



public works

Department:
Public Works
REPUBLIC OF SOUTH AFRICA

**MINISTER OF PUBLIC WORKS
REPUBLIC OF SOUTH AFRICA**

Construction Industry Development Board

The National Stakeholder Forum

Emperors Palace, Johannesburg, 5 July 2012

Keynote Address: TW Nxesi MP

PROTOCOL

- Programme Director
- Chairperson of the CIDB, Mr Bafana Ndendwa
- Chairperson of the Select Committee on Public Services, Honourable Mtikeni Sibande
- Members of the CIDB Board and the Acting CEO
- Representatives of Entities, SOEs, industry associations, labour, academia, the private sector and government officials
- And most importantly, all stakeholders in the Built Environment sector

Greetings, and welcome to this meeting between the National Stakeholder Forum and the Minister of Public Works, which is convened annually in terms of the CIDB Act. Thanks to the CIDB (Construction Industry Development Board) for facilitating this important event.

On a lighter note - given what has been happening lately in the construction sector, and given the powers of the CIDB - for some construction companies, any future invitation from the CIDB is likely to provoke considerable fear and trepidation. But I shouldn't make light of this matter: collusion and price-fixing is a serious business, and I will return to this issue in due course.

Let me take this opportunity to congratulate the CIDB on its professionalism and the important work done in raising and maintaining ethical standards in the sector as well as in relation to development and transformation. The topics of the breakaway sessions – which reflect the work of the task teams – are clearly on point and relevant to the current stage of the evolution of the construction industry.

These are:

- Procurement driven transformation
- Monitoring of Public Sector delivery
- Construction Charter and BBBEE Scorecard
- Contractor development and registration criteria.

I also need to acknowledge the important work of the other task teams – set up by the 2012 Stakeholder Forum. They addressed the following:

- Balancing delivery, development and empowerment, and
- Skills for infrastructure delivery.

The scope of these task teams and the discussion papers already completed – to me – provide evidence of a Council, and a sector, which is grappling with key issues which impact not only on the construction industry, but more broadly on government policy and the wider society and economy.

In the time available I want to cover the following:

- I need to report back to you on progress in our efforts to turnaround and rebuild the Department of Public Works;
- I want to reflect on some of the things we said last year as the National Stakeholder Forum when we met in Kempton Park;
- I will look at where we are in terms of transformation initiatives; and
- Finally, I will revisit the issue of price-fixing, and discuss a possible way forward.

Of course the main point of this exercise is for the CIDB and for myself as minister to hear from you the stakeholders:

- Tell us: what are the challenges you are facing?
- What are we doing wrong – as CIDB or as Public Works?
- How can we improve and better support the people on the ground?

I look forward to hearing your comments.

1. Rebuilding Public Works

The Department's past performance was characterised by corruption and mismanagement, evidenced by eight years of qualified audits, and disclaimers in the last two financial years.

The root causes of this deteriorating situation can be attributed to a lack of controls in Supply Chain Management practices, poor lease management, lack of

accountability of our Regional Offices, lack of an appropriate accounting platform for the Property Management Trading Entity as well as the non-existence of a reliable Immovable Asset Register.

Compounding these challenges is the fact that, all too often, there is a misalignment between the mandate and the structure of the Department.

I want to assure you that we are addressing these challenges – and we are undertaking changes to the structure of the Department.

More generally, we have now put in place the building blocks for turnaround:

- We have the funding from National Treasury for the turnaround;
- The core of the Turnaround Team is in place under the office of the Director-General so that we build capacity in the Department – not the Ministry - to address stabilisation and for the long haul of rebuilding the technical capacity of the Department. So if the Minister is recalled tomorrow it will not derail the whole turnaround.
- The planning processes are well-advanced – in consultation with National Treasury. Increasingly we talk less about ‘turnaround’, and use the language of ‘Rebuilding Public Works’.
- We have also – crucially – stabilised the leadership of the Department with the appointment of the new Director-General and CFO. When we started out 18 months ago, we said that much of DPW’s problems could be traced to a long period of unstable and constantly changing leadership. We also said that any turnaround strategy would need to be led from the top.

The focus of the Turnaround has been on taking control of key areas:

1. ***Developing a complete and credible register of state immovable assets –***

I am very confident that we are on-track for the creation of an Asset Register that will – for the first time ever - accurately reflect the state's assets.

