

## **JABULANI (ZOLA) HOSPITAL**

A tender for the construction of the Zola Hospital on a site in Jabulani was issued in various media on 10 March 2006. The original site was intended to be the current Zola Clinic, thus the project was named Zola Hospital. When I took over the department as HOD, I made the determination that the Zola Clinic site was not suitable, the land available was not adequate, besides, the Zola site is deep in the residential area and would have had a distabilizing effect on the community. The alternative site was found in Jabulani, thus the project is inter-changeably referred to as either Zola Hospital or Jabulani Hospital, I prefer Jabulani.

The project comprise of a multi storey 300 bed District Hospital with 120 step-down beds, a Gateway Clinic and Service Buildings. Upon receipt of various tender bids, the Departmental Acquisition Council (DAC) short-listed three entities, namely:

- Ilima Joint Venture, led by Ilima Projects;
- Maziya Joint Venture, led by Maziya;
- P Gerolemou Construction (“Gerolemou”) trading as Mvela Phanda Construction.

The Ilima Joint Venture was constituted by the following companies:

- Ilima Projects (Pty) Ltd;
- Yikusasa Building Contractors SA;
- TTR General Building Construction (Pty) Ltd;
- Motheo Construction Group.

The Tender was finally awarded to the Ilima Joint Venture on 10 May 2006 upon the completion of an open evaluation and adjudication process by DAC.

DAC considered the Ilima Joint Venture submission the best as it had complied with all Tender requirements including the South African Revenue Services (“SARS”) and the Construction Industry Development Board (“CIDB”) requirements. Since Ilima Projects became the centre of allegations published by the City Press newspaper that it was awarded several tenders without valid tax clearance certificates, it is critical to make the point that at the time of the award of the Tender, Ilima had submitted an authentic tax clearance certificate and was listed on the CIDB database at level 8GB PE and 8CE PE. This listing meant that Ilima was qualified to execute projects in excess of R80million. Upon this DAC decision, the Department and the Ilima Joint Venture entered into a contract on 31 July 2006. The original contract sum was an amount of R335million and the Project was to be completed at the end of May 2008.

However, soon after DAC awarded the Tender to the Ilima Joint Venture and the Department having entered into a contract with it, the partners began bickering amongst themselves. These conflicts had a deleterious impact on the ability of their joint venture to meet project deadlines. However, the Department did not however jettison the entity as it was of the view that the disputes were capable of resolution through a developmental approach.

One such interventions in this regard included availing one of the Project Management Resource Groups (PMRG), which were largely structures appointed by the Department pursuant to an open procedure to provide capacity support to contractors employed by the Department.

At the time, this approach made perfect sense for the Department as it presented the partners in the joint venture with a perfect opportunity to ensure delivery of the Project on time, thereby cutting losses for the Department and the joint venture itself. However, this noble intention on the part of the Department proved a sterile exercise as the conflicts continued unabated. In the midst of this, three of the partners withdrew from the joint venture, albeit at different times, thus leaving Ilima Projects being the only contractor left on the Project.



The project as it was at the time of the dissolution of the original iLima JV (May 2008)

The departure of the partners in the joint venture compromised Project delivery and it soon became apparent that Ilima, as the only remaining contractor, would not be in a position to meet the targets for Project delivery on account of these withdrawals. The Department had therefore to make a decision at that point whether to terminate the contract with the Ilima Joint Venture and reissue a tender for the completion of the Project or provide support to Ilima Projects to complete the Project in its capacity as the only remaining partner in the joint venture.

Having considered the above options, the Department terminated the contract with the Ilima Joint Venture and proceeded to enter into another contract with Ilima Projects, the terms of which were inter alia that the Department would avail the services of Tau Pride, a PMRG, to provide capacity support to Ilima Projects in an attempt to ensure delivery of the Project by 2010. The Department was however fully cognizant of the potential legal questions on the appointment of Ilima Projects without recourse normal tender processes to complete the Project.

