

# **INTERIM REPORT**

**NORTHERN PROVINCE**

**COMMISSION OF INQUIRY**

**IN TERMS OF**

**GENERAL NOTICE 466 OF 1996**

**(INVESTIGATION INTO THE PROCUREMENT**

**OF IMMOVABLE PROPERTY ACQUIRED**

**BY THE NORTHERN PROVINCE GOVERNMENT**

**SINCE 1994 TO DATE)**

**MAY IT PLEASE YOU THE HONOURABLE MR STATE  
PRESIDENT AND THE HONOURABLE MR PREMIER  
(NORTHERN PROVINCE)**

WE, THE UNDERSIGNED, who have been appointed as members of the Commission of Enquiry in terms of General Notice 466 of 1996 and whose terms of reference are set out in the aforesaid General Notice have the honour in submitting herewith an **Interim Report** of our inquiry into the procurement of immovable property acquired by the Northern Province Government since 1994 to date and in particular the Parliamentary Building, Parliamentary Village and the building occupied by Safety and Security.

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Adv I A M Semanya  
(Chairperson)

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Mr J K Sithole

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Mr D Moshapalo

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## **GENERAL BACKGROUND**

### **TERMS OF REFERENCE**

This Commission was established by the Premier of the Northern Province under Section 147(1)(d) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) with the following original terms of reference:

1. To investigate, analyse and make findings in regard to procurement of immovable property acquired by the Northern Province Government since 1994 to date and in particular the Parliamentary building, Parliamentary village and the building occupied by Safety and Security.
2. To investigate any other procurement matters that may be referred to the Commission by the Premier.
3. To make findings and recommendations in regard to the terms of reference under paragraphs 1 and 2 above.
4. To report such findings and recommendations to the Premier of the Northern Province within 30 days of the commencement of the Commission.

These terms of reference were amended by General Notice No. 44 of 1997 which amended paragraph 4 of the original terms of

reference which reads:

“4. The Commission shall submit to the Premier of the Northern Province -

- (a) an interim report on or before 15 April 1997; and
- (b) a final report on or before 30 May 1997,

of its findings and recommendations on the matter as referred to in paragraphs 1, 2 and 3 herein above.”

In terms of General Notice No.125 of 1997 paragraph 4 of the amended terms of reference were further amended to read:

1.“The Commission shall submit to the Premier of the Northern Province and the President of the Republic of South Africa -

- (a) an interim report on or before 15 April 1997; and
- (b) a final report on or before 30 May 1997 of its findings and recommendations on the matter as referred to in paragraphs 1, 2 and 3 herein above”

2. I hereby refer to the Commission, in terms of paragraph 2 of the initial terms of reference published in the General Notice 466 of 1996, to enquire into and report on the following:

- (a) Whether the two capital assets known as Gateway

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Airport Authority Limited and Gateway Airport Holdings Limited are state or privately owned and what were the circumstances relating to such ownership;

- (b) whether state or public funds have been used for personal benefit in respect of (a) above; and
- (c) whether there exists prim facie evidence of criminal conduct or probable grounds for civil liability on the part of any person or persons with regard to the matters referred to (a) and (b) above.”

## **INTERPRETATION OF THE TERMS OF REFERENCE**

For the purposes of this report the Commission has, in its investigations and hearings, given a narrow interpretation to “immovable property acquired by the Northern Province Government”. The Commission has excluded procurement of immovable property by the local government stratum of the government of the Northern Province.

*The terms of reference do not direct that the investigation and analysis relating to the procurement of immovable property must enquire into whether or not the procurement of the immovable property was by means including corrupt conduct on the part of any official or any person. Investigation into corruption entails an ability on the part of the Commission to probe personal assets of officials and individuals who are associated with the procurement of the immovable property referred to in the terms of reference. Since the Commission is a government appointed body, any probing into private and personal data of the individuals will be a possible limitation of rights protected under Chapter 2 of the Constitution of South Africa Act 1996 and to be enforceable will have to survive the provisions of section 36 of the Constitution Act. (The evidence, though revealing disturbing patterns of disregard for strict compliance with law and procedures, no direct evidence of corrupt conduct surfaced).*



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## **STATUS OF THE REPORT**

This record is purely an interim report and does not hold any conclusions that cannot be disturbed by such further additional information as would become available to the Commission during the further hearings. Some of the findings albeit stated as such are limited in their correctness by the possibility that there may be tampered by information that may yet be furnished to the Commission by other sources who are busy with investigations.

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## **HISTORICAL PERSPECTIVE**

This report must be understood against the background that it relates to procurement of property by the Northern Province Government which came into legal existence after 27 April 1994. The Constitution of the Republic of South Africa established the Northern Province which previously comprised the Transvaal Provincial Administration, the Lebowa government, the Gazankulu government and the Venda government. The effect of the coming into existence of the Northern Province Government entailed the amalgamation of the administrations that formed the former four governments. After the establishment of the Northern Province Government, a decision was made to declare Pietersburg a capital city of the Northern Province government necessitating that functions and functionaries of the provincial government were to be situated in Pietersburg.

Consistent with the dictates of the Constitution to make government reflect the broad spectrum of the people of South Africa, the government of the Northern Province restructured the departments in the amalgamation of the various administrations. This exercise included the pre-Constitution arrangement that the civil servants were not to be affected by the new constitutional arrangement. This imperative resulted in a fluid situation regarding the position of administration personnel.

The decision to make Pietersburg a capital city of the Northern

Province also brought with it the need to accommodate government both in terms of residential accommodation as well as office accommodation. This demand was larger than the infrastructure that the former four administrations had. Various departments were accommodated on an ad hoc basis and the officials were scattered throughout the territory of the province. The Northern Province government established an ad hoc cabinet committee on accommodation whose purpose was to address the accommodation needs of the government and its personnel.

The department of Public Works as the department with technical expertise was tasked with the responsibility of addressing the accommodation crisis. This was addressed by way of entering into lease agreements with various property owners as well as purchasing buildings both existing as well as those under construction. The procurement processes were undermined by the urgency to facilitate the government's mandate to deliver. The personnel that administered this process was lacking in sufficient expertise and experience. The report will deal more broadly with this issue later.

There is only one Director-General for the Northern Province Government appointed in terms of the Public Service Act, 1994. This person is the accounting officer for the whole province. The Northern Province has ten (10) departments. The additional constraint for proper financial management and for the procurement process was the fact that the critical appointment

of personnel was staggered during the period. The office of the Director-General does not have reports that explain at regular intervals the state of expenditure by the various departments. These reports would go a long way to assist the monitoring of the expenditure and to ensure that the various departments do not exceed their budget allocations. The report will later indicate that the expenditure in particular in respect of capital projects would escalate during a fiscal year by more than a thousand percent.

The finances of the Northern Province Government were also structured in a fluid way. There was no Appropriation Act for the financial year 1994/95 and the resources of the provincial exchequer were drawn from national grants as well as the coffers of the former Venda Government, Lebowa Government, Gazankulu Governments on the one hand, and the Transvaal Provincial Administration on the other. The financial systems were also not centralised. For instance, the salaries of the personnel were still separately drawn from the accounts of the former administrations.

The Northern Transvaal Tender Board Act No. 2 of 1994 was only published in the Government Gazette No. 3 of 1994. This means that procurement of certain buildings through lease or purchase were done prior to the coming into operation of this piece of legislation. The administration was during this time guided broadly by the national Act. An interim Tender Board was put in place to help in the process. The administration of these

properties was done with the assistance of structures in the Gauteng Province. The shortage of the suppliers of goods and services also made the tender procedures difficult to manage. For instance, it was not possible in certain instances to invite tenders and to choose amongst them the suitable supplier in terms of price and quality. In some of the instances contracts were concluded for lease accommodation even where no physical building was in place. In some other instances the government approached developers during the construction to secure leases for the accommodation of civil servants. The management of this interim phase will explain the unsatisfactory manner in which procurement generally was done. This will also be dealt with later in the report.

