

To date Lefika was paid R72 604 000.00, Platinum Sport R3 619 000.00 and Umzamo R871 000.00. The total paid out on this project is R77 095 000.00. Mbombela JV did not receive any payment up to date.

Delivering construction projects involves engineering and construction works which by definition is the provision of a combination of supplies and services, arranged for the development, extension, installation, repairs, maintenance, renewal, removal, renovation, alteration, dismantling or demotion of structures, including building and engineering infrastructure.

The following activities are undertaken during the project delivery process:

- Activity 1: Initiate design process
- Activity 2: Develop conceptual design
- Activity 3: Finalise and document design
- Activity 4: Appoint contractor
- Activity 5: Perform and complete the works
- Activity 6: Commission and hand over works

Much is however still to be done to verify the value for money paid to the suppliers or contractors.

For the construction of stadium, Lefika Emerging Equity (Pty) LTD has been appointed to do the design of the stadium (professional team) at contract amount of R139, 331 million and Platinum Sport Consulting (Pty) LTD is responsible for the management of the project (project management team) at a contract amount of R11, 460 million.

During the process a need aroused for the business plan to be developed for the 2010 FIFA World Cup legacy. The municipality decided because of time constraints to extend the contract of Lefika Emerging Equity (Pty) TLD to include the development of the Business Plan.

The process was agreed and Lefika Emerging Equity (Pty) LTD quoted an amount of R2, 986 million to do the work. Due to the capacity and time constraints, Lefika Emerging Equity (Pty) LTD subcontracted to work to Grant Thornton that in turn quoted Lefika Emerging Equity (Pty) LTD an amount of R570,000.00, which is far lower than what Lefika Emerging Equity (Pty) LTD quoted initially to do the same work.

However, Lefika Emerging Equity (Pty) LTD did not inform the Municipality of the lower quote submitted by Grant Thornton amounting to R570 000.00, but invoiced the Municipality to the amount of R2, 986 million. On the other hand Lefika Emerging Equity (Pty) LTD delayed to pay Grant Thornton the amount of R570, 000.00 citing reason that they are awaiting payment from the Municipality. Grant Thornton approached Development Bank of Southern Africa (DBSA) for payment, and the DBSA responded positively by transferring R570,000.00 to Grant Thornton on receipt of the invoice.

The amount of R2, 986 million was already paid by Municipality to Lefika Emerging Equity (Pty) LTD, since the latter did not disclose the lower quote. On discovery on this information, the Municipality was expected, but failed to deduct the amount of R2, 986 million from Lefika Emerging Equity (Pty) LTD Certificate No.4 of R43, 405 million for the performance of the professional work done for the building of the stadium.

The failure by the Municipality to deduct the R2, 986 million is in contravention of Section 62(1) (d) that provides that, the accounting officer (Municipal Manager) is responsible for managing the financial administration of the municipality, and must for this purpose take all reasonable steps to ensure that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented.

It should however, be noted that non deduction is not a permanent loss to the municipality because Lefika Emerging Equity (Pty) LTD has a contract with the municipality of R139,331 million, therefore there is an opportunity for deducting the amount in question on the next certificate to be submitted for payment.

8. FINDINGS

8.1. 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.

8.1.1 Availability of cash and investments to fund activities:

The cashbook balance could not be verified due to the non reconciliation of the cashbook since June 2006. Council operates with a positive bank balance to the value of R6 837 567.37, with outstanding Cheques to the amount of R1 000 563.61.

The Immediate available cash (includes call account as well as cash book balance) is an amount of R273 834 079. Council does have investments to the amount of R267 997 075.06 as at 31 January 2007.

