

3 Tendering irregularities in the Eastern Cape

EDDIE BOTHA AND GCINA NTSALUBA

Fast facts about the Nelson Mandela Bay Stadium¹

- The stadium cost approximately R2,065 billion to build.
- The stadium seats 45 000 in addition to 4 000 extra seats which will be temporarily installed for the World Cup.
- Floor area is 55 000 m², 1 015 rooms, 54 kiosks, 24 offices, 264 flood-lights, 35 loud speakers, 64 turnstiles and two scoreboards.
- The stadium is approximately 40 m high with six levels on the western side in addition to five on each of the north, south and east stands.
- There are two big viewing screens and two conference rooms, accommodating 200 people.
- It has four wheelchair ramps, 74 toilet blocks and 32 colour-coded turnstile gates.
- There are 23 private boxes; 22 more are planned, including two bars.
- Energy efficiency is a key element and includes energy-saving designs, the building management system and temperature control.

- The playing field (pitch) is natural grass, with the outer and surrounding areas consisting of artificial turf.
- Eight games have been scheduled to play at the Nelson Mandela Bay multi-purpose stadium including the losers' round to decide the third-place finisher.

INTRODUCTION

It is a tribute to Port Elizabeth that the Nelson Mandela Bay Stadium was the first of the 2010 World Cup mega structures across the country to be completed on time. However, for soccer supporters it must have bordered on sacrilege that, more than a year before the world's most popular sport kicked off on African soil, the stadium hosted a warm up rugby match between the visiting British and Ireland Lions team and a coastal side on 16 June 2008. The first soccer match – the Vodacom Challenge soccer match between Orlando Pirates and Kaizer Chiefs – took place a month later, on 23 July.

As the 2010 frenzy increased across the province, it became clear that other seshows, not directly involved with the actual construction of the Nelson Mandela Bay Stadium, would play a part to keep up the province's less than squeaky clean image. Whereas the authors could find no substantiated incidences of conflicts of interest or corruption surrounding the construction of the Nelson Mandela Bay Stadium, of major concern was the allocation of advertising and branding contracts by the Eastern Cape Tourism Board (ECTB) with a view to promote the industry during World Cup 2010. A senior ECTB official and whistle-blower was immediately suspended after it was alleged that he had leaked information to the authors. In November 2009, seven months after being suspended, he had yet to face a disciplinary hearing.

More drama was to follow when unhappiness over the appointment of an advertising company by the ECTB also resulted in accusations of irregular tendering activities by a local firm of attorneys representing one of the losing bidders. At one stage the provincial economic affairs department, under which tourism falls, also placed a moratorium on advertising spending for 2010.

A similar situation occurred in East London, where accusations of favouritism were made by losing bidders when the Buffalo City Municipality (BCM) awarded a contract to a firm of architects for the upgrade of the Absa Stadium, which it hoped would be used as a training camp.

But the first real allegations of corruption surfaced in Mthatha. Isolated from other big centres, the capital of the erstwhile Transkei is not really on the 2010 map, other than in the hope that it may attract one of the visiting teams to use its stadium as a base camp. But it was rather the off-the-field antics, centering on the construction tender, which attracted local attention.

THE NELSON MANDELA BAY STADIUM

To have the stadium built took some hard bargaining, according to Nelson Mandela Bay's municipal manager, Graham Richards.² The winning tender of the Grinaker-LTA/Interbeton/Ibhayi joint venture was subject to certain conditions, one being the lowering of the price. Although Richards and the contractor wouldn't disclose the tender price, Richards revealed that the National Treasury awarded Nelson Mandela Bay Municipality (NMBM) a R1,375 billion grant, or 70 per cent of the total cost. A further R222 million (20 per cent) was received by the provincial government, while the municipality was responsible for R99 million (or 10 per cent of the total costs), placing the total amount at an initial R1,692 billion. But bargaining efforts by the municipality for a discount on the construction tender price did not help. The final costs are now estimated to have spiralled to R2,065 billion, creating a shortfall of over R300 million, which will be charged to the municipality's account.

Local governments, in terms of the Constitution, are obligated and have a legal duty, to promote economic social development such as services. The objective of local government is to create sustainable communities and deliver cost-effective services and to eliminate inequities, and build infrastructural development. While Richards pointed out that the municipality has, over time, contributed substantial amounts of its own money to focus on the poor, it was unclear how the building of the stadium would impact on the municipality's capacity to continue prioritising its pro-poor spending. He stated that:

[the building of the stadium] will impact adversely on our ability to spend on infrastructure over the next 15 years. My view is that unless national government finds ways to mitigate this effect it will definitely impact negatively and my other colleagues agree.³

It is probably too early to say how the costs of the stadium will affect ratepayers. But officials agree that it will make an impact. The money that is needed must come from somewhere. Either government chips in ... or else the ratepayers will feel the crunch.

