

DIRECTORATE: SCM

vate Bag X9152, PIETERMARITZBURG, 3200
 0 Jabu Ndlovu Street, PIETERMARITZBURG, 3200
 mail: Ntombifuthi.shange@kznedtea.gov.za

SUBMISSION TO DEVIATE FROM NORMAL PROCUREMENT PROCESSES

TO		DR THANDEKA ELLENSON ACTING ACCOUNTING OFFICER	
CC		MR KHAYA MTHETHWA CHIEF FINANCIAL OFFICER: EDTA MR STHEMBISO KHANYI CHIEF DIRECTOR: CORPORATE SERVICES MR TERENCE CHIMUKA ACTING DIRECTOR: LEGAL SERVICES MS DHARSHINI RAICHUND DIRECTOR: SCM MS NTOMBIFUTHI SHANGE SCM PRACTITIONER	
FROM			
SUBJECT		- APPRISE THE ACTING ACCOUNTING OFFICER OF THE DISPUTE LEVELLED AGAINST THE DEPARTMENT BY THE FORMER CONTRACTOR RAINBOW MOON SERVICES; - PROPOSE A REMEDY FOR MEETING THE DEPARTMENT'S OBLIGATION TO THE CONTRACTOR; AND; - DEVIATE FROM NORMAL PROCUREMENT PROCESSES IN APPOINTING RAINBOW MOON SERVICE TO RENDER CLEANING SERVICES AT THE RASET OFFICE FOR A PERIOD OF SIX MONTHS AND TO SUPPLY AND DELIVER CLEANING MATERIAL	
CONTRACT DURATION		a) 6 MONTHS CLEANING SERVICES b) ONCE-OFF SUPPLY AND DELIVERY	
SUBMITTED BY		MS NTOMBIFUTHI SHANGE	
DATE		30 NOVEMBER 2023	

1. PURPOSE

The purpose of this correspondence is to:

- 1.1 Apprise the Acting Accounting Officer of the dispute leveled against the department by the former contractor Rainbow Moon Services;

- 1.2 Propose a remedy in meeting the department's obligation to the contractor; and;

- 1.3 Obtain approval for deviation from normal procurement processes in appointing Rainbow Moon Service to render cleaning services at the Rasel office for a period of six months for an amount of **R155 250,00** inclusive of VAT and to supply and deliver cleaning material (once-off) for an amount of **R115 793,50** inclusive of VAT.

2. BACKGROUND

In May 2020 Supply Chain Management received a requisition for Fogging Services/ Decontamination Services for various offices and vehicles of the department for a period of 6 months in light of the COVID 19 pandemic. The services were sourced through a quotation process following the approval of an emergency deviation from the normal SCM process wherein Rainbow Moon Services was appointed to render the services for an amount of R493 426,82 inclusive of VAT.

Purchase order no. D0062350 was issued to the service provider and the department entered into a contract with the service provider. The contract came into effect on 07 August 2020. The contract end date was 06 February 2021. As per the deliverables, the services were to be rendered as follows:

- a) on a monthly basis for a period of six months; and
- b) on an adhoc basis should the need arise. Separate orders were to be issued for adhoc requests for each call.

The service provider briefly rendered the services as contracted for, however, the provision of the service was halted when the department cancelled the services that were scheduled for the 26th August 2020 (as per email correspondence to Service provider dated 25/08/2020) and thereafter ceased to call out for the services. The service provider expressed their discontentment with the halting of the service and the department's failure to meet its contractual obligations through an emailed correspondence dated 01/09/2020.

Legal opinion was sought from the Legal Services Directorate and was provided by the Director: Legal Services on 01/09/2020. The legal opinion suggested that in the absence of reasons justifiable in law to cancel the contract, the cancellation of the agreement would constitute a breach according to clause 14 of the agreement signed by both parties which states " If either party fails to meet its obligations in terms of

this agreement, the innocent party, at its choice, and after giving seven days written notice to the defaulting party at its domicile, calling on the latter to remedy the breach, may

14.1 terminate the agreement; or

14.2 enforce the terms of agreement; and

14.3 in any event claim any damages that it may have suffered as a result of the breach."

The legal opinion emphasized the obligation of the department to comply with the terms of the contract falling which the department could face a claim for specific performance or a claim of damages resulting from the cancellation of the award. A signed version of the said legal opinion has not been made available. Subsequent to receiving a legal opinion, further action was not taken by the contract owner to redress the situation until the service provider re-emerged with an enquiry sent to Director: SCM on 14/09/2023 (Annexure G). The contract lapsed on 06 February 2021.

3. DISCUSSION AND MOTIVATION

On the 02nd of November 2023 Supply Chain Management convened a dispute resolution meeting with the purpose of deliberating and coming up with a solution in light of the dispute leveled against the department by Rainbow Moon Services. In attendance were officials from the Corporate Services Directorate: Mr Sthembisiso Khanyli (Chief Director), Ms Thobile Sithole, Ms Nonhlanhla Dlamini, Ms Zama Diamo, Legal Services: Mr Terence Chimuka and Supply Chain Management: Mr Siliindile Mqana (Deputy Director), Ntombifuthi Shange, Myrtle Naidu and Karmath Barath (minutes attached- Annexure A). The committee deliberated and came to an agreement that the department indeed had a contractual obligation which it failed to fulfil when it departed prematurely from the contract by halting the call for services until the contract lapsed.

