



**O.R. TAMBO  
DISTRICT MUNICIPALITY**



## **OR Tambo District Municipality**

**Forensic Investigations into Allegations of Financial Mismanagement,  
Irregularities and Unorthodox Financial Practices in Relation to Infrastructure  
Projects at OR Tambo District Municipality**

**Final Report**

27 August 2020

Mr F Mphako  
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Ayanda Peyane and Company (hereinafter referred to as APAC) is pleased to submit this draft report to the OR Tambo District Municipality (hereinafter referred to as the ORTDM), for the above-mentioned engagement.

We have presented our findings in this draft report based on the information made available to us during the course of our engagement. However, should it come to our attention that material information was not disclosed to us for whatever reasons, or was not made available to us at the time of writing this draft report, we reserve the right to amend and qualify our findings based on that additional information accordingly.

Please be advised that we regard the contents of this document as strictly confidential and therefore request that the ORTDM affords it the same treatment. The contents of this report are therefore not intended for, nor may it be relied upon by any third party except for circumstances authorised by the ORTDM, in consultation with us.

For any queries and questions regarding the information contained in this report, please do not hesitate to contact Msekeli Nqabeni on 076 084 5165.

Yours faithfully



**Mr M. Nqabeni**  
**On behalf of A. Peyana & Co. (Pty) Ltd**  
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## 1. BACKGROUND

- 1.1. The Council of OR Tambo District Municipality ("ORTDM") resolved to suspend Municipal Manager of ORTDM while conducting forensic investigation into allegations of financial misconduct, theft and corruption against the Municipal Manager.
- 1.2. The said allegations emanated from the following alleged transactions:
  - 1.2.1. The payment of R12 622 000 to Ruwaccon for the supply of materials to the Signal Hill and yet these materials were allegedly not delivered;
  - 1.2.2. The payment of R9 990 000 to Khwalo Construction for the Mqaunduli Bulk Sewer project and yet Khwalo Construction did not allegedly do the work;
  - 1.2.3. The payment of R10 361 500 to Gcina Sonke for the Mqanduli Bulk Sewer project and yet Gcina Sonke allegedly did not do the work;
  - 1.2.4. The payment of R 2 503 467 and R1 040 314 for Valotone and Phoenix respectively in respect of the delivery of tanks at Mhlontlo project;
  - 1.2.5. It is alleged that both Valotone and Phoenix did not deliver the said tanks and did not participate in the project; and
  - 1.2.6. ORTDM made the following unexplained payments to Amatola Water Board:
    - R28 020 506;
    - R91 182 757; and
    - R14 800 930.

## 2. SCOPE

- 2.1. The scope of the investigation was to:
  - 2.1.1. Investigate if the payments made followed official payment processes;
  - 2.1.2. Investigate if the work was actually done, materials acquired and delivered, or goods and services were actually acquired and delivered;
  - 2.1.3. Investigate non-compliance with laws and official procedures;
  - 2.1.4. Investigate/ assess if these projects' progress matches money spent;
  - 2.1.5. Assess adequacy of municipal processes in managing these infrastructure projects;

- 2.1.6. Investigate if the payments were made to the organisations or individuals that were supposed to receive them;
- 2.1.7. Investigate if any illegal activities took place;
- 2.1.8. Investigate if municipal officials acted in the best interest of the municipality and within the rules and law;
- 2.1.9. Investigate whether the Accounting Officer had at all material times acted with due care, diligence, and acted in accordance with due legislation to safeguard the interests of the municipality;
- 2.1.10. Investigate whether the Accounting Officer was in anyway negligent, malicious, and/ or reckless in conducting the financial and non-financial affairs of the municipality;
- 2.1.11. Investigate whether the Accounting Officer is personally implicated in any acts of wrongdoing, whether identified by the Council or come about as a result of the investigation; and
- 2.1.12. Determine the involvement and the role of the Accounting Officer on the identified projects, and whether such involvement was by omission or commission.

### 3. ENGAGEMENT APPROACH

- 3.1. During the period 30 July 2020 to 25 August 2020, we performed the following procedures:
  - 3.1.1. Obtained and perused the following documents:
    - ORTDM Invoice Payment Management Processes and Procedure Manual dated April 2019;
    - ORTDM Code of Conduct for Municipal Staff Members revised in July 2017;
    - General Conditions of Contract for Construction Works, Third Edition 2015; and
    - Guidelines to General Conditions of Contract for Construction Works, Third Edition 2015.
  - 3.1.2. Obtained and perused the following payment vouchers:
    - Payment of R12 622 924 to Amotola for Payment Certificate 24 in respect of the construction of reservoir at Signal Hill by Ruwacon;

- Payment of R9 990 000 for Payment Certificate 1 submitted by Ziinzame Consulting Engineers ("Ziinzame") in respect of Mqanduli Secondary Bulk Water Scheme Contract 01 by Khwalo Construction;
- Payment of R10 361 500 for Payment Certificate 1 submitted by Ziinzame in respect Mqanduli Secondary Bulk Water Scheme Contract 02 by Gcina Sonke;
- Payment of R1 040 314 for Payment Certificate 02 submitted by Ziinzame in respect Mhlontlo Cluster 1 Water Supply – Drought Relief Programme by Phoenix;
- Payment of R2 053 467 for Payment Certificate 02 submitted by Ziinzame in respect Mhlontlo Cluster 1 Water Supply – Drought Relief Programme by Valtone;
- Payment of R28 020 506,69 for Payment Certificate 08 submitted by Amatola in respect of construction of Thorn Hill clear water pump station;
- Payment of R91 182 737.29 for Payment Certificate 105 submitted by Amatola in respect of electrical connection for Highbury at Thorn Hill for Water Treatment Works Upgrade;
- Payment of R14 800 930.74 for Payment Certificate 18 submitted by Amatola in respect of electrical connection for Highbury at Thorn Hill for Water Treatment Works Upgrade.

3.1.3. Conducted site visit for the following projects:

- Mqanduli Secondary Bulk Water Scheme; and
- Mhlontlo Cluster 1 Water Supply – Drought Relief Programme.

3.1.4. Conducted interviews with the following individuals:

- Mr Monwabisi Mgqibi ("Mr Mgqibi"), Project Manager at ORTDM;
- Mr Mawethu Mtengwane ("Mr Mtengwane"), Project Management Unit ("PMU") Manager at ORTDM;
- Mr Andile Vellem (Mr Vellem"), Director of Water Services Services at ORTDM;
- Ms Nodumo Mazwana ("Ms Mazwana"), Finance Manager at ORTDM;
- Mr B Matomela ("Mr Matomela"), Director in the office of the Municipal Manager;

- Mr Ravik Rajkumar ("Mr Rajkumar"), Project Manager at Ziinzame;
- Mr Andrew Myeki, Director at Amathole Pipe Systems (Pty) Ltd; and
- Mr Ike Majola ("Mr Majola"), Project Lead at Ziinzame.

#### **4. ORTDM POLICIES AND LEGISLATIVE FRAMEWORK**

- 4.1.** Municipal Finance Management Act ("MFMA");
- 4.2.** ORTDM Invoice Payment Management Processes and Procedure Manual dated April 2019;
- 4.3.** General Conditions of Contract for Construction Works, Third Edition 2015; and
- 4.4.** Guidelines to General Conditions of Contract for Construction Works, Third Edition 2015

#### **5. LIMITATIONS OF THE INVESTIGATION**

- 5.1.** Our procedures were not performed according to an audit methodology as indicated in terms of the International Standards on Auditing, nor were we required to conduct this engagement as such.
- 5.2.** We were not required to, nor did we express any legal and audit opinions in this document, nor should anything stated herein be regarded as such. However, our conclusions have been tested against the applicable legal principles and frameworks and found to be in line with the same.
- 5.3.** This report is intended for the addressees within the ORTDM and should not be disclosed to any other third party who is not part of the commissioning structures of the ORTDM. Furthermore, APAC will not accept any responsibility should this report, or any part thereof, be disclosed or released to any other third party without our prior written consent.
- 5.4.** The findings contained herein are based on the work performed to date.
- 5.5.** As a consequence, we cannot conclude that our investigation outcome has been exhaustive. However, to the extent that our conclusions are based on the information provided corroborated by interviews conducted with ORTDM employees and other implicated persons, we are satisfied that the said conclusions are sound, reasonable and justifiable.

- 5.6.** We note that we were unable to meet with the following persons/entities as a result of the timelines provided by Council, Mr. Owen Hlazo, Valotone 95 CC and Phoenix Tanks (Pty) Ltd.
- 5.7.** The investigation findings are based on facts, documentary review and other procedures. Please note that this report is not a pronouncement of guilt or lack thereof by any party or parties that may be implicated. It however forms a basis for a consideration that could lead to whatever corrective process deemed necessary by the ORTDM.
- 5.8.** It is the prerogative of management to act on any of the recommendations made in this report. These are based on our findings to date and consider, inter alia, remedies available to you as per internal policies and legislative prescripts. As the recommendations are of an advisory nature, APAC may not be held responsible for actions emanating from the implementation thereof.

