

Report to the Standing Committee on Public Accounts on implementation of corrective measures and the ongoing processes to effect the Committee recommendations and those of the DPWI/SIU investigations



public works
& infrastructure

Department:
Public Works and Infrastructure
REPUBLIC OF SOUTH AFRICA

Standing Committee on Public Accounts (SCOPA)
14th March 2023

PURPOSE

- **Progress on the implementation of corrective measures** and the ongoing processes to effect the recommendations of the Committee; DPWI and SIU investigations.

ACRONYMS

CS	Corporate Services branch within the DPWI
DDG	Deputy Director General
DG	Director General
DOD	Department of Defence
DPWI	National Department of Public Works & Infrastructure
DTIC	Department of Trade, Industry and Competition
GRC	Governance, Risk and Compliance branch within the DPWI
IGR	Inter-Governmental Relations branch within the DPWI
JCPS	Justice, Crime Prevention and Security Cluster
MOU	Memorandum of Understanding
NBAC	National Bid Adjudication Committee
NT	National Treasury
ODG	Office of the Director General within DPWI
PMO	Project Management Office branch within the DPWI
SCM	Supply Chain Management branch within the DPWI
SCOPA	Standing Committee on Public Accounts
SIU	Special Investigating Unit
REIS	Real Estate Investment Services branch within the DPWI

OUTLINE: Implementation of corrective measures

1) Introduction: *summary of the timeline*

2) Progress of corrective measures and the ongoing processes to implement the recommendations of the Committee.

The Implementation of the recommendations of the Report of the SCOPA on its September 2020 oversight visit to Beitbridge Border Post (dated 17 November 2020). *For the ease of review, **progress since the previous report is indicated in red.***

3) Progress on the recommendations of DPWI and SIU investigations.

1: INTRODUCTION: *summary of timeline (1)*

- Following the declaration of a National State of Disaster in March 2020 to fight the spread of the COVID-19, DPWI commenced repairing and replacing a 40km section of the Beitbridge Border Post Fence, which was identified by DoD as a hotspot for illegal immigration.
 - Due to various concerns raised about the cost and fitness for purpose of the fence, the Minister requested **the Auditor-General to conduct a forensic audit on 20 April 2020.**
- **On 25 April 2020**, the Minister requested that all payments be stopped and requested the DPWI's Governance, Risk and Compliance (GRC) branch to investigate procurement and all processes followed in relation to the construction of the fence. The GRC branch was assisted by the SIU and built environment specialists from the PICC.
 - The investigation on Beitbridge commenced on **25 April 2020** and identified a lack of planning, procurement irregularities, non-compliance with SCM prescripts, poor quality of materials used for construction, as well as excessive project costs.
- On **3 June 2020** DPWI appeared before SCOPA on Border Fence Procurement where the committee sought more clarity on the project and the investigation.
- On **25 August 2020** DPWI appeared before SCOPA again on the Beitbridge Investigation's findings.
- SCOPA conducted an **oversight visit from 04 to 06 September 2020** and made certain findings in this regard.
 - On 4 of September 2020 DPWI, PICC and SIU briefed the PC on Public Works and Infrastructure and SCOPA on the findings of the investigation.
- DPWI appeared before **SCOPA on 6 October 2020** where progress on recommendations from the Investigation Reports were presented to the committee.

1: INTRODUCTION: *summary of timeline (2)*

- On **17 November 2020**, the **SCOPA Report** on its oversight visit to the Beitbridge Border Post from 4 to 6 September 2020 was released with recommendations that the Department needs to respond to.
- On **2 February 2021** the DPWI appeared before SCOPA on Beitbridge Investigation where progress on recommendations from Investigation Reports were presented to the committee.
- On **11 May 2021** the DPWI appeared before SCOPA on Beitbridge Investigation where progress on recommendations from Investigation Reports were presented to the committee.
- On **30 November 2021** the DPWI appeared before SCOPA on Beitbridge Investigation where progress on recommendations from Investigation Reports were presented to the committee.
- On **22 February 2022**, the DPWI appeared before SCOPA to present the progress the Department has made in addressing Material Irregularities, including the Material Irregularities related to the Beitbridge Border Fence Project.
 - At this meeting, SCOPA members provided additional recommendations to the DPWI.
- On **24 February 2022**, the State concluded its case in the Disciplinary proceedings against the majority of implicated DPWI officials.
- On **8 March 2022**, the Special Tribunal handed down its judgment on the matter between the SIU/DPWI (applicants) and Caledon River Properties/Magwa Construction (respondents). The judgment strips the contractor, Magwa, and principal agent, Caledon River Properties, of any profits arising from the Beitbridge Border Fence project.
- During **May 2022**, the disciplinary proceedings against the majority of implicated DPWI officials continued when the implicated officials responded to the State's case.
- The hearing concluded on the **10 May 2022**.
- Parties submitted closing arguments on the **27 May 2022**.