Out of the R493 426,82 commitment, the department had paid R213 261, 88 for the services that were rendered up to 31 August 2020. The outstanding balance of the purchase order after deduction of the paid invoices is R 280 164,94. As the department no longer needs the services which were originally contracted for, the committee resolved to identify a current need/ services which could be rendered by Rainbow Moon as a replacement in order to indemnify the service provider whilst obtaining value for money. The Service provider would be requested to quote for the services and the award would be subject to the approval by the Acting Accounting Officer.

Subsequently, Auxiliary Services identified the cleaning services for six months and proposed that the service provider be requested to quote. Upon response to Rainbow Moon Services (Annexure B) the specification for the required goods and services was attached and the service provider was requested to respond with a quotation.

An invitation to quote for Cleaning Services at the Raset Office and the supply & delivery of cleaning material was sent to the service provider. The service provider responded with a quotation of R155 250,00

for Cleaning services at the Raset office (annexure C) and R115 793,50 for the supply and delivery of Cleaning material (annexure D). The total cost for both services is R271 043,50.

Supply Chain Management had initially invited quotations through a competitive quotation process for cleaning services at Ilembe District Office and the Raset Office which were used as a benchmark to determine reasonableness of the quotations provided by Rainbow Moon Services. Supply Chain Management also conducted a market analysis for the cleaning material.

The service provider submitted proof of registration with BCCCL, resolution letter and completed SBD 4: Bidder's disclosure and Authority to Sign Bid. The bidder's tax status was compliant as at the 30th November 2023.

It is therefore recommended that the Acting Accounting Officer approves the deviation in order to fulfil the department's obligation to Rainbow Moon Services in appointing Rainbow Moon Service to render cleaning services at the Raset office for a period of six months for an amount of R155 250,00 inclusive of VAT and to supply and deliver cleaning material (once-off) for an amount of R115 793,50 inclusive of VAT.

4. FINANCIAL IMPLICATIONS

- The total cost cleaning services at the Raset office for a period of six months is R155 250,00 inclusive of VAT, and the total cost for the supply and delivery of cleaning material is R115 793,50 inclusive of VAT.
- The goods and services are accordingly budgeted for and funded from the Auxiliary Services budget.
- The total amount for the commitment is R271 043,50 which is less than the obligated amount and the service provider is satisfied with the proposed arrangement.

5. COMPULSORY DOCUMENTS TO BE ATTACHED TO THIS SUBMISSION:

- Annexure A – Minutes of a dispute resolution meeting
- Annexure B – Response letter to Rainbow Moon Services
- Annexure C – Quotation for cleaning services at the Raset office
- Annexure D – Quotation for supply and delivery of cleaning material
- Annexure E - Market analysis report for cleaning material
- Annexure F – Dispute letter from Rainbow Moon Services

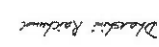
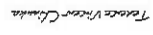
6. RECOMMENDATION

It is recommended that the Acting Accounting Officer:

6.1. notes the dispute leveled against the department by the former contractor Rainbow Moon Services and the proposed remedy in meeting the department's obligation to the contractor; and;

6.2. Approves the deviation from normal procurement processes in appointing Rainbow Moon Service to render cleaning services at the Raset office for a period of six months for an amount of R155 250.00 inclusive of VAT and to supply and deliver cleaning material (once-off) for an amount of R115 793,50 inclusive of VAT.

7. ADMINISTRATION AND PROCESS SIGN OFF

NAME	ROLE	SIGNATURE	DATE
Ms Ntombifuthi Shange	SCM Practitioner		30/11/2023
Ms Dharshini Raichund	Director: SCM	 Signed by: Dharshini Raichund Signed at: 2023-12-01 10:05:35 +02:00 Reason: I approve this document	01/12/23
Comments:			
Mr Sthembiso Khanyi	Chief Director: Corporate Services	 Signed by: Sthembiso Phanuel Khanyi Signed at: 2023-12-01 06:40:19 +02:00 Reason: I approve this document	01/12/23
Comments: noted			
Mr Terence Chimuka	Acting Director: Legal Services	 Signed by: Terence Vincent Chimuka Signed at: 2023-12-01 10:59:36 +02:00 Reason: I approve this document	01/12/23
Comments:			
Mr Khaya Mthethwa	Chief Financial Officer	 Signed by: Khayelthle Njabulo Mthethwa Signed at: 2023-12-01 13:46:56 +02:00 Reason: I approve this document	30/11/23
Comments:			

8. APPROVAL BY THE ACTING ACCOUNTING OFFICER

It is recommended that the Acting Accounting Officer:

8.1. notes the dispute leveled against the department by the former contractor Rainbow Moon Services and the proposed remedy in meeting the department's obligation to the contractor; and;

8.2 Approves the deviation from normal procurement processes in appointing Rainbow Moon Service to render cleaning services at the Raset office for a period of six months for an amount of R155 250.00 inclusive of VAT and to supply and deliver cleaning material (once-off) for an amount of R115 793,50 inclusive of VAT.

NAME	Dr Thandeka Ellen
ROLE	Acting Accounting Officer
SIGNATURE	
DATE	04/12/23

Comments:

04/12/23

04/12/23