Let me make a further point: that this is a real game-changer. With a sustainable register of state immovable assets in place, we will have at our disposal the tools to leverage this massive state property portfolio for economic development.

2. ***Conducting a comprehensive audit of leases and the establishment of a Lease Management Framework.***

The Department presently manages a portfolio of nearly 3,000 leased properties across the Republic. In his 2012 Budget speech, the Minister of Finance announced Treasury's support for a national audit of leases by DPW – a timely response to the numerous lease scandals at the time. To date, 100% of these leases have been reviewed.

3. ***Ensuring progressively improving audit outcomes for the DPW***

The DG is confident that we will move decisively towards a clean audit this year. It is a major priority of the Department to address the deficiencies identified by the Auditor General

4. ***Actively reducing fraud and corruption in the DPW –*** through the establishment of improved controls and comprehensive reporting in the supply chain management environment, and

5. ***Operationalising the Property Management Trading Entity***

I am pleased to confirm that we have now formalised the establishment of the Property Management Trading Entity – which focuses on the core property management business of Public Works. We are currently engaging the private sector to assist with technical expertise in this respect.

Slowly but surely, we are turning around Public Works and rebuilding technical capacity to improve service delivery to clients.

2. National Stakeholder Forum 2012

Let me comment on some of the issues raised in last year's Stakeholder Forum:

- ***Business Integrity***

Corruption - the Forum said – *“was detrimental to the construction industry. Corruption is not limited to government officials only. Action must be taken to isolate and to deal with corrupt contractors.”*

How prophetic!

From the side of the Department of Public Works, we have worked closely with the SIU (Special Investigations Unit) to investigate irregular leases and projects – some 40 investigations in all, of which 23 are completed. This has resulted in successful disciplinary actions, the suspension of six officials and the dismissal of four, including senior officials. We have instituted court actions to recover monies wrongly paid by the Department.

SIU investigations, taken together with recent findings of the Competition Commission, are a timely reminder that it takes two to tango; that corruption and greed in the private and public sectors are mutually reinforcing each other. In the light of this, we have started to enhance investigating capacity within the Department:

- Internal Audit was empowered to commission forensic investigations. Some 19 investigations have already been completed.
- We are also establishing an internal Compliance and Enforcement Unit – advised by SARS – as part of a separate Risk Management Branch.
- Looking forward, we are establishing a separate Supply Chain Management (SCM) Branch. In this regard we are working closely with National Treasury to review and strengthen SCM processes.

Our broad approach can be characterised as follows:

- We will investigate and prosecute cases of fraud and corruption, but
 - It is equally important to put in place robust systems to minimize fraud in the first place.
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- ***Procurement systems***

The 2012 Forum highlighted an erosion of value for money in construction and the need for greater competition at the top of the CIDB grades to address this. Clearly this is linked to the issue of collusion.

From the side of DPW, I am pleased to be able to announce that the Chief Procurement Office at National Treasury is working closely with my team in re-modelling the Supply Chain System for Public Works. I believe that previous challenges experienced with the legislation on construction procurement will receive the attention it deserves. Without pre-empting the outcome of this project, I believe that it will contribute to the further development of the construction industry.

- ***Maintenance***

The Forum made the point that the maintenance backlog is a serious challenge facing the industry – and called for appropriate planning and budgeting for the whole asset life cycle. The President of CESA – Naren Bhojaram – is quoted as saying: “*We have lots of infrastructure in the country. And when we look around we see that not enough effort is being put into operations and maintenance.*”

We have taken this to heart. The Department has recently taken the decision to revive and implement the National Infrastructure Maintenance Strategy (NIMS) programme. Indeed, CIDB is assisting us in establishing norms and standards and procedures to implement a national maintenance programme in the state sector.

- ***Institutional capacity in the public sector***

I am pleased to be able to say that the Construction Projects branch of Public Works is now implementing IDIP (Infrastructure Delivery Improvement Programme) – supported by the Infrastructure Delivery Management System (IDMS) which was developed by CIDB.

I firmly believe that this is going to greatly assist us in addressing the problem of under-spending on capital projects. I want to concur with Mr Neville Gurry of SAFCEC when he said: *“We, like government are very concerned about job creation. Without projects there are no jobs.”*

- ***Delayed payments***

At last year’s Forum I said: *“as DPW we have to re-invent ourselves as a better client – a model client - to the construction industry... we cannot be happy with the late payments which threaten the lifeblood of small contractors in particular.”*

I am pleased to report that the Department has elevated this matter to a special project of the turnaround strategy. The focus is on the reduction of late payments and compliance with the President’s instruction to pay suppliers within 30 days.

