REPORT OF THE PUBLIC PROTECTOR

PUBLIC PROTECTOR
SOUTH AFRICA

10 MUNICIPALITIES, 28 CONTRACTS, AND A POLITICIAN

REPORT ON AN INVESTIGATION INTO COMPLAINTS RELATING TO THE IMPROPER AWARDING OF TENDERS BY MUNICIPALITIES IN THE LIMPOPO AND NORTH WEST PROVINCES
INDEX

List of acronyms 6
Executive summary 7

PART A

INTRODUCTION, THE COMPLAINTS, BACKGROUND AND JURISDICTION

1. INTRODUCTION 13
2. THE COMPLAINTS 14
3. BACKGROUND TO THE COMPLAINTS THAT WERE INVESTIGATED 16
4. THE JURISDICTION OF THE PUBLIC PROTECTOR AND THE DECISION TO INVESTIGATE THE ALLEGED IMPROPER CONDUCT OF THE MUNICIPALITIES CONCERNED 18

PART B

THE INVESTIGATION

5. THE SOURCES OF INFORMATION UTILISED DURING THE INVESTIGATION 19

PART C

INFORMATION OBTAINED FROM BID PROPOSALS, CIPRO, THE ENGINEERING COUNCIL OF SOUTH AFRICA AND THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD (CIDB)

6. THE COMPANY PROFILE OF SGL 25
7. REGISTRATION WITH THE ENGINEERING COUNCIL OF SOUTH AFRICA 27
8. THE SCOPE OF SERVICES AND TARIFF OF FEES PRESCRIBED FOR CONSULTING ENGINEERS 27
9. REGISTRATION WITH THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

PART D

THE EVIDENCE AND INFORMATION OBTAINED FROM THE INVESTIGATION

10. COMMON CAUSE

11. Bojanala Platinum District Municipality

12. Greater Sekhukhune District Municipality

13. Waterberg District Municipality

14. Vhembe District Municipality

15. Mopani District Municipality

16. Greater Letaba Local Municipality

17. Greater Tzaneen Local Municipality

18. Mutale Local Municipality

19. Makhado Local Municipality

20. Lepelle-Nkumpi Local Municipality

PART E

THE INFORMATION AND EVIDENCE OBTAINED FROM OFFICIALS AND WITNESSES

21-23
PART F

THE LEGAL FRAMEWORK REGULATING THE PROCUREMENT OF GOODS AND SERVICES BY MUNICIPALITIES

24. THE CONSTITUTION 63

25. THE MUNICIPAL FINANCE MANAGEMENT ACT 63

26. THE MUNICIPAL SUPPLY CHAIN MANAGEMENT REGULATIONS 64

27. THE EXEMPTION OF CERTAIN MUNICIPALITIES FROM THE SUPPLY CHAIN MANAGEMENT PROVISIONS OF THE MUNICIPAL FINANCE MANAGEMENT ACT 67

28. THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE REGULATIONS 68

PART G

REPORTS OF THE AUDITOR GENERAL

29-35 68

PART H

THE INFORMATION OBTAINED FROM THE RECORDS OF CIPRO AND THE TENDER DOCUMENTS OF THE MUNICIPALITIES PERTAINING TO THE INTERESTS OF MR MALEMA IN SGL

36-37 70
PART I


38. THE SCM POLICIES

39. MINIMUM COMPETENCY LEVELS FOR MEMBERS OF SUPPLY CHAIN MANAGEMENT UNITS OF MUNICIPALITIES

PART J

CONCLUSIONS

40. TENDERS/CONTRACTS AWARDED TO SGL PRIOR TO THE IMPLEMENTATION OF SECTIONS 110 TO 116 OF THE MFMA AND THE SCM REGULATIONS

41. COMPLIANCE BY THE MUNICIPALITIES WITH THE MFMA AND THE SCM REGULATIONS IN RESPECT OF TENDERS AWARDED TO SGL

42. GENERAL CONCLUSIONS

PART K

FINDINGS, RECOMMENDATIONS AND MONITORING

43. FINDINGS

44. RECOMMENDATIONS

45. MONITORING
### LIST OF ACRONYMS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANCYL</td>
<td>African National Congress Youth League</td>
</tr>
<tr>
<td>CFO</td>
<td>Chief Financial Officer</td>
</tr>
<tr>
<td>CIPRO</td>
<td>Companies and Intellectual Property Registration Office</td>
</tr>
<tr>
<td>ECSA</td>
<td>Engineering Council of South Africa</td>
</tr>
<tr>
<td>HDI</td>
<td>Historically Disadvantaged Individual as contemplated by the section 1 of the Preferential Procurement Policy Framework Act, 2000</td>
</tr>
<tr>
<td>IDP</td>
<td>Integrated Development Plan</td>
</tr>
<tr>
<td>MFMA</td>
<td>Municipal Finance Management Act, 2003</td>
</tr>
<tr>
<td>MIG</td>
<td>Municipal Infrastructure Grant</td>
</tr>
<tr>
<td>NDPG</td>
<td>Neighbourhood Development Partnership Grant</td>
</tr>
<tr>
<td>SCM</td>
<td>Supply Chain Management</td>
</tr>
<tr>
<td>SCM Regulations</td>
<td>Municipal Supply Chain Management Regulations</td>
</tr>
</tbody>
</table>
Executive summary

(i) The Public Protector was approached by Mr I Kekana, the Head of Communications in the Limpopo Province of the Congress of the People and Mr E Roets, the National Chairperson of AfriForum Youth, to investigate allegations that the awarding of tenders to an entity, referred to as SGL Engineering Projects (SGL), by 9 municipalities in the Limpopo Province and 1 municipality in the North West Province, was irregular.

(ii) The complaints lodged with the Public Protector on 22 February 2010 and 2 March 2010 respectively, were based on a newspaper report, which suggested that the following municipalities had improperly awarded tenders to SGL, due to the political influence of Mr J Malema, the President of the African National Congress Youth League, who had an interest in the company:

(a) Bojanala Platinum District Municipality;
(b) Mopani District Municipality;
(c) Greater Sekhukhune District Municipality;
(d) Waterberg District Municipality;
(e) Vhembe District Municipality;
(f) Greater Tzaneen Local Municipality;
(g) Makhado Local Municipality;
(h) Greater Letaba Local Municipality;
(i) Lepelle-Nkumpi Local Municipality; and
(j) Mutale Local Municipality.

(iii) The investigation focussed on:

(a) Compliance by the municipalities in the awarding of tenders to SGL with the legislation and other prescripts regulating procurement in local government;
(b) Compliance with quality assurance requirements before payment for the procured services and;
(c) The governance and administration of procurement by the municipalities to determine whether it generally complies with the prescribed legal framework relating to supply chain management in local government.

(iv) Mr Roets also requested the Public Protector investigate allegations published by the media that tenders might have been improperly awarded to companies in which Mr Malema has an interest, by the Roads Agency Limpopo and in respect of the state funded annual Mapungubwe Jazz Festival held in Polokwane. These allegations are the subject of a separate investigation and are not referred to in this report.

(v) From the investigation, the Public Protector, in the main, concluded that:

(a) Compliance with the procurement legislation in respect of:
   (aa) The tender awarded to SGL by the Makhado Local Municipality;
   (bb) 4 tenders/contracts awarded to SGL by the Greater Sekhukhune District Municipality; and
   (cc) 1 contract awarded to SGL by the Lepelle-Nkumpi Local Municipality

   could not be determined with certainty, due to poor procurement record keeping by the said municipalities, which constituted non compliance with the Supply Chain Management Regulations.

(b) Except for the tenders/contracts referred to in paragraph (a) above, in respect of which no conclusion could be made, the tenders/contracts awarded to SGL by the municipalities were the results of procurement processes that generally complied with the relevant provisions of the Constitution, the Municipal Finance Management Act, 2003 and the Supply Chain Management (SCM) Regulations.

(c) The projects where SGL was involved and that have been completed were generally regarded as of at least an acceptable standard. In cases where deficiencies were discovered, funds held in retention were utilised to effect repairs. The only exception in this regard relates to a project of the
Lepelle-Nkumpi Local Municipality, which is currently the subject of further internal investigations being conducted by the Municipality.

(d) Mr J Malema was involved with SGL during a period that only 3 tenders were awarded to SGL by the municipalities referred to in this report (i.e. on 30 July 2009, 15 October 2009 and 20 November 2009) In one such case, the bid proposal was submitted before he became a director of SGL. In the other 2 cases, the bid proposals were submitted in the name of SGL Engineering Projects CC, which at the time had already been converted into the private company, SGL Engineering Projects (Pty) Ltd. Mr Malema’s interest in SGL was therefore not disclosed in the bid proposal documents.

(e) It is doubtful whether these tenders would not have been awarded to SGL by the municipalities involved, had the bid proposals been submitted in the name of the private company, as the evaluation was done mainly on functionality and the profile of the bidder entity was of little consequence.

(f) The Supply Chain Management Regulations do not provide for Supply Chain Management Policies to regulate the verification of close corporation and company records submitted in bid proposals.

(g) The Supply Chain Management Policies of the majority of the municipalities referred to in the report, comply with the Supply Chain Management Regulations. The Policies of the Bonjanala Platinum District, Mopani District, Greater Letaba Local, Greater Tzaneen Local and Makhado Local Municipalities, need to be reviewed.

(h) No verifiable information or evidence was presented or could be found from the investigation that indicated that contract/tenders were awarded to SGL as a result of improper influence due to friendships, comradeship, favouritism, nepotism, interference or any other impropriety; and
(i) As a consulting engineers enterprise, SGL was not required to register with the Construction Industry Development Board (CIDB).

(vi) The findings of the Public Protector are that:

(a) It could not be determined whether:

(aa) The tender awarded to SGL by the Makhado Local Municipality;
(bb) Four contracts awarded to SGL by the Greater Sekhukhune District Municipality; and
(cc) One contract awarded to SGL by the Lepelle-Nkumpi Local Municipality

complied with the relevant procurement legislation and other prescripts, due to poor procurement record keeping by the said municipalities;

(b) Except for the tenders/contracts referred to in paragraph (a) above, in respect of which no finding could be made, the tenders/contracts awarded to SGL by the municipalities were the results of procurement processes that generally complied with the relevant provisions of the Constitution, the Municipal Finance Management Act, 2003 and the SCM Regulations.

(c) The completed projects relating to the tenders/contracts awarded to SGL by the municipalities, referred to in this report, were generally of an acceptable quality and standard;

(d) No verifiable information or evidence was presented or could be found from the investigation that indicated that contract/tenders were awarded to SGL as a result of improper influence due to friendships, comradeship, favouritism, nepotism, political affiliations, interference or any other impropriety; and

(e) As a consulting engineers enterprise, SGL was not required to register with the Construction Industry Development Board (CIDB).
(vii) The Public Protector recommended that:

(a) The Minister of Finance considers amending the SCM Regulations to provide for the Supply Chain Management Policies of Municipalities and Municipal Entities to regulate the verification of close corporation and company records of bidders from the official database of the Companies and Intellectual Property Registration Office;

(b) The Municipal Manager of the Greater Sekhukhune District Municipality takes urgent steps to ensure that:
   (aa) The contract entered into between the Municipality and SGL in connection with the Malebitsa/Driefontein Road Project refers to SGL Engineering Projects (Pty) Ltd and not to SGL Engineering Projects CC;
   (bb) The procurement records of the Municipality pertaining to the project referred to in paragraph (aa) above include a valid professional indemnity insurance certificate in respect of SGL;
   (cc) The record keeping by the Municipality of procurement documents is improved;

(c) The Municipal Manager of the Mopani District Municipality takes urgent steps to ensure that:

   (aa) The contract entered into between the Municipality and SGL in connection with the Nkowankowa Sewerage Project refers to SGL Engineering Projects (Pty) Ltd and not to SGL Engineering Projects CC;
   (bb) The procurement records of the Municipality pertaining to the project referred to in paragraph (aa) above, include a valid professional indemnity insurance certificate in respect of SGL; and
   (cc) The SCM Policy of the Municipality is reviewed as contemplated by Regulation 3(1)(b) of the SCM Regulations;
(d) The Municipal Manager of the Makhado Local Municipality takes urgent steps to ensure that:

(aa) Record keeping of procurement documents by the municipality is improved; and
(bb) The SCM Policy of the Municipality is reviewed, as contemplated by Regulation 3(1)(b) of the SCM Regulations;

(e) The Municipal Manager of the Lepelle-Nkumpi Local Municipality takes urgent steps to ensure that:

(aa) Record keeping of procurement documents by the municipality is improved;
(bb) The SCM Policy of the Municipality is reviewed, as contemplated by Regulation 3(1)(b) of the SCM Regulations;
(cc) Appropriate action is taken in respect of Phase 1 of the upgrading of roads in Lebowakgomo Zone A, and that the project is properly implemented;

(f) The Municipal Managers of the Bojanala Platinum District, Greater Letaba Local and Greater Tzaneen Local Municipalities take steps to ensure that the SCM Policies of the respective Municipalities are reviewed, as contemplated by Regulation 3(1)(b) of the SCM Regulations.

(viii) The Municipal Managers of the Municipalities referred to in paragraph (vi) above are required to submit a report to the Public Protector on the progress made with the implementation of the respective recommendations referred to in paragraph (vi) above, by 15 November 2010.