The Northern Province Government had to cope with four different accounting systems of the former four administrations which could not produce consolidated reports. The result is that the departments are not able to ascertain stages of expenditures accurately at any given moment. At date of this report the interfacing of these accounting systems is not complete.

## **SAFETY AND SECURITY BUILDING**

### **INTRODUCTION**

The department of Safety and Security is housed in a new building that was bought by the Northern Province in the financial year 1996/97. This building is situated at 32 Schoeman Street on portion 1 erf 381 measuring 1428 square metres in the town of Pietersburg and is held under the title deed No. T 42015/96 registered in the name of the Northern Province Government.

The building was procured on behalf of the department of Safety and Security to deal with the accommodation stress. The department of Safety and Security was housed together with other departments in the Civil Centre building. It is understood that this position compromised the security and resulted in two burglaries and sensitive information was lost.

The building was procured after a developer discussed with the MEC for Safety and Security and offered to put up a structure for their accommodation needs. The developer was then instructed to negotiate with the department of Public Works. At that time the negotiations were to investigate a lease agreement for the accommodation of the Safety and Security department and officials of the South

African Police Services. The result was that the developer was given specifications of the personnel requirements of both the department of Safety and Security as well as the department of the South African Police Services. The Commission is made to understand that the arrangement was that the department of the South African Police Services was to contribute to the rental of the proposed building.

The negotiations between the department of Public Works and the developer resulted in a draft lease agreement specifying a monthly rental of R80 000. This arrangement was later altered by the incorporation of the requirements by the South African Police Services. The eventual lease entered into between the Northern Province government and the developer was specified at a monthly rental of R140 000. The Commission was also made to understand that the structure that was in progress up to the first floor of the building had to be destroyed to accommodate two extra floors for the South African Police Services. The lease agreement was to come into operation on 1 May 1996.

In April of 1996 the government bought the building for the amount of R18,6 million. It was argued that the lease would have resulted in over R33 million over the ten year period of its life. There are concerns whether this option to purchase the building was regular. This aspect will be dealt with in more detail later in the report.

The procurement of this building was irregular in several respects that will be addressed under separate headings. There will also be recommendations made in respect of the factual findings and analysis made in respect of this procurement.

## **INVESTIGATIONS**

The investigation involved the analysis of documentation from various sources, the interviews with government officials, politicians, experts and the formal public hearings.

### **Summary of the evidence**

The Northern Province Government decided to house the Ministry of Safety and Security at a place other than where the other government departments were to be housed. It was submitted to the Commission that the ideal location for this department was a place near court buildings and the police station. It is not the Commission's intention to enquire into the correctness or otherwise of this political decision.

The department of Public Works submitted that they were given instructions by the ad hoc Cabinet Committee on accommodation to negotiate accommodation for the



department of Safety and Security.

The department of Safety and Security at that stage had an organogram for 28 people but had no more than 10 people in fact. The negotiations with the developer were for lease accommodation. The arrangement to include members of the South African Police Services was on the understanding that there would be a contribution by them towards rental. A lease agreement was ultimately signed for a period of ten years. The extended lease period was authorised by the provincial cabinet as per cabinet resolution No. 203/95. The developer had indicated that he was not prepared to go ahead with the deal without a lease agreement of a period less than ten years.

On the analysis of the evidence the Commission finds that the agreed lease amount of R140 000 a month was unsupportable. This amount was arrived at when the developer considered the costs factored by demolishing the first floor as well as making additional security features to the building. No sound basis was offered why the resulting rental per square metre was far higher than any of the government buildings that were leased at the time. This is notwithstanding the fact that the building had special security specifications.

The lease agreement was given to the State Attorney for legal correctness and this was after the Tender Board had

suggested that the agreement should incorporate a clause offering government an option to purchase the building during the period of the lease. This option to purchase formed Clause 5 to which much evidence was received. The lease agreement also stipulated a formula with which to determine the purchase price at any given time during the life of the lease.

The Commission notes that the lease which was subsequently authorised by the Tender Board with the commencement date of 1 May 1996 did not come into existence at all. Before 1 May 1996 the department of Public Works invoked the option to purchase and an amount of R18,6 million was paid.

The purchase of this building was not authorised by the Tender Board. The suggestions by the department of Public Works officials that they inferred an authority to purchase from Clause 5 of the lease agreement is untenable. It is obvious that procurement of the building through a lease was a separate and distinct process to that of purchase. This offends the provisions of the Northern Transvaal Tender Board Act No. 2 of 1994 as well as the Northern Transvaal Exchequer Act No. 3 of 1994 and makes this purchase an unauthorised expenditure.

The department of Finance was also not approached with regard to the purchase of this building. This offends

against the Treasury Instructions which provide that an accounting officer can procure any immovable property without reference to the Provincial Treasury, if the purchase price amounts to R1 million or more on condition that two independent evaluators give their valuation. This condition was not met. Further, in terms of the Treasury Instructions, the Director-General can procure any immovable property without reference to the Provincial Treasury, if the purchase price amounts to R1 million or more provided that funds are available. This condition was also undermined. The Treasury Instructions are further that any project with an estimated tender price exceeding R5 million must be submitted to the Provincial Treasury for approval. This instruction was not complied with.

The budget of the department of Public Works for the financial year 1996/97 had an original allocation of R10,09 million. The purchase of this building during the financial year 1996/97 was not accommodated in the relevant financial year. This makes the purchase unauthorised in terms of the Northern Transvaal Exchequer Act No. 3 1994. It is for reasons of accuracy that the Commission cite the relevant piece of legislation in the form in which it appears.

The amount of R18,6 million was charged against the ledger item **Rental: Land and Buildings**. The amount was not drawn from the appropriate allocation for capital projects.

The Tender Board approval No. NTP 1719 that was used to access these funds was also an incorrect Tender Board authority.

The Deed of Sale made provision for the appointment of a quantity surveyor chosen by both parties for the purposes of evaluating the progress payments agreed to by the parties. No such quantity surveyor was appointed, instead an official of the department of Public Works simply went ahead to prepare certificates of payment in line with the terms of the instalment payments. No evaluations were made.

Clause 5 of the lease agreement which sought to stipulate a formula by which a purchase amount could be determined was hopelessly flawed. This Deed of Sale was not given to the State Attorney for legal correctness. This failure is against the regulations. The impact of this failure is that the purchase price of R18,6 million was erroneous for want of taking into consideration the expenses.

The Commission engaged an independent evaluator to evaluate the cost of this building. Two methods of valuations were considered. The first method used was the summation method and the other the replacement value method. These two methods put the building at no more than R8,1 million. There are suggestions that the evaluator

was incorrect in his evaluations but it is difficult to see how any method of evaluation would explain the R10,5 million difference. This, in the Commission's view makes the procurement of this building to result in a fruitless expenditure of approximately R10 million.

It makes for a worrying observation that the MEC for Safety and Security stated that he did not know that the building was purchased until this matter was conveyed in the public media.

The Northern Province Government paid a private law firm conveyancing fees when in the normal cause these services could have been rendered by the appropriate state officials.

As at the date of this report the plans for the building are still not approved by the Town Council and the Commission is made to believe that the building exceeds the permitted area space for the particular erf.