My Department is currently addressing backlogs and implementing new and improved systems. I have also started visiting regions to meet with contractors to address problems of late payments.

- ***The Construction Sector Charter Council***

I have asked my officials in the Department to now finalise the appointment of a Chair for the Charter Council. This process has dragged on for far too long. I assure you that the Council will be one of my priorities in the coming year.

- ***Construction Industry Development regulation amendments***

I am happy to report that the process of amending the Register of Contractors Regulations has been completed, and the new regulations are scheduled to be gazetted this month (July).

3. Transformation

Some of the transformation issues raised at the 2012 Stakeholder Forum were taken up by the Construction Industry Transformation Summit which was held near OR Tambo Airport on 23 November 2012.

In my opening address I explained the purpose of the event as follows:

... at the heart of the Transformation Summit is a clear focus on the issue of empowerment in the sector and amongst others the need to develop practical strategies to significantly increase empowerment outputs in measureable and sustainable ways.

To succeed in our objectives we have to come together – in terms of the relevant government departments and the different levels of government – as well as entities – and all the construction sector role players – contractors, suppliers, professionals etc. The Transformation Summit provides an opportunity for this engagement to begin to take place.

The Summit concluded that:

- Addressing transformation requires a cross-sectoral response, involving all stakeholders in the public and private sector.
- Addressing transformation requires us to strengthen existing mechanisms and instruments, but also to develop new mechanisms and instruments.
- The Summit concluded that an appropriate way forward was to build on the existing CIDB National Stakeholder Forum (NSF) and the Task Teams established by the Forum with DPW and its entities establishing an umbrella structure (or Transformation Focus Group) to take this forward.

A lot of work has been done by the various task teams and working groups. One discussion we need to have now is how best to use the material that is being produced, and what are the appropriate vehicles and processes to take forward the transformation debate with a view to effective implementation.

4. Tackling collusion: the way forward

This brings me back to my starting point: the Competition Commission findings and what is to be done?

Daily we read about protagonists of the rule law lambasting the government law enforcement agencies for being soft on corruption. You also read widespread corruption coverage in national and metropolitan newspapers. These prominently reported criminal acts are often perpetrated by individuals or people involved in small companies.

But the same vigour is not displayed to this massive corruption of the big cartels in the construction industry. Instead, one reads about whispers of leniency and caution. The supporters of this position erroneously believe that any drastic action against these culprits in the construction could destabilise the economy.

Such misplaced views deliberately ignore that corruption is corruption, irrespective of whether it is being perpetrated by big or small companies. We need to be even-handed when stamping out corruption. Frankly, it may appear that we have different rules for big white-owned companies.

Let me assure everyone here that the Department of Public Works, together with its entity stakeholders such as the CIDB, is watching the developments in this saga with interest.

We have vowed that we will not shirk our responsibility in this regard. We will take whatever necessary steps to ensure that construction industry is free of criminal tendencies.

Let us remind ourselves that there are statutory processes which must be followed. In particular, the CIDB is obliged in terms of legislation to initiate its own inquiry – and this process is independent of the Minister.

We also need to recognize that the practice of anti-competitive behaviour is a sophisticated form of corruption and is prevalent in construction industries across the globe. Only those who participate in the practice know the full extent of its detail. This is what makes it difficult to detect and prosecute.

This is why the announcement by the Competition Commission that a settlement has been reached following the admission of guilt by 15 companies accused of collusion in the construction industry is so significant.

This kind of conduct is not only anti-competitive but also anti-transformation, as it has the consequence of undermining expected social and economic benefits arising from projects, and represents a major setback to the efforts to transform the patterns of ownership and control in the Construction Industry.

Collusion and artificially-inflated prices on projects has the knock on effect of reducing the number of projects that we are able to deliver over a defined financial period – harming service delivery and reducing employment.

Furthermore, bid-rigging undermines the public tendering system established in June 2004 to standardize procurement practices in government. This is regulated by the CIDB in the Standard for Uniformity in Construction Procurement – and we regulate for a reason: exactly to promote ethical standards and an equal playing field.

