

REPORT TO: COUNCIL

1. ITEM NUMBER C 67/04/21

2. SUBJECT

REPORT IN TERMS OF SUPPLY CHAIN MANAGEMENT REGULATIONS, REGULATION 36, AND THE SUPPLY CHAIN MANAGEMENT POLICY, CLAUSE 330, FOR THE PERIOD 10 MARCH 2021 TO 13 APRIL 2021: FOR INFORMATION PURPOSES.

ONDERWERP

VERSLAG INGEVOLGE REGULASIE 36 VAN DIE REGULASIES OOR VOORSIENINGSKANAALBESTUUR EN KLOUSULE 330 VAN DIE BELEID OOR VOORSIENINGSKANAALBESTUUR VIR DIE TYDPERK 10 MAART 2021 TOT 13 APRIL 2021: TER INLIGTING

ISIHLOKO

INGXELO NGOKWEMIGAQO YOLAWULO LOBONELELO NGOMSEBENZI WEZIKO, UMGAQO-36 NANGOKOMGAQO-NKQUBO ONGOLAWULO LOBONELELO NGOMSEBENZI WEZIKO, ISOLOTYA 330, YESITHUBA ESISUSELA NGOWE 10 KWEYOKWINDLA 2021 UKUYA KOWE 13 KUCANZIBE 2021: YEYOKUBA KUFUNYANWE ULWAZI

M3456

3. DELEGATED AUTHORITY

In terms of delegation 36 of the Supply Chain Management (SCM) Regulations and clause 330 of the City's SCM Policy (2019).

This report is to advise Council of matters authorised by the City Manager in terms of the Supply Chain Management (SCM) Regulations and Policy during the 2020/21 financial year for the period 10 March 2021 to 13 April 2021.

Committee name :

The Executive Mayor together with the Mayoral Committee (MAYCO)

Council – For Noting

4. DISCUSSION

This report is in line with providing equitable and effective service delivery to the community by ensuring that the critical goods and services required and to be procured are obtained, due to the exceptional circumstances, emergency of a situation, or when the normal procurement process could not be followed due to it being a sole provider, impractical, impossible or infeasible as permitted in terms of clauses 327 - 329 of the City's SCM policy.

In terms of regulation 36 of the Municipal Supply Chain Management Regulations and in terms of clause 330 of the Supply Chain Management Policy any deviations from the Supply Chain Management Policy considered and approved by the City Manager needs to be reported to Council.

The relevant reports received, considered and authorised by the City Manager and the expenditure and reasons for these approvals are herewith reported to Council as per Annexure "A". These matters were each considered on merit and the reasons provided were clarified or additional information obtained in compliance with the legislative criteria, as provided for in terms of the City's Supply Chain Management Policy. Consequence management interventions are also exercised, where necessary. In addition, the expenditure needs to be disclosed in a note to City's Annual Financial Statements.

The analysis of the deviations for the period 10 March 2021 to 13 April 2021 are that six requests were made where the criterion of exceptional circumstance was applied i.e. where there were no alternatives or where it was impractical or impossible to follow the normal procurement process.

It should be noted that legislative frameworks are being more stringently applied and this will result in –

- an increased volume in deviation procurement transactions, as the deviation process is being applied to ensure a valid contractual relationship.
- reporting taking place for a time period as opposed to a monthly report.
- an increase in irregular expenditure, as condonations and support for payments where the services of vendors have enriched the City.

The statutory delegation is assigned to the Accounting Officer (City Manager) and record of the reasons for any deviations are to be reported to the Council and are to be included as a note to the annual financial statements.

4.1. Financial Implications None Opex Capex

Capex: New Projects

Capex: Existing projects requiring additional funding

Capex: Existing projects with no additional funding requirements

Making progress possible. Together.

4.2. Policy and Strategy Yes No

4.3. Legislative Vetting Yes No

See signature provision

4.4. Legal Compliance

Supply Chain Management Regulations and in terms of clause 330 of the City's Supply Chain Management Policy (2019). Furthermore, the expenditure needs to be disclosed as a note to City's Annual Financial Statements.

4.5. Staff Implications Yes No

4.6. Risk Implications Yes No

5. RECOMMENDATIONS

It is recommended that

The Supply Chain Management deviations as authorised by the City Manager in terms of the Supply Chain Management Regulations, regulation 36, and the Supply Chain Management Policy, clause 330, for the period 10 March 2021 to 13 April 2021., attached as annexure A, be noted by Council and be disclosed as a note to the Council's annual financial statements.

AANBEVELINGS

Daar word aanbeveel dat

Die Raad kennis neem van die afwykings van voorsieningskanaalbestuursvoorskrifte soos deur die stadsbestuurder gemagtig ingevolge regulasie 36 van die regulasies oor voorsieningskanaalbestuur en klousule 330 van die beleid oor voorsieningskanaalbestuur vir die tydperk 10 Maart 2021 tot 13 April 2021, aangeheg as bylae A, en dat dit as 'n nota by die Raad se finansiële jaarstate ingesluit word.

IZINDULULO

Kundululwe ukuba:

IBhunga maliqwalasele iziphambuko kwimigaqo zabezoLawulo loBonelelo ngoMsebenzi weZiko njengoko zigunyazisiwe nguMphathi weSixeko ngokungqinelana nomgaqo-36 weMigaqo engoLawulo lomsebenzi weZiko nangokwesolotya 330 loMgaqonkqubo ongoLawulo loBonelelo ngoMsebenzi weZiko, kwisithuba esisusela ngowe-10 kweyoKwindla 2021 ukuya kowe-13 kuCanzibe 2021 eziqhotyeshelwe kwisihlomelo A kwaye zidandalaziswe njengemaziqwalaselwe kwiingxelo ezingezimali zonyaka zeBhunga.

