

D/SM 3/25



Municipality - Munisipaliteit
Stellenbosch

13 JUL 2024

MEMORANDUM
Office of the Municipal Manager
Kantoor van die Munisipale Bestuurder
LEGAL DEPARTMENT

CHECK BEFORE SUBMISSION	YES	NO
REGISTERED ON CSD DATABASE		
LETTER - SOLE SUPPLIER if applicable.		
CSD		
MUNICIPAL ACCOUNTS		
MBD 8,9 & 10		
QUOTE/INVOICE ATTACHED		
BUDGET (SAMRAS)		
CASHFLOW		
SIGNATURES		

To Aan: MUNICIPAL MANAGER
From Van: MERVIN WILLIAMS
Job Title: CHIEF LEGAL ADVISOR
Date Datum: 27 JUNE 2024
Re Insake: DEVIATION: APPOINTMENT OF ATTORNEY'S IN APPEAL MATTER:
FRANSCHHOEK CLAIMANT TRUST / STELLENBOSCH MUNICIPALITY

1. PURPOSE

To obtain approval in terms of Supply Chain Management Policy, to deviate from the official procurement process, in an exceptional case where it is impractical or impossible to follow the official procurement processes (section 36.1(a)(v))

REASON FOR DEVIATION: (Mark with x where applicable)	
36.1(a)(i) Emergency.	
36.1(a)(ii) Goods or services are produced or available from a single provider.	
36.1(a)(iii) Acquisition of special works of art or historical objects where specifications are difficult to compile.	
36.1(a)(iv) Acquisition of animals for zoos and /or nature and game reserves.	
36.1(a)(v) Exceptional case and it is impractical or impossible to follow the official procurement processes.	X

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

The Franschhoek Claimant's Trust ("the Trust") applied for an order in terms of section 6 and 8 of PAJA reviewing and setting aside the Executive Mayor's decision, in her capacity as the appeal authority, to revoke the development and related approvals, granted by the Stellenbosch Municipal Planning Tribunal to the Trust in respect of Erf 1692 Franschhoek, Western Cape. Substituting the decision of the Executive Mayor with the following: "The appeal is dismissed".

The Court held that the appeal lodged by the Franschhoek Gegriefde Grondeisers Groep and Ward 1 and 2 Committees are remitted back to the Municipality for reconsideration before the appeal authority other than the Executive Mayor.

APPENDIX B: BELOW R 200 000

Council appointed an appeal committee to rehear the appeal. An attorney needs to be appointed to assist the committee through the rehearing process.

Yvette Cloete Attorneys were appointed by the Municipality on the previous legal Tender B/SM97/19 to oppose the review application instituted by Franschhoek Claimant Trust against the Municipality. They have been involved in this matter from the inception thereof and has the relevant background and institutional knowledge on this matter and they are best placed to assist the Committee appointed to attend to the hearing of the Appeal.

Yvette Cloete Attorneys are not on the current legal panel of B/SM54/22. It is impractical to go out on a new SCM process to appoint another attorney. It would not make financial sense to appoint any other attorney firm to assist the Committee appointed to attend to the Appeal submitted by the Franschhoek Claimant Trust. Should a new attorney firm be appointed, they would need to read the entire record in the review application instituted by the Franschhoek Claimant Trust which will amount to additional legal fees incurred instead of appointing Yvette Cloete Attorneys who has the relevant background, institutional experience and expertise to attend to this matter. In terms of the current legal tender, the Municipality reserved the right to make appointments outside the legal panel, to ensure that the best interest of the Municipality is served.

3. BACKGROUND

The Franschhoek Claimant's Trust ("the Trust") applied for an order in terms of section 6 and 8 of PAJA reviewing and setting aside the Executive Mayor's decision, in her capacity as the appeal authority, to revoke the development and related approvals, granted by the Stellenbosch Municipal Planning Tribunal to the Trust in respect of Erf 1692 Franschhoek, Western Cape. Substituting the decision of the Executive Mayor with the following: "The appeal is dismissed". In the alternative to the aforesaid, referring the decision back to the Executive Mayor for reconsideration with directions: to conduct an oral hearing in terms of s57(3)(b) of the By-law and the Executive Mayor allows the Trust and the aggrieved members of the Trust to produce evidence on the issue of the Trust's locus standi. The Municipality opposed the application and filed its pleadings.

The Court held that the appeal lodged by the Franschhoek Gegriefde Grondeisers Groep and Ward 1 and 2 Committees are remitted back to the Municipality for reconsideration before the appeal authority other than the Executive Mayor.

