

D/sm 7/23

DEVIATION: APPOINTMENT OF SADRA AS SPECIALIST MEDIATOR/S



MEMORANDUM

Directorate: Planning and Economic Development

CHECK BEFORE SUBMISSION	YES	NO
REGISTERED ON CSD DATABASE		
LETTER - SOLE SUPPLIER if applicable.		
QUOTE/INVOICE ATTACHED		
BUDGET (SAMRAS)		
CASHFLOW		
SIGNATURES		

To Aan:	MUNICIPAL MANAGER
From Van:	JOHRU ROBYN LESTER VAN STAVEL
Job Title:	MANAGER: INFORMAL SETTLEMENTS MANAGER: HOUSING DEVELOPMENT
Date Datum:	9 NOVEMBER 2022
Re Insake:	DEVIATION: APPOINTMENT OF SOUTHERN AFRICAN DEVELOPMENT AND RECONSTRUCTION AGENCY (SADRA)

1. PURPOSE

To obtain approval in terms of Supply Chain Management Policy, to deviate from the official procurement process in terms of section 36 of the approved SCM Policy

REASON FOR DEVIATION: (Mark with x where applicable)	
1. Emergency. "Emergency dispensation" means emergency as referred to in paragraph 36(1)(a)(i) of this policy under which one or more of the following is in existence that warrants an emergency dispensation;	
a The possibility of human injury or death;	
b The prevalence of human suffering or deprivation of rights;	
c The possibility of damage to property, or suffering and death of livestock and animals;	
d The interruption of essential services, including transportation and communication facilities or support services critical to the effective functioning of the municipality as a whole;	
e The possibility of serious damage occurring to the natural environment;	
f The possibility that failure to take necessary action may result in the municipality not being able to render an essential community service;	
g The possibility that the security of the state could be compromised; or	
h The prevailing situation, or imminent danger, should be of such a scale and nature that it could not readily be alleviated by interim measures, in order to allow time for the formal procurement process. Emergency dispensation shall not be granted in respect of circumstances other than those contemplated above.	
2. Goods or services are produced or available from a single provider	
3. Acquisition of special works of art or historical objects where specifications are difficult to compile.	
4. Acquisition of animals for zoos and /or nature and game reserves	
5. Exceptional case and it is impractical or impossible to follow the official procurement processes	✓

NB! All deviations i.r.o the amount will be tabled at the BAC

2020/2021

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2. SUBSTANTIATE WHY SCM PROCESS COULD NOT BE FOLLOWED (TO BE REPORT TO COUNCIL)

2.1 Time constraints

An eviction order was granted to the then owner of Watergang Farm on 13 December 2018 against illegal occupiers on Farm 182 and Portions 1 and 5 of Farm 183, Stellenbosch (Watergang Farm) for the illegal occupiers to be evicted on 3 January 2029. The eviction order was not implemented. The illegal occupiers requested the court for leave to appeal. The Municipality obtained the eviction order when the land was purchased from Mr Smit in October 2019. During July 2022 the municipality brought a section 18 Application to request the court to make a determination on the request for leave to appeal as the Applicants did not take the matter forward. The court in September 2022 made a final determination not to grant leave to appeal.

The Municipality can now unhindered give effect to this eviction order as soon as possible as the property is under constant threat of further invasion. Given the urgency of this matter, the Municipality wishes to commence with putting measures place from 25 November 2022 to mitigate amongst others the risk of possible new occupiers settling on Watergang Farm. It is envisaged that skilled and experienced mediator/s must be appointed to mediate the process between the Municipality and the Watergang community at large.