ANNEXURES

ANNEXURE A – DEVIATIONS FOR THE PERIOD 10 MARCH 2021 TO 13 APRIL 2021.

FOR FURTHER DETAILS CONTACT

NAME	Gayle Postings	CONTACT NUMBER	021 400 1268
E-MAIL ADDRESS	Gayle.postings@capetown.gov.za		
DIRECTORATE	Office of the City Manager	FILE REF NO	HO 9/7

CITY MANAGER

NAME LUNGELO MBANDAZAYO COMMENT: _____

DATE _____

SIGNATURE  Digitally signed by Lungelo Mbandazayo
Date: 2021.04.16 17:09:24 +02'00'

LEGAL COMPLIANCE

- REPORT COMPLIANT WITH THE PROVISIONS OF COUNCIL'S DELEGATIONS, POLICIES, BY-LAWS AND ALL LEGISLATION RELATING TO THE MATTER UNDER CONSIDERATION.
- NON-COMPLIANT

NAME _____ COMMENT: _____

DATE _____ Certified as legally compliant based on the contents of the report

SIGNATURE  Digitally signed by Jason Sam Liebenberg
Date: 2021.04.16 14:22:12 +02'00'

SUPPLY CHAIN MANAGEMENT DEVIATIONS ITO THE SCM REGULATIONS & THE CITY'S SCM POLICY REPORT FOR THE PERIOD: 10 March 2021 to 13 April 2021												Annexure "A"	
No.	CM Ref No.	CMO log no.	Directorate	Project Title	Objective/Explanation/ Comments Provided by the Author	Recommendation of report (as per original author)	Total Value of Deviation	Reasons for Deviation	Responsible / Accountable Official	Date & time received by OCM	Date approved by City Manager (CM)	CM Comments/ Conditions of Approval	Additional Comments
1	CM 01/03/21	CM60721A	Transport	Request for deviation and/or condonation: DP6547Y/2020/21: Banking services agreement (ABSA) for contactless low value payments in public transport.	<p>To request approval in terms of the Supply Chain Management (SCM) Policy paragraph 327 for the deviation from the official procurement processes.</p> <p>The cost incurred fall within the Transport Department budget and the service provider shall render a services of contactless low value payments in public transport.</p>	<p>a) To CONDONE the payment of irregular expenditure incurred from 01 March 2021 until date of approval by the City Manager.</p> <p>b) APPOINT ABSA Bank Limited to render the services of contactless low value payments in public transport, at the rates below (excl. VAT), from date of approval by the City Manager until 30 June 2021.</p>	Rates Schedule	Deviation : Exceptional Circumstances	Dalene Campbell	11/03/2021 at 17h37	18/03/2021	<p>NOTES:</p> <p>a. The AFC contract was advertised and awarded in 2010/11 - per the guidelines of the National Department of Transport (NDoT).</p> <p>b. NDoT also required that a banking partner be secured to allow for Europay, Mastercard and Visa card transactions.</p> <p>c. When the contractor submitted a bid in response to this AFC tender advertisement, it recommended that ABSA bank be appointed as their banking partner and subcontractor to provide the back end banking system and banking interface infrastructure for loading of cards, this included the provision of the necessary fare media (i.e. current myconnect card). While the AFC contract was being finalised between the City and the AFC contractor in 2011, it was brought to the City's attention that certain bank charges were applicable to the AFC banking solution.</p> <p>d. At the time ABSA bank was also the City's main banker and a separate agreement was entered into with ABSA to regulate and fix the bank charges associated with the fare revenue from the MyCiti services.</p> <p>e. Even though the money was going to flow through the City's main corporate bank account, it was agreed that a separate agreement was required aside from the main banking agreement as the bank charges relating to the MyCiti services was not included in the main agreement with the City's banker.</p> <p>f. Originally, the Bank Services Agreement (BSA) was entered into for a period of 5 years starting on 28 February 2011 following a Section 33 process which was concluded for the AFC contract for a period of 7 years. The BSA was subsequently extended for a further 5 years starting 29 February 2016 (until 28 February 2021) after a Section 116(3) process was successfully concluded.</p> <p>g. The current contract for the AFC expires on 30 June 2021 and a new tender process was advertised in March 2020, together with the provision of a new banking system. No responsive bids were received and the tender was cancelled.</p> <p>h. Another tender was advertised in November 2020 and the evaluation process is underway.</p> <p>i. With the AFC contract (concludes on 30 June 2021) and BSA contract (expired 28 February 2021) misaligned the need exists to ensure continuity.</p> <p>APPROVAL:</p> <p>I hereby note the BAC recommendation, the comments of the BAC Members and the motivation memo of the Executive Director: Transport (received electronically on 25 February 2021).