## **6. DETAILS OF THE FINDINGS**

### **6.1. Payment by OR Tambo District Municipality to Amatola Water : Construction of the 15ml Signal Hill Reservoir 4.**

6.1.1. We obtained and perused the payment pack with supporting documents in relation to the allegation that an amount of R12 622 924.10 was paid to Ruwacon, for the supply of material to the construction of the 15ml Signal Hill Reservoir 4.

6.1.2. Upon perusing the supporting documents on the payment pack, we noted that the R12 622 924.10 was not paid by OR Tambo District Municipality ("ORTDM") to RUWACON as alleged, rather ORTDM paid the funds to Amatola Water.

6.1.3. Subsequent analysis of the payment pack we noted the following documents:

- **Payment Approval form for Projects only**

Budget Approved: R241 333 000.00

Programme: Regional Bulk Infrastructure Grant (RBIG)



Project Description	Programme	Project No.	Consultant	Contractor	Amount of Claim	Basis of Claim
Mthatha Corridor/Signal Hill Reservoir	RBIG	AW2018/19/23	GIBB	RUWACON	R12 622 924.10	Work done

### Approvers

**Project Manager:** M Mqgibi

Signed & Date: 24/01/2020

**ISD Officer:** None

Signed & Date: None

**Programme Manager:** None

Signed & Date: None

**PMU Manager:** M Mtengwane

Signed & Date: Signed no date

**Director – Water Services:** A Velem

Signed & Date: 29/01/2020

**Municipal Manager:** O Hlazo

Signed & Date: only signed no date

- **Amatola Water Amanzi Tax Invoice**

Invoice date	Account number	Invoiced to	Reference Number	Invoice details	Amount total due
19/12/2019	DORT003	OR Tambo District Municipality- RBIG	S07/100071 75	KSD PI Water & Sanitation Installment 457 Summary of Expenditure: Dec 19	R12 622 924.10

- **Amatola Water Amanzi Request for Payment**

- The document was certified and signed by W Manzi on 02/12/2019
- Verified and signed by PMU Manager M Mabulu on 03/12/2019
- Recommended and signed by Acting Executive Manager S Qweleka on 03/12/2019
- Approved by CE V Zitumane on 05/12/2019.

- **GIBB Engineering and Architecture Payment Certificate No 2 cover letter with supporting documents**
  - The payment certificate cover letter, we noted that it is dated 29 November 2019 and was prepared and signed by Duncan Shaw from GIBB for the attention of Mr S Qweleka of Amatola Water.
  - We noted that the cover letter for the payment certificate no 2 was in relation to an amount of R12 021 832.49, which was to be paid to Ruwaccon in relation to the construction of 15ml Signal Hill Reservoir 4.
  - Upon viewing the payment certificate no 2 cover letter from GIBB, we noted that it did not state that the amount was an advance payment request.

#### **Payment Certificate No 2**

- Further, we noted that the payment certificate no 2 to Amatola Water was also attached.
  - Upon perusing the payment certificate we noted that from the R12 021 832.49 invoiced, an amount of R8 730 269.66 was for 80% materials on site.
  - On the payment certificate from GIBB it stated that, "we hereby certify that the above mentioned work has been executed satisfactorily and that the quantities are correct".
  - We noted on the payment certificate signatures from Ruwaccon, Basil Sparg Senior Resident Engineer (RE) from GIBB and Duncan Shaw Pr Engineer from GIBB (reflected pp Nokuphumla Mkhwanazi GIBB). The document was signed by all parties on 29 November 2019.
- **Ruwaccon Tax Invoice and Payment Certificate Checklist**
    - Amongst the documents attached with the cover letter we noted a Ruwaccon (Pty) Ltd Tax Invoice dated 29 November 2019 for Amatola Water in relation the construction of 15ml Signal Hill Reservoir.

- On the Ruwacou Tax Invoice we noted that an amount of R12 021 832.48 was invoiced, but out of the amount, an amount of R8 730 269.65 was for materials on site.
  - The Ruwacou Tax invoice was certified and signed by Wakayi Manzi, verified and signed by Mabulu and was approved and signed by S Qweleka
  - The Payment Certificate Checklist 2019 was signed by Assistant Resident Engineer and the Resident Engineer. Names of the engineers who signed the document are not stated and there is no date when the document was signed.
- **Amatola Water – Approval Cover sheet of Documents submitted to CEO Office**
    - Upon perusing we could not fully ascertain the person who signed the document, but the signature appears to be that one of Mr S Qweleka.
    - We noted that this document was submitted and signed by W Manzi.
    - There is no information filled in relation to when the document was received and the receiver.
    - It appears that the document at Amatola water was submitted by the P&D department and is dated 02/12/2019.
  - Bill of Quantities
  - Certificate No 2 – Contract Price Adjustment

**Additional Information received from GIBB**

- 6.1.4. On 11 August 2020 we sent an email to Mr Duncan Shaw from GIBB, requesting that he furnish us with records pertaining to project management of the construction of 15ml Signal Hill Reservoir.
- 6.1.5. An email response dated 13 August 2020 (05:35) was received from Mr Shaw which stated that, they demonstrated to various Oversight Committees investigating the same matter that Ruwacou provided a valid Advance

Payment Guarantee to Amatola Water in respect of being paid up front for the purchase of materials.

- 6.1.6. Mr Shaw further stated that, Ruwacon to this day have never been paid any of the advance sum. Mr Shaw's response on an email dated 13 August 2020 (12:30) stated that, Amatola Water is the implementing agent for ORTDM. According to Mr Shaw, the R12 021 832.49 advance payment that was paid by ORTDM to Amatola Water is presumably safe in Amatola Water bank account.
- 6.1.7. During the email correspondence, Mr Shaw provided other emails in relation to the advance payment and the Advance Payment Guarantee for materials to be purchased.
- 6.1.8. We noted an email dated 28 July 2020 (13:29) from Ruwacon Contract Manager Pieter van der Westhuizen ("van der Westhuizen") to Mr Shaw and various other people that were copied.
- 6.1.9. On the email Mr van der Westhuizen stated that, "unless paid for in advance by the client. The risk of ordering materials so far in advance has various risks associated to it for example, theft, fire and damage by nature, something no one has priced nor insured for".
- 6.1.10. Mr van der Westhuizen on the email stated that, "As noted before and by our Financial Director, no goods will be purchased without receiving the Advance Payment that goes hand in hand with the Advance Payment Materials Guarantee issued".
- 6.1.11. Mr Shaw on an email dated 28 July 2020 (07:30) to Mr van der Westhuizen stated that, "we have your previously supplied proof of placing orders, but not proof of purchase". It was further stated by Mr Shaw on the same email that the advance funds were never paid to Ruwacon.
- 6.1.12. We noted an email dated 27 July 2020 (21:29) from Mr Usanda Kewana (Amatola Water) to Mr Mlamli Mabulu (Amatola Water), Mr Basil Sparg (GIBB), Mr Shaw (GIBB) and Mr S Qweleka from Amatola Water was copied.
- 6.1.13. On the email Mr Kewana confirmed that, a meeting with CoGTA, Treasury, DWS and ORTDM took place on 27 July 2020 indicating information that was requested from the meeting.
- 6.1.14. According to Mr Kewana information that was requested was delivery notes for all materials procured but not yet delivered, copies of certificates submitted

to Amatola Water and bills submitted to ORTDM with all supporting documents and proof of payments for Ruwaccon invoices.

6.1.15. Upon analysis we noted on the ORTDM payment there were no delivery notes for materials procured.

6.1.16. We perused the General Conditions of Construction Works (the GCC 3<sup>rd</sup> Edition 2015) published by the South African Institute of Civil Engineers (GCC 2015) regarding Materials on Site and noted the following:

- **“6.10 Payments**

- 6.10.1 *With regard to all amounts that become due to the Contractor in respect of the matters set out in Clauses 6.10.1.1, 6.10.1.2, 6.10.1.3, 6.10.4, and 6.10.1.5 below, he shall deliver to the Employer's Agent a monthly statement for payment of all amounts he considers to be due to him (in such form and on such date as may be agreed between the Contractors and the Employer's Agent, or failing agreement, as the Employer's Agent may require) and the Employer's Agent shall, by signed payment certificates issued to the Employer and the Contractor, certify the amount he considers to be due to the Contractor, taking into account the following:*

- 6.10.1.5 *The value up to the percentage limit stated in the Contract Data of Plant and materials referred to in Clause 6.9.1 not yet supplied to Site or not yet built into the Permanent Works; provided that the Contractor has produced documentary evidence of ownership of such Plant and/or materials and has delivered to the Employer an indemnity, approved in writing by the Employer, against any claim to or in respects of such Plant and/or materials by reasons of the Contractor's title to the Plant and/or materials.”*

6.1.17. As stated above in order for a contractor to be compensated for a Materials on Site claim, there are two primary requirements:

- Documentary evidence of ownership and
- An indemnity, approved in writing by the Employer

6.1.18. If these requirements stated are not met, the claim for Materials on Site is not compliant with GCC 2015.

6.1.19. Further, on advance payments the Guide to the General Conditions of Contract 2015 published by the South African Institute of Civil Engineering Second Edition (2015) (Guide to GCC 2015) states that:

- “Although not stipulated in GCC 2015, and advance payment to the Contractor may be beneficial. At the commencement of the works, the Contractor needs working capital to purchase materials, Construction Equipment, and pay for Plant to be installed. This need is especially applicable to emerging contractors who must still build up the required working capital from their profits. To assist the Contractor with financing the initial stages of construction, the Employer can pay him a part of the Contract Sum in advance. Depending on the demand for working capital needed up front for a particular contract, advance payment can vary from 10% to 20% of the Contract Sum.
- Should the Employer wish to make an advance payment to the Contractor, he can secure the risk by requiring an Advance Payment Guarantee from a recognised bank or other financial institution. The guaranteed amount equals the advance payment and will decrease on accordance with the work paid for”.
- Please refer to Appendix 4 for the Contract Data required to provide for an advance payment and the pro forma Advance Payment Guarantee.”

