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napokwe



Department:  
Public Works  
REPUBLIC OF SOUTH AFRICA

## INTERNAL MEMO

To:	The Acting Director General	Date:	21 November 2011
From:	Pretoria: Property Management	Office:	306,AVN
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**SUBJECT: BRIEFING NOTES: INDEPENDENT COMPLAINTS DIRECTORATE LEASES.**

The lease agreements entered into by and between the Department of Public Works for Independent Complaint Directorate refers, and

The attention of the Acting Director General is drawn to the series of events that surrounds the conclusion of these leases.

### Procurement of Struktura building: ICD

- ICD has been occupying two buildings in Pretoria e.g. Ex-Mercedes and ICD House. *from when?*
- In 2007 ICD approached the Department of Public Works to secure alternative accommodation by 2008 when the above leases terminate.
- A PI was therefore issued by KAM in December 2007, for the region to secure the required accommodation by August 2008.
- On receipt of the PI the Pretoria Regional Office approached the relevant committees and the Tender was advertised in February 2008 as PT08/008.
- On closing of the Tenders in March 2008 four Bidders tendered, with Struktura Building being one of the tenders.
- In April 2008 an inspection and evaluation process indicated that the bidders did not meet the minimal functionality criteria. *what was the criteria?*
- In view of the above, the relevant committees were approached and granted approval for lapsing of the tenders.

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- In May 2008 a request to nominate four bidders from the PIP database was tabled before the relevant committees; however these bidders could not provide the required assistance in July 2008.
- In July 2008 again, the Department approached owners of buildings in Pretoria to provide the required space and in the course of that process new owners of the Struktura building made the building available for occupation by the National Government.
- When approached for consent the client concurred in a letter dated 21/07/2008. — copy
- On 22 July 2008 the RBAC recommended the approval of the lease with the new owners to the Director General, in line with circular 4 of 2007, which only allowed DG and EXCO members to approve and support any procurement above 2 million, with the role of regions limited to recommendation.
- In line with the above circular approval was therefore granted on the following terms.
  - 3887m<sup>2</sup> @ R70.00/m<sup>2</sup> excluding Vat.
  - 27 Bays @ R438.59/ parking bay excluding Vat
  - @ 9% escalation rate.
  - 8 yrs and eleven months *9 yrs & 11 months*
  - The lease agreement was signed on 15 October 2008 in line with the BEE strategy.
  - The Landlord was therefore obliged in line with provision of schedule 2 to reconfigure the building to suit the client needs in line with the space planning documents signed. *at whose cost.*
  - On completion of the upgrades after a considerable delay of almost a year by the Landlord to complete the project; the client outlined the challenge of the building, space planning not accommodating its furniture and the delay in issuing of certificates by the landlord.
  - In the mist of delay ICD directly negotiated a lease renewal for ICD House old building, which had an effect on rental expenditure and this action was irregular.
  - DPW intervened and settled on the following terms ,R54.54/m<sup>2</sup> including Vat
  - In 2010 the landlord issued the relevant certificates in order to allow occupation of the building. *when?*
  - Despite the above certificates the client refused occupation of the building for reasons outlined on bullet no.19 above.

In view of the signed space planning documents by client, infrastructure installed by client (IT and Telkom) clause 8 of the lease agreement, which may lead to possible litigation and fruitless expenditure, ICD was therefore engaged and provided with the option of occupying 114 Vermeulen Street on a swap deal with Human Settlement occupying Struktura building.

## LEASES.

### Procurement of 114 Vermeulen Street: DHS

- A Procurement instruction was issued on 05/11/2007.
- Procurement Strategy for an open procedure approved on 31/01/2008, with the tender advertised on 22/02/2008.
- On closing of the tender in March 2008, 2 bidders had expressed interest but were found to be non-responsive.
- On 14/05/2008 approval was obtained to lapse the tender PT08/010.
- On 11/06/2008 the approval for a negotiated procedure with Mati Properties to conclude the lease was adjudicated.
- On 25/08/2008 the Director-General granted approval in line with circular 4 of 2007, which allowed only EXCO members to support all submission above 2 million for DG's approval with regional offices only role limited to recommendation.
- On 18 June 2008 an acceptance of offer was issued in favour of Mati Properties@ a rate of R62.70/m<sup>2</sup>, R456 P/B @ 8%.
- The acceptance of the above was informed by the deed of sale, between Mati Properties and Bamboo Rock, a subsidiary of SHM Group of companies.

### Financial implications of the swap

**Rental costs struktura @ commencement**  
**R 70.00/m<sup>2</sup> Vat exclusive @3887m<sup>2</sup>@9 %**  
**R 500 p/b Vat exclusive @ 27 bays @9 %**

**114 Vermeulen Street @ commencement**  
**R80 /m<sup>2</sup> Vat exclusive @7614m<sup>2</sup>@10%**  
**R 438 p/b Vat exclusive @102 parking bays@10%**

Difference in rental

R 10.00/m<sup>2</sup> Vat exclusive difference.  
1% escalation rate difference.