</p> <p>Whilst the BAC resolved that the irregular expenditure payment be condoned, this is not within my authority contained in clause 329 of the SCM Policy.</p> <p>I acknowledge that the MyCiti transport operations did not come to halt and therefore the costs incurred from 1 March 2021 for the banking services are to be disclosed as irregular expenditure as no contract was in place.</p> <p>In light of the above, my approval of the BAC recommendation (a) shall read as follows: RESOLVED that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed in Clauses 327.5.5 and 329 of the CCT's Supply Chain Management Policy to condone the appointment of ABSA Bank Limited from 01 March 2021 until date of my approval.</p> <p>Despite the BAC recommending the deviation in terms of clause 327.2 ABSA cannot be classified as a sole provider. However, as the automated fare collection (AFC) process is embedded (existing contract with AFC, software and hardware components at the backend, redevelopment costs, financial viability, system integrity with merchant number detail updates, point-of-sale (POS) reconfiguration requirements, POS device switch-out, change over implications and primary banker misalignment) in the banking service agreement with ABSA making it impossible to separate the two systems and could result in the municipal service being significantly impacted, therefore recommendation (b) shall read as follows:</p> <p>RESOLVED that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed in Clause 327.5.5 of the CCT's Supply Chain Management Policy (i.e. where it is impractical or impossible to follow the official procurement process and where the delivery of a municipal service would be significantly restricted) to appoint ABSA Bank Limited to render the services of contactless low value payments in public transport, at the rates negotiated (excl., VAT), from date of my approval until 30 June 2021.</p> <p>CONDITIONS:</p> <p>A. Appropriate contract and project management processes are to be exercised, including performance management of the ABSA Bank Limited. B. A new contract must be entered into with ABSA Bank Limited. C. The replacement Automated Fare Collection Tender must be expedited to ensure business continuity from 1 July 2021, with due consideration of the parallel process required i.e. plan accordingly for the 6 -10 weeks before 1 July 2021. D. No further deviation shall be accommodated for this banking service agreement and I reiterate that no further deviation shall be provided for the automated fare collection deviation currently in operation, concluding on 30 June 2021.</p>	<p>SCM BAC Resolution</p> <p>RECOMMENDED TO THE CITY MANAGER that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed in Clauses 327.5.5 and 329 of the CCT's Supply Chain Management Policy:</p> <p>(a) to condone the payment of irregular expenditure incurred from 01 March 2021 until date of approval by the City Manager.</p> <p>FURTHER RECOMMENDED TO THE CITY MANAGER that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed in Clause 327.2 of the CCT's Supply Chain Management Policy, to:</p> <p>(b) appoint ABSA Bank Limited to render the services of contactless low value payments in public transport, at the rates below (excl. VAT), from date of approval by the City Manager until 30 June 2021.</p> <p>And accordingly that the City enter into a Banking Services Agreement.</p> <p>Reason for applying for SCM Regulation 36 -</p> <p>Exceptional circumstances where it is impractical or impossible to follow the official procurement process, where a municipal service would be impacted</p> <p>The ABSA BSA solution is embedded in the existing AFC service in terms of –</p> <ul style="list-style-type: none"> existing contract with AFC, as their contract expires on 30 June 2021. software and hardware components at the backend, vested infrastructure that if replaced would require re-investment. redevelopment costs, if an alternative BSA was sourced. financial viability to incur costs for four-months that have no assurance the new AFC provider would be vested in. system integrity with merchant number detail updates. POS reconfiguration requirements and related costs. POS device switch-out which would have teething and change over issues to be resolved. change over implications in terms of customisation and issue resolution requirements. use of the City's primary banker would result in repetitive misalignment as the City's primary banker can change every 5 years. <p>As a result of the above the procurement of the BSA required direct negotiation with ABSA to secure the further four-months with no price increase as the current service provider of the banking service agreement in the City's AFC.</p>