8.1.2 The cash available is reserved as follows:

| Reservation of Funds | Amount |
|---|----------------------|
| 1) Unutilized Capital Receipts (Grants) | R 44,610,671 |
| 2) Unutilized Capital Receipts (Sport Stadium 2010) | R 36,533,027 |
| 3) INCA Loan – White River Pipe Line | R 5,996,830 |
| 4) RMB - White River invest | R 478,828 |
| 5) Capital Replacement Reserve | R 56,617,667 |
| 6) Leave Reserve Fund | R 10,608,545 |
| 7) Insurance Fund and Bursary Loan Fund | R 5,585,792 |
| 8) Trust Funds | R 1,286,538 |
| 9) Eskom Guarantee | R 5,189,500 |
| 10) Unallocated Deposit's | R 44,106,741 |
| 11) Service Contributions – Developers | R 26,624,690 |
| 12) Operating Account (Unappropriated Surplus) | R 36,195,250 |
| Total | R 273,834,079 |

The outstanding debtors as at 30/06/2005 amounted to R181 605 821.00 and on 30/06/2006 to R203 686 993.90 and at 31/01/2007 the outstanding debtors is standing at R223 827 157.77.

The municipality provided for an amount of R14 233 808.00 in the budget in respect of bad debts. For the first six months of this financial year the outstanding debtors already increased with an amount of R25 578 115.57

When comparing the budgeted levies for consumers with the actual cash received for the first six months it is clear that the municipality will have a over collection of R52 956 865.00 by the end of the financial year. The picture changed if one considers the total consumers actual billing with the collections. This picture indicates a projected under collection of R155 437 326.00. This is a more realistic forecast.

It is critical for the municipality to revise its budget to indicate more realistic figure. Council adopted a credit control policy, as well as an indigent policy.

8.2 Consumer debtors

The following billing and payments were recorded as from July 2006 up to December 2006:

| <u>Billed</u> | <u>Cash Received</u> | <u>% Non Payment</u> |
|---------------|----------------------|----------------------|
| R268 304 633 | R190 585 965 | 29% |

Councilor's consumer accounts are in arrears to the amount of R27 735.53. Item 12A of Code of Conduct for Councilors should be adhered to.

8.3 Internal Control

- The non completion of the bank reconciliation since June 2006 is unacceptable.
- The Increase of the consumer debtors with an amount of R25 578 115.57 since July 2006 clearly indicates insufficient credit control.
- The 29% non-payment rate is unacceptable.
- The non-existence of proper cash flow management system is of concern.
- The non-adherence to the Councilors Code of Conduct

8.4 General Findings

The following are areas of concern, which emanates out of above investigation.

- The outstanding bank reconciliations
- The escalation of consumer debtors at the alarming rate. Non adherence to Section 64 (2) (a) of the MFMA.
- The unacceptable payment rate of 71%
- The outstanding consumer accounts of Councilors. Non adherence to Item 12A of Code of Conduct for Councilors.
- Vacancies as well as capacity within the finance section.
- The financial statements have been completed and submitted, but the qualification of the statements is a concern.
- The adjustment appropriation has not been tabled before the municipal council.

9. Allegations of procurement irregularities in Mbombela as reported by National Hotline.

It was found that the Bid Specification Committee did not adhere to section 13 of the MFMA by ensuring maximum value and benefit during procurement. This contributed to different cost structures submitted by companies and therefore prevents the Bid Evaluation Committee to compare the fee structures of companies. It is therefore clear that the municipality relied on suppliers to indicate the cost of the project, thus compromising the cost benefit analysis of the municipality.

There is a possibility of conflict of interest to be determined through further investigation between directors of Lefika and Mbombela JV.

The MFMA requires the Municipal Council to secure the budget before a service provider can be appointed or list the votes which the funding could be drawn should there be any shortfall. Currently the Municipality has over-committed itself since its available budget is R875 million and the contractor has been appointed at R920,931,887.13. **The Municipal Manager has this matter contravened the provisions of the MFMA.** The team did not have sufficient time to investigate the processes of the awarding of the tender nor familiarize itself with the tender contract. More time will be needed to further investigate this matter.

