

ISDF TENDER

COMMENTS ON THE FINDINGS OF THE WESTERN CAPE PROVINCIAL GOVERNMENT "WCPG", IN RESPECT OF THE ISDF TENDER PROCESS AND THE RESPONSE THERETO BY THE KNYSNA MUNICIPALITY ("KM").

PREPARED BY MS CAMPBELL

Background

In May 2014 the Executive Mayor ("the Mayor") of the Knysna Municipality requested the Western Cape Provincial Treasury to investigate the ISDF Tender. In late November 2014 the Knysna Executive Mayor was provided with a summary of the findings of the Provincial investigation into the ISDF Tender process. It was indicated on the correspondence that the report was attached to the summary. The summary contained several adverse findings, yet contained the following irrational statement;

The assessment revealed that the process followed by Knysna Municipality is considered to be compliant with the SCM prescripts and regulations. However, certain deficiencies were identified which, according to the report, did not influence the outcome of the procurement process.

The administration prepared a response thereto, which was signed by the Mayor. The summary together with the response was included in the agenda for the MAYCO meeting of 19 February 2015.

The agenda included the following proposed recommendation;

That Council notes that the Provincial Government has found the process followed by Knysna Municipality in respect of Tender T03/2013 to be compliant with SCM prescripts and regulations and that any deficiencies in the process did not influence the outcome of the procurement process.

In response to this I wrote to the Mayor and asked for the full report. This letter was copied to Minister Bredell. I commented on the summary and the municipal response thereto. The comment is annexed hereto as "ANNEXURE A".

The matter was postponed to the following Council meeting and the recommendation was amended to include paragraph [b] hereunder;

[b]That the Provincial Government be requested to address Council at its Ordinary Meeting in March 2015 to explain how the finding was arrived at and

in particular to clarify how the identified deficiencies were found not to have influenced the outcome of the procurement process.

The lack of clarity relating to the ISDF investigation thereafter delayed the appointment of Mr. Grant Easton as Municipal Manger at a special council meeting on the 6th of March 2015, as the Mayor wanted clarity regarding the ISDF findings before appointing Mr. Easton.

Mr. Graham Paulse, who had received the copy of my letter to the Mayor and Anton Bredell, advised me telephonically, that upon receipt of "Annexure A", he realised that the wrong letter had been signed by Minister Bredell and sent to the Mayor. He advised me that he promptly sent the correct letter to the Municipality.

The entire paragraph that indicated that process was compliant with SCM prescripts and that the deficiencies did not influence the outcome of the process had been removed from the letter.

This letter was sent to the municipality before the March Council meeting. As the paragraph, that gave rise to the discrepancy had been removed, officials from the WCPG no longer needed to attend the Council meeting.

At the Council meeting of the 26th of March Councillor van Aswegen asked whether paragraph [a] of the recommendation of the Executive Mayor was correct. The recommendation read as follows;

[a] That Council notes that the Provincial Government has found the process followed by the Knysna Municipality in respect of Tender T03/2013 to be compliant with SCM prescripts and the regulations and that any deficiencies in the process did not influence the outcome of the procurement process;

Melony Paulsen explained that the paragraph referred to the recommendation of the Provincial Government and not a finding of Council.

Melony Paulsen, who had at this stage received the amended letter from Mr. Paulse, in which the recommendation in paragraph [a] had been removed, did not disclose to the Council that the Provincial Government had withdrawn the incorrect conclusion from their letter. Ms. Paulse was aware of the fact that the Provincial Government had advised the municipality that Minister Bredell had erroneously signed the wrong letter. This letter contained the incorrect conclusion and had thereafter been erroneously sent to the Mayor in November 2014. One would have expected Ms. Paulse to advise Council that the Provincial Government would no longer be required to explain the discrepancy to Council, as the discrepancy had been removed. The logical result of the removal of the paragraph was that the Provincial Government had

concluded that the tender process was not compliant with SCM prescripts and the outcome of the process had been influenced by the non-compliance.

The Mayor also did not advise the Council that the problematic conclusion had been removed and that there was no longer a need for an explanation from the Provincial Government. Instead the Mayor advised the Council that certain items in the letter were in dispute. This was nothing new as the response from the administration had been included in the agenda item in February 2015.

The Mayor advised the Council that she did request the Provincial Government to address the Council and had received nothing from them. The Mayor confirmed to the Council that she had received no response from Minister Bredell, upon which Councillor Luthuli expressed the view that the Provincial Government was undermining the Council.

Later during the same meeting, when the item relating to Mr. Easton's appointment as Municipal Manager came up, the Mayor advised the Council that she is yet to receive the full report from Minister Bredell. Council was advised that the administration had been in contact with the Provincial Government, with a view to submitting a report. As the process would take a long time to complete, Council needed to proceed with the appointment of the MM. The Mayor reiterated they had received nothing further from Province.

The Mayor was later asked by Councillor van Aswegen whether the Minister Bredell had not at least acknowledged receipt of the Mayor's letter. At no stage did the Mayor advise the Council that the Provincial Government had in fact responded and that the irrational conclusion had been omitted from the report.

The Mayor and Melony Paulsen failed to disclose the true position to the Council and in the process the Council was misled and made the decision to appoint the MM without the benefit of the vital information that was withheld from them.

The second municipal response to the findings was prepared by Melony Paulsen ('MP'), the Manager, Legal Services and signed by Councillor Esme Edge, on behalf of the Executive Mayor. The response was submitted on the 5th of May 2015.

THE FINDINGS AND THE RESPONSE THERETO ARE SET OUT HEREUNDER, FOLLOWED BY COMMENT FROM SUSAN CAMPBELL ("SC").

- 1. The bid specification was not developed by a Bid Specification Committee ("BSC")**

FINDING WCPG: The bid specification was developed by the Director: Planning and Development, in the absence of the BSC, as the KM did not have a functioning BSC at the time. This is a contravention of sections 26.1(a) and 27.1 of the Supply Chain Management ("SCM") Regulations.

RESPONSE KM: The response, prepared by MP, is copied and included hereunder.

This finding is incorrect.

A Bid Specification Committee (BSC) was properly established as provided for by the Supply Chain Management (SCM) Regulation 26(1) (a) and 27(1).

