received value for money.

On 24 June 2020 the Municipal Public Accounts Committee (MPAC) consisting of Cllrs S Tebele, D Botha, B Molefe, L Ntsabo and R Nutt considered a detailed report on the matter and came to the conclusion that the municipality received value for money and was unanimous in its decision to recommend to Council that the irregular expenditure to the amount of R548 087,13 (Vat Inclusive), incurred for the Supply and Delivery of Human Protection Clothing and Articles for the Fire and Rescue Services, be certified as irrecoverable and written off in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

7. Financial Implications

R548 087,13 (Vat Inclusive).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that, in view of the fact that the municipality has received value for money and due processes were followed at the time by the Municipality for the award of the transversal agreement, the irregular expenditure in the amount of R548 087,13 (Vat Inclusive) or the Supply and Delivery of Human Protection Clothing and Articles for the Fire and Rescue Services, **be written off** in terms of Section 32(2)(b) Local Government: Municipal Finance Management Act, Act 56 of 2003

RESPONSIBLE OFFICIALS :**C LE ROUX
B KING****TARGET DATE FOR IMPLEMENTATION :****31 AUGUST 2020**

6.4**INVESTIGATION INTO THE IRREGULAR EXPENDITURE SCIE 2019/20.09 - SC1738/2016: NON-COMPLIANCE WITH SUPPLY CHAIN MANAGEMENT POLICY WITH REGARDS TO PROCUREMENT OF GOODS OF SERVICES UNDER CONTRACTS SECURED BY OTHER ORGANS OF STATE****3/2/3/8****B King****17 June 2020****Senior Manager: Accounting Services****028 313 8154**

1. Executive Summary

The purpose of this report is to request Council to approve the writing off of irregular expenditure in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), for services rendered with regard to Contract 24/2013: Provision of Banking Services - Langeberg Municipality. The Banking Services tender was awarded to ABSA BANK in accordance with the tariffs as determined in their bid document.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Finance
Accounting Services

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services

4. Delegated Authority

Not applicable

5. Legal Requirements

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003)
Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

6. Background/Discussion/Evaluation/Conclusion

Background

Contract 24/2013 was awarded by Langeberg Municipality for Banking Services to ABSA BANK in accordance with the tariffs as determined in their bid document. Langeberg Local Municipality has secured the services of ABSA Bank Ltd via a competitive bidding process and Overstrand Municipality has elected to utilise the contract, duly motivated in accordance with the requirements of clause 32 of the SCM Policy.

This contract had no estimated or projected contract value and the scope of works was identical to the contract procured by the other organ of state and the municipality did not enter into a separate agreement with the supplier. The rates/tariffs used was identical as that awarded by the other organ of state.

Discussion

Section 32 of the Supply Chain Management Policy makes provision for the *Procurement of goods and services under contracts secured by other organs of state*

- 2) *The accounting Officer may procure goods or services under a contract secured by another organ of state, but only if-*
 - a) *The contract has been secured by that other organ of state by means of a competitive bidding process applicable to that organ of state;*
 - b) *There is no reason to believe that such contract was not validly procured;*
 - c) *There are demonstrable discounts or benefits to do so; and*
 - d) *That other organ of state and the provider have consented to such procurement in writing*

The Overstrand Municipality obtained all documents as required by Section 32(1) and henceforth proceeded with the transversal agreement. SC 1644/2015 was therefore awarded on the same items. The Overstrand Municipality was familiar with interpretation of Section 32, that all due processes were followed to legally award tender SC1644/2015.

On 24 July 2019 National Treasury issued Circular 96 "SCM Regulations 32: Procurement of Goods and Services under contracts secured by other organs of state", which provides more clarification in terms of such procurement contracts.

The legal interpretation of regulation 32 means that the accounting officer of the original contracting organ of state is willing to forfeit a portion of its contract that has not already been utilised to the accounting officer who is requesting to procure under that contract, in terms of contract value and quantity that has not been utilised.

