23 May 2019

Zondo Commission – company that scored millions from Transnet probably not genuine

A shelf company that made over R70-million for the supposed relocation of manufacturing operations in the implementation phase of Transnet's 1 064 locomotives project was at the centre of the proceedings at the commission of inquiry into state capture on Thursday. Business Expansion Structured Products (Bex) was hired by China North Rail's (CNR) South African division to facilitate the moving of operations from Pretoria's Koedoespoort assembly facility to Bayhead, Durban. CNR was awarded the business of manufacturing 232 diesel locomotives.

Roberto Gonsalves, a director at Cadiz Corporate Solutions, one of the minority shareholders of the CNR consortium, testified before the inquiry. He spoke of the discomfort with which local members of the consortium watched CNR and Bex strike their deal. Their discomfort was overruled in a numbers game that saw the Chinese component winning by virtue of holding majority shares. Cadiz held a 2% stake in the deal, with Gonsalves being the sole representative of the company in the consortium. Bex came on board, despite the local partners' pleas to Transnet Freight Rail to reconsider.

According to Gonsalves, the initial tender documents submitted by the consortium – which was awarded a contract to manufacture both diesel and electric locomotives in the 2014 contract – showed pricing projections set on the basis that the locomotives would be manufactured at Koedoespoort. The contract was amended, however, after Transnet proposed to CNR to move operations to Bayhead instead. CNR then revisited their initial plans to calculate the costs associated with moving to Bayhead, coming up with a final figure of R9.7-million. This was presented to TFR and the amount was paid to CNR.

Although the calculations were made in good faith as per the client's request, asserted Gonsalves, the local partners in the consortium were adamant that it made better business sense to keep operations at Koedoespoort. He told the inquiry that a letter was written to Lindiwe Mdletshe, the executive manager for sourcing at Transnet, explaining the position of the minority shareholders. The response was that Transnet wanted to split manufacturing among the four contractors – CNR, China South Rail, General Electric and Bombardier – to the two facilities for practical reasons, and so that the companies develop a skills base in each province.

A resolution signed by the executives of CNR South Africa was e-mailed to the local partners in April, asking them to sign off on Bex being appointed the agent to negotiate the relocation contract – this despite CNR SA itself having already signed the agreement with Bex, in March. "We refused to sign the resolution, at countless board meetings we raised the same issue, and reminded them that we hadn't approved the resolution."

Bex Structured Products, said Gonsalves, had only been registered for a few years, with no evidence of having traded in the years of its existence. Furthermore, its listed director by the name of Mark Shaw, had only become listed days prior to the March signing of the agreement between CNR and Bex. A second company with the same name, registered even earlier, in 2000, must have had its profile hijacked for the purpose of doing the relocation business, according to Gonsalves. The minority shareholders picked this discrepancy up when they were given documents to support the Bex sign-off, but, said Gonsalves, their frustrations were not heeded by CNR or Transnet.

In addition, Gonsalves said, he was told by an associate that Bex was linked to the Guptas. However, he has not elaborated on this.

Nevertheless, between the two companies, a benchmark charge of R580-million was set as the relocation cost to be put to Transnet, with the expectation that Bex would get half of the spoils. Gonsalves's view is that instead of going with an inexperienced company, Transnet could have engaged any of the minority shareholders – given that they were all South African – on the best way to deal with the relocation matter.

Through several negotiations among the three parties involved, a final relocation fee of R719-million was arrived at through a variation order signed by CNR's Geoff Wang and Transnet CFO Anoj Singh in July 2015. Even this was a change from a figure of R287-million that had initially been agreed on. Of the R719-million, it was decided, Bex would walk away with R67-million plus VAT, which came to R76-million.

Meanwhile, CNR received R647-million – on top of the R9.7-million already paid, which had been built into the revised tender documents, as mentioned earlier.

All the negotiations took place before CNR had done any work on the 232 locomotives.

Useful links:

Zondo Commission website

Corruption Watch's Zondo Commission update page

Transnet