1: INTRODUCTION: *summary of timeline (3)*

- **On 3 June 2022 all implicated NBAC officials were found guilty of the charges against them.**
 - Mitigating and aggravating arguments were due on the 10 June 2022 by employee party and the 20 June 2022 by employer party, whereafter sanction will be handed down.
 - The employee parties submitted their mitigating arguments requesting for lenient sanction short of dismissal based on their personal circumstances, however, the employer submitted aggravating arguments calling for sanction of dismissal given the seriousness of the charges, the amount involved and the conduct of the employees.
 - Chairperson delivered the sanction report imposing final written warning and suspension without pay to all the employees on the basis that there was no irretrievable breakdown of relationship of trust, dishonesty on the part of the employees nor any evidence of employees benefiting out of the project.

Employees accepted the sanction through their Attorneys.

- On the **17 October 2022**, approval was granted by Acting Director General to give effect to the sanctions with effective date of 01 November 2022 for all employees.
- The sanctions recommended by the Chairperson of the Disciplinary committee and approved by the AO (final written warnings and one or more months of suspension without pay) have been in effect from **01 November 2022** and employees have been serving their respective sanction periods.
- Employees have returned to work upon conclusion of the sanction periods.

With regard to disciplinary cases against the two of the three senior DPWI employees, the State Attorney has appointed initiator and chairperson to facilitate the disciplinary enquiry and tentatively proposed that the hearing be scheduled for **28 – 31 March 2023**.

The third senior employee, acting through his Attorneys, filed notice of intention to oppose. The State Attorney has since applied for a hearing date with the Registrar of the Labour Court. The State Attorney followed up with Registrar in November 2022, January 2023 and in February 2023, the office of State Attorney Kimberley will be visiting the Registrar's office.

2: PROGRESS: *Implementation of the SCOPA recommendations*

2(a): Recommendations from the November 2020 SCOPA report

1. The Memorandum of understanding (MoU) is reviewed to clarify the roles and responsibilities of the Department of Defense, the Department of Public Works and Infrastructure and the Department of Home Affairs.

REIS

The updated **MOU** to clarify roles and responsibilities for the border-line environment was submitted to the Department of Defence (DOD) on the 13 August 2021. Inputs were received on 05 November 2021 from the DOD.

DOD has since requested that other stakeholders be included in the MOU e.g. the DALRRD (for foot & mouth disease) and the BMA (in line with the current DOD & BMA Protocol Agreement). **The updated MOU is currently with DPWI Legal Services for approval of the revised content.**

In respect of the **Ports of Entry**, Department of Home Affairs, including the Border Management Authority, is leading the development of the MOU between DPWI and other role players in alignment with the recently accepted BMA Act. In support the development of the MOU, meetings with the relevant role-players to clarify roles and responsibilities are transpiring on a regular basis. The last meeting took place on the 11th of November 2021. Meetings have been taking place monthly since 31 March 2022.

To support the DOD in the development of an integrated Borderline solution, a Request for Information (RFI) was commissioned by DPWI on 28 March 2021. The RFI closed on **26 of April 2021** and 16 Proposals have been received.

- The Bid Evaluation Committee completed the evaluation of bids in June 2021.
- 3 bids were compliant to the terms of reference of the RFI.
- Compliant bids were submitted to DOD in July 2021 to be incorporated into the final specifications for border fences.

On **10 February 2022** the DPWI completed the Phase 01 Feasibility Study reports for the acquisition of various land parcels for the following three borderline infrastructure projects:

- (a.) RSA, ZIMBAMBWE & MOZAMBIQUE
- (b.) RSA & LESOTHO
- (c.) RSA, ESWATINI & MOZAMBIQUE

2: PROGRESS: Implementation of the SCOPA recommendations

2(a): Recommendations from the November 2020 SCOPA report

1. The Memorandum of understanding (MoU) is reviewed to clarify the roles and responsibilities of the Department of Defense, the Department of Public Works and Infrastructure and the Department of Home Affairs ...

... continued

REIS

2. All physical defects are rectified in line with all applicable regulations.

The Phase 1 Feasibility Study reports were submitted to DOD on the 01st and 02nd of March 2022 respectively. In the same communication, DOD was requested to submit a User Asset Management Plan and Capital budget funding confirmation to implement the Phase 1 Feasibility Study report recommendations.