10. Allegations of mismanagement of appointment in the 2010 office.

There is inconsistency of the appointment of managers in the municipality. This is characterised by the absence of the following:

- Approved Organogram that indicates clear post levels, including that of the 2010 coordinator.
- Clear recruitment policy
- The decision to nullify the appointment of the 2010 coordinator constituted an unfair dismissal.

11. Allegations of interference in the administration by Municipal Council.

The following specific areas were investigated:

- If the Speaker has interfered with the administration or abused his powers.
- If the Executive Mayor has interfered with the administration or abused his powers
- If the Deputy Executive Mayor has interfered with the administration or abused his powers.
- If the Chief Whip has interfered with the administration or abused his powers.

11.1 The Speaker

There has been evidence of interference in the administration by the Speaker.

○ Following our observation, the Speaker as the Presiding Official of Council has been directly participating in deliberations of Council thus negating his position of being seen to be neutral in council sitting.

The speaker has been sitting and deliberating in some of the Mayoral Committee Meetings.

The minutes of council dated 29 January 2007 resolved that the Speaker should oversee the investigation by the Ad Hoc Committee into the appointment of the 2010 coordinator. It should be noted the committee was due to report back to the same Speaker who must then preside over the same issue in council and ensure impartiality of the findings of the report.

It should be noted that in the spirit of cooperative governance the Mayor and the Municipal Manager should be able to report to the speaker on some of the matters that council resolves on prior to council meetings,

The Speaker has therefore contravened the Code of Conduct for Councillors in terms of the Municipal Structures Act.

11.2 The Executive Mayor

There has been evidence of interference in the administration. The Mayor has been sitting in Management Meetings in the absence of the members of the Mayoral Committee responsible for those departments.

The Mayor and the Municipal Manager have been spending time on 2010 matters thus neglecting his Executive duties of overseeing the whole Municipality, evidence could be seen in the performance of the other departments in the Municipality such as Technical and the performance in MIG which is at 28 %.

Failure to report the appointment of the 2010 Coordinator despite having requested the item to be deferred from the date of the 28 August 2006 to 26 September 2006. Council learned that the 2010 Coordinator was already in Dubai representing the Municipality despite council having not approved his employment (Council resolutions, of 27 November 2006).

Failure to establish the section 79 committees as per council resolution of the 08 June 2006. It should be noted that Mayoral Committee meetings have also been characterized by divisions and political infighting as a result it is failing to perform its functions as per legislation.

The Executive Mayor has contravened the Code of Conduct for Councillors in terms of the Municipal Structures Act.

11.3 The Executive Deputy Mayor

There is evidence that the Executive Deputy Mayor has interfered with the administration. The Deputy Executive Mayor has written letters to the Acting head asking questions about issues relating to supply chain and transfer of staff members. (Correspondence dated 09 February 2007 and 27 February 2007).

On the 20th February the Executive Deputy Mayor issued instruction to the Acting Director Corporate to postpone interviews without any reason. It should be noted that such instruction was not brought to the attention of the Executive Mayor nor the Municipal Manager. The Executive Deputy Mayor has contravened the Code of conduct for Councillors and the Structures Act by undermining the Executive Mayor.

11.4 Ward Councillors

There is evidence of interference with the administration. Officials interviewed complained about receiving instructions from Councillors on how they should perform their duties or asking for information in relation to the administration.

The team interviewed a few Councillors who confirmed and further said that it was caused by the non functionality of the Executive committees that have failed to assist them or provide them with information. The Councillors have contravened the Structures Act and the Code of conduct for Councillors.

11.4.1 Chief Whip

There was interference by the Chief Whip when he was participating in Mayoral Committee meetings.

11.5 Allegations of Municipal Council effecting decisions that are contravening legislation that is governing Local Government.

11.5.1 Decisions contravening the Act.

The decision to appoint an Ad hoc committee to investigate other members of council was not correct since it compromised the impartiality of the investigating committee.

The Speaker cannot oversee Ad hoc committees that are investigating other members of council, since that questions the impartiality of the office of the Speaker.