The allocation of a tender to build the stadium to Grinaker-LTA/Interbeton/Ibhayi immediately resulted in some negative publicity when Port Elizabeth's *The Herald* newspaper⁴ reported that a group of wealthy Eastern Cape businessmen, including Mkuseli Jack, former Finance MEC Enoch Godongwana (now a national Cabinet member) and Mthatha entrepreneur Thembelani Nodada, were among the subcontractors linked to the preferred bidder to build the stadium. The newspaper said the three were part of Ibhayi Construction, which is one of the subcontractors linked to Grinaker-LTA/Interbeton/Ibhayi joint venture. It said it was believed that Ibhayi Construction has a 30 per cent stake in the project.

It does not seem, however, as if there were any conflicts of interest with regards to the awarding of contracts for the building of the stadium. According to Contracts Director and Project Director Mark Bicknell of Grinaker-LTA, the main contractor for the construction and engineering of the multi-purpose stadium, subcontractors were chosen by the main contractor in terms of a mutual agreement with the municipality that it would not interfere in the building of the stadium.⁵ Bicknell said the agreement entailed taking over the stadium precinct and the main contractors making their own appointments, without any interference from the municipality. The selection or appointment of subcontractors was thus largely based on preference by the main contractor.

THE ADVERTISING TENDERS

Observers often suppose that the business of World Cup preparation centres on the stadiums. However, a variety of other business opportunities arise in other economic areas, such as advertising and accommodation. Of particular interest in the Eastern Cape has been the competition for advertising tenders. The province is one of the poorest in South Africa, so it was to be expected that local advertising companies would put up a fight for a slice of the lucrative advertising pie that the World Cup would offer. It was no exception when the ECTB awarded its two advertising and branding contracts. The drama of what was to come was already evident in early March 2009, when the investigations editor of East London's *Daily Dispatch* received a letter from an anonymous source

within the ECTB, which included minutes of the ECTB adjudication committee. The document outlined various allegations about so-called maladministration and mismanagement within the institution.⁶

According to the minutes of a meeting by the Tender Evaluation Committee, which was held on 2 December 2008 in the ECTB boardroom, tenders for the 'branding contract' were adjudicated. Present at the meeting were acting chief financial officer Les Martin, destination marketing manager Eddie Marafane, acting information systems manager Kaligna Gopar, procurement officer Laurene Matroos and destination marketing trade relations consultant Susan Wilson.

Bids for the branding contract were received from six companies: Boomtown, Dumisa Investments, Hip Hop Media, Hands On Marketing, Futa Communications and Intengu.

It was decided that the Preferential Procurement Framework should be followed and that the tender points should reflect the value of the tender. As the tender price was expected to be more than R500 000 the 90/10 principle was applied. According to the advertisement for tenders, which appeared in the *Daily Dispatch* and *The Herald* on 18 November 2008, the points allocated for the tender (out of a total of 100) were 30 for price, 25 for relevant experience, 35 for comprehensiveness and 10 for BEE compliancy.

During the evaluation Eddie Marafane, the marketing manager, stated that one of the bidders, Hands On Marketing, had been a friend of his and signed the declaration form accordingly. An overview of results of the evaluation process shows that scoring for the top three was as follows:

	Hip Hop Media	Intengu	Boomtown
Price	30,00	14,82	17,33
Experience (ave.)	15,60	17,20	19,00
Comprehensiveness (ave.)	20,60	22,80	24,80
BEE	8,40	10,00	1,00

Source: Compiled by author based on figures sourced from minutes of the ECTB adjudication committee meeting and made available to the author by an anonymous source.

Hip Hop received the most points (87,50), followed by Itengu with 80,22 and Boomtown with 78,33.

The minutes, which were signed by Martin, recommended that 'tenders be considered for adjudication in order of scoring with Hip Hop Media being

the highest'. The committee also concluded that all tenders were 'fairly evaluated without bias or favour and the adjudication of the tenders should be done knowing that the presentation of results is sound'.⁷

But that was not to be. Surprisingly, Boomtown was awarded the tender despite ranking third in terms of its point score. How did this decision emerge? According to an anonymous source at the ECTB, chief executive Zola Tshefu arranged for a special advertising pitch following the 2 December meeting, which fell outside the original advertisement and terms of reference of the tender.⁸ It was also alleged that during this meeting Tshefu, who chaired the meeting on 15 December 2008, declared her relationship with two Port Elizabeth-based agencies, Dumisa Media and Boomtown, but did not recuse herself.

