

WESTERN CAPE WATER CARE FORUM

OUTSOURCING OF BULK WATER SERVICES IN OVERSTRAND MUNICIPALITY

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Presentation Outline:

- Background: Overstrand Municipality
- Triggers for MSA Section 78
- MSA Section 78 Process
- Procurement Process
- MFMA Section 33 Process
- The Contract
- Unions and LRA
- Challenges
- Benefits
- Acknowledgements

Background (continued)



Background (continued)

- 84 000 permanent residents; Hermanus 44 000 residents
- 11 Towns and Villages

Water Sources:

- 6 Dams
- 16 Boreholes
- 3 Rivers and 3 Springs

Water Infrastructure:

- 8 Water Schemes
- 9 Water Treatment Plants

Waste Water Infrastructure:

- 5 Waste Water Schemes
- 5 Waste Water Treatment Plants
- 42 Pump Stations

Overstrand S.77 Triggers for S.78 process

- Overstrand Municipality completed major bulk infrastructure upgrades over the last 5 years
- Total treatment capacity of WTW's was upgraded from 42.8 Mℓ/d to 59 Mℓ/d - an increase of 37.6 %, including 4 new plants
- Total treatment capacity of WWTW's was upgraded from 12.8 Mℓ/day to 17.5 Mℓ/day - an increase of 40.4 %
- New technologies were deployed, e.g. Nereda, Reverse Osmosis, Ultra Filtration, and Bio-filtration of Iron and Manganese from Groundwater
- Additional skilled personnel are required to operate the plants and the new technologies - Regulations 2834 and 17
- Limited budgets for maintenance



MSA Section 78 Process

- On 28 June 2011 Council resolved to undertake a review of its current water services delivery mechanism in terms of Section 78(1) of the Municipal Systems Act, due to the substantial investments made in water and sewerage infrastructure.
- Worley Parsons was appointed as the independent assessor
- Involved a team of technical, legal and financial experts (transaction advisors)

Section 78(1) Investigation: outcomes

- OM has day-to-day operational challenges, but has the capacity to continue rendering water services by way of an internal Water Services Provider (WSP) mechanism.
- Key challenge is accessing and retaining the required skills and expertise to operate the WTW's and WWTW's sustainably over the longer term – additional support is required
- Concluded that an internal WSP support contract will best address the specific needs of OM.
- Report discussed with and circulated to organized labour for comments for a period of 2 months
- Council resolved in January 2014 that the internal WSP mechanism be retained, but that a suitably qualified and experienced operator be contracted to operate and maintain the bulk infrastructure

Procurement Process

- Two stage process: (1) RFQ and (2) RFP
- 22 Aug 2014: Request for qualification was issued:
 - No pricing involved at his stage
 - Purely points for company relevant experience and expertise, staff qualifications and relevant experience, company management systems, company financial position
- 26 Sept 2014: 8 Submissions were received at close of tender
- 3 Dec 2014: 4 short listed bidders were issued with the RFP documentation
- 30 Jan 2015: At close of tender 3 bids were received

Procurement Process (continued)

- 9 March 2015: Bid Adjudication Committee identified the Preferred Bidder and the Reserve Preferred Bidder
- 10 March 2015: Municipal Manager announced the Preferred Bidder (Veolia) and Reserve Preferred Bidder (WSSA)
- 13 March – 2 July 2015: Final Contract negotiated with the Preferred Bidder
- 17 July 2015: Bid Adjudication Committee Recommendation to MM
- 22 July 2015: MM awarded the contract

MFMA section 33 Process

- Contracts exceeding 3 years have to be approved by Council in its final form, after considering:
 - The long term financial implications of the contract
 - The impact of the proposed contract on future tariffs
 - The views of National and Provincial Treasuries and the relevant sector department (DWS)
 - The views of the public
 - Views to be solicited at least 60 days before Council meeting
- Council has to ascertain that it will secure a significant financial economical benefit from the contract
- Council has to authorise the MM to sign the contract
- Final report served before Council on 29 July 2015

Consultation



- Organised Labour i.t.o. MSA s.78(1)
 - Views of organised labour solicited during s.78(1): Aug-Oct 2011
 - Working group with SAMWU, IMATU and OM established by resolution of LLF to deal with implementation of Council resolution
- NT, PT, DLG and DWS i.t.o. MFMA s.33
 - Advised of outcome of Council's decision and proposed approach in June 2014.
 - Meetings were held with National and Provincial Treasury on 3 July 2014 and PT on 19 March 2015
 - Formal submission received only from PT - supporting the process
- Community i.t.o. MFMA s.33
 - Public Notice in local newspaper 12 March 2015
 - Information Statement was available
 - Comments period closed 13 April 2015
 - No formal submission received

