

Questionable tender will not be rescinded

Justice department defends company that falsified information

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THE justice department will not cancel a multimillion-rand tender awarded to a company that allegedly falsified information in its bid documents.

The R29.5 million tender to design a new human resource structure for the department was awarded to Cyberia Group despite revelations that it misrepresented its tax, VAT and company registration details.

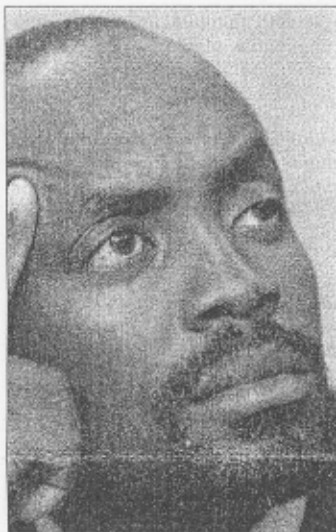
An internal audit report says the misrepresentation by Cyberia was aimed at misleading the department about its ownership. The report found that the details pertain to Cyberia's sister company, Cyberia Technology. It found that Cyberia Group claimed that it was 100% black-owned in its bid documents while Cyberia Technology was not.

"This misrepresentation appears to have been done to obscure the identity of Brian Shamrock, who is white, as this would have diluted their BEE profile and could have had an impact on the awarding of the bid," the report states.

The report further shows how officials failed to follow tender rules in awarding the contract. The evaluation committee, chaired by the department's chief financial officer, Sandra Gomm, changed the evaluation criteria and this later worked in favour of Cyberia Group.

The deviation from rules meant that the short-listed bidders were invited for oral presentations—contrary to National Treasury regulations, which say evaluation of bids should follow criteria stipulated in the request for bids document.

City Press has established that a consortium named Tribal/Nokusa Consulting was at the point of changing the criteria, leading other bidders. It had quoted R14.5 million for the project—about half the amount quoted by Cyberia.



NOT BUDGING . . . Justice department director-general Menzi Simelane won't cancel contract
Picture: Dudu Zitha

After these presentations, Cyberia was the leading bidder and was awarded the contract despite its bid being the most expensive.

Gomm also chaired the adjudication committee for the tender but later appointed herself to chair the evaluation committee, which recommended appointing Cyberia.

The report says Gomm's appointments to these committees "highlights a lack of segregation of duties, which may raise questions about the integrity of the tender process".

It recommended the evaluation and adjudication committees be held accountable for, among others:

- Contravening regulations by deviating from evaluation rules;
- Failing to appoint a specifications committee and not approving the specifications for the tender;
- For recommending the appoint-

ment of Cyberia while part of the evaluation was not done by the evaluation committee; and

■ For condoning the appointment of the evaluation committee contrary to the department's delegation of authority.

Department spokesperson Zolile Ngayi said: "It is not illegal not to award a contract to the bidder with the lowest bid. In short, the contract has not been terminated as there is no legal basis to do so."

But the internal audit report says Cyberia's misrepresentation of facts meant the department was dealing with Cyberia Technology and not Cyberia Group on the contract. It recommended that justice department—director-general Menzi Simelane consider obtaining a legal opinion "with regard to the possible termination of the contract with Cyberia for misrepresenting facts in their bid". It noted that potential litigation by unsuccessful bidders may ensue.

"The director-general should also consider giving direction for instituting criminal proceedings for fraud and civil proceedings against Cyberia for recovery of losses that may arise as a result of implementing the recommendations," it says.

Cyberia refused to comment but a source sympathetic to the company said the company should not be punished for government's bungling of the tender.

The report found that two invoices of R6.6 million and R3.8 million, had some questionable claims which could have been noticed if they were checked. Both invoices were certified and authorised by Simelane and Gomm.

The report says the two invoices appeared to be overstated in that:

- Some of the claims for payment appear to have been duplicated;
- Dates and, in certain instances, the hours spent by consultants are

not indicated;

■ Charge-out rates of some consultants were not indicated in the pricing schedule; and

■ Cyberia Group may have fraudulently charged the department for VAT but no evidence could be obtained that Cyberia was registered as a VAT vendor with the South African Revenue Service (Sars).

However, Ngayi said Cyberia was a registered VAT vendor.

"It is mischievous to suggest that Cyberia Group was not a registered VAT payer with Sars. The Cyberia Group does possess a valid VAT registration certificate and this was confirmed by our internal auditors and there is thus no need to recover any funds from the group."

Gomm referred questions sent to her to Ngayi, who said Gomm was appointed by Simelane as chairperson of the adjudication committee.

"I am not sure on what basis the department is supposed to act against her as the audit report did not refer to Gomm's conduct as questionable," Ngayi said.

The report further found that Gomm and her committee acted against the department's own tender procedures when she invited bids for the project well aware that funds were not available.

Internal procedures require that an indication should be made whether a budget for a project is available before tenders are advertised and awarded.

Gomm, the report says, told internal auditors that Simelane granted her "verbal principal approval" to source the funds from budget reprioritisation. This is when departments allocate unspent funds to new projects rather than return them to the National Treasury.

Ngayi denied that the department ignored its own prescripts by going to tender without a budget.

"There was and still is a budget for the project," he said.