6.1.20. We noted that, while the Guide to GCC 2015 provides some guidance when making advance payments, it must be noted that these guidelines are **not contractual**. Further, advance payments can be interpreted as a loan which is strictly not allowed in terms of the MFMA.

6.1.21. Considering this, it can be reasonably inferred that the Employer needs to put processes in place to ensure the guide to GCC 2015 and CIDB guidelines are applied correctly, in terms of:

- Identifying emerging contractors;
- Managing the percentage advance payment against the contract sum;

- Ensuring that guarantees contain the required information; and
- Ensuring that financial, management or other support is provided to that contractor to enable the contractor to successfully execute the contract.

**Letter from Phatshoane Henney Attorneys for the attention of the Executive Mayor of OR Tambo District Municipality**

- 6.1.22. We further noted a letter dated 22 June 2020 by Phatshoane Henney Attorneys for the attention of the Executive Mayor of OR Tambo District Municipality.
- 6.1.23. In the letter of Phatshoane Henney Attorneys it stated that, they represent Ruwacou (Pty) Ltd as their client. Apart from other matters stated on the letter, it stated that, Ruwacou provided to the Employer the required guarantee in the amount of R8 730 269.66 during May 2020.
- 6.1.24. Furthermore the letter stated that, Ruwacou has not received payment of the amount of R12 021 832.48.
- 6.1.25. We noted from Phatshoane Henney Attorneys letter attached a performance guarantee from Infiniti Guarantees signed at Sandton dated 17 July 2019. The Infiniti guarantee reflected R3 299 143.72 as the guaranteed maximum amount.

**Interviews Conducted with Mr Andile Velem**

- 6.1.26. We conducted an interview on 20 August 2020 with Mr Andile Velem Director for Water Services ("MrVelem") in relation to the advance payment to Amatola Water for the construction of the Signal Hill Reservoir 4. Mr Velem stated that he was not aware that the R12 622 924.10 that was paid to Amatola Water by ORTDM was an advance payment.
- 6.1.27. According to Mr Velem he only became aware that the payment that was made to Amatola was an advance payment when the allegations were put to him and when the investigation processes started.
- 6.1.28. Mr Velem stated that he only became aware during the investigation process that the advance payment was made without the materials being on site.
- 6.1.29. It was stated by Mr Velem that he was not aware that there was supposed to be a Payment Guarantee in relation to the advance payment.
- 6.1.30. Mr Velem stated that he approved the payment to Amatola as he relied on Amatola Water as the implementing agent of ORTDM. Further stated that when

he received the documents he did not look into detail on the documents submitted by Amatola for the project as he depended on Amatola to conduct due diligence.

- 6.1.31. It was stated by Mr Velem that the contract between ORTDM and Amatola Water has a provision for Amatola Water to claim for advance payment.
- 6.1.32. We noted on the contract of 2018/2019 signed between ORTDM and Amatola Water that, on section 17.3.2.5 it states that: "the Implementing Agent shall invoice the Department and such invoice shall reflect an advance payment where materials are ordered but have not yet been delivered".
- 6.1.33. We noted that the tax invoice that was submitted by Amatola Water did not reflect that this was an advance payment.
- 6.1.34. During the interview Mr Velem stated that, he engaged Amatola Water regarding the advance payment and agreed with them that the Ruwacou will claim material on site. Further stated that the contractor presented a payment guarantee which was delayed.
- 6.1.35. According to Mr Velem the contractor was also not paid as they were not on site due to lockdown.
- 6.1.36. During the interview Mr Velem stated that there are no written Standard Operating Procedures for the Project Management Unit in relation to management of projects,
- 6.1.37. It was further stated by Mr Velem that the check list of supporting documents in preparing for payment is not documented

#### **Interviews Conducted with Mr Mawethu Mtengwane**

- 6.1.38. On 19 August 2020 we conducted an interview with Mr Mawethu Mtengwane Project Management Unit Manager ("Mr Mtengwane") in relation to the advance payment to Amatola Water for the construction of the Signal Hill Reservoir 4. Mr Mtengwane stated that he was aware that the R12 622 924.10 was paid to Amatola Water by ORTDM.
- 6.1.39. Mr Mtengwane stated that he was not aware if the materials were on site during the payment of the funds to Amatola Water.
- 6.1.40. It was stated by Mr Mtengwane that he was aware that the payment that was made to Amatola Water was an advance payment.



- 6.1.41. According to Mr Mtengwane although the advance payment was approved he did not have sight of the Payment Guarantee of Ruwacon. He signed the approval payment document because the payment certificate indicated that there is a payment guarantee.
- 6.1.42. Upon analysing the payment certificate we noted that the Payment Guarantee is not mentioned.
- 6.1.43. Mr Mtengwane stated that he recently requested the Payment Guarantee after he already approved the advance payment to Amatola Water. Furthermore he stated that the Payment Guarantee should have been attached on the documents that were submitted to finance.
- 6.1.44. It was stated by Mr Mtengwane that there is no written process that guides him which documents must be included on the payment pack to finance. He stated that he used his own discretion in compiling the documents for payment by finance.
- 6.1.45. According to Mr Mtengwane there has been progress on the project but there has been a delay and the project is behind due to Covid 19 including the community protest.

#### **Interviews Conducted with Mr Monwabisi Mgqibi**

- 6.1.46. On 18 August 2020 an interview was conducted with Mr Monwabisi Mgqibi ("Mr Mgqibi") who is a Project Manager at ORTDM. Mr Mgqibi stated that Amatola Water is the implementing agent on the Signal Hill project but he checks the progress of the project through site visits
- 6.1.47. It was stated by Mr Mgqibi that the payment made was an advance payment and the materials were not delivered on site at time.
- 6.1.48. According to Mr Mgqibi he was informed by the project manager from Amatola Water that a Payment Guarantee was provided by Ruwacon.
- 6.1.49. Mr Mgqibi acknowledged that although he approved the advance payment, he did not see the payment guarantee and no materials were delivered on site as well.
- 6.1.50. During the interview Mr Mgqibi stated that the Payment Guarantee was sent by Amatola Water and will provide which he did not provide.

**Interviews Conducted with Mr Qweleka**

- 6.1.51. On 28 August 2020 an interview was conducted with Mr Sazile Qweleka Acting Executive for Planning and Development ("Mr Qweleka") at Amatola Water offices. Mr Qweleka stated that Ruwacon was appointed by Amatola Water.
- 6.1.52. Mr Qweleka stated that GIBB was initially appointed by ORTDM but was eventually ceded to Amatola Water around 2012.
- 6.1.53. According to Mr Qweleka, Amatola Water submitted the invoice to ORTDM in order to assist Ruwacon to purchase materials, but the risk was mitigated when a Payment Guarantee was requested from Ruwacon.
- 6.1.54. During the interview Mr Qweleka stated that the advance funds were not paid to Ruwacon as they did not provide the Payment Guarantee before lockdown.
- 6.1.55. Mr Qweleka stated that the payment of the advance sums to Ruwacon has not been paid due to internal delays from Amatola Water to approve the Payment Guarantee from Ruwacon.
- 6.1.56. It was further stated by Mr Qweleka that the amount of R12 622 924.10 which was paid by ORTDM to Amatola Water was an advance payment. According to Mr Qweleka, from the Amatola Water these funds on their financials are reflected as advance payments.

**Advance Payment Findings**

- 6.1.57. During the investigation we noted that ORTDM made an advance payment to Amatola Water.
- 6.1.58. The said amount paid by ORTDM was an advance payment to Amatola Water for materials on site which were not delivered.
- 6.1.59. We noted that the payment certificate that was prepared by GIBB and Ruwacon including the tax invoice from Ruwacon to Amatola Water did not reflect that the R8 730 269.66 was a request for advance payment for 80% materials on site.
- 6.1.60. At the time the advance payment was done, there were no materials delivered on site as at 30 June 2020;
- 6.1.61. Payment Guarantee, that provides security against the risk of advance payments, was not included when the invoice was submitted for payment.