COMMENT BY SC: The relevant provisions of the SCM Regulations are included hereunder:

MFMA: SCM REGS

Committee system for competitive bids

26.(1) *A committee system for competitive bids is hereby established, consisting of the following committees for each procurement or cluster of procurements as the accounting officer may determine:*

(a) ***a bid specification committee (own emphasis);***

(b) *a bid evaluation committee; and*

(c) *a bid adjudication committee;*

(2) ***The accounting officer appoints the members of each committee (own emphasis), taking into account section 117 of the Act;***

The appointment of the BSC by the Accounting Officer should be in writing. No evidence of the appointment of the BSC for this tender was provided to the WCPG. In fact, all documentation provided confirmed the finding that the BSC had not been appointed and that the Director: Planning and Development played a pivotal role in developing the bid specifications. The documents attached in support of the KM prove that Mr Maughan-Brown and the managers of various departments under his control were responsible for the tender document. No evidence of any BSC meetings could be provided.

RESPONSE KM:

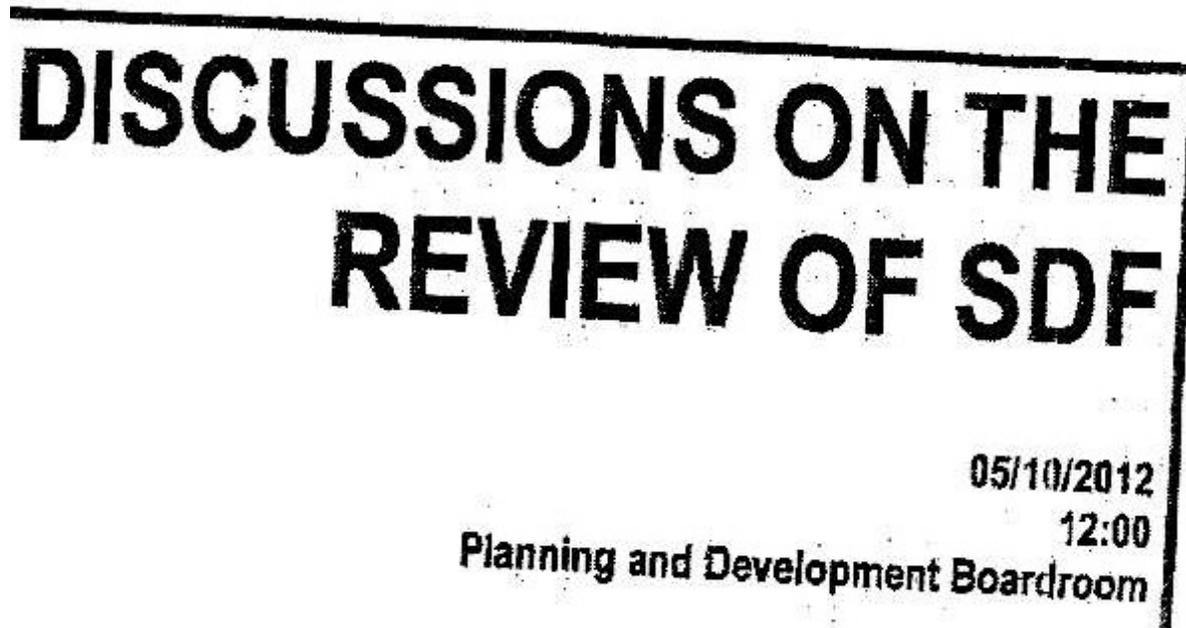
The members of the Bid Specification Committee were:

- Ilse Van Schalkwyk
- Dawid Adonis
- Eben Phillips
- Fredri Kruger
- Jonathan Mabula

COMMENT SC: It is unclear how MP came to the conclusion that the above managers in Mr. Maughan-Brown's department were the members of the BSC.

This is contradicted by Annexure "A" to the response, in which Mr. Maughan-Brown provided Mr. Phillips with detailed requirements for the Spatial Development Framework ("SDF").

"Annexure B" is described by MP as "minutes of a BSC meeting". Sections of the first page are copied hereunder and commented on.



MP's reference to "Annexure B" as "minutes of a BSC meeting" is inexplicable and contradicted by the heading and contents of the document. The document is headed "DISCUSSIONS ON THE REVIEW OF SDF" and the meeting was held in the Planning and Development Boardroom.

A further section of "Annexure B" is included hereunder.

Meeting convened by:	IDP Manager
Purpose of meeting:	Discussion on the way forward of drafting an integrated SDF document
Facilitator:	IDP Manager
Admin Support:	Cherne Wolmarans
Attendees:	Eben Phillips, Ilse van Schalkwyk, Mike Maughan-Brown, Fredri Kruger, Jocelyn Farlan

From the above it is clear that the attendees were:

Eben Phillips
 Ilse van Schalkwyk
 Mike Maughan-Brown
 Fredri Kruger and

Jocelyn Farlan.

How Melony Paulsen, an admitted Attorney, could have come to the conclusion that this document related to a BSC meeting, is beyond comprehension.

Firstly the attendees did not correspond with the persons MP alleged were members of the BSC.

Mike Maughan-Brown and Jocelyn Farlan were not members of the alleged BSC. By the same token, Mr. Mabula and Mr. Adonis were supposed to be members of the BSC, but they did not attend the meeting.

Secondly, the purpose of the meeting is described as "Discussion on the way forward of drafting an integrated SDF document"

Agenda topics

- Presentation IDP Manager
- Discussion on way forward

The agenda topics above clearly indicate that the meeting involved a presentation from the IDP Manager and a discussion on the way forward and refute the allegation by MP that this was a BSC meeting.

To further confuse matters, MP provided us with different names of members of the BSC, in response to a request for access to information in 2014. In response to a request for information relating to the identity of the members of the BSC, MP forwarded an email from Ilse van Schalkwyk to MP, dated 25/04/2014, in which MP was advised that the terms of reference document was drafted by Fredri Kruger, Eben Phillips, Ilse van Schalkwyk, Dawie Adonis and Mike Maughan-Brown.