(ix) The Public Protector to further monitor progress over a period of 6 months.
PART A

INTRODUCTION, BACKGROUND, THE COMPLAINTS AND JURISDICTION

1. INTRODUCTION

1.1 This is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted to:

1.2.1 The Speaker of the National Assembly;

1.2.2 The complainants, Mr I Kekana, the Head of Communications in Limpopo of the Congress of the People and Mr E Roets, the National Chairperson of AfriForum Youth;

1.2.3 The Minister of Corporate Governance and Traditional Affairs;

1.2.4 The Minister of Finance;

1.2.5 The Speaker of the Limpopo Provincial Legislature;

1.2.6 The Member responsible for Local Government and Housing of the Executive Council of the Limpopo Provincial Government;

1.2.7 The Member responsible for Local Government and Traditional Affairs of the Executive Council of the North West Provincial Government; and

1.2.8 The Speakers of the Municipal Councils, Executive Mayors and the Municipal Managers of the following municipalities:

1.2.8.1 Bojanala Platinum District Municipality

1.2.8.2 Mopani District Municipality;

1.2.8.3 Greater Sekhukhune District Municipality;
1.2.8.4 Waterberg District Municipality;
1.2.8.5 Vhembe District Municipality;
1.2.8.6 Greater Tzaneen Local Municipality;
1.2.8.7 Greater Letaba Local Municipality;
1.2.8.8 Makhado Local Municipality;
1.2.8.9 Lepelle-Nkumpi Local Municipality; and
1.2.8.10 Mutale Local Municipality.

1.3 It relates to an investigation conducted by the Public Protector into complaints lodged in connection with allegations published by the media of the improper awarding of tenders by the said municipalities to an entity, referred to as SGL Engineering Projects (SGL).

2. THE COMPLAINTS

2.1 On 22 February 2010, Mr E Roets, the National Chairperson of AfriForum Youth, lodged a complaint with the Public Protector based on what was stated in an article published by the Sunday Times on 21 February 2010, under the heading: “How Malema made his millions”.

2.2 The article claimed that an investigation by the Sunday Times had found that Mr Malema had benefitted substantially from several tenders that were awarded by the State. It stated that:

“One of Malema’s businesses, a small engineering firm, has profited more than R130 million worth of tenders in just two years.”

and

“The Sunday Times has seen documents which show that SGL Engineering Projects and its subsidiaries, which Malema co-owns with Lesiba Gwangwa, have been awarded dozens of contracts since 2003—often from cash strapped
municipalities in Limpopo. The projects range from road and pavement construction to bulk water supply and upgrading of cemeteries.”

2.3 The contracts reportedly awarded to SGL by municipalities between 2007 and 2008, were listed as having related to:

2.3.1 A R2,1 million sewerage upgrade project by the Waterberg District Municipality;

2.3.2 A R39,3 million sewer reticulation project by the Mopani District Municipality;

2.3.3 A R27,9 million street paving and drainage contract by the Greater Letaba Local Municipality; and

2.3.4 A R28 million tender for several municipal infrastructure projects by the Greater Tzaneen Local Municipality.

2.4 An addition, the article of the Sunday Times stated that the Lepelle-Nkumpi Local Municipality, the Vhembe District Municipality, the Mutale Local Municipality, the Makhado Local Municipality, the Bojanala Platinum District Municipality and the “Tzaneen District Municipality” (sic) have awarded contracts to SGL.

2.5 It was further claimed that:

“Government officials in Limpopo painted a detailed picture of how the ANCYL president’s businesses secured repeated tenders. While Malema’s companies often bid for the tenders, some of the contracts are awarded to contractors closely linked to him, who then subcontract his company.”

2.6 Mr Roets requested the Public Protector “to investigate the appropriateness of tender processes followed by the various municipalities and other government institutions when awarding tenders to companies such as SGL Engineering Projects, in which the President of the ANC Youth League, Mr Julius Malema, has a stake.” (emphasis added)

2.7 The Head of Communications in the Limpopo Province of the Congress of the People, Mr I Kekana, also lodged a complaint based on the said media reports relating to the awarding of tenders by municipalities to a company in
which Mr Malema had an interest. In his letter of complaint, Mr Kekana stated that:

“Rumours and gossips about the awarding of tenders on the basis of friendship, comradeship, favouritism and nepotism have been making the rounds in the province for quite some time. Now that a glimpse of evidence that these tenders were awarded illegally because they were not CIDB compliant, has finally come into the open. We expect that your good office will take interest in the matter and begin a thorough investigation about the veracity or otherwise of these claims.”

2.8 Mr Kekana also named the some of the municipalities referred to by the newspaper reports in his letter of complaint and included in his list the Greater Sekhukhune District Municipality, which was not referred to before. He requested the Public Protector to investigate the procurement practices of the municipalities concerned relating to the awarding of the contracts to the company in which Mr Malema had an interest and the quality of the work performed by the company, and to make the findings of the investigation public.

2.9 Mr Roets further requested the Public Protector investigate allegations published by the media that tenders might have been improperly awarded to companies in which Mr Malema has in interest, by the Roads Agency Limpopo and in respect of the state funded annual Mapungubwe Jazz Festival held in Polokwane. These allegations are the subject of a separate investigation and are not referred to in this report.

3. BACKGROUND TO THE COMPLAINTS THAT WERE INVESTIGATED

3.1 Mr Julius Malema was elected as the President of the Youth League of the African National Congress (ANCYL), on 7 April 2008. The ANCYL is a structure of the African National Congress, the current ruling party in the national government and in most of the provinces and municipalities of the Republic of South Africa.
3.2  

*City Press* published an article similar in contents than that of the *Sunday Times*, referred to above, on 21 February 2010 (the same day). It went further and stated that in some of the cases where tenders were awarded by municipalities to SGL, the projects were not completed. SGL was referred to in this article as “Malema’s engineering company”. Moreover, the article claimed that “Malema” received tenders worth about R21 million from 8 municipalities in the Limpopo Province.

3.3  

In the days that followed, several other newspapers published articles on the matter. *The Times* of 22 February 2010 stated that a constitutional law expert, who was consulted regarding the matter, indicated that: “The questions that arise are on what basis did Malema win those tenders and did he use his political position to win them.”

3.4  

According to the *Sowetan* of 24 February 2010, the former Premier of the Limpopo Provincial Government claimed that Mr Malema was awarded tenders in the Limpopo Province illegally: “It is obvious that Malema had been getting the tenders illegally. He (Malema) got those tenders by intimidating mayors and municipal managers that they would lose their jobs if they did not approve the appointments of his companies.”

3.5  

An article published by the *Sowetan* on 23 February 2010, stated that Mr Malema had told the media that he had resigned as a director of SGL in 2008, when he became the President of the ANCYL. He reportedly indicated that his resignation was supposed to have been attended to by his attorneys.

3.6  

On 2 March 2010, *City Press* published a follow-up on its article of 21 February 2010, which stated *inter alia* that:

“*City Press on Sunday published excerpts from company registration records showing that Malema owned 70 percent of SGL Engineering Projects, which built bridges and roads in Limpopo-some of which were washed away or collapsed soon after completion.*"
3.7 A picture of a “bridge” which was reportedly built for R27.9 million and in the Ga-Kgapane township and that allegedly collapsed, was also published. ¹

4. THE JURISDICTION OF THE PUBLIC PROTECTOR AND THE DECISION TO INVESTIGATE THE ALLEGED IMPROPER CONDUCT OF THE MUNICIPALITIES CONCERNED

4.1 The Public Protector is a constitutional body that was established by the Constitution to support constitutional democracy in the Republic of South Africa.

4.2 Section 182(1) of the Constitution provides that the Public Protector has the power:

4.2.1 To investigate any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;

4.2.2 To report on that conduct; and

4.2.3 To take appropriate remedial action.

4.3 In terms of section 181(2) of the Constitution, the Public Protector has the additional powers and functions prescribed by national legislation.

4.4 Section 6(4) of the Public Protector Act provides that the Public Protector shall be competent to investigate, *inter alia*, any alleged maladministration in connection with the affairs of government at any level and any alleged receipt of an improper advantage by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level.

4.5 The Public Protector therefore has the jurisdiction and the powers to investigate the alleged improper awarding of tenders by the municipalities to SGL, referred to in the complaints lodged by Messrs Roets and Kekana.

¹ See paragraph 16.5 below
4.6 The investigation also dealt with the governance and administration of procurement by the said municipalities to determine whether this generally complies with the prescribed legal framework relating to supply chain management in local government.

PART B
THE INVESTIGATION

5. THE SOURCES OF INFORMATION UTILISED DURING THE INVESTIGATION

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act and comprised the following:

5.1 The Sunday Times approached for assistance

5.1.1 The article published by the Sunday Times on 21 February 2010\(^2\) stated that:

“The Sunday Times has seen documents which show that SGL Engineering Projects and its subsidiaries, which Malema co-owns with Lesiba Gwangwa have been awarded dozens of contracts....” (emphasis added).

5.1.2 The Editor of the Sunday Times, Mr R Hartley, was approached telephonically and in writing (by electronic mail) on 16 April 2010 and requested to assist in the investigation by providing copies of the documents referred to in the said article. Although he received the request by electronic mail on the same day, Mr Hartley never responded.

5.2 Interviews conducted

The following persons were interviewed during the investigation:

5.2.1 Mr I Kekana, the Head of Communications in Limpopo of the Congress of the People and one of the complainants, on 4 May 2010; and

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\(^2\) See paragraph 2 above
5.2.2 Mr S Moloto, the former Premier of the Limpopo Provincial Legislature, on 10 May 2010.

5.3 Visits to municipalities

The offices of all the municipalities referred to in the complaints and the said newspaper reports were visited, copies the relevant tender documents obtained and interviews were conducted with the officials involved in the procurement processes, as indicated below.

5.3.1 Greater Letaba Municipality

5.3.1.1 The municipality was visited on 5 May 2010. The following officials were interviewed:

(a) The Municipal Manager, Mr I P Mutshinyali;
(b) The Chief Financial Officer (CFO), Mr E Mangabedi; and
(c) The Supply Chain Management (SCM) Manager, Ms Y Rahabala.

5.3.1.2 Several areas of the Ga-Kgapane street upgrading and drainage projects were also visited and observations made.

5.3.2 Greater Tzaneen Local Municipality

The Municipal Manager, Mr M Mangena, was interviewed at his office on 18 May 2010.

5.3.3 Mopani District Municipality

5.3.3.1 The following officials were interviewed at the Disaster Management Centre of the Municipality in Tzaneen, on 19 May 2010:

(a) The Municipal Manager, Mr T Maake;
(b) The CFO, Mr M M Mokgobolotho;
(c) The Director: Technical Services, Mr N L Ramathoka; and
(d) The Manager of the Project Management Unit, Ms I Letwaba.
5.3.3.2 The Modjadji Fire Station and Sewer projects were visited.

5.3.4 Vhembe District Municipality

5.3.4.1 The offices of the Municipality were visited on 23 June 2010 and the following officials interviewed:

(a) The Municipal Manager, Mr M Sigidi;
(b) The Acting CFO, Mr T D Mufamadi;
(c) The Manager: Technical Services, Mr N Tshivhengwa; and
(d) The Manager: SCM, Mr K M Nemaname.

5.3.5 Mutale Local Municipality

5.3.5.1 The Gundani Land Fill sites relating to the project involving SGL were visited and the following officials interviewed at the offices of the Municipality, on 24 June 2010:

(a) The Municipal Manager, Mr G Netshanze;
(b) The CFO, Ms Z Tshikundamalema;
(c) The Accountant: Expenditure, Mr A Tshinavhe; and
(d) The Technical Manager, Mr M Chauke; and
(e) The Manager: Corporate Finance, Mr S Ramuvhundu.

5.3.6 Makhado Local Municipality

5.3.6.1 During the visit to the offices of the Municipality, interviews were conducted with:

(a) The CFO, Mr R H Maluleke; and
(b) The Technical Manager, Mr T Ralulimi.
5.3.7 Greater Sekhukhune District Municipality

5.3.7.1 The following officials were interviewed at the offices of the Municipality on 5 July 2010:

(a) The CFO, Ms T Lengwate,
(b) The Chief Operations Officer, Ms M Ntshudisane;
(c) The Manager: Project Implementation Unit, Mr K De Jongh; and
(d) The Project Manager: Roads, Ms D Lekoloana.

5.3.7.2 One of the projects where SGL was involved, the Makduduthamage Taxi Rank, was visited on 7 July 2010.

5.3.8 Waterberg District Municipality

5.3.8.1 The offices of the Municipality were visited on 6 July 2010 and the following officials interviewed:

(a) The Municipal Manager, Mr M Letsoalo;
(b) The CFO, Ms N Laubser;
(c) The SCM Manager, Ms T Maluleke;
(d) The Technical Manager, Mr M Mathunyana; and
(e) The Legal Manager, Mr P Sebola.

5.3.9 Lepelle-Nkumpi Local Municipality

5.3.9.1 The following officials were interviewed during a visit to the offices of the Municipality, on 7 July 2010:

(a) The Acting Municipal Manager, Mr F Ramaphakela;
(b) The Acting CFO, Ms N Masemola;
(c) The SCM Manager, Mr T Manala; and
(d) The Technical Manager, Mr N Monaga.
5.3.9.2 Observations were also made from site visits to the upgrading of streets in Lebowakgomo, where SGL was involved.

5.3.10 Bojanala Platinum District Municipality

5.3.10.1 The offices of the Municipality were visited on 19 July 2010 and the following officials interviewed:

(a) The Acting Municipal Manager, Mr A Khuduge;

(b) The CFO, Mr I Louis; and

(c) The Director: Technical Services, Mr G H Daya.

5.4 Municipal records studied

5.4.1 All the relevant tender documents relating to the projects referred to in Part D below that were available in the records of the respective municipalities were perused. These included:

5.4.1.1 Bid documents;

5.4.1.2 Bid proposals;

5.4.1.3 Minutes of meetings of Tender Committees;

5.4.1.4 Minutes of meetings of Bid Specification Committees, Bid Evaluation Committees and Bid Adjudication Committees;

5.4.1.5 Letters of appointment;

5.4.1.6 Contracts;

5.4.1.7 Completion Reports; and

5.4.1.8 Reports of payments made.

5.4.2 The relevant documents are referred to in more detail in the references to the specific tenders in Part D below.
5.5 Supply Chain Management Policies and qualifications of Supply Chain Management Staff considered

The Supply Chain Management Policies and the records of the qualifications and experience of key staff members in the Supply Chain Management Units of all the municipalities were perused.