### Comparable transactions

In the same period of Acquisition of the Struktura and 114 Vermeulen, Street the Department invited tenders under bid no.PT08/005 for occupation by SASSA on closing of the tenders the Market reflected the below rates:

EX MERCEDEDS BUILDING		
	Offices	Parking
<b>Lettable Area</b>	<b>1229.91</b>	<b>26</b>
Tarrifs	R124.69m <sup>2</sup>	R255.79per bay
Vat	R17.36	R35.81
<b>Total</b>	<b>R141.36/m<sup>2</sup></b>	<b>R291.60 per bay.</b>

Lefapha la Diliro Isa Setsnaba Department of Public Works Lefapha la Mesebetsi ya Seljhaba Kgoro ya Mešomo ya Selshaba Ndzawuloyya Minsirho ya Vaaki LIT@o la Temisebeni yaHutimende Yomphakatsi (Sebe laMisebenzi yoliNtu UmiNyango wezeraSebenzi yoniPhakathi uMnyango Wenisebenzi Yomphakathi eMiphakathini Muhasho wa Mishume ya Tshshavha Departement van Openbare Werke

) date of beneficial occupation  
 < date of occupation  
 ← Commencement of lease

I.T and Telkom infrastructure

Human settlement	ICD
Unknown	IT R 700 000

**Tenant installation /security measures**

Human settlement	ICD
1. No investment on security upgrades only physical security.	1. Invested R 2,883,500.17 mil on security measures.
2. Accepted the ICD layout and occupied the building.	2. Did not accept DHS configurations and suggested major changes in line with the signed layout plan.

**Size of the building and impact thereof space procured (swapped).**

Human settlement :114 Vermeulen Street	ICD :Struktura
1.7614m <sup>2</sup>	1. 3887m <sup>2</sup>
2. 102 parking Bays	2. 27 parking Bays

**ICD POSSIBLE IRREGULAR EXPENDITURE / FRUITLESS EXPENDITURE**

- Non occupation of the struktura building could have led to fruitless expenditure on I.T and Telkom installed.
- Damages claim by the landlord in line with clause 8 of the lease, resulting in interest charged on unpaid rentals and legal costs.
- ICD direct negotiations with the owner of the Ex-Mercedes Benz without DPW and committed the state to a rental amount of R154, 060.23 per month from R 67, 083.15 per month.
- Legal costs if any emanating from the litigation process instituted by the landlord to enforce the above adjustment.
- Layout plans signed without consideration of the furniture specification, resulting in further delay of occupation of the building.
- Major reconfiguration of the 114 Vermeulen building to suit their needs, including security measures (As opposed to occupying as is).
- Demand to be provided with accommodation options other than 114 Vermeulen and Struktura, could have resulted into a major fruitless expenditure (ICD's inability to provide adjusted /revised needs assessments despite various reminders by DPW), could have resulted in an unnecessary creation of a vacancy rate, which is contrary to the KAM directives.

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**DHS POSSIBLE IRREGULAR EXPENDITURE /FRUITLESS EXPENDITURE  
Unexplained**

- Delay in signing space planning documents, which strengthened the landlord enforcement of clause 8 of the lease.
- IT and Telkom Infrastructure installed could have been fruitless if building not occupied.
- Cost of deploying physical security for the period of non occupancy.
- Cost of deploying physical security for the period of non occupancy.
- Dear colleague letter from DHS former accounting officer to DPW former accounting officer committing on 01 January 2009 occupation.
- DHS demand for additional accommodation in the mist of a vacancy for 114 Vermeulen Street.
- DHS disregard of DPW's fruitless expenditure letters.

**DPW POSSIBLE IRREGULAR EXPENDITURE /FRUITLESS EXPENDITURE**

- DPW paid rental of 114 Vermeulen Street from July 2009 up to and including August 2010, in line with the provisions of the lease commencement date, clause 8 and strength of the pre-occupation certificate of the building, as issued by the landlord
- Furthermore the legal services opinion obtained was in favour of the rental being paid from July.
- DPW's delay in enforcing the Mora and recovery of the costs incurred by the department to effect compliance issues.

The purchase price of the property by Mati Properties was R23 000 000-00, with only 70%, which is R16100 000-00 market value being financed with the 30% being a gentlemen's agreement between the seller/purchaser. A unique arrangement, which places doubt on the principle of "arms length"

On 25 March 2008, an agent of the Seller in an email to DPW bear no knowledge of the existence of the above transaction ( Deed of sale) placing further doubt and confirming suspicion of the strange 70% - 30% arrangement.

Due to DPW policy of, not signing leases with entities not owning at the time, Mati Properties could not take transfer of the property.

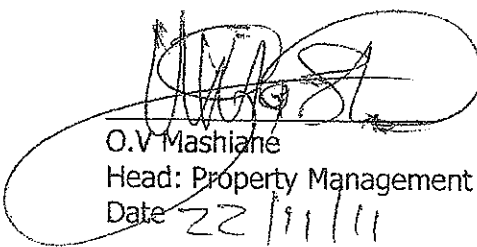
In August 2008, the Seller SHM Group signed a deed of sale with Majestic Silver for a purchase price of R23000 000 however this sale was not subjected to a 70% - 30% arrangement, which therefore confirmed an increase from R16100 000-00 from one buyer to the other and further benefiting the seller unfairly.

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In view of the above an offer from Majestic Silver informed by the Deed of Sale and guarantees issued by Investec bank was therefore tabled before the relevant committees for approval in line with circular 4 of 2007 at a cost of R80/m<sup>2</sup> excluding vat at 10% escalation.

The above circumstances therefore confirm that the change of "Market Value" as per the purchase price between one buyer to the other had a major effect on the rental, with the new buyer injecting an estimated amount of R15 000 000-00 for upgrades and T.I above the R23 000 000-00 purchase price = R38 000 000-00 ( capital outlay).

If the above circumstances and other transactions are taken into account in line with the industry norms, it is evident that only the Sellers benefit, with BEE entities remains, with a huge debt to service and the state expected to pay increased/unfavourable rates contrary to the property review Guidelines.

  
O.V Mashiane  
Head: Property Management  
Date 22/11/11

*Cannot rely on report.  
need further verification of  
figures & facts.*