

**8.
PROPOSED AMENDMENT OF CONTRACT SC 1706/2016: OPERATION OF CELL
3 OF THE KARWYDESKRAAL LANDFILL SITE FOR OVERSTRAND
MUNICIPALITY**

8/2/1/SC1706/2016

H Blignaut

(028) 313 5047

Hermanus Administration

13 November 2018

1. Executive Summary

The purpose of this report is to provide the necessary information and motivation for the proposed amendment of Contract Number SC1706/2016: Operation of Cell 3 of the Karwyderskraal Landfill Site for Overstrand Municipality, in terms of the enabling provisions of Section 116(3) of the Local Government: Municipal Finance Management Act 2003 (Act No. 56 of 2003) (MFMA), to enable Council to make an informed decision whether to consent to the amendment of the contract.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate: Infrastructure & Planning

Department: Engineering Planning, Solid Waste Planning section

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)

National Environmental Management: Waste Act, 2008 (Act 59 of 2008)

Overstrand Municipality Supply Chain Management Policy as amended

Overstrand Municipality Contract Management Policy as amended

National Treasury MFMA Circular 73

6. Background/Evaluation/Conclusion

Background

Contract SC1706/2016 for the Operation of Cell 3 of the Karwyderskraal Landfill Site for Overstrand Municipality was awarded to Averda South Africa (Pty) Ltd (previously known as Wasteman Holdings (Pty) Ltd) on 19 August 2016, and will terminate on 31 December 2018. The Overberg District Municipality (ODM) is currently busy with the construction of Cell 4 at the Karwyderskraal Landfill Site, which is envisaged to come into operation not before March 2019. Cell 4 will be operated by the ODM. Cell 3 will therefore have to remain in operation until the commencement of operation of Cell 4, and therefore it is necessary to extend the end date of the current operations contract, SC1706/2016. In order to provide for unforeseen delays, it is recommended that the end date be extended until 30 June 2019, but with the option to terminate the contract earlier with one month's notice from Overstrand Municipality.

MFMA Section 116(3) process

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

“116(3) A contract or agreement procured through the supply chain management policy of a 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; 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.”*

The proposed amendment of contract SC1706/2016 was advertised for public comment as follows (refer to Annexure B):

Date of Advertising:	27 September 2018
Method of Advertising:	Hermanus Times, Overstrand Herald, Overstrand Website & Municipal Notice Boards
Closing Date for Comments:	15 October 2018

No comments were received by the closing date.

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, 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).

Evaluation

The proposed amendment of Contract SC1706/2016 is for the following reasons:

- (a) To ensure that there is no interruption in service delivery before ODM’s completion of construction of Cell 4 and commencement of operation of Cell 4.
- (b) To provide sufficient time for the ODM’s successful bidder for the operation of Cell 4 to establish on site with the required staff and equipment, to ensure continuous landfill air space availability to the users of the landfill site, including Overstrand Municipality.

The contract is tariff based. The service provider signed an Intent to Amend (refer to Annexure A), confirming his acceptance of the proposed extension of the contract on exactly the same terms and conditions.

Conclusion

The extension of Contract SC 1706/2016 is essential to ensure continuous service delivery and availability of landfill air space at Karwyderskraal. The service provider signed an acceptance of the extension of the contract on the same terms and conditions, thereby minimising any risk to Overstrand Municipality. The proposed amendment of the contract will have no adverse financial implication for Council.

7. Financial Implications

Source of Funding: Operating Budget Provision

The estimated maximum financial implication of the amendment of the contract is illustrated in the table below. The estimated maximum amount of the amendment is within the available budget.

YEAR	Budget 2018/2019
SCOA Description	OutsrccdServ:Mini Dumping Sites
SCOA Cost Account	13640200440000
SCOA Business Key	20170525078506
Budget Provision	R 8 341 890
Balance Available	R 2 750 906
Total Estimated Maximum Expenditure for Amendment (excluding VAT)	R 1 634 626.36

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Contract Management Office:

It is confirmed that contract **SC1706/2016** is still alive and the proposed extension of the contract is supported. This is the first extension to the existing contract, and a Section 116(3) amendment as required by the MFMA is being followed. The successful amendment of this contract is subject to Council's consent to the proposed amendment of the contract.