5.6 The public records of the Companies and Intellectual Property Registration Office

The records held by the Companies and Intellectual Property Registration Office (CIPRO) in respect of the following entities were perused:

5.6.1 Segwalo Consulting Engineers CC;
5.6.2 SGL Engineering Projects CC; and
5.6.3 SGL Engineering Projects (Pty) Ltd.

5.7 Assistance by the Office of the Auditor General

5.7.1 A telephonic interview was conducted with the Provincial Representative of the Auditor General in the Limpopo Province, on 7 April 2010.

5.7.2 The Limpopo Provincial Office of the Auditor General provided copies of the Reports of the Auditor General on the financial statements and performance information, for the past 4 financial years, of all the municipalities concerned, with the exception of the Bojanala Platinum Municipality, which is located in the North West Province.

5.7.3 The General Reports of the Auditor General on the audit outcomes of the Limpopo and North West local governments for the 2007/8 financial year were also studied.

5.8 Information obtained from the Construction Industry Development Board

The Construction Industry Development Board was approached on 16 July 2010, to obtain information regarding the obligation of Consulting Engineers doing business with the State, to register.
5.9 Legislation, regulations and other prescripts considered

5.9.1 The provisions of the following legislation were considered and applied, where appropriate, during the investigation:

5.9.1.1 Sections 182 and 217 of the Constitution;

5.9.1.2 The Public Protector Act;

5.9.1.3 The Municipal Finance Management Act, 2003 (MFMA);

5.9.1.4 The Preferential Procurement Policy Framework Act, 2000;

5.9.1.5 The Engineering Profession Act, 2000; and

5.9.1.6 The Engineering Profession of South Africa Act, 1990;

5.9.2 The relevant provisions of the Municipal Supply Chain Management (SCM) Regulations, published on 30 May 2005, and the Municipal Regulations on Minimum Competency Levels, published on 15 June 2007 were considered and applied.

5.9.3 Cognisance was further taken of directives issued by notice in the Government Gazette by the former Minister of Finance on 30 June 2005, relating to the implementation of the SCM Regulations and of the Municipal Supply Chain Model Policy, issued by means of a circular, published by the National Treasury on 25 August 2005.

PART C

INFORMATION OBTAINED FROM BID PROPOSALS, CIPRO, THE ENGINEERING COUNCIL OF SOUTH AFRICA AND THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD (CIBD)

6. THE COMPANY PROFILE OF SGL

6.1 Documents submitted by SGL Engineering Projects CC as part of bid proposals that were perused during the investigation indicate that this entity was originally established by Mr L C Gwangwa under the name Segwalo
Consulting Engineers, in 2002. It was registered under this name as a close corporation with CIPRO on 14 January 2002.

6.2 The registered members of Segwalo Consulting Engineers CC were Messrs L C Gwangwa, J A Khedzi and C Kawanga and its industrial classification was recorded as “civil engineering and project managers”.

6.3 It was further established that Segwalo Consulting Engineers CC submitted several bid proposals under their name, but trading as SGL Consulting Engineers.

6.4 SGL Engineering Projects was registered as a close corporation with CIPRO on 28 May 2008. Its principal business was described as ‘engineering and transport” and Mr L C Gwangwa was registered as the only member.

6.5 The close corporation, SGL Engineering Projects CC was converted into a private company on 12 May 2009. Its Memorandum of Association filed with CIPRO in terms of the Companies Act, 1973, stated its main business as “engineering and transport”. The share capital of the company was recorded as R1000, divided into 1000 ordinary shares of R1 each. Mr L C Gwangwa signed the Memorandum as a director taking 300 shares, on 6 May 2009. Mr J S Malema signed the Memorandum as the only other director of the company, on 6 May 2009, taking 700 shares. Mr Malema therefore obtained 70% of the shares in the company.

6.6 Mr J S Malema’s resignation as a director of the company was recorded in the records of CIPRO on 29 March 2010.

6.7 For the purposes of this report, a reference to “SGL” should therefore be regarded as a reference either to Segwalo Consulting Engineers trading as SGL Consulting Engineers, or SGL Engineering Projects CC, or SGL Engineering Projects (Pty)Ltd, depending on the date referred to.
7. REGISTRATION WITH THE ENGINEERING COUNCIL OF SOUTH AFRICA

7.1 Certificates ostensibly issued by the Engineering Council of South Africa (ECSA) and found amongst the tender documents perused during the investigation, indicate that Mr L C Gwangwa of SGL was registered with the Council as a Candidate Engineering Technician on 3 February 2004 and Mr C Kawanga as a Professional Engineer, on 18 September 1997, in terms of the Engineering Profession Act, 2000 (which replaced the Engineering Profession of South Africa Act 1990).

7.2 This information was verified from the database of ECSA during the investigation.

8. THE SCOPE OF SERVICES AND TARIFF OF FEES PRESCRIBED FOR CONSULTING ENGINEERS

8.1 Section 34(2) of the Engineering Profession Act, 2000 provides that Engineering Council must annually determine guideline professional fees to be published in the Government Gazette. The provisions of the Act came into operation on 1 December 2000 and apply also to consulting engineers.

8.2 The published guideline professional fees were referred to in the relevant bid proposals and documents that relate to the tenders that were awarded by the municipalities to SGL.

9. REGISTRATION WITH THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

9.1 It was suggested in one of the complaints investigated that SGL should not have been awarded tenders by the municipalities concerned as "they were not CIDB compliant"

9.2 In this regard, it was established that the Construction Industry Development Board (CIDB) was established to promote a regulatory and development framework for the construction industry. Construction companies and entities
that render construction services to the State have to be registered with the Board, but it is not a requirement for consulting engineers, such as SGL.

PART D

THE EVIDENCE AND INFORMATION OBTAINED FROM THE INVESTIGATION

10. COMMON CAUSE

From the investigation, it was established that the following could be regarded as common cause:

10.1 The complainants, on the basis of reports published by the media, requested that the Public Protector investigate the propriety of tenders that were awarded to SGL by the municipalities referred to in this report. The only basis for the suspected improper conduct by the municipalities was the alleged involvement of Mr J Malema in SGL and the assumption that officials might have been improperly influenced in the procurement process. No details of any such incidents were however provided by the newspaper reports or the complainants.

10.2 SGL entered into a total of 27 contracts with the respective municipalities over a period from 2004 to 2009.

10.3 The bid proposal documents of SGL relating to the tenders awarded to them found in the records of the municipalities concerned, contained valid Tax Clearance and ECSA Registration Certificates as were required.

10.4 Mr J Malema’s name does not appear in any of the tender documentation that was perused during the investigation.

10.5 No objections against any of the tenders that were awarded to SGL were recorded in the records of the municipality.

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3 See paragraph 42.5 below. None of the tender documents perused during the investigation were submitted in the name of SGL Engineering Projects (Pty)Ltd.
10.6 The fees charged by consulting engineers are prescribed by means of a guideline issued annually by ECSA. In the evaluation by the municipalities of the tenders submitted by consulting engineers, such as SGL, that were considered during the investigation, price played an insignificant role as it could only be based on estimates and the ultimate fee charged could not exceed the prescribed fee.

The District Municipality in the North West Province

11. Bojanala Platinum District Municipality

11.1 The alleged improper conduct

The newspaper reports referred to by the complainants claimed that the Municipality awarded a tender to SGL, and that the procurement process might have been improperly influenced due to Mr Malema’s interest in the company. No further details in respect of the tender referred to were provided.

11.2 The Municipality

The Bojanala Platinum District Municipality is one of four District Municipalities in the North West Province and comprises the local municipalities of Kgetleng Rivier, Madibeng, Moses Kotane, Moretele and Rustenburg. The Municipality is located in Rustenburg, approximately 100 km from Pretoria.

11.3 The Kutlwanong Project

11.3.1 In January 2005, the Municipality published an advertisement inviting proposals from consulting engineers for the design, documentation, and supervision of the upgrading of the sport facilities at the Kutlwanong School.

11.3.2 SGL was one of 8 tenderers that submitted proposals.
11.3.3 An evaluation of the tenders was conducted and a report submitted to the Bid Evaluation Committee, on 16 February 2005. The evaluation took into account functionality, accountability, previous experience, time frames price and the prescribed preferential procurement framework.

11.3.4 From the score sheets, it was established that SGL scored the second highest points overall, but that it was recommended to be awarded the contract as the previous experience of the entity that scored 2 points higher, was doubtful.

11.3.5 The Minutes of the meeting of the Bid Evaluation Committee, held on 16 February 2005, stated that the Evaluation Report referred to above, was noted and the recommendation of the awarding of the tender to SGL accepted. The contract between the Municipality and SGL was entered into on 1 July 2005.

11.3.6 The project was completed in March 2006. According to the Manager: Technical Services of the Municipality, the work performed by SGL was sustainable and to the satisfaction of the Municipality. The funds held in retention were subsequently paid to them.

11.4  The Klipvoorstad and Kwarrikraal Bridge Projects

11.4.1 The Bid Specification Committee of the Municipality considered technical assessments and specifications submitted by the Department of Technical Services relating to the design and construction supervision of the repair of bridges in the Klipvoorstad and Kwarrikraal areas, on 29 April 2008.

11.4.2 An advertisement inviting proposals from consulting engineers for the project was published on 30 April 2008.

11.4.3 Three bids were received, including one from SGL,

11.4.4 The Bid Evaluation Committee considered the 3 bids on 27 May 2008 and awarded points for functionality, price and HDI representation. SGL scored
the highest points and the Committee recommended that the tender be awarded to them.

11.4.5 On 9 June 2008, the Bid Adjudication Committee resolved to accept the recommendation of the Bid Evaluation Committee and recommended to the Municipal Manager that SGL is appointed.

11.4.6 The contract between the Municipality and SGL was signed on 26 August 2008.

11.4.7 The records of the Municipality show that the project was successfully completed in October 2009. According to the Manager: Technical Services, the work done was of a high standard.

11.4.8 Both projects formed part of the Integrated Development Plan (IDP) of the Municipality.
12. **Greater Sekhukhune District Municipality**

12.1 **The alleged improper conduct**

The newspaper reports referred to in paragraph 2 above, did not mention the Greater Sekhukhune District Municipality. One of the complainants, Mr I Kekana, however, referred to the Municipality as one where the procurement process relating to tenders that might have been improperly influenced.

12.2 **The Municipality**

The Sekhukhune District covers approximately 13 264 km$^2$, most of which is rural. The main urban centres are Groblersdal, Marble Hall, Burgersfort, Jane Furse, Ohrigstad, Steelport and Driekop. It includes approximately 546 villages and 5 local municipalities. The Municipality was established in December 2000.
12.3 The contracts/tenders awarded to SGL

12.3.1 It was established that in all 6 contracts had been awarded to SGL by the Municipality, over a period from 2005 to 2009.

12.3.2 It must be noted that the tender documentation obtained from the Municipality was incomplete in certain respects, which hampered the investigation. The CFO indicated that the Municipality recently moved to its current location and that some of the documents might have been misplaced in the process. However, the officials that were interviewed were in a position to provide much of the outstanding information that could not be supported by documentation.

12.4 The Mamasetlele and Marble Hall Waste Water Projects

12.4.1 SGL was appointed as consulting engineers and project managers in respect of 2 projects of the Municipality, in August 2005. Both formed part of a comprehensive list of projects that the Municipality embarked upon, during 2005/6. At the time, the end user Department selected an appropriate service provider from an approved list and submitted recommendations to the Tender Committee for approval.

12.4.2 The Tender Committee approved, on 19 August 2005, the appointment of SGL for a project, only referred to as “Mamasetlele” and Phase 1 of the upgrading of the Marble Hall Waste Water Treatment Works. The budgeted amounts for the projects were R1 million and R2 733 869.51, respectively.

12.4.3 According to the Memorandum submitted by the Department of Technical Services to the Tender Committee, these projects were prioritised in the IDP of the Municipality.

12.4.4 The Manager: Project Implementation of the Municipality indicated during the investigation that the Marble Hall project was completed satisfactorily. No further information relating to the said 2 contracts could be obtained.

12.4.5 Both projects were provided for in the IPD of the Municipality for the relevant financial year.
12.5  The Makduduthamaga Taxi Rank Project

12.5.1 The Municipality awarded a tender for the rendering of professional services relating to project management and the design, adjudication of tenders for and supervising of the construction of a taxi rank at Makduduthamaga.

12.5.2 Unfortunately, the only document that could be found during the investigation in connection with this project, was the letter of appointment that was sent to SGL by the Manager: Technical Services and the Municipal Manager, on 3 March 2006.

12.5.3 According to the Manager: Project Implementation of the Municipality, the construction of the taxi rank was completed in October 2009. There were however questions about the design of the structure of the roof and the project was not signed off as the design and construction of improvements to the roof will have to be effected from the amount that was held in retention.

12.5.4 This project, also known as the Apel Cross Taxi Rank, was provided for in the 2007/08 IDP of the Municipality
12.6 The Mmotwaneng/Blydeplaas Road Project

12.6.1 The only document that could be provided by the Municipality in respect of this tender was a letter of appointment addressed to SGL by the Municipal Manager, on 21 August 2008. It stated, *inter alia*, that SGL was appointed to design and manage the implementation of the project, the total budget for which was R 3 million.

12.6.2 The Manager: Project Implementation indicated during the investigation that this project was completed to the satisfaction of the Municipality, in November 2009, but that the retention period of 1 year has not expired.