The legal interpretation of regulation 32 only became evident after the commencement of the Overstrand award as SC1644/2015. The irregular expenditure had thus occurred unintendedly to the Overstrand Municipality, in the municipality only became aware of the implications of entering such agreement after the release of Circular 96 "SCM Regulations 32: Procurement of Goods and Services under contracts secured by other organs of state" and the subsequent annual audit where this matter was raised as a finding in the management report.

Conclusion

Overstrand Municipality and any number of other municipality's did not agree with the interpretation of the relevant section of the MFMA but the AG based their finding on an interpretation of a judgment by the Kwazulu Natal High Court and notwithstanding local government's arguments to the contrary, the AG suffice with their professional opinion. The matter was also only addressed with regard to clarity, for the first time by NT on 24 July 2019 in their MFMA Circular 96 of 2019 (Implementation of SCM Regulation 32).

Management reviewed its implementation of SCM Regulation 32. The submission of this irregular expenditure report to the MPAC also states that the municipality did not suffer a financial loss as the municipality received value for money.

On 24 June 2020 the Municipal Public Accounts Committee (MPAC) consisting of Cllrs S Tebele, D Botha, B Molefe, L Ntsabo and R Nutt considered a detailed report on the matter and came to the conclusion that the municipality received value for money and was unanimous in its decision to recommend to Council that the irregular expenditure to the amount of R2 073 194,36 (Vat Inclusive), incurred for the Provision of Banking Services, be certified as irrecoverable and written off in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

7. Financial Implications

R2 073 194,36 (Vat Inclusive)

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that, in view of the fact that the municipality has received value for money and that due processes were followed at the time by Overstrand Municipality for the award of the transversal agreement, the amount of R2 073 194,36 (Vat Inclusive), for the Provision of Banking Services, **be written off** in terms of Section 32(20 Local Government: Municipal Finance Management Act, Act 56 of 2003.

RESPONSIBLE OFFICIALS :**C LE ROUX
B KING****TARGET DATE FOR IMPLEMENTATION :****31 AUGUST 2020**

6.5**INVESTIGATION INTO THE INSTANCE OF IRREGULAR EXPENDITURE:
SCIE 2019/20.10: NON-COMPLIANCE WITH REGARDS TO TRANSVERSAL
TERM CONTRACT S037/18: WESTERN CAPE ALL REGIONS: TMG DRILLING
FRAMEWORK AGREEMENT 2018-2021****8/3/1/SC1938/2019****H Blignaut****30 March 2020****Deputy Director : Engineering Services****(028) 313 5047**

1. Executive Summary

The purpose of this report is to request Council to approve the writing off of irregular expenditure in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), which occurred with regard to the “Transversal Term Contract S037/18: Western Cape All regions TMG Drilling Framework Agreement 2018-2021”.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Infrastructure and Planning
Department: Engineering Planning

3. Compliance with Strategic Priority

The provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

Not applicable

5. Legal Requirements

Local Government: Municipal Finance Management Act 2003, (Act 56 of 2003);
Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

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

During 2018 the Western Cape Department of Transport and Public Works has secured a contract with drilling contractors for the drilling of boreholes

into the Table Mountain Group (TMG) aquifers via a competitive bidding process.

In view of the prolonged drought experienced in the Greater Hermanus area, and the fact that water is also abstracted from the Table Mountain Group for Hermanus, the Overstrand Municipality considered utilising this contract in accordance with the provisions of paragraph 32 of the SCM Policy, to drill additional boreholes for the Greater Hermanus area, in order to save on time and cost for the municipality.

Discussion

This approach would be advantageous to the municipality, due to the potential savings in terms of both the time and cost normally associated with tender processes, as well as the economies of scale linked to a provincial wide project, as opposed to one contract for a single municipality. The wider approach would potentially attract interest from more contractors, with better rates than for a smaller single project.

In order to secure maximum benefit for the Overstrand Municipality, it was deemed fit to enter into a transversal agreement with the Western Cape Department of Transport and Public Works. Permission was granted by the Municipal Manager in terms of the provisions of the Supply Chain Management Policy to follow the prescribed process in this regard.

The Municipal Supply Chain Management (SCM) Regulations of 2018, paragraph 32, determines the requirements and conditions under which SCM Policies of municipalities may allow their respective Accounting Officers to procure goods or services for the municipality under a contract secured by another organ of state in the context of a competitive bidding process.