The submissions by the Director-General that the monies for the purchase of this building were derived from a sinking fund were, even if honest, were based on incorrect information and could have been misleading. It is clear that the amount of R36 million that was obtained from the former Gazankulu administration's investments was appropriated in the financial year 1995/96 and had no relevance whatsoever in explaining the source from which

R18,6 million was obtained.

## **FACTUAL FINDINGS**

With regard to the above, the Commission makes the following factual findings:

- there was no budget allocation for the procurement of the building for Safety and Security in the financial year 1996/97. The Appropriation Act of the Northern Province for the financial year ending 1996/97 had an original allocation for capital projects in the amount of R10,09 million. The Estimate Adjustment Act made a further appropriation of R95 million for capital projects. This, despite, did not even cater for the purchase of this building. It therefore makes the amount of R18,6 million an unauthorised expenditure in terms of section 20(1)(a) of the Northern Transvaal Exchequer Act 1994. This purchase may also offend against the provisions of section 20(1)(b) of the same Act in so far as it may cause the allocation of the vote being exceeded;
- the procurement of this building at a cost of R18,6 million was

to accommodate a personnel component of at most 28 people. It is hardly understandable when the Northern Province government was in such dire need for accommodation that it would expend this amount of money for the personnel of such a small number;

- no application for the purchase of this building was made to the Tender Board, nor did the Tender Board approve any such purchase. This is in contravention of the Northern Transvaal Tender Board Act No. 2 of 1994;
- notwithstanding the fact that the building was procured without the Tender Board approval, the Tender Board knowing this fact, did not take it up with the department of Public Works. The Tender Board was content with the fact that the Provincial Auditor-General had launched an investigation in this regard;
- the building was not evaluated. The treasury instructions are very specific that evaluators are to be engaged when procurement of immovable property is to be made. It is a necessary control system to safe-guard fruitless expenditure. Failure to comply is contrary to the Treasury Instructions;
- the procurement of this building has resulted in a fruitless

expenditure of approximately R10 million. The provisions of the Exchequer Act are that if such fruitless expenditure is not authorised or validated by the Provincial Legislature, such expenditure must be recovered from the responsible official;

- the payment certificates prepared by the department of Public Works for the payment of R18,6 million were not a true reflection of an exercise of evaluation. These certificates were a simple calculation based on a Deed of Sale agreement;
- the amount of R18,6 million was paid within a period of three months;
- the negotiations by the department of Public Works officials and the developer were immature. From the evidence it was not demonstrated that the department of Public Works officials were sufficiently astute to deal with this developer who displayed profound entrepreneurial instincts;
- the building plans were not approved by the Town Council. The erection of building is subject to compliance with the regulations of appropriate local authority. The developer did not obtain prior approval from the Town Council before construction commenced, nor was such approval present when the department of Public Works purchased the building



from the developer;

- the Deed of Sale requirement for the appointment of a quantity surveyor by both parties was not complied with. This resulted in the payments being made in the manner they were;
- an incorrect ledger account was debited with the amount of R18,6 million. This practice can potentially mask the irregularity of debiting an incorrect ledger account;
- treasury realised that an incorrect ledger account was debited with the amount of R18,6 million and also that the requisite treasury approvals were not obtained but did not report this to the Auditor-General;
- the department of Public Works used a Tender Board authority allocated for procurement of graders to access the funds. This is a very disturbing practice. It offers a facility to circumvent the financial controls;
- the ad hoc Cabinet Committee on accommodation instructed the department of Public Works to proceed with the purchase of the building of the department of Safety and Security. This practice is undesirable in the extreme. It confuses the separation between the executive and the administration;

- the accommodation of the South African Police Services in the Safety and Security building which is a national competence is not justified. Schedule 6 of the Constitution Act 200 of 1993 does not include the South African Police Services as a provincial function. A proper arrangement with the national government ought to have been made for this facility;
- the department of Safety and Security had a budget of approximately R1,65 million and could by no means afford the capital expenditure of the magnitude undertaken;
- there is to this date of the report no fixed asset register for the province. It would be desirable that efforts are made to compile this register to control the provincial assets;
- the computer systems of the former administration have not been completely interfaced to ensure management of expenditure.

## **RECOMMENDATIONS**

- ♦ the fact that there is only one accounting officer in the province is problematic. It is beyond the capacity of an individual to oversee the running of ten departments without

expert assistance. This difficulty may be addressed by the Premier appointing heads of the department as accounting officers in terms of section 16(1)(b) of the Exchequer Act 3 of 1994;

- ◆ the fact that the department of Public Works was able to charge a different ledger account for capital projects shows that the financial management systems are inadequate. The provincial government may well be served to introduce strict financial management controls. Also for consideration may be an establishment of internal audit section to service the departments and would help to monitor the compliance with financial instructions and procedures;
- ◆ the Northern Province Government would be well advised to make an effort to have a comprehensive asset register compiled for the province;
- ◆ the Northern Province Government needs to discourage the user departments in particular the department of Public Works from negotiating with suppliers of goods and services particularly relating to procurement of capital goods up to a point of agreement without first approaching the Tender Board;

- ◆ the Northern Province Government will be well advised to invest in a training programme for department personnel. Public officials have demonstrated a glaring lack of appreciation and understanding of financial instructions and statutes governing procurement in the province;
- ◆ the Northern Province Government must undertake a staff performance appraisal from the Director-General downwards to investigate their appropriateness for the various positions they hold;
- ◆ deviations from the budget should only be undertaken in exceptional circumstances as provided for in the Exchequer Act. Budgeting is a planning tool which provides guidelines to government in the discharge of its functions. Provision for all capital projects should be made in the normal budgeting process;
- ◆ each head of department should provide the office of the Director-General with regular reports concerning matters both financial and otherwise regarding their departments. This will enable the Director-General to have an accurate understanding of the state of the provincial affairs. This in turn will enable the provincial cabinet to have a sound

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understanding of the state of the provincial affairs from time to time;

- ◆ the provincial cabinet needs to be alert that its ad hoc committees should do no more than report its findings to the cabinet directly from which point any conclusions would be communicated through the proper channels. It is unfortunate that in this instance the ad hoc Cabinet Committee on accommodation gave instructions to the department of Public Works officials directly;
- ◆ the fruitless expenditure or irregular payment of approximately R10 million must be recovered in terms of section 21[1][b] and 21[1][c] of the Provincial Exchequer Act.

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## **PARLIAMENTARY BUILDING**

### **INTRODUCTION**

The ad hoc Cabinet Committee on accommodation together with the department of Public Works were tasked by the provincial cabinet in terms of decision No. 70/94 to make a feasible study of acquiring enough office accommodation for all ministries in Pietersburg. The Executive Council approved guidelines for an architectural competition. This was in terms of cabinet decision 167/95. An invitation was then made to architectural firms throughout the Northern Province to submit proposals on this project. There was a significant response to this invitation and the Tender Board granted an authority for the appointment of three independent adjudicators of the competition. Three architectural firms were recommended by the adjudicators to have had the most viable presentation on the proposed project. An invitation was then made in the media to interest the developers to select anyone of the three winning concepts and to make proposals on the full development of the project. These proposals were to include financial programme, the construction

and design plan.

The ad hoc Cabinet Committee on accommodation, advised by independent adjudicators, the department of Economic Affairs and the department of Public Works interviewed four developers on their proposals. The recommendation by this group to cabinet was that one of the developers should be considered for appointment. The cabinet in terms of cabinet decision No. 17/96 granted approval to the department of Public Works to go ahead with the proposed project of constructing the Parliamentary building. The internal arrangement legislative committee was kept informed of the developments concerning this project.