No.	CM Ref No.	CMO log no.	Directorate	Project Title	Objective/Explanation/ Comments Provided by the Author	Recommendation of report (as per original author)	Total Value of Deviation	Reasons for Deviation	Responsible / Accountable Official	Date & time received by OCM	Date approved by City Manager (CM)	CM Comments/ Conditions of Approval	Additional Comments
2	Not Applicable	CM60752A	Corporate Services	Deviation confirmation: DP6383S/2020/21: Request for confirmation of appointment of attorneys to institute interdict proceedings in the high court against all unauthorised traders n the road reserve at Stodels, Stellenryk Bellville.	<p>To request approval in terms of the Supply Chain Management (SCM) Policy paragraph 327 for the deviation from the official procurement processes.</p> <p>The cost incurred fall within the Legal Services Department budget and the service provider shall institute interdict proceedings in the high court against all unauthorised traders n the road reserve at Stodels, Stellenryk Bellville.</p>	<p>a. That the official procurement process established BE DISPENSED with in terms of the Supply Chain Management Policy, 2019 for exceptional circumstances where it is impractical or impossible to follow the official procurement process where compliance with the official procurement process is not in the public interest; and</p> <p>b. that the appointment of Timothy and Timothy Attorneys BE CONFIRMED, having instituted Interdict Proceedings in the High Court against all unauthorised traders on the road reserve at Stodels, Stellenryk Bellville, at an hourly rate of R1 300.00 (one thousand three hundred rand) excl. VAT plus disbursements.</p>	R1 300.00 (one thousand three hundred rand) excl. VAT plus disbursements.	Legal Deviation (Confirmation); Exceptional Circumstances	Glenda Jefferies	16/03/2021 at 18h07	19/03/2021	<p>NOTES:</p> <p>The Legal Services Department received a legal request from the Urban Management Department to apply for a High Court Interdict to stop unauthorised traders on the road reserve in terms of the Informal Trading Bylaw.</p> <p>Authority to institute High Court Interdict Proceedings was authorised by the Executive Mayor. Three quotations were obtained – Timothy and Timothy (R1 300 per hour), Cluver Markotter Attorneys (R1 750 per hour) and CK Attorneys (R1 500 per hour). The request is for the appointment of Timothy and Timothy Attorneys, with resource being Mr Kshethra Naidoo.</p> <p>The Director: SCM requested the City Manager to appoint Timothy and Timothy Attorneys, which has the experience in matters of this nature, is an admitted attorney and has acted diligently for the City in the past. Mr Kshethra Naidoo from Timothy and Timothy Attorneys was appointed on 8 December 2020 at an hourly rate of R1 300 excluding VAT plus disbursements. Mr Naidoo is a senior associate at the firm with more than 4 years post qualification experience.</p> <p>The rate of the attorney has been compared to the AGSA and the DPSA rates in accordance with the Cost Containment Regulation and City Policy, the rate is higher than the AGSA and lower than the DPSA rates. A consultant assessment was completed in line with the Cost Containment Regulations and the City's Cost Containment Policy.</p> <p>Approval and comments: Based on the information provided by Legal Services, I provided verbal approval for the appointment of Timothy and Timothy Attorneys (Mr Kshethra Naidoo) to institute the urgent interdict.</p> <p>In light of the above, my approval shall read as follows: RESOLVED that for the reasons set out in the report and in terms of clause 327.5.2 of the CCT's SCM Policy, providing for exceptional circumstances where it is impractical or impossible to follow the official procurement processes where any contract in respect of which compliance therewith would not be in the public interest, I confirm my verbal appointment of Timothy and Timothy Attorneys (resource being Mr Kshethra Naidoo) having instituted Interdict Proceedings in the High Court against all unauthorised traders on the road reserve at Stodels, Stellenryk Bellville, at an hourly rate of R1 300.00 (one thousand three hundred rand) excl. VAT plus disbursements.</p> <p>Deviation confirmation conditions: A. Appropriate legal services management processes are to be exercised related to cost management and legal professional service provider management and monitoring – performance. B. The Demand Plan Tender for 2020/21 is to be prioritised and every effort to convene the bid committees must be made. C. Timely submission of confirmation reports is required as reiterated at the SCM Forum of Monday, 12 October 2020. D. Appropriate consequence management action be taken for the tardy turnaround (more than three months since my approval) in sending a deviation confirmation report to me, such reports are required to reach my office within 14 days of my approval.</p>	<p>Summary of Director: SCM (Memo):</p> <p>The attached confirmation report for the appointment of Timothy and Timothy Attorneys on a rates based appointment is supported (rate of R1 300 per hour). The City Manager gave approval on 08 December 2020. The Report was submitted to my office on 28 January 2021. The report was incorrect and referred back. The correct report was submitted to my office on the 11 March 2021.</p> <p>Cost escalation and supplier performance must be monitored. Legal Unit to fast-track the tender in order to address the AGSA findings in this regard. A contract should have been signed for this appointment. I have indicated at the time that a correct and compliant report is to be submitted within five working days of verbal approval.</p> <p>Reason for applying for SCM Regulation 36 -</p> <p>Exceptional circumstances where it is impractical or impossible to follow the official procurement process - not in public interest</p> <p>The past practices of procuring Legal Services, based on the City's system of delegations, was found to be inappropriate in the last (2018/19 AGSA) audit review. An immediate need of the Legal Services Department is the requirement for business continuity measures and the approach is as follows -</p> <ul style="list-style-type: none"> The past solution 3 quotes are obtained - <ul style="list-style-type: none"> o Appointments for less than R200 000 were approved by the Director: Supply Chain Management; and o Appointments for more than R200 000 were approved by the City Manager. The current medium Term solution – A Request for Proposals has been formalised for a panel of Legal Professional Service providers to be appointed, per SCM deviation: CM60149 approved 21 December 2020. The long-Term solution – A tender will be advertised (the tender has been registered on the demand plan as at 2020/21).