It was incorrect for the speaker to allow council to establish an Ad hoc committee to investigate the administration; an independent commission would have been established to investigate such allegation.

The relationships in the municipality have deteriorated to an extent that Special Council meetings are convened to deliberate on matters that are supposed to be processed by the Mayoral Committee.

Council has deliberately sort to delegate functions to junior officials and the Executive Deputy Mayor, undermining the Municipal Manager and the Executive Mayor.

Council took a decision to fill vacant post on a new structure without adopting and costing such a structure, and without consulting with the Municipal Manager.

12. Allegation of failure to appoint section 56 and 57 of the Local Government: Municipal Systems, Act (Act 32 of 2000).

The following specific areas were investigated.

- Appointment of Chief Operating Manager. (Deputy Municipal Manager)
- Appointment of Director Corporate Services
- Appointment of Director Public Safety
- Appointment of Director Technical Services
- Appointment of Director Social Development

12.1 Appointment of Chief Operating Officer

The post was advertised in October 2006 and all applicants were short listed by the Executive Deputy Mayor. The Municipal Manager and the Executive Mayor were not part of the process of short listing. The Municipal Manager was given the list of short listed candidates by the Executive Deputy Mayor and instructed to proceed with interviews. Interviews took place on the 23rd of January 2007. The Deputy Mayor was part of the panel that was interviewing the candidates. The candidate with the highest score did not fare well in the skills Audit. The candidate was appointed by council in a special council meeting on the 1st of March 2006.

12.2 Appointment of Section 57 Managers.

The process has been marked by infighting and political wrangling between the Executive Mayor, the Executive Deputy Mayor and the Municipal Manager and Council is being used to take resolution of what should happen without seeking a consensus with its Executive or consulting with the Municipal Manager.

12.3 Municipal Manager

It must be clearly stated that the Municipal Manager is the Accounting Officer and therefore responsible for the proper administration of the Municipality.

All the identified deficiencies in the administration are solely his responsibility. Although it should also be noted that evidence suggest that the political instabilities in the municipality have contributed in the deficiencies as a result of interference in the administration by politicians.

13. Any other irregularity in terms of legislation.

The following specific areas were investigated:

- o Vacancies in the Administration
- o Conduct of the Municipal Manager.

13.1 Vacancies in the Administration

The team discovered that the Municipality has 115 vacant positions. 41 of the posts were advertised in August 2006 and the Executive Deputy Mayor issued instructions not to continue with the interviews and appointments. Nothing has been done over six months down the line since August 2006.

The Municipal Manager assumed duties on 1st October 2006, but to date no Performance agreement was signed between him and the municipality.

The municipality has not yet developed the Service Delivery and Budget and Implementation Plan (SDBIP) as required by the Municipal Finance Management Act.

14. CONCLUSIONS AND RECOMMENDATIONS

14.1 Conclusions

It is evident that the municipality is unable to perform its functions as required by law.

- The municipality has not yet tabled the 2006/7 adjustment budget thus contravening the MFMA legislation.
- Since the main approval of the annual budget (2006/7), the municipality is operating without the SDBIP.
- The municipality is operating only with MM and the CFO, no executive managers appointed. All of them are without the Performance Contracts.
- The Council decisions which was based on the Ad hoc committee's recommendation should be reviewed.

The relationship between the Council and the Administration has deteriorated to a level where service delivery has been affected due to the implementation of 2010 projects.

It should also be noted that an expectation was created when the matter was brought to council for deliberation and a full report was supposed to have been presented before the appointment could be effected as the item was deferred to the 26 of September 2006 on the request of the Executive Mayor. Council should be respected and reports should be submitted as requested even if they are contrary to the initial directives before final decisions are made if the matter was brought to council.

The relationships in the Executive Structures of the Council have deteriorated in such that service delivery is severely hampered.