The department of Public Works appointed a consortium of a group of professionals and a developer to proceed with the needs analysis of the various departments. It should be noted that the Ministry of Safety and Security was not to be included in this project. The department of Public Works sought authority from the Tender Board for the appointment of a legal advisor to assist the department of Public Works in drafting an agreement for the engagement of a consortium for the project. The Tender Board

approved this application in terms of authority NTP 2082.

The consortium proposed a financial plan which suggested a turn-key development in the amount of R339 million. The State Attorney advised against this proposal. The department of Public Works then made a proposal to Treasury for the financing of the full development of the project on a budget figure of R350 million over a period of three financial years. The treasury approved the application by the department of Public Works in terms of treasury approval No. 09/0018/96/T which entailed a virement for the amount of R97 million for the financial year 1996/97. The proposal for the financial years 1997/98 and 1998/99 was that the money would be appropriated by the legislature.

The department of Public Works made an application to the Tender Board for an *ex post facto* approval of the appointment of the consortium and for the payment of work done by the consortium. The Tender Board approved this application in terms of authority No. NTP 4278. An amount of R40 million was paid to the consortium.



The Tender Board further granted an application for the appointment of a company to do the civil work phase of the project in terms of authority No. NTP 4385.

The aspects of this authority, that of the Treasury and that of the State Attorney will be dealt with later in this report.

## **INVESTIGATIONS**

The investigation involved the analysis of the documentation from various sources, the interviews with government officials, submission by politicians, experts and the formal public hearings.

### **Summary of the Evidence**

Following the decision of the cabinet to make Pietersburg the capital of the Northern Province the department of Public Works together with the ad hoc Cabinet Committee on accommodation was assigned the duty to proceed with the project of developing a Parliamentary building for the accommodation of the various

departments of the provincial government.

The department of Public Works drew guidelines for the architectural competition for the design of the Parliamentary Building for the Northern Province government. An invitation was made to all architects who reside and work in the Northern Province to submit a design concept for the Parliamentary Building. The stipulation by the department of Public Works was that these designs were to be privately financed and no amount was to be paid by government. Various firms of architects submitted designs.

The Tender Board granted approval for the appointment of adjudicators of the competition. The result of this competition was that three concepts were recommended.

The ad hoc Cabinet Committee on accommodation and the department of Public Works made a public invitation calling for interested developers to choose among the three winning concepts and to submit a proposal on how the concept could be developed. These proposals were to include amongst others

financial programme, construction and design plans. The teams made presentations to the department of Public Works officials, officials of the department of Economic Affairs and the ad hoc Cabinet Committee on accommodation. These interviews resulted in the appointment of one consortium comprising a group of professionals and a developer.

The ad hoc Cabinet Committee on accommodation submitted a memorandum to cabinet dated 13 March 1996 for the approval of the appointment of the consortium. The memorandum sought the cabinet approval for the consortium to carry out a needs analysis within all the departments and the legislature. The approval sought was also for the consortium to produce the necessary documentation in the form of drawings and necessary reports which would provide the necessary basis for an agreement to be entered into for the construction of the complex. In terms of decision No. 17/96 the cabinet granted approval to the department of Public Works to go ahead with the proposed project of constructing the government complex.

The consortium which won the appointment submitted in its

presentations a financial package based on a turn-key programme in the amount of R339 million. A draft agreement was submitted to the state attorney for consideration. A meeting between the State Attorney and the Deputy Director-General of the department of Public Works was held. The State Attorney raised various concerns regarding the draft agreement inter alia, that the agreement had insufficient detail and was void or voidable for vagueness, that the transfer of land on which this project was to be erected must be sought and obtained beforehand, that a consultant must be appointed by the department to certify when payments are due, that the consortium must furnish the department of Public Works with a guarantee of ten percent of the contract value, that the contract should provide for breach and a dispute resolution method in the event of such a breach and also that the legal status of the consortium be clarified.

The State Attorney made the following remarks in its comment to the Deputy Director-General of the department of Public Works dated 9 May 1996:

*"...Your Mr Motswenyane advised us that an architectural competition had been held and that the three of the concepts therein were selected. A committee has apparently already held consultations with certain developers who are interested in the matter. Even if you were to obtain permission not to follow an open tender procedure then it would still be essential to ensure that the contract amount is reasonable and justifiable and that the party with which the contract is entered into has been selected fairly and openly. In view of the large amount of money involved in this contract and the importance of the buildings it is clear that there will be considerable scrutiny by the public of your Government's actions and that public money is expended wisely. Your government must ensure that it protects itself adequately. In our view the proposed scheme does not offer you adequate protection. In our view it would not be advisable to disregard the open tender system and it is unlikely that the Tender Board would give permission for this to be done as it would then also be criticised if your government is not adequately protected".*

This strong warning and wise counsel was pitifully not heeded

and may very well be the reason there was such a public outcry necessitating the appointment of a Commission of Inquiry. The following are just but a few examples of failure to heed this advice, Tender Board and Treasury Instructions:

- the consortium was not appointed through an open tender;
- the legal status of the consortium is still unascertained;
- the consortium has not provided government with guarantees;
- the appointment of the company for civil works was not through an open tender;
- no consultant was appointed to certify when payments became due;
- the needs analysis of government were done by the consultants themselves;
- the contract amount was not verified by independent evaluators;
- the department of Public Works did not approach the Tender Board with an application for the appointment of the consortium beforehand;
- the department of Public Works went ahead to give instructions to the consortium to do the necessary

documentation in the form of drawings without first obtaining the approval of the Tender Board;

- the Tender Board went ahead to give approval for the appointment of the consortium and the payment to this consortium *ex post facto*;
- the department of Public Works submitted an application to Treasury for the approval of a virement of R97 million. The basis of this virement was that in terms of the allocation for personnel expenditure there would be enough savings under that programme.

The reasons offered were that there would be posts for which an allocation has been made, but there were no prospects that the personnel would be engaged during the financial year 1996/97 and that there were vacancies which the department did not intend to fill for that financial year. The Commission invited submissions from various parties to demonstrate the R97 million saving. The Commission was not satisfied that such a saving is demonstrable. The Commission notes however, that this amount has been accommodated in the Adjustment Estimate Appropriation Act for the financial year ending 31 March 1997.

The Treasury approval for the virement of R97 million was on condition that the Tender Board approval be obtained, that the adjustments be incorporated in the second report for the 1996\97 financial year, that the personnel expenditure for the period 1 October 1996 to 31 January 1997 be submitted to Treasury on or before 15 January 1997 and that Treasury approval be obtained for the filling of vacant posts listed in Annexure 6 of the application.

Again the Commission realises that the department of Public Works did not meet the condition of the Treasury approval that the Tender Board approval be obtained. This then puts to question whether Treasury has in fact approved the virement. We note that the very fact that the Adjustment Estimate Appropriation Act was passed authorising the virement of R97 million assumes that the condition for the virement by Treasury is assumed to have been met. This is doubtful.

The application by the department of Public Works to the Tender Board for an *ex post facto* approval elicited the following



concerns by the Tender Board:

- that full disclosure of the nature of the services rendered and circumstances which led to the services being rendered *ex post facto* be given;
- that documentary proof of the services rendered be given;
- that names of the beneficiaries and the break down of the amounts to be paid per beneficiary be given.

The Tender Board granted the approval for the appointment of consultants and the payment of the amount of R61 181 982 in terms of authority No. NTP 4278 on the condition that the professional fees to be paid are confirmed by an independent institution. The concern by the Tender Board that the names of the beneficiaries and the break down of the amounts to be paid per beneficiary does not seem to have been addressed and yet the department of Public Works went ahead to pay the consortium an amount of R40 million. The Commission notes that the amount of R2 406 221,99 paid to the project manager could not be justified. The Commission doubts further that the reasons given were adequate to explain the circumstances for

the services being rendered before the approval is sought from the Tender Board.