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3	CM 02/02/21	CM60668A	Water and Waste Services	Request for deviation and/or condonation: CM58567A: Provision of professional services for the construction of a main water supply pipeline along Baden Powell Drive in Khayelitsha.	<p>To request approval in terms of the Supply Chain Management (SCM) Policy paragraph 327 for the deviation from the official procurement processes.</p> <p>The cost incurred fall within the Water and Waste Department budget and the service provider shall provide professional services for the construction of a main water supply pipeline along Baden Powell Drive in Khayelitsha.</p>	<p>(a) APPOINT Ingerop South Africa (Pty) Ltd to supply the services for Provision of Professional Services for the Construction of a main water supply pipeline along Baden Powell Drive in Khayelitsha, in the amount of R 7 543 196.00 (excl VAT), from date of approval by the City Manager until 09 November 2021 or for a period as long as the construction tender 112Q/2018/19 is valid, in the event it be extended.</p> <p>(b) Consider Consequence Management action be taken.</p>	R 7 543 196.00 (excl VAT),	Deviation: Exceptional Circumstances	Mbali Matiwane	23/03/2021 at 18h08	29/03/2021	<p>NOTES:</p> <p>a. Tender No. 257C/2015/16: Provision of Professional Services for the Construction of a Main Water Supply Pipeline Along Baden Powell Drive in Khayelitsha came to an end.</p> <p>b. On 03 June 2020 the City Manager approved a deviation contract CM58567A: Provision of Professional Services for the construction of a main water supply pipeline along Baden Powell Drive in Khayelitsha to Ingerop South Africa (Pty) Ltd until 28 February 2021.</p> <p>c. An administrative error occurred and the end date was incorrect. This deviation includes the administrative error correction and additional time as the construction and professional services contract are inter-related.</p> <p>d. The construction contract 112Q/2018/19 delays which occurred centred around the issue of the finalisation of the Advance Payment Guarantee (APG). This was required by the contractor to enable them to place an order for pipe for pipe materials from overseas.</p> <p>e. The national lock down was announced and implemented and the construction activities were halted and only recommenced on 05 May 2020 under lockdown level 4, having an impact on the completion construction project.</p> <p>f. The Engineering Services Unit (ESU) review was completed on 10 July 2020 and the ESU supported the project and confirmed that there was an ambiguity regarding the contract completion date.</p> <p>g. The original deviation contract value was meant to cover the period up to 28 February 2022 including close-out processes. The expenditure to date indicates that almost half of the original deviation contract value has been reached with a remainder budget of R5 643 196,00.</p> <p>h. The additional cost due to work that will be performed by Consultants from 01 March to 31 May 2022 is estimated R 1 900 000.</p> <p>i. In the absence of Professional Services, the construction works would need be delayed and the standing time cost R79 000 per day could be incurred.</p> <p>APPROVAL:</p> <p>I hereby note the BAC recommendation, the comments of the Director: SCM and the administrative error of defining the incorrect date for completion. The Project Manager confirmed that the Professional Services has been stopped, this was re-affirmed by the ED: WWS.</p> <p>Per the SCM: BAC resolution, an authority linked to the construction contract is not acceptable and hence the correspondence with the ED: WWS, per CM60668A and the subsequent response received on 15 March 2021, to ensure an appropriate date linked to the construction project plan, namely 31 May 2022.</p> <p>In light of the above, including the additional information, my approval of the BAC recommendation shall read as follows:</p> <p>RESOLVED that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed in Clause 327.5.5 of the CCT's Supply Chain Management Policy, to appoint Ingerop South Africa (Pty) Ltd to supply the services for Provision of Professional Services for the Construction of a main water supply pipeline along Baden Powell Drive in Khayelitsha, in the amount of R 7 543 196.00 (excl VAT), from date of my approval until 31 May 2022.</p> <p>CONDITIONS:</p> <p>A. Appropriate contract and project management processes are to be exercised, including performance management of the service provider.</p> <p>B. A new contract must be entered into with Ingerop South Africa (Pty) Ltd for the fixed value of the deviation, per clause 10.2.2. of the Cost Containment Policy.</p> <p>C. The remedial and consequence management action must be completed – per CM60668C.</p> <p>D. No further deviation shall be accommodated for this professional service provider and their project monitoring of the construction of the main water</p>	<p>SCM BAC Resolution</p> <p>RECOMMENDED TO THE CITY MANAGER that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed in Clause 327.5 of the CCT's Supply Chain Management Policy, to:</p> <p>(a) appoint Ingerop South Africa (Pty) Ltd to supply the services for Provision of Professional Services for the Construction of a main water supply pipeline along Baden Powell Drive in Khayelitsha, in the amount of R 7 543 196.00 (excl VAT), from date of approval by the City Manager until 09 November 2021 or for a period as long as the construction tender 112Q/2018/19 is valid, in the event it be extended.</p> <p>(b) consider Consequence Management action be taken.</p> <p>Reason for applying for SCM Regulation 36 -</p> <p>Exceptional circumstances where it is impractical or impossible to follow the official procurement process, where a municipal service would be impacted</p>