PROGRESS TO DATE:

- DOD submitted user specification inputs to DPWI on the 14 December 2022.
- DPWI is currently scrutinizing the said inputs with the intent to develop a feasibility study for the construction of the integrated borderline security infrastructure.
- Commitment from DOD is critical to the projects, and there is no firm commitment in the DOD letter dated 14 December 2022 mandating DPWI to proceed and implement the projects.
- Paragraph 4 of the DOD aforementioned letter states as follows:

“It is important to note at this point that the SANDF is only providing inputs and recommendations, and that this should not be seen as the ultimate and final decision regarding a national borderline fence. The Department of Defence (DOD), as a member of the Justice, Crime Prevention and Security Cluster has tabled the proposal that a national borderline fence cannot be the responsibility of the DOD, but must be a whole of government project. Therefore, the SANDF is not able to make any comments regarding funding of such an endeavor.”

A Technical condition report has been finalized.

As the fence, in its current form, is not fit for purpose and in material non-compliance with specifications, the Department has taken a decision not to undertake any repairs on the fence as it will constitute wasteful expenditure.

2: PROGRESS: *Implementation of the SCOPA recommendations*

2(a): Recommendations from the November 2020 SCOPA report

3. Legal action is taken against implicated companies, and processes to recover the money paid are set in motion.

GRC

The SIU launched an application on **23 September 2020** to freeze the service providers' bank accounts. The Tribunal made an order by agreement that the service providers would not make any further claims for payment from the Department, the service providers would settle any proven claim and that the SIU will by a pre-determined date institute proceedings to set aside the contract.

CRIMINAL MATTERS:

The SIU received correspondence from the NPA in March 2021 indicating that the matter was erroneously referred to the National Director of Public Prosecutions in Polokwane. The matter was transferred back to the Director of Public Prosecutions' office in Pretoria. The matter is now with the Police and the SIU met with the lead investigator on the matter for a briefing session. The lead investigator from the Police has made contact with DPWI to retrieve all the original records. The Department has provided the Police with the records on **22 July 2021**. As a result thereof the lead Investigator was able to register a criminal case on **22 July 2021** at SAPS Pretoria-Central: CAS 359/07/2021. The investigation is still on-going.

RECOVERY OF FUNDS:

On **17 November 2020**, the SIU instituted legal action against Caledon River Properties (Pty) Ltd t/a Magwa and Profteam CC with the Special Tribunal under case number GP17/2020. The application is opposed and the matter has been enrolled to argue jurisdiction which was raised as a point in limine. The matter was heard on **Tuesday 26 January 2021** in the Special Tribunal. The Tribunal on **25 February 2021** dismissed the respondent's points in limine and the matter will proceed in the absence of any appeal.

On **9 March 2022**, the Special Tribunal judgment was handed down on the matter. The judgment strips the contractor, Magwa and principal agent, Caledon/aka Profteam, of any profits arising from the BeitBridge Border Fence project.

The judgment of the Special Tribunal was appealed on the 19th May by the contractor and principal agent. **Their appeal was dismissed with costs on the 7th September 2022.** The contractor and principal agent are now appealing through the High Court.

2: PROGRESS: *Implementation of the SCOPA recommendations*

2(a): Recommendations from the November 2020 SCOPA report

4. The Department writes to NT requesting to blacklist and monitor the Principal Agent and Main Contractor from doing business with Government, in terms of Regulation 14 of the Preferential Procurement Regulations, 2017.

SCM

It was recommended that the Principal Agent and the Main Contractor must be restricted from doing business with government subject to the application of the relevant due process and National Treasury concurrence, pursuant to the examination of the findings of the investigation that they acted in an irregular manner in their respective engagements with the DPWI. The matter served before the Restriction Committee & Authority (RCAA) **on 28 August 2020**, after which detailed evidence contained in the Investigation Report was sought by the RCAA to enable it to continue its business. The Department was compelled to delay the release of this information and to reconstitute the composition of the RCAA, recognising that the chairperson of the RCAA was one of the officials cited in the investigation report and subject to disciplinary action. This was also delayed to allow the Department to initiate and advance disciplinary processes before releasing the investigation report to third parties to protect the confidentiality of the information contained in the report.

On **11 February 2021**, the Department approved the final charges against the officials and formally reconstituted the Restriction Committee and Authority to exclude from membership of the Committee any person who may have a conflict of interest. On **12 February 2021**, the matter was tabled again with the RCAA and all the relevant reports and supporting evidence were provided to the committee to enable it to conclude its work. The Committee has considered and studied the relevant investigation reports and on **17 March 2021** issued letters to the contractor and consultant requesting reasons why the Department should not recommend to National Treasury their restriction from doing business with the State. On **1st April 2021** the Consultant responded to the Department's letter denying the allegations levelled against it and further contended that it has not committed any fraudulent misrepresentation but that the advance payment was sought based on the request of senior officials of the Department.