The Northern Province Estimate of Revenue and Estimate of Expenditure for the financial year ending 31 March 1998 shows an amount of R60 million for capital projects during that financial year. The Commission has been made to understand that this amount in the main is to fund the Parliamentary Building. The Commission is further made to understand that there is an unspent amount of R57 million from the approved virement of R97 million. This unspent amount, the Commission is told, will also be used for the Parliamentary Building if the department of Public Works makes an application to Treasury for a roll over. This is a very disturbing way to fund a capital project of this magnitude. In the first instance, in terms of the application by the department of Public Works to Treasury, the financing of the project for the financial year 1997/98 in the amount of R132,545 million was to be appropriated in that financial year. Only an amount of R60 million is appropriated.

The subject of the Parliamentary Building was also entertained

by the Internal Arrangement Committee of the provincial legislature. A public hearing was held by the committee on 13 and 19 September 1996 for all interested parties to make their submissions regarding this project. The Internal Arrangement Committee also met with the Tender Board, the department of Finance (Treasury), and the department of Public Works, to obtain clarity on whether tender procedures were followed with regard to the project, and whether funds for the project were included in the budget. The findings of this committee were the following:

- there is a dire need for a government complex, and the building of such a complex would have the support of the people of the Northern Province;
- insufficient funds for the project are available and that the project has not been budgeted for in the 1996/97 financial year. There was no clarity as to where the funds to finance the project would be obtained;
- none of the departments, including the department of Public Works, have budgeted for the project in the 1996/97 financial year or the ensuing financial year 1997/98;

- the architectural competition and the acquisition of the legal adviser to draw up the agreement was in accordance with the Tender Board procedures;
- tender procedures were not complied with in acquiring the services of the developer.

The Internal Arrangement Committee, after making the above findings made the following recommendations:

- that the departments of Public Works and Finance should work in co-operation to identify funds for the project, and to report back to the legislature on this project;
- should funds be found to finance the project, the government complex should be built in phases. The first phase would involve the building of the office of the Premier, the office of the Speaker, and the Legislative Assembly Chamber;
- that the Constitution, the Tender Board and the Treasury procedures, as well as related regulations, be adhered to at all times, and in full.

The Commission also had the benefit of a submission both

written and oral by the Property Owners Association (Northern Provincial Council). In terms of these representations the Association raises various concerns, amongst others, that this project would impact negatively on the property owners in Pietersburg, that the amount of R868 942,85 per month would be lost in rentals to the property owners, that no sufficient consultation and disclosure regarding this project was made by the government. The Association recommended that the present course regarding the planning of the Parliamentary Building be halted or suspended, that an objective scientifically based analysis of the governmental requirement for fixed property investment be completed, that an independent body of financial experts be appointed to advise the provincial government on the cost benefits and feasibility of erecting its own accommodation as against renting private accommodation space, that synergy with local government be investigated and that the state property portfolio must become better co-ordinated across tiers of government.

The submission by the member of Provincial Legislature - National Party was more or less of the same import as the

submission by the Property Owners Association. The emphasis in his submission was largely a complaint for insufficient transparency in the procurement of the Parliamentary Building.

The Commission has engaged the services of quantity surveyors to provide an analysis on the feasibility of building this project as directed by the internal arrangement committee and recommended by the Property Owners Association.

The report of the quantity surveyors postulates the following scenarios:

- if the building is built in phases over three financial years from start to finish commencing during the financial year 1997/98 to 1999/2001, the cost of construction will be approximately R534 176 273. This proposition seems from a financial point of view an untenable option. It assumes an allocation of approximately R258 261 970 for the financial year 1998/99. Given the patterns of financial allocation for capital projects for the past two financial years, the allocations are far less than the projected expenditure;

- the second scenario is one of building only the House of Assembly, the office of the Premier and office of the Speaker over three financial years 1997/98 to 1999/2000 at a cost of approximately R117 328 429. This option judged purely in financial terms seems the most tenable of the options. The provincial government is advised to consider this option as the most practical. It projects a spending of R41 867 578 during this current financial year and lesser amounts during the future financial years. Given the fact that there is an allocation of R60 million for the current financial year, this might prove a practical expenditure without resorting to nebulous possibilities of “roll overs”;
- the third scenario contemplates the building of the departmental buildings over three financial years commencing in the financial year 1997/98 to 1999/2000 in the amount of R406 353 354. This is equally an untenable proposition, taking into account financial considerations. This amount will have to be spent in conjunction with the amounts relating to the three main buildings. On the facts available it will be folly to even consider this possibility.

The recommendation to implement the second scenario carries with it certain penalties. In the first place a significant portion of R40 million paid to the professionals and consultants will be fruitless expenditure. Secondly, the outstanding amount owing to the professional consultants as per the invoice tendered and as approved by the Tender Board may have to be paid without value to the government. The decision to go only in respect of a specific section of the building may entail a revision of the contract awarded to the company for civil works. This last mentioned option may also yield a loss.

The provincial government is advised to manage the exercise of its options in a careful way. It might also be prudent to discuss the possibilities with various interest groups and affected parties so as to minimise the possible impact of loss. Consultations will also assist in the process of transparency and resolution of possible legal disputes.

It is unclear whether there is a contract with any developer, excluding the company for civil works regarding this project. It seems that the developer is of the view that he was appointed to



do this project on a turn-key basis. That despite the government's undertaking to engage the developer under a turn-key programme, the government has reneged on the appointment. To the extent that the developer's opinion may be correct, this could expose the Northern Province Government to a lawsuit. The developer indicated to the Commission that he reserves his right regarding the possibility of pursuing legal remedies with regards to this aspect. Certainty in this regard is to be obtained.

## **FACTUAL FINDINGS**

With regard to the above the Commission make the following factual findings:

- the cabinet has made a decision for the erection of the Parliamentary Building to house various departments and ministries of the provincial government in Pietersburg;
- the Internal Arrangement Committee of the provincial legislature has accepted that it is in the interest of the people of the Northern Province that the Parliamentary Building be

erected;

- the allocation for capital projects for the financial year 1996/97 was originally R10,09 million and revised to R105 million in the adjustment estimate for the financial year ending 31 March 1997;
- the virement of R97 million approved by Treasury appears suspect. The evidence before the Commission was not sufficiently probative;
- there seems to have been some measure of consultation with interested bodies regarding this project. It might serve the interest of the Northern Province Government to be a little more transparent regarding the details of how this project would be achieved;
- no Treasury verification to validate the computation of the virement of the R97 million;
- the decision by cabinet to erect the Parliamentary Building was arrived at without adequate technical and financial information. As at the date of this report, it is unclear how the provincial government intends to fund this building, what phases structurally are to be constructed and when the construction should commence;

- the payment of the R40 million paid to the consortium was above the statutory tariff. The amount paid for professional services was computed on a R339 million turn-key figure which has since been abandoned. A portion of this amount can prove to be a fruitless expenditure if the Parliamentary Building is built in phases and not as one complete project;
- there does not appear to be a clear explanation whether or not a legal obligation is in place either by way of contract or otherwise for the payment of the R40 million to the consortium;
- the project manager's fees of R2 406 221,99 cannot be supported by any comprehensible argument;
- the department of Public Works failed to heed the State Attorney's advice that the legal status of the developer be established. The amount of R40 million was paid to this consortium. It is unclear whether this amounts to payment to the various professionals who have submitted some work to the department of Public Works;
- the Tender Board to approve the payment of R61 million to the professionals is not supported by sound valuation. This figure is merely 18 per cent of R339 million;