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4	Not Applicable	CM60797A	Corporate Services	Deviation confirmation: DP6396/2020/21: To confirm approval of appointment of attorneys to oppose a high court application for an interdict against the City of Cape Town by the Fairdale Land Owners.	<p>To request approval in terms of the Supply Chain Management (SCM) Policy paragraph 327 for the deviation from the official procurement processes.</p> <p>The cost incurred fall within the Legal Services Department budget and the service provider shall oppose a high court application for an interdict against the City of Cape Town by the Fairdale Land Owners.</p>	<p>a. That the official procurement process established BE DISPENSED with in terms of the clause 327.5.2. of the City of Cape Town's Supply Chain Management Policy, 2019 for exceptional circumstances where it is impractical or impossible to follow the official procurement process where compliance with the official procurement process is not in the public interest; and</p> <p>b. that the appointment of Reagan Brown Inc. BE CONFIRMED, to supply legal services to Oppose a High Court application for an interdicts against the City of Cape Town by Fairdale Land Owners, per hour excl. VAT plus disbursements.</p>	Rates Schedule	Legal Deviation (Confirmation); Exceptional Circumstances	Glenda Jefferies	25/03/2021 at 15h30	29/03/2021	<p>NOTES:</p> <p>The Legal Services Department received a legal request on 20 November 2020, requesting legal assistance to oppose an application to the High Court for an interdict against the City of Cape Town.</p> <p>Authority to Oppose the High Court Interdict Proceedings was authorised by the Executive Mayor. Three quotations were obtained – Reagan Brown Inc. (R1 600 per hour), Herold Gie Attorneys (R1 700 per hour) and Riley Inc. (R1 800 per hour). The request is for the appointment of Reagan Brown Inc. Attorneys, with resource being Mr Reagan Brown.</p> <p>The Director: SCM requested the City Manager to appoint Reagan Brown Inc., which has the experience in matters of this nature and has acted diligently for the City in the past. Mr Reagan Brown from Reagan Brown Inc. was appointed on 20 November 2020 at an hourly rate of R1 600 excluding VAT plus disbursements. Mr Brown is a Director at the firm with more than 21 years post qualification experience.</p> <p>The rate of the attorney has been compared to the AGSA and the DPSA rates in accordance with the Cost Containment Regulation and City Policy, the rate is lower than the AGSA and DPSA rates. A consultant assessment was completed in line with the Cost Containment Regulations and the City's Cost Containment Policy.</p> <p>Approval and comments: Based on the information provided by Legal Services, I provided verbal approval for the appointment of Reagan Brown Inc. (Mr Reagan Brown) to oppose the urgent interdict.</p> <p>In light of the above, my approval shall read as follows: RESOLVED that for the reasons set out in the report and in terms of clause 327.5.2 of the CCT's SCM Policy, providing for exceptional circumstances where it is impractical or impossible to follow the official procurement processes where any contract in respect of which compliance therewith would not be in the public interest, I confirm my verbal appointment of Reagan Brown Inc. (resource being Mr Reagan Brown) having provided legal services to Oppose a High Court application for an interdict against the City of Cape Town by Fairdale Land Owners, per hourly rate of R1 600.00 excl. VAT plus disbursements.</p> <p>Deviation confirmation conditions: A. Appropriate legal services management processes are to be exercised related to cost management and legal professional service provider management and monitoring – performance. B. The Demand Plan Tender for 2020/21 is to be prioritised and every effort to convene the bid committees must be made. C. Timely submission of confirmation reports is required as reiterated at the SCM Forum of Monday, 12 October 2020. D. Appropriate consequence management action be taken for the tardy turnaround (more than four months since my approval) in sending a deviation confirmation report to me, such reports are required to reach my office within 14 days of my approval.</p>	<p>Summary of Director: SCM (Memo):</p> <p>The attached confirmation report for the appointment of Reagan Brown Attorneys on a rates based appointment is supported (rate of R1 600 per hour). The City Manager gave approval on 20 November 2020. The Report was submitted to my office on 17 March 2021.</p> <p>Cost escalation and supplier performance must be monitored. Legal Unit to fast-track the tender in order to address the AGSA findings in this regard. A contract should have been signed for this appointment. I have indicated at the time that a correct and compliant report is to be submitted within five working days of verbal approval.</p> <p>Reason for applying for SCM Regulation 36 -</p> <p>Exceptional circumstances where it is impractical or impossible to follow the official procurement process - not in public interest</p> <p>The past practices of procuring Legal Services, based on the City's system of delegations, was found to be inappropriate in the last (2018/19 AGSA) audit review. An immediate need of the Legal Services Department is the requirement for business continuity measures and the approach is as follows -</p> <ul style="list-style-type: none"> • The past solution 3 quotes are obtained - <ul style="list-style-type: none"> o Appointments for less than R200 000 were approved by the Director: Supply Chain Management; and o Appointments for more than R200 000 were approved by the City Manager. • The current medium Term solution – A Request for Proposals has been formalised for a panel of Legal Professional Service providers to be appointed, per SCM deviation: CM60149 approved 21 December 2020. • The long-Term solution – A tender will be advertised (the tender has been registered on the demand plan as at 2020/21).