Noteworthy is the presence of Mike Maughan-Brown and the absence of Jonathan Mabula from the list. The correspondence, which is copied and included below, confirms the finding of the WCPG that there was no BSC. It is hard to fathom how MP, a qualified legal practitioner and the Manager; Legal Services, could have concluded from the correspondence below that there was a BSC and that the members were as stated by her. There is furthermore no explanation for the discrepancy between the names of the members provided to us and the investigating team.

----- Original message -----

From: Ilse van Schalkwyk <ivanschalkwyk@knysna.gov.za>

Date: 25/04/2014 15:46 (GMT+02:00)

To: Melony Paulsen <mpaulsen@knysna.gov.za>

Cc: Delon Barnard <Delon@loganmartin.co.za>

Subject: Re: BSC - ISDF

Hi Melony

The terms of reference was drafted by the following people:

1. Acting Manager Town Planning - Fredri Kruger
2. Manager IDP - Eben Phillips
3. Manager LED - Ilse van Schalkwyk
4. Manager IHS - Dawie Adonis
5. Director Planning & Development - Mike Maughan-Brown

Once the terms of reference was drafted it was circulated to the external steering committee members (District and Provincial & National Departments) for comment and input. So this was a very inclusive process.

Regards
Ilse

The following response from MP therefore seems inexplicable in the light of the above information.

RESPONSE MP:

During the investigation on 28 August 2014, one of the members of the BSC and also a member of the BEC, Ms Ilse Van Schalkwyk, was interviewed by Messrs Graham Paulse and Michael Brewis from Provincial Treasury and questioned on her role in the ISDF Tender process. Ms Van Schalkwyk advised them that she was both a member of the BSC, who developed the Terms of Reference and a member of the BEC which evaluated the tender and made a recommendation to the BAC.

It is unclear why and how WCPG could have made such a finding, after having interviewed Ms Van Schalkwyk and having been provided with minutes of the BSC meeting and a copy of the Terms of Reference.

COMMENT SC: The above statement from MP shows a shocking lack of knowledge and/or disregard of SCM Regulations. MP ought to have known that the fact that Ilse van Schalkwyk may have thought that she was a member of the BSC (presumably because they developed the terms of reference) does alter the fact that no BSC was appointed.

2. No Evidence of Approval of Bid Specification By AO Prior To Publication.

FINDING WCPG: The bid specification had to be approved by the AO prior to publication, in terms of section 27.2(g) of the SCM Regulations. The KM provided a copy of the terms of reference (“TOR”), with the initials of the AO and certain amendments thereto as evidence of review, however evidence of approval could not be provided.

RESPONSE KM: A copy of the TOR, containing the signature of Lauren Waring on the front page, was handed to the investigating team by MP on the 20th of August 2014. The document dated 11 December 2012 contained further hand written notes from the AO, proving that the AO did approve the bid specifications. The document was annexed as annexure “G”.

COMMENT SC: It is clear that the WCPG and MP are interpreting the same TOR document differently. The WCPG considers the document proof of review of the TOR by the AO, whereas MP considers the same document as proof of approval.

However, annexure “D” an email, dated 12 December 2014, from Eben Phillips addressed to “Colleagues”, provides proof that the document which was signed the previous day by the AO, was a draft document, that would be only be finalised once all comments and input had been received.

Annexure “D” is included hereunder.

“Annexure D”

>>> Eben Phillips 12/12/2012 12:52 >>>
Colleagues

Knysna Municipality is about to embark on a process of reviewing our SDF, Economic Development Strategy, Strategic Environmental Assessment and the Integrated Human Settlement Plan. In order to achieve greater integration and alignment we are going to do this through one combined process and develop an Integrated Strategic Development Framework.

Attached is a copy of the draft Terms of Reference for the appointment of consultants which we aim to advertise in January 2013. We therefore would like you to peruse the draft TOR and provide comment on it. It would be appreciated if your comment could reach the office of Mike Maughan-Brown on or before 15 January 2013.

Thanks for your co-operation in this regard and we are positive that this process will certainly facilitate a strong and realistic planning framework for our municipality.

Yours faithfully

From the above it is clear that comments could be submitted until 15 January 2015 and that the TOR document may be amended once comments had been received. (The TOR document was in fact amended after the date of signature by the AO. This aspect will be dealt with later hereunder.)

It is therefore clear that the WCPG were correct in interpreting annexure "G" as evidence of review of the TOR by the AO and that there is no evidence that the final TOR document was approved by the AO.

Evidence to the contrary is contained in annexure "C", which is included hereunder. Annexure "C" includes an email from the AO, Lauren Waring to "Eben, Mike and team" dated 12 December 2012, in which they are thanked for a clearly articulated and well constructed document. The document referred to is the draft TOR document, which was subsequently forwarded to MP by the AO on the 13th of August 2014. It is telling that in the email the subject is described as "Draft TOR for Integrated Strategic Development Framework". This is the same document that MP provided to the investigating team from the WCPG on the 20th of August 2014. It is therefore clear that Lauren Waring did not have the final TOR document in her possession, lending further weight to the finding that she did not approve the final TOR.

Annexure "C" is included below.

Melony Paulsen - Draft TOR for Integrated Strategic Development Framework

From: Lauren Waring
To: Melony Paulsen
Date: 13/08/2014 15:36
Subject: Draft TOR for Integrated Strategic Development Framework
CC: Anita Strydom

Hi Mel

Copy as discussed.

Ta

L

Lauren Waring (Municipal Manager)
 PO Box 21, Knysna, 6570 - Western Cape, South Africa
 Tel.: +27 (0)44 302 6300 (switchboard) or 302 6302 (office)
 Fax: +27 (0)86 858 9636 - E-mail: lwaring@knysna.gov.za

>>> Lauren Waring: 2012/12/12 01:56:27 PM >>>

Dear Eben, Mike and team

Thank you for such a well-constructed and clearly articulated document.

This is not the only evidence that the AO was not in possession of the final TOR document.

On the 30th of April 2013, Lauren Waring forwarded an email to objectors in which a document, described as the "Final Draft ISDF TOR Document" was annexed. Ms. Waring also annexed the incorrect BAC minutes.

I noticed that paragraph 14 differed materially from the advertised TOR document.