- 6.1.62. During analysis we noted that no delivery notes were attached in relation to the payment advance payment.
- 6.1.63. There is no evidence to prove if the Payment Guarantee was requested and received by the ORTDM officials when they approved the advance payment for materials on site.
- 6.1.64. Upon analysis of the emails we noted that Ruwacon requested for an advance payment to purchase materials and also provided an Advance Payment Guarantee to Amatola Water.
- 6.1.65. According to Ruwacon they have not been paid any of the advance sum by Amatola Water although they provided the advance Payment Guarantee.
- 6.1.66. Information received from Mr Qweleka confirmed that the advance sum has not been paid to Ruwacon due to internal delays within Amatola Water.
- 6.1.67. We noted during the investigation the Regional Bulk Water Supply Agreement of 2018/2019 between OR Tambo District Municipality and Amatola Water Board.
- 6.1.68. On the Agreement it states on section 17.3.2.5 that the Amatola Water as the Implementing Agent shall invoice and such invoice shall, "reflect an advance payment where materials are ordered but have not yet been delivered".
- 6.1.69. During analysis we noted that the tax invoice that was submitted by Amatola Water to ORTDM was not in line with the Agreement that was signed by the two institutions, in that it did not reflect advance payment as a requirement in the contract.
- 6.1.70. We noted that Mr Mgqibi, Mr Mtengwane, Mr Velem and Mr Owen Hlazo approved the advance payment yet the tax invoice submitted by Amatola Water did not reflect advance payment as per the requirement in the contract agreement.
- 6.1.71. Furthermore, Mr Mgqibi, Mr Mtengwane and Mr Velem approved the advance payment without even having sight of the payment guarantee.
- 6.1.72. It is evident that Mr Mgqibi, Mr Mtengwane, Mr Velem and Mr Hlazo by approving the advance payment at the time were not in line with GCC 2015 as there was no documentary evidence of ownership and there was no indemnity approved in writing by the Employer.

- 6.1.73. The advance payment that was approved by Mr Mgqibi, Mr Mtengwane, Mr Velem and Mr Owen Hlazo appear to be in contravention of the MFMA. The MFMA S164 (1)(c)(iii) states that, "no municipality or municipal entity may make loans to members of the public".
- 6.1.74. It appears that the advanced payment transactions by ORTDM to Amatola Water are a breach to the provisions of the MFMA and are not aligned with the GCC 2015.
- 6.1.75. We noted officials from both ORTDM and Amatola Water are relying on the provisions that are part of the GCC which do not comply with the MFMA.

## **6.2. Prepayment to Khwalo**

- 6.2.1. We noted during our investigation that Ziinzame and Khwalo were appointed by ORTDM as consulting engineers and contractors respectively for the Mqanduli Secondary Bulk Water Scheme: Contract 01. We further noted that Ziinzame submitted first tax invoice of Khwalo, numbered A0788, amounting to R9 990 000 and dated 30 April 2019 at ORTDM in respect of this project.
- 6.2.2. We obtained and perused the payment voucher in respect of the above mentioned tax invoice and noted that the following supporting documents were attached to the said tax invoice:
- Bill of Quantities ("BoQ");
  - Pro forma invoice of Amothole;
  - Tax invoice of Amothole;
  - Covering letter of Ziinzame; and
  - Payment Approval Form for Projects Only for ORTDM.
- 6.2.3. We perused the above mentioned BoQ and noted what is referred to as summary of sections on Preliminary and General ("P&G") and Material on Site ("MoS"). According to these summaries, the claim for P&G amounts to R1 639 166.67 and the claim for MoS amounts to R3 975 120.00 subsequent to deducting 20% from the cost of MoS. The actual cost of the materials, according to this summary, prior to deducting 20% is R4 968 900.00.

- 6.2.4. The total claim of Khwalo in terms of the above mentioned information is supposed to be R5 614 286.67 (R1 639 166.67 + R3 975 120.00). However, we noted from the tax invoice of Khwalo that they claimed R9 990 000.00 inclusive of VAT of R1 303 043.48. Therefore Khwalo claimed in excess of R4 375 713.33 on their tax invoice without providing any explanation.
- 6.2.5. We further perused the tax invoice of Amothole, numbered 000675, dated 29 April 2019, addressed to Khwalo and attached as one of the supporting documents for the Khwalo invoice. This invoice supposedly provides evidence with regards to materials purchased by Khwalo at Amathole. We noted that the description on this tax invoice is reflected as *"SUPPLY AND DELIVERY OF MPVC PIPES AND FITTINGS: MQANDULI SECONDARY BULK WATER SUPPLY CONTRACT 1 TENDER No.: ORTDM SCMU 48-18/19"*.
- 6.2.6. According to the above mentioned invoice of Amathole and contrary to the amount of R4 968 900.00 reflected on the summary of sections for MoS of Khwalo, the cost of the materials reflected on this invoice of Amathole is R4 571 388.00 inclusive of VAT of R596 268.00. We noted that the amount of MoS, on the summary of sections for MoS, before deducting 20% was inflated by R397 512 (R4 968 900.00 – R4 571 388).
- 6.2.7. We further noted that the payment in respect of the invoice of Khwalo did not have the signed payment certificate from Ziinzame as the consulting engineers of Mqanduli Secondary Bulk Water Scheme: Contract No. 01. Instead Ziinzame attached their covering letter as one of the supporting documents to the invoice of Khwalo.
- 6.2.8. We perused the said covering letter signed by Mr Hlela Ngxola ("Mr Ngxola") dated 30 April 2019, addressed to the Municipal Manager and titled *"MQANDULI SECONDARY BULK WATER SCHEME: CONTRACT 01: ORTDM SCMU 48 – 18/19: MIG PROGRAMME – PAYMENT CERTIFICATE NO. 01"*. We further noted that the letter was for the attention of Mr V Makala ("Mr Makala"), Project Manager from ORTDM in charge of Mqanduli Secondary Bulk Water Scheme.
- 6.2.9. According to the above mentioned letter, Mr Ngxola confirms that the certified works in terms of Payment Certificate No.1 for Khwalo and for an amount of

R9 990 000 are complete. We further noted that Mr Ngxola indicated that the following documents were attached for perusal and approval:

- Invoice of Kwalo for an amount of R9 990 000 inclusive of VAT; and
- Supporting documents for work completed as of 30 April 2019.

6.2.10. The allegation states that Khwalo was paid for the work they did not do. Therefore, we conducted an interview with Mr Andrew Myeki ("Mr Myeki"), one of the Directors of Amothole, and enquired from him as to whether Khwalo procured the said materials from Amathole. Mr Myeki stated that Khwalo did not procure materials from them and that Khwalo only requested a pro forma invoice and not tax invoice.

6.2.11. Contrary to what Mr Myeki asserted, we noted that both the tax invoice and pro forma invoice from Amathole in respect of supposedly procured materials were attached by Khwalo as one of the supporting documents on the said payment certificate. The attachment of the Amathole tax invoice to the payment certificate implied that Khwalo procured the said materials and was entitled to 80% of the amount stated on the invoice.

6.2.12. We obtained and perused the email from Mr Myeki to Mr Nceba Mandela ("Mr Mandela"), Director and owner of Khwalo, dated 29 April 2019 and titled *CONTRACT 1 – Tax Invoice*. We noted that Mr Myeki thanked Mr Mandela for his enquiry and indicated that he had attached a copy of tax invoice as per their discussion. We noted that the said copy that was attached on this email is the same copy that Khwalo attached as a supporting document to their invoice. It should be noted that Mr Myeni misled us by stating that he provided Khwalo with pro forma invoice and not tax invoice.

6.2.13. We conducted an interview with Mr Mandela and enquired about the first invoice of Khwalo in respect of Mqanduli Secondary Bulk Water Scheme Contract 01. Mr Mandela indicated the following, amongst others:

- They were called to a meeting by ORTDM where payments for contractors were discussed;
- The meeting was attended by 15 contractors;

- ORTDM was represented by Mr Velem, Mr Mtengwane and Ms Ntombi Tshicilela ("Ms Tshicilela");
- They were informed in that meeting that ORTDM is approaching its financial year end and that they were supposed to assist ORTDM in expediting their expenditure;
- They were thus requested to submit invoices for them to be paid in advance;
- They were thus requested to organise payment guarantees for the above mentioned advance payments;
- Mr Majola provided Khwalo with an amount and requested Khwalo to prepare the first invoice based on the provided amount;
- Khwalo had neither done any work nor procured any material when they prepared the said invoice;
- He requested Mr Myeki to provide him with the tax invoice for materials, Mr Myeki sent the said invoice through an email and he forwarded the said invoice to Mr Majola;
- He further organised a payment guarantee from Khula Guarantee that he would use as a security for the advance payment and he sent it to Mr Majola as well;
- The BoQ that is attached on the first invoice of Khwalo was prepared by Ziinzame without the assistance of the project manager of Khwalo;

6.2.14. We further enquired from Mr Mandela as to why the tax invoice of Khwalo was presented to ORTDM with the false impression that the work was done and that materials had been purchased. Mr Mandela indicated that the BoQ that was attached to the said invoice was prepared by Ziinzame without their involvement. According to Mr Mandela, they provided Ziinzame with their payment guarantee so that they attach it to their tax invoice to serve as evidence of security arranged for their advance payment instead of the Amothole tax invoice they had provided earlier.

