

ANNEXURE "A"

**MPUMALANGA
PROVINCIAL
GOVERNMENT**



*Department of Local Government and
Housing*

REPORT

ON THE

**INVESTIGATIONS IN
MBOMBELA MUNICIPALITY**

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1. INTRODUCTION

The office of the MEC for Local Government and Housing received numerous reports, which amongst others included allegation of mismanagement and procurement irregularities. There were also numerous media reports that reported incidences of infighting. The MEC held a meeting with the Mayoral Committee, and it became evident that the levels of trust and working relationship have deteriorated to a point where service delivery has been affected.

The outcome of the MEC's interaction with the leadership of Mbombela Municipality led to the appointment of a team that was sent to investigate and assist in stabilising the municipality. The nature and scope of the investigation is outlined below.

2. NATURE AND SCOPE OF THE INVESTIGATION

To address the above allegations, the MEC for Local Government and Housing, Ms K.C Mashego-Dlamini invoked Section 106(1)(b) of the Local Government Municipal System Act No. 32 of 2000, on the 27 of February 2006 appointing an Investigation Team comprised of officials from the Department Local Government and Housing (Messrs: I E Oupa Pilane, I D P Straus and Adv B T Bongo) and the Department of Finance (Mr. Nethononda A J and Ms Tihapane S B) to investigate the allegations of fraud, corruption maladministration and other irregularities against the Municipal Council.

The following were the terms of reference within which the Investigation Team was expected to investigate:

- Allegations of failure to keep proper financial records, and statutory obligations in relation to the Municipal Finance Management Act (MFMA) that led to a qualified financial report from the Auditor General.
- Allegations of procurement irregularities in Mbombela as reported on National Hotline.
- Allegations of mismanagement of appointments in the 2010 office.
- Allegations of interference in the administration by Municipal Council.
- Allegations of Municipal Council effecting decisions that are contravening legislation that is governing Local Government.
- Allegation of failure to appoint section 56 and 57 of the Local Government: Municipal Systems, Act (Act 32 of 2000).
- Any other irregularity in terms of legislation.

3. PROCEDURE AND SOURCE DOCUMENTS

The Team reported to Mbombela municipality on the 28 of February 2007 and held its first meeting with both the Executive Mayor and the Municipal Manager. The second meeting was held with senior managers in the presence of the Executive Mayor and the Municipal Manager and the third meeting was with the Mayoral Committee, the Executive Deputy Mayor and the MMC member Councillor S Siwela were not present (no apologies were provided). Council also set on the 1st March 2007 where the correspondence with regards to the investigation and the team were brought to the attention of council members.

The general procedures followed by the team in the investigation included amongst other things:

- o Collation analysis and review of documentation (council resolutions) obtained from secretariat of Municipal Council.
- o Reports from the Office of the Municipal Manager.
- o Policy documents, Organograms and Bid documents from the various departments of the municipality.
- o Employment Contracts of the 2010 Coordinator.

Interviews were held with the Municipal Manager, Acting directors of the various components, the Executive Mayor and the Speaker, as well as with some members of the Mayoral Committee and some councillors. The Team was not able to interview the Deputy Mayor as at the time of the interviews she was not in the office and was also not in the Mayoral committee meeting.

The following source document were secured and used for the purpose if investigations:

- Council Resolutions
- Minutes of the mayoral committee (outstanding)
- Auditor General Report on financial statement 2005/6.
- Tender documents
- Contract of the 2010 Coordinator

The team reviewed and analyzed documents, referring back to council resolution taken from June 2006 and also reviewed financial document dating back to 2005/6 up to the date of this report.

4. HUMAN RESOURCE MANAGEMENT

It should be noted that although council pronounced (10th August 2006) itself on which Organogram should be used, there is still confusion since council referred back a number of positions for further investigation. Since then there has not been a finalization of the Organogram, and that has had an adverse effect on the 2010 Coordinator's position.

4.1 Appointment of managers directly accountable to municipal managers

Section 56 of the Municipal Systems Act provides that:

(a) A municipal council, after consultation with the municipal manager, appoints a manager directly accountable to the municipal manager.