12.6.3 This project was provided for in the 2008/09 IDP of the Municipality

12.7 The Zaaiplaas bulk water and reticulation project

12.7.1 In this regard only the Minutes/Reports of the Bid Adjudication and Bid Evaluation Committees and the letter of appointment could be found. The information contained in these documents indicated that the advertisement for proposals from consulting engineers for the design and implementation of this project was published on 7 September 2008.

12.7.2 The bids, including that of SGL, that were received totaled 22, 13 of which were disqualified on the basis of incomplete bid documentation.

12.7.3 At its meeting held on 27 November 2008, the Bid Evaluation Committee awarded points for experience(functionality) and HDI representation. SGL scored the highest points and it was recommended that they be awarded the tender. The recommendation of the Bid Evaluation Committee was supported by the Bid Adjudication Committee on 13 December 2008.

12.7.4 SGL was informed of their appointment for this project by the Municipal Manager on 5 December 2008.

12.7.5 The project is currently at the feasibility study phase. It was provided for in the 2008/09 IDP of the Municipality.
12.8 The Montshana water project

12.8.1 Invitations to submit proposals for professional engineering services to the Municipality in connection with the design and implementation of several infrastructural related water projects were advertised on 20 and 20 February 2009.

12.8.2 The projects concerned envisaged providing on-site water infrastructure solutions to 6 villages located in the district, including Montshana that has a population of approximately 518 households.

12.8.3 Numerous companies and other entities of consulting engineers submitted proposals for the different projects. SGL only tendered for the Montshana project, together with 19 other bidders and their proposal was submitted on 12 March 2009.

12.8.4 The Bid Evaluation Committee considered the tenders for all 6 the projects on 19 June 2009. 6 bidders were disqualified in respect of the Montshana project by the Committee due to incomplete tender documents submitted.

12.8.5 The Committee scored points for “quality and experience” and for “HDI components”.

12.8.6 SGL scored the highest points and it was resolved to recommend that the tender for the Montshana project be awarded to them.

12.8.7 On 20 June 2010, the Bid Adjudication Committee supported the recommendation of the Bid Evaluation Committee and SGL was informed of the awarding of the tender to them on 30 July 2009. The budgeted amount for the whole project was stated as R1 808 618.00.

12.8.8 The Manager: Project Implementation of the Municipality indicated that the designs for the Montshana project were completed in June 2010, but that it is envisaged that the construction will only be attended to in the current financial year. He further expressed his satisfaction with the work done by SGL on this project to date.

12.8.9 This project was provided for in the 2008/09 IDP of the Municipality
12.9  The Malebitsa to Driefontein Road Project

12.9.1 The Municipality published an advertisement inviting proposals for professional engineering services for 6 road projects to be implemented in the 2009/10 financial year, on 19 and 20 July 2009.

12.9.2 In total, 114 bids were received, some only in respect of certain of the projects, but the majority in respect of all. SGL submitted a proposal in respect of all the advertised projects, on 29 July 2009.

12.9.3 The Bid Evaluation Committee considered all the bids for the 6 projects on 29 September 2009. Only 39 of the submitted bids, including that of SGL, qualified for evaluation. Points were awarded in respect of each of the projects for experience, price and HDI representation.

12.9.4 Although they submitted proposals for all 6 projects, SGL was only successful in respect on 1, i.e. the planning and design of the Malebitsa to Driefontein Road.

12.9.5 The Bid Adjudication Committee approved the recommendations of the Bid Evaluation Committee on 1 October 2009 and SGL was informed of their appointment by the Municipal Manager on 15 October 2009.

12.9.6 It was noted during the investigation that the bid submitted by SGL was in the name of *SGL Engineering Projects CC* and signed on 29 July 2009. Although SGL indicated in the *Enterprise Questionnaire*, that formed part of the bid documentation, that it was a company, the registration number of SGL Engineering Projects CC was provided as the company registration number. As indicated in paragraph 6 above, SGL Engineering Projects CC was converted into a private company on 12 May 2009.

12.9.7 The bid document also did not include a resolution by the Board of Directors of SGL Engineering Projects (Pty) Ltd, as was required.

12.9.8 Annexure A to the Technical Proposal that formed part of the Bid Documentation was supposed to contain the company registration certificate. Instead, what was attached was the Registration Certificate of SGL Engineering Projects CC, indicating Mr L C Gwangwa as its only member.
The Tax Clearance Certificate that was attached as Annexure B, was valid and issued in the name of SGL Engineering Projects, but containing the company registration number and not that of the close corporation.

12.9.9 Annexure C contained the professional indemnity insurance renewal schedule, issued in the name of the said close corporation. According to the document that was submitted, it expired on 30 June 2009. In this regard, it was noted that the Municipal Manager requested proof of professional indemnity insurance from SGL, as a special condition, in his letter of appointment, dated 16 October 2009.

12.9.10 At the time of the investigation, the project was still in its design stage.

12.9.11 The project was provided for in the 2009/10 IDP of the Municipality.

13. Waterberg District Municipality

13.1 The alleged improper conduct

According to the newspaper reports referred to in paragraph 2 above, a tender to the value of R2,1 million for the upgrade of a sewer was awarded to SGL by the Municipality. It was suggested that the awarding of the contract was improper as the procurement process might have been improperly influenced due to the interest of Mr Malema in SGL.

13.2 The Municipality

The Municipality is located in the town of Modimolle, which is situated in the eastern part of the Limpopo Province. It was established in 2000 and provides services in the areas of 6 local municipalities. The economic activities of the district are predominantly mining and agriculture.
13.3  The Northam Sewer Project

13.3.1 Early in 2008, the Municipality published an advertisement inviting professionally registered civil engineering consultants to submit proposals for the design, supervision and management of several projects, including the construction of “Northam Sewer Extensions 5 and 7.” The relevant area of Northam was still relying on a septic tank sewerage system that had to be upgraded. The closing date for submissions was 22 February 2008.

13.3.2 SGL submitted 1 of 9 proposals that were considered by the Bid Evaluation Committee at their meeting held on 26 February 2008. The Minutes of the meeting indicate that 3 proposals were eliminated due to incompleteness. The focus of the points scored was on the experience of key staff of the tenderer, company experience and the understanding of the scope of the work. HDI equity and locality were also taken into account. One of the remaining 6 tenderers was eliminated as its proposal could not reach the minimum score of 45 points required.

13.3.3 The score sheets indicate that SGL scored the highest and the Bid Evaluation Committee recommended that the contract be awarded to them. The budgeted amount for the project was R10 million.

13.3.4 The Bid Adjudication Committee met on 5 March 2008 and supported the recommendation of the Bid Evaluation Committee that SGL should be awarded the contract.

13.3.5 SGL was informed of the awarding of the tender to them on 7 March 2008.

13.3.6 According to the Technical Manager of the Municipality, the project complied with the requirements, was completed to the satisfaction of the Municipality in June 2009 and the retention payment released in June 2010.

13.3.7 It was included in the 2007/8 IDP of the Municipality
14. Vhembe District Municipality

14.1 The alleged improper conduct

The newspaper reports referred to by the complainants claimed that the Municipality awarded a tender to SGL, and suggested that the awarding of the contract might have been improperly influenced due to Mr Malema’s interest in the business. No further details in respect of the contract were provided.

14.2 The Municipality

The Municipality has its headquarters in Thohoyandou, in the northern part of the Limpopo Province. It was established in 2000 and provide services in the areas of 4 local Municipalities, i.e. Makhado, Musina, Thulamela and Mutale. The area of the Municipality covers 21 407 km², has a population of 274 480 households and is predominantly rural.

14.3 The Mhinga/Lambadani Bulk Water Supply Project

14.3.1 On 6 March 2009, the Municipality published an advertisement inviting professional service providers to submit proposals for the design and implementation of, inter alia, the Mhinga/Lambadani Bulk Water Supply project. SGL was one of 19 service providers that submitted bids for the project, only one of which was eliminated because of a failure to submit Tax Clearance and Company Registration Certificates.

14.3.2 The Bid Adjudication Committee met on 9 April 2009. The evaluation criteria applied by the Committee focussed mostly on functionality, but also included HDI considerations.

14.3.3 SGL’s proposal received the highest overall score and the Bid Evaluation Committee recommended that the tender be awarded to them.
14.3.4 At its meeting held on 6 May 2010, the Bid Adjudication Committee resolved that: “The report from the evaluation committee was considered. The committee verified reasons for disqualifications provided by the evaluation committee and found that the disqualification and the points were fairly scored. The committee recommended the bid to be awarded to SGL Engineering Projects and the rate will be determined by ECSA guidelines.”

14.3.5 The Municipal Manager approved the recommendation of the Bid Adjudication Committee on 8 May 2009. SGL was informed of the award on 15 May 2009 and a contract was signed on 15 September 2009.

14.3.6 According the Manager: Technical Services of the Municipality, the design by SGL is of a high standard and it was completed within the agreed timelines. The Municipality has recently appointed a contractor for the construction of the project.

15. **Mopani District Municipality**

15.1 **The alleged improper conduct**

The newspaper reports referred to by the complainants stated that the Municipality awarded a tender for a sewer reticulation project to the value of R39,3 million to SGL and suggested that the procurement process might have improperly influenced due to Mr Malema’s interest in SGL.

15.2 **The Municipality**

The Municipality is located in the north eastern part of the Limpopo Province. The population of its mostly rural area is estimated at 1,2 million people. It includes 5 local municipalities.

15.3 **The contracts/tenders awarded to SGL**

15.3.1 It was established that the Municipality has awarded 10 contracts/tenders to SGL over a period from 2004 to 2009. The details of the projects are set out in the table below:
<table>
<thead>
<tr>
<th>PROJECT NAME</th>
<th>DATE OF APPOINTMENT</th>
<th>VALUE</th>
<th>PROFESSIONAL FEES</th>
<th>DATE OF COMPLETION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Zava Village Water</td>
<td>6 October 2004</td>
<td>R 2 860 000.00</td>
<td>R 577 507.16</td>
<td>6 August 2006</td>
</tr>
<tr>
<td>2. Mahale Water</td>
<td>8 October 2005</td>
<td>R 3 300 000.00</td>
<td>R 541 275.72</td>
<td>8 January 2006</td>
</tr>
<tr>
<td>3. Dzumeri Road Phase 1-2</td>
<td>23 October 2006</td>
<td>R 3 870 957</td>
<td>R 1 416 071.61</td>
<td>30 June 2007</td>
</tr>
<tr>
<td>4. Maseke Road Phase 1-5</td>
<td>20 October 2006</td>
<td>R 15 782 937</td>
<td>R 3 118 475.07</td>
<td>18 March 2009</td>
</tr>
<tr>
<td>5. Modjadji Sewer</td>
<td>14 March 2007</td>
<td>R23 446 346</td>
<td>R6444157.37</td>
<td>31 May 2010</td>
</tr>
<tr>
<td>8. N’wamita wa Community Hall</td>
<td>1 July 2005</td>
<td>R4 000 000</td>
<td>R 1 289 813</td>
<td>Project delayed. First part completed on 8 May 2010</td>
</tr>
</tbody>
</table>
10. Upgrading of Nkowankowa sewer

<table>
<thead>
<tr>
<th>Date</th>
<th>Phase</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 November 2009</td>
<td>Planning stage</td>
<td>Estimated at R 1 mil</td>
</tr>
</tbody>
</table>

Construction of the N’wamitwa Community Hall

15.3.2 The Municipal Manager explained that the Municipality was identified by the National Treasury as a low capacity municipality for the purposes of the implementation of the MFMA, which meant that it was exempted from the supply chain management requirements of the Act and the SCM Regulations until 1 July 2006. Prior to this date, the Municipality selected service providers from a database. A recommendation was made by the Technical Director and submitted to the Tender Committee for consideration. This process was confirmed by the Minutes of the relevant Tender Committee Meetings held during this period.

15.3.3 However, it was noted that the same process was followed in respect of the projects numbered 3-7 and 9 in the table above, despite the fact that the Municipality was by then obliged to have procured the services concerned in

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4 See more detail reference to this in paragraph 27 below.
compliance with the Act and the Regulations.

15.3.4 The Municipal Manager further advised in this regard in that the Municipality experienced difficulties to implement the said prescripts at the time, due to capacity constraints. These deficiencies were also highlighted by the Auditor General and the Municipality managed to comply with the Act and the Regulations as from 2008.

15.3.5 It was further emphasised that the procurement process followed prior to the implementation of the prescribed supply chain management process, was fair, transparent and competitive and was applied in the cases of all projects and not only those where SGL was involved.

15.3.6 In the case of the project numbered 10 in the table above, it was established that the Bid Specification Committee of the Municipality met on 2 July 2009 and endorsed the terms of reference that were developed for the project. It was recommended that the accounting officer should continue with the advertisement for the invitation of bids.

15.3.7 SGL submitted a proposal for the planning, design and project management of the upgrading of the Nkowankowa Sewerage Plant on 28 July 2009.

15.3.8 The Bid Adjudication Committee resolved on 29 November 2009, to recommend that the tender is awarded to SGL.
15.3.9 It was noted that Annexure A to the Bid Proposal that formed part of the bid documents, was supposed to contain the Company Registration Certificate. Instead, what was attached was the Registration Certificate of SGL Engineering Projects CC, indicating Mr L C Gwangwa as its only member. The Tax Clearance Certificate that was attached as Annexure B, was valid and issued in the name of SGL Engineering Projects but contained the company registration number, and not that of the close corporation.

15.3.10 The bid document also did not include a resolution by the Board of Directors of SGL Engineering Projects (Pty) Ltd, as was required.

15.3.11 Annexure C contained the professional indemnity insurance renewal schedule, issued in the name of the said close corporation. According to the document that was submitted, it expired on 30 June 2009. Professional indemnity insurance was however not a key requirement for bid qualification and is a matter that can be addressed after a tender is awarded.