6.2.15. We obtained and perused the above mentioned payment guarantee of Khwalo and noted the following, amongst others:

- The payment guarantee was arranged with ACS Guarantees;

- The contract sum of the payment guarantee is R10 000 000 and the payment guarantee was signed on 29 April 2019; and
- The payment guarantee is not specific that it was arranged for the MoS and as a result it might not be providing the required security to ORTDM in respect of the said advance payment.

6.2.16. We conducted an interview with Mr Ravik Rajkumar ("Mr Rajkumar"), Project Manager at Ziinzane and enquired about the first invoice of Khwalo in respect of Mqanduli Secondary Bulk Water Scheme: Contract 1. Mr Rajkumar indicated the following, amongst others:

- ORTDM called a meeting for all the contractors to discuss advance payments;
- ORTDM was represented by Mr Vellem, Mr Ntsengwane and Ms Tshicilela;
- The meeting was chaired by Mr Vellem;
- It was indicated in that meeting that ORTDM was approaching its financial year end and needed to expedite its expenditure;
- It was further indicated in that email that contractors will be paid two advance payments and that contractors should arrange payment guarantees that will serve as security for ORTDM; and
- Khwalo arranged a R10 million payment guarantee.

6.2.17. It should be noted that, although Khwalo arranged a payment guarantee to the value of R10 million, copy of this payment guarantee was not attached as one of the supporting documents on the first tax invoice of Khwalo. It should further be noted that the first tax invoice of Khwalo was misleading as it gave an impression that the claim was on the work done and MoS when the claim was actually for an advance payment.

6.2.18. We had a consultation with Mr Vellem on 20 August 2020. Mr Vellem indicated that ORTDM took a risk by appointing emerging contractors. According to him, established contractors have a good credit record and as a result they can easily have an access to credit and purchase materials without any difficulties. He further indicated that some municipalities pay for materials and insurances for emerging contractors through cessions.



6.2.19. Mr Vellem indicated the following with regards to the grants that ORTDM receives and challenges that they face in spending those grants:

- Municipalities receive a lot of money from grants and that money must be spent by the end of the financial year;
- The money is paid to the municipalities in tranches wherein 40% of that money must be spent by the end of November, 60% of the money by the end of December and the remaining 40% by the end of the financial year;
- That money that the municipality did not use will be recalled by the National Treasury and the grant for the following year will subsequently be reduced;
- The supply chain management process consumes a lot of time in appointing contractors and they add with little amount time left on the financial year to spend the grant;
- Advance payment for MoS accelerates expenditure on the grant money paid to the municipality.
- There are three ways in which materials can be paid for:
  - ✓ Advance payments for electrical connections;
  - ✓ Advance payments for special items that are not bought from off shelf, are only manufacture subsequent placing an order and the deposit has to be paid before the supplier start manufacturing them; and
  - ✓ Materials on site or off site

6.2.20. Notwithstanding the above explanation provided by Mr Vellem, it should be noted that the payment of the first invoice of Khwalo was an advance payment where the work had not been done and materials not be bought. It should further be noted that this occurred as a result of the announcement that Mr Vellem made on the meeting that was held on 25 April 2019 between himself and the contractors.

6.2.21. We noted that section 164 (1) (c) of the Municipal Finance Management Act No 56 of 2003 prohibits prepayments or loans. The said section provides: “164. (1) No municipality or municipal entity may.... (c) make loans to- (i) councillors

*or officials of the municipality; (ii) directors or officials of the entity; or (iii) members of the public.”*

6.2.22. We further noted that section 6.10.1 and 6.10.1.5 of General Conditions of Contract for Construction Works (“GCC”) 2015 provides that the Employer can only pay for the materials on site provided the contractor provide the following:

- Documentary evidence of ownership; and
- An indemnity that has been approved in writing by the Employer.

6.2.23. The said provisions provide: *“6,10,1 With regard to all amounts that become due to the Contractor in respect of the matters set out in Clauses 6.10.1.1, 6.10.1.2, 6.10.1.3, 6.10.4, and 6.10.1.5 below, he shall deliver to the Employer’s Agent a monthly statement for payment of all amounts he considers to be due to him (in such form and on such date as may be agreed between the Contractors and the Employer’s Agent, or failing agreement, as the Employer’s Agent may require) and the Employer’s Agent shall, by signed payment certificates issued to the Employer and the Contractor, certify the amount he considers to be due to the Contractor, taking into account the following:....*

*6.10.1.5 The value up to the percentage limit stated in the Contract Data of Plant and materials referred to in Clause 6.9.1 not yet supplied to Site or not yet built into the Permanent Works; provided that the Contractor has produced documentary evidence of ownership of such Plant and/or materials and has delivered to the Employer an indemnity, approved in writing by the Employer, against any claim to or in respects of such Plant and/or materials by reasons of the Contractor’s title to the Plant and/or materials....”*

6.2.24. We noted that Khwalo provided payment guarantee by ACS Guarantees. However, we noted that their registration number does not match the details on the National Credit Regulator website. We further noted that this payment guarantee is a performance guarantee and not an advance payment guarantee. Therefore the payment of first invoice of Khwalo is irregular as it is prohibited by section 164 (1) (c) of the MFMA and section 6.10.1 and 6.10.1.5 of the GCC 2015

6.2.25. We perused the Payment Approval Form for Projects Only attached to the payment voucher of the first invoice of Khwalo. The table below lists individuals that are supposed to sign this form and what their signatures certify:

No	Designation	What the signature signifies
1	Project Manager	The project confirms that the works for which this payment is requested have been done according to specifications, the quantities are a true reflection of work done and therefore certify the claim for payment
2	ISD Manager	The ISD Manager confirms that the works for which this payment is requested have been done according to specifications, the quantities are a true reflection of work done and therefore certify the claim for payment
3	Project Management Unit ("PMU") Manager	The PMU Manager confirms that that this Project for which the payment is requested forms part of the infrastructure plan, has sufficient budget in terms of Municipal Infrastructure Grant ("MIG") or have checked for counter funding through Equitable Share and therefore certifies claim for payment
4	Director Water Services	The Director – Water Services confirms that the claim for which payment is requested has been checked, found in order and is approved. The work for which payment is claimed has been inspected by his/her department and the amounts claimed are in accordance with the contract/business plan and are approved for payment.

5	Municipal Manager	
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6.2.26. We noted that this form was not signed by the Project Manager and the ISD Manager. We further noted that on 30 April 2019 Mr Mtengwane, Mr Vellem and Mr Hlazo signed this form in their capacity as PMU Manager, Director – Water Services and Municipal Manager respectively. Therefore Mr Mtengwane, Mr Vellem and Mr Hlazo approved an irregular expenditure.

### 6.3. Prepayment to Gcina Sonke Engineers CC

6.3.1. We noted during our investigation that Ziinzame and Gcina Sonke CC (“Gcina Sonke”) were appointed by ORTDM as consulting engineers and contractors respectively for the Mqanduli Secondary Bulk Water Scheme: Contract 02. We further noted that Ziinzame submitted first tax invoice of Gcina Sonke, numbered 1, amounting to R10 361 500.00 and dated 30 April 2019 at ORTDM in respect of this project.

6.3.2. We obtained and perused the payment voucher in respect of the above mentioned tax invoice and noted that the following supporting documents were attached to the said tax invoice:

- Bill of Quantities (“BoQ”);
- Payment Certificate No.1 from Ziinzame;
- Covering letter of Ziinzame; and
- Payment Approval Form for Projects Only for ORTDM.

6.3.3. We perused the above mentioned payment certificate No.1 that was prepared by Ziinzame, dated 30 May 2019 and signed by Mr Ngxola. We noted that the Project Manager and PMU Manager of ORTDM did not sign this payment certificate. We further noted that this payment certificate is claiming R7 485 600.00 and R1 524 400 for MoS and work done respectively. The total amount of money claimed is R10 361 500 inclusive of VAT of R1 351 500. We perused the tax invoice of Gcina Sonke and noted that it reflects the figures as the above mentioned payment certificate.