(b) A person appointed as a manager in terms of paragraph (a) must have the relevant skills and expertise to perform the duties associated with the post in question taking into account the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination.

4.2 Employment contracts for municipal managers and managers directly accountable to municipal managers

Section 57 of the Municipal Systems Act provides that:

(1) A person to be appointed as the municipal manager of a municipality, and a person to be appointed as a manager directly accountable to the municipal manager, may be appointed to that position only (a) in terms of a written employment contract with the municipality complying with the provisions of this section; and (b) subject to a separate performance agreement concluded annually as provided for in subsection (2).

(2) The performance agreement referred to in subsection (1) must (a) be concluded within a reasonable time after a person has been appointed as the municipal manager or as a manager directly accountable to the municipal manager, and thereafter, within one month after the beginning of the financial year of the municipality.

In the implementation of Section 57 of the Municipal Systems Act, Section 57 managers should be interpreted to be heads of departments in a municipality and their levels should be level 1 since the municipal managers is level 0. This should be interpreted with the understanding and logic that there are other official and managers whose levels are lower than that of heads of departments but reporting directly to the municipal managers. These managers are however, not considered as Section 57 managers although they are required to sign a contract similar as Section 57 managers. In using the golden rule of interpretation, since a PA for an example is a manager in the Office of the Municipal Manager is not appointed by Council in consultation with the Municipal Manager.

As it be the case the Municipal Council was found not to be consistent with the application of their understanding of what a section 57 is, since other positions of managers that directly report to municipal manager were not appointed by council nor condone occupation of such positions (Communication, Internal Audit and Service Centre).

The municipality advertised the post of a 2010 Coordinator at level below that of head of department, though is reporting directly to the municipal manager. The 2010 Coordinator is therefore not regarded as a Section 57 manager.

It should however be noted that an expectation was created to council when the matter of the appointment of the 2010 Coordinator was brought as an item for discussion, as a result council expected to be part of the appointment, which was not necessarily the case.

5. BUDGET MANAGEMENT

5.1. Municipal Budgets

The objective of the implementation of the Municipal Finance Management Act, 2003 (MFMA Act No.56 of 2003) is to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to establish treasury norms and standards for the local sphere of government; and to provide for matters connected therewith.

Sections 16 and 17 of the MFMA provide that the council of a municipality must for each financial year approve an annual budget for the municipality before the start of that financial year, at least 90 days before the start of the budget year. An annual budget must be a schedule in the prescribed format:-

- (a) setting out realistically anticipated revenue for the budget year from each revenue source;
- (b) appropriating expenditure for the budget year under the different votes of the municipality;
- (c) setting out indicative revenue per revenue source and projected expenditure by vote for the two financial years following the budget year;
- (d) setting out—
 - a. estimated revenue and expenditure by vote for the current year; and
 - b. actual revenue and expenditure by vote for the financial year preceding the current year; and
- (e) a statement containing any other information required by section 215(3) of the Constitution or as may be prescribed.

The Executive Mayor tabled the 2006/07 financial year budget before the council on the 30th March 2006. The tabling was followed by the IDP/Budget consultation process that was undertaken from 18th April to 14th May 2006.

The municipality complied with the above requirement or provisions of the MFMA and the Executive Mayor tabled an Operational Budget of R586, 875 million and a Capital budget of R144, 254 million, thus bringing the total budget of the municipality to R731, 129 million. It should be noted that the amount excludes the allocation of R301 million by national Government for the construction of the Stadium for the 2010 FIFA World Cup.