Paragraph 14 of the Final Draft TOR document, which was provided to objectors ended as follows:

Applicants who do not meet or better the minimum qualifying score of 150 points for Functionality will not be considered further. Applicants meeting the minimum criteria will progress to the next phase of the evaluation.

Paragraph 14 of the advertised document read:

Applicants who do not meet or better the minimum qualifying score of 150 points for Functionality will not be considered further. Applicants meeting the minimum criteria will progress to the next phase of the evaluation. **The final score will only consist of BBBEE and Price.**

NB. The municipality of Knysna has recently adopted a Preferential Procurement Strategy document which may be applied for the reason of objectivity.

The sections in red where added to the document signed by the AO.

I wrote to the AO on the 13th of May 2013 and pointed out the discrepancy between the two documents. The email is included hereunder.

>>> "Susan Campbell" <sucam@mweb.co.za> 13/05/2013 08:51 >>>
Dear Ms. Waring

We refer to the Terms of Reference attached to your email to objectors.

It has come to our attention that the annexure differs from the Terms of Reference sent to parties expressing an interest in tendering for the ISDF contract.

We have noticed that there is a material difference in paragraph 14 of the two documents.

This difference is extremely relevant to the whole process and objectors would have based their objections on a document that differs from the document the tender was, or should have been decided on.

Kindly forward the correct document to objectors and allow a further reasonable period for objectors to respond to the correct Terms of Reference.

In addition to this the incorrect minutes of the BAC were annexed. We were given the minutes of March 2013 and not the meeting of 15 April when the bid was awarded.

The Preferential Procurement Strategy document would also be required by objectors to enable them to respond to the correct Terms of Reference.

There is no such document on the website.

We look forward to hearing from you.

Kind regards

Susan Campbell.

This provides clear proof that the AO did not approve the advertised bid document. Had the AO been in possession of the advertised TOR, one would have expected her to provide this document to MP in August 2014 and to the objectors in April 2013.

In the absence of proof from the KM that the advertised TOR document was signed and approved by the AO, the findings of the WCPG have to be accepted.

3. A lack of breakdown of thresholds for evaluation criteria.

FINDING WCPG: It is not clearly indicated how points were allocated for each bidder, in the absence of breakdown of points in different thresholds, to ensure consistent allocation of points in accordance with expertise and resourcefulness.

RESPONSE KM:

This finding is also incorrect.

The bid document contained the bid evaluation criteria for functionality. All bidders were scored in accordance with the said criteria. Overviews of responsiveness in terms of functionality by bidders were performed. A score sheet based on the bid criteria was completed by the BEC. As proof thereof, we attach hereto "Annexure H", the Bid Adjudication Committee Meeting minutes, which includes the Bid Evaluation Report, submitted by the BEC to the BAC during the final adjudication.

COMMENT SC: The bid document did include evaluation criteria and the points or weight that would be attributed to each criterion.

However the bid document lacked objective **applicable values** that had to be used when scoring each individual criterion.

For example, 50 points were allocated to the quality of methodology of the proposal and the understanding and conceptualisation of brief. No applicable values were included to guide the BEC in scoring this or any of the other criteria. It was therefore not possible to determine whether the allocation of the individual scores was fair and rational.

The absence of applicable values to guide the BEC in scoring the bids constituted non-compliance with paragraph 6.2(c) of the National Treasury Implementation Guide to the Preferential Procurement Regulations 2011. The relevant section is included hereunder.

IMPLEMENTATION GUIDE: PREFERENTIAL PROCUREMENT REGULATIONS 2011

6.2 When an institution invites a bid that will also be evaluated on the basis of functionality as a criterion, the AO/ AA must clearly specify the following aspects in the bid documents:

(a) Evaluation criteria for measuring functionality

The evaluation criteria may include criteria such as the consultant's relevant experience for the assignment, the quality of the methodology; the qualifications of key personnel; transfer of knowledge etc.

(b) Weight of each criterion

The weight that is allocated to each criterion should not be generic but should be determined separately for each bid on a case by case basis.

(c) Applicable value

The applicable values that will be utilised when scoring each criterion should be objective.

As a guide, values ranging from 1 being poor, 2 being average, 3 being good, 4 being very good and 5 being excellent, may be utilised.

4. Absence of proof of comprehensive advertisement of erratum.

FINDING WCPG: The KM was unable to prove that the erratum was advertised in all newspapers where the initial advertisement was placed, as required by section 22.1(a) of the SCM Regulations.

RESPONSE KM: It is admitted, but explained that this was to save advertising costs. It is furthermore alleged that no bidders were prejudiced.

COMMENT SC: The SCM Regulations are not discretionary and no organ of state may deviate therefrom in order to save costs. If such a precedent were to be allowed, which other provisions could be ignored to save costs?

It is however correct to state that no bidder was prejudiced, as all the bids exceeded a Million Rand, confirming that all bidders were aware of the amendment.

What is disappointing is that the WCPG did not find that the advertising period did not comply with section 22.1(b)(i) of the SCM Regulations. The ISDF tender was advertised for 21 days. As the tender was of a long term nature and therefore had to be advertised for at least 30 days.

Furthermore it is alleged that the tender was advertised in the Knysna-Plett Herald, Action Ads and Die Burger. However proof of advertisement was only provided in respect of the Action Ads. Despite numerous requests I have not been provided with proof of the advertisements in die Burger and Knysna-Plett Herald.

5. Inadequate minutes of compulsory briefing meeting.

FINDING WCPG: No critical matters were included in the minutes as being raised or discussed at the meeting.

RESPONSE KM: This matter has not been responded to.

6. The BEC members did not score individually

FINDING WCPG: No individual scores were kept to determine highest bidder.

RESPONSE KM: A score sheet based on the bid criteria was completed. The members agreed on the score.

COMMENT SC: It is admitted that individual score sheets were not kept and the finding is therefore correct.

7. Lack of valid reasons in BEC minutes for not awarding bid to City Think Space

FINDING WCPG: City Think Space scored the highest points, in terms of BBEE and price, yet the recommendation was to award the bid to Knysna Creative Heads Consortium ("KCHC"). No valid reasons were provided in the BEC minutes for not recommending the award of the bid to the highest scoring bidder.