The RCAA met on the **04 May 2021** and deliberated on the matter and resolved that the contractor and principal agent be recommended for restriction to National Treasury. Due process has been followed and the referral to National Treasury was submitted on **07 May 2021**. National Treasury wrote back requesting several documents from the Department and the information was provided by the Chairperson of RCAA during the week of 14 -16 July 2021.

2: PROGRESS: *Implementation of the SCOPA recommendations*

2(a): Recommendations from the November 2020 SCOPA report

4. The Department writes to NT requesting to blacklist and monitor the Principal Agent and Main Contractor from doing business with Government, in terms of Regulation 14 of the Preferential Procurement Regulations, 2017 ... (cont)...

SCM

Both the companies were placed under restriction by National Treasury in September 2021 for a period of 10 years. They have appealed, however, whilst the Department and National Treasury were still addressing the appeal, the companies launched an urgent court application to challenge restriction of their companies and to review the decision of National Treasury.

National Treasury consulted with the Department on the court application and advised that it considered temporary withdrawal of the companies from the list of restricted suppliers and to provide the companies with an opportunity to make representations since it would appear that the companies were not afforded sufficient opportunity to make representations

The National Treasury issued the companies with the letters to this effect and the part of the court application was then abandoned. During January 2022 the National Treasury convened a meeting with DPWI to provide feedback on the matter and it was reported that the National Treasury has reviewed the file further and it intends to oppose Part B of the court application which is mainly the review of its decisions based on the fact that the National Treasury is satisfied that the DPWI followed due process and that a letter to this effect will be issued to this companies.

Further feedback from National Treasury is awaited by the DPWI in relation to the notification of the companies of the intended course of action as well as the opposition to the court review application.

The restriction imposed on both Magwa and Profteam was subsequently uplifted by National Treasury and referred back to the Department on **21 February 2022**. NT requested DPWI to reconsider the matter and decide as to whether restriction is to be imposed or not.

The request from NT was referred to the DPWI's Restriction Committee and Authority for consideration. In the interim, the term of the DPWI's Restriction Committee expired. The Acting DG has appointed a new Restriction Committee on the 10th November 2022. **Unfortunately the nominated Chair of the committee (DPWI Ethics Officer) resigned in the same month and the traditional chair post (DDG:SCM) is vacant. RCAA members met on 27th January to finalise the TOR of the restriction committee and will complete this review in March 2023 and thereafter the Beitbridge matter will be considered by a constituted committee.**

2: PROGRESS: Implementation of the SCOPA recommendations

2(a): Recommendations from the November 2020 SCOPA report

5. The several contracts that the Principal Agent and the Main Contractor have with the Department are terminated with immediate effect.

Internal Audit

DPWI Internal Audit unit has reviewed the current contracts of Magwa Construction and Profteam on a sample basis (tabulated in the following slides). Below is the high level outcome of the audit.

PROJECT STATUS	NUMBER OF ACTIVE CONTRACTS PER PROJECT STATUS (PROFTEAM)	NUMBER OF ACTIVE CONTRACTS PER PROJECT STATUS (MAGWA)
Final Delivery (Status 7)	6	3
Practical Completion (Status 6A)	5	5
Construction Stage (Status 5B)	4	3
Tender Stage (Status 5)	2	0
Design State (Status 4)	2.	0
Total	19	11

The audit of these contracts (excluding the Beit Bridge border fence, which is subject to its own investigations) has been concluded.

Based on the work performed and reviewed under the procurement processes and site visitations, **the audit report concluded that, based on the sampled audited sites, there is no material non-compliance finding by the Principal Agent and the Main Contractor noted that warrants the termination of these contracts.**

Feedback have been reported to SCOPA previously and the findings recommendations are being followed for implementation.

2: PROGRESS: Implementation of the SCOPA recommendations

2(a): Recommendations from the November 2020 SCOPA report

6. The several contracts that the Principal Agent and the Main Contractor have with the Department are terminated with immediate effect.

