

Media Statement

Immediate Release

Issued By: Coega Development Corporation

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Media Enquiry from the Mail & Guardian (M&G):

Good afternoon Mr Silinga, as per our telephonic conversation earlier, I am writing a story based on an affidavit that was deposed with the Hawks last month by former EC Health Department official Mmlamli Tuswa. In the affidavit numerous allegations are made I would like to request clarity and comment on the following?

- 1) What were the basis of the R150m claimed by CDC from ECDOH?

The claim was for Management fees that the CDC charged for the implementation of work done by the organisation on behalf of ECDOH. The basis of which, are fully ventilated in the SDA signed by both parties.

The CDC has claimed costs based on a recognised fee scale as prescribed in the Department of Public Service and Administration (the DPSA) Schedule, Department of Public Works framework and the Engineering Profession Act 2000, as amended by Government Gazette No. 28643 of 31 March 2006 and as amended from time to time.

- 2) What service level agreement was the claim based on?

The 2009 Service Delivery Agreement (SDA), which remains in force until the discharge of all contractual obligations.

- 3) Can CDC confirm that there are invoices supporting the R150m payment and whether these were submitted to the ECDOH and when? Can a sample of these be provided?

Yes, we can confirm affirmatively, the claim relates to unpaid invoices duly submitted to the Department and approved by ECDoH but not paid. Furthermore, in the Statement of Claim submitted by the CDC to the Tribunal and the ECDOH as respondent the CDC provided all of the evidence and was dully considered by independent, experienced and qualified professionals in their respective fields.

In terms of providing the invoices to the media, this would require the explicit permission of ECDoH as the client.

4. What evidence was given to the Arbitrators to find in favour of CDC?

It would not be appropriate for the CDC to provide the media with such information without the explicit consent of the Arbitration Chair. However, the CDC provided sufficient evidence during the arbitration. The methodology followed as agreed upon by all parties was that three sets of submissions were made to the Tribunal. The CDC filed a statement of claim with all supporting annexures, ECDOH submitted a statement of defence, and the CDC submitted their responses.

The tribunal further raised a few queries of clarity and afforded both parties an opportunity to respond to the queries raised by the tribunal. Based on all information presented to the tribunal, they (the Tribunal) made their 1 award.

5. Did any of the Arbitrators have contracts with CDC or are doing work for CDC?

Unequivocally NO.

The CDC and the ECDOH concluded an arbitration agreement. In the agreement, the parties agreed that the Tribunal would be constituted of professionals from three

disciplines i.e. a Professional Engineer, Professional Quantity Surveyor and a Chartered Accountant.

To ensure transparency and credibility of the process, independent professional associations did the appointment of the arbitrators. The Association of Arbitrators (Southern Africa) appointed the first two arbitrators. The South African Institute of Chartered Accountants (SAICA) appointed the Chartered Accountant.

None of the parties raised objection to the appointments. In fact, the first set of arbitrators that were appointed proved to be conflicted in one way or another. These were subsequently withdrawn by the Association prior to the commencement of the arbitration.

Furthermore, the arbitrators were required to declare any conflict of interest before the work of the arbitration commenced. It is important to note, NONE of the arbitrators declared any conflict of interest. BOTH the CDC and the ECDOH were completely comfortable with their appointment and signed off on it.

6. Can CDC explain the method used by the Arbitrators in arriving at the R150m?

It is important to note, the CDC does not speak on behalf of the arbitrators as they are independent, experienced and qualified professionals who are more than capable to speak for themselves. The question is best placed with the arbitrators.

7. Can CDC confirm that no additional information was requested from it that did not form its actual original claims. If this is not the case, why has the Arbitrators made reference to this in its Award?

There was no information that was submitted to the Tribunal that was of no relevance to the arbitration. At some point prior to the award being issued, the ECDOH raised issue with the submission of the CDC arguing that this was new information. The ECDOH through the Superintendent General subsequently withdrew their objection in writing.

