

Media Statement

Immediate Release

Issued By: Coega Development Corporation

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RIGHT OF RESPONSE: Hawks probe R111m hospital fraud

[Article]: *“The so-called debt to Coega was paid without provision of the supporting documentation in the form of invoices, confirming that services were delivered and that invoices submitted are valid and authentic...,” claims the affidavit.*

[CDC Response]: The CDC has consistently acted within defined parameters of the Service Delivery Agreement (SDA) and provisions that govern interaction between arms of government. The statement by the former health employee is devoid of any truth. It is important to note that the CDC claims have been affirmed by independent processes, which culminated in the following sequence of events:

1. There had been a sustained and unsubstantiated assertion by ECDoH that it did not owe any monies to the CDC;
2. On 16 November 2017, the CDC instituted legal action against ECDoH, initially by way of a letter of Demand;
3. The matter led to prolonged court processes at the Grahamstown High Court, which made an order of the court in favour of the CDC;
4. It should be noted, ECDoH reneged on their initial posture of ‘not owing any monies to the CDC’ and on;
5. 27 March 2018, ECDoH tendered an offer to pay the CDC R 24 562 080.70, within 30 working days and with effect from 27 March 2018;
6. An offer which the CDC accepted and consequently was made an order of the High Court, leaving the balance of R 129.8 million still the subject of litigation before the Courts;

7. On 27 April 2018, at the instance of the SG of ECDoH and duly accepted by the CDC, and subsequently endorsed by the SG of PPT on 13 July 2018, ECDoH and CDC agreed to enter into an Arbitration process, convened by a panel of three independent experts to make a final determination on the dispute, which determination would not be appealable by both parties; and
8. The experts were selected by the **Institute of Arbitrators of Southern Africa** and the **South African Institute of Chartered Accountants [SAICA]**, in order to ensure objectivity and professional independence for the appointment of Arbitrators.

[Article]: *“Tuswa wants the Hawks to investigate Coega’s bank accounts...”*

[CDC Response]: As already indicated in our previous response, the CDC notes the statement and will await interaction from the Hawks and/or law enforcement agencies.

[Article]: *“The R111-million is said to be an irregular portion of a total R150 million that was paid to Coega as the result of an arbitration award in September last year, after a drawnout battle between the Eastern Cape health department and the entity....”*

[CDC Response]: Once again the above statement is grossly incorrect and does not take into account the amount litigated by the CDC was made an order of the Grahamstown High Court and fully ventilated in the arbitration process **[refer to sequence of events paragraph contained in this response]**. Furthermore, (1) **Interim Award** on paragraphs 207 to 222 fully explains the award arguments and (2) **Annexure IA1** captures the calculated amount inclusive of the R111m. Moreover, the tribunal also issued an (3) **Article 37 Interpretation of Award** dated 28 September 2018 which dealt with the R111m specifically. Furthermore, as previously 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 and independently interpreted by the Tribunal. The associated invoices were submitted to ECDoH with relevant supporting information/documentation. The CDC 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 guidelines and the Engineering Profession Act 2000, as amended by Government Gazette No. 28643 of 31 March 2006 and as amended from time-to-time.

[Article]: *“Mbengashe wrote to the tribunal asking it how it had arrived at the amount...”*

[CDC Response]: Kindly note, the tribunal comprehensively responded to this item under the heading – *ARTICLE 37 INTERPRETATION OF AWARD*. This is contained as part of our response for ease of reference.

[Article]: *“...Tuswa said the arbitration process was flawed because the panel selection was controlled by Coega...”*

[CDC Response]: The CDC rejects this assertion as stated in the article – *“a claim the agency denies. It said the process was agreed upon by both parties.”* However, what the article fell short of detailing was the objective and independent process that was followed to appoint the Arbitrators. A process which the CDC comprehensively outlined in its previous response to the Mail & Guardian, further outlined below:

- The Eastern Cape Department of Health (ECDoH) and Coega Development Corporation (CDC) represented by Superintendent General (SG), Dr. Mbengashe and the Chief Executive Officer (CEO), Pepi Silinga respectively concluded an arbitration agreement, wherein the parties agreed that the Tribunal must be constituted by Professionals from three (3) disciplines, namely (i) Professional Civil Engineer; (ii) Professional Quantity Surveyor; and (iii) Chartered Accountant;
- However, to ensure complete transparency, objectivity and to insulate the process from any perceived or real undue influence, both the ECDoH and the CDC agreed that professional associations should make the appointments without recommendations of the names from any of the parties;
- Delegated officials from both the ECDoH and the CDC were jointly involved with the administrative process of interfacing with the Associations that were to make the appointment of the Arbitrators;
- On 15 June 2018, the Association of Arbitrators appointed three (3) Arbitrators which appointments were reviewed by the Association as contained herein below:
- On 19 June 2018, the CDC, out of its own volition, alerted the Association of Arbitrators of a potential conflict of interest in respect of one (1) of the Arbitrators;

- Consequently, the Association of Arbitrators withdrew the appointment of the potentially conflicted Arbitrator, and another Arbitrator recused himself from the nominated list;
- On 22 June 2018, the Association of Arbitrators appointed two (2) Arbitrators and directed the CDC & ECDoH to approach South African Institute of Chartered Accountants (SAICA) for the appointment of the remaining Chartered Accountant arbitrator to complete the specified three (3);
- On 3 July 2018, SAICA finalised the nomination of the third Arbitrator, who is a Chartered Accountant by profession;
- Neither ECDoH nor CDC raised any objection to the appointments of the last names pertaining to the three (3) Arbitrators and no conflict of interest was identified by any of the parties;
- In addition and in compliance with article eleven (11) of the rules of the Association of Arbitrators, each arbitrator signed and handed a statement of impartiality to both ECDoH and the CDC;
- On 06 July 2018, the ECDoH and CDC agreed on the ground rules that would jointly be proposed to the Arbitrators; and
- On 11 July 2018, a commencement meeting convened and presided over by the tribunal and attended by ECDoH and CDC was held, in which meeting the ground rules were outlined by the tribunal.

[Article]: *"CDC had submitted its claim largely based on using a nonexisting service level agreement alleged by Coega Development Corporation to have been signed by both parties during the 2014-15 financial year..."*

[CDC Response]: As indicated in our previous response, the CDC submitted its claims based on the 2009 Service Delivery Agreement (SDA), which remains in force until the discharge of all contractual obligations.

[Article]: *"...during the planning stage of projects and progress on site during implementation ..."* said Silindile Manqina, communications officer in Silinga's office,..."

[CDC Response]: The CDC requested in writing that the Mail & Guardian attributes all comments to the CDC spokesperson – Dr. Ayanda Vilakazi, CDC's Head of Marketing, Brand and Communications, dully authorized to speak on behalf of the CDC.

END.

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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