Internal Audit

Below are the details of the site visitations: PROFTEAM

WCS Number	Project Status	Status Description	Contract Description	Amount (R)	Site Visit Conducted Yes/No
053707	7	Final Delivery Stage	Appointment Of Contract: Maintenance And Servicing (Pafuri)	1 494 613,12	Yes
054331	7	Final Delivery Stage	Ports Of Entry: 36 Months Re (Golela And Onverwacht)	3 287 640,97	Yes
052983	6A	Practical Completion Stage	Ramatlabama, Kopfontein And Derdepoort: 36 Months	1 448 836,52	Yes
052500	5B	Construction Stage	Upgrading And Maintenance Of Buildings, Civil Infr.	4 046 582,97	Yes
055769	5B	Construction Stage	Beitbridge Borderline Base: (Phase 1):40 Km Border	3 259 071,48	Yes

2: PROGRESS: *Implementation of the SCOPA recommendations*

2(a): Recommendations from the November 2020 SCOPA report

7. The several contracts that the Principal Agent and the Main Contractor have with the Department are terminated with immediate effect.

Internal Audit

Below are the details of the site visitations: MAGWA

WCS Number	Project Status	Status Description	Contract Description	Amount (R)	Site Visit Conducted Yes/No
052500	5B	Construction Stage	Upgrading And Maintenance Of Buildings, Civil Infr (Beitbridge)	94 088 097,10	Yes
055769	5B	Construction Stage	Beitbridge Borderline Base: (Phase 1):40 Km Border	37 176 843,50	Yes
055165	5B	Construction Stage	Appointment of A Service Provider/S for The Maintenance (Ramatselitso, Ongeluksnek, Boesmansnek)	17 170 625,20	Yes
054631	6A	Practical Completion Stage	Skilpadshek Port Of Entry: 36 Months Repairs, Main	46 348 067,74	Yes
052734	7	Final Delivery Stage	Land Ports Of Entry: Groblers Bridge And Stockpoort	43 172 755,90	Yes

2: PROGRESS: Implementation of the SCOPA recommendations

2(a): Recommendations from the November 2020 SCOPA report

9. A process of vetting of all Supply Chain Management personnel is initiated.

CS (Security)

Project Update	Updated Figures
<ul style="list-style-type: none">The total number of identified officials to be vetted for financial year 21/22	253
<ul style="list-style-type: none">The number of officials vetted so far	253
<ul style="list-style-type: none">The remaining number of vetting files to be completed	
<ul style="list-style-type: none">The number of clearances received from SSA	23
<p>With the assistance of the State Security Agency, the Department has vetted the 253 SCM officials identified for vetting in the 2021/22 financial year.</p> <p>It must be recognized that vetting is a lengthy process, which involves interviews, collecting of supporting documents, report writing, and the SSA conducting Polygraph tests, evaluating information and then issuing or denying clearances.</p> <p>The SSA had suspended polygraph testing, but this process has since been reinitiated. This delay impacted the pace of issuance of security clearance certificates by the SSA.</p>	

2: PROGRESS: *Implementation of the SCOPA recommendations*

2(a): Recommendations from the November 2020 SCOPA report

10. All reasonable steps are taken before monies owed to the state can be written off as irrecoverable.

GRC

The Department had placed a moratorium on payments to the service providers.

On **9 March 2022**, the Special Tribunal judgment was handed down on the matter. The judgment strips the contractor, Magwa and principal agent, Caledon/aka Profteam, of any profits arising from the BeitBridge Border Fence project.

The judgment of the Special Tribunal was appealed on the **19th May 2022** by the contractor and principal agent. **Their appeal was dismissed with costs on the 7th September 2022.** The DPWI have been advised by the SIU that the contractor and principal agent are now appealing through the High Court.

2: PROGRESS: Implementation of the SCOPA recommendations

2(a): Recommendations from the November 2020 SCOPA report

11. Consequence management against all implicated officials is carried out with adequate sanctions

Ministry

DISCIPLINARIES AGAINST SECTION 12 EMPLOYEES

Two (the Director-General and Special Advisor to the Minister) of the thirteen implicated DPWI employees are employed in terms of section 12 and 12A of the Public Service Act 1994. In this regard, their disciplinary processes are not being dealt with by the Department.

Regarding the Director-General:

- The disciplinary action against the Director-General is being managed by the Presidency.
- **On 9 September 2020** Minister De Lille wrote to the Presidency, informing of the findings and recommendations of the Beitbridge Border Fence investigation. The Presidency acknowledged the letter on the same day.
- Minister Mthembu wrote to the Director-General Adv Sam Vukela on **16 October 2020** informing him of supplementary charges of misconduct relating to the Beitbridge Border Fence to be added to his charge sheet.
- The Minister has advised the SCOPA Chairperson on **16 April 2021**, requesting that then Acting Minister in the Presidency, Khumbudzo Ntshaveni be called to update the committee on progress of this disciplinary matter.