R Thousand	2006/07		
	2006/06 to be rolled over to Adjustme of Budget	Allocated during 2006/07 Main Budget	% share to total revenue
Equitable Share		102 361	17.4%
Conditional Grants		43 583	7.5%
Financial Management Grant		500	1.1%
Water Services (DWAF)			0.0%
LED		1 500	3.4%
Provincial Transfers		6 170	14.0%
Systems Improvement		700	1.6%
Public Transport			0.0%
Water Services Operating		35 113	79.8%
Municipal Rates and Tariffs		328 218	56.0%
Assessment Rates		123 443	37.6%
Electricity		149 156	45.4%
Refuse		31 405	9.6%
Sewerage		6 680	2.0%
Water		14 532	4.4%
Other Receipts		112 315	19.1%
Tariff Charge Levies		10 355	14.6%
Tariff Charges Levies Other		10 320	9.2%
Fines		6 500	8.5%
Interest		19 351	17.2%
Rent Facilities and Equipment		1 988	1.8%
Licences and Permits		617	0.7%
Agency Services		34 190	30.4%
Profit/Sale of assets		-	0.0%
Other Income		13 101	11.7%
Income Forgone		- 591	-0.5%
Internal Transfers		7 066	6.3%
Total Revenue		686 676	100.0%

Table 2: 2006 MTEF Mbombela Capital Revenue position	2006/07		
	2005/06 to be rolled over to Adjusted Budget	Allocated during 2006/07 Main Budget	% share to total revenue
R Thousand			
Equitable Share			0.0%
Conditional Grants		69 330	15.6%
MIG		67 330	97%
INEP (Electricity)		2 000	3.0%
Municipality Own Receipts		74 924	16.8%
External Loan Funding		23 945	32.0%
Own Funding		50 979	68.0%
2010 FIFA World Cup Construction of Stadium		301 200	67.6%
		301 200	100.0%
Total Revenue		445 454	100.0%

When 2006/07 financial year budget was tabled before the council, the Municipal Manager recommended that the following be approved:

- Investment Policy and Tariff Policy
- Service Delivery and Budget Implementation Plan (SDBIP) of each department and section be tabled before Executive Mayor within 14 days after the approval of the budget.
- Service Delivery and Budget Implementation Plan (SDBIP) of each department and section be tabled before Council by the Executive Mayor within 28 days after the approval of the budget.
- Performance Agreements of all senior managers as prescribed in Municipal Systems Act be concluded and tabled before the Council within 28 days of the approval of the budget.

To date the Service Delivery and Budget Implementation Plan (SDBIP) and Performance Agreements of all senior managers (including that of Municipal Manager) as prescribed in Municipal Systems Act were not tabled before the Council within prescribed period after the approval of the 2006/07 financial year budget, only the Investment Policy and Tariff Policy were tabled before Council and were approved.

Section 28 of the MFMA provides that a municipality may revise an approved annual budget through an adjustments budget. An adjustments budget must adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year; may appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for; may, within a prescribed framework, authorise unforeseeable and unavoidable expenditure recommended by the mayor of the municipality; may authorise the utilisation of projected savings in one vote towards spending under another vote; may authorise the spending of funds that were unspent at the end of the past financial year where the under-spending could not reasonably have been foreseen at the time to include projected roll-overs when the annual budget for the current year was approved by the council.

The Mayor is expected to review the mid-year reports and tables to council with recommendations regarding the need for an adjustment budget during January 2007.

The municipality is yet to table the 2006/07 financial year adjustment budget to cater for 2005/06 unspent funds, under collection in revenue and appropriation of funds earmarked for the construction of stadium. Failure to table the adjustment budget by the municipality is the contravention of the MFMA and expenditure incurred in respect of funds from previous financial year (rollovers) and payments in respect of the construction of the stadium and other funds not part of the main budget is unauthorized.

In this case the Municipality lost an opportunity to enforce the provisions of Section 29(1) and (2) of the MFMA that provide that the:

- (1) Mayor of a municipality may in emergency and unavoidable expenditure for which no provision was made in an approved budget.
- (2) Any such expenditure-
 - (a) must be in accordance with any framework that may be prescribed
 - (b) may not exceed a prescribed percentage of the approved annual budget
 - (c) must be reported by the mayor to the municipalities council at its next meeting, and
 - (d) must be appropriated in an adjustments budget
- (3) If such adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorized and section 32 applies. Section 32 deals with unauthorized, irregular or fruitless and wasteful expenditure.

6. SUPPLY CHAIN MANAGEMENT

The Process of procuring the service of Construction of the stadium for 2010 world cup final.