- 6.3.4. We perused covering letter of Ziinzame signed by Mr Hlela Ngxola ("Mr Ngxola"), dated 30 April 2019, addressed to the Municipal Manager and titled "MQANDULI SECONDARY BULK WATER SCHEME: CONTRACT 02: ORTDM SCMU 48 – 18/19: MIG PROGRAMME – PAYMENT CERTIFICATE NO. 01". We further noted that the letter was for the attention of Mr V Makala ("Mr Makala"), Project Manager from ORTDM in charge of Mqanduli Secondary Bulk Water Scheme.
- 6.3.5. According to the above mentioned letter, Mr Ngxola confirms that the certified works in terms of Payment Certificate No.1 for Gcina Sonke and for an amount of R10 361 500 are complete. We further noted that Mr Ngxola indicated that the following documents were attached for perusal and approval:
- Invoice of Gcina Sonke for an amount of R10 361 500 inclusive of VAT; and
  - Supporting documents for work completed as of 30 April 2019.
- 6.3.6. We noted that the payment certificate claimed for materials on site and yet there is neither tax invoice nor delivery note in respect of purchased materials attached to the payment voucher. We further noted that there is no evidence of payment guarantee in the event materials were bought off site or were paid in advance.
- 6.3.7. Notwithstanding the above, the allegation states that Gcina Sonke was paid for the work they did not do. We enquired from Mr Jones Frimpong ("Mr Frimpong") about their first tax invoice in respect of Mqanduli Secondary Bulk Water Scheme: Contract 2. And he indicated the following amongst others:
- When the first tax invoice was submitted, Gcina Sonke had neither done the work nor procured materials;
  - They were told by Mr Vellem in a meeting that was held on 25 April 2019 and attended by 15 contractors that they should submit invoices;
  - Ziinzame prepared BoQ for them and provided them with the amount which they were supposed to claim on their tax invoice;
  - Mr Majola sent them an email on 29 April 2019 reminding them to send documents that will enable them to prepare the payment certificate;
  - They were requested to organise payment guarantees for advance payments, however, he declined to do that as he did not understand why

the cost of those payment guarantees would be carried by Gcina Sonke and not ORTDM.

6.3.8. We obtained and perused the above mentioned email. We noted that on 29 April 2019 Mr Majola sent an email titled *MQANDULI CONTRACT 1, 2 & 3A: PAYMENT CERTS* to Mr Frimpong and Mr Mndela, amongst others. We further noted that Mr Mtengwane, Ms TShicilela and Mr Malaka were copied on this email. According to this email, Mr Majola indicated that they were waiting for documents and further indicated that they were being requested for payments the following day.

6.3.9. It should be noted that the first tax invoice of Gcina Sonke is misleading as it claims for materials on site and work done. We noted that, like Khwalo, this Payment Approval Form for Project Only in respect of this invoice was signed by Mr Mtengwane, Mr Vellem and Mr Hlazo. We further noted that Mr Makala as the Project Manager and the ISD Manager did not sign.

#### **6.4. Prepayment to Valotone 95cc and Phoenix Tanks (Pty) Ltd**

6.4.1. We noted that Ziinzame and Tyeks Plant Hire ("Tyeks") were appointed on the Mhlontlo Cluster 1 Water Supply project as consulting engineers and contractors respectively. We further noted that Valotone 95cc ("Valotone") and Phoenix Tanks (Pty) Ltd were nominated by Ziinzame to subcontract under Tyeks. Valotone was appointed for mechanical and electrical works and Phoenix was appointed for installation of underground and elevated tanks.

6.4.2. We noted during our consultation with Mr Majola that a cession agreement was entered into between Tyeks and Valotone and between Tyeks and Phoenix. According to Mr Majola, the cession agreement was arranged so that both Phoenix and Valotone would receive their payments directly from ORTDM.

6.4.3. We obtained and perused the invoice of Phoenix and noted that Phoenix claimed an amount of R1 040 314 inclusive of VAT of R135 693 for the following items:

- *Phoenix Tanks Square – 5 X 5 X 4 = 181 584 L;*
- *5m Galvanised Tower with Cat Ladder;*

- Phoenix Nyane Tank – 8.28 diameter – 2.18m = 111 000L

- 6.4.4. The allegation states that Phoenix did not install the tanks, did not participate in the project and yet it was paid. We conducted a site inspection and noted that Phoenix had completed installing an underground tank. We further noted during our site inspection that Phoenix was in the process of installing an elevated tank
- 6.4.5. We had a consultation with Mr Mnwabisi Mngqibi ("Mr Mngqibi"), Project Manager from OTRDM in charge of Mqanduli Secondary Bulk Water Scheme and enquired about the payment of the tax invoice of Phoenix. Mr Mngqibi indicated that Phoenix was paid in advance for special materials that are not bought off the shelf. According to him, the said materials that would be needed for construction of water tanks, could only be manufactured *Just In Time* and Phoenix needed a deposit before they could start with the manufacturing process.
- 6.4.6. We obtained and perused the tax invoice of Valotone and noted that Valotone was paid an amount of R2 053 467.60 for mechanical and electrical sub-contracting at Mhlontlo Cluster 1. Mr Majola indicated that Valotone informed them that they were having cash flow problems as result Valotone was paid in advance to enable them to procure materials.
- 6.4.7. According to Mr Majola, the payment guarantee of Tyeks was applicable to Phoenix and Valtone as they were subcontracting under them. Phoenix and Valtone fell under the payment guarantee of Tyeks as they were their sub-contractor. Contrary to what Mr Majola asserted, Mr Akhona Japhta ("Mr Japhta"), Project Manager of Tyeks, indicated during our consultation with him that Phoenix and Valotone were not sub-contracting under Tyeks. According to Mr Japhta, Phoenix and Valotone have a cessionary agreement with ORTDM and are getting instructions directly from Ziinzame. Therefore the payment certificate of Tyeks cannot be applicable to them as well.
- 6.4.8. We conducted site inspection and noted the diesel pump and submersible water pump that were installed by Valotone. We further conducted another site inspection and noted that Valotone had installed two motors and two

pumps at the treatment plant in.....However the two pumps and two motors appear like they were refurbished and not brand new.

6.4.9. We enquired from Mr Mgqibi about the two pumps and two motors installed by Valotone. Mr Mgqibi insisted that the two pumps were installed brand new. We requested Mr Mgqibi to provide us with the source documents of the two pumps and motors. At the time of writing this report, Mr Mgqibi had not provided us with the said documents.

**6.5. Investigation into 3 unexplained Advance Payments made to Amatola Water by ORTDM**

6.5.1. We noted that the funds were paid by ORDTM to Amatola Water for the Thornhill Clear Water Pump Station construction and Electrical connection for the Highbury and Thornhill Water Treatment Works Upgrade.

6.5.2. We obtained and perused the three payments made to Amatola Water by ORTDM.

**Construction of Thornhill Clear Water Pump Station**

6.5.3. We obtained and perused the payment pack documents in relation to the R28 020 506.69 that was paid to Amatola Water.

6.5.4. Upon perusing the payment documents we noted the following:

**Amatola Water Tax Invoice**

Invoice date	Account number	Invoiced to	Reference Number	Invoice details	Amount total due
21/11/2018	DORT003	OR Tambo District Municipality-RBIG	S07/10006769	KSD PI Water & Sanitation Installment 342 Summary of Expenditure: Nov 18	R28 020 506.69



**ORTDM Payment Approval Form for Projects Only**

**Budget Approved: R300 706 570.00**

**Award Amount: R137 000 000.00**

**Regional Bulk Infrastructure Grant (RBIG)**

<b>Project Description</b>	<b>Programme</b>	<b>Project No.</b>	<b>Consultant</b>	<b>Contractor</b>	<b>Amount of Claim</b>	<b>Basis of Claim</b>
Thornhill Clear water PS	RBIG	IEX000064	Amatola/GIBB	H&I HES JV	R28 020 506.69	Construction

**Approvers**

**Project Manager:** None

Signed & Date: None

**ISD Officer:** None

Signed & Date: None

**Programme Manager:** None

Signed & Date: None

**PMU Manager:** M Mtengwane

Signed & Date: Signed no date

**Director – Water Services:** B Matomela

Signed & Date: Signed no date

**Municipal Manager:** Signed by B Matomela

Signed & Date: only signed no date

- **Amatola Water Amanzi Request for Payment**

- The document was certified and signed by W Manzi on 19/11/2018.
- Verified and signed by PMU Manager M Mabulu on 19/11/2018.
- Recommended and signed by Acting Executive Director S Qweleka on 03/12/2019
- Approved and signed by CE V Zitumane on 20/11/2018.

- **GIBB Engineering and Architecture Payment Certificate No 3 cover letter with supporting documents**

- The payment certificate cover letter, we noted that it is dated 14 November 2018 and was prepared and signed by Duncan Shaw (pp Phums Mkhwanazi Technical Executive) from GIBB for the attention of Mr S Qweleka of Amatola Water .
- We noted that the cover letter was in relation to a payment to HAW & INGLIS Civil Engineering (Pty) Ltd for an amount of R26 686 196.84.

- Upon viewing the payment certificate cover letter, it stated that, “as agreed by yourselves, this is an Advance Payment to facilitate the timeous completion of this Contract”.
- On the cover letter it is further stated that, “payment to the Contractor should not be made until such time as you have the original Advance Payment Guarantee and have satisfied yourselves the wording is acceptable”.

### **Payment Certificate No 3**

- Further, we noted that the payment certificate no 3 to Amatola Water was also attached .
- Upon perusing the payment certificate we noted that from the R26 686 196.84 invoiced, an amount of R23 205 388.56 was an advance payment.
- On the payment certificate from GIBB it stated that, “we hereby certify that the above mentioned work has been executed satisfactorily and that the above amount is due and payable to the Contractor”.
- On the payment certificate it highlighted that there is an Advance Payment Guarantee.
- We noted on the payment certificate signatures from H&I HES JV, Basil Sparg Senior Resident Engineer (RE) from GIBB and Duncan Shaw Pr Engineer from GIBB (reflected pp Nokuphumla Mkhwanazi GIBB). The document was signed by all parties on 14 and 15 November 2018.

