

**SCMB 39/05/20 PROCUREMENT OF GOODS/ SERVICES/ CONSTRUCTION
WORKS UNDER A CONTRACT SECURED BY AN ORGAN OF
STATE – REFRACTORY SERVICES FOR MAITLAND
CREMATORIUM**

Additional documents in respect of this matter has been circulated to members of the Committee prior to the meeting.

Members of the Committee through a BAC Comments form raised questions and comments.

Mr Wootton requested that his vote against the decision be recorded. He felt that none of the concerns raised at the previous BAC meeting have been answered and have not justified why the court judgement does not apply.

It was suggested to attach the email on confirmation and Legal Services to give clarity regarding the judgement and NT Circular.

Committee members enquired re the forfeit in terms of Circular conditions and details of the circular. They also enquired about air travel, where the service provider is located and if the motor vehicle rate is R 4.00 per km. Further questions related to: *2.5.1 Material property of PetroSA and 2.5.2 PetroSA reserves right to supply.*

The Chairperson said he noted that questions raised at the previous meeting were not fully answered, but there was confirmation that PetroSA ceded a value of R1.5 million of the contract to the City.

The Chairperson raised concerns raised regarding a condition stated on page 3 of the report that “any additional plant/equipment acquired from a third party shall be charged at cost + 15% and with prior approval by PetroSA”, the cost in respect of air travel, and also the conditions in respect of material/spares in 2.5.

In response to the concern raised regarding air travel cost, the author of the report, Ms S Brice responded that the contractor is based in the Brackenfell Area, Cape Town, therefor no air travel is necessary. She also said that PetroSA will not supply the City with materials or spares. She said the condition was included by PetroSA for occasions when the contractor is performing work for them. She said that the applicable rates will apply to the City.

The Chairperson was concerned that it was included in the report if the condition was not applicable to the City.

Mr P de Vries explained that the underlying principle is that the City must adopt the agreement “as is” with no changes at all. He further explained that this was one of the pitfalls with the Blue Nightingale case where they changed the agreement in making use of Regulation 32. He said although it was included the City does not have to use it.

The Chairperson noted the comment, but felt it should have mentioned in the body of the report.

In response to questions raised regarding confirmation regarding ceding of a portion of the contract to the value of R1.5 million, Mr de Vries confirmed that the City had received confirmation from PetroSA.

The Chairperson asked Mr R Wootton to elaborate on his request for his vote to be recorded again the approval of this matter. Mr Wootton explained the matter was discussed in detail at the previous meeting. He said that one of the issues he raised Was at the Court case did not differentiate between a rates-based and fixed cost contracts. He said that it is assumed that that the rates-based contract used by PetroSA is acceptable, but there is no differentiation when it was discussed. Mr Wootton said that although his questions were not answered, he suggested that the matter be dealt with in terms of the deviation procedures, but notwithstanding this, if the rest of the Committee was comfortable to proceed without legal input, he will not be obstructive. He said that the Committee must be mindful that National Treasury was now investigating the Johannesburg “hire” contract, which was also a piggy-back contract, and this became public knowledge. He said that although that case should not influence the matter under discussion, but he was not comfortable to take a decision where legal advice was requested and none was received yet, hence he requested that his vote be recorded against the decision, if approved.

The Legal Adviser, Mr A Page said that as he was not part of the previous meeting and has also not seen the legal request, but if there are reservations he proposed that the matter should be referred back in order for the issues raised to be scrutinised by the City’s Legal Office.

The Director: SCM felt that as it was a term tender which is rates-based, the matter is not subject to a similar principle as in the Blue Nightingale case. The Director said that the City received a letter from PetroSA that clearly states that they cede a portion of the contract to the value of R1.5 million to the City. The Director re-affirmed that the agreement should be adopted in full, although not all items and conditions are required by the City. The Director felt that the City can proceed on the basis of the letter received from PetroSA.