Having considered the applicable statutes governing supply chain management, in particular the Public Finance Management Act and Treasury Regulations, the Department formed the view that it was prudent and legally permissible to enter into a new contract with Ilima Projects through a procedure other than competitive tendering (deviation) if considered impractical in the circumstances to do so. The Department was aware at all times that the decision to deviate from

competitive tendering must be properly recorded and communicated to Treasury and the Auditor General.

The decision was furthermore informed by the imperative to complete the Project in the shortest possible time period in view of the delays that had already affected the Project and the possibility of further escalation in costs. In view of the need to complete the Project urgently, a new Project Team arrived on site on 04 August 2008.

Upon learning of this revised contract with Ilima Projects, the City Press newspaper started raising questions about possible irregularities by the Department in re-appointing Ilima Projects without recourse to an open tender process. The City Press journalists first submitted a list of questions to me as the Head of Department (“HOD”) for my response on or around 15 August 2008.

The substance of their questions related to project costs, completion date, in particular on the reasons why the Department did not re-issue a tender after the other partners in the Ilima Joint Venture withdrew. As the HOD, in my capacity as the accounting officer, provided detailed responses to the journalists’ questions in particular on the project costs and the reasons a decision had been taken by the Department not to re-issue a tender for the completion of the Project.

However, City Press continued to publish a series of articles, citing an exaggerated and inaccurate amount of R690 million as the amount required to complete the Project. This inaccurate figure was published despite the fact that I had indicated in my response that the revised contract sum was an amount of R480 million, excluding professional fees and had provided a Bill of Quantities in this regard. The Bill of Quantities was even provided to the journalists.

Upon the publication of such inaccurate articles, I instructed a firm of attorneys to write a letter to the Editor of the City Press demanding a retraction and an apology from City Press newspaper on the 29<sup>th</sup> August 2008. The content of the letter was also to register the Department’s displeasure at the inaccurate and misleading nature of the articles on the Project.

On the 5<sup>th</sup> September 2008, the Department received a response from City Press’s lawyers stating that City Press stood by its story. It was at this point that the attorneys were further instructed to proceed with lodging a complaint against City Press with the Press Ombudsman.

On 07 September 2008, City Press published another story about Ilima Projects, this time about its financial status. The substance of the article was that Ilima Projects was not in good financial standing and did not have a valid tax clearance certificate. What City Press did not reflect in the article was that Ilima’s financial position had been uncovered by the Department’s own internal Forensic Investigation, which was commissioned by the Department after all the partners in the venture came under scrutiny following the collapse of the joint venture. Somehow, the forensic report found its way to the City Press, and the findings of this Forensic Investigation were then published in the City Press, presented and passed off as the outcome of an investigation by City Press.

Following the forensic investigation, and taking cognisance of the need to ensure the continuation of the Project and to curb further financial loss, I instructed that the process of terminating the contract with Ilima and the appointment of another contractor be completed within 7(seven) days from date of instruction. This intervention was designed to sustain the momentum to complete the

Project by 2010. It is critical to note, however, that notwithstanding the findings of the forensic report, the Department was still obligated to ensure delivery of the Project by 2010, in particular the completion of a Gateway Clinic by March 2009.

#### New Implementation Approach

In view of all the above, the Department accordingly implemented the following interventions:

Changed the nature of the contract to make it a labour-only contract by engaging the services of the Impophoma Infrastructure Support Entity (“Impophoma”). Impophoma was an agency of government set up to provide capacity support to contractors appointed by the Department. It was envisaged that it would provide plant, materials and equipment to the Project and the newly appointed contractor would provide the labour component.

Appointed the next best contractor from the original tenders received to provide the said as stated above. The next best submission at the time of the award of the Tender was one led by P Gerolemou (trading as Mvela Phanda Construction). However, the Department was aware that Gerolemou was involved in the construction of the new Natalspruit and Germiston hospitals. Accordingly, the Department resolved to appoint the next best contractor after Gerolemou, in this case being the joint venture led by Maziya General Services. This is consistent with supply chain management practices and procedures governing organs of state.

As already stated above, these interventions represented a new implementation strategy and were all aimed at ensuring timeous delivery of the Project.



A view from the street. Jabulani (Zola) Hospital as at December 2011