### **H&I HES JV Tax Invoice with Mechanical & Electrical Equipment**

- We noted an H&I HES JV Tax Invoice Tax Invoice dated 14 November 2018 to Amatola Water in relation the construction of the Thornhill Clear Water Pump Station .

- On the H&I HES JV Tax Invoice we noted that an amount of R26 686 196.84 including VAT was invoiced to Amatola Water for Electrical and Mechanical equipment.
- The H&I HES JV Tax invoice was certified and signed by Wakayi Manzi, verified and signed by MD Mabulu and was approved and signed by S Qweleka on 19/11/2018.
- We noted attached on the tax invoice a list of the electrical and mechanical equipment. On the document was also reflected advance payment.

6.5.5. Upon analysis we noted that ORTDM made an advance payment for an amount of R28 020 506.69 to Amatola Water.

6.5.6. The tax invoice from Amatola Water did not reflect advance payment, but we noted that the payment certificate cover letter by GIBB to Amatola reflected that this transaction was an advance payment.

6.5.7. We noted that, at the time the advance payment was made by ORTDM to Amatola Water, the Advance Payment Guarantee from H&I HES JV was not attached.

6.5.8. We further noted that, Mr Bongani Matomela ("Mr Matomela") signed on the payment approval form on behalf of Mr Velem and Mr Hlazo.

6.5.9. During the interview that was conducted with Mr Matomela, he stated that he signed the payment approval form on behalf of Mr Hlazo and Mr Velem after they delegated him to sign on their behalf.

6.5.10. Upon investigation we noted delegation documents from Mr Hlazo and Mr Velem. The delegation document by Mr Velem is dated 30 November 2018 and the delegation document by Mr Hlazo is dated 18 August 2016 . We noted that both delegation documents did not reflect due dates or renewal timelines.

6.5.11. Mr Matomela signed the delegation document from Mr Hlazo on 20 August 2016, whilst the delegation document from Mr Velem did not reflect evidence that Mr Matomela signed for it officially to acknowledge the delegated responsibilities.

- 6.5.12. During the investigation we noted that no evidence was provided by Mr Matomela proving that there was a system of delegation in 2016 when he signed the delegation document from Mr Hlazo. The MFMA S79 states that the accounting officer must develop a system of delegation.
- 6.5.13. We noted that the delegation document by Mr Velem is dated 30 November 2018, yet Mr Matomela signed the payment approval form on behalf of Mr Velem about 29 November 2018 when one considers the date of the payment release by finance. It appears that Mr Matomela signed on behalf of Mr Velem without any delegated authority.
- 6.5.14. Further it is of concern that Mr Matomela signed for two people at the same time as that poses a risk when it comes to segregation of duties.
- 6.5.15. When signing the document for two people, Mr Matomela failed to consider the principle of segregation of duties.
- 6.5.16. Mr Matomela and Mr Mtengwane signed on the payment approval form without providing evidence that they confirmed with the Project Manager whether work was done or goods were delivered at the time.
- 6.5.17. It is important to note that the Project Manager Mr Mqgibi did not append his signature on the document and did not confirm that Mr Matomela and Mr Mtengwane called him in relation to the status of the project.
- 6.5.18. During the interview Mr Matomela confirmed that he signed the approval document without even checking whether work was done or goods were delivered.
- 6.5.19. Mr Matomela and Mr Mtengwane signed the approval payment document without having sight of the Advance Payment Guarantee.
- 6.5.20. During the interview, Mr Matomela and Mr Mtengwane failed to prove that when they signed the approval payment form they checked whether work was done or goods were delivered.
- 6.5.21. GIBB in their correspondence with Amatola Water indicated that there should be a Payment Guarantee from the contractor before any payment is made;

- 6.5.22. Currently there is no evidence that ORTDM officials who approved the advance payment requested or enquired with Amatola Water whether the Payment Guarantee had been received by Amatola Water at the time of payment approval.
- 6.5.23. On the Agreement between Amatola Water and ORTDM it states in section 17.3.2.5 that the Amatola Water as the Implementing Agent shall invoice and such invoice shall, “reflect an advance payment where materials are ordered but have not yet been delivered”.
- 6.5.24. During analysis we noted that the tax invoice that was submitted by Amatola Water to ORTDM was not in line with the Agreement that was signed by the two institutions, in that it did not reflect advance payment as a requirement in the contract.
- 6.5.25. We noted that Mr Mtengwane and Mr Matomela signed the payment approval form yet the tax invoice from Amatola Water did not reflect advance payment as per requirement of the Agreement between Amatola Water and ORTDM.
- 6.5.26. During the interview Mr Qweleka, stated that the R28 020 506.69 was an advance payment as suppliers insists on prepayment on goods that cannot be purchased from the shelf.
- 6.5.27. It is evident that Mr Matomela and Mr Mtengwane by approving the advance payment at the time, they were not in line with GCC 2015 as there was no documentary evidence of ownership and there was no indemnity approved in writing by the Employer.
- 6.5.28. The advance payment that was approved by Mr Matomela and Mr Mtengwane appear to be in contravention of the MFMA. The MFMA S164 (1)(c)(iii) states that, “no municipality or municipal entity may make loans to members of the public”.
- 6.5.29. It appears that the advanced payment transactions by ORTDM to Amatola Water are a breach to the provisions of the MFMA and are not aligned with the GCC 2015.
- 6.5.30. We noted officials from both ORTDM and Amatola Water are relying on the provisions that are part of the GCC which do not comply with the MFMA.

6.5.31. Mr Qweleka stated that by end of September 2020 the pumps will be operational as the transformers have been delivered already. The generators are still to be done.

**Electrical connection for the Abstraction of raw water from the Mthatha Dam, new Highbury Water Treatment Works and upgrade of Thornhill Water Treatment Works**

6.5.32. During the investigation we noted that two payments were made by ORTDM to Amatola Water for the project for the project stated above.

6.5.33. We noted that an amount of R91 182 737.79 was paid on 28 June 2018 and another payment of R14 800 930.74 was made on 28 February 2019.

6.5.34. Upon perusing the payment documents we noted the following:

- **Amatola Water Tax Invoice**

Invoice date	Account number	Invoiced to	Reference Number	Invoice details	Amount total due
20/06/2018	DORT003	OR Tambo District Municipality- RBIG	S07/100066 19	KSD PI Water & Sanitation Installment 314 Summary of Expenditure: June 18	R91 182 737.79

- **ORTDM Payment Approval Form for Projects Only**

**Budget Approved: R300 000 000.00**

**Award Amount: R100 936 827.17**

**Regional Bulk Infrastructure Grant (RBIG)**

Project Description	Programme	Project No.	Consultant	Contractor	Amount of Claim	Basis of Claim
Mthatha Corridor	RBIG	IEX000064 (RBIG)	Amatola	KSD Electrical Department	R91 182 737.37	Mthatha Corridor: Abstraction

						from Mthatha Dam, Highbury and Thornhill WTW Upgrade
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**Approvers**

**Project Manager:** Mqgibi

Signed & Date: 27/06/2018

**ISD Officer:** None

Signed & Date: None

**Programme Manager:** None

Signed & Date: None

**PMU Manager:** M Mtengwane

Signed & Date: 28/06/2018

**Director – Water Services:** A Velem

Signed & Date: 28/06/2018

**Municipal Manager:** ON Hlazo

Signed & Date: only signed no date

• **Amatola Water Tax Invoice**

Invoice date	Account number	Invoiced to	Reference Number	Invoice details	Amount total due
26/02/2018	DORT003	OR Tambo District Municipality- RBIG	S07/100068 79	KSD PI Water & Sanitation Installment 314 Summary of Expenditure: Feb 19	R14 800 930.7 4

• **ORTDM Payment Approval Form for Projects Only**

**Budget Approved: R300 06 570.00**

**Award Amount: R105 983 668.52**

**Regional Bulk Infrastructure Grant (RBIG)**

Project Description	Programme	Project No.	Consultant	Contractor	Amount of Claim	Basis of Claim
Mthatha Corridor	KSD – PI	IEX000064 (RBIG)	Amatola	KSD - LM	R14 800 930.74	Mthatha Corridor: Abstraction from Mthatha Dam, Highbury and Thornhill WTW Upgrade

**Approvers**

<b>Project Manager:</b> M Mgqibi	Signed & Date: 27/06/2018
<b>ISD Officer:</b> None	Signed & Date: None
<b>Programme Manager:</b> None	Signed & Date: None
<b>PMU Manager:</b> M Mtengwane	Signed & Date: 28/02/2019
<b>Director – Water Services:</b> A Velem	Signed & Date: 28/02/2019
<b>Municipal Manager:</b> ON Hlazo	Signed & Date: No date

6.5.35. Subsequent analysis on both payments made by ORTDM to Amatola Water, we noted that the total amount that was supposed to be paid was R105 983 668.53, but was divided into two payments.