6.1 Background

The process commenced with the appointment of the Project Management Unit and The Professional Team that was to oversee the actual construction of the stadium.

Platinum Sport was appointed as Project Managers and Lefika Emerging Equity as the professional team responsible for design, construction supervision, and the commissioning of the Mbombela multi-purpose stadium.

In terms of MFMA section 111 and 112 indicates that each municipality must have and implement the Supply Chain Policy and the policy must be fair, equitable, transparent, competitive, and cost effective and comply with a prescribed regulatory framework for municipal supply chain management.

6.2 Findings of the contents

The appointment of Platinum Sport and Lefika Emerging Equity (Pty) Ltd followed a similar process.

- The advertisement for this tender went out on the 20th January 2006
- The closing date for the tender was 10th March 2006.
- Briefing date 17th February 2006.
- Number of bidders received was 23 and 3 was disqualified

The Supply Chain Management requires that the municipality should put in place a supply chain structure comprising of the following structures:

- 1) Bid Specification Committee
- 2) Bid Evaluation Committee
- 3) Bid Adjudication Committee

The scope of work in the terms of reference was not clearly defined and could not assist the bidders in the establishment of a comparable fee structure. This resulted in the professional firms submitting different fee structures.

It was therefore agreed to ignore the fees structure during the evaluation of the tender. All companies received the same points for the project cost irrespective of their tendered amount. It was agreed to utilize the fee structure for professional bodies.

6.3 The Appointment of the Main Contractor for the Mbombela Stadium.

The tenders were divided into three, mainly the:

- Perimeter Fencing
- Bulk Earthworks
- Construction of the Stadium.

6.3.1 Perimeter Fencing:

The fencing contract was awarded to Umzamo Wa-Makhosikazi and the contract amount was R 1, 054 243-96.

6.3.2 Earth works: Contracted to clean up the land identified the 2010 stadium

The municipality advertised Tender number 38/2006 during July 2006 in respect of bulk earthworks and sub-surface drainage for the multi-purpose stadium. The Tender closed on the 18 August 2006. The following bids were received on closing day:

- Joubert and Seuns
- Klus Civils CC
- Philmally (PTY) LTD
- Interstate Clearing CC
- Ulusha Projects JV
- Dlabane Construction Trading as Africa Civil and Building Construction
- Edwin Construction
- Globul Roads (PTY) LTD
- Protec Khuthela
- Ascul Construction
- Mathemba Civils

The municipality in consultation with the PM and Professional team, took a decision to include the bulk earthwork as a subcontractor under the main contractor. The main contractor indicated that it would delay the commencement of the actual construction and that they would still need to evaluate the potential risk associated with the potential delays and the cost resulting from the ground water. The main contractor agreed to look at the possibility of subcontracting one of the companies that tendered, and to keep its cost as they are without any escalations due to time delays.

On the 18 December 2006 the senior project manager requested on behalf of Mbombela Municipality these companies to extend the validity period of the tender to 31 January 2007. This was done due to the fact that National Treasury stopped the appointment until finalization of the funding for the project. Documentation indicated that the extension was agreed upon.

On the 24 January 2007 four of the original bidders were notified that they will now be subcontractors for the Bulk Earthworks. These companies were requested to immediately price new bill of quantities for submission on the 29th January 2007. The following companies were short listed:

- i. Ulusha Projects JV
- ii. Dlabane Construction Trading as Africa Civil and Building Construction
- iii. Protec Khuthela
- iv. Ascul Construction

The short listing of these companies was done by Basil Read JV. Basil Read JV is part of the Mbombela JV. This process was done outside the Supply Chain Management structures as appointed by the Municipal Manager. There is a need for further investigation into the role between Mbombela JV and the municipality in the bulk earthworks tender.

Considering the list of Bidders as listed above it is clear that Mbombela JV never submitted a bid for the Earth Works Tender. There is still a need for further investigating the process which was followed during the award of the tender to Mbombela JV. The investigation was delayed due to the fact that the official documents with regard to this appointment could not be supplied for verification purposes to date.

