



- DEPARTMENT

MEMORANDUM

To Aan: MUNICIPAL MANAGER

From Van: MERVIN WILLIAMS

Job Title: CHIEF LEGAL ADVISOR

Date Datum: 16 MAY 2022

Re Insake: **DEVIATION: TO APPOINT AN SERVICE PROVIDER TO OPPOSE THE DEFAULT JUDGMENT AND STATEMENT OF CLAIM INSTITUTED BY ANGELA ADELINE MOGOLEGENG AGAINST STELLENBOSCH MUNICIPALITY IN TERMS OF RULE 6 OF THE LABOUR COURT RULES**

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		

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)

Angela Adeline Mogolegeng ("Mogolegeng") is employed by the Municipality as Senior Lab Technician. Mogolegeng alleged that in 2014 the Municipality embarked on a process of restructuring the T-grading system. She received a letter in 2016 from the Municipality stating that there would be restructuring in the organogram which would affect the T grading of individuals. Upon receiving the letter, Mogolegeng approached her Senior and enquired as to the reasons why her T-grading was lower than a Technician, despite Mogolegeng being a Senior Technician.

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Mogolegeng is alleging that she is the subject of an unfair labour practice in relation to failure to promote and/or demotion and is being unfairly discriminated against and that she is victimized by the Municipality.

Mogolegeng's attorneys Ismail and Dahya Attorneys served an Application for Default Judgment on the Municipality, subsequent to which Levendal Attorneys were appointed via formal quotation to oppose the Default Judgment and Statement of Claim instituted by Mogolegeng. The Municipality has served and filed its statement of response in the matter and the matter was set down for argument. The court referred the matter back to the parties for round table discussion and possible settlement.

Levendal Attorneys has been appointed to attend to this matter via a formal quotation process and has the relevant background, institutional experience and expertise to attend to this matter. Except for a deviation no other supply chain management process can be followed to appoint Levendal Attorneys for this matter.

3. BACKGROUND

Mogolegeng's attorneys, Ismail and Dahya Attorneys served an Application for Default Judgment on the Municipality for an order that Mogolegeng had been demoted by the Municipality by removing certain duties from her and that the Municipality unfairly discriminated against her by failing to promote her and requesting payment equal to 24 months remuneration. Levendal Attorneys were appointed via formal quotation to oppose the Default Judgment and Statement of Claim instituted by Mogolegeng.

The Municipality served and filed its statement of response to the claim of Mogolegeng in the matter whereafter the matter was set down for argument in the Labour Court. Judge Raibkin-Naicker postponed the matter *sine die* to enable the parties to hold round table discussion to attempt possible settlement of the matter. Round table discussions were held on or about 14 December 2021 between the Municipality and Mogolegeng and her attorney. This matter is not yet resolved and is still pending.

4. DISCUSSION

1. The matter was set down for argument in the Labour Court and Judge Raibkin Naicker postponed the matter *sine die* to enable the parties to arrange round table discussion with Mrs Mogolegeng to discuss the issues and the way forward to see whether the matter can be settled between the parties.
2. Round table discussions were indeed held between the parties on or about 14 December 2021.
3. The issues between the parties are not yet resolved and the matter is still pending.
4. The appointment of the attorneys in terms of the formal quotation was for an amount less than R200 000.00. In terms of the formal quotation an amount of R166 684.48 was already paid to Levendal Attorneys for services rendered. The amount of approximately R33 314.52 left will not be sufficient to cover the legal fees still to be paid to Levendal Attorneys to finalise this matter.
5. It would be impractical or impossible to follow a tender process to appoint a different attorney firm or to appoint a service provider in terms of the current legal panel, as Levendal Attorneys

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was initially appointed and dealt with this matter, has the relevant background and institutional knowledge to deal with this matter on behalf of the Municipality.

6. In light of the aforesaid, Levendal Attorneys needs to be appointed on deviation to *inter alia* oppose the default judgment applied for and to argue the matter should the parties fail/refuse to settle the matter.

5. FINANCIAL IMPLICATIONS

Levendal Attorneys indicated that they will attend to the matter for an amount of approximately R101 332.00 inclusive of VAT. This also include the cost of an advocate to be appointed to attend to the matter. The amount indicated here is market related.

6. RECOMMENDATION

It is recommended that:

1. Levendal Attorneys be appointed to oppose the Default Judgment instituted by Mogolegeng against the Municipality.
2. That provision be made for the appointment of an advocate, which costs is included in the abovementioned quoted amount;
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.


MERVIN WILLIAMS
CHIEF LEGAL ADVISOR

Date: 30 June 2022

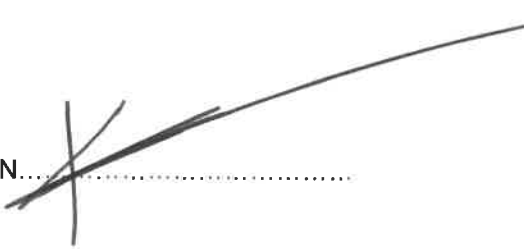
RECOMMENDATION SUPPORTED / NOT SUPPORTED BY THE STELLENBOSCH MUNICIPAL BID ADJUDICATION COMMITTEE		
Name	Signature	Date
Anthony Barnes		8-7-2022
Dorthea Louw		8/7/2022
A de Beer	ONLINE	08 - 07 - 2022
D Louw	ONLINE	08 - 07 - 2022
G Boshoff	ONLINE	08 - 07 - 2022

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Comments:

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CHAIRPERSON.....



DATE 8/7/2022

RECOMMENDATION FROM BID ADJUDICATION COMMITTEE APPROVED BY THE ACCOUNTING OFFICER

Name	Signature	Date
Gladine Mettel		12/7/2022