14.2 Recommendations

- The council should finalize and approve the Organogram with clear post levels
- Finalize and approve recruitment policy which clearly delegations (clear post levels that must be appointed by Council in consultation with MM)
- The municipality should immediately table and adopt the Adjustment budget to avoid further unauthorized expenditure
- Finalize the Service Delivery and Budget Implementation Plan (SDBIP).
- The municipality must finalize the Performance Agreement with MM and the MM must do the same with his managers.
- The decision to nullify the 2010 Coordinator's position be reversed to avoid a potential loss of an estimated R 4 million relating to the payment of the contract.
- To reduce the conflict around the 2010 project, there is need for a centralized coordination in the office of the Premier
- Roles and responsibilities must be clearly defined to Councillors by MEC of Local Government and Housing, failure to adhere to the roles as identified be seen as contravention of the code of contract and the necessary steps thereof be taken
- A forensic team should be appointed to determine the value for money on all 2010 contracts and projects with the municipality

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RECOVERY PLAN FOR MBOMBELA MUNICIPALITY

The investigation into Mbombela Municipality identified certain shortfalls within the administration that needs urgent support from the Province.

The areas for support as identified are as follows:

- Human Resource
- Procurement
- Financial management
- Asset management
- 2010 Coordination function
- Legislative compliance
- Reporting

Detail support that will be required on above items:

| Area of Support | Activity | Responsibility | Deadline |
|-----------------|---|-----------------------------------|-----------------|
| Human Resource | Approval of the Human Resource plan by Council | Human Resource | 31 October 2007 |
| | Finalise recruitment policy with clear delegations with levels of appointment | Human Resource | 31 October 2007 |
| | Advertise all critical vacant funded posts | Human Resource | November 2008 |
| | Short listing and appointments of vacant posts | Human Resource & Support Team | Jan 2008 |
| | Conduct skills audit into the finance and procurement section | Human Resource & Support Team | 1 May 2008 |
| | Identify training needs as per skills audit and facilitate training | Human Resource | 1 June 2008 |
| Procurement | Revised Supply Chain Management Policies and procedures. | Dept of Finance | 31 Dec 2007 |
| | Provide Supply Chain Management training to unit | CFO and Dept. of Finance | 31 Jan 2008 |
| | Audit on all Quotation based procurement's as well as all contracts | Internal Audit Premiers office | 31 Jan 2008 |
| Financial | Training on completion of | CFO and Dept. | 30 Nov 2007 |

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|------------------------|--|---|---------------|
| Management | bank reconciliations | of Finance | |
| | Training on budget reporting | CFO and Dept. of Finance | 30 Nov 2007 |
| | Implementation of proper cash flow management system | CFO and Task Team | 15 Nov 2007 |
| | Training on cash flow management for all managers | CFO and Task Team | 30 Nov 2007 |
| | Establish a reporting model based on SDBIP for reporting to Council | Municipal Manager and Task Team | Dec 2007 |
| | Review financial policies | Support Team | 30 April 2008 |
| | Revenue enhancement programme to be approved by council | Municipal Manager and Council | Nov 2007 |
| Asset Management | Finalise movable asset register | CFO and Dept of Finance | Nov 2007 |
| | Finalise immovable asset register | CFO and Dept of Finance | August 2008 |
| Audit report | Correct all issues as raised by the Auditor-General over the last three financial years | CFO Task Team | Feb 2008 |
| 2010 Coordination | Finalise the 2010 coordination structure. Council to approve the recommended structure for implementation | Municipal Manager and Council | Oct 2007 |
| Legislative compliance | Conduct workshop for Councillors on roles and responsibilities | Dept of Local Government | 31 Jan 2008 |
| | Workshop on compliance for all other legislation for Mayoral Committee, Municipal Manager and all Heads of Departments | Dept Local Government and Housing (Legal Section) | April 2008 |
| Reporting | Workshop on MFMA compliance for Mayoral Committee, Municipal Manager and all Heads of Departments | CFO and Dept of Finance | 20 Feb 2008 |
| | Train officials and councillors on processes and procedures to follow for submission of items to | Task Team | Dec 2007 |