Tshefu later said that there was no need for her to recuse herself:

Everyone knows everyone in this province. If someone declares a relationship with a company, which could influence that person's decision, then that person should recuse him or herself. I know Boomtown but do not have that kind of relationship with them.⁹

Potentially dubious processes and outcomes also characterised the second tender process. On 19 November 2008 the Tender Evaluation Committee met in the ECTB boardroom to evaluate the tender for the advertising agency. Present were Les Martin, destination management manager Fezeka Mlungu, Kaligna Gopar, Eddie Marafane, Laurene Matroos, Veliswa Mhlapo from communications and Vuyelwa Mantyi, who is responsible for 2010 projects.

Martin declared a conflict of interest, indicating that he had a good friend who had submitted a tender.¹⁰

Bids for the tender, which were advertised in the *Daily Dispatch* and *The Herald* on 1 September 2008, were received from Phenyso, Di Stap, SMG Africa, Sondlo Kropp, Siyathetha, Buchule, Phulo Media, Intengu, Boomtown, Hip Hop Media, Dumisa Media, Umso, Soul Juice, and MJ Communications.

After a number of meetings the committee scored the tenders as follows:

1. Hip Hop Media
2. SMG Africa
3. Di Stap
4. Boomtown
5. Intengu

However, Dumisa Media, which scored the sixth highest points, was awarded the tender.

Following this, on 2 April 2009, attorney Nico du Plessis of the East London based firm, Velile Tinto & Associates, which represented Hip Hop Media, wrote to Tshefu to request access to the ECTB reports which lead to the awarding of the tender.¹¹

Du Plessis requested that in terms of the Promotion of Access to Information Act 2 of 2000, all the reports and minutes, which are held by the Specification Committee, the Evaluation Committee, the Adjudication Committee, and the ECTB supply chain management policy, be made available to his offices before close of business on 8 April 2009, 'failing which we will proceed with legal action to obtain same'.¹²

Du Plessis later said that the matter was settled when the board awarded Hip Hop Media a side service tender.¹³ This demonstrates an example of the precarious position in which some businesses that depend on government contracts find themselves. Instead of fighting the validity of the tender award, Hip Hop Media obviously decided that in the long term it would be better to be satisfied with the crumbs.

In a bid to shed light on these two developments, the *Daily Dispatch* contacted the ECTB's chief executive, Zola Tshefu. On 29 April 2009 Tshefu denied any irregularities in the awarding of a tender to the advertising company.¹⁴ She added that 'The ECTB is however involved in a dispute with one of the parties, who were appointed in terms of the tender'.¹⁵

In reply to specific questions posed by the *Daily Dispatch*, Tshefu replied as follows:¹⁶

Q: Did you override the 2 December 2008 recommendation of the adjudication (where tenders for the 'Branding Contract' were adjudicated)?

A: *No, a new process was followed thereafter which involved presentations by shortlisted bidders in order to make an appointment.*

Q: Is it true that Hip Hop has been consulting with its lawyers regarding the issue?

A: *Yes our respective lawyers are dealing with the dispute.*

Q: Is it true that you have on occasion during an adjudication meeting, which you chaired, declared a relationship with Boomtown and Dumisa Media, but failed to recuse yourself?

A: No, I have no relationship with both Boomtown and Dumisa, I merely declared that Boomtown was a service provider in my previous employment and that whilst at the same agency I had been exposed to Dumisa. At each bid committee meeting members are required to make declarations to ensure transparency and this declaration was made in that light.

A day after the *Dispatch* contacted Tshefu, and following her response, she suspended, with immediate effect, the ECTB human resources manager, Noel van Wyk, allegedly for speaking to a third party. Evidently, she suspected that he had leaked the information. In another email to the *Dispatch* on 28 May 2009 Tshefu wrote: 'It is true that the ECTB HR Manager has been suspended, however I am not at liberty to divulge the charges as the disciplinary process against him is still underway and must be confidential at this stage.'¹⁷ She promised to release details of Van Wyk's suspension once due process had been concluded. In a telephone interview Tshefu¹⁸ admitted that she suspected Van Wyk of having been the whistle-blower. She also confirmed that Van Wyk had resigned.

On 19 February 2009, Mendo Dukada, acting accounting officer of the Eastern Cape Department of Economic Development & Economic Affairs (DEDEA) wrote to Tshefu.¹⁹ Dukada, who had recently been appointed to that position, said it was part of her responsibility to maintain and execute appropriate measures to ensure that transfers (between the DEDEA and public entities attached to it) were utilised in line with the department's strategic objectives.

Dukada requested a report from Tshefu on:

- Her understanding of approved 2010 projects to be implemented by the ECTB
- A description of the projects and the budgets associated with them
- A detailed performance report associated with each project
- Tshefu's understanding of total transfers to the ECTB from the department for the specific purpose of the 2010 projects
- Business trips undertaken locally and internationally against the 2010 budget
- Tenders – a report on projects Tshefu intended to outsource as well as their value ('I would welcome that you provide us with a sense of any external disputes in relations with these tenders')
- ECTB's plans for the 2009/2010 financial year on 2010 projects.

To gain an understanding of and regularise the department's approach to the 2010 projects, she also placed a moratorium on all further expenditure and approvals of financial commitments on the 2010 projects pending the outcome of a meeting between her and Tshefu.

Dukada, who has since moved to the provincial Treasury Department, said²⁰ that she could not remember the correspondence. However Van Wyk was adamant²¹ that the moratorium on expenditure was directly related to the tender processes.

Tshefu maintains that there was nothing irregular about the tender processes. She said²² that Dukada's concerns had been discussed with her and the various political heads of the economic development department and that the moratorium had been lifted at the end of March 2009.

It is, however, strange that the acting Head of the Department would take such drastic action over the 2010 financial expenditure of the ECTB if she did not have some concerns that needed to be allayed. Tshefu's immediate response to queries about the tender processes – the suspension of Van Wyk – is at the least evidence that any questions asked about the tender processes touched a raw nerve.

Although Tshefu had no basis to accuse Van Wyk of being the whistleblower, his suspension for allegedly talking to a third party (it can reasonable be assumed that Tshefu had the dreaded Fourth Estate in mind), illustrates that often whistle-blowers in government or parastatal circles cannot expect protection from their peers for leaking such information, especially not to the media.

THE BUFFALO CITY TENDER

An almost similar situation played itself out when the BCM awarded a tender to NOA/THM/ATB/Carifro, a consultancy group, for the upgrading of the Absa Stadium in East London as a possible training camp for overseas soccer teams.

NOA/THM/ATB/Carifro's tender of R3 851 700 was the highest of the seven tenders submitted. The other companies to tender were Ilitha Consulting Consortium (R1 735 080), IDC/HRN/BKS Consortium (R2 222 222), Point Architects Consortium (R2 239 476), Impendulo Design Architects Consortium (R2 449 208), Gideon Sam & Associates (R3 044 250) and UWP Consulting Consortium (R3 318 449).²³

As a result of NOA/THM/ATB/Carifro's successful bid, Point Architects' Henning Rasmuss, whose company had been successful in its tender as ar-

chitects for the Cape Town stadium, wrote to BCM's acting procurement and contracts manager on 23 April 2009. He requested that BCM furnish his office with a report 'as to the value of the contract awarded to the winning tenderer, and the basis on which the tender was awarded'.²⁴ Rasmuss also wrote that he believed the awarded tender came in at an 'excessively higher price than a number of other offers, including ours'. He asked the municipality to provide its reason for this decision and to 'make a full disclosure of all factors affecting your decision-making in this tender'. Rasmuss told the authors on 28 May 2009 that he has had no response from the municipality. This is still the case.²⁵

In a similar vein Johann Schoeman of the East London-based Impendulo Design Architects wrote to BCM acting municipal manager Nonceba Mbali-Majeng on 23 April 2009.²⁶ Schoeman complained that the results of the awarded bid had not been made public. He asked that BCM clarify the award of the bid, issue his company with a copy of the Bid Evaluation Report and inform all bidders of the official results.

On 12 May, Schoeman, not having received a response from the municipality, wrote again to Mbali-Majeng, whose supply chain management department denied ever having seen Schoeman's letter, despite proof that the hand-delivered letter had been signed for.

However, in response to a query lodged by the *Daily Dispatch* on 28 May 2009, the BCM forwarded the newspaper a letter, dated 11 May, which it said had been mailed to Schoeman.²⁷

In the letter, signed by N Ncunyana, director of engineering services, it was pointed out that the bidder's amount for the successful tender, NOA/THM/ATB/Carifro, a joint venture, was recorded as R3 851 700 when the tenders were opened. The letter continues:

However, the tenderer on 9 March 2009 reported that the amount that was read and recorded was incorrect. The tenderer stated that his proper tender figure was R2 812 441 and upon further perusal of the bid document it was established that the figure of R3 851 700 was not the professional fees offer but rather the estimated cost for electrical and mechanical works.²⁸

Ncunyana also wrote that NOA/THM/ATB/Carifro had submitted a letter to the municipality in which it stated its correct tender amount.

Two architects, who were present during the opening of the tender documents, expressed their concerns about the procedures that were followed during the tender.²⁹ They said the tender amounts were read out from a specific page in the submitted pages. Their arguments follow:

There could not have been a mistake on BCM's side. The official while reading the tender amounts looked carefully in each document for the correct page and amount. It is highly questionable that the tenderer corresponded with BCM after the opening without the other tenderers being notified of this before they were appointed. In fact, it was in the tender document [stipulated] that no tenderer may communicate with any official. If they do, they will be disqualified. This should have been conveyed in a meeting to all tenderers, upon which the other tenderers could have objected.³⁰

The architects also argued that the tender report had been withheld from them. Furthermore, the municipality had failed to correctly apply the correct criteria as stipulated by the Public Finance Management Act. They argued:

The Public Finance Management Act interpretation by BCM is wrong. The fact is that this tender falls within the 90/10 tender principle, 90 for price and experience and 10 for PDI/HDI, [previously and historically disadvantaged individuals]. Tenderers had been disqualified – without [the BCM] looking at price and experience – if they did not have enough PDI/HDI points in their architects' company. This is not within the rules of the PFMA. You may not put more weight on the 10% to disqualify a tenderer.³¹

The architects said there was no mention made by BCM at the compulsory meeting for bidders (consultants) that an architectural firm's PDI/HDI component will be a determining factor in the disqualification of a bidder. 'In fact the criteria mentioned was: experience and a valid tax clearance certificate. This with my experience is the only document that allows an organ of the state to disqualify a tenderer,' said one of the losing bidders.³²

NOA/THM/ATB/Carifro³³ is a joint venture between Carifro Consulting Engineers, whose members are David Frost, Michele Rivarola and Likayaletu Liyeza Nkonki, and NOA Architects, which was formed in 1997 and is 57 per

cent HDI owned. Its directors are Sindile Ngonyama, Innocent Okpanum and Tim Coleman. The two remaining partners are THM Engineers E L CC and quantity surveyor Arthur T Bisiwe.

Interestingly, prior to the BCM tender, Bisiwe had been in partnership with quantity surveyor Willem van Niekerk. Their company, Bisiwe Van Niekerk, had been involved for almost five years with contractual work for the Border Rugby Union,³⁴ which rents the Absa Stadium from the municipality. In September 2008 Bisiwe split with Van Niekerk and formed his own company, which joined forces with the NOA/THM/ATB/Carifro joint venture which, with the highest tender price (at least in its original submission), became the successful bidder for the stadium's upgrade. Van Niekerk, on the other hand, joined the unsuccessful Impendulo Design Architects Consortium bid team.

MTHATHA'S UNSOLICITED BRIBE

If ample newspaper clippings about corruption across South African cities are any indication, Mthatha is a likely location for bribes. Sadly, the city lived up to its image when tenders went out for the construction of the Mthatha Stadium.

As with upgrading of the Absa Stadium in East London, Mthatha's King Sabata Dalindyebo Municipality (KSDM) hoped that its stadium could be used, if successfully negotiated with World Cup teams, as a base camp or training field. However, progress with the construction of the Mthatha Stadium has been marred by a number of issues and it looks highly unlikely that the stadium will be completed in time for 2010.

From the beginning the construction of Mthatha's stadium was fraught with controversy. The first obstacle came when the Eastern Cape provincial government cut the funding it promised the KSDM. The initial budget of R500 million was cut by the Department of Sport, Recreation, Arts and Culture to R120 million.

Then, in 2008, before construction work even started, there were fears that a dispute between a local Mthatha community and the municipality would delay construction work. The Zimbane community lodged a land claim in 1998 for virtually the whole of Mthatha, including the site where the stadium is being built. The matter of restitution was eventually settled out of court. In April 2009 construction work was still at foundation level despite the municipality having ploughed R220 million into its construction.³⁵ KSDM spokesperson Sonwabo

Mampoza said theft had contributed to delays. Two men later appeared at the Mthatha Magistrate's Court in connection with the theft of construction equipment from the stadium.³⁶

Later, KSDM municipal manager Monde Tom instituted an investigation into suspected tender irregularities. Of particular concern were allegations that a bribe had been asked of potential bidders. Tom commissioned East London private investigator, Christian Botha, to investigate the allegations but Botha's report was never tabled in the KSDM council. Tom concluded that the report was 'inconclusive',³⁷ which sparked a party-political battle within the KSDM council chambers.

It was up to the *Daily Dispatch* to first report that there were serious irregularities in the contract. It reported that East London-based construction company, Rumdel Construction, revealed it had been asked for a R6 million bribe to be awarded the R500 million contract to build the stadium.³⁸ A second article reported on how the alleged bribe had been repeated in Rumdel's boardroom.³⁹

On 10 July 2009 Rumdel's commercial manager in East London, Dean Townsend, who was responsible for the Mthatha Stadium tender, revealed the cloak and dagger background of the alleged bribe.⁴⁰ Rumdel had submitted a tender for Phase 2 of the Mthatha Stadium contract in October 2008, to the value of R525 million, after successfully prequalifying for the tender. He stated:

The programme was fast tracked and the project was to commence in November 2008. Various problems were encountered by the professional team in the award process, and we were asked to extend our tender validity on two separate occasions, extending the validity of our tender to the end of February 2009.⁴¹

On 13 January Townsend received a call from a Mr Masela, who requested a meeting later that afternoon. According to Townsend the caller said that he had been tasked by the KSDM to interview Rumdel about its tender. Townsend and Rumdel MD Gerald Dreyer met with Masela, who was accompanied by another person.

Masela informed us that he had to interview us regarding our capability and how we intended utilizing emerging contractors from the Mthatha

area on the project. He also stated that he was to meet two of the other tenderers, namely Ho Hup that afternoon, and Khumbula Property Services the next day.⁴²

Townsend said that Masela asked what Rumdel could do to assist him and his colleagues to swing the contract to their company. ‘We asked him what he meant by this and he replied that he would revert to us in the morning.’⁴³

He said Masela contacted him on his cell phone the next day, asking whether Rumdel had considered their request. Townsend asked Masela how they could assist with the development of local emerging contractors. ‘Mr Masela then said that “they require a monetary amount to swing the contract Rumdel’s way”.’⁴⁴ When Townsend asked him how much Masela stated that the required amount was R6 million. Townsend replied that Rumdel does not enter into these types of arrangements in order to influence the tender process, but that he would take it up with the MD, which he did. Townsend stated:

I also contacted our non-executive director, Mr Faku Maraqana, who is a well respected businessman with a legal qualification. I asked him to phone Mr Masela in order to identify whom he represented.⁴⁵

Townsend said Maraqana contacted Masela and that the same figure was mentioned, which Maraqana also rejected.

Instructed by his MD, Gerald Dreyer, Townsend then reported the incident to Steven Richter of UWP Engineers in East London, whose company represented the professional team in their communications with Rumdel.

‘Richter asked Dreyer and me to attend a meeting on 16 January with the Directorate of Public Prosecutions to report the incident,’ said Townsend, adding that the meeting was attended by a police captain and superintendent, as well as an independent auditor responsible for reviewing the tender process:⁴⁶

The incident was discussed and Rumdel made it clear that they were concerned about the safety of their staff members who were still working on Phase 1 should any formal charges be laid.⁴⁷

According to Townsend the tender was not awarded due to a lack of funding after the Department of Sport, Recreation, Arts and Culture cut its contribution to the stadium to R120 million.

In May Rumdel submitted a tender prequalification for the revised scope of the tender (approximately R150 million). Townsend said there was an objection to a prequalified tender process for the project, and the tender was subsequently re-advertised as an open tender at the end of May 2009. Rumdel declined to tender, he added.

In his report, private investigator Christian Botha explained that Townsend had furnished him with details of the caller, whom – via cell phone numbers – Botha identified as Xolani Masela. Company searches linked Masela to Daluxolo Mlenzana, a member of the municipality's evaluation and adjudication committee.

The plot thickened when UWP Consulting's Mondli Dlulane told Botha that Mlenzana had earlier approached him to arrange work for one of Masela's companies on the stadium project. It was also revealed by Botha that the relationship between Mlenzana and Masela started in 2006 when both had worked for the Nelson Mandela Metropole.⁴⁸

Despite Tom's earlier statement that the report was 'inconclusive', Mlenzana was suspended, but his disciplinary hearing has been postponed several times as he has pleaded ill health. It will now continue without him, said Tom. The matter is still under police investigation.⁴⁹

Tom said that the contract for the second phase of the stadium has now been awarded to KwaZulu-Natal contractors Stedone Mechanicos Building. Tom is convinced that it will be completed by end of March 2010.

In another twist to the saga the United Democratic Movement (UDM) in the KSDM council attempted to link Tom to R6 million of the contract money, which it said had not been accounted for. On 20 October 2009 UDM caucus leader Wandile Tsipa handed in a motion asking that the allegations be discussed by council.⁵⁰ Tsipa insisted⁵¹ that after the last payment had been made to Rumdel for the initial earthworks contract an amount of R6 million had been in surplus. It was this money that was used to offer the bribe to Rumdel for the construction of the stadium tender, he said.

Tom rejected the allegation and confirmed that the UDM motion was never tabled in council.⁵²

WHITE ELEPHANTS?

The big question, however – which has elicited quite a debate already in the Eastern Cape – is whether the money for the construction of the Nelson Mandela Bay and Mthatha stadiums and that for the upgrade of the Absa Stadium in East London has been well spent: are these structures going to be put to good use after the World Cup?

Even at this late stage it remains to be seen whether the Mthatha Stadium will be finished on time. If completed, the Mathatha Stadium would probably host club games in future. Whether spending all that money on such a construction was a good investment is highly debatable. The next municipal budget will tell the story.

The Absa Stadium, earlier known as the Basil Kenyon Stadium, has always been the home ground of the Border rugby team and has on a number of occasions hosted international rugby matches. That will not change and its future is securely cemented in East London.

It is, however, the financial viability of the Nelson Mandela Bay Stadium in Port Elizabeth that will dominate ratepayers' discussions in years to come. Prior to the first World Cup kick-off, the stadium hosted an Open Day which allowed Nelson Mandela Bay residents the opportunity to experience their brand new 2010 stadium first hand, as well as the British and Irish Lions rugby match against a Coastal XV team and a Vodacom Challenge soccer match between Orlando Pirates and Kaizer Chiefs in July 2009.⁵³

But to survive financially the stadium will need an anchor tenant. And the issue is not without some controversy. It is clear that Eastern Province Rugby Union (EPRU) president Cheeky Watson sees the new stadium as the future home ground for the Southern Kings, the newly formed rugby franchise, which is set to join the Super XIV annual rugby tournament between the top teams from South Africa, New Zealand and Australia.⁵⁴ He insisted however that the newly formed franchise does not want to become the stadium operator.

'We cannot be expected to fill the stadium to capacity,' said Prof Malcolm Figg, financial director of the EPRU.⁵⁵ 'We organise rugby but the stadium can't rely solely on rugby for its revenue.'⁵⁶

Writing on his website,⁵⁷ former Southern Spears chief executive Tony McKeever, who has since lost this position after the franchise was liquidated following a dispute with SA Rugby, said the financial viability and feasibility

model for the Nelson Mandela Bay Stadium was based on the stadium hosting at least 15 international Super Rugby matches a year starting in 2009.

But he also has a message of gloom. The bad news is that the stadium will cost, as from 7 June 2009 onwards, R178 000 a day to run. 'That is R65 million a year and will escalate at about 10% a year. In five years time the stadium will have cost the Nelson Mandela Bay municipality R400 million.'⁵⁸

McKeever backs the Super Kings franchise to be the anchor tenant and operator of the stadium, despite Watson's reluctance to run the stadium:

It is for the Metro to ensure that the Super Rugby Southern Kings franchise and its infrastructure and Rugby Academy were locked into the Nelson Mandela Bay area and that the stadium becomes the headquarters of professional rugby in the Eastern Cape in a mutually beneficial public-private partnership. Without a Super Rugby franchise in the Eastern Cape, the Nelson Mandela Bay Stadium will die.⁵⁹

CONCLUSION

Regardless of the sporting outcomes of the 2010 World Cup, hosting such a prestigious event must at least have taught the organisers and those closely connected to the sport's greatest showpiece valuable lessons. The Eastern Cape provides illuminating insights into potentially irregular tendering activities.

In particular are the concerns raised by advertising companies, which felt that they had been done down by the tender process of the ECTB. That the board had to settle with a bidder following its refusal to accept its own adjudication norms is disturbing. In the aftermath of the World Cup the province's Treasury should insist that the board fully explains its actions. In addition, further explanation is required to better understand its reasons for suspending an official whom the board's chief executive regarded as the culprit, when details of the tender somersault reached the ears of the press.

It is also questionable that BCM, despite strong objections by other bidders against the tender procedures that it followed, insisted on its choice of a firm of architects contracted for the upgrade of the Absa Stadium.

Ironically, barely four months later, the same municipality faced the wrath of the Grahamstown High Court over its tender procedures when the court ruled a contract for an R86 million housing project unlawful.⁶⁰ In his review

of an earlier ruling, which interdicted Umso Construction from providing the internal engineering services for 2 500 RDP houses to be built in the Duncan Village township, High Court Judge Jos Jones described BCM's handling of the tender process as 'perverse'.

Judge Jones' review followed an application by Mpumalanga Construction, NJV Contractors, Rumdel Construction and WBHO Construction, which claimed that BCM applied 'pre-qualification' criteria, which, it knew, was unlawful for a massive housing project tender. Umso was awarded the contract despite the fact that it bid R15 million more than its closest competitor, Mpumalanga Construction.

It is possible that, had the losing architects bidding for the Absa Stadium upgrade approached the High Court at the time, the municipality's decision to award the contract to NOA/THM/ATB/Carifro may also have been overturned. Hopefully the municipality will in future stick to proper tender procedures.

The behind-the-scenes shenanigans, which pre-empted KSDM's tender for the construction of the Mthatha Stadium, is of a much more serious nature. In this case, at stake are not only lopsided tender procedures or favouritism towards a preferred advertising company, but the possibility of a blatantly criminal act.

The suspension of the official who is suspected of having been involved in the alleged bribe is only a first step. Criminal investigation must be a priority and it presents an ideal opportunity for the province, and specifically Mthatha, to improve its tarnished image.

NOTES

- 1 Nelson Mandela Bay Municipality communications department and website <http://www.nelsonmandelabay.gov.za/FIFAWORLDCUP/Content.aspx?objID=258> (accessed 14 February 2010), 6 May 2009.
- 2 Graham Richards, personal communication, 6 May 2009.
- 3 Ibid.
- 4 Max Matavire, Fat cats get fatter with soccer stadium tender, *The Herald*, 20 February 2007, http://www.theherald.co.za/herald/2007/02/20/news/n01_20022007.htm (accessed 14 February 2010).
- 5 Mark Bicknell, personal communication, 25 March 2009.
- 6 Anonymous document received by authors and in possession of the authors.
- 7 Ibid.
- 8 Anonymous, personal communication, 25 March 2009.
- 9 Zola Tshetu, personal communication, 2 December 2009.
- 10 Anonymous document received by authors and in possession of the authors.
- 11 Nico du Plessis, letter to Zola Tshetu (attorneys' ref SD0360), copy in possession of the authors.
- 12 Ibid.
- 13 Nico du Plessis, personal communication, 7 November 2009.
- 14 Zola Tshetu, personal communication, 29 April 2009.
- 15 Ibid.
- 16 Ibid.
- 17 Zola Tshetu, personal communication, 28 May 2009.
- 18 Zola Tshetu, personal communication, 2 December 2009.
- 19 Mendo Dukada, letter to Zola Tshetu, 19 February 2009, copy in possession of the authors.
- 20 Mendo Dukada, personal communication, 2 December 2009.
- 21 Noel van Wyk, personal communication, 2 December 2009.
- 22 Zola Tshetu, personal communication, 2 December 2009.
- 23 J W Schoeman, Impendulo Design Architects director, letter to Buffalo City acting municipal manager, 23 April 2009, copy in possession of the authors.

- 24 Henning Rasmuss, Point Architects, letter to BCM acting procurement and contracts manager, 23 April 2009, copy in possession of the authors.
- 25 In this chapter, the factual position is reflected as at 11 January 2010.
- 26 Johann Schoeman, personal communication, 27 May 2009.
- 27 Samkelo Ngwenya, personal communication, 5 June 2009.
- 28 Letter signed by N Ncunyana, director of engineering services, copy in possession of the authors.
- 29 Names withheld, personal communication, 12 June 2009. As is often the situation when service providers disagree with the outcome of government tenders, the two architects wish to remain anonymous because they may again tender for BCM work.
- 30 Ibid.
- 31 Ibid.
- 32 Ibid.
- 33 Websites of joint venture: <http://www.carifro.co.za/>, <http://www.thm.co.za/>, <http://www.no-harchitects.co.za/> (accessed 14 February 2010).
- 34 Willem van Niekerk, personal communication, 2 December 2009.
- 35 Bongani Hans and Yanda Bango, Mthatha stadium at foundation phase, *Daily Dispatch*, 17 April 2009, <http://www.dispatch.co.za/politics/article.aspx?id=308963> (accessed 14 February 2010).
- 36 Ibid.
- 37 Monde Tom, personal communication, 1 June 2009.
- 38 Eddie Botha, R6m bribe bid for Mthatha stadium deal, *Daily Dispatch*, 7 July 2009, <http://www.dispatch.co.za/article.aspx?id=328190> (accessed 14 February 2010).
- 39 Eddie Botha, Suspects repeated stadium bribe offer, *Daily Dispatch*, 8 July 2009, 4, <http://www.dispatch.co.za/article.aspx?id=328460> (accessed 14 February 2010).
- 40 Dean Townsend, personal communication, 14 July 2009.
- 41 Ibid.
- 42 Ibid.
- 43 Ibid.
- 44 Ibid.
- 45 Ibid.
- 46 Ibid.
- 47 Ibid.

- 48 The author attempted to contact Xolani Masela and Daluxolo Mlenzana for their comment on the allegation that they sought a bribe on 7 July 2009. They declined to comment. Also see Eddie Botha, R6m bribe bid for Mthatha stadium deal, *Daily Dispatch*, 7 July 2009, <http://www.dispatch.co.za/article.aspx?id=328190> (accessed 14 February 2010).
- 49 In this chapter, the factual position is reflected as at 11 January 2010.
- 50 United Democratic Movement, letter to KSDM municipal manager, 20 October 2009, copy in possession of the authors.
- 51 Wandile Tsipa, personal communication, 30 October 2009.
- 52 Monde Tom, personal communication, 5 November 2009.
- 53 Kupido Baron, Nelson Mandela Bay Municipality media liaison officer, personal communication, 18 May 2009.
- 54 Cheeky Watson and Professor Malcolm Figg, personal communication, 6 May 2009.
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- 56 Ibid.
- 57 Tony McKeever, Nelson Mandela Bay Stadium: The good news and the very bad news, *Sports Leader*, 1 June 2009, <http://www.sportsleader.co.za/tonymckeever/2009/06/01/nelson-mandela-bay-r2bn-stadium-the-good-news-the-very-bad-news/> (accessed 14 February 2010).
- 58 Ibid.
- 59 Ibid.
- 60 Eddie Botha, Contract for house project ruled unlawful, *Daily Dispatch*, 11 September 2009, 6, <http://www.dispatch.co.za/article.aspx?id=344200> (accessed 14 February 2010).