RESPONSE KM: The reason was stated in the BEC report and it was based on the

"objective criterion of achieving Council objectives which is recorded in its Preferential Procurement Strategy."

COMMENT SC: No specific objective criteria were described in the BEC report and the Supply Chain Management Policy of the municipality and the provisions of the Preferential Procurement Framework Act Regulations were not complied with. No specific objectives were included in the tender document.

8. The BEC minutes do not reflect the basis for scoring functionality points

FINDING WCPG: The BEC minutes do not include the basis for scoring and allocating functionality points to each bidder and do not reflect the reasoning for the allocation of individual scores.

RESPONSE KM: This was not responded to, save to state that points were allocated for each of the criteria that made up the functionality points.

COMMENT SC: The finding is correct as there is no information to inform the independent observer of how the points would be allocated and how the scores were arrived at.

9. The BEC minutes provide no valid reasons for preferring the bid of KCHC

FINDING WCPG: The award of the bid to KCHC is recommended but the only reason provided in the minutes for the recommendation is the fact that the highest functionality points were achieved.

RESPONSE KM: The reason was stated in the BEC report and it was based on the

“objective criterion of achieving Council objectives which is recorded in its Preferential Procurement Strategy.”

COMMENT SC: It is correct that the BEC minutes provide no reasons for awarding the tender to KCHC, other than that the highest functionality points were achieved. No specific objective criteria were described in the BEC report and the Supply Chain Management Policy of the municipality and the provisions of the Preferential Procurement Framework Act Regulations were not complied with. No specific objectives were included in the tender document.

10. The BEC did not draw the attention of the BAC to the risk of conflict of interest

FINDING WCPG: The BEC did consider the possibility of conflict of interest in respect for the project manager, Chris Mulder and Associates as a major developer in Knysna, but it was decided in the absence of sufficient evidence to recommend the award of the bid to KCHC. The attention of the BAC was not drawn to the risk of conflict of interest and possible mitigation measures.

RESPONSE KM: The finding is incorrect as it was stated in the BEC minutes that the Compliance Officer expressed concern about the potential conflict of interest, but that insufficient information was

available to assess the likelihood of risk materializing in the mitigation options.

COMMENT SC: The BEC did refer to the risk of conflict of interest, but should have had the Compliance Officer address the BAC, to ensure that this matter was carefully considered. It is correct that no risk mitigation measures were suggested to the BAC and the BAC did not include any such measures in the award. Instead Ilse van Schalkwyk addressed the BAC about the creativity of KCHC, confirming that the objective assessment that the reason for the recommendation of the BEC was based on functionality.

11. The bid was awarded based on a Preferential Procurement Policy that did not exist.

FINDING WCPG: The bid was awarded based on objective criteria in terms of a Preferential Procurement Policy that did not exist on the award date and the Supply Chain Management Policy did not make provision for the criteria or mention of the Preferential Procurement Policy.

RESPONSE KM: The Preferential Procurement Strategy was adopted in the 2011/2012 financial year. The provision relied on states;

“ Increase the proportion of spend with local suppliers; and ensure local suppliers have equal access to procurement opportunities.”

The bid was awarded based on the above provision. It is further stated that the strategy allowed the municipality to accept a financial premium for locally based service providers of 25 and 11% respectively.

COMMENT SC: The contention from KM is riddled with inaccuracies which are listed below;

- KCHC could not be regarded as local as, only 33% of the contract price would be paid to local consultants.

- a. **Project Management:** CMAI/ **Based in :**Knysna/ **Budget percentage:** 21.8%
 - b. **Town Planning and GIS:** Marike Vreken /**Based in:** Knysna/
Budget percentage:14.2%
 - c. **Public Participation and Environmental:** DJ Environmental Consultants/ **Based in:** Somerset West/ **Budget percentage:** 31.8%
 - d. **Economic Development:** Urban Econ/ **Based in:** Nelson Mandela Metro /**Percentage:** 14.6%
 - e. **Electrical Engineers:** CMB/ **Based in:** George/ **Budget percentage:**6.6%
 - f. **Civil, Traffic, Transport Engineers:** PDNA/ **Based in:** Gauteng/
Budget percentage:11%
- The Preferential Procurement Regulations of 2011 in any event no longer allowed for preference to achieve RDP goals, such as local contractors.
 - The Supply Chain Management Policy of KM did not allow for a contract to be awarded to a bidder that did not achieve the highest points.
 - Knysna had no Preferential Procurement Policy that provided for a premium for local contractors in 2013. In the 2014/2015 financial year such a policy was adopted for the first time. The “local premium” provisions of this policy were in any event unlawful due to the 2011 Preferential Procurement Regulations.

The tender therefore should have been awarded to City Think Space and the award to KCHC was unlawful.

12. Declaration of interest not signed.

FINDING WCPG: The members of the BAC and BEC did not sign a declaration of interest and confidentiality each time they meet.

RESPONSE KM: The finding is correct and it is an unfortunate oversight that has been corrected.

13. Conflict of Interest

FINDING WCPG: There is a possible future conflict of interest for KCH and CMAI due to the nature of their property development business in Knysna. Previous development proposals outside the urban edge, such as in Brenton on Sea, have

been submitted. CMAI is doing work on behalf of PG Bison, that will be incorporated in the ISDF.

The municipality indicated that it placed a verbal condition that CMAI will not take part in any resulting ISDF developments.

RESPONSE KM: It is denied that the WCPG is in a position to make such a finding. The perceived conflict only relates to one member of the consortium. Every person who has tendered knows someone in the property development business. There are no specific facts to base this on and the attacks are personal in nature. Nobody should have been given the tender as every person could in the future benefit private if they wished to do so in future. The process is very public and the final decision is made by the Council.

COMMENT SC: There is a potential conflict of interest in respect of a number of members KCHC. The motivation therefor is set out hereunder;

13.1 CONFLICT OF INTEREST

13.1.1 THE TENDER DOCUMENT

The experience of CMAI is set out in pages 6 to 8 of the KCHC tender document. Dr. Mulder's firm has specialised in property development for the last 30 years and a number of property developments managed by CMAI are described. Nowhere in the document is there any indication that the firm has any project management experience relevant to the ISDF tender.