10. Annexures

Annexure A: Signed Intent to Amend

Annexure B: MFMA Section 116(3) Public Notice

RECOMMENDATION TO THE COUNCIL:

1. that **cognisance be taken** of the reasons for the proposed amendment of Contract SC1706/2016 for the Operation of Cell 3 of the Karwyderskraal Landfill Site for Overstrand Municipality, in terms of the enabling provisions of Section 116(3) of the Local Government: Municipal Finance Management Act 2003 (Act 56 of 2003), and that the amendment be **consented to**; and
2. that **cognisance be taken** that no recommendations or representations were received from the local community by the closing date of 15 October 2018.

RESPONSIBLE OFFICIAL :

J VAN TAAK

TARGET DATE FOR IMPLEMENTATION :

1 JANUARY 2019

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A



Enquiries: N Elgnaut/J van Taaik
Date: 21 September 2018

OFFICE OF THE DIRECTOR:
INFRASTRUCTURE & PLANNING

ADDENDUM – INTENT TO AMEND A CONTRACT

The parties agree to the following intention to amend the existing contract SC1706/2016 between Overstrand Municipality and Averda South Africa (Pty) Ltd for the Operation of Cell 3 of the Karwyderskraal Landfill Site for Overstrand Municipality, which was signed between them on 15 September 2016, and record that this was done freely and willingly, without any coercion whatsoever from any one party;

The parties agree to the amendment of the contract end date, regarding the abovementioned agreement to 30 June 2019 on exactly the same terms and conditions as agreed to in the original contract, save that the contract can be terminated earlier than 30 June 2019 by Overstrand Municipality, after giving 30 days notice to Averda to this effect, on commissioning of cell 4 of the Karwyderskraal Landfill Site.

The supplier acknowledges that they do have the capacity to fulfil the obligations as set out in the terms and conditions.

The parties agree that the amendment of the contract is subject to the completion of a Supply Chain Management process, including completing a process as prescribed by section 116(3) of the Municipal Finance Management.

The parties further agree to commit to this amendment of contract after the date of completion of the prescribed Supply Chain Management process.

Thus done and signed at DURBAN this 26 day of Sept 2018 in the presence of the undersigned witnesses

WITNESSES:

- 1.
- 2.

.....
 Duty authorized, for and on behalf of Averda South Africa (Pty) Ltd
 Name: R. GERBER
 Designation: GM - LANDFILL

Thus done and signed at Hermanus this 26 day of Sept 2018 in the presence of the undersigned witnesses

WITNESSES:

- 1.
- 2.

.....
 for and on behalf of Overstrand Municipality: SU Müller
 Director: Infrastructure & Planning

Hermanus Times
27/09/2018

Amptelike Pakt - U-Munisipale - Municipal Pakt

OVERSTRAND



NOTICE IN TERMS OF SECTION 116(3) OF THE LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003 (ACT 56 OF 2003) FOR THE PROPOSED AMENDMENT OF THE EXISTING CONTRACT SC1706A/2016 WITH AVERDA SOUTH AFRICA (PTY) LTD FOR THE OPERATION OF CELL 3 OF THE KARWYDERSKRAAL LANDFILL SITE FOR THE OVERSTRAND MUNICIPALITY

Notice is hereby given in terms of Section 116 (3) (a) and (b) of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) that it is the intention of the Overstrand Municipality to amend the existing contract with Averda South Africa (Pty) Ltd. The proposed amendment is for the operation of cell 3 of the Karwyderskraal landfill site for Overstrand Municipality to be extended for a period of six months, effectively from 1 January 2019 to 30 June 2019.

Notice is hereby further given in terms of Section 21 and 21A of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) that the local community and affected parties are invited to submit comments or representations on the proposed amendment of the agreement. Such comments or representations must be submitted by not later than Monday, 15 October 2018 at 12:00.

Comments or representations must be submitted in a sealed envelope clearly endorsed "SC1706A/2016: COMMENTS ON NOTICE OF AMENDMENT OF EXISTING CONTRACT FOR THE OPERATION OF KARWYDERSKRAAL LANDFILL CELL 3" and be deposited in tender box no. 7.

