D/SM 2/25

APPENDIX B: BELOW R 200 000

4CHECK 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		

MEMORANDUM

LEGAL DEPARTMENT

To Aan: MUNICIPAL MANAGER
From Van: MERVIN WILLIAMS
Job Title: CHIEF LEGAL ADVISOR
Date Datum: 19 JUNE 2024
Re Insake: DEVIATION: APPOINTMENT OF AN ATTORNEY FIRM TO:
ASSIST THE APPEAL AUTHORITY IN REHEARING OF THE APPEAL BY DB PROPERTIES REGARDING THE CONDITIONS THAT WAS APPROVED WITH THE DEVELOPMENT.
REVIEWING A DECISION BY THE ADMINISTRATION TO APPROVE CREDIT FOR THE DEVELOPMENT CONTRIBUTIONS PAYABLE TO THE MUNICIPALITY DB PROPERTIES REGARDING THE DEVELOPMENT.

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)

On 2 June 2022 the Director: Planning and Economic Development approved subject to certain conditions, DB Property's land use application for the rezoning, consent use, departure and temporary departure in relation to Portion 43 of Farm No 65 Stellenbosch Division.

DB Property Development Company (Pty) Ltd ("DB Property") instituted review proceedings and applied for the setting aside of two conditions of the 2020 Approval in terms of section 6 and 8 of the Promotion of Administrative Justice Act, 3 of 2000. The first condition relates to the amount of money DB Property is required to contribute as development charges towards the municipal road infrastructure for the trips generated by its proposed development. The second condition relates to the amount of credit the Municipality granted to DB Property for development charges.

The Court granted the review application and referred the matter back to the Appeal Authority for reconsideration of the appeal.

TNK Attorneys were appointed by the Municipality on previous legal Tender B/SM97/19 to oppose the review application instituted by DB Property 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 proceed with the self-review application on the Municipality's behalf with regard to the credit initially provided to DB Property by the Municipality.

TNK Attorneys are not on the current legal panel of B/SM54/22. This is an exceptional case and it is impractical to follow the official procurement processes. It would make no financial sense to appoint any other attorney firm to attend to the self-review of the Municipality. Should a new attorney firm be appointed, they would need to read the entire record in the review application instituted by DB Property against the Municipality including the judgment which would amount to additional legal fees incurred instead of appointed TNK 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.

The municipality wants to institute legal action to review the decision by the administration to give credit of R25 490 105.44 towards development contributions due by DB Properties for the development. The same attorneys should deal with such a review application for value for money purposes as they already have the background of the matter.

3. BACKGROUND

On 2 June 2022 the Director: Planning and Economic Development approved subject to certain conditions, DB Property's land use application for the rezoning, consent use, departure and temporary departure in relation to Portion 43 of Farm No 65 Stellenbosch Division.

DB Property Development Company (Pty) Ltd ("DB Property") instituted review proceedings and applied setting aside two conditions of the 2020 Approval in terms of section 6 and 8 of the Promotion of Administrative Justice Act, 3 of 2000.

The first condition relates to the amount of money DB Property is required to contribute as development charges towards the municipal road infrastructure for the trips generated by its proposed development. The second condition relates to the amount of credit the

Municipality granted to DB Property for development charges. That decision is valid until set aside and the same credit should have been applied as was calculated on the basis that DB Property vested rights. The Municipality had previously granted credit.

The Court granted the review application and referred the matter back to the Appeal Authority for reconsideration of the appeal.

When considering the application the administration realised that a previous incumbent incorrectly granted credits to the amount of R25 490 105.44. The only way in which this can be rectified is by an review of that decision by the high court.

4. DISCUSSION

1. In the review application instituted by DB Property the second condition challenged is that in the approval the Municipality made a very substantial reduction in the amount of the development charges credit granted to DB Property as a condition of a previous approval ("the 2018 approval") from R25 490 015.44 (15% of the total development charges imposed pursuant to the 2018 approval) to R1 447 158.39 (2% of the total development charges of R81 708 331.11 imposed).

2. DB Property maintains that the Municipality's previously granted credit remains valid until set aside, and the current credit should have been calculated inclusive of DB Property's vested rights. In short, DB Property is of the view that it is entitled to the credit of R25 490 015.44 instead of R1 447 158.39. The Municipality disputed that the previously granted credit should have been considered and intends taking that decision on review.

3. The Court held that it did not intend dealing with DB Property's argument that the calculation of the 2020 development charges credit must take into account the 2018 credit, since on the Executive Mayor's own reasoning this did not inform her decision. It is open to DB Property to renew this argument when the matter is reconsidered.

4. In light of the aforesaid, it is clear that the Municipality will have to review its 2018 decision taken with regard to the Development charges credit provided.

5. TNK Attorneys was previously appointed to attend to the review application instituted by DB Property and has the relevant background and institutional knowledge to deal with this matter including the necessary experience and expertise. This is an exceptional case and it is impractical to follow the official procurement processes. It would make no financial sense to appoint any other attorney firm to attend to the self-review of the Municipality. Should a new attorney firm be appointed, they would need to read the entire record in the review application instituted by DB Property against the Municipality including the judgment which would amount to additional legal fees incurred instead of appointed TNK 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.

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6. TNK Attorneys needs to be appointed on deviation to institute a review application against the Development credit granted in 2018 by the Municipality and to assist and advise the Executive Mayor in dealing with the appeal referred-back to the Executive Mayor by the High Court.

5. FINANCIAL IMPLICATIONS

TNK Attorneys indicated that they will attend to the matter for an estimated amount of R1 155 500.00 inclusive of VAT (**see appendix A**). This also include the cost of junior and senior advocate to be appointed to attend to the matter. The amount indicated here is market related. KO

6. RECOMMENDATION

It is recommended that:

1. The accounting officer takes note of the exceptional and impractical circumstances to follow an SCM process to appoint attorneys to institute review application against the Municipality Development charges credit provided in 2018 and to provide assist the Appeal Authority in rehearing the matter.
2. That TNK attorneys be appointed on deviation to institute review application against the Municipality Development charges credit provided in 2018 and to provide assist the Appeal Authority in rehearing the matter.
3. That provision be made for the appointment of a junior and senior advocate, which costs is included in the abovementioned quoted amount;
4. That the deviation be reported to Council in terms of the Supply Chain Regulations and Council Policy;
5. ~~That the total costs be reported to Council after the matter has been completed.~~ KO

MERVIN WILLIAMS
CHIEF LEGAL ADVISOR

Date: 27/6/2024

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RECOMMENDATION SUPPORTED / NOT SUPPORTED BY THE STELLENBOSCH MUNICIPAL BID ADJUDICATION COMMITTEE		
Name	Signature	Date
D. Jacob	[signature]	2/7/2024
S Chandaka	Online	2/7/2024
A de Beer	Online	2/7/2024
S Carstens	Online	2/7/2024

Comments: The deviation is supported by the BAC. Recommended to the Accounting Officer for approval.

CHAIRPERSON [signature] DATE 02/07/2024

RECOMMENDATION FROM BID ADJUDICATION COMMITTEE APPROVED BY THE ACCOUNTING OFFICER		
Name	Signature	Date
G. BOSHOFF (Acting)	[signature]	8/7/24