Regarding the Minister's Special Advisor:

- The disciplinary action against the Special Advisor is being managed by the State Attorney on behalf of the Minister of Public Works and Infrastructure.
- The Minister served a letter to her Advisor, Ms. Whitehead, in September 2020 informing her of the intended charges following the findings of the Beitbridge Border Post report.
- Ms Whitehead acknowledged receipt of the letter.
- The Minister requested the State Attorney to appoint the Initiator and Chairperson for the ensuing disciplinary process. An Initiator and Chairperson have been appointed by the State Attorney.
- The Initiator has prepared draft charges against Ms. Whitehead.
- The Minister interacted with the Initiator on 9 December 2020, 27 February 2021 and 1 April 2021.
- The Minister met with the Initiator and State Attorney in December 2021 to finalise the charge sheet against Ms Whitehead.
- The charge sheet is now finalised by the Initiator and will be served on her by 30 March 2022. Hearing dates will be set for April 2022.
- The Chairperson and counsel has been appointed. We expect the Chairperson to convene the meeting by mid-July. The Minister is waiting for a report from the Chairperson.

2: PROGRESS: Implementation of the SCOPA recommendations

2(a): Recommendations from the November 2020 SCOPA report

11. Consequence management against all implicated officials is carried out with adequate sanctions ...
cont...

CS: Legal Services

DISCIPLINARIES AGAINST NBAC OFFICIALS

On **24 February 2022**, the State concluded its case in the Disciplinary proceedings against the majority of implicated DPWI officials.

During **May 2022**, the disciplinary proceedings against the majority of implicated DPWI officials continued when the implicated officials responded to the State's case. The hearing concluded on the 10 May 2022 and the parties submitted closing arguments on the 27 May 2022.

On 3 June 2022 all implicated NBAC officials were found guilty of the charges against them. Mitigating and aggravating arguments are due on the 10 June 2022 by employee party and the 20 June 2022 by employer party, whereafter sanction will be handed down.

The employee parties submitted their mitigating arguments requesting for lenient sanction short of dismissal based on their personal circumstances, however, the employer submitted aggravating arguments calling for sanction of dismissal given the seriousness of the charges, the amount involved and the conduct of the employees. Chairperson delivered the sanction report imposing final written warning and suspension without pay to all the employees on the basis that there was no irretrievable breakdown of relationship of trust, dishonesty on the part of the employees and any evidence of employees benefiting out of the project.

Employees have accepted the sanction through their Attorneys and the Acting Director General has been apprised about this and approval is awaited to give effect to the sanctions as well as the dates thereof.

On the 17 October 2022, approval was granted by Acting Director General to give effect to the sanctions with effective date of 01 November 2022 for all employees.

All employees began serving their sanctions of suspension without pay with effect from 01 November 2022 and returned to work when the sanction period was concluded.

2: PROGRESS: Implementation of the SCOPA recommendations



2(a): Recommendations from the November 2020 SCOPA report

11. Consequence management against all implicated officials is carried out with adequate sanctions ...
cont...

CS: Legal Services

DISCIPLINARIES AGAINST SENIOR DPWI OFFICIALS

- The hearings of the Senior Officials were scheduled for 04 – 06 May 2021, however, these were postponed on the first sitting due to failure of the legal representative of one of the officials to attend the hearing, who indicated that he is launching a court application to review the investigation report and the disciplinary enquiry. However, the Department argued that the matter should proceed and the hearing was held on the 05 May 2021.
- During the hearing of 5 May 2021, one of the official's legal representatives, Kambonani Cooper Incorporated, served the chairperson and the Department with the Court application to amongst others: set aside the investigation report and the disciplinary enquiry.
- Furthermore, the Department has prepared and filed the record of the procurement process and the investigation report with the Applicant and the Registrar on 14 June 2021 and the State Attorney is now waiting for the Applicant to serve their supplementary papers in compliance with Rule 53 of the Rule of the Court.
- The Applicant's Attorneys wrote a letter requesting further information and documents relating to the investigation from Minister and ADG and the information. The documents were prepared and sent to Senior Counsel for advice to Minister and ADG and we are now awaiting advice on the relevant information to disclose to the Applicant.
- The DPWI has since deposed the founding papers for review of the Chairperson's ruling postponing the hearing sine die and submitted the papers to State Attorney for service on the Respondent and filing at the Labour Court.
- Feedback received from Pretoria State Attorney on the 28 January 2022 was that the court application will be served on the 02 February 2022 by Pretoria State Attorney after receiving the instruction letter from State Attorney Kimberly who are the instructing Attorneys.
- The Chairperson of the Disciplinary Hearing was served with the Labour Court application on the 29 November 2021 in Bloemfontein by State Attorney Kimberly and the application was served on DDG-CPM's Attorneys in Johannesburg on the **02 February 2022** by State Attorney Pretoria.
- To this end, the Respondents have not yet served any notice of intention to oppose the application and the State Attorney wishes to inform the Registrar that the DPWI has no other record to file and that the matter may be set down for hearing.
- The employee party acting through his Attorneys served and filed notice of intention to oppose and his answering affidavit on **06 June 2022** which was replied to by the Department on the **13 June 2022** and the State Attorney has since applied for a hearing date with the Registrar of the Labour Court. *The State Attorney followed up with Registrar via an email in November 2022 and January 2023 and in February 2023, the office of State Attorney Kimberly will be visiting the Registrar's office.*
- *With regard to the two senior employees, the State Attorney has appointed initiator and chairperson to facilitate the disciplinary enquiry of the two senior managers separate from the DDG:CPM hearing. To this end, the team has tentatively proposed that the hearing be scheduled for **28 – 31 March 2023**. The team in consultation with State Attorney are currently attending to review charge sheet and service thereof.*