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5	CM 05/03/21	CM60806A	Transport	SCMB 79/03/21: Request for deviation: Provision of a public transport Dial-A-Ride Services.	<p>To request approval in terms of the Supply Chain Management (SCM) Policy paragraph 327 for the deviation from the official procurement processes.</p> <p>The cost incurred fall within the Transport Department budget and the service provider shall provide a service to the most vulnerable individuals in the City</p>	<p>(a) APPOINT HG Travelling Services (Pty) Ltd to supply the goods and/render the works/services for The Dial-a-Ride Public Transport Service, from 01 April 2021 until 30 September 2021, at the same rates, terms and conditions:</p> <p>(b) Wages are subject to annual adjustment in accordance to the SARPBAC wage determination</p> <p>(c) The operating cost of the vehicles are adjusted monthly in accordance with a combination of the current fuel price and month-to-month CPI.</p> <p>(d) Consider Consequence Management action be taken</p>	Rates Schedule	Deviation: Exceptional Circumstances	Gershwin Fortune	26/03/2021 at 16h59	30/03/2021	<p>NOTES:</p> <ul style="list-style-type: none"> The City Transport Directorate provides a passenger transport service called Dial-A-Ride (DAR) to members of the public with disabilities which render them unable to access mainstream public transport. A competitive tender process was followed and the contract was awarded to HG Travelling Services (Pty) Ltd, commenced on 1 November 2015 and were set to expire on 30 June 2018. The procurement for the replacement contract was awarded on 22 January 2018, by the Bid Adjudicating Committee (BAC) awarded to WCL Trading CC. The 2018 DAR Tender was intended to take effect on 1 July 2018. On 15 February 2018, HG Travelling Services (Pty) Ltd lodged an appeal against the award made to WCL Trading CC. The City's Appeal Authority dismissed the Appeal on 26 March 2018. On 17 May 2018, HG Travelling Services (Pty) Ltd instituted proceedings in the Western Cape High Court to review and set aside the award made to WCL Trading CC. On 4 July 2019, the Western Cape High Court reviewed and set aside the award to WCL Trading CC (court order). As a consequence of the Court Order, the BEC had to be reconstituted to re-evaluate the 2018 DAR Tender afresh. However, no successful bidder could be recommended and the BAC on 27 October 2020 cancelled the 2018 DAR Tender on the recommendation of the BEC. On 1 September 2020 the Public Transport Operations and Fleet teams finalised a concept "DAR Plan B 9-meter Bus Option" and explored a vehicle operating option. Three RFQ process were followed. The first two was too restrictive and had to be cancelled. The evaluation process is on-going and is anticipated to complete in 2020, however, given that a 6-year contract requires a Section 33, it is anticipated that the final award will be made during the second quarter of 2021. The anticipated solution is yet to be awarded and finalised and in the interim a deviation is required to ensure continuity in service. This is the 6th deviation and is required to ensure an uninterrupted service. The main reasons for HG Services being the best suited service provider for the interim are- <ul style="list-style-type: none"> Fleet monitoring, given the ageing fleet; Operations meetings have been implemented, including sign-off protocols, to ensure a workable service arrangement between the service provider and the City; and Daily fleet status reports provided for the City thereby providing assurance that performance is achieved, as part of the service provider performance management measures. <p>APPROVAL: I hereby note the BAC recommendation, the comments of the Director: SCM and the need for the service. In light of the above, my approval of the BAC recommendation shall read as follows: RESOLVED that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed for in clause 327.5.5 of the City's SCM Policy, providing for exceptional circumstances where it is impractical or impossible to follow the official procurement processes where any contract in respect of which compliance therewith would not be in the public interest and will significantly restrict the delivery of a municipal service -</p> <p>(a) To appoint HG Travelling Services (Pty) Ltd to supply the goods and/render the works/services for The Dial-a-Ride Public Transport Service, from 01 April 2021 until 30 September 2021, at the same rates up to an estimated amount of R14 124 754.41, with no performance agreement in place as communicated by the Transport Directorate; plus</p> <p>(b) Wages are subject to annual adjustment in accordance to the SARPBAC wage determination; and</p> <p>(c) The operating cost of the vehicles are adjusted monthly in accordance with a combination of the current fuel price and month-to-month CPI.</p> <p>CONDITIONS:</p> <p>A. Appropriate contract management processes are to be exercised.</p> <p>B. Stringent and micro-performance management of the service provider given the ageing DAR fleet and the past performance issues that are being managed with the assistance of Legal Services.</p> <p>C. A new contract must be entered into with HG Travelling Services (Pty) Ltd with new terms and conditions.</p> <p>D. The replacement framework tender must be expedited.</p> <p>E. Business continuity measures, as a contingency plan, are to be documented and tested to ensure that a service is always available for the most vulnerable, including public liability insurance cover.</p> <p>F. Transport Directorate are to continue to mitigate the risk as far as possible, including progressive enhancements as issues arise, in the absence of a performance guarantee.</p> <p>G. Administrative and functional commitments are to be achieved, namely</p> <ul style="list-style-type: none"> Issue escalation and resolution Deploy a Fleet Officer to HG Services to oversee fleet management Daily Comprehensive fleet status reports <p>H. The remedial and consequence management action must be completed – per CM60806A.</p>	<p>SCM BAC Resolution</p> <p>RECOMMENDED TO THE CITY MANAGER that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed in Clause 327.5 of the CCT's Supply Chain Management Policy, to:</p> <p>(a) appoint HG Travelling Services (Pty) Ltd to supply the goods and/render the works/services for The Dial-a-Ride Public Transport Service, from 01 April 2021 until 30 September 2021, at the same rates, terms and conditions:</p> <p>(b) wages are subject to annual adjustment in accordance to the SARPBAC wage determination</p> <p>(c) the operating cost of the vehicles are adjusted monthly in accordance with a combination of the current fuel price and month-to-month CPI.</p> <p>(d) consider Consequence Management action be taken.</p> <p>Reason for applying for SCM Regulation 36 -</p> <p>Exceptional circumstances where it is impractical or impossible to follow the official procurement process, where a municipal services would be impacted.</p> <ul style="list-style-type: none"> The proposed use of HG Travelling Services (Pty) Ltd is because if an alternative service provider is required the implications would be as follows- <ul style="list-style-type: none"> A fleet of 18 vehicles would need to be procured for the DAR Service (R14 400 000) and an alternative service provider would need 8 weeks to procure such assets; Fleet retrofitting would be required from (i) at a cost of R6 000 000; Fleet procured in (i) would require painting – logos and contact numbers; Recruitment of drivers and skilled competency for transporting disabled person; Call centre service and toll-free number (approximately 4-week delay) would need to be established; Depot facility would need to be organised or built and established; Vehicle monitoring and communications systems would need to be installed; and The existing database of users, of current users, would need to be made available to the new Operator. On-boarding will take approximately 24 weeks (6 months) to be service ready. The risk of not having the service available to 2 347 vulnerable users thereby leaving them stranded without transport. If the service is stopped or interrupted it could negatively affect user's employment, education and health. The City's IDP lists DAR as a critical project to implement.