The Local Municipalities in the Limpopo Province

16. **Greater Letaba Local Municipality**

16.1 **The alleged improper conduct**

The newspaper reports referred to in paragraph 2 above, claimed that a contract to the value of R27,9 million for street paving and storm water drainage was awarded to SGL by the Municipality. It was suggested that the procurement process might have been improperly influenced due to Mr Malema’s interest in SGL.

16.2 **The Municipality**

16.2.1 The Municipality is located at Mojadjiskloof, formerly known as Duiwelskloof, in close proximately to the town of Tzaneen, in the Limpopo Province. Much of its area is mountainous and consists mainly of commercial farming, traditional communities and villages.

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5 See paragraph 6 above
16.2.2 The Municipality was proclaimed in 1990 and constituted after the 2000 local government elections.

16.3 The first tender

16.3.1 The Municipality was allocated a Municipal Infrastructure Grant (MIG), in the amount of R 11 576 000, by the Limpopo Department of Provincial and Local Government (the Department) in the 2006/7 financial year. The grant was earmarked for the upgrading of streets in the Ga-Kgapane area.

16.3.2 Due to capacity and infrastructure challenges, the Municipality failed to implement the project timeously and by 31 October 2006, no expenditure of the grant had taken place.

16.3.3 On 3 November 2006, the Municipality advertised an invitation for tenders from consultants for the design, supervision and project management in connection with the construction and drainage of streets in Ga-Kgapane. The closing date for the tender was 17 November 2006.

16.3.4 The Municipal Manager was informed by the Department on 14 November 2006, that due to the under performance of the Municipality in respect of the grant, the transfer of funds from November 2006 would depend on the submission of a revised payment schedule and an action plan on how the Municipality planned to accelerate the provision of services to its community for the remainder of the financial year concerned.

16.3.5 The CFO and other senior managers of the Municipality attended a workshop presented by the Department, on 12 and 13 December 2006, where issues such as the possible withdrawal of grants and the expediting of the tender and procurement processes, were discussed.

16.3.6 Following the directives issued at the workshop, the CFO submitted a memorandum to the Municipal Manager on 14 December 2006, in which he highlighted the fact that the Department was about to stop the transfer of funds in terms of the MIG to the Municipality and that it would in any event not be possible for the Municipality to complete the project in Ga-Kgapane by the
end of the financial year that applied to Department, which was 31 March 2007.

16.3.7 The CFO recommended that the procurement of the services of the consultant be done by means of a 2 stage bidding process, “in terms of paragraph 36(1)(a)(v) of the Supply Chain Management Policy of the Municipality.”

16.3.8 The Municipal Manager agreed and submitted a memorandum on the same day to the Executive Mayor of the Municipality, in terms of paragraph 36 of the said Policy, in which he recommended that the consultant is appointed by means of a 2 stage bidding process, due to the urgency of the matter.

16.3.9 On 15 December 2006, the Executive Mayor approved the memorandum of the Municipal Manager. He added a note stating that: “Urgently deal with the matter to avoid MIG being reversed & process for EXCO & Council consideration.”

16.3.10 One of the proposals received for the project was that of SGL.

16.3.11 The meeting of the Tender Adjudication Committee was held on 18 December 2006.

16.3.12 It was recorded in the Minutes of the meeting, inter alia, that:

(a) In terms of the normal procurement process, the Bid Evaluation Committee should have evaluated the tenders submitted and made a recommendation to the Bid Adjudication Committee;

(b) Due to the risk of the MIG being withdrawn, paragraph 36 of the Supply Chain Management Policy was applied, in terms of which the accounting officer could deviate from the prescribed process; and

(c) “It was also noted that, as per item above, all in sundry (sic) are invited by the Accounting Officer to assist in the appointment of consultants on a two stage bidding process (turn key), and that
the decision to appoint will be collective and binding in (sic) all who were part of the adjudication process.”

16.3.13 The Bid Adjudication Committee disqualified 5 proposals due to incompleteness of the submitted documentation. One of the remaining 7 tenderers was also disqualified because of a project that it was involved in for the Municipality, which was not completed.

16.3.14 The Committee resolved to appoint SGL “due to the fact that their price was the lowest and that their company has experience and that they are capable to do the work (functionality).

16.3.15 SGL and the Municipality signed a contract for the project on 5 February 2007.

16.3.16 By March 2007, SGL was experiencing a number of challenges that had an impact on the costs of the project. A geotechnical report was submitted that indicated that the mountainous topography of the area where the project was implemented, the condition and type of soil, extensive soil erosion, the high rainfall in the area and the fact that no proper drainage system had been in place before, warranted more compaction in certain areas of the project to make it viable.

16.3.17 Based on the technical report of the consulting engineers, the Municipal Manager submitted a request for additional funding from Department, on 12 March 2007, which was approved.

16.3.18 The project was completed to the satisfaction of the Municipality on 31 October 2007. It proved to have been sustainable and the streets have been in use by the community ever since.
16.4 The second tender

16.4.1 In April 2007, the Municipality published an advertisement inviting tenders for a number of projects that included the provision of engineering services for paving and drainage on 6 kilometers of roads at Ga-Kgapane. This project represented phase 2 of the upgrading of roads and drainage in the relevant area.

16.4.2 SGL was one of 18 tenderers that submitted proposals. The Bid Evaluation Committee of the Municipality met on 19 June 2007 and resolved to award the tender to SGL “as they are already on a similar project in the Municipality, and that they are doing a satisfactory job.”

16.4.3 It was noted from the score sheet of the Committee that SGL scored high on functionality, locality, and HDI representation.

16.4.4 The Bid Adjudication Committee of the Municipality considered the recommendations of the Bid Evaluation Committee on 11 July 2007 and resolved that the tender concerned should be awarded to SGL.
16.4.5 A contract for the provision of professional engineering services was concluded with SGL on 23 October 2007.

16.4.6 The upgrading of roads in Ga-Kgapane was included in the Integrated Development Plans of the Municipality for 2006 and 2007 as new infrastructure development.

16.4.7 Phase 2 of the paving and drainage of streets in Ga-Kgapane was completed to the satisfaction of the Municipality in August 2009.

16.5 The sustainability of the projects and the “bridge” that collapsed

16.5.1 Observations made during the investigation of phases 1 and 2 of the paving and drainage of streets projects in Ga-Kgapane indicated that the work done was of a satisfactory quality and that it substantially improved the lives of the community concerned. Many of them previously clearly had no or difficult access to their homes and public facilities during the raining season, as the roads were really only muddy paths.

16.5.2 It was also observed that due to the mountainous area and the lack of proper drainage, many houses in the low lying areas were previously flooded and severely damaged. All the roads have not yet been paved and drainage of especially storm water will remain a challenge for some time to come.  

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6 See the reference to this in the geotechnical report referred to in paragraph 16.3.16 above.
16.5.3 A picture was published by City Press of a bridge reportedly built for R27,9 million that collapsed. 

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7 See paragraph 3.7 above
16.5.3 At the time of the visit to the particular site during the investigation, construction workers were installing storm water piping and repairing the damage that was clearly done to the paving of the street concerned. The Municipal Manager explained that the damage was caused by storm water that came down hill in the area during severe rain storms and accumulated at the particular spot. Although that section of the street formed part of the project referred to above, it was envisaged at the time that the drainage that was constructed would be sufficient. The volume of storm water that actually accumulated at the particular point where the damage occurred, could not reasonably be determined at the time when the project was designed and constructed. However, it was later established that further storm water measures were required to deal with extreme situations.

16.5.4 What was clear from the observations made at the site concerned, was that there was no bridge that collapsed. The damage caused to the part of the road that was paved, was minimal and future damage would be prevented by the extra storm water measures that have been taken. The remedial work was performed by the contractor responsible for the construction, was funded from the retention that had not been paid, and therefore resulted in no extra costs to the Municipality.
17. Greater Tzaneen Local Municipality

17.1 The alleged improper conduct

The newspaper reports referred to by the complainants claimed that the Municipality awarded a tender amounting to R28 million for several municipal infrastructure projects to SGL. It was suggested that the procurement process might have been improperly influenced due to the interest of Mr Malema in SGL.

17.2 The Municipality

The area of the Greater Tzaneen Local Municipality extends from Haenertsburg in the west to Rubbervale in the east and just south of Modjadjiiskloof to Trichardtsdal in the south, in the Limpopo Province. It encompasses 125 rural villages, where almost 80% of its households reside. The area is characterized by extensive and intensive farming activities.
17.3 The Nkowankowa Cemetery Road Project

17.3.1 It was established that the Municipality has not awarded any tender to SGL, as was alleged.

17.3.2 The Municipality qualified for and was awarded a Neighbourhood Development Partnership Grant (NDPG), by the National Treasury in 2007. The primary focus of the NDPG is to stimulate and accelerate investment in poor, underserved residential neighbourhoods by providing technical assistance and capital grant financing for municipal projects that have either a distinct private sector element or an intention to achieve this.

17.3.3 The NDPG is structured in the form of a conditional grant to municipalities through the Division of Revenue Act, 2007 and is administered by the Neighbourhood Development Programme Unit of the National Treasury.

17.3.4 According to the Funding Agreement for Technical Assistance and/or Capital Grant Funding, that was concluded between the Neighbourhood Development Programme Unit of the National Treasury and the Municipality, the grant amounted to R84,8 million and was awarded for a project entitled: “Tzaneen MPCC/Thusong Service Centres”. The project time frame started in May 2007 and will run until May 2013.

17.3.5 R4,8 million of the total amount of the grant was earmarked for technical assistance.

17.3.6 The Municipality appointed PondoCrop Socio-Economic Development Services (Pty)Ltd (PondoCrop) on 13 July 2009, as the project manager for technical assistance on the project concerned.

17.3.7 PondoCrop, on its part, appointed SGL as consulting engineers, to provide a design, technical documentation and supervision for the upgrading of the road leading to the Nkowankowa Cemetery, as part of the project relating to the NDPG referred to above.
17.3.8 The Municipality appointed the contractors to perform the construction directly. No contractual relationship exists between the Municipality and SGL.

17.3.9 The upgrading of the road to the Nkowankowa Cemetery was still in progress at the time of the investigation. From observations made on the sight and the information provided by the Manager: Technical Services of the Municipality, the services rendered by SGL in respect of the design, technical assistance and supervision, were satisfactory.

17.3.10 The upgrading of the access road to the Nkowankowa Cemetery was included in the IDP of the Municipality and initially targeted for the 2007/8 financial year.

18. Mutale Local Municipality

18.1 The alleged improper conduct

The newspaper reports referred to by the complainants claimed that the Municipality awarded a tender to SGL, and suggested that the awarding of the contract might have been improperly influenced due to Mr Malema’s interest in SGL. No further details in respect of the tender were provided.

18.2 The Municipality

The Municipality is located in the far north eastern corner of the Vhembe District in the Limpopo Province. The eastern boundary of its area is formed by the Kruger National Park. The Municipality shares borders with the Musina Local Municipality and Zimbabwe to the north and Mozambique to the east. It serves mainly rural and traditional communities with a population of 131,781 spread over 150 villages.
18.3 The Gundani Land Fill Project

18.3.1 On 9 June 2006, the Municipality published an advertisement inviting proposals from interested consultants in the fields of civil engineering and environmental management for the development of a new land fill (waste disposal) site at Gundani.

18.3.2 The project was to be funded from a MIG in the amount of R1,2 million. SGL submitted a tender for the design, technical advice and supervision of the project, together with Nzumbululo Heritage Solutions, who would be responsible for the environmental management of the project.

18.3.3 From the Minutes of the relevant Tender Committee meeting, held on 30 June 2006, it was established that 8 proposals were considered. The main focus was on functionality, i.e. relevant projects carried out in the past, past experience and registration with professional bodies.

18.3.4 The Committee resolved as follows:

“In terms of the Preferential Procurement Policy Zitholele Consulting attained the highest points and SGL & Nzumbululo Heritage scored the second highest points. It is therefore recommended that SGL & Nzumbululo Heritage be awarded contract M/05/06/02 as the bidder who scored the highest points is not registered with a professional body of engineers.”

18.3.5 SGL and Nzumbululo Heritage Solutions were appointed as consultants for the project on 30 June 2006.

18.3.6 Shortly after the implementation of the project started, it was discovered that

The current waste disposal site
the land that was identified for the construction of the land fill site was unsuitable from an environmental management perspective. A new site had to be found in the area, with the assistance of traditional leaders who had to allocate land for the purpose of a land fill to the Municipality. When a site that appeared to be suitable was identified, there was a dispute between 2 traditional leaders about the ownership of the land. This caused a substantial delay to the implementation of the project.

18.3.7 Agreement in connection with the allocation of the site was eventually reached by the traditional authorities, in August 2007. Subsequently, an environmental impact study had to be conducted and submitted to the relevant authorities for approval, a process that has not been completed to date.

18.3.8 It is not clear when the project will be completed. The MIG awarded for the project has been rolled over due to the circumstances.

18.3.9 The construction of the land fill site at Gundani has been and still is provided for in the IDP of the Municipality.

19. **Makhado Local Municipality**

19.1 **The alleged improper conduct**

The newspaper reports referred to in paragraph 2 above, claimed that the Municipality awarded a tender to SGL, and suggested that the propriety of the awarding of the contract might be suspect due to Mr Malema’s interest in SGL. No further details in respect of the tender were provided.
19.2 The Municipality

The town of Makhado is located on the N1 north national route, approximately 85 kilometres south of the border between South Africa and Zimbabwe, in the Northern Province. The Municipality started its life as the Louis Trichardt Town Council in 1934. Following the promulgation of the Local Government: Municipal Structures Act, 1998, several municipalities merged and the Makhado Local Municipality was established. Its area currently also includes the settlements and villages of Nzhelele, Elim, Tsitale, Hlanganani, Levubu, Vuwani, Alldays, Buysdorp and Bandelierkop.