Almost all the developments and proposed developments described in the tender proposal are large-scale developments, the majority of which are located outside the urban edge and comprise of self-contained security villages.

On page 7, reference is made to three large proposed developments CMAI was responsible for during the period of 2004 to 2008.

These developments are described as:

Ganzevallei- Bitou Municipality. An agriculture base(sic) residential development on 1 700 hectares.

Hangklip - Bitou. An agriculture and wildlife development.

Kurland- Bitou. Agri and Polo estate on 1 200 hectares.

The following statement on page 7 clearly illustrates a glaring conflict of interest:

All of the above, large scale divers(sic) projects came to a halt as a result of the inability of the Provincial planning authorities and the local municipality to agree on the extent of the Urban Edge and the authority on making the final land use decision.

In all of the above, CMAI acted as Project Managers and Coordinators managing a huge team of Consultants, specialist consultants, almost all of them in this consortium tendering for the Knysna Creative Heads Consortium project.

The above illustrates the conflict of interest in a number of ways:

- The entire KCH Consortium has been involved in several property developments managed by Dr. Mulder's firm, thus creating a perception of bias in favour of property development, outside the existing urban area, in respect of each team member.
- It exposes the glaring conflict of interest associated with appointing a local property developer and his development team to determine the short and long term development future of Knysna.
- The crucial importance of the urban edge to obtaining the necessary planning approvals for CMAI's proposed developments, is emphasised by the statement that the dispute between Bitou Municipality and provincial planning authorities over the urban edge resulted in projects managed by CMAI grinding to a halt.

13.1.2 PREVIOUS KNYSNA SDF PROCESS

The current SDF was the first to be adopted for Knysna and the concept of an **urban edge** was introduced for the first time. The location of the urban edge and the designation of core and secondary conservation areas in the draft SDF led to significant controversy.

Almost all the opponents of the proposed urban edge and designated conservation areas, with the exception of VPM Planners, are currently involved in the ISDF tender, which includes the review of the SDF.

CNDV SOUTH CAPE-MIKE MAUGHAN-BROWN

Mr Maughan-Brown was a managing member of the above firm and headed the Knysna office.

He is currently the Director of Planning and Development of KM and was involved in compiling the terms of reference and a member of the BAC.

In August 2006 Mr Maughan-Brown submitted four objections to the draft SDF on behalf of clients. The objections related mainly to the urban edge in Sedgefield and issues relating to core and secondary conservation areas.

MARIKE VREKEN TOWN AND REGIONAL PLANNERS-MARIKE VREKEN

Ms Vreken submitted seven objections on behalf of clients.

The objections related to the urban edge, infill development, public participation and other matters relating to the preparation of the SDF.

Marike Vreken is part of the KCHC and responsible for the SDF and GIS. Ms Vreken's firm is responsible for approximately 90% of all town planning applications in Knysna.

VPM PLANNING

VPM submitted three objections to the draft SDF on behalf of specified clients and two general objections in respect of Knysna and Sedgefield.

One of the objections was on behalf of Barlow Knysna Properties. This related to the proposed Uitzicht development. VPM had been instructed by Chris Mulder's company CMAI to deliver the objection.

CMAI had been tasked to obtain planning and environmental approval for this proposed development by the land owner and CMAI would become part of the development team should planning approval be obtained.

In terms of the draft SDF the property was located outside the urban edge and the objection proposed the inclusion of the property inside the urban edge.

VPM is not involved in the ISDF tender.

CMAI-CHRIS MULDER

Dr Chris Mulder submitted an objection (prepared by VPM and Urban Econ at the request of CMAI) on behalf of the Forum for Sustainable Development (FSD). It is

not clear who the members of the FSD were, but Dr Mulder was a member and acted on its behalf.

In a covering letter to the Municipal Manager dated 1 September 2006 and signed by Dr Mulder, the following is stated;

- *We seriously object to the Urban Edge as proposed and believe it will throttle the town to a standstill.*
- *We confirm that the FSD and ourselves have submitted an alternative Urban Edge to you and the Mayor. This alternative allows for growth for at least 10 years and has been professionally prepared and evaluated by Urban Economists. **We have spent thousands of Rands and hundreds of man hours in preparing these studies and we can defend our assumptions and statements.** (own emphasis)*
- *We request that you and the Council give this plan serious attention and we hold ourselves available to present the plan and the results of the Urban Econ study to the Council and/or hold discussions to debate it.*

The document is concerned mainly with the urban edge and an alternate urban edge was proposed. This was a much wider urban edge than proposed by the municipality and in conflict with provincial guidelines.

The alternate urban edge included the entire Eastern Head area, including the Woodbourne Farm. Two proposed developments, located outside the municipality's urban edge, were named and included in the alternate urban edge by the Forum. These were Uitzicht and the Knysna River Reserve. Uitzicht was CMAI's proposed development for Barlows.

CNDV Southern Cape, headed by Mr. Maughan-Brown, was tasked with obtaining the planning approval for the Knysna River Reserve development.

The following extracts from the document are indicative of the importance of the urban edge to Dr Mulder and the FSD:

5. URBAN EDGE

It appears that the edge was mainly determined by environmental considerations. This is in direct contrast with one of the NEMA principles that states that Environmental Management must place people and their need at the forefront of this concern.

6. CALCULATION OF SUPPLY OF DEVELOPABLE LAND WITHIN THE KNYSNA URBAN EDGE,

The SDF makes the statement that this area can still provide for urban development until 2010. Our study indicates that by 2007 there will be no more developable land.

The above statement is based on statistics provided by Urban Econ. With the benefit of hindsight, it is clear that the projections contained in the SDF were accurate and that Urban Econ got it wrong. In fact, in 2013 the land provided for future growth in the current SDF is still adequate, due to the collapse of the property market in 2008. This collapse was apparently not foreseen by Urban Econ.

The importance of the urban edge to developers specialising in upmarket estates, outside the urban edge, such as CMAI, is highlighted under the heading

12. EFFECT OF A TIGHT URBAN EDGE ON THE PROPERTY MARKET.

The areas of densification of conventional urban development will make provision for that part of the population that choose to reside in conventional town areas.

