



28 August 2020

Zondo commission – provisions flouted for asbestos project deviation, says HoD

The Free State human settlements head of department Nthimose Mokhesi has admitted that his department failed to comply with provisions for unsolicited proposals when it accepted one for the R255-million asbestos eradication project in 2014.

Mokhesi appeared before the commission of inquiry into state capture on Friday, following the dismissal of an earlier application to have his testimony postponed. Mokhesi had sought the postponement in light of what his legal representative Advocate Dali Mpofu described as pending criminal charges against him in relation to his role in the project. Mpofu's argument was that Mokhesi has a right to not incriminate himself ahead of the possible criminal case to be brought against him. This was Mokhesi's second application for postponement, the first having been granted to allow him time to secure legal advice prior to appearing.

"It is nothing unusual that implicated people come to testify before the commission," argued the commission's Advocate Paul Pretorius in response to the application. "Mr Mokhesi has not been arrested nor has he been charged. There is no right to remain silent." This right, he added, only applies to arrested persons in criminal proceedings.

Mpofu, however, argued that although he had not yet been criminally charged, Mokhesi had been made to believe that the police are interested in the same issues as the commission, with regard to the project, and for that reason the risk of incriminating himself was very real. Commission chairperson Deputy Chief Justice Raymond Zondo ruled that Mokhesi should take the witness seat, and indicate to the commission the areas of the evidence that he wished not to answer to, for fear of self-incrimination.

Once in the seat, Mokhesi conceded that the proposal from a joint venture comprising of Blackhead Consulting and Diamond Hill Trading, received by his department in early 2014, was considered not by him, but by his department's supply chain management (SCM) unit, headed by John Matlakala. It was on Matlakala's advice that the department decided to invoke treasury regulations which apply when there is a deviation from the open bidding process, to proceed with the approval of the project. In previous evidence before the commission, it was heard that the provincial department had no budgetary provision for the project, and had to seek help from the national department.

Mokhesi defended the decision, saying at the time of the process, the department had no reason to believe that it was delving in irregular grounds. "There are other processes, whether it's an unsolicited bid, regulation 16.6A [of treasury regulations] and so on. Those are recognised bidding instruments that also have an underlying constitutional imperative. So let's not create an impression that the conventional tendering system is the only one, because things can go wrong even in that conventional tendering process."

But he nevertheless admitted that the irregularity of the process came when the SCM unit advised the department to apply the wrong provision in accepting, and approving the project. This, however, he only learned afterwards.

Zondo proposed to Mokhesi that in summary, even the provisions available for unsolicited proposals were flouted, and he agreed. “We instead used a different method which turned out not to be the correct method,” said Mokhesi.

The project has been the commission’s subject of focus for some time, after former economic development MEC in the Free State Mxolisi Dukwana first brought it to its attention last year. He named former premier Ace Magashule, now the ANC secretary-general, as its mastermind, along with Diamond Hill director, the late Ignatius Mpambani.

On a practical level, the project sought to identify, assess and eradicate all asbestos roofing on houses in black Free State townships, and replace the hazardous material with an eco-friendly alternative.

This process was first undertaken in Gauteng, when that government took a strategic approach to eradicate asbestos from townships following devastating storms in late 2013. It was on the back of this, in early 2014, that Mpambani approached Blackhead CEO Edwin Sodi with a proposal for the two companies to tackle the same issue in the Free State, according to Sodi’s testimony earlier this month.

Mokhesi agreed to a proposition from Pretorius that in invoking the treasury provisions to justify the project, his department used the fact that it had previously been done in Gauteng, and was thus following a precedent. But, Pretorius added, for it to be a justified proposal to the national department, the same circumstances that applied in Gauteng would have to apply in the Free State, including the choice of service provider, as it could be argued that there was precedential proof of their competence. In this case, the fact that this was a joint venture in which only one company, Blackhead, had participated in the Gauteng project, was a detriment. Mokhesi agreed to this.

Dukwana’s version was that Mpambani was well-connected in political circles and he had approached Magashule first, not the human settlements department, with the idea. Only after the department had spent R230-million on the project, did the public protector’s office start questioning its legitimacy.

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