19.3 The Tsianda to Vuwani Access Road Project

19.3.1 The investigation of the complaint relating to the Municipality was challenged by the absence of many of the relevant procurement documents from the records of the Municipality. The CFO also explained that many of the officials that were previously involved in procurement matters, including the former CFO and Municipal Manager, had left the employ of the Municipality. No proper record keeping system was in place. Minutes of the meetings of Tender Committees were not readily available, as were the advertisement of tenders, specification and proposal documents.

19.3.2 From the information that was available, it was established that the Municipality awarded a tender to SGL during the second half of 2007. The project concerned was phase 2 of the upgrading of the Tsianda to Vuwani access road.

19.3.3 SGL was appointed to prepare the design and documentation, to assist the Municipality in the evaluation of tenders of contractors for the construction work and to monitor the implementation of the project.
19.3.4 According to a report by the Acting Director: Technical Services that was submitted to the Bid Adjudication Committee, the project was funded by means of a MIG in the amount of R6 million. Three tenderers submitted proposals and it was recommended that SGL should be appointed. There is however insufficient information to determine the basis on which it was decided that SGL should be the preferred bidder. It was therefore not possible to investigate compliance of the procurement process with the MFMA and the SCM Regulations$^{8}$.

19.3.5 A contractor for the construction of the road was selected and appointed by the Municipality, on the recommendation of SGL, following a tender evaluation process.

19.3.6 It was established that the project was completed in 2009. There were some defects in areas of the road construction, which were remedied by means of the retention funds, after the handing over of the project. The Municipality was ultimately satisfied that the project was properly completed.

19.3.7 The project was provided for in the IDP of the Municipality.

20. Lepelle –Nkumpi Local Municipality

20.1 The alleged improper conduct

It was claimed in the newspaper reports referred to by the complainants that the Municipality awarded a tender to SGL, and suggested that the procurement process might have been improperly influenced due to the interest of Mr Malema in the company. No further details in respect of the tender were provided.

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$^{8}$ See paragraph 41.6 below
20.2 The Municipality

The Municipality is located in the Capricorn District, approximately 55 km from Polokwane, in the Limpopo Province. It serves a predominantly rural community with a population of about 227 965 people.

20.3 The tenders awarded to SGL

20.3.1 From the information that could be obtained from the records of the Municipality, it was established that 2 tenders had been awarded to SGL relating to the upgrading of streets in Lebowakgomo Zone A.

20.3.2 The investigation was hampered by the fact that most of the senior officials that were employed by the Municipality at the time when the tenders in question were awarded to SGL, had since left, including the former CFO. The former Municipal Manager passed on. Furthermore, the documentation that could be provided in connection with the project concerned was incomplete.

20.3.3 The first tender related to the upgrading of 1.3 km of a street. SGL was appointed to design the surfacing and to manage the construction of the project. The appointment was made on 20 February 2006 and the total project cost was R 2 195 982. Neither the bid proposals nor the minutes of Tender Committee meetings or any other verifiable documentation relating to the procurement process could be found in the records of the Municipality.

20.3.4 It was further established that invitations for professional services relating to the design of the in respect of the upgrading of 1.8 km of a street were invited by means of an advertisement published by the Municipality in March 2006 (the second tender).

20.3.5 SGL was one of 7 tenderers that submitted proposals. The records of the Municipality indicate that the proposals were considered only by an ‘Adjudication Committee”. This Committee met in connection with the tender some time after the closing date (date unknown as it was not indicated in the
Minutes). The Minutes stated that 3 tenderers were disqualified as they “tendered below and above the estimated price.”

20.3.6 The Adjudication Committee resolved as follows:

“In terms of the preferential point (sic) system SGL Consulting Engineering (sic) is the lowest in terms of points on price with 90 points. The company owned (sic) 100% by black people in terms of their PDI’s (sic) status.”

20.3.7 The recommendation of the Committee that the tender should be awarded to SGL was approved by the then Acting Municipal Manager, but the date of approval could not be determined. SGL was informed of the awarding of the tender to them on 25 April 2006, and the contract signed on 24 May 2006.

20.3.8 According to the Manager: Technical Services of the Municipality, the first project was a failure as the surface of the street disintegrated after the project was completed. He indicated that R1,3 million of the retention money of the project was not paid, but that it would be insufficient to reconstruct the surface.

20.3.9 The Acting Municipal Manager advised that the Internal Auditors of the Municipality were conducting an investigation into this project and the implications thereof for the Municipality, and that a report would be submitted to him soon.

20.3.10 The second project was completed, but, according to the Manager: Technical Services, the street now requires regular maintenance to repair...
potholes. The information that could be obtained from the records of the Municipality show that SGL was only involved in the design of the second project and the construction was performed by another contractor.

20.3.11 The tarring of internal streets in Lebowakgomo Zone A was included as a project in the 2006-2011 IDP review of the Municipality, which was adopted by the Municipal Council in May 2006.

PART E

THE INFORMATION AND EVIDENCE OBTAINED FROM OFFICIALS AND WITNESSES

21. All the officials that were interviewed during the investigation, as indicated in paragraph 5 above, without exception, denied that they were approached or that they were aware of any of their colleagues having been approached by anyone to improperly interfere in the procurement processes relating to the projects referred to in this report.

22. Municipal Managers, in particular, also emphasised that councillors are barred from being involved in the procurement process by virtue of the provisions of section 117 of the MFMA. The adjudication of tenders is also not a matter that is referred to Municipal Councils as the final decision is taken by the accounting officer.

23. During the interview that was conducted with Mr S Moloto, the former Premier of the Limpopo Provincial Government, he repeated the statements that he made in the media, referred to in paragraph 3.4 above, but did not provide the particulars of any municipal manager, mayor or official that could be approached to verify the allegations of impropriety.
PART F
THE LEGAL FRAMEWORK REGULATING THE PROCUREMENT OF GOODS AND SERVICES BY MUNICIPALITIES

24. THE CONSTITUTION

Procurement by organs of state in all the spheres of government is, in the first instance, provided for by section 217 of the Constitution. In terms of this provision, municipalities that contract for goods or services must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

25. THE MUNICIPAL FINANCE MANAGEMENT ACT

25.1 The procurement of goods and services by municipalities are specifically provided for in Chapter 11 of the Act.

25.2 Every municipality is obliged, by virtue of the provisions of section 111 and 112, to have and implement a supply chain management policy that complies with the requirements of section 217 of the Constitution, referred to above. The policy must cover a range of relevant issues and activities, such as (but not limited to):

25.2.1 The different supply chain management processes that municipalities may use, including tenders and quotations;

25.2.2 The procedures and mechanisms for each type of process;

25.2.3 Bid documentation, advertising and invitations for contracts;

25.2.4 Procedures and mechanisms for the evaluation of bids to ensure best value for money;

25.2.5 The approval of bids;
25.2.6 The barring of persons whose tax matters are not cleared by the South African Revue Services or who wilfully neglected, reneged on or failed to comply with a government contract during the past 5 years; and

25.2.7 The delegation of municipal supply chain management powers and duties, including that to officials.

25.3 The accounting officer (usually the Municipal Manager) must, in terms of section 115, implement the supply chain management policy of the municipality and take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.

25.4 Section 117 bars councillors from being members of or attending the meetings of tender committees.

25.5 The competency levels of officials involved in municipal supply chain management are regulated by section 119, which provides that it has to comply with the prescribed standard. Municipalities must provide resources or opportunities for the training of the relevant officials and may be assisted in this regard by the National Treasury.

25.6 The date of commencement of the Act was 1 July 2004.

26. THE MUNICIPAL SUPPLY CHAIN MANAGEMENT REGULATIONS

26.1 The Regulations were made in terms of section 168 of the MFMA and became effective on different dates for different categories on municipalities\(^9\). It consists of 4 Chapters containing 52 Regulations. For the purposes of this report, reference will only be made to the provisions relevant to the investigation that was conducted.

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\(^9\) See paragraph 27 below
26.2 Regulations 2 and 3 confirm that every municipality must have and implement a supply chain management policy that has to be complied with when goods or services are procured.

26.3 It is the responsibility of the accounting officer to draft the Policy. In this regard he/she may make use of any guidelines issued by National Treasury, such as the Municipal Supply Chain Model Policy that was issued on 25 August 2005.

26.4 The Policy has to be reviewed annually.

26.5 Every municipality must, in terms of Regulation 7, have a supply chain management unit that should ideally operate under the direct supervision of the CFO.

26.6 The prescribed Policy must, in terms of Regulation 12, provide for the procurement of goods and services by way of a competitive bidding process for procurements above a transaction value of R 200 000, as indicated in more detail below.

26.7 Regulation 19 provides that goods or services above a transaction value of R200 000 may be procured only through a competitive bidding process that should consist of the following stages:

26.7.1 Compilation of bidding documentation;
26.7.2 Public invitation of bids;
26.7.3 Site meetings and briefings, if applicable;
26.7.4 Evaluation of bids;
26.7.5 Award of contracts;
26.7.6 Administration of contracts; and
26.7.7 Proper record keeping.

26.8 Municipalities should, in terms of Regulation 26, have a committee system for competitive bids consisting of at least:
26.8.1 A bid specification committee that has to compile the specifications of each procurement of goods or services. This committee must be composed of one or more officials of the municipality, preferably the manager responsible for the function involved.

26.8.2 A bid evaluation committee that has to evaluate bids in accordance with the specifications for the procurement and a points system based on specific goals and the prescripts of the Preferential Procurement Policy Framework Act, 2000. This committee must evaluate each bidder’s ability to execute the contract, check in respect of the recommended bidder whether municipal rates, taxes and service charges are not in arrears and submit a report with recommendations to the bid adjudication committee.

26.8.3 A bid adjudication committee that has to be composed of at least 4 senior managers, which must include the CFO. This committee has to consider the report and recommendations of the bid evaluation committee make a final award or recommendation to the accounting officer for his/her consideration and approval.

26.8.4 Regulation 36 provides that the accounting officer may dispense with the official procurement processes referred to above in, *inter alia* an emergency or other exceptional cases, where it is impractical or impossible to follow the official procurement processes. The accounting officer must record the reasons for any deviations and report them to the next meeting of the council.

26.8.5 Municipalities are prohibited by Regulation 43 to make any award above R15 000 to a person whose tax matters have not been declared by the South African Revenue Services to be in order.

26.8.6 Persons aggrieved by the decisions or actions of a municipality in the implementation of its supply chain management system may, by virtue of the provisions of Regulation 49, lodge within 14 days a written objection or complaint with the municipality, which then has to be resolved by means of a process prescribed by Regulation 50.
27. THE EXEMPTION OF CERTAIN MUNICIPALITIES FROM THE SUPPLY CHAIN MANAGEMENT PROVISIONS OF THE MUNICIPAL FINANCE MANAGEMENT ACT

27.1 On 30 June 2005, the former Minister of Finance, by notice in the Government Gazette and acting in terms of section 177 of the MFMA, exempted certain municipalities from sections 110 to 116 of the Act and the Supply Chain Management Regulations.

27.2 The periods of exemption were determined in the notice as follows:

<table>
<thead>
<tr>
<th>TYPE OF MUNICIPALITY</th>
<th>PERIOD OF EXEMPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>High capacity municipalities</td>
<td>Until 1 October 2005</td>
</tr>
<tr>
<td>Medium capacity municipalities</td>
<td>Until 1 January 2006</td>
</tr>
<tr>
<td>Low capacity municipalities</td>
<td>Until 1 July 2006</td>
</tr>
</tbody>
</table>

The municipalities referred to in this report were classified in the notice as:

<table>
<thead>
<tr>
<th>NAME OF MUNICIPALITY</th>
<th>TYPE OF MUNICIPALITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater Sekhukhune District Municipality</td>
<td>High capacity</td>
</tr>
<tr>
<td>Mopani District Municipality</td>
<td>Low capacity</td>
</tr>
<tr>
<td>Vhembe District Municipality</td>
<td>Low capacity</td>
</tr>
<tr>
<td>Waterberg District Municipality</td>
<td>Low capacity</td>
</tr>
<tr>
<td>Greater Letaba Local Municipality</td>
<td>Low capacity</td>
</tr>
<tr>
<td>Greater Tzaneen Local Municipality</td>
<td>High capacity</td>
</tr>
<tr>
<td>Mutale Local Municipality</td>
<td>Low capacity</td>
</tr>
<tr>
<td>Makhado Local Municipality</td>
<td>Medium capacity</td>
</tr>
<tr>
<td>Lepelle-Nkumpi Local Municipality</td>
<td>Low capacity</td>
</tr>
<tr>
<td>Bojanala Platinum District Municipality</td>
<td>High capacity</td>
</tr>
</tbody>
</table>

27.3 The exemption was granted subject to the condition that the municipalities affected apply a procurement system during the period of exemption that was fair, equitable, transparent, competitive and cost effective.
28. THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE REGULATIONS

28.1 In terms of section 2 of the Act, organs of state must determine its preferential procurement policy and implement it within a framework that accommodates the awarding of points for specific goals, including contracting with persons historically disadvantaged by unfair discrimination on the basis of race, gender or disability.

28.2 The Regulations made in terms of the Act provide specifically for the evaluation of tenders on functionality and price, which is relevant to the matters that were investigated. In terms of Regulation 8, the total combined points allowed for functionality and price may in respect of tenders with an estimated Rand value equal to or below R500 000 not exceed 80 points and in respect of tenders with an estimated Rand value above R500 000 not exceed 90 points.

PART G
REPORTS OF THE AUDITOR-GENERAL

29. The Provincial Representative of the Auditor General in Limpopo assisted in the investigation by providing reports of the Auditor General on the financial statements and performance information of the 9 municipalities located in the province, for the previous 4 financial years. However, he did indicate, as it also appeared from the reports, that the Auditor General had not specifically investigated any of the contracts or tenders referred to by the complainants and the newspaper reports that they relied on.