All submissions must be addressed to:
The Municipal Manager
Tender box no 7
Overstrand Municipality

KENNISGEWING INGEVOLGE ARTIKEL 116(3) VAN DIE WET OP PLAASLIKE REGERING: MUNISIPALE FINANSIËLE BESTUUR, 2003 (WET 56 VAN 2003) VIR DIE VOORGESTELDE WYSIGING VAN DIE BESTAANDE KONTRAK MET AVERDA SOUTH AFRICA (EDMS) BPK VIR DIE BEDRYF VAN SEL 3 VAN DIE KARWYDERSKRAAL STORTINGSTERREIN VIR DIE OVERSTRAND MUNISIPALITEIT.

Kennis geskied hiermee ingevolge artikel 116(3) (a) en (b) van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003 (Wet 56 van 2003) dat die Munisipaliteit Overstrand van voornemens is om die bestaande kontrak met Averda South Africa (Edms) Bpk. te wysig. Die voorgestelde wysiging is vir die werking van sel 3 van die Karwyderskraal stortingssterrein vir Overstrand Munisipaliteit, vir 'n verdere periode van ses maande, effektiwief vanaf 1 Januarie 2019 tot 30 Junie 2019.

Kennis geskied verder ingevolge artikel 21 en 21A van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet 32 van 2000), dat die plaaslike gemeenskap en geaffekteerde partye genooi word om kommentaar of versoë oor die voorgestelde wysiging van die ooreenkoms aan die Munisipaliteit te lewer. Hierdie kommentaar of versoë moet teen nie later nie as Maandag, 15 Oktober 2018 om 12:00 ingedien word.

Alle kommentare of versoë moet ingedien word in 'n verseëld koever, duidelik gemerk "SC1706A/2016: KOMMENTAAR OP KENNISGEWING VAN WYSIGING VAN BESTAANDE KONTRAK VIR DIE BEDRYF VAN KARWYDERSKRAAL STORTTERREIN SEL 3." en geplaas word in Tenderbus nr. 7.

Alle voorleggings moet geadresseer word aan:
Die Munisipale Bestuurder
Tenderbus nr. 7
Overstrand Municipality

ISAZISO SECANDELO-116(3) LOKTHETHO KARHULUMENTE WENGINQI: UMTHETHO WOLAWULO MALI KAMASIPALA, NO.56 WANGO-2003 SESILJUNGISO ESICETYWAYO SESIVUMELWANO SC1706/2016 ESESIKHONA NO AVERDA SOUTH AFRICA (PTY) Ltd SOKUSETYENZISWA NGUMASIPALA WASE OVERSTRAND KWESELI 3 KWINDAWO YOKULAHLA INKUKUMA EKARWYDERSKRAAL.

Isaziso sinikezwa ngokwemimiselo yeCardelo 116(3) (a) no (b) kaRhulumente weNgingqi: umthetho wolawulo lweMali kaMasipala, 2003 (umthetho we56 ka2003) ukuba kuyinjongo ka Masipala wase Overstrand ukulungisa isivumelwano esesikhona Averda South Africa (Pty) Ltd. Esi siphakamiso sokulungisa kwesivumelwano sokusetyenziswa kweseli 3 nguMasipala wase Overstrand kwindawo yokulahla inkukuma eKarwyderskraal sizokwandisewa ngenyanga esintandathu, ukuqala nge 1 Janyuwar 2019 ukuya kwi 30 Kuni 2019.

Isaziso sinikwa ngakumbi ngokommiselo yeCardelo 21 no 21A kaMasipala weNgingqi: umthetho weNkqubo zoMasipala, 2000 (Mithetho 32 ka2000) ukuba abantu basekuhlaleni nabanye abantu abachaphazelekayo bayamenywa ukuba bathumele izimvo zabo okanye izinto abazibhalileyo ngokumayela nokulungiswa kwesi sivumelwano siphakanyiswayo. Ezo zimvo okanye izinto abazibhalileyo kufuneka zingeniswe ngo Mvulo, 15 Okthobha 2018 ngo 12:00.

Izimvo okanye izinto ezibhalileyo mazifakwe kwimvulophu etyiniweyo ebhahwe ngokucacileyo "SC1706A/2016: IZIMVO KWISAZISO SOKULUNGISA ISIVUMELWANO ESESIKHONA SOKUSETYENZISWA NGUMASIPALA WASE OVERSTRAND KWESELI 3 KWINDAWO YOKULAHLA INKUKUMA EKARWYDERSKRAAL." zifakwe kwi Bhokisi yeZink-maxabiso no. 7.

Zonke izibhalo zithumelelwe kwi...