- the department of Public Works did not make application to the Provincial Tender Board for approval to go ahead with the Parliamentary Building project. The *ex post facto* approval by the Tender Board was only with regard to the appointment of the consultants. It may prove embarrassing that the money was paid to a consortium of questionable legal standing and to this extent arguable whether that payment was authorised by the Tender Board;
- the Provincial Tender Board approved the appointment of a company to do civil works without going through the open tender procedures. This was against the advice and warning by the State Attorney;
- the allocation for capital projects for the financial year 1997/98 is reflected as R60 million in the Appropriation Act. It is suggested that an additional unspent amount of R57 million could be rolled over to finance this project. This practise also confuse the process. Public scrutiny of the provincial finances will show that there are insufficient funds for this project whereas the department internally uses other means, despite being legal, to finance the project with roll overs or virements;

- the Tender Board's *ex post facto* approval seems on the face of it to go against the user manual ST 37 whose Chapter 12, Regulation 34 reads:

*"That board may approve ex post facto any action of the government department whereby any power conferred upon the board by the Act or these regulations has been exercised if the board is satisfied that such action of the government department took place in circumstances of emergency or otherwise was in the best interest of the state and was done without negligence, provided that the state has not suffered any damages as a result thereof".*


It is clear that this *ex post facto* application by department of Public Works did not arise out of circumstances of emergency. If it is contended that the criteria of best interest to government was considered then it is unclear how the provisions of section 12.2.5.4.2 of the user manual ST 37 could have been satisfied. The section requires that it be shown that an unauthorised action *yielded better results than would have been yielded if the normal procedure had been followed*. It is not apparent to the Commission that an open tender for professional services would

not have yielded better results;

- the amount of R40 million was paid in two separate payments of R20 million. The two payments were merely twelve days apart. The certificates of payment were prepared without any verification that the work was worth that amount. It should be noted that the Tender Board wanted to know whether the fee of R61 million was fair and reasonable. The Tender Board went ahead to appoint a consultant to establish this fact. It is clear however when one looks at the report of the consultant that the determination of reasonableness or otherwise of the fee was not made on the assessment of the work done by the consultants but merely as to whether R61 million would be a fair and reasonable price for professional fees *if the contract amount is R339 million*;
- an independent evaluation of the work done and submitted to the department of Public Works may prove to be less than R40 million and make such excess amount a fruitless expenditure invoking the provisions of the Northern Transvaal Exchequer Act No. 3 of 1994;
- the progress payment certificates for the first amount of R20 million was not sanctioned by a qualified or competent

quantity surveyor. This document was signed by persons who did not have the qualification to quantify and certify the correctness of the payment.

## RECOMMENDATIONS

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- the proposition to build a Parliamentary Building enjoys the support of the Provincial Executive Council, the people of the Northern Province including the Property Owners Association [Northern Transvaal Council]. This is a political decision which is outside the province of the Commission. It is not in the Commission's competence to stop or reverse the implementation unless such a project is prohibited by the Constitution, a competent law or simply untenable in its implementation;
  - the Northern Province government would be well advised to form a formal structure involving all the stakeholders including the Property Owners Association to make this project as inclusive as possible, and where practicable, to minimise the impact this would have on private investments of property owners;

- the Northern Province government may find it prudent to investigate whether there is a possibility of a lawsuit by the developer who claims that the government reneged on his appointment to have the developer erect the project on a turn-key programme to the amount of R339 million;
- the Northern Province government is urged to determine the actual amount for the work done by the professionals so far and to recover any fruitless expenditure if the work done by the professionals is found to be less than R40 million;
- the tension between the department of Public Works and the Tender Board has degenerated to such a state as would hamper the capacity of the government to deliver. Whereas tension is healthy as a check and balance on the government expenditure the situation with regard to Tender Board and the department of Public Works officials has become personal and counter productive;
- further work on this project must be through an open tender. It is necessary to make sure that at all times suppliers of goods and services are people of sound financial and technical capabilities;
- the Standing Committee on Finance must make clear



allocations in its budgetary processes to cater for this project in the coming financial years. It is highly undesirable that future programmes must be paid for out of virement;

- the size of this project must demand that suppliers of goods and services furnish government with guarantees. The Northern Province government will need to protect itself against possibilities that any contracted supplier who become insolvent at great financial loss to the government;
- a proper needs analysis of the Northern Province Government departments and ministries must be done. This process must take into consideration the right sizing of the civil service;
- the Northern Province Government needs to give urgent attention to the training of the government officials without which the financial management systems would collapse. Public officials have demonstrated an inclination to circumvent controls. The procedures that govern expenditure seem to be undermined by lack of adherence to strict compliance. This matter will require urgent attention;
- it is necessary to update the computer software such that it is possible for the user departments to be able to ascertain at any given moment the state of the department's expenditure.

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As matters stand the determination of what the province spends on salaries entails a long process because the systems are not centralised;

- the Tender Board needs to make sure that its consideration of *ex post facto* applications complies strictly with the Act, the regulations and the user manual.
- it is highly undesirable that an ad hoc committee should involve itself directly with administrative processes. This tendency may bring undue pressure on public officials;
- the land upon which the Parliamentary Building is to be erected should first be rezoned by the town council for this purpose. This will help to avoid a possible embarrassment as may be the case with the Safety and Security Building;
- the donation of the land to the provincial government must comply with the treasury instructions F 1.8.

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## **PARLIAMENTARY VILLAGE**

### **INTRODUCTION**

The decision to make Pietersburg the seat of government of the Northern Province resulted in the deployment of government functionaries from far and wide to Pietersburg. The biggest challenge facing the new administration was the provision of not only office accommodation for the bureaucrats but also housing for the Members of the Provincial Legislature and their families in Pietersburg. Hardest hit by the accommodation crisis were Members of the Provincial Legislature who came from outside of Pietersburg.

The department of Public Works was charged by the ad hoc Cabinet Committee on accommodation with the task of finding suitable accommodation for Members of the Provincial Legislature.

As a temporary solution to the accommodation crisis, the department of Public Works allocated twelve of the most hard

pressed Members of the Provincial Legislature accommodation in duplexes recently acquired for use by civil servants who came into the capital city from outside Pietersburg.

For a more permanent solution to the housing problem, the ad hoc Cabinet Committee on accommodation directed the department of Public Works to approach three property developers for sites on which a housing scheme for Members of the Provincial Legislature could be developed.

The department of Public Works, the Internal Arrangement Committee together with the ad hoc Cabinet Committee on accommodation identified the site of one developer as being the most suitable for the kind of housing envisaged. This site is situated in plot 41 on farm Koppiesfontein 686, in Pietersburg.

The developer whose site was identified as the most suitable was then requested by the department of Public Works to produce a full set of working drawings and plans showing the complete housing development.

The developer went ahead and produced his drawings, which together with his asking price of R32 618 500 were then referred to independent evaluations by two firms of quantity surveyors who valued the proposed development at R30 917 980 and R28 949 000 respectively.

The department of Public Works made an offer to the developer to purchase the housing scheme for an amount of R30 784 000 which the department claimed was the mean between the two amounts by the quantity surveyors.

This offer by the department of Public Works to purchase the housing scheme was accepted by the developer subject to the signing of the Deed of Sale.

The department of Public Works then made an application to the Tender Board for authority to purchase the proposed property. The Tender Board rejected the application by the department of Public Works for want of more information which will be dealt with later.

The department of Public Works withdrew this application to the Tender Board on the strength of the cabinet Decision No.73/96, following public outcry at the extravagance of the scheme.

## **INVESTIGATIONS**

The investigations involved the analysis of the documentation from various sources, the interviews with government officials, submissions by politicians and the formal public hearings.

### **Summary of the Evidence**

The decision to make Pietersburg the seat of government of the Northern Province brought with it acute accommodation problems, both office and residential, for government functionaries and Members of the Provincial Legislature. These functionaries and politicians were drawn from the four corners of the Northern Province and housing had to be found for them as soon as possible for effective governance.

An ad hoc Cabinet Committee on accommodation was formed

consisting of four Members of the Executive Council and two Commissioners of Youth and Reconstruction and Development Programme. The sole function of the ad hoc Cabinet Committee on accommodation was to advise the cabinet on accommodation matters.

The ad hoc Cabinet Committee on accommodation requested the department of Public Works to search for suitable housing for Members of the Provincial Legislature and their families. These Members of the Provincial Legislature lived in accommodation all over the province and it was cumbersome for them to drive into the capital city to discharge their functions. A place closer to the Legislature had to be found as a matter of urgency.

The department of Public Works, on the advise of the ad hoc Cabinet Committee on accommodation, approached three developers from whom the Northern Province Government had on previous occasions acquired property for a site on which a housing scheme for Members of the Provincial Legislature could be developed.



MINISTER VAN BUITELANDSE SAKE



The department of Public Works, the ad hoc Cabinet Committee on accommodation and the Internal Arrangement Committee identified a site deemed suitable from among the three sites owned by the three developers.

The department of Public Works was then tasked by the ad hoc Cabinet Committee on accommodation with the responsibility of entering into negotiations with the chosen developer who was to produce a full set of working drawings and plans showing the proposed development.

Both the full set of drawings and the plans produced by the developer, together with the developer's asking price of R32 900 000 were submitted to two independent firms of quantity surveyors for evaluation. The quantity surveyors valued the proposed housing scheme on completion to cost R28 949 000 and R30 917 980 respectively.

In a letter dated 15 March 1996 the department of Public Works made an offer to the developer to purchase the property for an amount of R30 784 000 which amount the department claimed

was the mean between the two valuations by the quantity surveyors. The developer, in a letter dated 17 March 1996, accepted the offer on the condition that a Deed of Sale be signed by the parties.

No Deed of Sale was signed by the parties. The developer wrote several letters to the department of Public Works. In one of these letters, dated 18 June 1996, the developer proposed to the department of Public Works that the initial purchase price of R30 784 000 be increased by ten percent because of the twenty percent devaluation of the rand and the increase in the price of petrol, transport, building material and services.

On 21 June 1996, the developer yet again accepted the revised offer to purchase from the department of Public Works in the amount of R33 239 000. This acceptance was again subject to the signing of the Deed of Sale by the parties.

The department of Public Works proceeded and made an application to the Tender Board for authority *'to sanction our proposal and grant us authority to purchase the property on the*

*basis of the attached Deed of Sale for a total consideration of R33 239 000".*

The Tender Board withheld the application and instead requested the department of Public Works to indicate:

- how the department came to a conclusion to acquire property from the developer ; and
- if other developers were also given the opportunity to submit proposals.

The Tender Board also directed the department of Public Works to furnish it with a policy in terms of which property must be acquired for government use.

The department of Public Works submitted to the Tender Board information seeking to explain the concerns raised by the Tender Board. The information included in it an unsigned and undated letter by the Chairperson of the ad hoc Cabinet Committee on accommodation to support the application.

The Tender Board was also worried that the three developers who were hand picked did not form part of the Tender Board roster and that their appointment was not sanctioned by the Tender Board.

The Chairman of the Tender Board did a site inspection with officials from the department of Public Works and discovered that the development was already in progress. On enquiry, the Chairman of the Tender Board was informed that the developer was proceeding with the housing project at his own risk.

The Tender Board was of the opinion that the so-called Parliamentary Village was not necessary and expensive as there existed adequate accommodation for the Members of the Provincial Legislature in Lebowakgomo.

A public outcry in the media had also surfaced at the perceived extravagance of the project. The cabinet, in the face of all of these factors resolved, in terms of cabinet decision No. 73/96, to discontinue with the project.

Regarding matters of process the conduct of the department of Public Works officials and to some extent that of the ad hoc Cabinet Committee on accommodation brings uncomfortable comments from the Commission. As at the date of the offer made by the department of Public Works to the developer a series of systems designed for fiscal discipline were undermined. The department of Public Works had clearly not established the needs requirements for this project. The instructions to the developer were not in terms of the space and cost norms. The result was the developer given instructions to do the drawings with specifications that may amount to over-designing and over expenditure. The design included an olympic size swimming pool, a jogging track, a guest house, an aviary et cetera. These over-designs probably explains the public outcry.

This project was conceived, executed and negotiated within the financial year 1996/97 which had only R10,09 million allocation. It is obvious that the procurement of this building would have been an unauthorised expenditure unless Treasury approval was sought and obtained. Without the benefit of full information, it is difficult to see how treasury would approve this type of

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disbursement if it were approached.

The difficulty extends also to the requirement that Treasury must first be obtained for a capital project of this kind. In the documentation furnished to the Commission as well as oral evidence tendered, no indication is made that Treasury was approached or that it gave approval for this project.

The time at which the Tender Board was approached for approval illustrates the problem with the disregard for process. The department of Public Works had already appointed a developer without the Board's approval, the selection of the developer amongst the three developers was not sanctioned by the Tender Board and the fact that other developers were not given the chance to present proposals.

The department of Public Works went ahead to make an offer to the developer to purchase the property to the value of more than R30 million. One shudders to think that what would have happened had the developer accepted the offer unconditionally. The provincial government could not be heard to say that the

official was unauthorised to make this offer.

At the time the offer was made the department of Public Works had not subjected the project to an assessment by evaluators. It is impossible to understand how the department of Public Works could have satisfied itself that the value was correct.

## **FACTUAL FINDINGS**

With regard to the above, the Commission makes the following factual findings:

- there was no budget allocation for the procurement of the Parliamentary Village in the financial year 1996/97. The amount of only R10,09 million was allocated for capital projects in the relevant financial year. Although the Estimate Adjustment Act made a further appropriation of R95 million for capital projects, this did not cater for the purchase of the Parliamentary Village. Whatever amount was spent in relation to this project was an unauthorised expenditure in terms of section 20(1)(a) of the Northern Transvaal Exchequer Act

1994;

- the department of Public Works started negotiations with the developer on the basis of working drawings and plans. There was no physical structure in existence when the proposed purchase was to be effected;
- the Northern Province cabinet withdrew from the project inter alia, because of public objections at the extravagance of the housing development. This withdrawal by the government could result in protracted litigation with the developer;
- an amount of approximately R15 000 was paid to three firms of quantity surveyors for the valuation of the working drawings and plans, however evidence was tendered to the Commission that no public monies were spent on this project;
- evidence was tendered to the Commission that the Northern Province Government had no legal obligation to the developer in regard to this project. This evidence may prove to be unsupportable once the developer exercises an option to sue for damages;
- the developer was not consulted when the decision to discontinue the project was taken;
- the department of Public Works engaged non legal persons to



advise it on matters legal. One of the quantity surveyors was requested to make comments on some of the clauses of the Deed of sale;

- the assistance of the State Attorney was not requested in commenting on the draft Deed of Sale;
- the department of Public Works made an application to the Tender Board for authority to purchase a property for the amount of R33 239 000 that did not exist. The Commission finds this most worrying;
- the Tender Board found the procedure that was followed in the identifying of the developers in this project most wanting and that its authority was undermined;
- the department of Public Works withdrew the application on advise of the cabinet;
- there is no signed contract between the Northern Province government and the developer to date;
- the Commission finds it extremely difficult to comprehend how the developer went ahead with the Parliamentary Village without a signed contract. It may well be found out later that some sort of undertaking was made to him;
- the offer by the Chief Director of the department of Public

Works Chief Director in charge of administration to the developer for the purchase of the property for the amount of R33 239 000 was unfortunate. This is more so because no prior authority to do so was obtained from the Tender Board;

- the payments on this development were to be made during the construction phase of the project. This is unacceptable as it appears that the government was geared on funding the development;

## **RECOMMENDATION**

- the Northern Province government needs to discourage the department of Public Works from negotiating with suppliers of goods and services particularly relating to the procurement of capital goods up to a point of agreement without first approaching the Tender Board for authority to do so;
- the Northern Province government must make sure that its ad hoc committees should guard against functioning as instruments of authority when dealing with the administrative arms of government. The ad hoc Cabinet Committee on accommodation instruction to the department of Public Works

to go ahead with the acquisition of the proposed Parliamentary Village is a case in point;

- the Northern Province Government should engage the developer in question to establish whether he intends to institute legal action regarding the Parliamentary Village project, and if so to manage it. The developer has intimated to the Commission that he reserves his rights in this matter;
- the department of Finance needs to be vigilant at all times when acquisitions of this magnitude are envisaged. It is difficult for the Commission to understand how the department was not aware that this acquisition was imminent;
- it appears that there is no department of Finance representation in the Tender Board. The department of Finance's presence in the Tender Board would assist the tender process especially in ascertaining the availability of funds and any possible deviation from procurement rules with regard to capital projects of a similar nature;
- the relationship between user departments in particular the department of Public Works and the Tender Board needs to be more cordial. The by-passing of the Tender Board by the department of Public Works need to be discouraged;

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- the payment of approximately R15 000 to independent firms of quantity surveyors if found to be an unauthorised expenditure must be recovered in terms of the Northern Transvaal Exchequer Act.

## **OTHER PROPERTIES**

### **INTRODUCTION**

The other properties acquired by the Northern Province Government classify themselves in the following manner:

- office accommodation acquired through rental;
- office accommodation acquired through purchase;
- residential accommodation acquired through purchase;
- residential accommodation acquired through rental;
- additional accommodation for schools;
- additional accommodation for clinics.

The Commission has not heard oral evidence relating to most of these properties acquired by the Northern Province Government. The properties acquired since 1994 to date include those which were transferred from the former administrations of Venda, Gazankulu, Lebowa and the Transvaal administrations.

The province does not have a fixed asset register and makes it

impossible to paint a complete picture as required by the terms of reference. The properties which are included in the schedule to this report are not dealt with fully. This report has not outlined whether or not a procurement of these properties was regular or not. In the majority of cases the files are not complete and the information is insufficient to express a finding.

### **Summary of the Evidence**

The office of the provincial Auditor-General performed an audit inspection of rented buildings covering the period 1 April 1995 to 31 March 1996. The audit took a sample of 36 files from a population of 73 files and made the following observations:

- that there is no fixed asset register in the possession of the department of Public Works relating to rented properties. The evidence by the department of Public Works officials was that such a register exists. Inspection of documents submitted to the Commission indicated that the document is not an asset register and has insufficient details to constitute a proper official asset register.

- that of the 36 files randomly selected for audit, three files could not be produced. The Commission was informed that the files have since been recovered from the offices of the former Transvaal Provincial Administration. This information has not yet been verified.
- that sixty percent of the files sampled revealed that the needs analysis by the user department were not done. This is contrary to the provisions of Treasury Instructions F2.2 and F2.3. The Commission was informed that a team of consultants has been engaged to do a needs analysis of each and every department and that such a report must inform the department of Public Works what space the government owned, what space the government rented and if the needs of the government are more than the space available, what contingencies can be put in place. This information has not been verified.
- that in 94 percent of files sampled no technical reports could be found. These technical reports are supposed to describe the condition and the suitability of a building. The evidence before the Commission is that this audit observation is correct and the reason for this non-compliance was a lack of

understanding of the proper systems by the officials at the time of these acquisitions. The Commission was informed that there are measures put in place to address this problem. A guideline has been drawn to outline various stages that must be complied with. This information has not been verified.

- that the control systems require that after a technical report has been done, it must be submitted to management with recommendations whether a contract should or should not be entered into. None of the files had any such recommendations to management. The evidence before the Commission is that future transactions are to have this recommendations. The Commission has been advised that an instruction to this effect has been given.
- that twelve of the thirty six files sampled no Tender Board approval could be found in the files. The submission before the Commission is that in most of the files inherited from the former Transvaal Provincial Administration no Tender Board approval could be found. The Commission was informed that files have been submitted to the Tender Board to regularise these files. In other instances permission has been sought from the Tender Board that occupation of these premises



continue until such time as the processes are corrected. The Commission cannot express an opinion in this regard. No investigation has been made to confirm these submissions.

- that in almost half of the files the contracts for rental were not submitted to the State Attorney as required by Treasury Instructions XI2.2. The Commission is advised that an investigation has been lodged to investigate why this was the case. That in some instances the State Attorney would recommend that in cases where a standardised contract is to be concluded such instances need not be referred to the State Attorney. The correctness or otherwise of these assertions has not been verified.
- that in some cases no contracts could be found. The information from the department of Public Works is that efforts are being made to have the contracts negotiated and signed. In case of contracts which were not signed then signatures of relevant parties are to be obtained.
- that in some of the cases rental charged includes charges for water and electricity which are determined by the landlord and no account from the town council or copies thereof are sent to the property division. Further, there are other

departments which procure accommodation without going through the department of Public Works. In some other instances the government is renting premises that were built by the government

The majority of instances cited with possible irregularities have not been investigated. As it might well be realised that a thorough investigation of these aspects will require more time than is permitted by the proclamation.

The Commission has been given a report which deals with more than one thousand properties which are owned by the government for residential purposes. It may very well be that some of these properties were acquired after 1994 and that the procurement of these properties would fall within the ambit of the terms of reference of the Commission.

## **FACTUAL FINDINGS**

No factual findings under this heading are made. The documentation and the oral submissions are incomplete to

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enable the Commission to make sound factual findings.

## **RECOMMENDATIONS**

The Commission will require more time to investigate these acquisitions and make appropriate recommendations.

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## **GATEWAY PROPERTIES**

### **INTRODUCTION**

This aspect of the terms of reference has not been fully investigated. The Commission has obtained the services of a consultant who has submitted a report. The findings of the consultant will accompany this report. It must be understood that the findings are yet to be tested in open hearings.

The Commission has had preliminary interviews with the political head under whose authority Gateway properties belongs. No comment is made regarding the outcome of the interviews until such time other interested parties are offered an opportunity to respond on these issues.

## CONCLUSION

The analysis of the procurement systems in the Northern Province reveals a broad pattern of areas that need serious and urgent attention. The personnel responsible for procurement is not conversant with the statutory prescription regulating this process. The budget process is not sufficiently attuned to the demands of the province to communicate the constraints that go with the fiscal discipline. The computer network is either not understood by those who operate it or incapable to furnish proper and accurate information when required. The decisions of political authority are taken without adequate technical and financial information. There are no clear distinct demarcations to separate political and policy issues from administrative directives. The co-ordination between various functionaries, for example, the Tender Board, Treasury, user departments, State Attorney and the department of Public Works require some coherence and compatibility to achieve effective delivery.

As has been indicated earlier in the report, the findings made in