



CILLIERS BRINK MP

T: 021 403 2695 | C: 067 407 9701 | CilliersB@da.org.za

Ref: MFMA / 2020 / 01

2 January 2020

Mr. RB Makamu MPL
MEC for Cooperative Governance, Human Settlements & Traditional Affairs
Limpopo Provincial Government
POLOKWANE
mathyem@coghsta.limpopo.gov.za

Dear Sir,

CALL FOR AN INDEPENDENT FORENSIC INVESTIGATION INTO POSSIBLE TENDER & PAYMENT IRREGULARITIES IN BA-PHALABORWA LOCAL MUNICIPALITY IN TERMS OF SECTION 106 OF THE MUNICIPAL SYSTEMS ACT, 2000

1. I write to inform you of a series of suspicious transactions by the Ba-Phalaborwa Local Municipality that appear to contravene provisions of the Municipal Finance Management Act, 2003 ("MFMA") relating fair and transparent competitive tender processes. The transactions may also constitute serious misconduct by senior managers of the municipality. For reasons set out below I believe that this matter compels your intervention in terms of section 106 of the Municipal Systems Act, 2000.
2. The transaction relate to the following two projects, and companies:
 - 2.1 The refurbishment of the Namakgale Stadium (MIG/LP/1953/R.ST/15/17) – Infra Projects Africa Pty (Ltd) (Reg. No. 2014/120680/07);
 - 2.2 The installation of storm water culverts in Mashishimale and various other areas – Phamela Engineering Services (Pty) Ltd (Reg. No. 2011/138878/07).
3. This information is gleaned from a set of internal documents given to me, and I set out the facts in more detail in paragraph 5 below. I have taken care to cite each of the documents to help you confirm their existence, and for an independent forensic investigator to determine their veracity. I also include in this correspondence the Minister of Cooperative Governance & Traditional Affairs as well as MFMA Unit of National Treasury in light of their monitoring responsibilities in matters of this nature.

4. To the best of my understanding the same information has been given to the Executive Mayor, Cllr Merriam Malatji. According to unconfirmed sources more specific allegations of misconduct against the municipal manager, and other senior managers, have also been brought to the Executive Mayor's attention. But the municipality has failed to discharge its statutory obligations in that:
 - 4.1 The Executive Mayor has not disclosed full or essential facts about the transactions, and the nature of the allegations of misconduct against senior managers, to the municipal council. If indeed the Executive Mayor had prior knowledge of the matter, her non-disclosure constitutes a contravention of Regulations 5(1) and 5(2) of the Disciplinary Regulations for Senior Managers ("the Disciplinary Regulations") of the Municipal Systems Act ("the Act");
 - 4.2 The Municipal Council has not applied its mind to whether the matter justifies the appointment of an independent investigator as contemplated by Regulation 5(3) of the Disciplinary Regulations. (Similar provisions are contained in the MFMA Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings).
5. In essence the documents reveal the following:
 - 5.1 **Ba-Phalaborwa appointed and paid Infra Projects Africa and Phamela Engineering Services without following competitive bidding processes, and without contracts having been concluded between the municipality and the service providers concerned.**
 - 5.1.1 In a letter dated 26 June 2019 and referenced 9/4/1/39 the municipal manager, Ms MM Moakamela, informed Infra Projects Africa that they had been appointed to attend to the refurbishment of the Namakgale Stadium, a project evidently funded by national government by means of the Municipal Infrastructure Grant (MIG). The scope of the project included planning, design, the carrying out of an environmental impact assessment, geological surveys, and the administration and execution of the work. This is known as a turnkey project in construction parlance, and is distinct from contracts that only involve either consulting or construction. According to the appointment letter the work was to commence immediately upon acceptance of the letter of appointment.
 - 5.1.2 On 28 June 2019, two days after its appointment letter was issued, Infra Projects Africa invoiced the municipality for an amount of R499,080 for services rendered on the refurbishment of the Namakgale Stadium (invoice number: INFRA/BPLM/INVO1/2019). The invoice contains the following items: R157,743.32 for "Inception", R268,163.65 for "Concept and Viability", and R11,882.50 for "Disbursements and Recoverable Expenses". The statement of disbursements includes documentation,

plans, printing, accommodation, and travel expenses. The services were apparently rendered, and the disbursements incurred, in the space of less than two full working days. This invoice was paid within a day of being issued on 29 July 2019 (Payment reference: 77014660). Given that in the 2017/18 financial year Ba-Phalaborwa had an average cost coverage of only six days, the swiftness of this payment is extraordinary.