The Contract

- Contract period: 15 years, with the option to extend with 5 years; effective date 1 November 2015
- Main purposes are to drive efficiencies and to access appropriate skills and expertise to effectively and efficiently operate and maintain the WTW's and WWTW's;
- The Operator has to comply with Regulations 2834 or 17 within 3 years
- Affordability: a comprehensive O&M management fee is payable as determined through a competitive bidding process;
- Accountability: OM remains the WSA and WSP, with direct accountability to the community. The contractor will be accountable to OM;

The Contract (continued)

- The Management Fee includes a Salary Contribution, a Fixed Fee, and a Variable Fee for the treatment plants, pump stations, reservoirs and bulk pipelines
- The Operator can be appointed i.t.o. the contract as Implementing Agent for capital projects related to the function
- Performance will be measured and remunerated or penalized with reference to predetermined KPI's, including water quality, training, downtime, blue/green drop, etc.
- Implementable solution: appointment of a contractor i.t.o. the SCM Regulations, subject to internal bid specification, bid evaluation and bid adjudication processes (i.e. not an external WSP mechanism structure or PPP)
- Estimated contract value: R 830 million, excluding VAT over the 15 year contract period
- Escalation capped at CPI and SALGBC agreements

Transfer of Staff and the LRA

- All OM staff directly involved with the bulk works transfer to the operator
- The business associated with the bulk works transfer as a going concern
- Section 197(2) of the Labour Relations Act applies here:

197(2) If a transfer of a business takes place, unless otherwise agreed in terms of subsection (6)—

- a) the new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer;*
- b) all the rights and obligations between the old employer and an employee at the time of the transfer continue in force as if they had been rights and obligations between the new employer and the employee;*
- c) anything done before the transfer by or in relation to the old employer, including the dismissal of an employee or the commission of an unfair labour practice or act of unfair discrimination, is considered to have been done by or in relation to the new employer; and*
- d) the transfer does not interrupt an employee's continuity of employment, and an employee's contract of employment continues with the new employer as if with the old employer.*

LRA Implications



- Implications:
 - The transfer happens automatically by law
 - No agreement required of employees because no change in terms or conditions
 - Employees existing terms and conditions and length of employment protected by law
 - LRA principle of “in the whole no less favourable” applies
- Alternative:
 - If the terms and conditions of transfer need to be altered, a LRA s197(6) agreement has to be reached with the recognised unions
 - Where no agreement can be reached with the unions, the transfer will be automatic
- MM invited both unions per formal letter to submit alternative proposals i.t.o. LRA S197(6) by 25 June 2015

HR Working Group

- The Local Labour Forum (LLF) was engaged and a Working Group was constituted in March 2014 with representatives from IMATU, SAMWU and the Municipality
- A Terms of Reference for the Working Group was agreed by all parties in June 2014;
- Regular engagement took place
- Monthly feedback was given from the Working Group to the LLF.
- Communicated with potentially affected employees on 25/09/2014, 09/12/2014, 22 May 2015 and 1 June 2015
- Preferred Bidder communicated with affected employees on 5 and 18 June 2015

HR Working Group sessions



	Date:	Key Focus
No. 1	3/06/14	Terms of Reference of Working Group agreed
No. 2	3/07/14	Feedback from Organised Labour on engagements with employees at Bulk Works
No. 3	6/08/14	Agreement on key drivers for change and key outcomes sought from process
No. 4	26/09/14	Feedback from management on engagement with employees 25/09/14 Presentation and discussion of Assessment Report
No. 5	31/10/14	Recap on progress, scope, mandate, and objective
No. 6	28/11/14	Recap on progress, Assessment Report and Assessment of Options for Employees
No. 7	16/04/15	Outstanding issues discussed – complete list to be submitted by unions. Preferred bidder introduced and presented.
No. 8	19/05/15	Discussed union questions and employer responses. Due diligence process on pension and medical funds. Engagement plan.
No. 9	2/07/15	Continue with due diligence process on pension and medical funds.
No. 10	7/09/15	Final meeting for report back to LLF

Challenges

- Extensive and complex Legislation – exhaustive process (> 4 years)
- Changes in trade union leadership during the process
- Legal challenge by 2nd bidder
- Contract to be monitored and managed diligently
- Political will is required – keep Council informed

Benefits

- Regulatory compliance within 3 years (Regulation 2834 or 17)
- Extensive training and development of staff
- Improved Operational efficiencies:
 - SCM processes;
 - treatment process optimization;
 - savings on e.g. electricity and chemicals;
 - introducing alternative chemicals
- Substantial saving compared to the Municipality performing the full function (R9m/year in 2015/16 Rand value)
- Transfer of risk to the Operator



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