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Zondo commission final report – Sham asbestos project meant to siphon state funds

The state capture commission wants those involved in the “sham” that was the Free State asbestos eradication project in 2014 to face criminal investigations and potential prosecution. Commission chairperson Chief Justice Raymond Zondo concludes in the latest edition of his report – released last Friday – that the project was concocted with the sole purpose of defrauding the provincial government.

Several litigation processes involving the project are in process, including a criminal trial against 11 accused and five companies, with the accused including former Free State premier Ace Magashule, former MEC of human settlements Sarah Mlamleli and former director-general of the national department of human settlements, Thabane Zulu, among others.

The project, which the commission heard was first proposed in an unsolicited bid by a joint venture between companies owned by one of the accused, Edwin Sodi, and his late business partner Ignatius Mpambani, was awarded at a cost of R255-million to the provincial department of human settlements. This was only months after Blackhead Consulting and Diamond Hill delivered the proposal, claiming to seek to conduct an audit and eradication of all asbestos roofing in houses across the Free State’s townships.

Only one portion of this work was allegedly done, by a sub-contractor appointed by the joint venture’s own sub-contractor, an arrangement which is now the subject of litigation in the province. It was only after the public protector probed the matter that payments to the joint venture were stopped, some R230-million later, in 2020. Among the officials charged alongside Magashule and Sodi is the head of the provincial department, Nthimotse Mokhesi. Mpambani was assassinated in 2017 in Johannesburg in an early morning hit that remains unsolved.

In yet another litigation processes, Sodi is suing Mpambani’s estate for his share of proceeds from the contract.

Negligence or complicity?

Zondo notes that not only was there no budget for this, however, but there was also no urgency, and the project should not have been executed at the haste that it was, and agreed to at that cost without any due diligence of the companies and proof of their capabilities.

He notes: “The haste with which this Asbestos Eradication Project came to fruition is surprising. It appears little or no consideration was given to whether the project was needed, its timing, its scope and coverage and other matters relevant to the efficient and cost-effective execution of the project.”

In what appears to be a deliberate quest by Mokhesi to get funding approval for the project, National Treasury Regulation 16A was invoked. The regulation allows for the approval of a service provider without a state institution seeking an open tender process, provided that it can be proven that the service provider has successfully conducted the same service at another state institution, and that

they were appointed through a legitimate procurement process. The onus is on the second institution to prove urgency in pursuing the service provider.

But the commission heard during oral evidence that although Blackhead had previously conducted an asbestos audit in Gauteng, and was on a supplier panel for that province that allowed for the company's services to be sought again, its term on the database had lapsed by the time Mokhesi approved the appointment. Furthermore, Zondo finds, on the invocation of the treasury regulation, that Mokhesi deliberately misrepresented the facts in his submission for funding to the national Department of Human Settlements. He omitted the fact the new proposal was from a joint venture and not only from Blackhead, and on this basis, the funding should not have been approved.

"It would seem that neither competence nor negligence is in question. However, the context within which the errors were committed and the overwhelming nature thereof lead inexorably to the view that an agenda was being pursued which saw Treasury Regulation 16A6.6 as a ruse behind which to operate rather than a legitimate lawful procedure," Zondo writes.

At national level, it was Zulu who caught Zondo's attention, owing to a payment logged in Blackhead's financial statements for a vehicle in his name, purchased for R600 000 at a car dealership in Ballito, Durban. Zulu approved the funding for the project, and Zondo wants him probed so as to ascertain if he received the vehicle as a bribe for his part in the scheme.

"In each part of the process there was deceit. There was the obfuscation as to the identity of the parties, unconcern whether correspondence dealt with appointment to a panel or participation in a contract, disregard for the lapse of, and therefore absence of, any contract in Gauteng in which the Free State could legitimately participate, and officials' neglect of the different terms and conditions of the separate contracts. All this suggests more than mere inattention, incompetence on the part of those who purported to rely upon Treasury Regulation 16A6.6.

"The only conclusion which can be drawn from the undisputed facts, is that Mr Sodi and Mr Mokhesi both knew at all times that Treasury Regulation 16A6.6 was not available as a means to legitimise the contract which they both wished to secure without any competitive bidding process. They both took steps to conceal the inconvenient facts..."

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