2: PROGRESS: *Implementation of the SCOPA recommendations*

2(a): Recommendations from the November 2020 SCOPA report

<div>12. Investigation reports are submitted to SCOPA on 31 December; and thereafter monthly progress reports are also sent to the Committee.</div> <div>ODG/IGR</div>	<p>The Department appeared before the Committee on 3 June 2020, 25 August 2020, 6 October 2020, 2 February 2021, 11 May 2021, 30 November 2021 and September 2022 and provided the progress update to the Committee. The Department submitted progress reports to the Committee during February, March, May, September (direct presentation to SCOPA) and December 2022.</p>
<div>13. SANDF deploys optimally to perform their mandate of border management and security.</div> <div>REIS/Ministry</div>	<p>DPWI has engaged DOD on the need to increase their presence on the borderline in terms of their obligation in terms of Section 200 (2) of The Constitution. This included Ministerial interaction on 4 April 2020 and 26 January 2021. The DPWI DG further sent a letter to the Secretary of Defense on 27 April 2020 requesting DOD to intensify patrols and indicated the withdrawal of private security appointed by the Department. This matter was addressed by Defense. The Minister of Public Works and Infrastructure will, again, raise the issue during the envisaged meeting with the new Minister of Defence.</p>

2: PROGRESS: *Implementation of the SCOPA recommendations*

2(b): Recommendations from February 2022 meeting

Cases of improper conduct to be reported to SAPS

GRC

Public Service Regulation 22 (e) requires that allegations of corruption be referred to the relevant law enforcement agency and investigations determine whether disciplinary steps must be taken against any employees.

The GRC and SIU investigations of allegations of corruption and fraud have resulted in 91 disciplinary referrals (9 dismissals); 292 criminal referrals and R1.4 billion referred for civil recovery (R129m has been recovered, R378m is in court/summons issued and R466 million has been referred to AFU).

In the 2021/22 Financial Year, the GRC's ACU concluded 30 investigations; resulting in

- 42 officials referred for disciplinary measures;
- 10 criminal referrals to SAPS for possible fraud and corruption offences; and
- the DPWI's Legal Services, through the State Attorney, commenced with civil recoveries processes to recover R 4,397,130.41 (includes claims for Fruitless and Wasteful expenditure; Irregular Expenditure and fraudulent claims).
- Three entities and their Directors were referred for possible restriction/blacklisting due to their involvement in fraudulent conduct.

On the 8th April 2022, the Acting DG provided the SAPS with a list of criminal cases reported to the SAPS and requested an update on progress.

Branches, including, SCM, are provided with systemic recommendations arising from investigations in order to improve processes.

3: PROGRESS: *Recommendations from DPWI & SIU investigations*



Referral to Department of Environment, Forestry and Fisheries (“DEFF”)

REIS

The Department has submitted the letter to DEFF reporting the non-compliance with the provisions of the National Environmental Management Act No: 107 of 1998 on 30 November 2020.

The Department obtained the Environmental Authorization (EA) – in November and December 2020 for all the RSA/Zim sections (Madimbo Corridor, Mapungubwe Corridor and Mpumalanga corridor) – for the Planning & Design for the Maintenance and/or Upgrade of the Patrol Roads and Fencing on the Borders between RSA, Zimbabwe & Mozambique as part of the long term borderline infrastructure solution.

The Department is awaiting the outcome of DEA hearing.