6.3.3 Main Construction:

The tenders for the main construction were advertised and closed on the 18 of October 2006:

- The tender document was done by the Professional team.
- The tender document was approved by the specifications committee (no documentation was provided to the team).
- Five companies tendered for the construction of the Stadium.

- Covec MC JV	R 891 588 888.12
- Mbombela JV	R 920 931 801.13
- Hochtief Concor Motheo JV	R1, 084 211 025.00
- WBHO Construction	R1, 111 983 374.00
- Griniker-LTA	R1, 144 433 649.37

The contract was awarded to Mbombela JV.

- It should be noted that the Municipality is currently having an allocation of R 875 million.

It should be noted that the adjudication was done by the professional team Lefika, outside the normal supply chain management structures and a report was prepared and given to the supply chain office of the municipality.

The team could not find any documentation that supports that the internal supply chain management committee of the municipality set to deliberate on the selection and appointment although it is mentioned that they did.

The team further identified a potential risk of conflict of interest with the directors of Lefika and the main contractor. The team could not be furnished with evidence which supports that declarations were made in writing despite being promised to be given at the time of writing the report.

There needs to be further investigation in this regard.

7. EXPENDITURE MANAGEMENT

7.1 Municipal Operational Revenue Collection

The municipality has budgeted to receive an amount of R586, 875 million, which is composed of the Equitable Share of R102, 361 million, R43, 983 Conditional Grants, Municipal Own Major Receipts of R328, 216 million and other municipal receipts of R112, 315 million at the end of the financial year.

At the end of January 2007 the municipality received from the national Government an Equitable Share of R59, 728 million, Conditional Grants of R22, 245 million, Own Major Receipts of R189, 706 million and R69,994 million of Other receipts. In total the municipality received R341, 843 million, which represents 58, 2% of the total municipal operational budget.

Table 3: 2006 MTEF Mbombela Actual Operating Revenue position		2006/07		2006/07	
R Thousand	2005/06 to be rolled over to Adjusted Budget	Allocated during 2006/07 Main Budget	% share to total revenue	2006/07 Actuals	% share to total revenue
Equitable Share		102 361	17.4%	59 728	58.4%
Conditional Grants		43 983	7.6%	22 416	51.0%
Financial Management Grant		500		500	
Water Services (DWAF-Drought)				475	
Housing				7	
Norwegian				-	
LED		1 500		-	
Provincial Transfers		6 170		525	
Systems Improvement		700		-	
Public Transport					
Water Services Operating		35 113		20 908	
Municipal Rates and Tariffs		328 216	55.9%	159 706	57.8%
Assessment Rates		123 443	37.6%	73 730	38.9%
Electricity		149 156	45.4%	83 206	43.9%
Refuse		31 405	9.6%	18 145	9.6%
Sewerage		9 680	2.9%	5 666	3.1%
Water		14 532	4.4%	8 759	4.6%
Other Receipts		112 316	19.1%	69 994	62.3%
Tariff Charge Levies		16 365	14.6%	12 998	18.6%
Tariff Charges Levies Other		10 320	9.2%	2 340	3.3%
Fines		9 590	8.5%	3 134	4.5%
Interest		19 351	17.2%	16 644	23.6%
Rent Facilities and Equipment		1 968	1.8%	1 208	1.7%
Licenses and Permits		817	0.7%	636	0.9%
Agency Services		34 196	30.4%	23 578	33.7%
Profit/Sale of assets		-	0.0%	599	0.9%
Other Income		13 191	11.7%	5 544	7.9%
Income Forgone		- 591	-0.5%	(78)	-0.1%
Internal Transfers		7 088	6.3%	3 381	4.8%
Total Revenue		586 876	100.0%	341 843	58.2%

The R328, 216 million represents what the municipality is projecting to collect based on the billing to the consumers. For the period of seven months (January 2007), the municipality billed the consumers to the amount of R289 million, which is above 50% of the projected billing or collection.

This means that the consumption of services is higher than anticipated, therefore the municipality may under collect at the end of the financial year. The under collection will have negative impact to the 2006/07 because the own receipt represents 55, 9% of the total municipality operational budget.

The higher than anticipated billing may mean that the municipality was conservative when making projection during the budget process.