4. DISCUSSION

1. The Franschhoek Gegriefde Grondeisers Groep and Ward 1 and 2 Committees appealed the decision of the MPT to approve the development by the Franschhoek Claimant Trust. The Executive Mayor, as the Appeal authority in such cases, took a decision to uphold the appeal. The Franschhoek Claimants trust took this decision on review and the Court reviewed and set aside the decision by the Appeal authority and referred it back to the Municipality for re-hearing of the appeal by Franschhoek Gegriefde Grondeisers Groep and Ward 1 and 2 Committees. The appeal must however be heard by another appeal authority and council appointed councillors as an appeal committee to hear the matter.

APPENDIX B: BELOW R 200 000

2. The following Committee of Councillors were appointed to consider the appeal submitted by the Franschhoek Claimant Trust:

- Councillor Carli van Wyk;
- Councillor Mynard Slabbert;
- Councillor Lwando Nkamisa;
- Councillor Nombulelo Ntsunguzi;
- Councillor Wilfred Pietersen.

3. An attorney needs to be appointed to assist the committee through the rehearing process.

4. Yvette Cloete Attorneys was previously appointed to attend to the review application instituted by the Franschhoek Claimant Trust and has the relevant background and institutional knowledge to assist the Committee of Councillors with this matter including the necessary experience and expertise.

5. Yvette Cloete Attorneys are not on the current legal panel of B/SM54/22. It is impractical to go out on a new SCM process to appoint another attorney. It would not make financial sense to appoint any other attorney firm to assist the Committee appointed to attend to the Appeal submitted by the Franschhoek Claimant Trust. Should a new attorney firm be appointed, they would need to read the entire record in the review application instituted by the Franschhoek Claimant Trust which will amount to additional legal fees incurred instead of appointing Yvette Cloete Attorneys who has the relevant background, institutional experience and expertise to attend to this matter. In terms of the current legal tender, the Municipality reserved the right to make appointments outside the legal panel, to ensure that the best interest of the Municipality is served.

5. FINANCIAL IMPLICATIONS

Yvette Cloete Attorneys indicated that they would attend to the matter for an amount of R40 250.00 inclusive of VAT. The amount indicated here is market related.

estimated

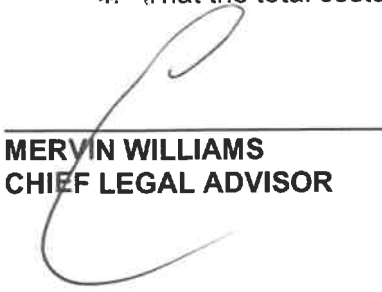
KQ

6. RECOMMENDATION

It is recommended that:

1. That the Accounting officer approves the fact that it is impractical and an exceptional case to appoint another firm.
2. That Yvette Cloete Attorneys be appointed to assist the Committee of Councillors in the Appeal to be heard and considered by them.
3. That the deviation be reported to Council in terms of the Supply Chain Regulations and Council Policy;
4. ~~That the total costs be reported to Council after the matter has been completed.~~

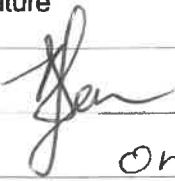
KQ


MERVIN WILLIAMS
CHIEF LEGAL ADVISOR

Date: _____

APPENDIX B: BELOW R 200 000

RECOMMENDATION SUPPORTED / NOT SUPPORTED BY THE STELLENBOSCH MUNICIPAL BID ADJUDICATION COMMITTEE

Name	Signature	Date
D. Joubert		21/7/2024
S. Chandaka	online	21/7/2024
A. de Beer	online	21/7/2024
S. Carstens	online	21/7/2024

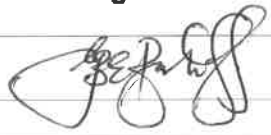
Comments: The deviation is supported by the
BTE

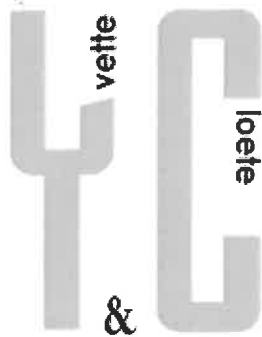
CHAIRPERSON 

DATE

22/07/2024

RECOMMENDATION FROM BID ADJUDICATION COMMITTEE APPROVED BY THE ACCOUNTING OFFICER

Name	Signature	Date
G. BOSHOFF (Acting)		16/7/24



associates

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attorneys, conveyancers & administrators of estates

Your Ref:

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Deeds Office Box 221 VAT NO: 4860284936

4 June 2024

STELLENBOSCH MUNICIPALITY (VAT NO 4700 102 181)

Plein Street
Stellenbosch

QUOTATION

FRANSCHHOEK CLAIMANT'S TRUST / STELLENBOSCH MUNICIPALITY

Description	Fees	Disbursements
Approximate legal fees to assist appeal authority with hearing (5days (7hrs/day) @R1000p/h +VAT)	40,250.00	
APPROXIMATE TOTAL	R40,250.00	