30. It was noted from these reports that the Auditor General had expressed an opinion on compliance with the SCM Regulations and the tender processes that were applied or not adhered to by some municipalities. So, for example, did he note in his 2005/6 report on in connection with the Mopani District Municipality that tenders and the adjudication process for a number of
projects could not be provided. This finding was in line with the explanation that was provided by the Municipal Manager during the investigation.\footnote{See paragraph 15.3 above} That the Mopani District Municipality made substantial improvement in this regard, appears from the fact that it received an unqualified opinion from the Auditor General in his 2008/9 report.

31. In his report on the Greater Letaba Local Municipality for the 2006/7 financial year, the Auditor General found that the provisions of the Preferential Procurement Policy Framework Act, 2000 were not properly applied in the evaluation of tenders. This Municipality subsequently also received an unqualified opinion from the Auditor General in his 2008/9 report, as did the Waterberg District Municipality.

32. The General Report of the Auditor-General on the Audit Outcomes of the Limpopo Local Government for the Financial Year 2007-08, the stated that:

“The attainment of financially unqualified audit reports by all government entities is a vision we fully ascribe to in our efforts to strengthen South Africa’s democracy, thereby building public confidence. The critical message we want to highlight is that it is possible to obtain an unqualified audit report if the basics in internal control systems, specifically document control, are in place and constantly monitored by the leadership.” (emphasis added)

33. The views of the Auditor General underscore the observations made during the investigation relating to the lack of proper control over crucial procurement documents of some municipalities.\footnote{See paragraph 42 below}

34. The Auditor General further stated in his General Report, that it was pleasing to note that the audit outcomes were generally reflective of a move in a positive direction. He emphasised that most of the matters reported in audit reports, including therefore the non compliance with supply chain management prescripts that led to qualified audit reports, were historical or
recurring issues. One of the main challenges identified in this regard was a general lack of capacity and skills to fully comply with the prescribed frameworks.

35. According to the General Report of the Auditor-General on the Audit Outcomes of the North West Local Government for the Financial Year 2007-08, the Bojanala Platinum District Municipality was one of only four municipalities that maintained unqualified opinions.

PART H
THE INFORMATION OBTAINED FROM THE RECORDS OF CIPRO AND THE TENDER DOCUMENTS OF THE MUNICIPALITIES PERTAINING TO THE INTEREST OF MR J MALEMA IN SGL

36. The table below represents the conclusions made from the investigation in respect of the interest of Mr J Malema in SGL, as it was deduced from the official records held by CIPRO and the relevant tender documents of the Municipalities, referred to above.

<table>
<thead>
<tr>
<th>NAME OF MUNICIPALITY</th>
<th>NAME OF PROJECT</th>
<th>CONTRACT/TENDER AWARDED ON</th>
<th>AWARDED TO</th>
<th>DID MR J MALEMA HAVE AN INTEREST?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bojanala District Municipality</td>
<td>Kutlwanong School</td>
<td>1 July 2005</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Klipvoorstad and Kwarriekraal Bridges</td>
<td>26 August 2008</td>
<td>SGL</td>
<td>No</td>
</tr>
<tr>
<td>Greater Sekhukhune District Municipality</td>
<td>Mamasetlele</td>
<td>19 August 2005</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Marble Hall Waste Water Treatment Works</td>
<td>19 August 2005</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Makhaduduthamage Taxi Rank</td>
<td>3 March 2006</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Mmotowaneng /Blydeplaas Road</td>
<td>21 August 2008</td>
<td>SGL</td>
<td>No</td>
</tr>
<tr>
<td>NAME OF MUNICIPALITY</td>
<td>NAME OF PROJECT</td>
<td>CONTRACT/TENDER AWARDED ON</td>
<td>AWARDED TO</td>
<td>DID MR J MALEMA HAVE AN INTEREST?</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------</td>
<td>---------------------------</td>
<td>------------</td>
<td>-----------------------------</td>
</tr>
<tr>
<td>Zaaiplaas</td>
<td>Bulk Water Supply</td>
<td>5 December 2008</td>
<td>SGL</td>
<td>No</td>
</tr>
<tr>
<td>Montshana Water</td>
<td></td>
<td>30 July 2009</td>
<td>SGL</td>
<td>Yes ¹²</td>
</tr>
<tr>
<td>Malebitsa/Driefontein Road</td>
<td></td>
<td>15 October 2009</td>
<td>SGL</td>
<td>Yes ¹³</td>
</tr>
<tr>
<td>Waterberg District Municipality</td>
<td>Northam Sewer</td>
<td>7 March 2008</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Vhembe District Municipality</td>
<td>Mhinga/Lambadani Bulk Water Supply</td>
<td>15 May 2008</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Mopani District Municipality</td>
<td>Zava Village Water Provision</td>
<td>6 October 2004</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Mahale Water Reticulation</td>
<td></td>
<td>8 October 2005</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Dzumeri Road</td>
<td></td>
<td>23 October 2006</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Masake Road</td>
<td></td>
<td>20 October 2006</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Modjadji Sewer</td>
<td></td>
<td>14 March 2007</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Modjadji Fire Station</td>
<td></td>
<td>18 July 2007</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Modjadji Fire Station sleeping quarters</td>
<td></td>
<td>18 July 2007</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>N'wamitwa Community Hall</td>
<td></td>
<td>1 July 2005</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Namakgale/Makhushane Road</td>
<td></td>
<td>29 July 2008</td>
<td>SGL</td>
<td>No</td>
</tr>
</tbody>
</table>

¹² It was noted that the Bid Proposal was submitted by SGL on 12 March 2009, i.e. before it was converted into a private company and therefore before Mr Malema became a Director. SGL was however already a private company at the time when the tender was awarded.

¹³ Note that the Bid Documents were however submitted in the name of SGL Engineering Projects CC and not in the name of the private company. See paragraph 12.9 above.
<table>
<thead>
<tr>
<th>NAME OF MUNICIPALITY</th>
<th>NAME OF PROJECT</th>
<th>CONTRACT/TENDER AWARDED ON</th>
<th>AWARDED TO</th>
<th>DID MR J MALEMA HAVE AN INTEREST?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greater Lethaba</td>
<td>Nkowankowa Sewer</td>
<td>20 November 2009</td>
<td>SGL</td>
<td>Yes 14</td>
</tr>
<tr>
<td>Local Municipality</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Upgrading of streets in Ga-Kgapane</td>
<td>5 February 2007</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Paving and draining of streets in Ga-Kgapane</td>
<td>23 October 2007</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Mutale Local</td>
<td>Land fill site at Gundani</td>
<td>30 June 2006</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Municipality</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Makhado Local</td>
<td>Upgrading of the Tsianda to Vuwani access Road</td>
<td>2007 (exact date could not be determined)</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Municipality</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lepelle-Nkumpi</td>
<td>2 tenders for the upgrading of streets in Lebowakgomo Zone A</td>
<td>20 February 2006 and 25 April 2006</td>
<td>Segwalo trading as SGL</td>
<td>No</td>
</tr>
<tr>
<td>Local Municipality</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As indicated in the table, Mr Malema was a Director of SGL at the time when only 3 of the tenders referred to were awarded to the company by the respective municipalities concerned.

37. It should again be noted, as stated in paragraph 17.3 above that the involvement of SGL in the Nkowankowa Cemetery Road Project of the Tzaneen Local Municipality was as a subcontractor to the project manager that was appointed by the Municipality. The Municipality played no part in the selection and appointment of SGL in this instance.

14 Note that the Bid Documents were however submitted in the name of SGL Engineering Projects CC and not in the name of the private company. See paragraph 15.3 above
PART I

38. THE SCM POLICIES

38.1 During the investigation, an assessment was also made of the compliance of the current Supply Chain Management Policies of the Municipalities investigated, with the relevant provisions of the MFMA and the SCM Regulations. This was regarded as necessary as proper, fair, competitive equitable, transparent and cost effective procurement practices in the future would depend largely on whether the Policies are in line with the prescripts and could therefore be applied properly by supply chain management officials.

38.2 It was found that the Model Policy issued by National Treasury in 2005, was generally followed by most municipalities when their SCM Policies were drafted and reviewed.

38.3 The table below indicates the conclusions made in respect of compliance in this regard.

<table>
<thead>
<tr>
<th>NAME OF MUNICIPALITY</th>
<th>POLICY ADOPTED ON</th>
<th>COMPLIES</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>MOPANI DISTRICT MUNICIPALITY</td>
<td>22/08/2007</td>
<td>Yes</td>
<td>To be reviewed</td>
</tr>
<tr>
<td>GREATER SEKHUKHUNE DISTRICT MUNICIPALITY</td>
<td>31/05/2010</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>VHEMBE DISTRICT MUNICIPALITY</td>
<td>31/05/2010</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>NAME OF MUNICIPALITY</td>
<td>POLICY ADOPTED ON</td>
<td>COMPLIES</td>
<td>COMMENTS</td>
</tr>
<tr>
<td>----------------------</td>
<td>-------------------</td>
<td>----------</td>
<td>----------</td>
</tr>
<tr>
<td>WATERBERG DISTRICT MUNICIPALITY</td>
<td>29/06/2010</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>BOJANALA PLATINUM DISTRICT MUNICIPALITY</td>
<td>1/10/2005</td>
<td>Yes</td>
<td>Chief Financial Officer indicated that it will be reviewed during the current financial year</td>
</tr>
<tr>
<td>GREATER LETABA LOCAL MUNICIPALITY</td>
<td>6/07/2006</td>
<td>No</td>
<td>To be reviewed to be brought in line with the SCM Regulations and the Model Policy</td>
</tr>
<tr>
<td>MAKHADO LOCAL MUNICIPALITY</td>
<td>1/1/2006</td>
<td>Yes</td>
<td>Chief Financial Officer indicated that it will be reviewed during the current financial year</td>
</tr>
<tr>
<td>MUTALE LOCAL MUNICIPALITY</td>
<td>31/05/2010</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>GREATER TZANEEN LOCAL MUNICIPALITY</td>
<td>1/10/2005</td>
<td>Yes</td>
<td>Needs to be reviewed</td>
</tr>
<tr>
<td>LEPELLE-NKUMPI LOCAL MUNICIPALITY</td>
<td>7/08/2009</td>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>
39. MINIMUM COMPETENCY LEVELS FOR MEMBERS OF SUPPLY CHAIN MANAGEMENT UNITS OF MUNICIPALITIES

39.1 The Municipal Regulations on Minimum Competency Levels were issued in terms of the Municipal Finance Management Act, on 15 June 2007. The Regulations prescribe the minimum qualifications, experience, skills required of accounting officers, chief financial officers, senior managers and other financial officials of municipalities.

39.2 During the course of the investigation referred to in this report, a general assessment of the competency levels of Chief Financial Officers, who are, in terms of Regulation 7 of the SCM Regulations, heading the Supply Chain Management Units of the Municipalities concerned, were done. It was found that they generally comply with the prescripts of the minimum competency prescripts.

39.3 However, it was also noted that Regulation 15 provides that financial and supply chain management officials that were appointed prior to 1 July 2007, have until 1 January 2013 to ensure that they comply with the minimum requirements.

39.4 Regulation 14 compels the Municipal Manager of a municipality to monitor and take necessary steps to ensure compliance with the said prescribed minimum competency levels.

39.5 Municipalities must further report to the National and Provincial Treasuries twice a year on compliance with the prescribed competency levels. It is therefore their responsibility to ensure that Municipalities comply in this respect. A report on compliance also has to be included in the annual reports of Municipalities.
PART J
CONCLUSIONS

40. TENDERS/CONTRACTS AWARDED TO SGL PRIOR TO THE IMPLEMENTATION OF SECTIONS 110 TO 116 OF MFMA AND THE SCM REGULATIONS

40.1 The Kutlwanong Project of the Bojanala Platinum District Municipality

40.1.1 The procurement process in respect of this project commenced and was concluded before sections 110 to 116 of the MFMA and the SCM Regulations had to be implemented by the Municipality on 1 October 2005.

40.1.2 From the evidence and information obtained in regard to the procurement process, it was established that a proper evaluation and adjudication was conducted.

40.1.3 No indication could be found that the procurement process was not fair, transparent, equitable and competitive.

40.2 The Mamasetlele and Marble Hall Waste Water Projects of the Greater Sekhukhune District Municipality

40.2.1 The contracts for both projects were awarded in August 2005, prior to the date that sections 110 to 116 of the MFMA and the SCM Regulations became effective in respect of the Municipality.

40.2.2 From the limited documentation that could be obtained during the investigation relating to these projects, it was established that the 2 projects were part of a list of projects in respect of which selection of service providers were made by the end user department from an approved list, at the time.

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15 See paragraph 11.3 above
16 See paragraph 27.2 above
17 See paragraph 12.4 above
40.2.3 Recommendations regarding the selected service providers were submitted to a Tender Committee for consideration.

40.2.4 The procurement process followed by the Municipality was in line with the general practice of municipalities at the time.

40.2.5 No indication could be found that the procurement process did not comply with the principles of fairness, competitiveness, transparency and equity, as it was applied at the time.

40.3 Several projects of the Mopani District Municipality

40.3.1 As stated in paragraph 15.3 above, the Municipality awarded a number of contracts to service providers, including SGL prior to 1 July 2006, which was the date on which the sections 110 to 116 of the MFMA and the SCM Regulations had to be implemented.

40.3.2 The procurement process followed was the same as in the case of other municipalities where service providers were selected from an approved list and a recommendation was made to a tender committee for consideration.

40.3.3 Reference has also been made to the fact that the Municipality continued to apply the same procurement process even after the MFMA and the SCM Regulations became fully effective.