8. How possible is it that CDC can claim R111-m only on Time and Cost?

As already indicated, the claim was for Management fees that the CDC charged for the implementation of work done by the organisation on behalf of ECDOH. The basis of which, are fully ventilated in the SDA signed by both parties. The CDC has claimed costs based on a recognised fee scale as prescribed in the Department of Public Service and Administration (the DPSA) Schedule, Department of Public Works framework and the Engineering Profession Act 2000, as amended by Government Gazette No. 28643 of 31 March 2006 and as amended from time to time.

9. Which projects formed part of this claim, what work was done and for which period?

It is important to note, work claimed, submitted to the department and signed related to completed stages during the planning stage of projects and progress on site during implementation stage (construction) of a project. Therefore, the CDC claimed for the complete Planning and Design at the new Psychiatric Hospital in Celia Makhiwane, twenty Clinics and four Community Health Centres in various stages of planning were stopped and CDC claimed fees only for the planning stages of work completed.

10. In light of the above can CDC confirm that its invoices submitted to ECDOH are not Percentage Base but rather Time Base. If this is the case, Is there nothing irregular about the Award?

Whilst the CDC fully subjected its submissions to the jointly agreed arbitration process. It should be noted, both parties, on two different occasions were provided ample opportunity to raise any clarifications. The CDC provided its inputs whilst ECDOH did not. It is thus unfair to expect the CDC to operate outside of the jointly agree process and provide inputs on matters that are of a technical nature and were fully ventilated in the process.

END.

Note to the Editor

Approval process for invoices

It is important to note, for all invoices submitted to the ECDoH there was a clearly defined process agreed upon by both parties ventilated fully in the SDA.

Below is a high-level summary of the process:

Management Fees are claimed/paid based on the agreed percentage based on specific deliverables and progress:

- Implementation of a project by an Implementing Agent happens in six stages identified by the industry and the SACPCMP identified a percentage achievement at the completion of each of the stages; (Modus Operandi followed by CDC)
- Stage 1 – Inception [10%]
- Stage 2 – Preliminary Design (Concept and Viability) [10%]
- Stage 3 – Detail Design (Design Development) [25%]
- Stage 4 – Documentation & Procurement [10]
- Stage 5 – Construction (Contract Administration / Inspection / Construction) [40%]
- Stage 6 – Close Out [5%]
- During construction (40% of the service delivery) the Implementing Agent normally charges based on the percentage progress on site as determined by the Contractor's Payment Certificate;
- The ECDOH verifies output at three levels prior to approval of Implementing Agent's invoices:
 - The ECDOH attend progress meetings and signs off on reports and at specific control points (Deliverables/Gates);
 - The ECDOH approves invoices submitted by Professional Service Providers appointed by the Implementing Agent for payment for work done. **It is important to note that this applies to all projects and this**

process was followed with payments made by ECDOH for Professional Service Providers;

- The ECDOH approves invoices submitted by Contractors appointed by the Implementing Agent for payment for work done. **It is important to note that this applies to all construction projects and this process was followed with payments made by ECDOH to Contractors.**

ENDS.

About Coega: The Coega Development Corporation (Pty) Ltd (CDC) is the operator of the Coega Special Economic Zone (SEZ) in Nelson Mandela Bay Municipality, South Africa. Established in 1999, the CDC is wholly-owned by the Province of the Eastern Cape under the Economic Development, Environmental Affairs, and Tourism department. The Coega SEZ is South Africa's award winning premier location for new industrial investments and a gateway to African and World markets. The CDC aims to provide a competitive investment location and a total business solution for its customers, as well as ensuring sustainable economic development in the region. The SEZ is a fully registered Customs Control Area (CCA), which benefit those qualifying investors located in the zone with various investment incentives (<http://www.coega.co.za/DocumentList.aspx?cmd=browse&objID=80&catID=46>). To date, the CDC has delivered on its mandate to provide socio-economic development for the Eastern Cape, and has enabled the creation 112 974 direct jobs since inception, with 43 operational investors and boasts an investment portfolio in excess of R9.9 –billion (as at April 2019). Four investors are currently undergoing construction of their plants at Coega, they have pledged a private sector investment of R12.1 billion. These investors are BAIC SA (R11 billion), OSHO Cement (R600 million), MM Engineering (R350 million), Akacia Medical (R100 million) and Hella (R53 million). Jointly, these investors are putting a dent on unemployment by creating the much needed jobs during the construction phase.

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