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6	CM06/03/21	CM60809	Water and Waste Services	SCMB 82/03/21: Request for Deviation: DP6582/2020/21: Hire of Various Refuse Collection Compactors With High Level Binliffing Attachments to the City of Cape Town's Solid Waste Management Collections Branch	<p>To request approval in terms of the Supply Chain Management (SCM) Policy paragraph 327 for the deviation from the official procurement processes.</p> <p>The cost incurred fall within the WWS: Solid Waste Department - Collections Branch budget for the Hire of Various Refuse Collection Compactors With High Level Binliffing Attachments</p>	<p>(a) That the official procurement process established BE DISPENSED with in terms of the Supply Chain Management Policy for 327.5 exceptional circumstances where it is impractical or impossible to follow the official procurement process in the event where the delivery of a municipal service would be significantly restricted.</p> <p>(b) And accordingly that Chippa Training Academy (Pty) Ltd, Waste Control (Pty) Ltd and Waste Mart (Pty) Ltd BE APPOINTED to supply the goods and/render the works/services for the Hire of the 12 m3; 15 m3; 19 m3; and 20 m3 Refuse Collection Compactors with High Level Binliffing attachments to the City of Cape Town's, Solid Waste Management, Collections Branch, for a period not exceeding 6 months from date of approval by the City Manager, as per the rates in the original report (excl VAT):</p> <p>(c) The contract period is on a month to month not exceeding 12 months from date of commencement</p>	Rates Schedule	Deviation : Exceptional Circumstances	Rustim Keraan	29/03/2021 at 15h02	01/04/2021	<p>NOTES:</p> <ul style="list-style-type: none"> • Solid Waste Management (SWM) requires a fleet of vehicles in particular the Refuse Collection Compactor trucks to keep the operations running, as waste disposal is a very important public service. • These vehicles play a pivotal role in effectively collecting and transporting waste on a weekly basis from residential areas and dispose of it. • In the recent months there has been a dire need for additional capacity as SWM is currently experiencing a lack of internal capacity. SWM has 226 refuse compactor trucks. However, only 43% of these are currently available, as the rest of the vehicles are down due to maintenance and are at the workshops for repairs and/or servicing. • Tender no. 316S/2016/17: Hire of Heavy Plant (SCMB 113/06/18) was secured but expires on 18 September 2021. • The tender is used for external hire of these type of vehicles does not have adequate capacity from the existing service providers. <p>APPROVAL:</p> <p>I hereby note the BAC recommendation, the comments of the SCM: BAC and the need for the service given the health and environmental risk exposures.</p> <p>In addition, the CSD compliance checks at 1 April 2021 were completed and Chippa Training Academy (Pty) Ltd were found to be tax non-compliant. Consequently, per the requirements of law, the vendor is excluded until such time as their records are compliant.</p> <p>In light of the above, my approval of the BAC recommendation shall read as follows: RESOLVED that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed for in clause 327.5.5 of the City's SCM Policy, providing for exceptional circumstances where it is impractical or impossible to follow the official procurement processes where any contract in respect of which compliance therewith would not be in the public interest and will significantly restrict the delivery of a municipal service to appoint Waste Control (Pty) Ltd and Waste Mart (Pty) Ltd to supply the goods and/render the works/services for the Hire of the 12m³; 15m³; 19m³; and 20m³ Refuse Collection Compactors with High Level Binliffing attachments to the City of Cape Town's, Solid Waste Management, Collections Branch, for a period not exceeding 6 months and at a R25 000 000 spend ceiling from date of my approval per the rates provided (excl. VAT).</p> <p>CONDITIONS:</p> <p>A. Appropriate contract and performance management processes are to be exercised.</p> <p>B. A new contract must be entered into with Waste Control (Pty) Ltd and Waste Mart (Pty) Ltd.</p> <p>C. The replacement tender must be expedited, including providing for sufficient capacity in future and for the worst case scenario (example when fleet repairs and maintenance impact operations).</p> <p>D. Attention is also to be given to asset life-cycle and replacement programmes.</p> <p>E. The remedial and consequence management action must be completed – per CM60809A.</p>	<p>SCM BAC Resolution</p> <p>RECOMMENDED TO THE CITY MANAGER that for the reasons set out in the report authority be granted for a deviation from the Supply Chain Management procedures, as allowed in Clause 327.5 of the CCT's Supply Chain Management Policy, to:</p> <p>(a) appoint Chippa Training Academy (Pty) Ltd, Waste Control (Pty) Ltd and Waste Mart (Pty) Ltd to supply the goods and/render the works/services for the Hire of the 12 m3; 15 m3; 19 m3; and 20 m3 Refuse Collection Compactors with High Level Binliffing attachments to the City of Cape Town's, Solid Waste Management, Collections Branch, for a period not exceeding 6 months from date of approval by the City Manager, as per rates schedule (excl VAT)</p> <p>(b) consider Consequence Management action be taken (regarding the asset not being maintained, the additional costs and consideration for outsourcing).</p> <p>(c) ensure timeline for new tenders be put in place.</p> <p>Reason for applying for SCM Regulation 36 -</p> <p>Exceptional circumstances where it is impractical or impossible to follow the official procurement process, where a municipal services would be impacted.</p> <p>In addition -</p> <ul style="list-style-type: none"> • Approximately 75% vehicle availability is required and currently the capacity is falling short by 32%. • To mitigate the problem, SWM in consultation with SCM resolved to procure the additional capacity using the RFQ process (RFQ no. WJ1210008) which will make provision for at least 31 refuse compactor trucks thereby reducing the internal pressure on vehicle availability, as these vehicles will help bridge the gap of the maintenance backlog. • These vehicles will help increase the vehicle availability to at least 57%. • The replacement tender (Tender No. 284S/2020/21) is at the final stages of evaluation and per tender tracking is on track to achieve the contract required by date of 1 September 2021