- 5.1.3 In a letter dated 4 July 2019 and also referenced 9/4/1/39 the municipal manager issued a letter of appointment to Phamela Engineering Services for the installation of storm water culverts in various areas of the municipality. On a reading of the letter of appointment this too was a turnkey project, and work had to commence immediately upon acceptance of the appointment. The company invoiced the municipality R930,261.44 on 19 September 2019 under the same reference as the letter of appointment. The invoice was paid eleven days later on 30 September 2019 (payment reference: 77015163).
- 5.1.4 The municipality's report on the implementation of its Supply Chain Management Policy for the year 2018/19 ("the 2018/19 SCM report") show that no tenders were adjudicated or awarded in this period either for the refurbishment of Namakgale Stadium, or the storm water culverts project. Reference is made to "design and construction of Culverts (Turnkey)", but at 30 June 2019 this tender still had to be evaluated and adjudicated (tender number: 21/2016). A thorough investigation should determine whether such a tender was in fact advertised, and if so, whether its evaluation and adjudication was completed before Phamela Engineering Services was appointed on 4 July 2019.
- 5.1.5 The name of Infra Projects Africa does appear in the 2018/19 SCM report as being chosen for the municipality's "Pool of Consulting Engineering for Civil Works". I have perused the consulting agreement between Ba-Phalaborwa and Infra Projects Africa that confirms the appointment. But this consulting agreement, and presumably also the separate agreements with the other panelists, was only concluded on 21 October 2019 – months after the municipality had awarded the Namakgale Stadium refurbishment project to Infra Project Africa. Curiously the consulting agreement indicates that it was drafted and signed on the same day.
- 5.1.6 At the time of checking the municipality's website earlier today, no supply chain management report for the first quarter of the 2019/20 year had been published (this commenced on 1 July 2019). But I understand that Ba-Phalaborwa appointed Infra Projects Africa and Phamela Engineering to a second panel of service providers in this period, namely the "Pool of Consulting Engineering for Electrical Engineering". I also

perused this second consulting agreement as between Ba-Phalaborwa and Infra Projects Africa. As can be expected, its terms are substantially similar to the first consulting agreement. And it was also drafted, and concluded, on 21 October 2019. It would only make sense if Ba-Phalaborwa's consulting agreements with the other members of this panel, including Phamela Engineering Services, were concluded in the same period and on the same terms.

5.1.7 Even if these consulting agreements can be interpreted to include turnkey projects, as opposed to merely consulting services, Infra Projects Africa's appointment letter of 26 June 2019 could not have been issued within the ambit of a contractual relationship that only arose on 21 October 2019. The same would be true of an agreement with Phamela Engineering Services that was also concluded after its appointment to the storm water culverts project on 4 July 2019. As the terms of the consulting agreements make clear, the appointment of Infra Project Africa to any specific project is subject to the municipality issuing a letter of appointment and specifications. No provision is made in the consulting agreement for retroactive appointments. Moreover, some form of competitive bidding as between panelists would presumably be required before specific work, especially a turnkey project, is awarded to a particular panelist.

5.2 **The Executive Mayor, and/or the municipal manager, has failed to disclose these improprieties to the municipal council, and the municipal council has failed to consider the appointment of an independent investigator in terms of Regulation 5 of Disciplinary Regulations for Senior Managers (Municipal Systems Act):**

5.2.1 Either one or both of these matters were placed before the municipal council in a special meeting on 19 December 2019. From draft minutes of the meeting provided to me the item is cited as "ELECTRICAL PROJECTS: ISSUE OF TURNKEY APPOINTMENT (TS)". The recommendations, which I understand were accepted, reads as follows:

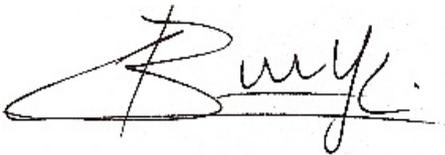
1. *That Council NOTES the continuation of the projects as Turnkey Projects to enable the projects to be completed within time and the allocated INEP budget for 2019/20 financial year and including internal projects mentioned above.*
2. *That the item BE REFERRED to MPAC for probing.*
3. *That Councillor SP. Mashumu's objection for referring the report to MPAC BE NOTED."*

5.2.2 From my discussion with Cllr Sybrandt de Beer of the Democratic Alliance it seems that municipal council was not furnished with the full particulars of the transactions in question, and neither were councillors informed of more specific allegations against the municipal manager and other senior managers. As pointed out above, the Executive Mayor's non-disclosure in this respect made it impossible for councillors to fulfill their obligations in terms of the Disciplinary Regulations.

5.2.3 Instead the municipal council decided in vague terms to refer the matter to the Municipal Public Accounts Committee ("MPAC") – a body of councillors with neither the resources nor the statutory power to investigate allegations of serious misconduct against senior managers. It follows that the Executive Mayor and the municipal council have failed to discharge their statutory obligations, and that steps listed in Section 106 of the Act should be considered by the provincial government.

6. I look forward to your reply, and your favourable consideration of this call to take steps in terms of Section 106 of the Act to ensure that an independent forensic investigation is conducted into possible tender irregularities in the Ba-Phalaborwa, and that the municipal council be compelled to consider and act on the findings.

Yours faithfully,



Cilliers Brink MP
Democratic Alliance

CC:

Dr Nkosozana Dlamini-Zuma MP
Minister of Cooperative Governance & Traditional Affairs
PRETORIA
ThobaniM@cogta.gov.za

Mr Parks Tau MP
Deputy Minister of Cooperative Governance: Local Government
PRETORIA
BabalwaG@cogta.gov.za

MFMA Unit
National Treasury
PRETORIA
mfma@treasury.gov.za