In response to a questions raised regarding the value of R1.5 million for the contract to be used by the City, Ms Brice said the estimated value of the work required at the Maitland Crematorium was approximate R1.2 million, but the letter received by the City from PetroSA cedes a value of R1.5 million. She said that although there might be unforeseen costs, it will be ensured that the value of R1.5 million will not be exceeded.

The Chairperson summarised that Mr R Wootton wished to record his vote against the decision, if approved, Mr Page was satisfied if the Director: SCM was satisfied to proceed in view of the letter from PetroSA, there was confirmation that the budget provision is less than R1.5 million, there is an email message that the City may make use of the contract up to a maximum of R1.5 million.

The Chairperson said that the spent and balance in respect of the contract is not known, that there is a National Treasury Circular (96) that guides Regulation 32 contracts, although the City has not adopted it yet, there is a legal opinion regarding the matter that needs to be applied in its terms of reference. He said that at the previous meeting it was indicated that the alternative would be was to send the matter directly to the City Manager to consider as a deviation if this is an urgent matter as because there was a lot of discomfort regarding the matter.

Ms Brice said that in terms of a n email received, the balance of the contract was approximately R9.284 million and the user-department of PetroSA has estimated that until the expiry period on 30 November 2020, they will spend approximately another R3 million, leaving a balance of R6 million in surplus and they are satisfied that the City could spend R1.5 million of the balance.

In response to questions raised regarding the satisfaction of the Director: SCM to proceed with the approval of the request before the Committee, the Director indicated that based on the letter received from PetroSA, he agrees.

The majority of the Committee members present indicated their agreement that the request should be approved.

RESOLVED that:

- (a) for the reasons set out in the report and in accordance with Clause 20.1 of the CCT's SCM Policy, National Refractory Industries t/a Cape Refractory Industries (Pty) Ltd be appointed for the Supply and delivery of refractory services at the Maitland Crematorium, from date of commencement of contract until 30 November 2020, as follows (excl. VAT):

SCHEDULE OF RATES TABLE

Category	UOM	Normal Time
Normal Refractory Work		
Site Manager	Hour	R365.00
QC Representative		R185.00
Supervisor		R270.00
Safety Officer		R151.00
Foreman		R186.00
Refractory Mason		R150.00
Skilled Labourer		R85.00
Driver		R95.00
Operator		R85.00

Plant/Equipment

The rates specified hereunder include for all maintenance costs, including fuel, etc.

Description	UOM	(R)
Normal Refractory Work		
Pan Mixer	Day/24hrs	R
Hobart Mixer	Day/24hrs	R
Hi-Frequency Vibrator	Day/24hrs	R
Gunniting Machine including hoses	Day/24hrs	R
Brokk Operation / Refractory Demolition		
Brokk 160	Day/12hrs	R

NB: Any additional plant/equipment acquired from a third party at cost + 15% and with prior approval by PetroSA. De

Description
Accommodation (inclusive of dinner, breakfast and parking)
Air Travel Local and Foreign (Economy Class)
Vehicle Hire (Class B or an equivalent class)
Other Public Travel, airport parking, etc.
Travel Motor Vehicle (Rate/Kilometre) – LDV (Mobilisation)
Travel Truck for equipment and material mobilization and demobilization; Rate/km
Travel Motor Vehicle (to escalate in accordance with

2.5 MATERIALS/SPARES

2.5.1 Material rates include for all direct and indirect site, etc. All materials purchased by the Supplier will be reimbursed to the Supplier at actual cost. All materials shall remain the property of PetroS

- (b) price adjustment be calculated in accordance with the contract document.

Mr R Wootton requested that his vote against the decision to approve this matter, be recorded.

ACTION: **B VUMASE** to communicate the decisions of the BAC to the tenderers and BEC.

FOR NOTING: **S BRICE** to note the BAC decisions and apply the recommendations and decisions of the BAC.

This resolution complies with the Supply Chain Management Policy as approved by Council on 30 May 2019.

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ARNO VORSTER EMPLOYEE NO. 10300397
CHAIRPERSON: SUPPLY CHAIN MANAGEMENT
BID ADJUDICATION COMMITTEE

DATE: