

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

CASE NO: 67574/12

In the matter between:

**MANDG CENTRE FOR
INVESTIGATIVE JOURNALISM NPC**

First Applicant

BHARDWAJ, VINAYAK

Second Applicant

and

MINISTER OF PUBLIC WORKS

First Respondent

**INFORMATION OFFICER:
DEPARTMENT OF PUBLIC WORKS**

Second Respondent

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

VINAYAK BHARDWAJ

do hereby make oath and say that:

1. I am the second applicant in this matter and the advocacy co-ordinator of the first applicant, which has its head office at 13th Floor, Metropolitan Building, 7 Coen Steytler Avenue, Foreshore, Cape Town. I deposed to the applicants' founding affidavit, replying affidavit and supplementary replying affidavit in this matter.

V. B



2. The facts and allegations herein are, save where the contrary is indicated by the context, all within my personal knowledge and are, to the best of my belief, both true and correct.
3. Where I make submissions of law, I do so on the basis of advice received from the applicants' legal representatives.


BACKGROUND TO THIS AFFIDAVIT

4. This application is currently enrolled as a special motion in the Third Court, for hearing on 5 and 6 November 2013, in accordance with the directions of the Deputy Judge President the Honourable Mr Justice Ledwaba, dated 22 August 2013 ("**the directions**").
5. The directions require the respondents to file supplementary affidavits by 11 September 2013. While the directions do not require the applicants to file a supplementary affidavit, the applicants consider it appropriate to do so, in order to explain the reasons for proceeding with the application and to clarify the case that the respondents' remain required to answer.
6. This affidavit has been prepared with all available haste, in order to afford the respondents as much time as possible to consider and respond to its contents before 11 September 2013.
7. This affidavit serves to outline the issues which remain in dispute between the parties and thus require deliberation and determination at the hearing. To this end, it is necessary to place on record the extensive exchanges in which the remaining issues were defined and refined.

U. B.
DB

The first disclosure

8. On 14 June 2013, the respondents served and filed an affidavit deposed to by Mr Phillip Sobi Masilo, the Special Advisor to the Minister of Public Works ("**the Minister**"), who is the first respondent. This affidavit already forms part of the record. In his affidavit, Mr Masilo stated that the Minister and the Director-General ("**the DG**") of the Department of Public Works ("**the Department**"), who is the second respondent, had instructed him "*to examine all of the documents in the possession of the Department that fall within the scope of the applicants' request for information*" and "*specifically asked [him] to advise whether it was possible to sever security-sensitive information from the documents*".
9. Mr Masilo stated that he had "*examined all of the relevant documents in the possession of the Department*", having "*worked through forty-two (42) separate files*", and had concluded that, with very limited exceptions and redactions, the documents in all 42 files, listed in a schedule annexed as "PM2" to Mr Masilo's affidavit ("**Mr Masilo's list**"), could be accessed by the applicants.
10. The 42 files of documents were duly copied and provided to the applicants on 21 June 2013 by Cheadle Thompson & Haysom Inc. Attorneys ("**CTH**"), of which Mr Masilo is a director ("**the first disclosure**"). The applicants reimbursed CTH for the considerable cost of copying the files, amounting to R27 936.84, as reflected in the invoice attached hereto marked "**SA1**".


U. B.


The public interest in disclosure

11. It is necessary to record, at this stage, that the documents contained in the furnished files ("**the disclosed documents**") demonstrate amply that the applicants were correct to assert, in the founding and replying affidavits, that the public interest in the disclosure of the requested records clearly and overwhelmingly outweighed the harm envisaged by the respondents, in accordance with section 46 of PAIA.
12. Conversely, they demonstrate that the bald assertion in the respondents' answering affidavit that *"it is not in the public interest for the documents sought to made public because of the security-related information that is contained therein"* was entirely unfounded and false. It is clear from the disclosed documents (some 12 000 pages) that their contents are of clear and profound public interest and expose no vulnerability in the security of the President, his premises or any persons present at those premises.
13. This is apparent from a special report prepared by the first applicant after a thorough analysis of the disclosed documents, which was published in the *Mail & Guardian* on 5 July 2013 under the title "*The Nkandla Files*" and which included the following articles, copies of which are attached hereto marked "**SA2**":
 - 13.1 "*An orgy of kowtowing*", in which it was shown why and how the cost of the Nkandla upgrade escalated almost 1000% from an estimated R27.8 million in 2009 to a projected R273.8 million in 2012.

01 V.B

- 13.2 "Number One emerges a clear winner", in which it was reported that, according to a "top secret" March 2011 memorandum, only 5% of the Nkandla upgrade costs would be funded by President Jacob Zuma. The secret memorandum apportioned R203 million to the state and only R10.5 million to President Zuma, and indicated that the state's portion of the costs would include outdoor landscaping, quoted at a cost of R14.3 million, as well as a "higher quality" cattle kraal costing R1 million.
- 13.3 "What did Zuma know about the Nkandla project?", in which it was reported that, despite President Zuma's denial in Parliament that he had been aware of the details and costs of the Nkandla upgrade, several of the disclosed documents indicate that he received regular updates on its progress and was instrumental in setting costly deadlines for the project.
- 13.4 "Project railroaded from the start", in which it was shown that the drastic escalation in the cost of the Nkandla upgrade resulted from the Department's haste to meet the President's deadlines, which saw procurement processes being routinely circumvented and which led one official to record in late 2010 that the "scope of works and costs have increased substantially on the project over the past few months, giving rise to serious concerns about what control mechanisms and parameters are in place".
- 13.5 "Secrecy obsessions betray political sensitivities", in which it was reported that the classification of many of the disclosed documents

 V.B

as "top secret" appeared to be motivated by concerns over potential political embarrassment rather than purely security concerns. This was revealed in a "top secret" March 2012 memorandum proposing the application of special tendering and auditing procedures to shield "prestige projects" from the public eye, not only for security reasons, but also "because these projects are further targeted by journalists in an attempt to discredit the government in general".

14. On 12 July 2013, the *Mail & Guardian* published two follow-up articles authored by the applicant, attached hereto marked "SA3":

14.1 "How IDC splashed R10m on bailout", in which it was reported that early in 2012 one of the contractors, Bonelena Construction CC, facing liquidation as well as the cancellation of its contract, owing to underperformance, refused to relinquish the project. The company then received a R10 million bail-out from the state-owned Industrial Development Corporation and a R7 million settlement payoff from the Department. A memorandum from the Durban Regional Office of the Department shows that this approach was adopted because a public dispute over the cancellation of the contract would "result in all the project information being subjected to public scrutiny", which posed "an unacceptable risk to this office and could result in political fallout that could possibly influence [President Zuma's] political position very negatively".

14.2 "Nkandla's money mine", in which it was reported that a contractor favoured by President Zuma, Moneymine Enterprises, has received

U. B

over R56 million from the Department to date, having been appointed to work on all three phases of the Nkandla upgrade without any of the requisite public procurement processes being followed.

15. It is abundantly apparent from the above articles (the contents of which I attest to be accurate) that the disclosed documents reveal vast evidence of impropriety and interference with the procurement processes that the Department is constitutionally commanded to observe. Nevertheless, as noted in the article "An orgy of kowtowing", *"there are significant gaps – notably in relation to communication with directors general, ministers and deputy ministers and, crucially, [President] Zuma"*.

The deficiencies in the first disclosure

16. From the first applicant's thorough analysis of the disclosed documents, it became clear that numerous documents were missing from their midst:
- 16.1 several of the documents tendered by the respondents in Mr Masilo's affidavit (i.e. specifically listed in his schedule) could not be located among the disclosed documents;
 - 16.2 several of the disclosed documents were clearly incomplete, in that they were missing pages or attachments;
 - 16.3 several of the disclosed documents referred to meetings of which no minutes could be located among the disclosed documents; and
 - 16.4 notably, the disclosed documents were confined to communications among the Department's middle and lower management, consultants

 V.B

and contractors, and although such records refer to a higher level of communication, deliberation and decision-making – i.e. so-called "top management" – the disclosed documents did not include any records generated at that level.


17. Accordingly, on 29 July 2013, the applicants' attorneys addressed a letter to the respondents' attorneys, a copy of which is attached hereto marked "SA4", identifying in detail the above deficiencies in the first disclosure and requesting the respondents to provide the absent documents, as well as a list of all records relating to request, which were held by the respondents, but which were withheld from disclosure for security or any other reasons.
18. On 6 August 2013, the applicants' attorneys received a letter from the respondents' attorneys, a copy of which is attached hereto marked "SA5", stating that Mr Masilo's list "*listed all of the documents in the possession of the Department ... relating to the Nkandla security upgrade*", that some of these documents "*cannot be disclosed due to the sensitive nature of their content*", while others may "*have inadvertently not been made available*" but would be disclosed after analysis by Mr Masilo.
19. On 8 August 2013, the applicants' attorneys addressed an urgent letter to the respondents' attorneys, a copy of which is attached hereto marked "SA6", seeking clarification of the following:
 - 19.1 whether the respondents' reference to "*documents in the possession of the Department*" (emphasis added) included any documents in the possession of the Ministry of Public Works;

00 V.B

- 19.2 whether the reference to documents "*related to the Nkandla security upgrade*" (emphasis added) included all documents related to other (i.e. non-security) aspects of the Nkandla upgrade;
- 19.3 whether any person had conducted a comprehensive audit of all of the documents held by the Department to determine whether they fell within the applicants' request, and, if not, what process was followed;
- 19.4 whether the respondents could exclude the possibility that relevant documents may have been omitted from the files that were examined by Mr Masilo; and
- 19.5 whether the respondents contend that those documents referred to in the disclosed documents but absent from Mr Masilo's list do not exist or cannot be located for any other reason, and, if so, whether the DG would be prepared to provide an affidavit to that effect in accordance with section 23 of PAIA.
20. As the respondents' attorneys had not yet responded to the urgent letter of 8 August 2013, the applicants' attorneys addressed further letters urging them to do so, on 19 and 21 August 2013, copies of which are attached hereto marked "**SA7**" and "**SA8**" respectively.
21. On 22 August 2013, the applicants' attorneys received a letter from the respondents' attorneys, a copy of which is attached hereto marked "**SA9**", stating that:

 v. 8

- 21.1 Mr Masilo had reviewed all of the documents **in** his possession, and had requested the KwaZulu-Natal Provincial Office of the Department ("**the KZN Office**") to conduct a similar exercise; and
- 21.2 Mr Masilo had found that several documents **had** been erroneously omitted from the disclosed documents and he **would** arrange for such documents to be provided to the applicants shortly.
22. On 27 August 2013, the applicants' attorneys addressed a further letter to the respondents' attorneys, a copy of which is attached hereto marked "**SA10**", reiterating the as yet unanswered requests for clarification in the letter dated 8 August 2013.
23. On 30 August 2013, the applicants' attorneys received a more substantial letter from the respondents' attorneys, a copy of which is attached hereto marked "**SA11**", confirming the following:
- 23.1 all documents related to all aspects of the Nkandla upgrade were filed at the KZN Office, which was tasked with managing the project;
- 23.2 Mr Masilo instructed the KZN Office to send all of the files related to the Nkandla upgrade to his office in the Ministry in Pretoria;
- 23.3 Mr Masilo examined each of the files and compiled his list from them; and
- 23.4 Mr Masilo is prepared to affirm under oath the process he undertook.

 V.B

24. Attached to that letter is a colour-coded schedule prepared by Mr Masilo, identifying the following four categories of documents (corresponding to the schedule attached to the applicants' attorneys' letter of 29 July 2013):
- 24.1 highlighted in green, documents that were tendered but mistakenly not copied for the first disclosure ("**the omitted documents**");
- 24.2 highlighted in yellow, documents that appear to have once existed but cannot now be located ("**the lost documents**");
- 24.3 highlighted in red, documents that cannot be disclosed because they contain sensitive security-related information and cannot be redacted ("**the withheld documents**"); and
- 24.4 highlighted in blue, documents of which Mr Masilo *"has been unable, despite his best efforts, to confirm the existence"* ("**the undetected documents**").
25. The applicants are not in a position, at this stage, to advance any reasons why the withheld documents, which are very few in number, are required to be disclosed under PAIA. The applicants record, however, that the respondents have taken the position, in their letter dated 6 August 2013 ("**SA6**"), that they have not withheld (for security reasons or otherwise) any documents apart from the withheld documents identified in this schedule.
26. Copies of the omitted documents were provided to the applicants by CTH on 2 September 2013 ("**the second disclosure**"). These documents fall within the applicants' request for information. They do not, however, fully satisfy that request. The applicants submit that the respondents have not

 V.B

appropriately accounted for the lost documents and the undetected documents - nor for the wider class of documents to which they belong - and thus are compelled to proceed with this application, for the reasons set out below.

THE EXISTENCE OF THE MISSING DOCUMENTS

27. In the letter dated 8 August 2013 ("SA6"), the applicants' attorneys listed several documents that are referred to within the disclosed documents but were neither tendered nor disclosed, although they must be or have been in the possession of the Department. These included:

27.1 records of the site handover held on 17 June 2010, site inspection held on 9 July 2010, and site meetings held on 1, 15 and 29 July, 12 and 26 August, 9 and 23 September, 7 and 21 October, 4 and 18 November, and 2 December 2010;


27.2 terms of reference for Durban: Prestige Project A: security measures, dated 8 September 2010;

27.3 records of meetings held on:

27.3.1 17 September 2010 (attended by the Minister);

27.3.2 2 December 2010 in Pretoria (attended by the Deputy Minister of Public Works ("the Deputy Minister"));

27.3.3 20 December 2010 (attended by the Deputy Minister, the Deputy Director-General of Public Works ("the DDG") and the

 V.B

Project Manager of the Nkandla upgrade, Mr Jean Rindel ("**the Project Manager**"));

- 27.3.4 21 December 2010 (attended by the Deputy Minister and the DDG);
- 27.3.5 6 June 2011 in Pretoria (attended by the Acting DG, the Project Manager and the Durban Regional Manager of the Department, Mr Kenneth Khanyile ("**the Regional Manager**"));
- 27.3.6 mid-January 2012 in Midrand (attended by the Minister); and
- 27.3.7 21 May 2012 at the Durban Regional Office of the Department (attended by the Acting DG);
- 27.4 records of the regular (weekly, bi-weekly, monthly, and bi-monthly) meetings held prior to 3 March 2011 between the Project Manager and the Minister, the Deputy Minister or the DG;
- 27.5 records of the fortnightly meetings between the Deputy Director-General of Public Works and consultants held on 25 May, 8 and 22 June, 6, 13 and 27 July, and 10 and 24 August 2011;
- 27.6 the internal memorandum from the Regional Manager to the Minister, regarding apportionment of costs between the State and the Principal (President Zuma), dated 28 March 2011; and
- 27.7 instructions from the Minister to Mr Philip Crafford on 19 July 2011.

U.B

28. Each of the above documents is described sufficiently clearly in several of the disclosed documents that they must, beyond any doubt (and certainly beyond a balance of probabilities), either exist or have existed and been in the possession of the Department.
29. The disclosed documents in which these clear descriptions appear are too voluminous to attach to this affidavit, but will be available at the hearing of this matter. The relevant descriptions are quoted in the schedule attached to the letter dated 29 July 2013 ("SA4"), which is cross-referenced to the numbering in Mr Masilo's list, so that the respondents are able to ascertain with ease the descriptions to which I refer, and thus cannot be prejudiced by the fact that the relevant documents are not attached to this affidavit. In addition, the following examples are instructive:

29.1 In the document disclosed under file reference 8.13, "*Request for the approval of the procurement strategy dated 10 January 2011*", a copy of which is attached hereto marked "SA12", it is recorded, at para 10, that "*A meeting was held with Deputy Minister Bogopane-Zulu and DDG: ICR, PM & PS on 21 December 2010 in which she confirmed that the Principal indicated that he does not want other contractors on site in Phase II opposed to Phase I. The meeting agreed that the works should be negotiated, and on the following bases...*" However, no minutes or any other records of this meeting appeared among the disclosed documents.

29.2 In the document disclosed under file reference 11.1, "*Memorandum from DJ Rindel to Regional Bid Committee dated 20 January 2011*",

 V.B

a copy of which is attached hereto marked "**SA13**", it is recorded at para 3.4 that *"all the works were discussed with the previous Minister G Doidge and the DDG / ICR, PS & PM, Mr R Samuels and he instructed this office to continue with immediate effect, as he was given a deadline by the Principal to have the site operational by 1 December 2010. Various meetings were held to discuss the scope and progress in this regard. The minutes can be made available for viewing, if required."* However, no minutes of any of these meetings appeared among the disclosed documents.

29.3 In the document disclosed under file reference 27.32, *"Memorandum from DJ Rindel to Regional Bid Adjudication Committee dated 4 July 2011"*, a copy of which is attached hereto marked "**SA14**", it is recorded at para 2.4.4. that *"The document 'Apportionment of Cost' was submitted to Top Management in January 2011 for perusal and discussion. The document was revised several times until a meeting held in Pretoria with the Acting Director General on 6 June 2011 during which the Acting DG instructed the RM, Acting CD/Prestige and the PM to form a committee and make the final decision on this matter."* However, the disclosed documents do not include copies of the minutes of this meeting, nor of the several revised versions of the document, nor of minutes or other records of the *"final decision"*.

30. The documents listed above are among the many undetected documents that Mr Masilo has been unable to locate, which, in turn, are merely examples of a much wider class of missing documents that must be (or

u.B

have been) in the possession of the Department yet remain undisclosed ("the missing documents").

31. The missing documents include all records of meetings, communications, deliberations and decisions at the level of "*top management*" - the term employed in the disclosed documents to refer to the Minister, the Deputy Minister, the DG and the DDG, including in their communications with the Principal (President Zuma).
32. Apart from the irresistible inference that such meetings, communications, deliberations and decisions must have occurred and been recorded, clear indications of the existence of the missing documents appear, not only in the documents provided in the first disclosure (as set out above), but also in several of the documents provided in the second disclosure. The most notable of these is a draft (unsigned and undated) internal memorandum from the DG to the Minister with the subject "*Requesting assistance in the relocation of neighboring [sic.] families from their old houses to newly build [sic.] accommodation*", a copy of which is attached hereto marked "SA15".
33. In it, the Minister is asked "*to request Principal to intervene in expediting the relocation of the families in order that the State may continue with the security works*", as follows:

"The new houses are now completed, but the families had not yet relocated, thus posing a risk that the deadlines as given by the Principal (all being completed before 30 November 2010 - including the fencing) may not be met. ...

U.B

In order to address this risk successfully, it is proposed that the Minister discuss this issue and submit the official letter (appended for the Minister's signature), to the Principal for further actions.

It is recommended that the Minister support this office's request to inform the Principal verbally and in writing (by means of signing the attached letter and forwarding the same) of the possible delays due to the slow relocation of the families and request the Principal to intervene in this matter."

34. The applicants have not been provided with a signed and dated version of this memorandum, nor with any version of the "official letter (appended for the Minister's signature)". It may be that neither the memorandum nor the letter was ever signed or sent. However, the fact that they were drafted at all clearly establishes, beyond any doubt (and certainly beyond a balance of probabilities), that documents of this nature were indeed prepared and exchanged at the level of "top management".
35. This draft memorandum, moreover, makes it clear that the Principal issued "deadlines" (and presumably other directions) to the "top management" of the Department and that they, in turn, kept him informed of the progress of the Nkandla upgrade. Records of such instructions from the Principal to the Department and of such updates from the Department to the Principal undeniably must exist or have existed, and must be or have been in the possession of the Department.
36. This inference is strengthened, I submit, by the undisputed existence of the document attached to the applicants' replying affidavit marked "RA6",


U.B
U

which had been anonymously leaked to the first applicant, namely: an internal memorandum from the Regional Manager to the Minister dated 28 March 2011, in which it was recorded that work falling under the "*private portion*" of the project (which the Principal would be responsible for funding) fell "*outside the scope of the security measures*" and could not be implemented "*without the written instructions from top management*".

37. Considering that the missing documents, which Mr Masilo stated he was unable to locate, include so many identified documents concerning "*top management*", and also that Mr Masilo was also unable to locate the undisputed document described immediately above ("**RA6**") it is, I submit, difficult to dispute the conclusion, on a balance of probabilities, that the entire class of "*top management*" records (including documents additional to those identified by the applicants) have been specifically withheld from Mr Masilo.
38. The applicants accordingly submit that there is an extensive class of highly relevant documents falling within the request (i.e. the missing documents), for which the Department remains required to account, either by disclosing those documents or by justifying fully, in accordance with PAIA, why those documents cannot be disclosed.

THE RESPONDENTS' FAILURE TO ACCOUNT APPROPRIATELY

39. The respondents' position, as it emerges from the correspondence already attached to this affidavit, is that the missing documents, which must either exist or have existed, cannot be located.

 V.B

40. In order to justify this conclusion, it is incumbent on the respondents to rely on and comply with section 23 of PAIA, which provides as follows:

"Records that cannot be found or do not exist

(1) If -

(a) all reasonable steps have been taken to find a record requested; and

(b) there are reasonable grounds for believing that the record-

(i) is in the public body's possession but cannot be found; or

(ii) does not exist,

the information officer of a public body must, by way of affidavit or affirmation, notify the requester that it is not possible to give access to that record.


(2) The affidavit or affirmation referred to in subsection (1) must give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer."

41. The information officer of the Department - the DG - has neither relied on nor complied with these provisions. Vastly on the contrary, the answering affidavit deposed to by the DG in these proceedings (on 29 January 2013) does not set out or even hint at the steps he took, if any, to ascertain what records fell within the applicants' request and whether any or all of those records may or must be protected from disclosure under PAIA. Rather, he

v. B

offered no more than the bald assertion that *"the documents sought are so replete with security-related information that they cannot be disclosed without disclosing security-sensitive information at the same time"*.

42. This assertion, moreover, was proved to be false and without foundation, not only by the applicants' replying affidavit, but by the respondents' own evidence, namely the affidavit of Mr Masilo, in which he testified that the documents examined by him were almost all capable of disclosure without disclosing security-sensitive information, subject to very limited redaction. Further proof of this fact - and thus of the falsehood of the DG's assertion - was provided by the disclosed documents themselves, which revealed no security-sensitive information at all.
43. The undertaking by Mr Masilo, conveyed in the letter of 30 August 2013 ("SA11"), to confirm under oath the steps he took to receive and examine *"all documents related to the project"*, would not and could not constitute compliance with section 23 of PAIA. It is necessary at this stage to record unequivocally that the applicants do not in any way dispute or discount the honesty of Mr Masilo. On the contrary, the applicants place on record that Mr Masilo has shown himself to be diligent, responsive and truthful since his involvement in these proceedings.
44. However, Mr Masilo's testimony that the 42 files which he was instructed to examine were all of the documents held by the Department in relation to the Nkandla upgrade, is not evidence that they were, as he could not have been aware of the existence of records that may have been withheld from him by other officials in the Department. He could not testify directly as to:

 V.B

what records were generated during the Nkandla upgrade; when, how, by whom and in what form they were generated; and to whom they were provided for filing or any other purpose. Moreover, he could not testify directly as to how the KZN Office sourced, maintained and protected their files, nor by whom they were accessible and capable of removal.

45. Moreover, under section 23 of PAIA, it is the DG alone, as the information officer, who is required under oath to *"give a full account of all steps taken to find the record in question or to determine whether the record exists, as the case may be, including all communications with every person who conducted the search on behalf of the information officer"*. It is required of the DG to demonstrate in detail what steps he took, including what terms of reference he gave to Mr Masilo regarding the scope of his examination.
46. The fact that records other than those provided to Mr Masilo must exist is apparent, not only from the undeniable existence of missing documents to which clear references are found in the disclosed documents, but further from the fact that Mr Masilo was provided only with the 42 files into which documents were physically deposited at the KZN Office.
47. Assuming that those 42 files were indeed fully furnished to Mr Masilo (which cannot be accepted to be true unless and until the respondents provide satisfactory testimony of that fact from, at least, persons with direct knowledge of the files being dispatched to Mr Masilo), it still remains obvious that other sources of the requested information would not have been included in those files. These sources include, importantly, relevant extracts from the diaries of officials who attended meetings relating to the

U.V.B


Nkandla upgrade, as well as emails exchanged between officials, consultants and contractors, and accounting records relevant to the Nkandla upgrade. The DG has not provided any evidence that these or other sources were examined or even considered, nor any evidence at all of the steps he took. For clarity, I record in this regard that, under section 4(b) of PAIA, any record held by an independent contractor engaged by a public body is regarded as being a record of that public body. Accordingly, records held by consultants and contractors engaged by the Department in relation to the Nkandla upgrade also fall within the scope of the records that the DG is required to examine in order to respond to the request.

48. It is on record and common cause in these proceedings that the task team appointed by the Minister to investigate and report on the procurement for the Nkandla upgrade were provided with records relevant to their inquiry. The respondents have provided no evidence that the records provided to the Minister's task team were the same records as provided to Mr Masilo. The absence of such evidence is glaring and telling, in light of the fact that the task team's report remains undisclosed, allegedly for reasons of national security (which is the subject of a separate application by the first applicant before this Honourable Court under Case No. 52268/13). If indeed the task team was provided with the same records as Mr Masilo, it is difficult to discern why their report is incapable of even redacted disclosure to the public, when the entirety of the source material on which their report is based has already been disclosed to the public in the form of Mr Masilo's files (with very limited exceptions and redactions). If, on the other hand, the task team was provided with additional material, then it

 U.B

cannot be true that Mr Masilo, and in turn the applicants, were provided with all of the relevant documents in the possession of the Department.

49. One would reasonably expect that the DG should also be able to account for the measures put in place to ensure that all records are preserved and protected from unauthorised removal or accidental misfiling. Particularly in light of the Department's strict stance about disclosing any information to the public that may be even remotely related to security, one would expect that the disappearance of any document related to the Nkandla upgrade (let alone the vast volumes of documents that have mysteriously vanished) would be the subject of serious administrative concern and investigation.
50. Even if the DG were to depose to an affidavit setting out the steps he took, if any, and the measures put in place to preserve and protect records, if any, such affidavit could not truly constitute compliance with section 23 of PAIA, as its reliability would be cast into grave doubt by the blatant falsity of the DG's answering affidavit.
51. Moreover, it may be inferred from the respondents' reliance on Mr Masilo's affidavit that his examination was indeed the only process undertaken to respond to the applicants' request, and thus that no official made any effort at all to ascertain whether relevant records were located in any place other than the KZN Office's 42 files, let alone in the physical and electronic files of the National Office occupied by both the Department and the Ministry in Pretoria. The respondents' failure to consider the latter location is particularly glaring, given that communications at the level of "top

 v. B

management" would, as a matter of course, have been filed primarily, if not exclusively, in the National Office.

RELIEF SOUGHT

52. For the reasons set out above, the applicants submit that the respondents have failed to account appropriately for the requested records (specifically, the class of documents comprising records of meetings, communications, deliberations and decisions at the level of "*top management*"), under the applicable provisions of PAIA, in that they have failed:

- 52.1 to disclose all of the requested records to the applicants;
- 52.2 to justify the non-disclosure of such records to the applicants; and
- 52.3 to account appropriately for the steps taken to locate such records.

53. Accordingly, the applicants respectfully persist with the prayers set out in the notice of motion by which these proceedings were initiated.

UD v.B

V. Bhardwaj

VINAYAK BHARDWAJ

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at **Illovo** on this the **4th** day of **SEPTEMBER 2013**, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

Craig Arthur Scott

COMMISSIONER OF OATHS

Full names:

Business address:

Designation:

Capacity:

CRAIG ARTHUR SCOTT
COMMISSIONER OF OATHS
PRACTISING ATTORNEY EX OFFICIO
SUITE 6, FRICKER ROAD
ILLOVO, SANDTON 2146
TEL: 011 268-5916

"SA1"

THE

7th Floor, Braamfontein Centre
23 Jorissen Street, Braamfontein
Johannesburg, South Africa
P O Box 30884, Braamfontein
South Africa, 2017
Tel: (011) 408-2965
Fax: (011) 408-1764
e-mail: admin@eds.co.za
Durban: 50, Johannesburg
Reg. No. EDCG/02373/21

Accounts are due and payable on presentation
Banking details: First National Bank, Braamfontein (251805)
Account No: 6201 5395 321
Please use account number as reference

7th Floor, Braamfontein Centre
23 Jackson Street, Braamfontein
Johannesburg, South Africa
P O Box 30894, Braamfontein
South Africa, 2017
Tel: (011) 403-2765
Fax: (011) 403-2766
e-mail: info@pcc.co.za
Docos 50, Johannesburg
Reg. No. 2000/00373/21

Matter	Date	Account No.	Balance
Mail & Guardian v Minister of Public Works	21 08 13	DEP30001	27 836.84

V.B



☐ PRINT FRIENDLY PAGE
☐ SEE ORIGINAL ARTICLE

Nkandla: An orgy of kowtowing

Documents obtained by amaBhungane on Nkandla show how costs ballooned tenfold as officials scrambled to please President Jacob Zuma.

05 Jul 2013 00:00AmaBhungane Reporters



If Jacob Zuma's Nkandla home is declared a national key point, it will be subject to blanket secrecy. (Madelene Cronjé, M&G)

Documents obtained by amaBhungane lay bare how Jacob Zuma's accession to the presidency set off an orgy of official grovelling that allowed the security upgrade at his private Nkandla homestead to balloon from a modest R27.8-million plan in 2009 to a projected total of about R270-million in October 2012.

The official expenditure as of June 2013 is R210 505 255 – but this does not appear to include bills still to be paid, including maintenance.

About 12 000 pages of public works department documents relating to Nkandla, known internally as Project A, were released to amaBhungane two weeks ago. They were disclosed in response to an access to information request launched a year ago under the Promotion of Access to Information

Act, apparently in a bid to head off a court hearing on the department's initial refusal of the request. (See "Long battle to get hold of redacted documents".)

More coverage

The Nkandla documents

Nkandla: Number One emerges a clear winner

What did Zuma know about the Nkandla project?

The Nkandla files: Project railroaded from the start

Long battle to get hold of redacted Nkandla documents

The Nkandla files: Secrecy obsessions betray political sensitivities

The documents represent the best approximation so far of the evidence available to the special public works task team appointed by Public Works Minister Thulas Nxesi last year to investigate the scandal.

The disclosures in the documents appear to make a mockery of the government's attempt to keep its own investigation under wraps by classifying the team's report top secret and referring it for discussion behind closed doors by the joint standing committee on intelligence.

In a letter to the National Assembly speaker, Max Sisulu, last month, Nxesi said the report on the Nkandla security upgrades had been classified top secret in terms of the minimum information security standards, making it exempt from disclosure.

The documents released by the department include a number that are marked "top secret", but the classification appears to be designed more to protect the government and the president from embarrassment than to ensure security.

They include a remarkable March 2012 secret letter from Durban regional manager Kenneth Khanyile to his public works department bosses in Pretoria in which he calls for special tendering and auditing procedures for so-called "prestige projects", which would shield them from public knowledge. This was not only for security reasons, but also "because these projects are further targeted by journalists in an attempt to discredit the government in general".

The documents also include fairly detailed, but unexceptional, information about the security measures at the Nkandla compound, despite amaBhungane excluding this data in the terms of its request.

In short, there is nothing in the Nkandla files that could not have been publicly disclosed, except that they paint an unedifying picture of how senior officials and politicians:

- Scrambled to meet deadlines set by Zuma, taking short cuts on tendering processes;
- Shifted money from other programmes to accommodate the unbudgeted spending;
- Implemented the Nkandla project with few proper cost controls and no allocated budget or limit on spending;

- Were mainly concerned with delivering to Zuma (referred to as "the principal") at a speed and level of quality befitting a "prestige project";
- Were reluctant to allocate costs to Zuma, including for the building of a new cattle kraal, a plant nursery, a road network and other improvements that will benefit Zuma's family long after he ceases to be president and
- Paid out an underperforming contractor at least partly because threatened court action could cause "political fallout that could possibly influence the principal's political position very negatively".

Although the documents provide evidence that in some cases the contracts were poorly managed, there is not a great deal to support the allegations of "overcharging" apparently raised in the task team report.

But there are significant gaps – notably in relation to communication with directors general, ministers and deputy ministers and, crucially, Zuma – though the documents provide intriguing pointers that cast doubt on the president's attempts to distance himself from the project and suggest that he played an important role in how the process unfolded.

A definitive answer to this question will probably depend on the disclosure of more high-level, sensitive documentation. To this end, ama-Bhungane is likely to proceed to court as scheduled on November 5.

All material © Mail & Guardian Online. Material may not be published or reproduced in any form without prior written permission.

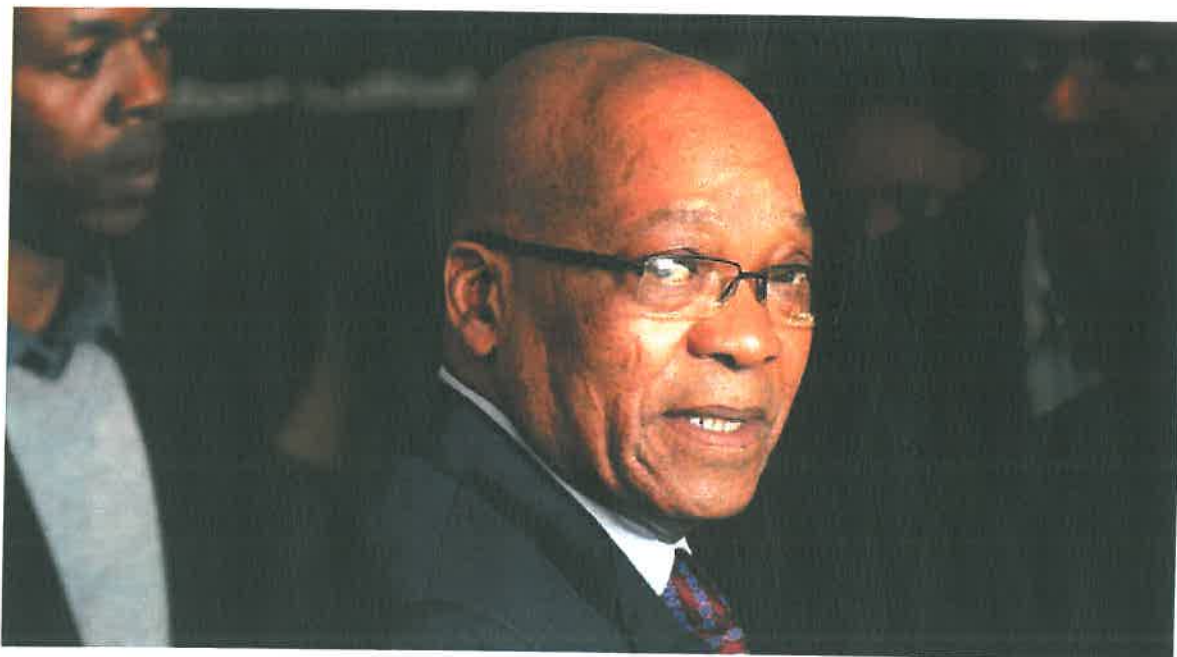


☐ PRINT FRIENDLY PAGE
☐ SEE ORIGINAL ARTICLE

Nkandla: Number One emerges a clear winner

Jacob Zuma's share of the 'security-related' costs has been whittled down steadily – at the state's expense.

05 Jul 2013 00:00Lionel Faull



The M&G's "assault" on the ANC and President Jacob Zuma is nothing but a continued effort to discredit the party's leadership, writes Jackson Mthembu.

President Jacob Zuma's contribution to the Nkandla bonanza was massaged downwards and he is now expected to pay for just 5% of the security-related improvements at his private residence.

A top-secret March 2011 memo split the bill by allocating R203-million to the public purse and R10.5-million for Zuma.

The document frets that "it may be necessary for these issues to be discussed with the principal [Zuma] as the financial implication directly affects him".

Justification

A security contractor also motivated that costs such as air conditioning in areas that "preclude the opening of windows", elevators and fire-fighting equipment were security-related, and, therefore, not Zuma's problem.

A decision was later taken by the department to find millions more for air conditioning even in "low ... security areas" and to fund the entire landscaping budget.

The landscaping contractor had quoted R14.3-million for the work, which included R840 000 for a "level terrace created for a function marquee".

The justification offered was that "functions are normally for heads of state and managed by DPW [department of public works]".

Presidential spokesperson Mac Maharaj failed to respond to questions about whether any such functions have been held at Nkandla and whether Zuma has made any contribution to the costs at all.

The contractor quoted a further R1-million for a new livestock kraal.

Variation order

"This kraal is of a higher quality than what was previously on site; however, the new kraal brings the project [into] line with prestige projects [the department of public work's categorisation of the Nkandla project]," the contractor said.

Also included in the landscaping was a tree nursery.

A quantity surveyor, who watched his cost estimates go up in smoke, wrote: "Given the nature of the project, I honestly don't think that spending this amount of money on landscaping is justifiable but, having said that, the decision still rests with the client."

In the months that followed, the question of how to split the bill went all the way "to top management", was "revised several times" and a committee was appointed "to make the final decision on this matter".

Their decision? A further R3.84-million to be added to the taxpayer's already astronomical financial commitment.

The official who approved the variation order (an appeal for money after unexpected costs overrun planned costs) scribbled underneath that "funds should be spent strictly on security measures at the private residence of the principal".

But the horse had already bolted, out the kraal, via the nursery, and away through the verdant rolling landscaping.

** Got a tip-off for us about this story? Email amabhungane@mg.co.za*





The *M&G* Centre for Investigative Journalism (amaBhungane) produced this story. All views are ours. See www.amabhungane.co.za for our stories, activities and funding sources.

All material © Mail & Guardian Online. Material may not be published or reproduced in any form without prior written permission.



☐ PRINT FRIENDLY PAGE
☐ SEE ORIGINAL ARTICLE

What did Zuma know about the Nkandla project?

Despite gaps, files suggest that President Jacob Zuma made an input on Nkandla project decisions.

05 Jul 2013 00:00Sam Sole



President Jacob Zuma. (Madelene Cronjè, MG)

In a rowdy debate in the National Assembly on November 15, President Jacob Zuma distanced himself from the process that resulted in the state spending huge amounts on upgrading security at his Nkandla home.

Expressing anger at being portrayed as corrupt for security expenses foisted on him by the state, Zuma said: "There are two different things: my homes that are built by me and my family, and the security features that the government wanted ... to satisfy their own requirements ... These are matters that the government ... don't ask me, don't ask me."

But documents obtained by amaBhungane cast some doubt on the president's reply – though there are significant gaps in the material released. What is there suggests Zuma – referred to as "the

Principal" – played an important role in how the process unfolded and had an input in some of the decisions:

More coverage

The Nkandla documents

Nkandla: Number One emerges a clear winner

The Nkandla files: Project railroaded from the start

Long battle to get hold of redacted Nkandla documents

Nkandla: An orgy of kowtowing

The Nkandla files: Secrecy obsessions betray political sensitivities

- An October 2009 letter from police divisional commissioner for supply chain management states: "By instruction of ... President Zuma, the existing house at Nkandla, currently accommodate [sic] SAPS members must be converted as part of the president's household."
- It appears Zuma was key to setting deadlines – and it was at least partially this urgency that led officials to adopt "emergency" procurement procedures. For instance, in one memo the public works project manager, Jean Rindel, states: "Minister [Geoff] Doidge and [deputy director general Rachaad] Samuels ... instructed this office to continue with immediate effect, as he was given a deadline by the principal to have the site operational by December 1 2010."
- A June 3 2011 memo asking for permission not to go out on tender for electronic security features notes: "The project must be completed by October 30 2011 as per instruction from the principal. A negotiated procurement process would be faster."
- The project was divided into two phases, with phase one including "emergency" work to ensure the basic security of the site. When contemplating phase two, officials were again influenced to abandon more open tender procedures and negotiate with the same contractors who had been appointed for phase one.
- A memo dated January 10 2010 states: "A meeting was held with [then public works] deputy minister [Hendrietta] Bogopane-Zulu ... on December 21 2010 in which she confirmed that the principal indicated that he does not want other contractors on site in phase two."
- It appears there was some detailed consultation with Zuma. Minutes of an emergency progress meeting on November 30 2010 state: "Bogopane-Zulu said she had a discussion with the principal on the relocation (of families). [She] mentioned she will conclude with the principal on the close off (fencing) of the relocation and report at the next meeting."

At a progress meeting on June 22 2011 it was agreed that "[Minenhle] Makhanya (the architect) would meet with the principal and present the fire pool".

A high-level document dated March 18 2011 relating to the allocation of costs between the state and the president noted: "It may be necessary for these issues to be discussed with the principal as the financial implication directly affects him."

Records of these discussions with "the principal" are not included in the documents released by public works.

Zuma's spokesperson, Mac Maharaj, did not respond to questions about the president's involvement in the process.

** Got a tip-off for us about this story? Email amabhungane@mg.co.za*



The M&G Centre for Investigative Journalism (amaBhungane) produced this story. All views are ours. See www.amabhungane.co.za for our stories, activities and funding sources.

All material © Mail & Guardian Online. Material may not be published or reproduced in any form without prior written permission.



☐ PRINT FRIENDLY PAGE
☐ SEE ORIGINAL ARTICLE

The Nkandla files: Project railroaded from the start

Procurement processes were overlooked and cost overruns justified as the team scurried to finish within deadlines imposed by Zuma.

05 Jul 2013 00:00 Craig McKune



Lie of the land: Phase one, which included road and fence upgrades, bypassed departmental guidelines to favour Zuma's personal choice of contractors. Photos: Madelene Cronjé

In May 2009, a fortnight after Jacob Zuma's presidential inauguration, a team of officials was dispatched to Nkandla to investigate how best to secure his home.

Led by police, military and intelligence officers, who laid down security requirements, the public works team of professionals put together a detailed "scope of works".

Their extensive recommendations included the upgrading of access roads, perimeter fencing, fire-fighting, sanitation, a heliport, air conditioning with biological filters in a "safe haven" and, puzzlingly, a "revamped" cattle kraal.

More coverage

The Nkandla documents

Nkandla: Number One emerges a clear winner

What did Zuma know about the Nkandla project?

Long battle to get hold of redacted Nkandla documents

Nkandla: An orgy of kowtowing

The Nkandla files: Secrecy obsessions betray political sensitivities

The department of public works's chief quantity surveyor, Ron Singh, ran the numbers, reporting that the job would cost just less than R28-million.

Zuma's contractors

The department's national office fired instructions off to its Durban branch, where regional manager Kenneth Khanyile would oversee the procurement of specialists to plan, design and construct the upgrades.

A handwritten note by a member of the budget committee that approved the funding gave an early indication that the project was being railroaded. It read: "Due to the urgent nature of service, service must proceed and funds will be made available periodically, as and when savings materialise from prestige/PWD [public works] budget."

This urgency and a willingness to sweep aside procedures was entrenched that October in 2009, when Khanyile described an agreement with acting director general Solly Malebye in which the Durban office would be given special powers to approve big Nkandla contracts worth more than R20-million.

Meanwhile, the department's procurement processes were in effect leapfrogged to favour Zuma's personal choice of three firms, privately hired for home renovations two years earlier. This was "essential", public works project manager Jean Rindel noted, "to ensure complete integration".

The private quantity surveyors on the project, in turn, handed the department a list of contractors from which it would choose, again deviating from supply chain processes, Khanyile wrote.

By February 2010, the main building, electrical and civil contractors had been chosen. Among these were the major contractors, Bonelena and Moneymine, the latter having been hired earlier by Zuma. Moneymine's appointment by public works was also "essential", Rindel said, because the company "is trusted by the owner of the property [Zuma]".

According to internal records, public works had spent R4.1-million on the project by the end of that financial year, March 31 2010. Yet the first of three project phases had barely begun.

Zuma's deadline

By June 2010, Rindel's project team at public works was ready to hand over the site to contractors for phase one of Nkandla, or "Prestige Project A", but they had not received official sign-off from the defence department or police.

Although Rindel calculated they would need just less than R40-million a year for two years to complete Project A, funding had still not been found.

His request was escalated to a national budget committee, recommending that the money be siphoned from two important programmes: inner-city regeneration and the dolomite risk management programme.

The contractors moved on to site that month.

In another supply chain management sidestep, Rindel's team appointed a security consultant without first getting approval from the regional adjudication committee. Justifying this three months later, he said the work had needed to start "immediately", apparently illustrated when the consultant was called "to accompany the [deputy director general] and minister [Geoff Doidge] on visits to the fencing and glass suppliers in order to expedite the work".

By then it was August, and Doidge was clearly coming under pressure from above to fast-track Project A.

In mid-September 2010, he set a "strict deadline" for the completion of phase one. Months later, when Rindel motivated for more funding because of serious cost overruns, he revealed the source of this pressure: "[Doidge] instructed this office to continue with immediate effect, as he was given a deadline by the principal to have the site operational by December 1."

"The principal" refers to Zuma.

Within a week of setting this deadline, Doidge and other senior police, defence and public works officials met at Nkandla, where the minister dished out instructions to get things done.

Justifying the cost overruns, Rindel explained that, at this late stage, the South African Police Service had submitted a "revised" scope of works. This had Rindel rushing to appoint more service providers – for the supply of bullet-resistant glass, a generator and prefabricated structures – with "emergency" permission obtained from Khanyile. Formal permission was again sought months after procurement.

According to Rindel, "the lengthy process" of waiting for approvals "could compromise the security of the principal and would not be tolerated. This was made very clear by the top management of the police service and the department of defence."

But the department's chief quantity surveyor, Glenda Pasley, was worried. She wrote to Rindel: "The scope of works and costs have increased substantially on the project over the past few months, giving rise to serious concerns about what control mechanisms and parameters are in place."

She also said there was no clarity on how the enormous cost would be split between Zuma and the state.

Another surveyor, Dumi Gqwaru, lamented the state of the contracts: "If a contractor were to be nasty, she would take us to the cleaners ... I could not agree more with [Deputy Minister Hendrietta Bogopane-Zulu] in referring to this project as 'project went wrong'."

Meanwhile, Zuma shuffled his Cabinet at the end of October, sacking Doidge before the deadline could be met.

The replacement minister, Gwen Mahlangu-Nkabinde, enthusiastically grabbed the Nkandla baton. In her first week in office, she submitted a detailed report to the president, reassuring him that everything was on track for December 1.

But the project team missed Zuma's deadline by three weeks. Evidently this caused consternation in high places. In a letter motivating for more fast-track measures, this time for phase two, Rindel said speed was "essential" because "the state already delayed the owner of the property [Zuma], and this caused much embarrassment to the state".

When the state prepared for the phase two contracts, it once again negotiated with Bonelena and Moneymine. As for the latter, this was once again according to Zuma's wishes.

According to a document discussing Moneymine: "[Bogopane-Zulu] confirmed that the principal indicated that he does not want other contractors on site in phase two."

Zuma's second deadline

By the end of the 2011 financial year, Project A had cost R62.3-million.

As phase two got under way, officials reluctantly began to wrestle with the question of how much Zuma would pay.

Meanwhile, Khanyile asked for permission to deviate once again from procurement prescripts for a security detection system. His request revealed another Zuma-driven deadline and a presidential secrecy requirement.

"The instructions of the owner must be respected," said Khanyile. These were that information should be contained and the project had to be completed by October 30 2011 "as per instruction from the principal".

The state quantity surveyors now complained that they had been sidelined. Pasley wrote to Rindel: "We are no longer in touch with the project as you have excluded us." And months later: "We have to date not been briefed by you." She wanted to see financial reports and cost-allocation decisions. "This is of serious concern."

Late in the year, and early in 2012, Rindel submitted another batch of requests to pay contractors extra after further cost overruns.

By March 2012, as the financial year came to a close, the state had spent almost R190-million on Project A.

Top secrecy

Throughout 2011, complaints flowed over contractor Bonelena's missed deadlines and, early in 2012, a consultant recommended that the contractor be fired. The company had cash flow trouble and was at the root of serious delays.

This appeared to elicit attention from the highest levels, because in January 2012, newly appointed Public Works Minister Thulas Nxesi met the company's owner, Thandeka Nene, in the first of several personal engagements.

In April that year, steps were taken to terminate Bonelena's contract but the company disputed it. Official memos recommended that an amicable settlement would be best to prevent information leaking out through a court battle.

This softly-softly approach – Nxesi and Nene's personal liaisons included – continued even after Bonelena filed for liquidation in July.

Even the state-owned funder, the Industrial Development Corporation, came to Bonelena's rescue. According to The Mercury, this year, the corporation bailed out Bonelena with R10-million, despite the fact that the company already owed it millions.

In correspondence with the national office, Khanyile put the problem plainly: Zuma's reputation.

"Court cases will result in public scrutiny ... This is an unacceptable risk to this office and could result in political fallout that could possibly influence the principal's [Zuma] political position very negatively."

In October, press leaks resulted in a major public outcry and, as phase three of Nkandla began, internal reports projected Zuma's Project would cost the state as much as R273.8-million – nearly 10 times what had been proposed back in 2009.

** Got a tip-off for us about this story? Email amabhungane@mg.co.za*



The M&G Centre for Investigative Journalism (amaBhungane) produced this story. All views are ours. See www.amabhungane.co.za for our stories, activities and funding sources.

All material © Mail & Guardian Online. Material may not be published or reproduced in any form without prior written permission.



☐ PRINT FRIENDLY PAGE
☐ SEE ORIGINAL ARTICLE

The Nkandla files: Secrecy obsessions betray political sensitivities

From the start, the battle over state spending on President Jacob Zuma's Nkandla security upgrade has been as much about secrecy as about cost.

05 Jul 2013 00:00Sam Sole



The huge spending on Jacob Zuma's Nkandla home flouted the parameters of the Act. (Madelene Cronjé, M&G)

At the start of the project, contractors were asked to tender without even being provided with the exact location or the name of the client.

Thereafter, contractors were required to sign a secrecy oath at almost every meeting and officials appeared to think that, merely because the president was involved, they were justified in slapping a "top secret" label on documents.

It is clear official sensitivity related not only to core security concerns, but also to the potential political embarrassment embedded in the lavish funding of such "prestige projects".

V B

More coverage

The Nkandla documents

Nkandla: Number One emerges a clear winner

What did Zuma know about the Nkandla project?

The Nkandla files: Project railroaded from the start

Long battle to get hold of redacted Nkandla documents

Nkandla: An orgy of kowtowing

This is captured in a top-secret memo from Durban regional manager Kenneth Khanyile to his superiors at the public works department.

Dated March 15 2012, the document sets out proposals for managing prestige projects in a different way to other projects.

Scope of works

Khanyile notes: "In order to ensure security, it is essential that the project be removed from the 'public eye' due to security reasons."

He says the "scope of works" includes "information that may be used by the enemies of the state to engineer an attack", but adds, "these projects are further targeted by journalists in an attempt to discredit the government in general".

These considerations justify deviating from normal tender processes, he argues. Not only that, special audit procedures need to be adopted.

Special security-cleared personnel should be appointed from the auditor general's office, he says, and he informs the director general of "the intention of the Durban regional office to withhold all project information from auditing until clear directive has been received".

Phillip Masilo, the legal adviser to Public Works Minister Thulas Nxesi, told amaBhungane that Khanyile's policy proposal was never adopted.

Formally, that may be true, but Nxesi's attitude appears consistent with Khanyile's.

Nxesi has defended the top-secret classification given to his own task team's report on Nkandla and has gone as far as to tell Parliament that this rendered him "unable to provide the auditor general and the public protector with copies of the report".

He has since provided the public protector with a copy.

Masilo said the documents released to amaBhungane did not demonstrate that the task team report was incorrectly classified.

"It is ... clear that other documents that contain sensitive security information were not released to the *Mail & Guardian*," he said. "Therefore, your conclusion about the classification of the report based on the documents released is unfounded."

UUB

All material © Mail & Guardian Online. Material may not be published or reproduced in any form without prior written permission.

U.B



☐ PRINT FRIENDLY PAGE
☐ SEE ORIGINAL ARTICLE

Nkandla: How IDC splashed R10m on bailout

When Bonelena, a firm nominated to do the major work at Jacob Zuma's Nkandla homestead, was liquidated the IDC intervened to keep the firm going.

12 Jul 2013 00:00AmaBhungane Reporters



High-level access: Thandeka Nene's conduct worried some officials. Jackie Clausen

Just who is Thandeka Nene – and what is her hold over state institutions?

Nene was the sole member of Bonelena Construction CC, one of two building firms nominated by the public works department to do the major work on the security upgrade at President Jacob Zuma's Nkandla homestead.

- Ex-teacher chalks up the contracts, builds Nkandla

Documents regarding the controversial development obtained by amaBhungane show:

- When Bonelena was liquidated, the state-owned Industrial Development Corporation (IDC) intervened to keep the firm going, providing extra funding when the prospect of recovering its loans appeared doubtful;
- When Bonelena's failure to meet deadlines led public works to cancel the contract, exposure in court of Project A – the department's code name for Nkandla – was a large concern for the department. Public Works Minister Thulas Nxesi also intervened, leading the department to backtrack and reach a compromise with Nene; and
- She had such high-level access that when part of the work was awarded – supposedly erroneously – to the other main contractor (See "Nkandla's money mine", Page 4), the public works' deputy minister intervened and the architects were obliged to write her a grovelling apology for their error.

IDC to the rescue

Documents obtained by amaBhungane relating to the June 2012 liquidation of Bonelena suggest the IDC went to extraordinary lengths to rescue Nene, who at that stage owed the corporation nearly R20-million.

She had concluded a loan agreement with the IDC in February 2011.

In April 2012, the public works project manager cancelled the Nkandla contract with Bonelena, citing repeated failures to reach agreed construction milestones.

Nene and her lawyers refused to accept the cancellation, arguing it was unlawful and unfair, as she had completed 95% of the work.

In May 2012, a Durban car-hire firm, Reebib Rentals, applied to liquidate Bonelena over R190000 it was allegedly owed. A final winding-up order was granted in the High Court in Pietermaritzburg on July 18.

Lobbying

Meanwhile, Nene was lobbying vigorously to overturn the contract cancellation. Her lawyers wrote to the department threatening legal action and she refused to hand over the keys to the Nkandla site so that another contractor could take over.

She also wrote to the new minister, Thulas Nxesi, on June 15 2012, noting: "I have great respect of the president ... and take cognizance of the security measures of the project."

She wrote to him again on July 20, noting: "We have received phone calls and text messages from creditors threatening to approach the media. We have also received phone calls from the media inquiring as to the nature of the project and the payment delays. We have not commented and will not be held liable for any resultant reports that may surface as a result of the media."

Earlier, the Durban public works regional office had written to the Pretoria head office warning about the possible fallout for Zuma – referred to as "the Principal".

"The severe implications of cancelling the contract is expected to end in court cases between the contractor and the department. This will result in all the project information being subjected to public scrutiny," the regional office said.

"This is an unacceptable risk to this office and could result in political fallout that could possibly influence the Principal's political position very negatively."

Nxesi pays up

The letters had the desired effect. On July 31 2012, a teleconference was held with Nene and her lawyer at one end and the minister and his senior department advisers at the other. An urgent agreement was reached to pay Bonelena about R7-million.

Neither Nene nor her lawyer disclosed that the company had already been placed in final liquidation.

Bad faith?

In September 2012, after the money had already been paid out, one senior official, Gerard Damsta, expressed outrage at discovering this.

In an email to the department's chief legal adviser, he wrote: "I have learnt today with great shock and disappointment ... that Bonelena was provisionally liquidated on 4 June 2012 ... This means that Bonelena negotiated with the employer [the minister and others from the department of public works] ... when it was already not in a competent position to have done so ...

"The conduct of Ms Nene in all of this is what I need your legal expertise for ...

"Can it be labelled as fraudulent? Bad faith?? ... What recourse does [the department] have under these circumstances?"

But, instead of fraud charges, Nene got a rescue package from the IDC to take her company out of liquidation.

Good money after bad?

According to a report by liquidator Eugene Nel, the IDC proposed and funded the rescue scheme.

On top of its R20-million, the corporation agreed to put up a further R10-million to pay the liquidators, fund the payout of preferred creditors (such as banks and the South African Revenue Service) and offer concurrent creditors – such as Reebib Rentals – 50c of every rand owed.

According to Nel, the offer was generous as the company's financial position was so dire that, if it was simply wound up, preferred creditors would have got a reduced payout and there would have been nothing at all for others.

The IDC insists that the decision to assist Bonelena to exit liquidation was "not influenced by politics whatsoever".

IDC public relations manager Mandla Mpangase told amaBhungane it viewed the liquidation as "erroneous" and that Bonelena had existing contracts "based on which the IDC will recover its money".

"Bonelena continues to honour its repayment arrangement with the IDC."

He declined to give details but the liquidation report suggests Bonelena will have to score some sweet new deals to be able to repay the loan.

Security?

At the date of the provisional liquidation, Bonelena owed about R32-million to creditors, of whom the IDC was the largest, with R20-million owed to it.

The liquidators judged two contracts – a prison upgrade and a school building project – were worth keeping the company solvent for.

However, the IDC's security was calculated at only R11.5-million – not a major comfort when its R20-million loan was pushed up to R30-million to secure Bonelena's release from liquidation.

In return for the cash injection, the IDC demanded that a quantity surveyor and an accountant appointed by the IDC should be given full access to help to manage the company.

AmaBhungane's attempts to communicate with Nene for clarity on the current state of the company were fruitless.

Other friends in high places

The public works documents obtained by amaBhungane provide other evidence of Nene's clout, despite officials and contractors complaining about the company's performance.

When Moneymine was allocated work that had been earmarked for Bonelena, Public Works Deputy Minister Hendrietta Bogopane-Zulu got involved and ordered that the decision be reversed.

The architects were obliged to write to the department and the deputy minister apologising for the error, saying: "We meant no disrespect."

** Got a tip-off for us about this story? Email amabhungane@mg.co.za*



The M&G Centre for Investigative Journalism (amaBhungane) produced this story. All views are ours. See www.amabhungane.co.za for our stories, activities and funding sources.

All material © Mail & Guardian Online. Material may not be published or reproduced in any form without prior written permission.



☐ PRINT FRIENDLY PAGE
☐ SEE ORIGINAL ARTICLE

Nkandla's money mine

As Jacob Zuma's hand-picked private contractor, Moneymine was set to land public works contracts on the project for several years.

12 Jul 2013 00:00 Sally Evans



Top of the world: A worker thatches a roof at President Zuma's Nkandla homestead. Photo: Madelene Cronjé

In mid-November 2009, when the public works department was already in a flurry over the increasingly complicated security upgrades at President Jacob Zuma's Nkandla homestead, the director of one of its main contractors was rubbing shoulders with ANC top brass in Guangzhou, China.

Pamela Mfeka, the sole director of Moneymine Enterprises, which was already on site at Nkandla in 2009 doing private work for Zuma, was accompanied by her husband, Michael Mfeka, on the five-day trip.

Pamela, who also owns Igugu Training and Investments and Igugu Functions Venue, was a member of the delegation, organised by the ANC's Progressive Business Forum.

The trip was led by the ANC's former treasurer general, Mathews Phosa.

Michael, who is not listed as a director of his wife's companies, worked as Moneymine's project manager at Nkandla.

Towards the end of 2009, the department was already spending money it had not secured – it was following instructions from the police and the defence department for security upgrades to Zuma's private residence.

The estimated cost at that stage was R27.8-million; the projected cost by October 2012 was R270-million.

Handsome profit

But on their China trip the Mfekas, from Pinetown in Durban, would have rested easy in the knowledge that Moneymine was guaranteed several multimillion-rand government contracts for work at Nkandla.

As Zuma's hand-picked private contractor, Moneymine had profited handsomely from its initial association with him and was set to land public works contracts on the project for several years.

Moneymine, which worked on Nkandla's high-security core area in phase one of the development, has been paid R56.3-million so far, according to the public works department's latest figures.

Its first contract at Nkandla for the department began in November 2009, according to documents obtained by the Mail & Guardian following a Promotion of Access to Information Act application.

Mfeka refers to her company's phase one work in a document listing its previous projects. Referring to "Durban Project A – Construction of a Homestead in Nkandla", she records the start of this project as November 2009, giving the following November as the completion date. The total cost was R19.4-million.

Moneymine's continued role at Nkandla was largely guaranteed by Zuma's insistence that he did not want another company on site.

Procurement procedures

In March 2010, a few months after the China trip, the department's Jean Rindel, who was overseeing the Nkandla upgrades, explained why Moneymine had been appointed as a phase one contractor despite the deviation from normal procurement procedures.

Rindel noted: "The owner of the property had appointed a contractor, Moneymine Investments, to construct new accommodation at the site. The current status of that project is that the contractor is on site and construction is 15% completed. The state has the obligation to include the security measures in the existing and the new accommodation."

Rindel noted that, as no other contractor could do the job, the work could not go out on open tender.

"It is essential that Moneymine construction be appointed under the negotiated procedure to eliminate ... risks. The contractor is security cleared by the National Intelligence Agency and is trusted by the owner of the property.

"It is thus essential that the same contractor, Moneymine Investments, be appointed to complete the works," he wrote.

Shortly after the memorandum, Rindel's pleas were answered in the affirmative, despite the fact that Moneymine had in effect been appointed to do the security installations and other works in the initial phase of the project.

In January 2011, Moneymine was again guaranteed work – for phase two.

Security surveillance

Another department document suggests that the decision to go with a "negotiated bid" at that stage was also indirectly prompted by Zuma: "A meeting was held with Deputy Minister [of Public Works] Hendrietta Bogopane-Zulu (and other senior officials) on 21 December 2010 in which she confirmed that the principal [Zuma] indicated that he does not want other contractors on site in phase two."

Phase two related mostly to the installation of additional "security measures", including 31 new buildings, police accommodation, bullet-proof glass and a security surveillance system.

Rindel and other public works department officials consistently motivated for Moneymine's appointments to be rolled over to ensure the "integration" of Zuma's private upgrades with the department's.

The company was also handed the remainder of work left by Bonelena, which the department fired in April during phase three, for which Moneymine received an extra R3.47-million.

Moneymine has a number of other lucrative contracts from public works.

Michael Mfeka said neither he nor his wife could comment on Moneymine's involvement at Nkandla. He said that they were "not allowed to talk to the press" and that the department "has all the information". – Additional reporting by Xanthe Hunt

** Got a tip-off for us about this story? Email amabhungane@mg.co.za*



The M&G Centre for Investigative Journalism (amaBhungane) produced this story. All views are ours. See www.amabhungane.co.za for our stories, activities and funding sources.

All material © Mail & Guardian Online. Material may not be published or reproduced in any form without prior written permission.

WEBBER WENTZEL

in alliance with > Linklaters

Mr Isaac Chowe
State Attorney, Pretoria
Respondents' Attorneys

By fax: 086 507 2194

By email: ichowe@justice.gov.za

10 Fricker Road, Illovo Boulevard
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Your reference
B Minnaar / I Chowe
7930/12/259

Our reference
D Milo / D Wild / B Winks
2328295

Date
29 July 2013

Dear Sir

MandG Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 67574/12)

1. We refer to the above application, in which our clients seek access to certain documents held by your clients, as described in the founding affidavit ("the requested documents"). We reiterate that our clients' request explicitly excluded any security-sensitive information. We refer also to your clients' supplementary affidavit of Phillip Sobi Masilo dated 14 June 2013, in which several documents were tendered to our clients, as itemised in a schedule annexed to that affidavit as "PM2" ("the tendered documents"). We refer further to the documents which we collected from Mr Masilo on 21 June 2013, comprising some 12 000 pages in 42 files ("the delivered documents").
2. We are instructed to inform you that our clients, after an in-depth analysis of the delivered documents, have noted with concern that the delivered documents do not fully satisfy their request for access to information. Specifically, our clients' analysis has revealed that the delivered documents do not correspond fully with the tendered documents, and moreover that the tendered documents do not correspond fully with the requested documents.
3. We attach, marked "A", a table identifying the extent to which the delivered documents do not correspond with the tendered documents, as well as the extent to which the delivered documents refer to other documents which fall within the scope of the request, but which

6540521_1

Senior Partner: DM Lancaster Partners: SM Adcock RB Africa NG Alp RL Appelbeum B Aronoff BA Baillie JM Balfour A Bennett HJ Bester
DHL Booysse AR Bowley PG Bradshaw JL Buckland MS Burger-van der Walt RS Coelco KL Collier KM Colman KE Coster K Couzyn Z Dasoo
JH Davies PM Daya JHB de Lange BEC Dickinson MA Diermont DA Dingley NF Dlamini KZ Dlothi HJ du Preez CP du Toit M Ebrahim SK Edmundson
JC Els AE Esterhuizen MJR Evans GA Fichardt JB Forman CP Gaul CI Gouws JP Gouws PD Greal SGT Gumede MJ Gwenzura VW Harrison
JM Harvey KM Hathorn JS Henning WA Hlepnier KR Hillis NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hoffeld PM Holloway MGH Honiball
SJ Hutton R Ismail AR James KA Jarvis ME Jarvis CM Jonker S Jooste E Jordaan LA Kahn M Kennedy A Keyser JE King J Lamb PSG Leon
DB le Roux L Marais T Maslingi S McCafferty MC McIntosh SI Melzer SM Methula CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu VS Moodaley
L Morphet NN Moshesh VM Movshovich MM Mitchell BP Ngoye ZN Ntshona MB Nzimande GJP Olivier N Paige N Parbhoo AMT Pardini AS Parry
S Patel GR Penfold SE Phajane HK Potgieter D Ramjettan NJA Robb DC Rudman JCL Russell JW Scholtz KE Shepherd GM Sibanda DMJ Silman
AJ Simpson J Simpson N Singh MP Spalding L Stein PS Stein LJ Swaine ER Swanepoel Z Swanepoel A Thakor CK Theodosiou A Toefy D Vallabh
PZ Vanda JP van der Poel SE van der Meulen ED van der Vyver M van der Walt N van Dyk MM van Schaardenburgh JE Veeren D Venter HM Venter
B Versfeld NG Versfeld TA Visagie JWL Westgate KL Williams RH Wilson M Yudaken Chief Operating Officer: SA Boyd

Webber Wentzel is associated with ALN

01 v.b

have been neither delivered nor tendered. For your ease of reference, this table adopts, as far as possible, the enumeration employed in Mr Masilo's "PM2".

4. In addition to the above, our clients have noted with concern that the documents annexed to their replying affidavit marked "RA5", "RA6" and "RA7", despite falling firmly within the scope of the request, are not among the tendered documents or the delivered documents. As it is self-evident from the nature, style and contents of those documents that they must represent only a small sample of a large body of similar records, our clients are concerned that such records have been neither tendered or nor delivered. The records would include progress reports and other correspondence exchanged at ministerial level, as well as with the President and/or his representatives.
5. Our clients are entitled to access all of the requested documents, including the documents described above, and your clients are legally obliged to facilitate such access, unless they can prove that the documents all qualify for statutory exemption from disclosure and are, in addition, incapable of redaction.
6. We are instructed to request, as we hereby do, that you provide our client, by no later than 5 August 2013, with:
 - 6.1 all of the requested documents that are not among the delivered documents, as they have been identified at 3 and 4 above; and
 - 6.2 a list of all of the documents or other records relating to the requested documents, which your clients hold and which they consider to be security-sensitive or otherwise exempt from disclosure.
7. We trust that your clients will be able and amenable to meet the above request promptly, failing which we are instructed to proceed with the application scheduled for hearing in the North Gauteng High Court on 5 and 6 November 2013. In the interests of preserving the hearing date, we will be writing to the Deputy Judge President shortly.
8. Please let us know whether you require further clarity in respect of any of the above.
9. All our clients' rights are reserved.

WEBBER WENTZEL

in alliance with > **Linklaters**

Page 3

Yours faithfully



WEBBER WENTZEL

Dario Milo / Ben Winks / Sandile Mathenjwa

Direct tel: +27 11 530 5137

Direct fax: +27 11 530 6137

Email: dario.milo@webberwentzel.com

UD V.B

"A"

APPLICANTS' ANALYSIS OF THE EXTENT TO WHICH THE RESPONDENTS' TENDER AND/OR DELIVERY OF DOCUMENTS WAS INADEQUATE

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
1.1	Progress report for Prestige Project A security measures dated 10 October 2010	This document could not be located at all.
1.4	WCS Consultant payment advice to Igoda Projects dated 24 December 2012	This document could not be located at all.
1.5	WCS Consultant payment advice to Igoda Projects dated 22 December 2011	This document could not be located at all.
1.7	WCS Consultant payment advice to Igoda Projects dated 4 September 2012	This document could not be located at all.
2.11	Internal memorandum from DJ Rindel to T Nkatha re: updating of the WCS in regard to tender, closing and award date: Park Homes (undated)	Only page 1 could be located.
3.10	Minutes of evaluation bid committee meeting dated 10 May 2011 re: installation of lifts	Between pages 1 and 2 of these minutes appears "Page 1 of 5" of a "register for receiving bids / tenders". Pages 4 to 5 of this register could not be located.
4.19	WCS Consultant Payment Advice to Igoda Projects dated 5 December 2009	Attached to this payment advice is a page entitled "Annexure C" and marked with the page number "13". No other annexures and no other pages could be located.
5.16	Schedule of emergency works and estimated cost	This document could not be located at all.
5.24	Minutes of consultants planning and co-ordination held on 19 March 2012	Only page 1 could be located.
5.25	Agenda for consultants co-ordination meeting held on 2 April 2012	No minutes of this meeting could be located.
5.53	Route form to GL Mahlangu-Nkabinde (undated) re: requesting resistance in the relocation of neighbouring families from their old houses to newly built accommodation	None of the pages distributed under this route form could be located.
5.57	Progress report re: security measures dated 14 June 2010	This document could not be located at all.

V.B

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
5.58	Cost breakdown net budget/escalated	This document could not be located at all.
5.64	Drawings by Department of Defence re: medical clinic 22 September 2009	This document could not be located at all.
6.5	Approval by Regional Bid Adjudication Committee dated 10 January 2011 re: application to issue variation order to the total of 8.64% <ul style="list-style-type: none">Attachment: Fax from Prenola Thevan (R&G Consultants) to Jean Rindel (DPW) dated 10 January 2011	"As discussed." No minutes or other records of the contents of this discussion could be located.
7.1	Internal memorandum from DJ Rindel to the Regional Bid Committee (undated) re: report on negotiated tender with contractor MoneyMine Investments 310 CC	Para 2.3: "The scope of works was identified in the meeting with the Deputy Minister on 21 December 2010." No minutes of this meeting could be located. "Further, the original Bill of Quantities included the scope of works for Landscaping, but this was removed, as the Honourable Deputy Minister instructed that she must be part of the process to approve this works, as it will subject to splitting of the cost between the State and the Principal." No minutes could be located of the meeting at which the Deputy Minister conveyed this instruction.
7.5	Needs Assessment from South African Police Service to Director-General Department of Public Works dated 15 October 2009	This document could not be located at all.
7.11	Motivations and cost allocation proposal no. 4 compiled by R&G Consultants dated June 2011	This document could not be located at all.
8.4	E-mail from Mr Rindel to Mr Dumstra re: updated information on cancelled contract	This document could not be located at all.

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
8.13	Approval by Regional Bid Adjudication Committee dated 10 January 2011 <ul style="list-style-type: none"> Attachment: Request for the approval of the procurement strategy dated 10 January 2011 <i>[also appears as attachment to 7.4. Approval by the Regional Bid Adjudication Committee dated 17 January 2011]</i>	Para 10: "A meeting was held with Deputy Minister Bogopane-Zulu and DDG: ICR, PM & PS on 21 December 2010 in which she confirmed that the Principal indicated that he does not want other contractors on site in Phase II opposed to Phase I. The meeting agreed that the works should be negotiated, and on the following bases: ..." No minutes could be located of either the meeting between the Deputy Minister and the Principal or the meeting between the Deputy Minister and the DDG.
9.11	Preliminary Cost Estimate No. 3 prepared by R&G Consultants (undated)	R&G Consultants' cost estimates No. 1 and No. 2 could not be located, nor could any estimates after No. 3.
9.12	Email from Jean Rindel to Sam Mahadeo, copied beneath email from Roy Govender to Kenneth Khanyile dated 13 October 2009	"Please see my comments on the attached scanned document." No attachment could be located.
9.22	Email from Mino Makhanya to Sam Mahadeo and Roy Govender dated 9 October 2009	Para 1: "Reference to our meeting on the 7th October 2009, we had agreed to issue to you:- i) the cost estimate of the various components of the project, ii) the master copy of the Bills of Quantities to you and iii) the list of contractors. This we did." No minutes of that meeting could be located.
10.22	Fax from DJ Rindel to Moneymine on 12 January 2011 re: Durban Prestige Project A: Phase II; building works HSA, construction of six new buildings and related civil works	"You are herewith invited to a Negotiation meeting for the abovementioned project as follows: ... 12 January 2011 ... 15:00 ..." No minutes of this meeting could be located.
10.24	Incomplete minutes of the Bid Adjudication Committee meeting held on 17 January 2011	Page 1 of these minutes could not be located.
10.28	Progress payment to MoneyMine dated 7 January 2011	This document could not be located at all.

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
11.1	Internal memorandum from DJ Rindel to Regional Bid Committee dated 20 January 2011 re: application to issue variation order to the total of 52.70% based on 59.95% non-schedule and -7.25% schedule items	<p>Para 3.3: "Major intervention by previous Minister G Doidge. Scrutiny of scope of works and imposition of strict deadline" dated "17 September 2010". No minutes of this meeting could be located.</p> <p>Para 3.4: "Please note that all the works were discussed with the previous Minister G Doidge and the DDG / ICR, PS & PM, Mr R Samuels and he instructed this office to continue with immediate effect, as he was given a deadline by the Principal to have the site operational by 1 December 2010. Various meetings were held to discuss the scope and progress in this regard. The minutes can be made available for viewing, if required." No minutes of any of these meetings could be located.</p>
11.2	Final statement of account by Bonelena Construction	This document could not be located at all.
11.4	<p>Internal memorandum from Gerard Damstra to Acting Director General dated 13 May 2012 re: Prestige Project A: Phase 2: Low security area: dispute resolution: Bonelena Construction Enterprise & Projects CC</p> <ul style="list-style-type: none"> Attachment: Letter from Bonelena Construction to National Department of Public Works dated 30 April 2012 	<p>Page 3: "Commitment was made to the Minister of Public Works in mid-January 2012 in a meeting held in Midrand to complete the project in end February 2012 as it was the matter of concern." No minutes of this meeting could be located.</p>
11.4	<p>Internal memorandum from Gerard Damstra to Acting Director General dated 13 May 2012 re: Prestige Project A: Phase 2: Low security area: dispute resolution: Bonelena Construction Enterprise & Projects CC</p> <ul style="list-style-type: none"> Attachment: Letter from Bonelena Construction to The Minister: Department of Public Works dated 15 June 2012 	<p>Page 1: "Our meeting held on the 21st of May 2012 at National Department of Public Works Regional office situated at corner of West and Aliwal Street, Durban central has reference. It was agreed that head office will consider the matter as of urgent and report back within a reasonable period." No minutes of this meeting could be located.</p>

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
11.13	Internal memorandum from Ms N Mbukushe to Chairperson: PMBC dated 30 June 2010	<p>Para 2: "The Durban Regional Manager has requested the Acting Director-General to make available R38,920,896.00 this financial year (Annexure B)." Annexure B could not be located.</p> <p>Para 3: The funds identified from these programmes need to be shifted to Prestige Capital Budget so as to ensure that funds are allocated to the above-mentioned project (Annexure C)." Annexure C could not be located.</p>
11.13	<p>Internal memorandum from Ms N Mbukushe to Chairperson: PMBC dated 30 June 2010</p> <ul style="list-style-type: none"> Annexure A: Internal memorandum from DJ Rindel to Ms M Mgemane dated 2 June 2010 	<p>Para 2: "Attached are the following: ... 2. Printouts from the WCs, indicating that the funds had been updated, thus requesting the funds to be made available (Annexure B). 3. Project execution plan (updated) (Annexure C)." Annexure B and Annexure C could not be located.</p>
11.13	<p>Internal memorandum from Ms N Mbukushe to Chairperson: PMBC dated 30 June 2010</p> <ul style="list-style-type: none"> Annexure A: Internal memorandum from DJ Rindel to Ms M Mgemane dated 2 June 2010 Annexure A (second item): Notice from Snr Supt Linde (SAPS) to Ms Mngemane and Mr Khanyile 	<p>Para 2: "By instruction of the State President, President Zuma the existing house at Nkandla, currently accommodate SAPS members, must be converted as part of the President's household." Neither a copy of this instruction, nor the minutes of the meeting at which it was conveyed, could be located.</p>
11.15	<p>Progress payment to Pro-Hydraulics dated 21 June 2011</p> <ul style="list-style-type: none"> Attachment: Approval by Bid Adjudication Committee dated 18 March 2011 Attachment: Internal memorandum from DJ Rindel to Chairperson: Bid Adjudication Committee dated 3 March 2011 re: supply and delivery of mobile generator for security installation 	<p>Para 2: "Meetings were held with the previous Honourable Minister G Doldge and later with the Honourable Deputy Minister Bogapane Zulu and DDG: ICR on a 2 monthly/ weekly bases." No minutes of any such meetings could be located.</p>

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
14.19	Minutes of the meeting held on Wednesday, 10 August 2011 at National Public Works Department, 188 Schoeman Street, Pretoria	Para 1: "The meeting commenced with PC stating that he, together with this him [sic.] were under ministerial instruction to get involved in the project." No minutes or other records could be located in respect of the meeting(s) at which the ministerial instruction was conveyed to PC.
17.26	Internal memorandum from Rindel to the Regional Bid Adjudication Committee dated 26 May 2010 re: security measures negotiated works - MoneyMine Investments	Page 2: "Copy of complete priced tender is included on the file and had been checked by the Departmental PrQS, Mr R Singh and approved. (See attached e-mail in this regard.)" No attachment could be located.
19.23	Request by Minenhle Makhanya dated 20 August 2012	This document could not be located at all.
22.4	Email from Glenda Pasley to Jean Rindel dated 8 July 2010, forwarding emails from Phillip Crafford to Jean Rindel and Glenda Pasley dated 7 July 2010	Pages 1-2: "This serves to confirm the setting of the next meeting of project A in Durban on Friday 16 July 2010 at 09:00. The meeting will be held in the DPW offices in the 12 th floor boardroom. Discussions will take place with officials of the DPW as well as the appointed consultants and will furthermore serve to brief the newly appointed security consultant, the mechanical engineer and the landscape architect." No minutes of this meeting could be located.
22.39	Email from Glenda Pasley to Jean Rindel dated 11 February 2011	"Please advise what the consultants' progress is in respect of finalising the motivation and cost allocation documentation on the Project. My queries and comments on the document were sent through to the consultant Quantity Surveyors on 25 and 26 January and again on 3 February 2011." No copies could be located of any versions of this cost allocation documentation, nor any comments or queries thereon.
22.42	Email from Glenda Pasley to Jean Rindel dated 21 February 2011	"Our meeting on 19 February 2011 refers." No minutes of this meeting could be located.



PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
22.49	Email from Phillip Crafford to Susan Pyke dated 20 July 2011, copied beneath email from Glenda Pasley to Jean Rindel dated 28 July 2011	"Minister instructed yesterday that the involvement of Professional Services in these two projects should continue." No formal records could be located of the contents of the Minister's instruction.
25.15	Schedule of site meeting dates prepared by Minenhle Makhanya	One "site handover", one "site inspection" and twelve "site meetings" are scheduled between 17 June and 2 December 2010. No minutes or other records of any of these events could be located.
27.8	Fax from Ramcom on 23 May 2013, attaching PPA meeting schedule	"DDG fortnightly meeting" appears on the attached schedule eight times. No minutes of such meetings could be located.
27.32	Internal memorandum from DJ Rindel to Chairman: Regional Bid Adjudication Committee dated 4 July 2011 re: application to issue variation order to the total of 3.02% based on 5.07% non-schedule and -2.05% schedule items	<p>Para 2.2.3: "In order to correct this, it was agreed that the works should be omitted from Messrs Moneymine Investment 310 CC and issued to Messrs Bonelena Construction and Projects... This is was [a]greed to in a meeting with the Honourable Deputy Minister, Regional Manager, Principal Agent and Project Manager." No minutes of this meeting could be located.</p> <p>Para 2.4.4: "The document 'Apportionment of Cost' was submitted to Top Management in January 2011 for perusal and discussion. The document was revised several times until a meeting held in Pretoria with the Acting Director General on 6 June 2011 during which the Acting DG instructed the RM, Acting CD/Prestige and the PM to form a committee and make the final decision on this matter." No minutes of this meeting could be located, nor could the several revised versions of the document. Also, no minutes or other records of the 'final decision' could be located.</p> <p>Para 2.4.5: The Committee approved in principle what would be the acceptable way forward on this matter and the PM was instructed to compile a final document, outlining the final scope of works for the landscaping. This was completed on 28 June 2011 and is the agreed scope of works to be done by the Department. Copy attached for your ease of reference." This attachment could not be located.</p>

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
27.32	<p>Internal memorandum from DJ Rindel to Chairman: Regional Bid Adjudication Committee dated 4 July 2011 re: application to issue variation order to the total of 3.02% based on 5.07% non-schedule and -2.05% schedule items</p> <ul style="list-style-type: none"> Attachment: Letter from Minenhle Makhanya Architects to R&G Consultants dated 25 January 2011 	"Kindly refer to attached documentation for your perusal." No attachments to this letter could be located.
27.32	<p>Internal memorandum from DJ Rindel to Chairman: Regional Bid Adjudication Committee dated 4 July 2011 re: application to issue variation order to the total of 3.02% based on 5.07% non-schedule and -2.05% schedule items</p> <ul style="list-style-type: none"> Attachment: Letter from Minenhle Makhanya Architects to the Deputy Minister of Public Works dated 25 January 2011 re: the casino matters 	"Kindly receive the attached documents for your perusal." No attachments to this letter could be located.
27.41	Progress Meeting - Prestige Durban Project A: Security Installations. Meeting held on 22 June 2011 at 10h30 on site: action items	Page 11: "M. Makhanya to meet with the principal and present the fire pool." No minutes of this meeting could be located.
28.5	<p>Minutes of Emergency Progress Meeting No 8- Prestige Durban Project A: Security Installations. Meeting held on 30th November 2010 on site at 10h00</p> <p><i>[Incorrectly described on PM2 as: Minutes of emergency progress meeting held on 13 November 2010 document prepared by Minenhle Makhanya: helipad and safety measures]</i></p>	<p>"Emergency Progress Meeting No 8". No minutes or other records of the prior seven or any subsequent emergency progress meetings could be located.</p> <p>Page 7: "Hon. Deputy Minister H. Bogopane-Zulu requested to meet with the main contractor (owner) to discuss outstanding payments. Meeting to be arranged for Thursday, 02/12/2010 in Pretoria." No minutes of this meeting could be located.</p> <p>Page 9: "Hon. Deputy Minister H. Bogopane-Zulu said that she had a discussion with the principal on the relocation. Further, mentioned that she will conclude with the principal on the close off (fencing) of the relocation and report at the next meeting." No minutes or other records of this meeting could be located.</p>

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
28.13	Internal memorandum from Mr BK Khanyile to Acting DG: Mr S Vukela dated 21 December 2010 re: extending delegation of RBAC to award tenders below and above limit of R20,000,000 for Prestige Project A [also appears as 6.12]	Para 2.3: "The project structure and execution plan was discussed in detail with the Honourable Deputy Minister, Mrs H Bokopana-Zulu and DDG / ICR, PM, PS (Mr. R Samuel) in a meeting on 20 December 2010." No minutes of this meeting could be located.
28.39	Route form to Ministry dated 24 March 2011 re: discussion of apportionment of costs between state and principal	None of the pages distributed under this route form could be located.
28.43	Internal memorandum from Khanyile to Deputy Minister dated 18 March 2011 re: discussion of apportionment of cost between state and principal	Para 2.3: "This exercise is now complete and provided in the attached document entitled 'MOTIVATIONS AND COST ALLOCATIONS PROPOSAL NO. 3' for your consideration." This attachment could not be located, nor could Proposals 1 and 2 or any subsequent proposals.
28	Unlisted document appearing after item 28.43	Handwritten notes of "Ministers Meeting 1/4/2011. April Fool Meeting." No formal minutes of this meeting could be located.
33.1	Email from Rindel to Gerard Dumstra and Ivan Ka-Mbonambi documents of the final account of Bonelena (recon of all payments to Bonelena) dated 16 August 2012	This document could not be located at all.
33.4	Voucher from Cochrane Products re: perimeter security barrier manufacturers	This document could not be located at all.
33.6	Internal memo from Mr J Mokuoane to Chairperson Sketch Plan Committee re: commencement on the PDR report	This document could not be located at all.
37	Unlisted document appearing between items 37.12 and 37.13	"Top Secret: Annexure D: Durban Regional Office - Page 16 of 17" No other pages of this document could be located

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
37	<p><i>[The documents delivered in file 37 do not appear to correlate coherently with the list of documents tendered under file 37 on the PM2 list. The document appearing as the 509th page of the 619 pages delivered under file 37 bears reference.]</i></p> <p>Internal memorandum from DJ Rindel to Regional Bid Committee re: request to appoint landscape architect via appointed architect, Messrs Minhle Makhanya Architects</p>	Only page 1 could be located.
38.26	Internal memorandum from Mr Rindel to the Chairman of Regional Bid Adjudication Committee dated 21 July 2011 re: publication to issue variation order to the total of 3.02%: construction of 25 new buildings and related civil works (together with annexures attached)	None of the "annexures attached" could be located.
38.28	Fax from the South African Civil Aviation Authority dated 28 May 2009 re: early stop information (attaching drawings)	This document could not be located at all.
38.39	Internal memorandum from Mr Khanyile to Ms Sasa Subban dated 5 August 2009 re: estimate of cost: Durban Project A	This document could not be located at all.
38.40	Procurement instruction from Eddie Malan to Regional Manager dated 18 August 2009 re: Nkandla installation of security measures and related services at Presidential private residence (SAPS security needs assessment attached)	The "needs assessment attached" could not be located.
38.41	Motivations and cost allocation proposal no. 4 compiled by R & G Consultants	This document could not be located at all.
38.42	Email from Mr Khanyile to Mr Rindel dated 22 November 2010 re: installation as discussed on site meeting dated 18 September	This document could not be located at all.
38.43	Letter from RPD Consultants to Department of Public Works re: repair of leaking roof at Durban King's house	This document could not be located at all.
38.44	RPD Consultants CC re: repair of roof at Durban King's house dated 15 November 2011	This document could not be located at all.

PM2 ref.	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate
38.45	Letter from acting Director-General Mr S Vokele to Regional Manager, Mr Khanyile, dated 24 August 2009 re: performance with regard to capital works planned maintenance and claims	This document could not be located at all.
40.38	Internal memorandum from DJ Rindel to Mr IH Molosi dated 7 June 2012 re: report on recommendation of extension of contract period claimed by Bonelela Construction dated 29 April 2012	Only page 1 could be located. Para 2: "The attached submission, entitled 'REPORT ON RECOMMENDATION OF ACCELERATION CLAIM SUBMITTED BY BONELENA CONSTRUCTION' refers." This attachment could not be located.

* * * COMMUNICATION RESULT REPORT (29. JUL. 2013 17:15) * * *

FAX HEADER: WEBER WENZEL

TRANSMITTED/STORED : 29. JUL. 2013 16:50
FILE MODE OPTION

ADDRESS

RESULT

PAGE

454 MEMORY TX

0865072194

OK

14/14

REASON FOR ERROR
E-1) HANGUP OR LINE FAIL
E-3) NO ANSWERE-2) BUSY
E-4) NO FACSIMILE CONNECTION**WEBER WENZEL**
in alliance with > Linklaters**Mr Isaac Chow**
State Attorney, Pretoria
Respondents' AttorneysBy fax: 086 507 2194
By email: ichow@justice.gov.za10 Frickar Road, Illovo Boulevard
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
T +27 11 530 5000
F +27 11 530 5111
www.weberwenzel.comYour reference
B Minnaar / I Chow
7930/12/259Our reference
D Miso / D Wild / B Winks
2324285Date
29 July 2013

Dear Sir

MandG Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 57674/12)

1. We refer to the above application, in which our clients seek access to certain documents held by your clients, as described in the founding affidavit ("the requested documents"). We reiterate that our clients' request explicitly excluded any security-sensitive information. We refer also to your clients' supplementary affidavit of Phillip Sobi Masilo dated 14 June 2013, in which several documents were tendered to our clients, as itemised in a schedule annexed to that affidavit as "PM2" ("the tendered documents"). We refer further to the documents which we collected from Mr Masilo on 21 June 2013, comprising some 12 000 pages in 42 files ("the delivered documents").
2. We are instructed to inform you that our clients, after an in-depth analysis of the delivered documents, have noted with concern that the delivered documents do not fully satisfy their request for access to information. Specifically, our clients' analysis has revealed that the delivered documents do not correspond fully with the tendered documents, and moreover that the tendered documents do not correspond fully with the requested documents.
3. We attach, marked "A", a table identifying the extent to which the delivered documents do not correspond with the tendered documents, as well as the extent to which the delivered documents refer to other documents which fall within the scope of the request, but which

084081_1

Benier Partners: DM Lancaster Partners: SM Adcock RB Africa MG Alp RL Appelbaum J Arnold SA Bellis JM Bellw A Bennett H Bester
 DML Sooyen AR Bolew PG Bradshaw JL Buckland MB Burger-van der Walt RS Coelha KL Collier KM Colman JC Coyle K Coymn Z Dabbe
 JM Davis PM Davis JH de Lange SSC Dickman NA Dierckx EA Oingloy MP Diamini KE Dikoth HJ du Preez CP du Toit M Ebrahim SM Edmondson
 JC Els AE Esterhuysen MJA Evans GA Fickard JS Forman CP Gail G Goup JF Gouws PG Greeff SN Gumede NJ Gwanzura VW Harrison
 JH Harvey MH Hechorn JP Henning WA Hegner KR Hills NA Hirschwege TNC Hirschwege S Hookey SN Gumede NJ Gwanzura VW Harrison
 SJ Hudson R Hume AR James KA Jarvis ME Jarvis CH Jenner S Jacobs E Jordan LA Kahn M Kennedy A Keyser J King J Lamb PLS Leon
 DB le Roux L Marais T Masindi S McCarthy MC McIntosh SE Netzer SN Nethela CS Neyer AJ Nils JA Ninar D Miso NP Mngomezulu VS Moodley
 L Morphet NR Moshesh VM Mousheovich MM Noshak BP Nsope ZN Ntshona NB Nzimande GJP Olivier N Paige N Perchec AMT Perdin AS Perry
 S Pabel GR Patrood SE Phisohe HJ Potgieter O Ramdassen NJA Rabb DC Rudman JCL Ruyter JW Scholtz KE Shephard SM Sibande DM Sibanda
 AJ Simpson J Simpson N Singh MP Siskind L Soth PS Soth G Sushie BR Swannepoel J Swannepoel A Treker CK Theodoridou A Tooley D Vailabh
 PE Vande JP van der Poel SE van der Meulen ED van der Vyver M van der Walt N van Dyk MN van Schaedenburgh JC Venter D Venter HM Venter
 S Versfeld MC Versfeld TA Versfeld DM Vicagie JWL Westgate KL Williams RH Wilson M Yudaken Chief Operating Officer: SA Boyd

Webber Wentzel is associated with ALN

V.B



Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

255 Schoeman Street
Salu Building
Entrance Andries Street

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1562
(Secretary): (012) 309 1530/23

Fax (General) (012) 309 1469/50
(Direct) (086) 507 2194

06 AUGUST 2013

Enquires: K I CHOWE
Email: ichowe@justice.gov.za

My ref: 7930/12/Z59
Your ref: D Milo / B Winks 2328295

PER FAX: 011 530 6232

MESSRS WEBBER WENTZEL
P O BOX 61771
JOHANNESBURG
2107

Sirs

**RE: M AND G CENTRE FOR INVESTIGATIVE JOURNALISM NPC AND
ANOTHER vs. MINISTER OF PUBLIC WORKS AND ANOTHER: CASE NO:
67574/2012**

- 1 I refer to your letter dated 29 July 2013.
- 2 I have been instructed to clarify the following:
 - 2.1 The index to Mr Masilo's additional affidavit listed all of the documents in the possession of the Department of Public Works (DPW) related to the Nkandla security upgrade.
 - 2.2 This includes documents that cannot be disclosed due to the sensitive nature of their content. It also includes documents in the possession of DPW that are irrelevant – i.e. documents that have been misfiled.

VB

Examples include the documents listed in your schedule under items listed as item number 38.43 and 38.44.

- 2.3 To respond to your letter, Mr Masilo needs to compare your schedule to the files in the possession of DPW. If documents in DPW's possession have inadvertently not been made available, DPW undertakes to tender them. This does not apply to documents that cannot be released for security reasons.
- 3 Given Mr Masilo's commitments, it has not possible for him to do so before 5 August 2013.
- 4 In light of this, my clients undertake to respond to your letter by no later than Wednesday 14 August 2013.

We trust you find the above in order.

Yours faithfully



K. CHOWE
FOR: STATE ATTORNEY (PRETORIA)

 V.B.

WEBBER WENTZEL

in alliance with > Linklaters



URGENT

Mr Isaac Chowe
State Attorney, Pretoria
Respondents' Attorneys

By fax: 086 507 2194

By email: ichowe@justice.gov.za

30 Fricker Road, Illovo Boulevard
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Your reference

I Chowe
7930/12/Z59

Our reference

D Milo / D Wild / B Winks
2328295

Date

8 August 2013

Dear Sir

MandG Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 67574/12)

1. We refer to your letter dated 6 August 2013.
2. We are instructed to seek urgent clarification on the following questions that arise from the statements in your letter:
 - 2.1 Does your reference to "*documents in the possession of the Department of Public Works*" (emphasis added) include documents in the possession of the Ministry of Public Works (including documents in the possession of the incumbent Minister of Public Works and his predecessors during their respective terms of office)?
 - 2.2 Does your reference to documents "*related to the Nkandla security upgrade*" include all documents related to "*procurement by the State of goods or services to improve, upgrade, alter, add to or secure the Nkandla Estate of the President*", as described in our clients' original request (emphasis added in both quotes)? We note that some of the documents disclosed to our clients contain references to non-security-related works, which would be for the account of the President. Are all documents related to such other works included in Mr Masilo's index?

6594410_1

Senior Partners: DM Lancaster Partners: SM Adcock RB Africa NG Alp RL Appelbaum B Aronoff SA Baillie JM Bollow A Bennett HJ Bester DHL Booysen AR Bowley PG Bradshaw JL Buckland MS Burger-van der Walt RS Coelho KL Collier KM Colman KE Coster K Couzyn Z Dasco JH Davies PM Daya JHB de Lange BEC Dickinson MA Diemont DA Dingley NF Diamini KZ Dlothi HJ du Preez CP du Toit M Ebrahim SK Edmundson JC Els AE Esterhuizen MDR Evans GA Richard JB Forman CP Gaul CI Gouws JP Gouws PD Grealy SN Gumede MJ Gwenzura VW Harrison JM Harvey MH Hathorn JS Henning WA Hiepner KR Hillis NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hoffeld PM Holloway MGH Honiball SJ Hutton R Ismail AR James KA Jarvis ME Jarvis CM Jonker S Jooste E Jordaan LA Kahn M Kennedy A Keyser JE King J Lamb PSG Leon DB le Roux L Marels T Masingi S McCafferty MC McIntosh SJ Melzer SM Methula CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu VS Moodaley L Morphet NN Moshesh VM Movshovich MM Mtshali BP Ngope ZN Ntshona MB Nzimande GJP Olivier N Paige N Parbhoo AMT Pardini AS Parry S Patel GR Penfold SE Phajane HK Potgieter D Ramdettan NJA Robb DC Rudman JCL Russell JW Scholtz KE Shepherd GM Sibanda DMJ Simaan AJ Simpson J Simpson N Singh MP Spalding L Stein PS Stein LJ Swaine ER Swanepoel Z Swanepoel A Thekore CK Theodosiou A Toefy D Valiebh PZ Vanda JP van der Poel SE van der Meulen ED van der Vyver M van der Walt N van Dyk MM van Schaardenburgh JE Veeran D Venter HM Venter B Versfeld MG Versfeld TA Versfeld DM Visagie JWL Westgate KL Williams RH Wilson M Yuckan Chief Operating Officer: SA Boyd

Webber Wentzel is associated with ALN

Handwritten signature and initials "U.B."

- 2.3 We note that Mr Masilo stated, at paragraph 7 of his affidavit, that he had "examined all of the relevant documents in the possession of the Department [of Public Works]" (emphasis added). Prior to such examination, did Mr Masilo or any other person conduct a comprehensive audit of the documents held by the Department (including the Ministry) of Public Works in order to ascertain whether they were "relevant" (i.e. whether they fell within our clients' request)?
- 2.4 If not, what process was followed, if any, to ascertain that the documents presented to Mr Masilo for examination were the only "relevant" documents in the possession of the Department (including the Ministry) of Public Works?
- 2.5 We note that your letter refers to documents, which appear on Mr Masilo's index of documents but which "are irrelevant" and only appear on the list because they "have been misfiled". Can your clients exclude the possibility that, just as those irrelevant documents have been "misfiled" into the midst of the relevant documents, other relevant documents (such as those identified in our letter dated 29 July 2013) may have been "misfiled" out of the midst of those documents examined by Mr Masilo? Kindly provide us with a comprehensive list of the documents referred to in Mr Masilo's index that your clients contend are irrelevant.
- 2.6 We note that your letter refers to documents, which appear on Mr Masilo's index but which "cannot be disclosed due to the sensitive nature of their content", and we wish to record that paragraph 9 of Mr Masilo's affidavit conveyed a contrary impression, namely that all of the documents itemised in the index were "tendered", without any indication that some of them would be withheld entirely (though it was indicated that some would be subject to "very limited" redaction). In any event, would your clients be prepared to provide us with a full list of those documents that are relevant but are nevertheless being entirely withheld "due to the sensitive nature of their content", as well as confirmation that such 'sensitivity' relates exclusively to the statutory grounds for refusal set out in the Promotion of Access to Information Act, 2000 ("PAIA")?
3. From the analysis attached to our letter dated 29 July 2013, it is apparent that at least the following documents must be or have been in the possession of the Department (including the Ministry) of Public Works:
- 3.1 records of the site handover held on 17 June 2010;

U.B

- 3.2 records of the site meetings held on 1, 15 and 29 July, 12 and 26 August, 9 and 23 September, 7 and 21 October, 4 and 18 November, and 2 December 2010;
- 3.3 records of the site inspection held on 9 July 2010;
- 3.4 minutes of the meeting held on 16 July 2010 at 09:00 at the Durban Regional Office of the Department of Public Works;
- 3.5 Department of Public Works Durban Regional Office terms of reference for Durban: Prestige Project A: security measures dated 8 September 2010
- 3.6 minutes of the meeting concerning the scope of works, held on 17 September 2010 and attended by the Minister of Public Works;
- 3.7 minutes of the meeting concerning outstanding payments held on 2 December 2010 in Pretoria and attended by the Deputy Minister of Public Works;
- 3.8 minutes of the meeting concerning the project structure and execution plan, held on 20 December 2010 and attended by the Deputy Minister, Deputy Director-General of Public Works and the Project Manager;
- 3.9 minutes of the meeting concerning the scope of works, held on 21 December 2010 and attended by the Deputy Minister and Deputy Director-General of Public Works ;
- 3.10 minutes of the negotiation meeting held at 15:00 on 12 January 2011;
- 3.11 minutes of the meeting held on 19 February 2011 and attended by Ms G Pasley and Mr DJ Rindel;
- 3.12 minutes of the regular (weekly, bi-weekly, monthly, and/or bi-monthly) meetings held prior to 3 March 2011 between Mr DJ Rindel and the Minister of Public Works, and between Mr DJ Rindel, the Deputy Minister and/or the Deputy Director-General of Public Works;
- 3.13 Department of Public Works internal memorandum from BK Khanyile to the Minister of Public Works, regarding discussion of apportionment of costs between state and principal, dated 28 March 2011
- 3.14 minutes of the fortnightly meetings between the Deputy Director-General of Public Works and consultants held on 25 May, 8 and 22 June, 6, 13 and 27 July, and 10 and 24 August 2011;

 v.B

- 3.15 minutes of the meeting held on 6 June 2011 in Pretoria and attended by the Acting Director-General of Public Works, the Regional Manager and the Project Manager;
 - 3.16 instructions from the Minister of Public Works to Mr P Crafford on 19 July 2011;
 - 3.17 minutes of the meeting concerning completion of the project by February 2012, held in mid-January 2012 in Midrand and attended by the Minister of Public Works;
 - 3.18 minutes of the consultants co-ordination meeting held on 2 April 2012; and
 - 3.19 minutes of the meeting held on 21 May 2012 at the Durban Regional Office of the Department of Public Works and attended by the Acting Director-General of Public Works.
4. Kindly provide us with the basis upon which your clients contend that these documents, or documents similar to these documents, were not included in Mr Masilo's index of "all the documents in the possession" of the Department (including the Ministry) of Public Works.
 5. Alternatively, kindly confirm whether it is your clients' contention that these documents do not exist or cannot be located for any other reason. If so, would the information officer of the Department of Public Works be prepared to provide an affidavit or affirmation to that effect in accordance with section 23 of PAIA (setting out reasonable grounds for believing that the documents cannot be found or do not exist, as well as reasonable steps taken to find the documents or to determine whether they exist, including all communications with every person who conducted the search on behalf of the information officer)?
 6. Please provide us with a response to all of the above questions (as well as your response to the remaining questions in our letter dated 29 July 2013) by no later than **Wednesday, 14 August 2013**.
 7. As you are aware, we undertook to notify Deputy Judge President Ledwaba of our clients' intention to proceed with or withdraw their application by Friday 9 August 2013. In light of your letter, our clients will not be able to do so. Accordingly, we will write to Deputy Judge President Ledwaba presently to request his further indulgence regarding the reservation of the hearing date. We trust that you will have no objection to our attaching your letter to that request.
 8. All our clients' rights are reserved.

V.B
U

WEBBER WENTZEL

in alliance with > **Linklaters**

Page 5

Yours faithfully



WEBBER WENTZEL

Dario Milo / Duncan Wild / Ben Winks

Direct tel: +27 11 530 5137

Direct fax: +27 11 530 5137

Email: dario.milo@webberwentzel.com

V.B
09

* * * COMMUNICATION RESULT REPORT (8. AUG. 20 13 16:49) * * *

FAX HEADER: WEBER WENZEL

TRANSMITTED/STORED : 8. AUG. 2013 16:42
FILE MODE OPTION

ADDRESS

RESULT

PAGE

464 MEMORY TX

0865072194

OK

5/5

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-3) NO ANSWERE-2) BUSY
E-4) NO FACSIMILE CONNECTION**WEBBER WENTZEL**

In alliance with > Linklaters

URGENT**Mr Isaac Chow**
State Attorney, Pretoria
Respondents' Attorneys**By fax: 086 507 2194****By email: ichow@justice.gov.za**10 Fricker Road, Illovo Boulevard
Johannesburg, 2196PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Your reference

I Chow
7930/12/259

Our reference

D Milo / D Wild / B Winks
2328298

Date

8 August 2013

Dear Sir

MandG Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 67574/12)

1. We refer to your letter dated 6 August 2013.
2. We are instructed to seek urgent clarification on the following questions that arise from the statements in your letter:
 - 2.1 Does your reference to "documents in the possession of the Department of Public Works" (emphasis added) include documents in the possession of the Ministry of Public Works (including documents in the possession of the incumbent Minister of Public Works and his predecessors during their respective terms of office)?
 - 2.2 Does your reference to documents "related to the Nkandla security upgrade" include all documents related to "procurement by the State of goods or services to improve, upgrade, alter, add to or secure the Nkandla Estate of the President", as described in our clients' original request (emphasis added in both quotes)? We note that some of the documents disclosed to our clients contain references to non-security-related works, which would be for the account of the President. Are all documents related to such other works included in Mr Masilo's Index?

0564410_1

Dehler Partners: DM Langenhorn Partners: SM Adcock RS Africa NG Alp RL Appelbaum S Aronoff SA Baika SM Bodien A Bennet HJ Bester
 DHL Booyse AR Bowley PB Bradshaw JL Ruckland MS Burger-van der Walt AS Coetjé KL Collier KM Coirman KE Cozier K Couzyn Z Daboo
 JH Davies PM Davis JMS de Lange SAC Diddams NA Dierckx DA Dingler NF Dlamini KC Obethi M du Preez CP du Toit M Ebrahim SK Edmundson
 JC Els AM Esterhuysen MJA Evans GA Fickardt JB Ferman CP Geld C L Gouws JP Gouws PD Greeff SM Gurnede MJ Gwanzura VV Hartzen
 JH Harvey MH Hesterm JH Henning WJA Hiepman KR Hilde NA Hlatshwaya XMC Hlatshwaya S Hooker SM Humede MJ Gwanzura VV Hartzen
 SJ Hulson R Zimani AJ James KA Jarvis ME Jarvis CM Jonker S Jooste E Jordana LA Kahn M Kennedy A Keyser JB King J Lamb PEG Leon
 Da le Roux L Marais T Masengi S McCarthy MC McIntosh ST Helzer SM Mabhoe CB Meyer AJ Mills JA Minar D Milo NP Mngomezulu VS Moolenaar
 L Morphet NN Moshush M Mosheovich MM Mshali SP Ngweni SM Nkomo MB Nkomo GIP Oliver M Pelje N Rantsoo AHT Parani AS Parry
 S Patel GR Penfold SE Phahle NK Potgieter S Ramjassan NIA Robb OC Rudman JCL Ruseff JW Scholtz KE Shepherd GH Sibanda DM Simeon
 AJ Simpson J Simpson N Sison NP Souding L Stein PS Stein LJ Swaine ER Swaneepoel E Swaneepoel A Tshabaz CK Theodolou A Tsofay D Valtah
 PE Vande JP van der Poel SE van der Heulen ED van der Vyver M van der Walt N van Dijk MW van Schoorburgh JE Venter D Venter MM Venter
 B Versteeg MG Versteeg TA Versteeg DM Visage JWL Westgate KL Williams RM Wilson M Yudaken Chief Operating Officers: SA Boyd

Webber Wentzel is associated with ALN

V.B

WEBBER WENTZEL

in alliance with > Linklaters

URGENT

Mr Isaac Chow
State Attorney, Pretoria
Respondents' Attorneys

By fax: 086 507 2194

By email: ichowe@justice.gov.za

10 Fricker Road, Illovo Boulevard
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Your reference

I Chow
7930/12/Z59

Our reference

D Milo / D Wild / B Winks
2328295

Date

19 August 2013

Dear Sir

MandG Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 67574/12)

1. We refer to our letter dated 29 July 2013, in which we requested copies of documents that our clients identified as missing from the records provided by your clients in this matter, as well as a list of all documents that your clients consider to be exempt from disclosure, by 5 August 2013.
2. We refer further to your letter dated 6 August 2013, in which you indicated that the records held by your clients are all listed in the schedule of documents attached to the affidavit of Mr Phillip Sobi Masilo in this matter, some of which were withheld for security reasons, while others were withheld as they were considered irrelevant. You undertook to respond fully to our request "by no later than Wednesday 14 August 2013".
3. We refer finally to our letter dated 8 August 2013, of which you acknowledged receipt on the same date. We requested urgent clarification on several questions arising from your letter, by no later than Wednesday 14 August 2013.
4. To date, we have not received your promised full response to our request dated 29 July 2013, nor any response at all to our request dated 8 August 2013. We have been unable to contact you by telephone, despite regular attempts to do so on 14, 15, 16 and 19 August 2013.

6825253_1

Senior Partners: DM Lancaster Partners: SM Adcock AB Africa NG Alp RL Appelbaum B Aronoff BA Baillie JM Bellaw A Bennett HJ Bester
DHL Booysse AR Bowley PG Bradshaw JL Buckland MS Burger-van der Walt RS Coelho KL Collier KM Colman KE Coster K Couzyn Z Dasoo
JH Davies PM Daya JHB de Lange BEC Dickinson MA Diamond DA Dingley NF Dlamini KZ Dlodlo HJ du Preez CP du Toit M Ebrahim SK Edmundson
JC Els AE Esterhuizen MJR Evans GA Fichardt JB Forman CP Gaul CI Gouwz JP Gouwz PD Greeley SN Gumede MJ Gwanzura VW Harrison
JM Harvey MH Hathorn JS Henning WA Hiepner KR Hillis NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hofeld PM Holloway MGH Honiball
SJ Hutton R Ismail AR James KA Jarvis ME Jarvis CM Jonker S Jooste E Jordaan LA Kahn M Kennedy A Keyser JE King J Lamb PSG Leon
DB le Roux L Merals T Masingi S McCafferty MC McIntosh SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu VS Moodaley
I Morphek NN Moshesh VN Movshovich MM Mtshali BP Ngoepe ZN Ntshona MB Nzimande GJP Olivier N Pelge N Parbhoo AMT Pardini AS Parry
S Patel GR Penfold SE Phajane HK Potgieter D Ramjettan NJA Robb DC Rudman JCL Russell JW Scholtz KE Shepherd GM Sibanda DMJ Simaan
AJ Simpson J Simpson N Singh MP Spalding L Stein PS Stein LJ Swaine ER Swanepoel Z Swanepoel A Thekro CK Theodosiou A Toefy D Valtabih
PZ Vande JP van der Poel SE van der Meulen ED van der Vyver H van der Walt N van Dyk MM van Schaedenburgh JE Veeran D Venter HM Venter
B Versfeld MG Versfeld TA Versfeld DM Visagie JWL Westgate KL Williams RH Wilson M Yudaken Chief Operating Officer: SA Boyd

Webber Wentzel is associated with ALN

U.B
03

WEBBER WENTZEL

In alliance with > Linklaters

Page 2

5. Please provide us with responses to both of our requests by no later than tomorrow, being Tuesday 20 August 2013, at 12:00.
6. In the event of your further failure to respond to our requests, our clients will be compelled to proceed with this application and to convey such intention immediately to Deputy Judge President Ledwaba, whose indulgences we have repeatedly been required to seek in the interests of preserving a prompt and mutually convenient hearing date.
7. All our clients' rights are reserved.

Yours faithfully



WEBBER WENTZEL

Darlo Milo / Duncan Wild / Ben Winks

Direct tel: +27 11 530 5137

Direct fax: +27 11 530 6137

Email: darlo.milo@webberwentzel.com

U V.B

"SA8"

WEBBER WENTZEL

in alliance with > Linklaters

URGENT

Mr Isaac Chowe
State Attorney, Pretoria
Respondents' Attorneys

By fax: 086 507 2194

By email: ichowe@justice.gov.za

10 Fricker Road, Illovo Boulevard
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Your reference

K I Chowe
7930/12/Z59

Our reference

D Milo / D Wild / B Winks
2328295

Date

21 August 2013

Dear Sir

MandG Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 67574/12)

1. We refer to our letters dated 29 July, 8 August and 19 August 2013, as well as your letter dated 6 August 2013, in which you undertook to provide us with a response to our request for further information and clarification by Wednesday 14 August 2013.
2. We note your email of 20 August 2013, in which you indicated you were awaiting your clients' instructions and would "revert shortly". We have, however, still not received the substantive response which you undertook to provide us with by Wednesday, 14 August 2013 (based on your clients' availability). One full week after the promised date, we have not received your response.
3. As you are aware, on 20 June 2013, the Honourable Deputy Judge President Ledwaba provisionally reserved the dates of 5 and 6 November 2013 for the hearing of this matter, to accommodate the availability of all counsel concerned, until the end of July 2013. The Honourable Deputy Judge President has repeatedly indulged us thereafter, by extending this provisional reservation in order to allow us to determine whether a dispute still exists between our clients and your clients in this matter.
4. We were notified this morning by the Office of the Deputy Judge President that the court roll for the fourth term has now become full, apart from the dates provisionally reserved for

6640538_2

Senior Partners: DM Lancaster Partners: SM Adcock RB Africa NG Alp RL Appelbaum B Aronoff BA Baillie JM Bellew A Bennett HJ Bester
DHL Booyens AR Bowley PG Bradshaw JL Buckland MS Burger-van der Walt RS Coelho KL Collier KM Colman KE Coster K Couzyn Z Dasoo
JH Davies PM Daya JHB de Lange BEC Dickinson MA Diemont DA Dingley NF Diemini KZ Dlothi HJ du Preez CP du Toit M Ebrahim SK Edmundson
JC Els AE Esterhuizen MJR Evans GA Fichardt JB Forman CP Gani CI Gouws JP Gouws PD Grealy SN Gumede MJ Gwanzura VW Harrison
JM Harvey MH Hathorn JS Henning WA Hiepner KR Hillis NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hoffeld PM Holloway MGH Honiball
SJ Kutton R Ismail AR James KA Jarvis ME Jarvis CM Jonker S Jooste E Jordaan LA Kahn M Kennedy A Keyser JE King J Lamb PSG Leon
DB le Roux L Marais T Masingi S McCafferty MC McIntosh SI Meltzer SM Methula CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu VS Moodaley
L Morphet NN Moshesh VM Movshovich MM Mtshali BP Ngoepe ZN Ntshona MB Nzimande GJP Olivier N Paige N Parbhoo AMT Pardini AS Parry
S Patel GR Penfold SE Phajane HK Potgieter D Ramjetan NJA Robb DC Rudman JCL Russell JW Scholtz KE Shepherd GM Sibanda DMJ Simaan
AJ Simpson J Simpson N Singh MP Spalding L Stein PS Stein LJ Swaine ER Swanepoel Z Swanepoel A Thakor CK Theodosiou A Toefy D Vallabh
PZ Vanda JP van der Poel SE van der Meulen ED van der Vyver M van der Walt N van Dyk MM van Schaardenburgh JE Veeran D Venter HM Venter
B Versfeld MG Versfeld TA Visagie JWL Westgate KL Williams RH Wilson M Yudaken Chief Operating Officer: SA Boyd

Webber Wentzel is associated with ALN

U-B
CS

the hearing of this matter. We are accordingly required to notify the Honourable Deputy Judge President, by close of court hours today, whether our clients intend to proceed with the application.

5. In the absence of a full response from your clients to our requests for further information and clarification, our clients remain unable to ascertain whether their request for access to information in this matter has been satisfied. The urgency of our receiving such response has at all times been manifest and has been repeatedly recorded in our correspondence. After the lapsing of the promised date of 14 August 2013, we have not received, and have not been able to procure from you, any indication of when we may expect to receive your clients' full response.
6. In light of the above, and in the interests of resolving this matter as efficiently as possible, we shall notify the Honourable Deputy Judge President at 14:00 today, 21 August 2013, that our clients intend to proceed with their application and to request that it be enrolled for hearing on 5 and 6 November 2013.

Yours faithfully



WEBBER WENTZEL

Dario Milo / Duncan Wild / Ben Winks

Direct tel: +27 11 530 5137

Direct fax: +27 11 530 6137

Email: dario.milo@webberwentzel.com

U.V.B



Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

SALU Building
316 Thabo Sehume Street
Pretoria

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1562
(Secretary): (012) 309 1530
Fax (General) (012) 309 1601/02
086 507 2194

22 August 2013

Enquires: K.I CHOWE
Email: KChowe@justice.gov.za

My ref: 7930/2012/Z59
Your ref: D Milo/D Wld/B Winks 2328295

WEBBER WENTZEL ATTORNEYS

Dear Sir,

**MandG Centre for Investigative Journalism NPC and Another v Minister of Public Works
and Another (North Gauteng High Court Case No 67574/12)**

- 1 I refer to the above matter and to your letter dated 21 August 2012. I apologise for the delay in responding to you.
- 2 My instructions are:
 - 2.1 Mr Masilo has reviewed all the documents in his possession.
 - 2.2 Regrettably, a number of documents - listed in the schedule attached to

Access to Justice for All

Always quote my reference number

U.B

Mr Masilo's further affidavit of documents - were not provided to you in error.

2.3 Mr Masilo is in the process of arranging for copies of these documents to be made so that they can be provided to you. Once this has been done I will contact you to make arrangements for delivery of the additional documents. I hope to be able to do so by Monday 26 August 2013.

2.4 This does not include documents that contain security sensitive information and/or documents authored by the South African Police Services or the South African National Defence Force.


2.5 In addition, Mr Masilo has asked the DPW KwaZulu Natal provincial office to review all its Nkandla security upgrade files. In particular, the provincial office has been asked to check whether its files contain any minutes of meetings referred to in your schedule. Mr Masilo's files do not contain these documents.

2.6 The provincial office is expected to provide Mr Masilo with feedback by Friday 23 August 2013. If these documents are located, they will be provided to you.

2.7 I will keep you updated on progress made to locate additional documents.

3 I have taken note of the contents of your letter to the Deputy Judge President. I have conveyed their contents to my clients.


Yours faithfully

 V.B



K.I CHOWE

FOR: STATE ATTORNEY (PRETORIA)

 V.B

WEBBER WENTZEL

in alliance with > Linklaters

Mr Isaac Chowe
State Attorney, Pretoria
Respondents' Attorneys

By fax: 086 507 2194

By email: ichowe@justice.gov.za

10 Fricker Road, Illovo Boulevard
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

T +27 11 530 5000

F +27 11 530 5111

www.webberwentzel.com

Your reference

K I Chowe
7930/12/Z59

Our reference

D Milo / D Wild / B Winks
2326295

Date

27 August 2013

Dear Sir

MandG Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 67574/12)

1. We refer to your letter dated 22 August 2013, in which you undertook to provide us with documents erroneously omitted from those already provided to us, as well as to update us on your clients' progress in locating records held by the KwaZulu-Natal Provincial Office of the Department of Public Works, which may fall within or clients' request.
2. While we appreciate your clients' continued efforts in this regard, and we look forward to your further updates, we must record that the specific questions posed in our letter dated 8 August 2013 remain unanswered. We would appreciate your clients' responses to these questions as soon as possible.
3. In particular, in light of your references to Mr Masilo asking the KwaZulu-Natal Provincial Office to review its Nkandla security upgrade files and to Mr Masilo having a separate set of files (in paragraph 2.5 of your letter dated 22 August 2013), we reiterate our request for clarification of whether Mr Masilo or any other person conducted a comprehensive audit of all documents held by the Department (including the Ministry) of Public Works (including its provincial offices), and, if not, what process was followed (paragraphs 2.3 and 2.4 of our letter dated 8 August 2013).

0662602_1

Senior Partners: DM Lancaster Partners: SM Adcock RB Africa NG Alp RL Appelbaum B Aronoff SA Baille JM Bellow A Bennett HJ Bester
DHL Booysen AR Bowley PG Bradshaw JL Buckland MS Burger-van der Walt RS Coelho KL Collier KM Colman KE Coster K Couzyn Z Dasoo
JH Davies PM Daya JHB de Lange BEC Dickinson MA Diemont DA Dingley NF Diemint KZ Dlotfi HJ du Preez CP du Toit M Ebrahim SK Edmundson
IC Els AE Esterhuizen MJR Evans GA Fichardt JB Forman CP Gaul CL Gouws JP Gouws PD Grealy SM Gurnede MJ Gwenzura VW Harrison
JM Harvey MH Hathorn JS Henning WA Hiepner KR Hillis NA Hlatshwayo XNC Hlatshwayo S Hockey CM Hofeld PM Holloway MGH Honiball
SJ Hutton R Ismail AR James KA Jarvis ME Jarvis CM Jonker S Jooste E Jordaan LA Kahn M Kennedy A Keyser JE King J Lamb PSG Leon
DB le Roux L Marais T Masingiri S McCafferty MC McIntosh SI Meltzer SM Methula CS Meyer AJ Mills JA Miner D Milo NP Mngomezulu VS Moodley
L Morphet NN Moshesh VM Movshovich MM Mshali BP Ngoepe ZN Ntshona MB Nzimande GJP Olivier N Paige N Parbhoo AMT Pardini AS Perry
S Patel GR Penfold SE Phajene HK Potgieter D Ramjettan NJA Robb DC Rudman JCL Russell JW Scholtz KE Shepherd GM Sibanda DMJ Smaen
AJ Simpson J Simpson N Singh NP Spalding L Stein PS Stein LJ Swaine ER Swanepoel Z Swanepoel A Thekoe CK Theodosiou A Tsofy D Vailabh
PZ Vanda JP van der Poel SE van der Meulen ED van der Vyver M van der Walt N van Dyk MM van Schaedenburgh JE Veezan D Venter HM Venter
B Versfeld MG Versfeld TA Versfeld DM Visagie JWL Westgate KL Williams RH Wilson M Yudaken Chief Operating Officers: SA Boyd

Webber Wentzel is associated with ALN

U.B.

WEBBER WENTZEL

in alliance with > Linklaters

Page 2

4. Please note that the Honourable Deputy Judge President Ledwaba has granted us leave to enrol this application for hearing on 5 and 6 November 2013, and that our clients', with the information presently available to them, intend to do so. In the event that you have not received the Deputy Judge President's directions, please see the copy attached hereto.
5. In accordance with the Deputy Judge President's directions, we intend to serve and file a notice of set down shortly and a supplementary affidavit as soon as possible thereafter, setting out our clients' reasons for proceeding with their application.

Yours faithfully



WEBBER WENTZEL

Dario Milo / Duncan Wild / Ben Winks

Direct tel: +27 11 530 5137

Direct fax: +27 11 530 5137

Email: dario.milo@webberwentzel.com

U.V.B



**OFFICE OF THE DEPUTY JUDGE PRESIDENT
NORTH GAUTENG HIGH COURT**

North Gauteng High Court Building, Cnr. Madiba (Vernoulen) & Paul Kruger Str, Room 7.15, 7th Floor
Tel. (012) 315 7575 – Fax. (012) 315 7600 – Direct Fax – 0867548804 – E-mail: Botong@justice.gov.za

22 AUGUST 2013

TO: WEBBER WENTZEL ATTORNEYS
Fax No. : 011 – 530 6137
Your Ref.: Mr D Milo
Our Ref.: 67574/12/DJP LEDWABA/MT

TO: STATE ATTORNEYS
Fax No: 086 644 6417
Your Ref: Mr B Minaar
Our Ref: 67574/12/DJP LEDWABA/MT

Dear Sirs

**RE: ALLOCATION OF A SPECIAL THIRD COURT MOTION DATE:
MANDG CENTRE FOR INVESTIGATIVE JOURNALISM NPC & ANOTHER /
MINISTER OF PUBLIC WORKS & ANOTHER
CASE NO: 47634/13**

1. Your letter dated 21 August 2013 refers.
2. You may set this matter down for 5 and 6 November 2013 as a Special Motion. Please attach a copy of this letter to your notice of set down and serve it on all the parties immediately. Furthermore I need written confirmation from your office within 7 (seven) days after receipt hereof that a notice of set down, together with a copy of this letter, has been served and filed.
3. Please note the following:
 - 3.1 The respondents should file their supplementary affidavits on or before 11 September 2013
 - 3.2 The applicant's heads of arguments and practice note to be filed on or before 30 September 2013
 - 3.4 The respondent's heads of arguments and practice note to be filed on or before 3 October 2013
 - 3.5 The court file must be properly indexed and paginated by the applicant, considering the provisions of clause (paragraph) 6.10 of the Practice Manual, by no later than 30 September 2013
 - 3.6 The Practice Note should clearly reflect:
 - Names of the parties and the case number
 - Names and telephone numbers of all counsel in the Motion


U.B.

- Nature of the motion
 - Issues to be determined in the application
 - Relief sought at the hearing by the party on whose behalf counsel is appearing
 - An estimate of the probable duration of the application
 - Number of pages in the application and whether or not all papers need to be read and if not, which portion need not be read
- 3 The aforesaid dates must be strictly adhered to, failing which the matter may not proceed on the date allocated, however depending on why there was non-compliance. All heads of argument must be filed at the office of the Deputy Judge President on the 7th floor.
- 4 The applicant must ensure that the court file has been delivered to the Office of the Deputy Judge President by close of business 30 September 2013. The file with the heads of argument will be delivered to the chambers of the Judge hearing the matter. It remains the duty of the legal representatives to ensure that the court file has been properly indexed and paginated in time and that all documents have been filed accordingly in time.
- 5 Should it, for any reasons, transpire that this matter will not proceed on the given date, you are directed to inform the Registrar's office as well as the Office of the Deputy Judge President, immediately.

Regards



A P LEDWABA
DEPUTY JUDGE PRESIDENT
NORTH GAUTENG HIGH COURT

 V.B

* * * COMMUNICATION RESULT REPORT (27 AUG 2013 10:09) * * *

TRANSMITTED/STORED : 27. AUG. 2013 10:06
FILE MODE OPTION

ADDRESS

FAX HEADER: WEBBER WENTZEL BOWENS

111 MEMORY TX

0865072194

RESULT

PAGE

OK

4/4

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) NO ANSWERE-2) BUSY
NO FACSIMILE CONNECTION**WEBBER WENTZEL**

In alliance with > Linklaters

Mr Isaac Chow
State Attorney, Pretoria
Respondents' Attorneys
By fax: 086 507 2194
By email: ichowe@justice.gov.za

10 Pricker Road, Illovo Boulevard
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
T +27 11 530 5000
F +27 11 530 5111
www.webberwentzel.com

Your reference
K I Chow
7930/12/289

Our reference
D Milo / D Wild / B Winks
2328298

Date
27 August 2013

Dear Sir

Mand@ Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 67674/12)

1. We refer to your letter dated 22 August 2013, in which you undertook to provide us with documents erroneously omitted from those already provided to us, as well as to update us on your clients' progress in locating records held by the KwaZulu-Natal Provincial Office of the Department of Public Works, which may fall within or clients' request.
2. While we appreciate your clients' continued efforts in this regard, and we look forward to your further updates, we must record that the specific questions posed in our letter dated 8 August 2013 remain unanswered. We would appreciate your clients' responses to these questions as soon as possible.
3. In particular, in light of your references to Mr Masilo asking the KwaZulu-Natal Provincial Office to review its Nkandla security upgrade files and to Mr Masilo having a separate set of files (in paragraph 2.5 of your letter dated 22 August 2013), we reiterate our request for clarification of whether Mr Masilo or any other person conducted a comprehensive audit of all documents held by the Department (including the Ministry) of Public Works (including its provincial offices), and, if not, what process was followed (paragraphs 2.3 and 2.4 of our letter dated 8 August 2013).

Number 1

Senior Partners: DM Lincaster Partners: SM Adcock RB Afriza NS Alp RL Appelbaum S Aronoff BA Baillie JM Bellow A Bennett NJ Bester
DHL Beersma AR Bowley PS Bradshaw JL Buckland NS Burger-van der Walt RS Coorssen KL Collier KM Colman KS Coster K Cusack Z Dasso
JM Davies PM Dwyer JHB de Lange MIC Dickinson MA Diamond DA Dingemans NP Dlamini NG Dlamini SD du Preez CP du Toit M Ebrahim SK Edmondson
JC Els AE Esterhuysen MJA Evans GA Fickens JB Forman CP Gaul LA Geyser JP Giese PD Gandy SM Groppe NG Gwathwaite VW Harrison
SJ Hertzog R Jansen AR Jansen KA Jervis MS Jervis CH Jonker S Jordana S Jordan LA Kahn M Kennedy A Meyer JE King J Lamb PG Leon
DB le Roux L Masele T Masingi S McCafferty MC McIntosh BJ Makhele SM Mathaba CM Meyer AJ Miller JA Milner D Miro NP Mngomezulu VS Moodale
L Norphlet NN Norsteyn VM Novitsovich NM Nyabasi BP Ntsepe ZN Ntshona NS Ntshwanda GJP Olivier N Palisa W Parbhoo ANT Pendergast AS Perry
S Rabel GA Puntold SE Phahle HX Potgieter D Roodman PCA Robb DC Rodman JCL Russell JW Scholte KE Shaphard GM Sibanda DSI Simons
AJ Simpson J Simpson R Singh NP Spalding L Stein NS Steyn LJ Swaine TG Swirapong Z Swirapong A Thakur CK Theodorou A Toefy D Vailish
PZ Vande JP van der Poel SE van der Merwe ED van der Vyver M van der Walt N van Dyk MH van Schoorburgh JE Venter B Venter HJ Venter
S Verweid HJ Verweid TA Verweid DM Vreugde JWL Wessgate KL Williams RH Wilson M Tudekso Chief Operating Officers SA Boyd

Webber Wentzel is associated with ALN

V.B



Office of the State Attorney Pretoria

Private Bag X 91
PRETORIA
0001

316 Francis Baard Street
Salu Building
Entrance Thabo Sehume Street

Tel: (Switchboard): (012) 309 1500
(Direct Line): (012) 309 1562
(Secretary): (012) 309 1530/23

Fax (General) (012) 309 1469/50
(Direct) (086) 507 3326

30 AUGUST 2013

Enquires: K I CHOWE
Email: ichowe@justice.gov.za

My ref: 7930/2012/Z74/js
Your ref: D Milo/B Winks 2328295

PER FAX: 011 530 5111

Messrs webber Wentzel Attorneys
JOHANNESBURG

Dear Sir

**RE: M AND G CENTER FOR INVESTIGATION JOURNALISM NPC &
VINAYAK BHARDWAJ vs. THE MINISTER OF PUBLIC WORKS AND
ANOTHER**

M&G Centre for Investigative Journalism NPC and Another v Minister of Public Works and Another (North Gauteng High Court Case No 67574/12)

1.I refer to the above matter and to your letters dated 29 July 2013 and 8 August 2013.

2.In response to your letter of 29 July 2013, Mr Phillip Masilo, the Minister's special advisor, re-examined all the files in his possession related to the procurement by the State of goods or services to improve, upgrade, alter, add to or secure the Nkandla Estate of the President.

3.Mr Masilo also asked the responsible Project Manager in the KZN Regional Office of DPW to go through the schedule attached to your letter of 29 July 2013 and check whether he could locate any of the documents in the KZN office.

4.Both exercises are now complete. The schedule attached to this letter was produced by Mr Masilo pursuant to those exercises and is a comprehensive response to your letter of 29 July 2013. Mr Masilo has used the schedule attached to your letter of 29 July 2013 and has added a fourth column that is

U.B

headed "Comments". You will also see that four categories of documents are identified in the schedule with each group being allocated a different colour.

4.1. The documents highlighted in green consist of documents that were tendered but mistakenly not copied for you, as well as additional documents located by the KZN office. You should contact Mr Masilo at Cheadle Thompson and Haysom attorneys to make arrangements for you to collect copies of these documents.

4.2. The documents highlighted in yellow are documents that appear to have once existed but which, despite our best efforts, cannot now be located.

4.3. The documents highlighted in red are documents that cannot be disclosed to your clients because they contain sensitive security related information and cannot be redacted. It is important to distinguish these documents from those that have been redacted and disclosed to your clients.

4.4. Mr Masilo has been unable, despite his best efforts, to confirm the existence of the documents highlighted in blue.

5. In response to queries raised in your letter dated 8 August 2013, I advise as follows:

5.1. The project related to the procurement by the State of goods or services to improve, upgrade, alter, add to or secure the Nkandla Estate of the President (referred to by DPW as the Nkandla security upgrade, and also as Project A) was a project managed by the KZN Regional Office of DPW.

5.2 All documents related to the project were filed in the KZN Regional Office.

5.3. In response to your clients' PAIA application, and the investigation of the Public Protector, Mr Masilo instructed the responsible Project Manager in the KZN office to send all the project files to his office in the Ministry in Pretoria.

5.4. Mr Masilo then worked through each of those files on the instruction of the Director General.

5.5. The documents listed in the schedule attached to Mr Masilo's affidavit were obtained from the files originally kept in the KZN Regional Office.

5.6. You will appreciate that the exercises undertaken by Mr Masilo and the KZN Project Manager have been time consuming and exhaustive. This was done in an attempt to ensure that the respondents make available to your clients all documents related to the Nkandla security upgrade/Project A – except those documents that cannot be disclosed for security reasons.

5.7. DPW's information officer is the Director General. He tasked Mr Masilo to respond to your clients' PAIA request. The process undertaken by Mr Masilo is outlined in this letter. Should your clients require the contents of this letter to be

confirmed under oath, Mr Masilo is prepared to do so. Kindly advise me accordingly.

6. In a department the size of DPW it is impossible to rule out the possibility that additional documents, related to the project, may exist and may have been misfiled. It is also possible that parties unknown to the respondents may have removed some documents from the project files. DPW manages approximately 2 300 leases, 2 000 infrastructure developments as well as numerous Prestige projects. It is simply impossible for the respondents to go through thousands of its files to determine if some documents related to the project have been misfiled.

7. My clients are satisfied that they have done everything reasonably possible to ensure that they comply fully with your clients' request.

8. To the extent that your clients are in possession of documents that DPW cannot locate in its files, it is possible that these documents were taken by persons unknown to us and handed to your clients.

Yours faithfully




KITCHOWE
FOR: STATE ATTORNEY (PRETORIA)

U.B
M

APPLICANT'S ANALYSIS OF THE EXTENT TO WHICH THE RESPONDENTS' TENDER AND/OR DELIVERY OF DOCUMENT WAS INADEQUATE

PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
1.1	Progress report for Prestige Project A security measures dated 10 October 2010	This document could not be located at all.	Document provided.
1.4	WCS Consultant payment advice to Igoda Projects dated 24 December 2012	This document could not be located at all.	The document is the same as the one noted in 1.5. It was incorrectly dated.
1.5	WCS Consultant payment to Igoda Projects dated 22 December 2011	This document could not be located at all.	Document provided.
1.7	WCS Consultant payment advice Igoda Projects dated 4 September 2012	This document could not be located at all.	Document provided.
2.11	Internal memorandum from DJ Rindel to T Nkatha re updating of the WCS in regard to tender, closing and award date: Park Homes (undated)	Only page 1 could be located.	Document provided.
3.10	Minutes of evaluation bid committee meeting date 10 May 2011 re installation of lifts	Between pages 1 and 2 of these minutes appears "Page 1 of 5" of a "register for receiving bids/tenders". Pages 4 to 5 of this register could not be located.	Document provided. Pages 4 & 5 attached
4.19	WCS Consultant Payment Advice to Igoda Projects dated 5 December 2009	Attached to this payment advise is a page entitled "Annexure C" and marked with the page number "13". No other annexures and no other pages could be located.	The document is as is in the file. No other documents.
5.16	Schedule of emergency works and estimated cost	This document could not be located at all.	Document provided.
5.24	Minutes of consultants planning and co-ordination held on 19 March 2012	Only page 1 could be located.	Document provided. 2 pages copied.
5.25	Agenda for consultants co-ordination meeting held on 2 April 2012	No minutes of this meeting could be located	There is only the agenda in the file. No minutes.
5.53	Route form to GL Mahlangu-Nkabinde (undated) re requesting resistance in the relocation of neighbouring families from their old homes to newly built accommodation.	None of the pages distributed under this route form could be located.	Route form and memo copied provided.
5.57	Progress report re: security measures dated 14 June 2010	This document could not be located at all.	Document provided.
5.58	Cost breakdown net budget/escalated	This document could not be located at all.	Document provided.
5.64	Drawings by Department of Defence re: medical clinic 22 September 2009	This document could not be located at all.	Document cannot be released for reasons set out in paragraphs 12-15 of Phillip Masilo's affidavit.
6.5	Approval by Regional Bid Adjudication	"As discussed." No minutes or	This is what we have

V.B


PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
	Committee dated 10 January 2011 re: application to issue variation order to the total of 8.64% • Attachment: Fax from Prenola Thevan (R&G Consultants) to Jean Rindel (DPW) dated 10 January 2011	other records of the contents of this discussion could be located.	in the file. No record of such discussion recorded.
7.1	Internal memorandum from DJ Rindel to the Regional Bid Committee (Undated) re: report on negotiated tender with contractor MoneyMine Investment 310 CC	Para 2.3: The scope of works was identified in the meeting with the Deputy Minister on 21 December 2010." No minutes of this meeting could be located. "Further, the original Bill of Quantities included the scope of works for Landscaping, but this was removed, as the Honourable Deputy Minister instructed that she must be part of the process of approve this works as it will subject to splitting of the cost between the State and the Principal." No minutes could be located of the meeting at which the Deputy Minister conveyed this instruction.	We do not have such minutes in the file. No such minutes of meeting could be located.
7.5	Needs Assessment from South African Police Service to Director-General Department of Public Works dated 15 October 2009	This document could not be located at all.	This document cannot be released for reasons set out in paragraph 12-15 of Phillip Masilo's affidavit.
7.11	Motivations and cost allocation proposal no.4 compiled by R&G Consultants dated June 2011	This document could not be located at all.	Document provided.
8.4	Email from Mr Rindel to Mr Dumstra re: updated information on cancelled contract	This document could not be located at all	Document provided.
8.13	Approval by Regional Bid Adjudication Committee dated 10 January 2011 • Attachment: Request for the approval of the procurement strategy dated 10 January 2011 <i>[also appears as attachment to 7.4. Approval by the Regional Bid Adjudication Committee dated 17 January 2011]</i>	Para 10: "A meeting was held with Deputy Minister Bogopane-Zulu and DDG: ICR, PM & PS on 21 December 2010 in which she confirmed that the Principal indicated that he does not want other contractors on site in Phase II opposed to Phase I. The meeting agreed that the works should be negotiated, and on the following bases: ..." No minutes could be located of either the meeting between the Deputy Minister and the Principal	We do not have minutes of such meeting on the file.

PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
		or the meeting between the Deputy Minister and the DDG.	
9.11	Preliminary Cost Estimate No.3 prepared by R&G Consultants (undated)	R&G Consultants' cost estimates No. 1 and No. 2 could not be located, nor could any estimates after No.3.	We do not have such document on file.
9.12	Email from Jean Rindel to Sam Mahadeo copied beneath email from Roy Govender to Kenneth Khanyile dated 13 October 2009	"Please see my comments on the attached scanned document." No attachment could be located.	We do not have such document on file.
9.22	Email from Mino Makhanya to Sam Mahadeo and Roy Govender dated 9 October 2009.	Para 1: "Reference to our meeting on the 7 th October 2009, we had agreed to issue to you:- i) the cost estimate of the various components of the project, ii) the master copy of the Bills of Quantities to you and iii) the list of contractors. This we did." No minutes of that meeting could be located.	We do not have such minutes on file.
10.22	Fax from DJ Rindel to MoneyMine on 12 January 2011 re: Durban Prestige Project A: Phase II; building works HSA, construction of six new buildings and related civil works.	"You are herewith invited to Negotiation meeting for the abovementioned project as follows: ...12 January 2011 ...15:00..." No minutes of this meeting could be located.	We do not have the minutes of this meeting.
10.24	Incomplete minutes of the Bid Adjudication Committee meeting held on 17 January 2011	Page 1 of these minutes could not be located.	This document is as it is in the file hence the word "incomplete".
10.28	Progress payment to MoneyMine dated 7 January 2011	This document could not be located at all.	Document provided.
11.1	Internal Memorandum from DJ Rindel to Regional Bid Committee dated 20 January 2011 re: application to issue variation order to the total of 52.70% based on 59.95% non-schedule and - 7.25% schedule items	Para 3.3: "Major intervention by previous Minister G Doidge. Scrutiny of scope of works and imposition of strict deadline" dated 17 September 2010". No minutes of this meeting could be located. Para 3.4: "Please note that all the works were discussed with the previous Minister G Doidge and the DDG/ICR. PS & PM, Mr R Samuels and he instructed this office to continue with immediate effect, as he was give a deadline by the Principal to have the site operational by 1 December 2010. Various meetings were held to discuss the scope and progress in this regard. The minutes can be made available for	We do not have minutes of meeting. We do not have such minutes of meeting.

PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
		viewing, if required." No minutes of any of these meetings could be located.	
11.2	Final statement of account by Bonelena Construction	This document could not be located at all.	Document attached.
11.4	Internal memorandum from Gerard Damstra to Acting Director General dated 13 May 2012 re: Prestige Project A: Phase 2: Low security area: dispute resolution: Bonelena Construction Enterprise & Projects CC • Attachment: Letter from Bonelena Construction to National Department of Public Works dated 30 April 2012.	Page 3: "Commitment was made to the Minister of Public Works in mid-January 2012 in a meeting held in Midrand to complete the project in end February 2012 as it was the matter of concern." No minutes of this meeting could be located.	We do not have minutes.
11.4	Internal memorandum from Gerard Damstra to Acting Director General dated 13 May 2012 re: Prestige CC	Page 1: "Our meeting held on the 21 st of May 2012 at National Department of Public Works Regional Office situated at corner of West and Aliwal Street, Durban central has reference. It was agreed that head office will consider the matter as of urgent and report back within a reasonable period." No minutes of this meeting could be located.	We do not have document on file.
11.13	Internal memorandum from Ms N Mbukushu to Chairperson: PMBC dated 30 June 2010. • Annexure A: Internal memorandum from DJ Rindel to Ms M Mngemane dated 2 June 2010 • Annexure A (second item): Notice from Snr Supt Linde (SAPS) to Ms Mngemane and Mr Khanyile	Para 2: "By instruction of the State President, President Zuma the existing house at Nkandla, currently accommodate SAPS members, must be converted as part of the President's household." Neither a copy of this instruction, nor the minutes of the meeting at which it was conveyed, could be located.	We do not have such a document or minutes of a meeting.
11.15	Progress payment to Pro-Hydraulics dated 21 June 2011 • Attachment: Approval by Bid Adjudication Committee dated 18 March 2011 • Attachment: Internal memorandum from DJ Rindel to Chairperson: Bid Adjudication Committee dated 3 March 2011 re: supply and delivery of mobile generator for security installation.	Para 2: "Meetings were held with the previous Honourable Minister G Doidge and later with the Honourable Deputy Minister Bogapane Zulu and DDG: ICR on a 2 monthly/weekly basis." No minutes of any such meetings could be located.	We do not have minutes of meetings.
14.19	Minutes of the meeting held on Wednesday, 10	Para 1: "The meeting commenced	We do not have

PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
	August 2011 at National Public Works Department, 188 Schoeman Street, Pretoria	with PC stating that he, together with this him [sic] were under ministerial instruction to get involved in the project." No minutes or other records could be located in respect of the meeting(s) at which the ministerial instruction was conveyed to PC.	document or minutes of meeting.
17.26	Internal memorandum from Rindel to the Regional Bid Adjudication Committee dated 26 May 2010 re: security measures negotiated works – Moneymine Investments	Page 2: "Copy of complete priced tender is included on the file and has been checked by the Departmental PrQS, Mr R Singh and approved. (See attached email in this regard)." No attachment could be located.	Copy of email could not be located.
19.23	Request by Minenhle Makhanya dated 20 August 2012	This document could not be located at all.	Document was not properly described. It is not a request but document issued by Minenhle Makhanya re scope of work dated 20 August 2012. Document provided.
22.4	Email from Glenda Pasley to Jean Rindel dated 8 July 2010, forwarding emails from Phillip Crafford to Jean Rindel and Glenda Pasley dated 7 July 2010	Pages 1-2: "This serves to confirm the setting of the next meeting of project A in Durban on Friday 16 July 2010 at 9.00. The meeting will be held in the DPW offices in the 12 th floor boardroom. Discussions will take place with officials of the DPW as well as the appointed consultants and will furthermore serve to brief the newly appointed security consultant, the mechanical engineer and the landscape architect." No minutes of this meeting could be located.	We do not have document on file.
22.39	Email from Glenda Pasley to Jean Rindel dated 11 February 2011	"Please advise what the consultants' progress is in respect of finalising the motivation and cost allocation documentation on the Project. My queries and comments on the document were sent through to the consultant Quantity Surveyors on 25 and 26 January and again on 3 February 2011". No copies could be located of any versions of this cost allocation	The document could not be located.

PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
		<p>CD/Prestige and the PM to form a committee and make the final decision on this matter." No minutes of this meeting could be located, nor could the several revised versions of the document. Also, no minutes or other records of the "final decision" could be located.</p> <p>Para 2.4.5: The Committee approved in principle what would be the acceptable way forward on this matter and the PM was instructed to compile a final document outlining the final scope of works for the landscaping. This was completed on 28 June 2011 and is agreed scope of works to be done by the Department. Copy attached for your ease of reference." This attachment could not be located.</p>	We do not have document on file.
27.32	<p>Internal memorandum from DJ Rindel to Chairman: Regional Bid Adjudication Committee dated 4 July 2011 re: application to issue variation order to the total of 3.02% based on 5.07% non-schedule and -2.05% schedule items</p> <ul style="list-style-type: none"> Attachment: Letter from Minenhle Makhanya Architects to R & G Consultants dated 25 January 2011. 	"Kindly refer to attached documentation for your perusal". No attachments to this letter could be located.	Document is as is in file. No attachments could be located.
27.32	<p>Internal memorandum from DJ Rindel to Chairman: Regional Bid Adjudication Committee dated 4 July 2011 re: application to issue variation order to the total of 3.02% based on 5.07% non-schedule and -2.05% schedule items</p> <p>Attachment: Letter from Minenhle Makhanya Architects to Deputy Minister of Public Works dated 25 January 2011 re: the casino matters</p>	"Kindly refer to attached documentation for your perusal". No attachments to this letter could be located.	Document is as is. Attachment could not be located.
27.41	Progress meeting – Prestige Durban Project A: Security Installations. Meeting held on 22 June 2011 at 10h30 on site: action items	Page 1: "M Makhanya to meet with the principal and present the fire pool." No minutes of this meeting could be located.	We do not have minutes of such meeting.
28.5	Minutes of Emergency Progress Meeting No.8 – Prestige Durban Project A: Security Installations.	"Emergency Progress Meeting No. 8". No minutes or other records of	Minutes of meetings attached. Meeting of

PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
	<p>Meeting held on 30th November 2010 on site at 10h00</p> <p><i>[Incorrectly described on PM2 as: Minutes of emergency progress meeting held on 13 November 2010 document prepared by Minenhle Makhanya: helipad and safety measures]</i></p>	<p>the prior seven or any subsequent emergency progress meetings could be located.</p> <p>Page 7: "Hon. Deputy Minister H. Bogopane-Zulu requested to meet with the main contractor (owner) to discuss outstanding payments. Meeting to be arranged for Thursday, 02/12/2010 in Pretoria. No minutes of this meeting could be located.</p> <p>Page 9: "Hon. Deputy Minister H. Bogopane-Zulu said that she had a discussion with the principal on the relocation. Further, mentioned that she will conclude with the principal on the close off (fencing) of the relocation and report at the next meeting." No minutes or other records of this meeting could be located.</p>	<p>seven prior meetings attached.</p> <p>We do not have minutes of meeting.</p> <p>We do not have minutes of meeting.</p>
28.13	<p>Internal memorandum from Mr BK Khanyile to Acting DG: Mr S Vukela dated 21 December 2010 re: extending delegation of RBAC to award tenders below and above limit of R20 000,000.00 for Prestige Project A</p> <p><i>[also appears as 6.12].</i></p>	<p>Para 2.3: "This project structure and execution plan was discussed in detail with the Honourable Deputy Minister, Mrs H Bokopana-Zulu and DDG/ICR, PM, PS (Mr R Samuel) in a meeting on 20 December 2010". No minutes of this meeting could be located.</p>	We do not have minutes of meeting.
28.39	Route form to Ministry dated 24 March 2011 re: discussion of apportionment of costs between state and principal	None of the pages distributed under this route form could be located.	Document is as is in the file.
28.43	Internal memorandum from Khanyile to Deputy Minister dated 18 March 2011 re: discussion of apportionment of cost between state and principal	<p>Para 2.3: "This exercise is no complete and provided in the attached document entitled 'MOTIVATIONAL AND COST ALLOCATIONS PROPOSAL NO. 3' for your consideration." This attachment could not be located, nor could Proposals 1 and 2 or any subsequent proposals.</p>	The document entitled "Motivational and Cost Allocations Proposal No.3" is provided. Similar to 22.42 above. Proposal 1 and 2 could not be located.
28	Unlisted document appearing after item 28.43	Handwritten notes of "Ministers Meeting 1/4/2011. April Fool Meeting." No formal minutes of this meeting could be located.	The document is as is in the file.
33.1	Email from Rindel to Gerard Dumstra and Ivan Ka-Mbonambi documents of the final account of	This document could not be located at all.	Document provided.

PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
	Bonelena (recon of all payments to Bonelena) dated 16 August 2012		
33.4	Voucher from Cochrane Products re: perimeter security barrier manufacturers	This document could not be located at all.	Document provided.
33.6	Internal memo from Mr J Mokuoane to Chairperson Sketch Plan Committee re: commencement on the PDR report	This document could not be located at all.	Document provided.
37	Unlisted document appearing between items 37.12 and 37.13	"Top Secret: Annexure D: Durban Regional Office – Page 16 of 17". No other pages of this document could be located.	Document is as is in the file. No other documents could be located.
37	<i>[The documents delivered in file 37 do not appear to correlate coherently with the list of documents tendered under file 37 on the PM2 list. The document appearing as the 509th page of the 619 pages delivered under file 37 bears reference.]</i> <i>Internal memorandum from DJ Rindel to Regional Bid Committee re: request to appoint landscape architect via appointed architect, Messrs Minhle Makhanya Architects</i>	Only page 1 could be located.	Documents are as is in the file
38.26	Internal memorandum from Mr Rindel to the Chairman of Regional Bid Adjudication Committee dated 21 July 2011 re: publication to issue variation order to the total of 3.02%: construction of 25 new buildings and related civil works (together with annexures attached)	None of the "annexure attached" could be located.	Documents is as is in file. No annexures could be located.
38.28	Fax from the South African Civil Aviation Authority dated 28 May 2009 re: early stop information (attaching drawings)	This document could not be located at all.	Document provided.
38.39	Internal memorandum from Mr Khanyile to Ms Sasa Subban dated 5 August 2009 re: estimate of cost: Durban Project A	This document could not be located at all.	Document provided with schedule of estimate costs.
38.40	Procurement instruction from Eddie Malan to Regional Manager dated 18 August 2009 re: Nkandla installation of security measures and related services at Presidential private residence (SAPS security needs assessment attached)	The "needs assessment attached" could not be located.	Cannot disclose SAPS. For reasons set out in paragraph 12-15 of Phillip Masilo's affidavit.
38.41	Motivations and cost allocation proposal no. 4 compiled by R & G Consultants	This document could not be located at all.	Document provided.
38.42	Email from Mr Khanyile to Mr Rindel dated 22 November 2010 re: installation as discussed on site meeting dated 18 September	This document could not be located at all.	Document provided.
38.43	Letter from RPD Consultants to Department of	This document could not be	This document was

PM2 Ref	Document for which the tender and/or delivery was inadequate	Extent to which the tender and/or delivery was inadequate	Comments
	Public Works re: repair of leaking rood at Durban King's house	located at all.	misfiled and it is irrelevant for this matter.
38.44	RPD Consultants CC re: repair of roof at Durban King's house dated 15 November 2011	This document could not be located at all.	This document was misfiled and it is irrelevant for this matter.
38.45	Letter from acting Director-General Mr S Vokele to Regional Manager, Mr Khanyile, dated 24 August 2009 re: performance with regard to capital works planned maintenance and claims	This document could not be located at all.	Document provided.
40.38	Internal memorandum from DJ Rindel to Mr IH Molosi dated 7 Juen 2012 re: report on recommendation of extension of contract period claimed by Bonelena Construction dated 29 April 2012	<p>Only page 1 could be located.</p> <p>Para 2: "The attached submission, entitled 'REPORT ON RECOMMENDATION OF ACCELERATION CLAIM SUBMITTED BY BONELENA CONSTRUCTION' refers."</p> <p>This attachment could not be located.</p>	The document is as it is in file. The attachment could not be located.

PA-01 (EC): REQUEST FOR APPROVAL OF THE PROCUREMENT STRATEGY

To:	Chairperson of Regional Bid Adjudication Committee
Project title:	DURBAN : PRESTIGE PROJECT "A" PHASE II : BUILDING WORKS : L.S.A, CONSTRUCTION OF TWENTY FIVE NEW BUILDING AND RELATED CIVIL WORKS

WCS no:	047455	Reference no:	P3/12/20/3/2/136
Project Manager:	Jean Rindel	Region:	DURBAN REGIONAL
E-mail:	Jean.rindel@dpw.gov.za	Cellular phone no:	084 5740712
Telephone number:	031 314 7114	Fax no:	031 337 9020

CATEGORY: Engineering and Construction

1. **VALUE THRESHOLD:** (Tick only one applicable threshold)

<input type="checkbox"/> R 0 - R10 000	<input type="checkbox"/> R10 001 - R30 000	<input type="checkbox"/> R30 001 - R300 000	<input type="checkbox"/> R300 001 - R500 000	<input checked="" type="checkbox"/> Above R 500 000
--	--	---	--	---

Estimate Value: R 41 115 690.63

2. **CIDB CONTRACTOR GRADING DESIGNATION REQUIRED:**

It is estimated that tenderers should have a CIDB contractor grading designation of **7 GB** or **7 GB*** or higher.

* Delete "or select tender value range select class of construction works" where only one class of construction works is applicable

It is estimated that potentially emerging enterprises should have a CIDB contractor grading designation of **6 GB PE** or **6 GB PE*** or higher.

* Delete "or select tender value range select class of construction works PE" where only one class of construction works is applicable

The contractor grading will ultimately be determined in accordance with the sum tendered.

3. **FORM OF CONTRACT:**

- ☐ GCC (2004) (General Conditions of Contract for Construction Works)
☒ JBCC Series 2000 Principal Building Agreement - Edition 4.1 of March 2005
☐ Other specify and motivate

4. **TENDER / QUOTE CRITERIA:**

4.1. The Bid Adjudication Committee's approval is hereby requested for the following procurement procedure:

(If Negotiated Procedure is requested, it must be fully motivated in a separate attachment.)

- ☒ Negotiated Procedure ☐ Nominated Procedure ☐ Open Procedure
☐ Qualified Procedure ☐ Quotation Procedure ☐ Shopping Procedure
☐ Proposal Procedure - Two-Stage System

4.2. The following Evaluation Method for responsive tenders will be applicable:

(Any choice other than Method 2 or 4 must be fully motivated in a separate attachment)

- ☒ Method 1 (Financial offer) ☐ Method 2 (Financial and Preference offer)
☐ Method 3 (Financial and Quality offer) ☐ Method 4 (Financial, Quality and Preference offer)

v.B

4.3. This tender will be evaluated according to the preferential procurement model in the PPPFA

4.3.1 Indicate the price / quality weighting applicable to this tender:

Price / Quality	Weighting percentage
Price:	100%
Quality:	0%
Total must equal:	100%

4.3.2 Indicate the quality criteria applicable to this tender:
(Weights for quality must add up to 100)

Quality criteria*	Weighting factor*
	N/A
	N/A
	N/A
	N/A
	N/A
	N/A
	N/A
	N/A
Total	100 Points

(Weightings will be multiplied by the scores allocated during the evaluation process to arrive at the total quality points)

*If Method 1 or 2 is indicated in 4.2 above, the words "Not Applicable" must be inserted in the table above

Minimum quality score to qualify for further evaluation	N/A
---	-----

(Total minimum qualifying score for quality is 50 percent, unless motivated otherwise to the Bid Adjudication Committee)

4.3.3 The following preferential procurement model will be applicable for this tender according to the preferential procurement model in the PPPFA:

The requirements in respect of the application of either the 80/20 or 90/10 preference point scoring system, as reflected in clause F3.11 of the Tender Data, will apply and the points reflected below for preferences will be adjusted accordingly on a pro-rata basis if required

Preference	
1. Historically Disadvantaged Individuals (HDI)	
(a) Persons who had no franchise in national elections before the 1983 and 1993 Constitutions	N/a Points
(b) Who is a female	Points
(c) Persons with disability	Points
2. Other specific goals (according to the PPPFA)	
(a) Contract participation goal by awarding contracts to targeted enterprises (Tender and Contract Conditions PA-16.2 EC is applicable)	Points
(b)	Points
(c)	Points
Total must equal 10 or 20 points	N/a Points

Tenderers will qualify for indirect preference points only if their tendered contract participation goals are equal to or exceed % . Tenderers may increase their contract participation goals above the minimum and the tenderer who tenders the highest contract participation goal will receive the maximum indirect preference points allocated above

4.4 Standard risk management assessment criteria in respect of tenders received for routine projects in the engineering and construction works environments:

Tender offers will be evaluated by an Evaluation Committee based on the technical and commercial risk criteria listed hereunder. Each criterion carries the same weight / importance and will be evaluated individually based on reports presented to the Evaluation Committee by the Professional Team appointed on the project. A tender offer will be declared non-responsive and removed from any further evaluation if any one criterion is found to present an unacceptable risk to the Employer.

In order for the evaluation reports to be prepared by the Professional Team, the Tenderer is obliged to provide comprehensive information on form DPW-09 (EC). Failure to complete the said form will cause the tender to be declared non-responsive and removed from any further consideration. The Employer reserves the right to request additional information over and above that which is provided by the Tenderer on said form. The information must be provided by the Tenderer within the stipulated time as determined by the Project Manager, failing which the tender offer will *mutatis mutandis* be declared non-responsive.

4.4.1 Technical risks:

Criterion 1: Quality of current and previous work

Quality of current and previous work performed by the Tenderer in the class of construction work stated above as per the evaluation report prepared by the Professional Team, based on its research and inspection of a representative sample of the Tenderer's current and previous work as reflected on form DPW-09 (EC), as well as, if necessary, of any additional work executed by the Tenderer, not reflected on form DPW-09 (EC).

Criterion 2: Contractual commitment

Adherence to contractual commitments, demonstrated by the Tenderer in the performance on current and previous work, evaluated in terms of:

- a) the level of progress on current projects in relation to the project programme or, if such is not available/applicable, to the contractual construction period in general;
- b) the degree to which previous projects have been completed within the contractual completion periods and/or extensions thereto; and
- c) general contract administration, i.e. compliance with contractual aspects such as laws and regulations, insurances, security, written contract instructions, subcontractors, time delay claims, etc as can generally be expected in standard/normal conditions of contract.

4.4.2 Commercial risks:

The level to which agreement with the Tenderer is reached in respect of the adjustment of rates which are considered to be imbalanced or unreasonable and to eliminate errors or discrepancies, without changing the tendered total price, over and above the correction of arithmetical errors as provided for in F.3.9.

5. RESPONSIVENESS CRITERIA:

5.1. Indicate responsiveness criteria applicable for this tender. Failure to comply with the criteria stated hereunder shall result in the tender offer being disqualified from further consideration:

X	Only those tenderers who satisfy the eligibility criteria stated in the Tender Data may submit tenders.
X	Tender offer must be properly received on the tender closing date and time specified on the Invitation, fully completed and signed in ink (All as per Standard Conditions of Tender).
X	Submission of (DPW-07 EC): Form of Offer and Acceptance.
X	Submission of (PA-11.1 EC): Declaration of Interest and Tenderer's Past Supply Chain Management Practices.
X	Submission of applicable (PA-15.1, PA-15.2, PA-15.3): Resolution by the legal entity, or consortium / joint venture, authorising a dedicated person(s) to sign documents on behalf of the firm / consortium / joint venture.
X	Has passed a risk assessment.

Handwritten signature V.B

<input checked="" type="checkbox"/>	Submission of (DPW-16 EC): Site Inspection Meeting Certificate as proof of attendance of compulsory site inspection meeting. <i>Negotiated works - Contractor must be present</i>
<input type="checkbox"/>	Has attained the minimum score for quality.
<input checked="" type="checkbox"/>	Submission of a valid original tax clearance certificate.
<input checked="" type="checkbox"/>	The tenderer will be required to submit his fully priced Bills of Quantities / Lump Sum Document together with his tender
<input checked="" type="checkbox"/>	Submission of form PA-29
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/>	

5.2. Additional information that may be required during the tender evaluation:

Legal Status of Tendering Entity: If the Tendering Entity is:	Documentation to be submitted with the tender, or which may be required during the bid evaluation:
a. A Close Corporation, Incorporated under the Close Corporation Act, 1984, Act 69 of 1984	Certified copies of the Founding Statement – CK1
b. A <u>private</u> Company having share capital, incorporated under the Companies Act, 1973, Act 61 of 1973 [Including Companies incorporated under Art 53(b)]	Certified copies of: I.) Certificate of Incorporation – CM1, and II.) Shareholders Certificates of all Members of the Company, plus a signed statement of the Company's Auditor, certifying each Member's ownership /shareholding percentage relative to the total.
c. A <u>private</u> Company having share capital, incorporated under the Companies Act, 1973, Act 61 of 1973, in which any, or all, shares are held by another Close Corporation or Company with, or without, share capital	Certified copies of documents referred to in a. and/or b. above in respect of all such Close Corporation(s) and/or Company (ies).
d. A <u>public</u> Company having share capital, incorporated under the Companies Act, 1973, Act 61 of 1973 [Including Companies incorporated under Art 21]	A signed statement of the Company's Secretary confirming that the Company is a public Company.
e. A natural person or a Partnership	Certified copy of the Identity Document of: I.) such natural person, or II.) each of the Partners to the Partnership



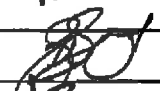



00 v.B

5.3. Additional returnable documents that may be required during the tender evaluation:

Tender document name
Particulars of Tenderer's Projects (DPW-09 EC).
Priced Bills of Quantities / Lump Sum Document If not required in 5.1 above.
Any <u>additional</u> information required to complete the risk assessment referred to in 5.1.

6. BID SPECIFICATION AND EVALUATION COMMITTEE MEMBERS:

6.1. The following members hereby certify that the bid specifications, evaluation criteria, preference point scoring system and responsiveness criteria have been analysed and agreed upon:

Bid Specification and Evaluation Committee member	Signature
R SEWJUGATH	
SUMESH GOVENDER	
MPUMI MACHENGEZA	
ZANDILE NGWANE	
R SINGH	
JEAN RINDEL	 J. Rindel

7. TENDER ADVERTISEMENT PERIOD:

<input type="checkbox"/>	4 1/2 weeks
<input checked="" type="checkbox"/>	Other : 2 DAYS. Tender is negotiated and most of the proposed rates are already known to both parties.

8. TENDER VALIDITY PERIOD:

<input checked="" type="checkbox"/>	8 weeks
<input type="checkbox"/>	12 weeks (Insert motivation)

9. TENDER DOCUMENTS WILL BE SOLD FOR A NON-REFUNDABLE AMOUNT OF R .

10. ADDITIONAL COMMENTS: (If applicable)

1. Reasons for recommending Negotiated tender:

A meeting was held with Deputy Minister Bogopane-Zulu and DDG : ICR, PM & PS on 21 December 2010 in which she confirmed that the Principal indicated that he does not want other contractors on site in Phase II opposed to Phase I. The meeting agreed that the works should be negotiated, and on the following bases:

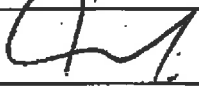
- * The Privately appointed quantity surveyors must draw up a complete price Bill of quantities in line with the scope of works
- * The rates to be used in the bill of quantities (previously proven market related costs) shall be based on the rates in the previously approved tender and be escalated as per standard calculation according to JBCC 2000.
- * The contractor shall be called into a meeting with the specification committee members and the documentation shall be discussed and the document handed it to the contractor for consideration and acceptance
- * The contractor shall return the completed negotiated tender document in a second meeting to the specification committee members after one week on a date mutually agreed.
- * Any rates disagreed by the contractor must be motivated by the contractor and discussed with the committee for approval or re-negotiation

The contractor that produced work under Phase I and nominated for negotiation in Phase II in the Low Security Area, is Messrs Bonilena Construction and Civil works (7 GB PE)

The reasons for nominating this contractor is the contractor are currently on site, performing works under Phase I. The contractor's performance is good, reached all the tight goals on time management and delivered the project on time.

The firm is a female owned, BEE firm and is thus in line with social responsibilities of the state.

11. COMPLETED BY:

	DT RINBUR	2011/1/10
Name of Project Manager	Signature	Date

12. SUPPORTED BY:

Name of Head: Projects	Signature	Date

 v.B

Department:
Public Works
REPUBLIC OF SOUTH AFRICA

To:	Regional Bld Committee	Ref:	Various
From:	DJ RINDEL	Office:	DURBAN REGIONAL OFFICE PROJECT MANAGEMENT
Tel:	(031) 314 7114	Fax:	(031) 368 7056

**Project : DURBAN : PRESTIGE PROJECT A – SECURITY UPGRADE
EMERGENCY CONTRACT (BONELENA CONSTRUCTION)**

The purpose of this submission is to request the RBAC to increase the delegation for issuing variation orders to the limit of 58.64% for additional works performed on the above mentioned contract.

2.2.1	Contract amount	R 16 819 718.00
2.2.2.	Variation orders <u>previously</u> approved: (Vo's 1)	
	Scheduled tariffs	-R 750 000.00
	Percentage on scheduled tariffs	-4.46%
	Non-scheduled tariffs	R 4 515 528.00
	Percentage on non-scheduled tariffs	26.85%
2.2.3	Variation orders <u>now</u> submitted for approval	
	Scheduled tariffs	-R 6 856 635.00
	Percentage on scheduled tariffs	-40.77%
	Non-scheduled tariffs	R 12 954 837.04
	Percentage on non-scheduled tariffs	77.02%
2.2.4	Total value of scheduled variation orders:	-R 7 606 635.00
	Percentage on scheduled tariffs	-45.22%
	Total value of non-scheduled variation orders:	R 17 470 365.04

U. V. E.



public works

Department
Public Works
REPUBLIC OF SOUTH AFRICA

3. MOTIVATION

- 3.1 The additional works included in this application was essential to continue with as soon as possible due to the urgency of the works and the time frame for completion.
- 3.2 The original scope of works was identified and implemented as Emergency works in order to provide the Clients, SAPS and DOD (that is mandated to protect the Principal) with the required level of facilities to perform their duties. It must be stated that a substantial amount of works were in design by the time that the project was implemented, so that the contractor may start with the works and progress.
- 3.3 The works included in the original contract as well as the additional work are directly in line with security measures for the protection of the Principal and thus could not await the normal lengthy process of waiting for the approval of the variation orders before the instruction to commence is given, as this could compromise the security of the Principal and would not be tolerated. This was made very clear by the Top Management of SAPS and DOD and accepted by NDPW.
- 3.4 The identification of the scope of works was done to the best with the information available at the time. Additional information became available after the contract had been priced and signed.
- 3.5 The timeline of events are as follows:

Event	Date
Contract award	17 June 2010
Site hand over	19 June 2010.
Scope of works discussed by Professional Services.	30 August 2010.
Major intervention by previous Minister G Doldge. Scrutiny of scope of works and Imposition of strict deadline of 31 November 2010.	17 September 2010.
Receipt of revised SAPS risk assessment (defining scope of the security installations)	25 September 2010.
<u>Decisions to add additional items to scope of the works.</u>	10 October 2010.
Request to Private Quantity Surveyor and Contractor to price additional items of variation orders.	10 October 2010.
Variation order submitted to this office	29 November 2010

U.V.B.

3.4 The additional works included in variation orders * to * herewith submitted, are as follows:

VO NUMBER	DESCRIPTION	TOTAL
VO 1	<p><u>Outer Clearvu Perimeter Fence – Specification Stage</u></p> <p>The original design included for a Bonnex type fence. Due to the high security levels required for the project, the specification was changed to the Clearvu type fence.</p> <p><u>This variation order was approved by the RBAC previously.</u></p>	R 3 765 528.00
VO 2	<p><u>Inner Core Perimeter Fence – Omit</u></p> <p>This item was omitted from the contract and executed as a direct contract. A direct contract was entered into with Messrs Betafence (Pty) Ltd in order to avoid paying exorbitant amounts for markup to the main contractor.</p> <p><u>This variation order was approved by the RBAC previously.</u></p>	-R 3 856 635.00
VO 3	<p><u>Civil Works – Scope Change</u></p> <p><u>These variation orders are now submitted:</u></p> <p>This variation consisted of various items that were included as part of the contract. These items were originally intended to be included as part of phase 2 of the project but was brought forward to ensure that the facility was fully functional by the end of phase 1 and; to prevent security breaches during phase 2 as the high security areas would be contained upon completion of phase 1.</p> <p>Please note that all the works were discussed with the previous Minister G Doldge and the DDG / ICR, PS & PM, Mr R Samuels and he instructed this office to continue with immediate effect, as he was given a deadline by the Principal to have the site operational by 1 December 2010. Various meetings were held to discuss the scope and progress in this regard. The minutes can be made available for viewing, if required.</p> <p>The items included are as follows:</p> <ul style="list-style-type: none"> • Sewer reticulation and sewer plant <ul style="list-style-type: none"> ◦ This item was not part of the original scope of the works, but became essential in order to avoid fruitless expenditure due to excessive desludging and also due to the fact that the support staff on site (SPAS and DOD) would have over worked the sewerage system. • Construction of cattle culvert <ul style="list-style-type: none"> ◦ This item was not part of the original scope of works, but became essential to build, as it would be delay the construction of the outer parameter fence, thereby causing major financial risk to the State for claims of standing time. • Portion of road 1 <ul style="list-style-type: none"> ◦ This item was not part of the scope of works, but became essential as the completion of the guard house and supporting buildings could not be completed and the site not be accessible without this works being completed. 	R 10 054 837.04

W V.B

DEPARTMENT OF PUBLIC WORKS



VARIATION ORDER: MOTIVATION

CONTRACT DUBAN PRESTIGE PROJECT A
CONTRACTOR MONEYMINE ENTERPRISE 310 CC

NCS 047455

REFERENCE No.

P3/12/20/3/2/138

TENDER No.

DBN 10/03/03

VARIATION ORDER No. 3

1 REASON FOR VARIATION (Mark applicable block with "X")

1.1 ADDITIONAL WORK

☒

1.2 SPECIFICATION CHANGE

☐

1.3 DESIGN CHANGE

☒

1.4 OMITTED WORK

☐

1.5 OTHER

☐

2 MOTIVATION

Original Scope included a portion of roads to be constructed, water supplies and stormwater drainage to entire premises.

Final work was given to the contractor as this was an Emergency Contract and the works had to be completed for the December period.

The construction of the roads and helipads were required in order for the Principal to gain access to the premises.

All services to be commissioned (Sewer Treatment Plant and Steel Reservoir) so that entire premises is operational by December.

Major earthworks for Platforms had to be created for the Platforms that will house SAPS and SANDF during the December period.

A cattle culvert area that contained a lot of earthworks had to be created to allow for access of the livestock.

3 RATES FAIR AND
REASONABLE

☒

3.1 SCHEDULED RATES

☐

3.2 NON-SCHEDULED RATES

☒

4 FUNDS ARE AVAILABLE

☐
5 ADDITIONAL FUNDS ARE
AVAILABLE
☐
6 NO FRUITLESS
EXPENDITURE IS INVOLVED
☐
7 FRUITLESS EXPENDITURE IS
INVOLVED
☐

RECOMMENDED

R & G CONSULTANTS
FIRM

CONSULTANT

DATE

ACCEPTED FOR ISSUE TO CONTRACTOR

MINENHLE MAKHANYA ARCHITECTS
FIRM

PRINCIPAL AGENT

DATE

APPROVED WITH RESPECT TO FINANCIAL POSITION RESULTING FROM VARIATION ORDER

DEPARTMENTAL DELEGATED OFFICER

OFFICIAL TITLE

DATE

PW

PRM038 Motivation

V.B
M

YCS No. 047455 REFERENCE No. P342/2013/2136 TENDER No. DBN 10/03/03

THE ABOVE RATES ARE VALID AT2010..... BASE MONTH (Delete if not applicable)

RECOMMENDED

CONSULTANT

DATE _____

ACCEPTED FOR ISSUE TO CONTRACTOR

PRINCIPAL AGENT

DATE _____

APPROVED WITH RESPECT TO FINANCIAL POSITION RESULTING FROM VARIATION ORDER

OFFICIAL USE

DATE:

***VARIATION ORDER can only be issued after being signed by the DELEGATED OFFICER**

V.B



public works

Department
Public Works
REPUBLIC OF SOUTH AFRICA

- Road 5
 - Similar motivation as above.
- Water reticulation and storage tank
 - This item was not part of the scope of works, but became essential as it became clear that the increased staff component on the site would not be sustained without the completion of the water supply upgrade. Calculations were made and it was found that it would be cheaper to complete the works, commission the new facilities than provide continuous water supply to the site. The site and surrounding area was and currently is being burdened by a severe drought.
- Park home platforms for SAPS and SANDF accommodation
 - The provisioning of park homes was a request from SAPS (Gen Kulu and Brig Zille) and DOD (Maj Gen Ramliken) in order to house their additional staff on site. The park homes was procured directly from Messrs Natal Park homes, but the earthworks were completed by the contractor, based on existing bill rates.

3. BUDGET CONFIRMATION (Confirm with financial unit that funds are available for this specific project)

Contact name:	S. Naidoo	Tel / Cell no:	0824648549
Confirmation date:	20/10/20	Confirmed available amount:	R 11 244 652,25

FOR APPROVAL WITHIN BUDGET OF
RECOMMENDATION

4. RECOMMENDATION

4.1 It is further recommended that the Regional Bid Committee approve the request to issue variation orders on this contract to a total of 58,64% of the contract amount. This application is however only for the additional amount of R 9 863 730,04 (VAT excluded) being 36,26% as previously 22,39% (VO1) had been approved.

4.2 The total amount for approval is thus R 11 244 652,25 VAT Included.

CHIEF CONSTRUCTION PROJECT MANAGER:
PROJECTS AND MAINTENANCE

DATE: 20/11/11

Checked :

Signed : Acting Director Projects and Maintenance.

Dated :

V.B
11



public works

Department:
Public Works
REPUBLIC OF SOUTH AFRICA

INTERNAL MEMORANDUM

To:	Chairman : Regional Bid Adjudication Committee	Ref:	File Number : P3/12/3/2/136
From:	DJ RINDEL	Office :	DURBAN REGIONAL OFFICE PROJECT MANAGEMENT
Tel:	(031) 314 7114	Fax:	(031) 368 7056

Subject : APPLICATION TO ISSUE VARIATION ORDER TO THE TOTAL OF 3.02% BASED ON 5.07% NON-SCHEDULE AND -2.05% SCHEDULE ITEMS.

Project : DURBAN : PRESTIGE PROJECT "A" PHASE II : BUILDING WORKS : L.S.A, CONSTRUCTION OF TWENTY FIVE NEW BUILDING AND RELATED CIVIL WORKS

1. AIM

The aim of this submission is to request the approve Variation order number 1 and 2 for additional works on this contract to the limits mentioned above.

2. BACKGROUND

1.2.1	Contract amount	R54,047,435.90
1.2.2.	Variation orders <u>previously</u> approved:	
	Scheduled tariffs	R 0.00
	Percentage on scheduled tariffs	0.00%
	Non-scheduled tariffs	R 0.00
	Percentage on non-scheduled tariffs	0.00%
1.2.3	Variation orders <u>now</u> submitted for approval	
	Scheduled tariffs	-R 1,106,450.87
	Percentage on scheduled tariffs	-2.05%
	Non-scheduled tariffs	R 2,738,011.58
	Percentage on non-scheduled tariffs	5.07%
1.2.4	Total value of scheduled variation orders:	-R 1,106,450.87
	Percentage on scheduled tariffs	-2.05%
	Total value of non-scheduled variation orders:	R 2,738,011.58
	Percentage on non-scheduled tariffs	5.07%

V.B.

Total increase over contract amount	<u>R 1,831,560.71</u>
Total percentage increase over contract amount	<u>3.02%</u>
Total including VAT @ 14%	<u>R 1,859,979.21</u>

2. MOTIVATION

2.1 It must be noted that no previous variation orders was requested or approved on this contract, this request being for variation order number 1 and 2.

2.2 Variation order number 1 – Construction of Staff housing:

2.2.1 The original tender allowed for the construction of 12 residential buildings of the total of 20. The other 8 x buildings were included in the scope of works for Messrs Moneyvine Investments n310 CC.

2.2.2 The division of works between the two contractors was in contradiction to the agreement with the Honourable Deputy Minister in a meeting held on 23 December 2010.

2.2.3 In order to correct this, it was agreed that the works should be omitted from Messrs Moneyvine Investment 310 CC and issued to Messrs Bonelela Construction and Projects (This contract.) This is was greed to in a meeting with the Honourable Deputy Minister, Regional Manager, Principal Agent and Project Manager.

2.2.4 The omission and addition of the works viewed as acceptable, as the total saving of is calculated as follows:

Add works to Bonelela Construction:	R10,708,646.01 (VAT Incl)
Omit works from Moneyvine Investment	<u>(R10,933,106.05) (VAT Incl)</u>
	(R224 460.04) (VAT Incl)

2.2.5 The variation order is supported and requested for approval.'

2.2.6 Funds are available.

2.3 Variation order number 2 – Air-conditioning installation:

2.3.1 At the time of tender it was not yet decided if the mechanical works should be part of the tender, or whether it should be handled separately, as in Phase I.

2.3.2 The decision had now been taken that it must be included into the scope of works of the contractors on site. It was decided that the scope of works of the air-conditioning should also be divided into the Low- and High security areas (Areas of responsibility of the 2 x main-contractors.)

2.3.3 The cost as installation of the air-conditioning units in the Low Security area is priced to be R567,794.74 (VAT Included)

2.3.4 The variation order is supported and requested for approval.'

2.3.5 Funds are available.



public works

Department:
Public Works
REPUBLIC OF SOUTH AFRICA

2.4. Variation order 3 – Landscaping :

- 2.4.1. The scope of works for the landscaping of the project refers.
- 2.4.2. The scope of the landscaping was part of this project since the inception. The scope of the landscaping was however not clearly defined as it was not clear who would be responsible for the payment thereof – the Owner or the State.
- 2.4.3. In order to ensure that this issue be correctly managed and that no commitment be made on the account of any party where it should not be, it was decided by the Team under the leadership of Top Management, that the scope should be clarified by means of dividing the responsibilities and cost between the two parties - complete with motivations.
- 2.4.4. The document "Apportionment of Cost" was submitted to Top Management in January 2011 for perusal and discussion. The document was revised several times until a meeting held in Pretoria with the Acting Director General on 6 June 2011 during which the Acting DG instructed the RM, Acting CD/Prestige and the PM to form a committee and make the final decision on this matter.
- 2.4.5. The Committee approved in principle what would be the acceptable way forward on this matter and the PM was instructed to compile a final document, outlining the final scope of works for the landscaping. This was completed on 28 June 2011 and is the agreed scope of works to be done by the Department. Copy attached for your ease of reference.
- 2.4.6. The works can now be included into the scope of this contract by means of a variation order. At the time that this project was tendered (Negotiated procedure) and implemented, the Bill of Quantities included a provisional sum for the Landscaping to the value of R10,500,000.00.
- 2.4.7. The variation order included into this submission includes the omission of the provisional sum and the addition of the actual scope of works. It is essential that the variation order be approved as soon as possible as the works must continue and be finalised before the end of October 2011.
- 2.4.8. Funds are available

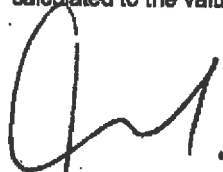
3. **BUDGET CONFIRMATION** (Confirm with financial unit that funds are available for this specific project)

Contact name:		Tel / Cell no:	
Confirmation date:		Confirmed available amount:	R

V. B

4. RECOMMENDATION

- 4.1 It is recommended that the request to issue variation orders on this contract to a total of 3.02%. The total additional amount required (funds being available) is calculated to the value of R 1,859,979.21 VAT inclusive.

 DJRINDOL

**CHIEF CONSTRUCTION PROJECT MANAGER
PROJECTS AND MAINTENANCE
DATE: 4 July 2011.**

Route Form

To : Mrs. G L Mahlangu-Nkabinde MP

"SA15"

5.53

Subject: REQUESTING ASSISTANCE IN THE RELOCATION OF
NEIGHBORING FAMILIES FROM THEIR OLD HOUSES TO
NEWLY BUILD ACCOMMODATION

Project: DURBAN : PRESTIGE PROJECT "A" : SECURITY
MEASURES

RANK	INITIALS AND SURNAME	SIGNATURE	DATE REFERRED	DATE RETURNED
RM	BK KHANYILE			
DDG : ICR, PS & PM	R SAMUEL			
COO	A ADAM			
DG	DONGWANA			
DEPUTY MINISTER				
MINISTER	G L Mahlangu- Nkabinde MP			

01
V.B



public works

Department:
Public Works
REPUBLIC OF SOUTH AFRICA

INTERNAL MEMORANDUM

To:	Minister : G L Mahlangu- Nkabinde MP	Ref:	PP A
From:	Mr DONGWANA	Office:	DIRECTOR GENERAL
Tel:	(012) 337 3000	Fax:	(012)

**Subject : REQUESTING ASSISTANCE IN THE RELOCATION OF
NEIGHBORING FAMILIES FROM THEIR OLD HOUSES TO
NEWLY BUILD ACCOMMODATION**

Project : DURBAN : PRESTIGE PROJECT "A" : SECURITY MEASURES

WCS: 047455

1. AIM :

The aim of this submission is to request the Minister of National Department of Public Works to request Principal to intervene in expediting the relocation of the families in order that the State may continue with the security works.

2. BACKGROUND.

The security measures that are currently under construction at the private residence of the Principal, refers.

The construction of Phase 1 of the security measures had progressed to an advanced stage and it is expected and endeavoured that the works be concluded by 30 November 2010.

The scope of works included in Phase 1, includes the inner and outer security fences, intended for the security and access control to the site. The fences shall enclose the old and newly acquired lands of the Principal.

The challenge that is currently being faced is that there are three families that are currently residing in their traditional rondavels on the newly acquired lands. The State addressed this issue by constructing new housing complexes for the families, so that their old residences may be vacated and the old building be demolished, as the new fence routes will run through that areas.

The new houses are now completed, but the families had not yet relocated, thus posing a risk that the deadlines as given by the Principal (all being completed before 30 November 2010 – including the fencing) may not be met.

The project team had already performed the following actions in order to address the situation:

- Houses had been completed by 25 October 2010.
- The neighbouring families had been notified of the intended relocation by 19 October 2010.
- Further requests for progress on this issue had been sent to the families, but no satisfactory answers had been received.
- The families had to date not relocate.

In order to address this risk successfully, it is proposed that the Minister discuss this issue and submit the official letter (appended for the Minister's signature), to the Principal for further actions.

V.B

3. RECOMMENDATION

It is recommended that the Minister support this office's request to inform the Principal verbally and in writing (by means of signing the attached letter and forwarding the same) of the possible delays due to the slow relocation of the families and request the Principal to intervene in this matter.

Signed : Mr BK Khanyile

Regional Manager : Durban

Date:

Supported / Not supported

Signed : DDG / ICR, PS & PM

Dated

Supported / Not supported

Signed : COO

Dated

Supported / Not supported

Signed : DG

Dated

Supported / Not supported

Signed : Deputy Minister of Public works

Dated

Approved / Not Approved

Minister of Public Works
Mrs G L Mahlangu-Nkabinde MP

Dated