Apart from 'normal' growth, the growth in the more expensive market also has to be provided for because it is in this market where the greatest potential is to alleviate poverty and allow "capital" to be created for the poorer and less privileged part of the community.

The map containing the alternate urban edge was published on the front page of the Knysna Plett Herald in August 2006.

The extreme efforts by Dr Mulder to influence the location of the urban edge and the hundreds of Rand and thousands of hours spent on the objection leave no doubt that CMAI has a vital interest in the location of the urban edge.

Dr Chris Mulder is the managing director of CMAI and the ISDF project manager.

URBAN ECON

As stated above Urban Econ played a significant role in the research for the objection. Urban Econ is part of KCHC.

Urban Econ is responsible for the Local Economic Development Plan that will form part of the ISDF.

OBJECTIONS BY 233 SEDGEFIELD RESIDENTS

Residents, mainly from disadvantaged communities in Sedgefield, signed identical objections to the proposed urban edge. The 233 objections referred to the Urban Econ report prepared for VPM on the instructions of CMAI. All the objectors stated that they had studied the Urban Econ report. Considerable man hours must have been invested by CMAI and VPM to ensure that so many people had an opportunity to study the Urban Econ report and express their support therefor.

This is another example of how important the urban edge was to CMAI.

OUTCOME OF URBAN EDGE OBJECTIONS

The abovementioned objections did not persuade the Knysna Council to adopt the urban edge proposed by Dr. Mulder and the other objectors.

A similar situation in Bitou municipality however led to a very different result.

13.1.3 THE FIRST BITOU SDF -LUDOLPH GERICKE AND CMAI

Ludolph Gericke was the Bitou Town Planner when the first SDF was prepared. CMAI was involved with the Hangklip development proposal as well as other proposed developments in the Bitou area.

As in the case of Knysna, CMAI arranged for a Bitou urban edge to be prepared by a GIS Specialist. This included in the urban edge the Hangklip property and many other proposed developments CMAI and other developers were involved in.

Contrary to the Provincial Urban Edge Policy, Bitou had a very wide urban edge. A significant portion of the rural area was included in the urban edge, leaving developers with a wide choice of land to potentially develop. This led to conflict between the Bitou Municipality and the Western Cape Department of Environmental Affairs and Development Planning and resulted in litigation.

The recent case of MEC for Environmental Affairs v Clairison's CC illustrates the conflict.

Bitou now has a new Town Planner and the SDF has been reviewed and a new SDF, including a tight urban edge, has been adopted.

Ludolph Gericke is part of the KCHC and will be assisting Marike Vreken with the the legal compliance side of the ISDF.

It is of great concern that the strongest opponents of the existing Knysna SDF have now been tasked with its review and the Town Planner, who allowed a property developer to determine Bitou's urban edge, will be responsible for ensuring legal compliance.

13.2 THE RHEENENDAL STRUCTURE PLAN

On the 29 of November 2012, the Knysna Municipality employed CMAI to prepare a Structure Plan for Rheenendal. The background to the appointment is as follows:

PG Bison is the largest private landowner in Knysna and owns some 13 000 hectares of land of which 8 000 hectares is under commercial Pine plantations. The forestry holdings include land previously owned by PJ van Reenen in Rheenendal, which was purchased approximately three years ago.

In 2012 PG Bison employed Dr. Mulder as a consultant to investigate the development of the Rheenendal industrial area as well as a residential development of some 500 houses catering for higher and middle-income earners and possibly some low income housing. As the current SDF does not cater for this, the Knysna municipality appointed the development team, headed by CMAI, to develop a structure plan for Rheenedal. The Municipality is contributing R 80,000 to the project and the landowner, PG Bison is paying the balance.

It is not clear why this appointment was made as it is conducted concurrently with the ISDF process and the terms of reference are very similar to the terms for the greater ISDF process.

The entire structure plan appointment is contrary to planning law principles in terms of which planning policies are determined by municipalities and aligned with the policies of provincial and central government. How PG Bison, the landowner, can be allowed by KM to pay a consultant of its choice, CMAI, to develop planning policies for a municipality, is beyond comprehension and flies in the face of all principles of good governance.

The fact that CMAI is the development consultant to Knysna's largest private land owner, PG Bison, creates an unacceptable and unmanageable conflict of interest in the ISDF process. This is aggravated by the fact that PG Bison have made it clear that

they wanted to develop some of their forestry land in Rheenendal, in partnership with CMAI.

How members of the BEC and the BAC could have needed further evidence of conflict of interest, is beyond comprehension, as all the BEC members were employed in the Planning and Development Department and must have known about CMAI and PG Bison's development plans for Rheenendal and the glaring conflict associated therewith.

Mike Maughan-Brown was a member of the BAC and was fully aware of the development plans. Prior to working for KM, Mr. Maughan-Brown (MMB) was a consultant to PG Bison (previously named Steinhoff Southern Cape) and he prepared a report for the company relating to their land holdings and the forestry communities residing on this land. The conflict of interest must have been known to him.

14. Payment of invoice for R498,560.00

FINDINGS WCPG: The payment of an invoice dated 10 June 2013 from CMAI prior to signing the contract on 17 July 2013 remains questionable and needs to be investigated. No details could be provided by the municipality as to what work had been performed by 10 June 2013, especially since the objections were only finalised on 20 May 2013. This constitutes a contravention of the MFMA. The invoice also does not reflect the joint venture name.

RESPONSE KM: It is correct that the invoice was issued prior to signature of the contract. The payments were for work done and the invoices are attached.

COMMENT SC: The invoice contains no detail of work completed and refers to a progress draw status quo and ISDF in progress, without specifying what work had been completed. The project was only launched in September 2013 and the Staus quo was finalised at the end of 2013. The finding is therefore correct and the contravention of the MFMA needs to be investigated.

15. Conclusion

RESPONSE KM: The WCPG is referred to the 2013/2014 clean audit obtained by the KM. The ISDF tender was part of the audit.

The Auditor General ("AG") did query the "local content" issue. Following the response from KM the comment was removed and KM was awarded a second clean audit.

Comment from National Treasury regarding "local preference" is awaited.

The letter was sent in the name of the Mayor and signed by Councillor Edge. The WCPG is advised that the Mayor considered the findings to be inaccurate and incorrect and hoped that the matter would now be closed.