In order to achieve the commencement date of the 25 November 2022, the normal procurement process of approval of specifications (BSC), advertising, evaluation of bids received (department and BEC) and approval by the BAC will take too long and an abbreviated and swift procurement process must be undertaken. The normal procurement timelines are as follows:

Procurement timelines	Minimum number of days required
Bid Specifications & Bid Specifications Committee (BSC)	14
Advertisement	21
Bid Evaluation & Bid Evaluation Committee (BEC)	14
Bid Adjudication Committee (BAC)	7
Appeals period	21
TOTAL (minimum required time)	77

Seventy-Seven days from today will bring us into the new calendar year. This period will also span the festive season which is a prime period for illegal occupation of land in the Stellenbosch area. It is therefore imperative that a deviation from the normal procurement process is undertaken.



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It is expected from the mediator/s to perform an outcome-based approach and with the mediation process completed by 31 January 2023.

2.2 Complexity

The complexity of this matter is on a similar level as to the incidents that happened in May 2013 with the farmworkers in the De Doorns, Hexriver Valley area. This incident has shown that there is a particular knowledge, skills and experience required to mediate these complex situations peacefully. South African Development and

Reconstruction Agency (SADRA) as specialist mediators and negotiators in have the requisite knowledge, skills and experience to mediate a complex situation such as the situation that is playing out in Watergang Informal Settlements (WIS). It would therefore be impractical or impossible to follow the official procurement processes and not ensure the skills, knowledge and experience is obtained.

3. BACKGROUND

3.1 RISK OF INVASION

Farm 183, Stellenbosch District, commonly as "Watergang Farm", was invaded on or about August 2018 by a group who identified themselves of backyard residents who grew tired of waiting in the backyards for a housing opportunity.

The Court delivered judgment on 13 December 2018 (Case No: 13926/18), granting an eviction order to the erstwhile and now deceased property owner Mr. Smit. He could however not execute the Court order, because of an intention to appeal process that was lodged by the community. A formal appeal, to our knowledge was never lodged by the invading community, and the final eviction order was granted in September 2022. The Municipality must now make provision for the execution / implementation of the eviction order.

In order to give effect to the evecton order, The Municipality commenced with an internal workshop / meeting which eventually resulted in a 90 (ninety) day engagement and action plan / strategy.

The desired outcomes for the Municipality are captured hereunder:

- **Desired outcomes**
 - Firm / fixed Northern boundary;
 - Continuous provision of basic services to a level and standards equivalent to the national norms and standards;
 - Continuous communication between the Municipality and the affected community;
 - **Time and cost effective implementation;** and
 - Appointment of mediator/s.



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4. DISCUSSION

4.1 SADRA is an NGO that operates to contribute to building a society that embraces non-violence, peaceful methods of resolving conflict, using conflict transformation approaches in resolving differences. Societal transformation and reconciliation have been difficult, and intervention and training at the grassroots level is where a difference is made. SADRA provides conflict mediation, peace training, capacity and team building, and specific interventions to issues such as school violence and xenophobic attacks. SADRA's clients include schools and universities, community

and government leaders, pastors and churches and traditional leaders. SADRA actively seeks to collaborate with other programs and to network with all affected stakeholders. Partnership is essential to holistic and sustainable solutions.

As specialist mediator/s SADRA will face the challenge that the residents are likely to initially perceive the mediator/s as biased and working for the Municipality. Therefore, specialist skilled mediator/s with prior experience can only be considered for such a *hostage negotiation* scenario.

4.2 Stellenbosch Municipality embarked proactively on a 90-day action plan to put methods and actions together to implement interventions for drought relieve. The first most important aspect of the 90-day action plan is the need to appoint a specialist mediator/s that understand the desired outcome for the Municipality. The mediation process must take into consideration the implementation of the eviction order considering the concerns, interests and needs of the community and other stakeholders.

4.3 The mediator/s needs to negotiate with the affected stakeholders that a firm northern boundary is created to prevent further invasion of the Watergang farm and the environmentally sensitive area that it comprises of. Furthermore, the Municipality requires buy in from the broader community of Kayamandi in the implementation of the eviction order.

SADRA has vast experience in various complex situation with required skilled mediators.