A review of the criteria for a transversal agreement as per Regulation 32(1) has been done in this case, and it was found that the proposed process meets all the criteria of a transversal agreement.

An application by the municipality to participate in this transversal contract was approved by the Western Cape Department of Transport and Public Works. The intention was to make use of the approved suppliers on this term contract for the drilling of additional boreholes in the Overstrand as and when budget becomes available, as the contract was rates based, and not a fixed amount contract.

Following thorough verification of the compliance of the provincial procurement processes with legislation, as well as of their approved contractors by the SCM unit, and evaluation by the Overstrand BEC, the use of Transversal Contract S037/18 of the Western Cape Province by the

Overstrand Municipality was subsequently recommended by the Overstrand BAC to the Accounting Officer on 20 March 2019, and approved by the Accounting Officer on 26 March 2019.

After approval by the Accounting Officer, the contract was applied to drill additional boreholes for the drought stricken Greater Hermanus area. In terms of the contract, quotations had again to be obtained from the approved contractors, and were verified by the SCM unit before an order was issued. The highest scoring bidder's quotation was R 7 944 739.97, excluding VAT. Due to savings realized during execution of the project, e.g. shallower boreholes than anticipated, the total amount spent amounted to only R 6 142 864.38, including VAT.

With the execution of the annual audit it was however a finding (across the industry) that Management did not identify that its historical interpretation and application of SCM regulation 32 has resulted in non-compliance with the regulation and/or has failed to provide audit with evidence that the expenditure incurred by it on so-called "piggy-back" contracts were limited to the portion forfeited by the other organ of state, resulting in the incurring of irregular expenditure.

It was recommended that Management should review its interpretation and implementation of SCM regulation 32 and implement the principles as clarified by the courts in the matters of Blue Nightingale Trading 397 (Pty) Ltd t/a Siyenza Group v Amathole District Municipality and Kwadukuza Municipality v Skilful 1169 CC and Another as it has the force of law and must form the basis against which the application of regulation 32 is measured.

The outcomes of the court judgement are to be applied retrospectively and applies to contracts where expenditure has been incurred in the 2018-19 financial year.

Conclusion

Overstrand Municipality and any number of other municipality's did not agree with the interpretation of the relevant section of the MFMA but the AG based their finding on an interpretation of a judgment by the Kwazulu Natal High Court and notwithstanding local government's arguments to the contrary, the AG suffice with their professional opinion. The matter was also only addressed with regard to clarity, for the first time by NT on 24 July 2019 in their MFMA Circular 96 of 2019 (Implementation of SCM Regulation 32).

Management reviewed its implementation of SCM Regulation 32. The submission of this irregular expenditure report to the MPAC also states that the municipality did not suffer a financial loss as the municipality received value for money.

On 24 June 2020 the Municipal Public Accounts Committee (MPAC) consisting of Cllrs S Tebele, D Botha, B Molefe, L Ntsabo and R Nutt considered a detailed report on the matter and came to the conclusion that the municipality received value for money and was unanimous in its decision to recommend to Council that the irregular expenditure to the amount of R6 142 864.38, including VAT, incurred for the drilling of boreholes into the TMG aquifer in Hermanus by Steyns Drilling CC by utilising the Western Cape Department of Transport and Public Works' Transversal Term Contract S037/18: Drilling Framework Agreement 2018-2021, be certified as irrecoverable and written off in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

7. Financial Implications

R 6 142 864.38, including VAT.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that, in view of the fact that the municipality has received value for money, the irregular expenditure to the amount of R6 142 864.38, including VAT, incurred for the drilling of boreholes into the TMG aquifer in Hermanus by Steyns Drilling CC by utilizing the Western Cape Department of Transport and Public Works' Transversal Term Contract S037/18: Drilling Framework Agreement 2018-2021, **be certified as irrecoverable and written off** in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.

RESPONSIBLE OFFICIALS :

**C LE ROUX
B KING**

TARGET DATE FOR IMPLEMENTATION :

31 AUGUST 2020

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)