3: PROGRESS: *Recommendations from DPWI & SIU investigations*

Report to the Council for the Built Environment and Engineering Council of South Africa

GRC

The Principal Agent failed to act in the interests of the Department and accordingly breached their fiduciary duties towards the DPWI. This is evident in their initiating and certifying a progress payment when no progress was achieved on the project, and overseeing the development of an overstated Bill of Quantities that placed the Department at risk of financial abuse and exploitation. It was therefore recommended that their conduct accordingly be referred to the Council for the Built Environment (CBE) and the Engineering Council of South Africa (ECSA) for further investigation. On 16 August 2020 the Department sent a letter to CBE requesting that they investigate the matter. CBE has since responded and in this regard it has also been noted that the CBE is an appellant body and does not conduct investigations.

As a result we have referred the matter to the Construction Industry Development Board (CIDB) on 06 October 2020 for further investigation. On 23 November 2020 the CIDB requested the investigation report as well as relevant details to support their own investigation. Having served final internal disciplinary charges, the relevant reports were submitted to CIDB on 11 February 2021. CIDB has acknowledged the receipt of the report on 12 February 2021. However on the same date the CIDB requested that the complaint including the investigation report must be submitted to them by the SIU and not the Department. The Department must not be involved in this process. The CIDB has indicated that the investigation has not commenced since they are still waiting on certain documentation from the SIU.

The Department also submitted the complaint to ECSA to investigate the Directors of Magwa Construction and ProfTeam on 11 February 2021. ECSA acknowledge receipt of the departmental complaint on 11 February 2021.

ECSA has indicated that the investigation into the Directors of both the service providers has been completed. However the investigation report was tabled before their Investigating Committee on 26 October 2021. The Investigating Committee requested a special meeting to go through the Beitbridge matter due to the size of the report and annexures. The Special Investigating Committee met last year and resolved that the matter must be investigated further.

On **1 March 2022**, the Acting Director General met with ECSA and on the same day confirmed in writing that ECSA should investigate the conduct of all engineers involved in the project – those within DPWI as well as those contracted or subcontracted to the DPWI.

ECSA has since concluded their investigation in to the external parties and this report has been endorsed by their Investigation Committee and tabled and approved by the ECSA Council. In January 2023 the ECSA Council confirmed with the DPWI that they have so far resolved that three of the registered persons involved in the project will be charged.

3: PROGRESS: Recommendations from DPWI & SIU investigations

Systematic Recommendations

- Training & Awareness
- Quality Control

SCM

DPWI concluded an **MOU** with the National School of Government on 18 December 2020 to facilitate training courses for personnel development within Governance, Administration and in particular, SCM.

The Professional Service branch in DPWI has developed a **Training Strategy** that aims at professionalising not only SCM officials, but all officials in the value chain of core infrastructure delivery and property management functions of the Department. Engagements were also held with National Treasury with regard to professionalizing SCM.

Several Bid committee (Bid Specification, Bid Evaluation and Bid Adjudication) training sessions were already conducted and being rolled out through-out the Department. Various other training interventions in aspects of supply chain management and financial management have also been rolled out in the Department. Mandatory training on irregular expenditure is currently underway for all officials. Furthermore, in areas where certain weaknesses were identified, focus training sessions have been planned as part of the preventative controls.

Controls are constantly reviewed by Internal Audit and where weaknesses are identified the controls are strengthened and then reevaluated by Internal Audit. Probity audits and compliance checklists are in place at each control gate in the SCM process to ensure compliance to the SCM regulatory framework. There are registers in place to record all approvals for deviations from conventional processes as well as for the reporting of these.

-IDMS

PMO

As part of enhancing efficiencies and compliance within the core infrastructure delivery and property management functions of the Department, the implementation and rollout of the **Infrastructure Delivery Management System (IDMS)** is underway. In this regard, a new Operating Model, associated business processes and 30 SOPs have been developed in full alignment and compliance with the IDMS and *Framework for Infrastructure Delivery and Procurement Management* (FIDPM). All material has been made available on a single repository on DPWI servers with Year Zero (setup year) and the process will commence on 1 April 2023. The implementation plans had to be revised to incorporate ISA Sustainable Infrastructure Development Symposium (SIDS) Methodology as part of Portfolio Planning.

As part of the IDMS implementation, SCM processes and SOPs have been developed in line with the FIDPM which primarily focuses on governance decision-making points as well as alignment and functions to support good management of infrastructure procurement and delivery.

RECOMMENDATIONS

It is recommended that the Standing Committee on Public Accounts (SCOPA) notes progress on:

- The Implementation of the recommendations of the Report (dated 17 November 2020) of the SCOPA on its 4 to 6 September 2020 oversight visit to Beitbridge Border Post, and
- The ongoing processes to effect these recommendations and the recommendations of the DPWI/SIU investigations.

END

THANK YOU

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