40.3.4 Cognisance has been taken of the explanation provided by the Municipal Manager that this deficiency was mainly due to capacity constraints that were experienced at the time and that it was corrected after the non compliance was highlighted by the Auditor-General. However, it is important to note that the non compliant process was followed by the Municipality in respect of all its projects at the time, and not only those where SGL was selected. There is therefore no indication that SGL benefitted improperly from the process.

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18 See paragraph 15.3 above
19 In paragraph 15.3.3 above
40.4  The Gundani Land Fill Project of the Mutale Local Municipality 20

40.4.1 The process followed by the Municipality for the procurement of consultants for this project involved the publication of an advertisement inviting tenders and the evaluation and adjudication of the bids received by a Tender Committee.

40.4.2 Sections 110 to 116 of the MFMA and the SCM Regulations only applied to the Municipality as from 1 July 2006 21.

40.4.3 No indication could be found that the procurement process that was followed in respect of this project was deficient, unfair, not equitable or uncompetitive.

40.5  The street upgrading projects of the Lepelle-Nkumpi Local Municipality 22

40.5.1 The first contract relating to these projects was awarded to SGL on 20 February 2006 and the second one on 25 April 2006.

40.5.2 Sections 110 to 116 of the MFMA and the SCM Regulations only became effective as far as the Municipality was concerned on 1 July 2006.

40.5.3 Due to the absence of records, no conclusion could be made in respect of the procurement process that was followed in regard to the first contract.

40.5.4 As far as the second contract is concerned, it was established that a proper tender process was followed that included invitation of bids, evaluation and adjudication.

20 See paragraph 18.3 above
21 See paragraph 27.2 above
22 See paragraph 20 above
41. COMPLIANCE BY THE MUNICIPALITIES WITH THE MFMA AND THE SCM REGULATIONS IN RESPECT OF INTENDERS AWARDED TO SGL

41.1 It should be noted that the investigation did not include a comprehensive audit of every aspect of the procurement process and that it also did not include a forensic assessment to verify unrecorded links and/or relationships. It was furthermore not aimed at being a review of the decisions taken by the respective officials but, due to the nature of the complaints, focussed on determining whether proper procurement processes were followed and to establish whether any indication could be found that SGL was afforded an improper advantage, for whatever reason, by the municipalities in the awarding of the tenders concerned.

41.2 The table in paragraph 41.6 below represents a synopsis of the conclusions made in regard to general compliance of the municipalities with the said prescripts in the awarding of the tenders discussed to SGL.

41.3 Regulations 26 and 27 of the SCM Regulations provide that the SCM Policies of municipalities must provide for a committee system for competitive bids that should include a bid specification committee.

41.4 The bid specification committee must compile the specifications for each procurement of goods or services and must be composed of one or more officials of the municipality.

41.5 It was noted during the investigation that municipalities generally comply with the requirement of the drafting of specifications, but that bid specification committees, although they might exist in practice, are not formally constituted and that the records of the committee are not properly kept and included in the tender documentation. Although, strictly speaking, there was general compliance with this requirement, it was concluded that this part of the procurement process should be improved.
### Report of the Public Protector

#### 41.6

<table>
<thead>
<tr>
<th>NAME OF MUNICIPALITY</th>
<th>NAME OF PROJECT</th>
<th>COMPILATION OF BIDDING DOCUMENTATION</th>
<th>PUBLIC INVITATION OF BIDS</th>
<th>BID SPECIFICATION COMMITTEE</th>
<th>BID EVALUATION COMMITTEE</th>
<th>BID ADJUDICATION COMMITTEE</th>
<th>TAX CLEARANCE CERTIFICATE</th>
<th>PPPF ACT APPLIED</th>
<th>OBJECTIONS LODGED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bonjanala Platinum District</td>
<td>Klipvoorstad and Kvarrikraal Bridges</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Greater Sekhukhune District</td>
<td>Makduduthamage Taxi Rank</td>
<td>Records not available</td>
<td>Records not available</td>
<td>Records not available</td>
<td>Records not available</td>
<td>Records not available</td>
<td>Records not available</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mmotwaneng/Blydeplaas Road</td>
<td>Records not available</td>
<td>Records not available</td>
<td>Records not available</td>
<td>Records not available</td>
<td>Records not available</td>
<td>Records not available</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Zaaiplaas Bulk Water</td>
<td>✓</td>
<td>✓</td>
<td>Records not available</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Montshana Water</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Waterberg District</td>
<td>Northam Sewer</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Vhembe District</td>
<td>Mhinga/Lambadani Bulk Water</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Mopani District</td>
<td>Nkowankowa Sewer</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Greater Letaba</td>
<td>Upgrading of streets in Ga-Kgapane Phase 1</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Makhado</td>
<td>Upgrading of Tsianda to Vuwani Access Road</td>
<td>✓</td>
<td>✓</td>
<td>Records not available</td>
<td>Records not available</td>
<td>✓</td>
<td>Records not available</td>
<td>✓</td>
<td>X</td>
</tr>
</tbody>
</table>
41.7 The bid proposals submitted in respect of the project of the Greater Letaba Local Municipality, referred to in the table above, were not submitted to a bid evaluation process, for the reasons explained in paragraph 16.3 above. It related to a situation where the Municipality ran the risk of an MIG being withdrawn, if the procurement process was not expedited. As stated, the records of the Municipality indicated that the accounting officer acted in terms of the SCM Policy of the Municipality when he dispensed with the official requirement of evaluation by the Bid Evaluation Committee. Reference was made in this regard to paragraph 36(1)(a)(v) of the SCM Policy.

41.8 However, as shown in the table in paragraph 38.3 above, the SCM Policy of the Greater Letaba Local Municipality does not comply with the SCM Regulations and needs to be reviewed. The reference to “paragraph 36(1)(a)(v)” was clearly meant to refer to Regulation 36(1)(a)(v) of the SCM Regulations. It was therefore concluded that the Municipal Manager acted in compliance with the SCM Regulations in this instance, even though the SCM Policy of the Municipality was deficient.

42. GENERAL CONCLUSIONS

The following general conclusions have been made from the investigation

42.1 Compliance with the procurement legislation in respect of:

42.1.1 The tender awarded to SGL by the Makhado Local Municipality;

42.1.2 Four contracts/tenders awarded to SGL by the Greater Sekhukhune District Municipality; and

42.1.3 One contract awarded to SGL by the Lepelle-Nkumpi Local Municipality
could not be determined with certainty, due to poor procurement record keeping by the said municipalities, which constituted non compliance with the Supply Chain Management Regulations.

42.2 Except for the tenders/contracts referred to in paragraph 42.1 above, in respect of which no conclusion could be made, the tenders/contracts awarded to SGL by the municipalities were the results of procurement processes that generally complied with the relevant provisions of the Constitution, the MFMA and the SCM Regulations.

42.3 No verifiable information or evidence was presented or could be found from the investigation that indicated that contract/tenders were awarded to SGL as a result of improper influence due to friendships, comradeship, favouritism, nepotism, interference or any other impropriety.

42.4 The projects where SGL was involved and that have been completed were generally regarded as of at least an acceptable standard. In cases where deficiencies were discovered, the funds held in retention were utilised to effect repairs. The only exception in this regard relates to a project of the Lepelle-Nkumpi Local Municipality, which is currently the subject of further internal investigations being conducted by the Municipality.

42.5 As a consulting engineers enterprise, SGL was not required to register with the Construction Industry Development Board (CIDB).

42.6 Mr J Malema was involved with SGL during a period that only 3 tenders were awarded to them by the municipalities referred to in this report. In one such case, the bid proposal was submitted before he became a director of SGL. In the other 2 cases, the bid proposals were submitted in the name of SGL Engineering Projects CC, which at the time had already been converted into the private company SGL Engineering Projects (Pty) Ltd. Mr Malema’s interest in SGL was therefore not disclosed in the bid proposal documents.
42.7 It is doubtful whether these tenders would not have been awarded to SGL by the municipalities involved had the bid proposals been submitted in the name of the private company, as the evaluation was done mainly on functionality and the profile of the bidder entity was of little consequence.

42.8 However, it is of concern that the Greater Sekhukhune and Mopani District Municipalities have awarded tenders to a close corporation that was already converted into a private company at the time\(^\text{23}\). This situation might have legal implications for the municipalities in the event of a dispute and should be corrected. It was also noted that the professional indemnity insurance certificates that were submitted by SGL as part of their bid proposal indicated that the cover had already expired. Although the submission of valid indemnity insurance certificates was not a key requirement of the bid proposal, the certificates confirming the current insurance cover should be obtained.

42.9 The SCM Regulations do not provide for SCM Policies to regulate the verification of close corporation and company records submitted in bid proposals. The situation referred to in paragraph 42.7 above could have been avoided, if the municipalities concerned were compelled to verify the official records of the bidders from the database of CIPRO for submission and consideration by bid evaluation and adjudication committees. Such verification would furthermore go a long way in preventing an undisclosed conflict of interest between the private interests of members of the committees and their obligations to the municipality from arising.

42.10 It was furthermore disconcerting to note that the record keeping of procurement documents by the Greater Sekhukhune District Municipality, Makhado Local Municipality and the Lepelle-Nkumpi Local Municipality was poor and did not comply with the requirements of proper record keeping, as contemplated by Regulation 20(h) of the SCM Regulations.

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\(^{23}\) See paragraphs 12.9 and 15.3 above
42.11 The Supply Chain Management Policies of the majority of the municipalities referred to in this report comply with the SCM Regulations. A review of the Policies of the Bojanala Platinum District, Mopani District, Greater Letaba Local, Greater Tzaneen Local and Makhado Local Municipalities need to be conducted.

42.12 Sufficient measures exist in the MFMA and the Municipal Regulations on Minimum Competency Levels to ensure that the SCM Units of municipalities are staffed by qualified and skilled personnel by 1 January 2013.

PART K
FINDINGS, RECOMMENDATIONS AND MONITORING

43. FINDINGS

43.1 From the information and evidence obtained during the investigation, the findings of the Public Protector are that:

43.1.1 It could not be determined whether:

43.1.1.1 The tender awarded to SGL by the Makhado Local Municipality;

43.1.1.2 Four contracts/tenders awarded to SGL by the Greater Sekhukhune District Municipality; and

43.1.1.3 One contract awarded to SGL by the Lepelle-Nkumpi Local Municipality

43.1.2 Except for the tenders/contracts referred to in paragraph 43.1.1 above, in respect of which no finding could be made, the tenders/contracts awarded to SGL by the municipalities were the results of procurement processes that
generally complied with the relevant provisions of the Constitution, the MFMA and the SCM Regulations;

43.1.3 The completed projects relating to the tenders/contracts awarded to SGL by the municipalities, referred to in this report, were generally of an acceptable quality and standard;

43.1.4 No verifiable information or evidence was presented or could be found from the investigation that indicated that contract/tenders were awarded to SGL as a result of improper influence due to friendships, comradeship, favouritism, nepotism, political affiliations, interference or any other impropriety; and

43.1.5 As a consulting engineers enterprise, SGL was not required to register with the Construction Industry Development Board (CIDB).

44. RECOMMENDATIONS

In terms of the provisions of section 182(1)(c) of the Constitution, 1996 and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that:

44.1 The Minister of Finance considers amending the SCM Regulations to provide for the SCM Policies of Municipalities and Municipal Entities to regulate the verification of close corporation and company records of bidders from the official database of CIPRO;

44.2 The Municipal Manager of the Greater Sekhukhune District Municipality takes urgent steps to ensure that:

44.2.1 The contract entered into between the Municipality and SGL in connection with the Malebitsa/Driefontein Road Project refers to SGL Engineering Projects (Pty) Ltd and not to SGL Engineering Projects CC;
44.2.2 The procurement records of the Municipality pertaining to the project referred to in paragraph 44.2.1 above include a valid professional indemnity insurance certificate in respect of SGL;

44.2.3 The record keeping by the Municipality of procurement documents is improved;

44.3 The Municipal Manager of the Mopani District Municipality takes urgent steps to ensure that:

44.3.1 The contract entered into between the Municipality and SGL in connection with the Nkowankowa Sewerage Project refers to SGL Engineering Projects (Pty) Ltd and not to SGL Engineering Projects CC;

44.3.2 The procurement records of the Municipality pertaining to the project referred to in paragraph 44.3.1 above include a valid professional indemnity insurance certificate in respect of SGL; and

44.3.3 The SCM Policy of the Municipality is reviewed as contemplated by Regulation 3(1)(b) of the SCM Regulations;

44.4 The Municipal Manager of the Makhado Local Municipality takes urgent steps to ensure that:

44.4.1 Record keeping of procurement documents by the municipality is improved; and

44.4.2 The SCM Policy of the Municipality is reviewed, as contemplated by Regulation 3(1)(b) of the SCM Regulations;

44.5 The Municipal Manager of the Lepelle-Nkumpi Local Municipality takes urgent steps to ensure that:

44.5.1 Record keeping of procurement documents by the municipality is improved;
44.5.2 The SCM Policy of the Municipality is reviewed, as contemplated by Regulation 3(1)(b) of the SCM Regulations;

44.5.3 Appropriate action is taken in respect of Phase 1 of the upgrading of roads on Lebowakgomo Zone A and that the project is properly implemented; and

44.6 The Municipal Managers of the Bojanala Platinum District, Greater Letaba Local and Greater Tzaneen Local Municipalities take steps to ensure that the SCM Policies of the respective Municipalities are reviewed, as contemplated by Regulation 3(1)(b) of the SCM Regulations;

45. MONITORING

45.1 The Municipal Managers of the Municipalities referred to in paragraph 44 above are required to submit a report to the Public Protector on the progress made with the implementation of the respective recommendations referred to in that paragraph, by 15 November 2010.

45.2 The Public Protector to further monitor progress over a period of 6 months.

ADV T N MADONSELA
PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
Date: