

Engineering

Engineers sick of tender abuse

Industry body is looking at legal action and to new procurement officer to combat corruption

Chantelle Benjamin

Overwhelmed by the high number of complaints from its members, the Consulting Engineers of South Africa (Cesa) has established a legal fund to take action against private companies and government entities who abuse the tender system.

In a clear indication of its determination, the body has lodged a case reportedly involving one of its own members to the public protector for irregularities involving a bulk infrastructure project in Mpumalanga. The investigation is at an early stage.

Cesa's chief executive officer, Graham Pirie, said the organisation decided to set up the fund out of desperation over the high number of complaints it was receiving from its members. "We were getting about 50 complaints a month, which works out to 600 complaints a year, and the situation seemed to be getting worse."

About 80% of Cesa's 490 members are small and emerging engineering firms with resources too limited to enable them to pursue legal recourse themselves.

Because legal action is so costly, the body plans to identify key cases that should be pursued and hopes to be able to refer some of the complaints to the new chief procurement officer that has been set up in the treasury.

Ironically, some members who are contributing 10% of their annual membership fees to the R1-million legal fund are divisions of larger

listed construction companies that are currently the subject of a Competition Commission investigation for collusion that has spanned more than a decade.

Pirie said fraud and corruption not only had a negative impact on how South African construction and engineering companies were perceived internationally but also on Cesa's members, who spent a lot of time and money researching and submitting these tenders. "Corruption has got so bad and so out of control that it has to be addressed ... and we took the decision to be more aggressive."

Pirie said the organisation was now working with other organisations in the construction sector and civil society, with the tender information company Leads 2 Business contributing R100 000 to the fund.

There has been much heated debate over how much has been lost to corruption and maladministration in the government, and Finance Minister Pravin Gordhan this week gave an indication of what could be involved. At a presentation of the South African Revenue Service's (Sars's) annual collection results for the 2012-2013 financial year, he said that the bulk of the R1.15-trillion set aside for government spending was being well spent but there was a discretionary amount of R150-billion remaining, which meant "there is only so much money that can be manipulated or abused". However, no matter what the amount was, South Africa still could not afford it, he said.

The Democratic Alliance, when presenting its alternative budget,

estimated that the amount could be almost R30-billion.

The Cesa case under investigation by the public prosecutor relates to a project carried out for the department of water affairs but administered by Mpumalanga's Ehlanzeni district municipality.

The public protector, Thuli Madonsela, has already recommended that criminal action be taken against the Ehlanzeni municipal manager, Hugh Mbatha, following complaints by the South African Municipal Workers' Union (Samwu). The complaints involved funds relating to a trip to Italy and not following the Municipal Finance Management Act regarding, among other things, the appointment of a legal firm. Mbatha still holds his position as the Ehlanzeni municipal manager.

Among the measures to be put in place to combat corruption and maladministration are the establishment of the office of a chief procurement officer under Kenneth Brown, who has been tasked with addressing the abuse of government funds relating to tendering.

Gordhan said this week that an announcement would be made in the next few weeks about Brown's role and focus areas, but the *Mail & Guardian* understands that projects relating to infrastructure, information technology and construction are likely to receive attention.

Pilot procurement and transformation programmes are also to be launched in the departments of health, education and public works, which have been repeatedly highlighted as having procurement issues.

Brown's department will look at immediate remedial action, stan-



Enough is enough: South African engineers will identify key projects to challenge in court. Photo: Delwyn Verasamy

dardising procurement procedures in all sectors but, in particular, establishing pricing norms for certain goods and services to assist government officials.

It's understood that departments including Sars and the Special Investigating Unit have already met Brown.

Gordhan said during his budget speech that the treasury was "scrutinising 76 business contracts worth R8.4-billion which we believe have infringed the procurement rules".

He said Sars was auditing more than 300 entities and looking into the business operations of about 700 companies with contracts estimated at more than R10-billion. The financial intelligence centre has also referred cases involving more than R6.5-billion for investigation.

In its compliance report, Sars says that 88 of these are companies in the construction industry that received government tenders. The government has recovered R380-million from the construction sector but estimates that there is R4-billion in outstanding taxes owed to the government.

The construction industry is currently under scrutiny. Wilson Bayly Holmes-Ovcon (WBHO), Stocks & Stocks civil engineering, Murray & Roberts, Group Five, Concor and

Aveng are among those named in a submission by the construction company Stefanutti Stocks to the Competition Commission for alleged tender rigging.

But it appears that, when it comes to tax, it is largely small and medium mining companies that are not complying.

Gordhan said that, going forward, "Sars would have a specific focus on those companies that receive government tenders, ensuring that they are tax compliant."

A tax clearance certificate monitoring programme will be piloted next year that will keep tabs on the tax compliance of companies awarded tenders to ensure they do not default.

A senior official at Sars said monthly monitoring would be undertaken and companies would be flagged as soon as they stopped being tax compliant. This, the official said, would lighten the load for Sars at the end of the financial year because these irregularities would be spotted immediately.

The official said meetings had already been held with Brown and some agencies and information had already been handed over on cases being investigated.

"At the moment the office is being staffed and given capacity," the official said.