It is by taken into account the complexity SADRA has been involved in with extremely challenging communities and life-threatening situations that their specialist mediator's services were utilised in matters as stipulated below:

1. Recently facilitating a community invading church land in Kalksteen, near Kuils River.
2. Inter-party conflict resolution provincial coordinator for the Independent Electoral Commission between 2014 – 2021.
3. In about 2020, involved in mediating in community development, the so-called Mau Mau housing project.
4. Inter-community conflict on a regular basis.
5. Involved in the De Doorns mediation in 2008 between Zimbabweans and the local community.
6. The relocation of the Kreefgat community (fire disaster eviction matter) of Jamestown in the jurisdiction of Stellenbosch to Temporary Relocation Area (TRA).
7. Electoral violence, gang conflict, taxi conflict, community service delivery protests and tertiary conflict (Feesmustfall) throughout the province, and other parts of South Africa.



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8. Worked with the Department of Transport with the relevant taxi associations.
9. Mediating complex community disputes between the Khomani San and the Nama people in the Northern Cape.
10. Mediated turf wars between gangs in Worcester – Avian Park.

It is further envisaged that a four-phase intervention approach will take place in the following interactions:

- Meeting stakeholders and building trust;
- Identifying concerns, interests and needs;
- Mediation – settlement; and
- Report/implementation of agreement.

5. FINANCIAL IMPLICATIONS

Attached find quotation from SADRA in the amount of R312 000.00 (**Annexure 1**) together with the confirmation of banking details (**Annexure 2**) and the CSD report (**Annexure 3**). It should be noted that an amount of R792,763.00 is available on ukey 20220825124430.

6. RECOMMENDATION

- a) that SADRA be appointed as mediator/s to assist the Municipality and affected community in understanding, considering and implementing the Eviction Order;
- b) that SADRA be appointed as mediator/s to mediate a desired outcome to the mutual benefit of the affected community and Stellenbosch Municipality; and
- c) that u-key 20220825124430 be utilised for the appointment of the service provider.

7. VALUE FOR MONEY (OTHER RATES/VALUES/...)

According to the Board of Legal Costs Mediators (<https://www.blcm.co.za>) in 2018, the rate per hour charge for Mediation and Assessments was between R1,800.00 and R2,100.00 per hour.

According to the quotation received from SADRA (**Annexure 1**), both Advocate Jacques Joubert and Mr. Geoffrey Mamputa will charge at a rate of R1 300.00 per hour for a total of 120 hours per individual.

The quotation can be summarised as follows:

	Hours	Rate	Cost
Mediator 1 (Advocate Jacques Joubert)	120	R1 300	R156 000
Mediator 2 (Mr. Geoffrey Mamputa)	120	R1 300	R156 000
TOTAL	240		R312 000



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8. IT IS RECOMMENDED THAT:

- a) that SADRA be appointed as mediator/s to assist the Stellenbosch Municipality resolve an impasse regarding an eviction order granted in favour of the Municipality for a group of residents who have occupied Farm 183, commonly known as the Watergang Farm; and
- b) that u-key 20220825124430 be utilised for the appointment of the service provider.


Lester van Stavel
Manager: Housing Development

Date: 11/11/2022


Johru Robyn
Manager: Informal Settlements

Date: 11-11-2022


Anthony Barnes
Director: Planning and Economic Development

Date: 11-11-2022

7. SUPPLY CHAIN MANAGEMENT COMMENTS:

SCM performed better
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8. APPROVAL:

REQUEST SUPPORTED / NOT SUPPORTED BY THE STELLENBOSCH MUNICIPAL BID ADJUDICATION COMMITTEE		
Name	Signature	Date
D. Louw		11/11/2022
A. Boerens	Ms Team 9	11/11/2022
G. Boschhoff	Ms Team 9	11/11/2022

Comments:

CHAIRPERSON..... DATE 11/11/2022.....

RECOMMENDATION FROM BID ADJUDICATION COMMITTEE APPROVED BY THE ACCOUNTING OFFICER

Comments:

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ACCOUNTING OFFICER..... DATE 17/11/2022