It is not surprising, therefore, that the fine imposed of R1.46 billion has been viewed as a ‘slap on the wrist’ in many quarters which sends out the message that large firms can get away with fraud and corruption.

However, the admission of guilt paves the way for the Construction Industry Development Board to initiate its own process of investigation into the firms’ conduct in terms of section 28 of the Construction Industry Development Regulations of 2004 and the CIDB Code of Conduct.

Sanctions available to the CIDB include a fine of up to R100,000 per transgression (*ie. the fine can be applied to every single state project that was investigated*), downgrading a contractor, deregistration which would render such firms unable to tender for public sector contracts, or ordering a ‘specific performance’.

A ‘specific performance’ is a remedy available when monetary damages are inappropriate or inadequate – and could for example include developmental remedies. A combination of sanctions could also be used.

I believe that any remedy or sanction should be designed with a view to positively addressing underlying systemic characteristics of the construction sector. These include the following:

- There is broad agreement amongst stakeholders that the rate of transformation in the sector has been slow – both in relation to contractor development and the share of contracts going to emerging (black and female) contractors, as well as the proportion of black qualified professionals in the built environment sector (currently standing at approximately 25%).
- Generally, there is a shortage of built environment professionals and skilled artisans.
- Since the financial melt-down of 2008 and subsequent global recession the sector has experienced reduced order books and profit levels.
- Meanwhile, going forward, the roll out of national infrastructure development plans – in terms of the National Growth Plan, the PICC SIPs and the National Development Plan - requires the mobilisation of construction capacity and partnerships on an unprecedented scale.
- The Construction Industry has the potential of creating jobs and contributing to addressing the triple challenge of poverty, unemployment and inequality.

Towards a Restitution and Transformation Programme

The findings of the Competition Commission, taken together with any subsequent inquiry and measures taken by the CIDB, represent a crossroads for the construction sector.

But these findings also present the ideal opportunity for us to establish systems and processes to eradicate collusive practices in the industry. While we unequivocally respect the independence of the CIDB's investigating committee, we need to emerge from this moment of crisis with a strategy and plan which promotes partnerships to achieve – amongst others - the following objectives:

- To send a clear message that fraud and corruption will not be tolerated, and seek to promote best ethical practices in the construction sector.

- To mobilise productive existing and new capacity to support national infrastructure development plans.
- promote job creation and skills development in the built environment sector; and
- To lead transformation through development of emerging black and female contractors, and support for the training of black professionals in the built environment sector.

These objectives indicate the need for a positive rather than simply punitive response and approach.

Whilst we remain distressed and outraged by the findings of the Commission, we also need to discuss a constructive way forward – which may take the form of restitution and restorative justice. It is vital – for the ethical functioning of the construction sector – that we make a clear statement that there can be no return to business as usual.

As Minister of Public Works, I will be consulting with my colleagues and with stakeholders about how best we build partnerships and secure – from all concerned - voluntary cooperation and commitment to the restitution or restorative justice approach.

Specific recommendations for inclusion in a Restitution and Transformation Programme would need to be consulted with all stakeholders but some of my thoughts on the matter include the following:

- All parties should recommit to adhere to the CIDB Code of Conduct and to do business only with those who do likewise.
- The need to put in place measures to create and support emerging black and female contractors in the Construction Sector, including a programme of contractor development with clear targets, deliverables and timelines.

- Funding a targeted number of built environment bursaries in the Further Education and Training Colleges and Tertiary Institutions, with a bias towards students from rural and poor communities.
- A commitment to fund an industry-initiated Artisan Career Development Programme with clear targets.
- A mentorship and support programme – and commitment to placement targets per contract – for post graduate black and female candidate professionals in particular.
- Commitment to job creation through use of labour intensive methodologies where appropriate.
- Funding a comprehensive programme of support for learners in targeted schools in disadvantaged communities, to assist their entry into the built environment professions and occupations.
- Establishment of a dedicated development fund.

I believe that these proposals respond to the current crisis of collusion in the sector, but they also take the process further.

I suggest that we require a Restitution and Transformation Programme – in which every effort is made to build partnerships and mobilise resources to address deep-rooted systemic issues of non-transformation by focusing on contractor development and skills development. This also begins to expand national capacity in the built environment sector to deliver on national infrastructure development plans and contributes to addressing the triple challenge of unemployment, poverty and inequality.

As our President likes to say, working together we can achieve more.

I thank you.