

02 JULY 2015

The Senior Investigator
PUBLIC PROTECTOR SA
PO BOX 424
BHISHO
5605

Dear Adv. Maxakato

**COMPLAINT: S .CHETTY// NELSON MANDELA BAY MUNICIPALITY-
MOTHERWELL THUSONG CENTRE**

Dear Sir,

As per your directive I refer to the report from the Municipality dated February 2015 and a covering letter from Mpilo Mbambisa dated 04 March 2015.

I shall deal with response of the municipality following the Annexures they believe portray facts regarding this matter as follows:

ANNEXURE A

This is my complaint with clear allegations which the municipality should have attempted to address in an orderly and logical sense so as to understand which aspects of my complaint do they agree with and which ones do they dispute. The municipality has not refuted the allegations instead they have provided voluminous documents which they do not explain how they relate to the allegations or their purported defence or

reply. Their submission without a document explaining their Annexures fails to assist the PP in resolving this matter in violation of their obligation to assist the PP in resolving complaints. I request that you take note of this conduct.

ANNEXURE B

In the third last paragraph of Annexure B the NMBM reveals that it was a term and/or condition of appointment that fees of the consultants be in terms of the gazetted fee structure for each professional body. It is evident from the very same letter that the consultants that had been appointed are as follows:

1. An architect/Principal Agent
2. A quantity surveyor
3. An electric engineer
4. And a mechanical engineer

According to Board Notice number 194 of 2011 which is a newer Notice than the one that would have been applicable from the beginning of the project, a fee structure for a project of this magnitude for an architect should have been calculated as R 135 000.00 PLUS 6.5% of R 30 821 655 = R 2 138 407.60. According to the above notice even my first calculation of R 3.1 Million was too high. Therefore as per this gazetted notice Raj Maharajh Associates should never have been paid R 9 623 438.31 for fees in this project. There is therefore an amount circa R 7 485 030.70 that has been paid to RMA although it was unlawful to do so given the terms

of appointment and the applicable government gazette. The City Manager is once again requested to pay particular attention to this and decide what he wants to do as in my view he is happy to pass reports from his officials to the PP which he never studied although he is an accounting officer.

I am unable to assess the payment to the Electrical Engineers and Mechanical Engineers without knowing the scope of the work involved in respect of electrical work and installation work as some of the work was done by Ho Hup. My allegations regarding construction costs being depleted due to undue and excessive payments to RMA stand and have not been refuted by NMBM. I reiterate that the payments in excess of what is prescribed by the Gazette were unlawful and I am prejudiced as a result of this callous conduct, the question to be answered is where did the additional fees come from if they did not come from the construction costs budget and cover this up by be unlawfully terminating MBCC's contract.

According to Board Notice 140 of 2008 the fees for a quantity surveyor for a project of this magnitude should have been R 876 000.00 plus 4.47% of R 14 821 655.00 = R 1 538 528.00. The fees paid to KWMH QS were in the order of what should have been paid. You will notice that my complaint on the professional fees were only directed to the RMA as these fees are shockingly over exorbitant.

ANNEXURE C

I have perused this Annexure before and I do not have much to say on it other than to say the following:

1. That at the time when the last payment was made to Ho Hup (previous contractor) only an amount of R 21 101 719 .76 had been paid to Ho Hup.
2. From the budget of R 35 136 688.00 an amount of R 14 034 969.00 should have been available to bring the works to completion when MBCC came on board but half of this amount was no longer available as it had been wasted unduly and unlawfully as a payment to RMA.
3. In the NMBM's own report and version or admission the approved fees had been unduly exceeded (this is evident from the revelation that the approved and estimated fees were R 7.7 Million, which is too high). If anyone disputes this without providing evidence to the contrary I request the PP to refer to the MFMA and consider charges against the involved officials including the City Manager for what is a clear act of Financial Misconduct in the context of MFMA.

ANNEXURE D

This is a formal resolution for the appointment of Ho Hup, of importance in this is the fact that the budget for the entire project was R 36 000 000.00 exclusive of VAT which includes an amount of R 30 821 656.00 for construction costs which means that the professional

fees were exactly R 5 178 344.00 excluding VAT and yet NMBM paid R 9 623 438.31 to RMA alone. Why am I the only one who can spot the irony?

ANNEXURE E

This is an unlawful extension of scope of work for RMA. In essence what this annexure does is to make RMA a contractor, an architect and principal agent which is tantamount to placing RMA in a position of the police, prosecutor, judge and executioner all in one, this is nothing more than giving RMA a licence to loot and justify its unlawful previous and future payments. This document does not call for RMA to submit a CIDB grading certificate as this is a government project and the law is clear that no one or entity may conduct construction work from government (except housing work) without a CIDB registration certificate either as a contractor or implementing agent, this is another SIYENZA scandal. This is an unlawful letter or whatever this document may purport to be. NMBM alleges that the value of outstanding work was R 9 623 437.72, this work could not be just allocated to RMA without following an open and public tendering process the constitution, the PPPFA and MFMA are clear in terms of this, including NMBM's own SCM Policy. This work is more than R 500 000.00 and should have gone through a tendering process. This is a revelation of corruption at its best in NMBM. I am saying all of this knowing very well that the value of outstanding work was less than R 2.5 Million as a person who did the work and I undertake to provide proof to

this effect. The City Manager can no longer afford to close his eyes and turn a blind eye to this corruption.

ANNEXURE A (Attachment to RMA's ILLEGAL EXTENSION OF SCOPE)

I deny that this was the value of outstanding work, the value of outstanding work is as shown in a separate cost report I shall provide.

OTHER ANNEXURES

It is not necessary that I comment on the rest of the annexures as they have just been annexed to confuse the Public Protector.

NEXT CAUSE OF ACTION/ CONCLUSION

As directed by Adv. Maxakato during a telephonic discussion on 01 July 2015 wherein I wanted to know what he intends doing going forward with this matter **I hereby demand that the NMBM responds to this response by me to their purported response by no later than Friday, 10 July 2015 failing which the Public Protector will be asked to conclude this process by writing a report confirming my allegations as no effort has been taken by NMBM to dispel them, and no evidence has been provided to dispel them.** And in effect no evidence can be adduced to dispel my allegations. For the benefit of the NMBM, I wish to confirm that 90% of the documents you have submitted are the same documents I relied on in making my complaint and you have done nothing to challenge the allegations and I am not prepared any

longer to permit you to delay this process unduly as I am aware that you have no credible evidence to dispel them as they are true and accurate.

Yours truly,

Samoo Chetty