COMMENT SC: The conclusion is questionable in a number of respects.

The submissions regarding the finding from the AG are both inaccurate and misleading.

The Auditor General's report included the following unresolved issue:

Tender awarded to local suppliers not in line with Preferential Procurement Regulations Section 6(5)

This relates to the so-called local premium issue and is referred to on pages 4 and 23 of the AG Final Management Report. On page 23, paragraph 68, the following is stated;

“Eight awards to the total value of R9 277,921 were made to suppliers that did not score the highest points without objective criteria and reasonable grounds for not selecting the supplier with the highest points as *prescribed* by the Preferential Procurement Regulations 2011 6(5).

This matter has been referred to both Provincial and National Treasury for further discussion as to the highest PPPFA points constitutes irregular expenditure.”

The eight awards that were referred to included the ISDF Tender. Knysna Municipality has since accepted that the “local premium”, which was used in the ISDF Tender, is unlawful and it has been removed from their Preferential Procurement Policy. It is therefore disingenuous for Melony Paulsen and the Mayor to state that the ISDF Tender passed the audit from the AG.

Even more concerning is that Melony Paulsen advised the BAC in a vehicle tender in May 2015 that the “local premium was no longer applied as it was non-compliant with legislation. See extract hereunder;

- (x) An email from the Legal Manager: Ms M. Paulsen was received and brought before the BAC. In the email Ms Paulsen states that we are no longer using the local preference to award tenders. Ms Paulsen recommended that the Municipal Manager should for the sake of consistency and not applying a policy which is regarded as non-compliant with the legislation, refer this item back to the BAC for consideration and advise the BAC that payment of local premium is no longer applied.


CHAIRPERSON

28/5/15
DATE

It is therefore inexplicable that earlier the same month, Ms. Paulsen could have contended that the ISDF tender, in which the “local premium” was applied was awarded lawfully and later the same month advise the BAC that the award of a tender based on the “local premium” is non-compliant with legislation.

16. FINAL COMMENTS AND REQUEST FOR INVESTIGATION

The inherent and unmanageable conflict of interest, in having the Administration and the Councillors share the same legal advisor, is highlighted by the response to the WCPG that was prepared by Melony Paulsen and signed by the Deputy Mayor.

The conduct of the MM and certain officials, including Melony Paulsen, in respect of the ISDF Tender and the handling of the objections, was the subject of the investigation.

After interviewing various officials, including Melony Paulsen, the WCPG made an alarming number of adverse findings regarding the ISDF tender process.

The Administration did send a response to the WCPG in December 2014, after receipt of the Summary of the ISDF Report. Presumably this response was prepared by Melony Paulsen.

When the irrational conclusion was removed from the same summary, Melony Paulsen took three months to prepare a response to the same findings they had responded to in December 2014.

It is striking how many contradictions there are between the response of December 2014 and the response of May 2015.

How the Mayor and/or the Deputy Mayor could have simply accepted the response prepared by MP on behalf of the administration and signed it, is beyond comprehension. It makes a mockery of the Mayor’s request for an investigation into

the handling of the tender by the Administration and the oversight function of Council, to simply accept the response of the Administration to the adverse findings.

It is very unfortunate that my letters to Mayor and other Councillors, shortly after the award of the tender, highlighting the irregularities in the ISDF Process were ignored. Instead of exercising their oversight role over tenders certain Councillors chose to listen to false rumours from officials that I was a disgruntled tenderer.

Councillors and the WCPG were also misled about a legal opinion obtained from Advocate Hiemstra and were advised that he confirmed that the objections were handled correctly. They omitted to advise the Councillors and the WCPG that the advice was based on the erroneous belief by Adv Hiemstra, that Knysna did not have a Supply Chain Management Policy. Adv. Hiemstra advised the municipality that the SCM Regulations provide for objections to tenders that have to be dealt with by an independent and impartial person. However, due to the fact that Knysna did not have a SCM Policy, Adv Hiemstra advised that there was no provision for objections to tenders in Knysna. The objections therefore did not have to be dealt with in terms of sections 49 and 50 of the SCM Regulations. Adv Hiemstra cautioned KM that it had to adopt a SCM Policy.

Instead of correcting the misunderstanding and providing Adv Hiemstra with the SCM Policy, that had been adopted by the municipality in 2006, Melony Paulsen and Lauren Waring chose to use the flawed legal opinion to justify their failure to follow the mandatory procedures for dealing with objections in sections 49 and 50 of the SCM Regulations, well knowing that this opinion was based on the mistaken belief that Knysna did not have a SCM Policy. Ratepayers would have expected Lauren Waring and/or the Manager, Legal Services to provide Adv Hiemstra with the SCM Policy as soon as they realised that his opinion was based on a factual error and asked for him to reconsider his opinion in the light of the correct information. Their failure to do so and their subsequent and repeated reliance on a legal opinion, they knew to be influenced by a mistake of fact, leaves a question mark about their bona fides and/or competence.

Now that the Council is being asked for more money because the tender amount has been spent and we ISDF Document has not yet gone out to public participation.

The Council is requested to take the following action:

- The conduct of a number of officials needs to be investigated and the irregular expenditure needs to be recovered.

- The comments submitted to the WCPG by Susan Campbell need to be studied and the conduct of the officials mentioned therein investigated. (It is clear from the WCPG report that that the investigating team did not even bother to read the detailed submissions to them. Susan Campbell handed a copy of the 35 page document to Mr. Paulse personally during their interview and subsequently forwarded an electronic copy to Mr. Paulse. The report includes details of material irregularities with the handling of the objections by Lauren Waring and Melony Paulsen.)
- Melony Paulsen and the Mayor need to be requested to explain to Council why they did not inform Council of the amended ISDF summary in March 2015.
- Remedial action in the light of the adverse findings needs to be taken.

I sincerely hope the Council will consider the submissions and the contents of this report seriously to ensure that this matter is fully investigated and that the irregular expenditure referred to in the report from the Auditor General is recovered from the responsible officials, starting with the AO at the time, Lauren Waring.

Submitted by

SUSAN CAMPBELL

On the 1st day of December 2015.