6.5.36. During the investigation we noted that both payments made to Amatola Water were advance payments.

6.5.37. Upon perusing the ORTDM payment pack, we noted attached a later dated 25 February 2019 was in relation to the outstanding payment of R14 800 930.30 from the initial payment of R91 182 737.78. The letter was from Mr ON Hlazo to Mr S Qweleka .



- 6.5.38. We further noted a contract between Amatola Water and King Sabata Dalindyebo Local Municipality which was in relation to the electricity connection for the abstraction of raw water .
- 6.5.39. During the interview with Mr Mqgibi, Mr Mtengwane and Mr Velem, stated that the project was managed by Amatola Water on behalf of ORTDM. They further stated that due to the nature of goods and services that were needed, an advance payment needed to be made to Amatola Water.
- 6.5.40. It was further highlighted by Mr Mqgibi, Mr Mtengwane and Mr Velem they relied on Amatola when they approved payment.
- 6.5.41. The advance payment fee funds paid to KSD Local Municipality for the electrical connection appear to be overly inflated and require further interrogation.
- 6.5.42. The advance payment to KSD Local Municipality for the electrical connection appears to be risky considering KSD Local Municipality financial circumstances.
- 6.5.43. During the investigation we were informed by Mr Qweleka including Mr Mqgibi that the project is still in progress.
- 6.5.44. According to Mr Qweleka KSD Local Municipality paid for professional service providers including poles and transformers.
- 6.5.45. It was further stated by Mr Qweleka during the interview that for projects of this nature it is difficult to check value for money as the infrastructure belongs to KSD Local Municipality.

## 7. CONCLUSION

Based on the above-mentioned findings, we conclude as follows:

### 7.1. Payment by OR Tambo District Municipality to Amatola Water : Construction of the 15ml Signal Hill Reservoir 4.

- 7.1.1. The investigation revealed that the R12 622 924.10 was not paid by OR Tambo District Municipality ("ORTDM") to RUWACON as alleged, rather ORTDM paid the funds to Amatola Water.

- 7.1.2. The investigation revealed that the funds that were paid to Amatola Water by ORTDM were advance payment.
- 7.1.3. Ruwacon submitted a tax invoice to Amatola Water in order to be paid an advance sum. .
- 7.1.4. An email dated 28 July 2020 (13:29) from Ruwacon Contract Manager Mr van der Westhuizen to Mr Shaw and various other people that were copied stated that, "unless paid for in advance by the client. The risk of ordering materials so far in advance has various risks associated to it for example, theft, fire and damage by nature, something no one has priced nor insured for".
- 7.1.5. Mr van der Westhuizen on the email stated that, "As noted before and by our Financial Director, no goods will be purchased without receiving the Advance Payment that goes hand in hand with the Advance Payment Materials Guarantee issued".
- 7.1.6. The payment certificate revealed that from the R12 021 832.49 invoiced, an amount of R8 730 269.66 was for 80% materials on site.
- 7.1.7. The allegation was founded in that, advance payment was made and there were no materials on site at the time of payment
- 7.1.8. The advance funds were paid to Amatola Water, but the latter has not paid the advance sum to Ruwacon at the time of the interview.
- 7.1.9. Information received from Amatola and from emails that were sent by Mr Shaw revealed that Ruwacon submitted an Advance Payment Guarantee.
- 7.1.10. Although Ruwacon submitted tax invoice reflecting materials on site, we noted that there were no materials on site and there was no documentary evidence ownership of such materials. Further there was no indemnity approved in writing by Amatola Water.
- 7.1.11. Information received from Mr Qweleka confirmed that the advance sum has not been paid to Ruwacon due to internal delays within Amatola Water.
- 7.1.12. On the Agreement it states on section 17.3.2.5 that the Amatola Water as the Implementing Agent shall invoice and such invoice shall, "reflect an advance payment where materials are ordered but have not yet been delivered". The tax invoice that was submitted to ORTDM by Amtola Water did not reflect an advance payment.

- 7.1.13. The agreement between ORTDM and Amatola should be reviewed by the Municipality.
- 7.1.14. The SLA appears to derive most of its content from the past agreement between the Department of Water and Sanitation and Amatola Water.
- 7.1.15. The result of this is that the SLA does not accurately capture the relationship between ORTDM and Amatola.
- 7.1.16. The result of this is that both entities appear to enforce provisions of the SLA that are contrary to the Municipal Finance Management Act and the General Conditions of Contract for Construction Works (the GCC 3<sup>rd</sup> Edition 2015) published by the South African Institute of Civil Engineers (GCC 2015).
- 7.1.17. Mr Mqgibi, Mr Mtengwane, Mr Velem and Mr Owen Hlazo approved the advance payment yet the tax invoice submitted by Amatola Water did not reflect advance payment as per the requirement in the contract agreement.
- 7.1.18. Furthermore, Mr Mqgibi, Mr Mtengwane and Mr Velem approved the advance payment without even having sight of the payment guarantee.
- 7.1.19. Mr Mqgibi, Mr Mtengwane, Mr Velem and Mr Hlazo by approving the advance payment at the time were not in line with GCC 2015 as there was no documentary evidence of ownership and there was no indemnity approved in writing by the Employer.
- 7.1.20. The advance payment that was approved by Mr Mqgibi, Mr Mtengwane, Mr Velem and Mr Owen Hlazo appear to be in contravention of the MFMA. The MFMA S164 (1)(c)(iii) states that, "no municipality or municipal entity may make loans to members of the public".
- 7.1.21. It appears that the advanced payment transactions by ORTDM to Amatola Water are a breach to the provisions of the MFMA and are not aligned with the GCC 2015.
- 7.1.22. We noted officials from both ORTDM and Amatola Water are relying on the provisions that are part of the GCC which do not comply with the MFMA.

## **7.2. Prepayment to Khwalo**

- 7.2.1. The first invoice of Khwalo was paid by ORTDM before Khwalo did the work or procured materials on site contrary to section 164 (1) (c) of the MFMA and section 6.10.1 and 6.10.1.5 of GCC 2015.

- 7.2.2. Payment of the first invoice of Khwalo is irregular as it is contrary to section 164 (1) (c) of the MFMA and section 6.10.1 and 6.10.1.5 of GCC 2015
- 7.2.3. The first invoice of Khwalo was paid before work was done and before materials were bought in order to expedite expenditure.
- 7.2.4. Ziinzame presented the first invoice of Khwalo at ORTDM with fraudulent supporting documents.
- 7.2.5. Mr Vellem, Mr Mtsengwane and Ms Tshicilelo enabled the advance payment of Khwalo without proper supporting documents.
- 7.2.6. Mr Hlazo approved the the advance payment of Khwalo without checking if proper supporting documents were attached or not.

### **7.3. Prepayment of Gcina Sonke**

- 7.3.1. The first invoice of Gcina Sonke was paid by ORTDM before Gcina Sonke did the work or procured materials on site contrary to section 164 (1) (c) of the MFMA and section 6.10.1 and section 6.10.1.5 of GCC 2015.
- 7.3.2. The first invoice of Gcina Sonke was paid before the work was done and before materials were bought in order to expedite expenditure.
- 7.3.3. Ziinzame presented the first invoice of Gcina Sonke at ORTDM with fraudulent supporting documents.
- 7.3.4. Payment of the first invoice of Gcina Sonke is irregular as it is contrary to section 164 (1) (c) of the MFMA and section 6.10.1 and section 6.10.1.5 of GCC 2015.
- 7.3.5. Fraudulent document were used as supporting documents on the first invoice of Gcina Sonke.
- 7.3.6. Mr Vellem, Mr Mtsengwane and Ms Tshicilelo enabled the advance payment of Gcina Sonke without proper supporting documents.
- 7.3.7. Mr Hlazo approved the the advance payment of Gcina Sonke without checking if proper supporting documents were attached or not.

### **7.4. Prepayment of Valotone and Phoenix**

- 7.4.1. Valotone and Phoenix were paid in advance without payment guarantee.
- 7.4.2. Mr Mggqibi, Mr Vellem and Mr Mtsengwane signed the payment request form without checking if proper supporting documents were attached on the payment voucher of Phoenix and Valotone.
- 7.4.3. Mr Hlazo approved the payment of Phoenix and Valotone without checking if proper supporting documents were attached on their payment vouchers.

## **7.5. Investigation into 3 unexplained Advance Payments made to Amatola Water by ORTDM**

### ***1<sup>st</sup> Advance Payment: Construction of Thornhill Clear Water Pump Station***

- 7.5.1. The payment certificate cover letter, from GIBB revealed that the payment that was made was an Advance Payment.
- 7.5.2. The allegation that the R28 020 506.69 was an advance payment is founded.
- 7.5.3. On the payment certificate from GIBB it stated that, "we hereby certify that the above-mentioned work has been executed satisfactorily and that the above amount is due and payable to the Contractor". It is important to note that at the time the payment was done no such work was done.
- 7.5.4. The tax invoice from Amatola Water did not reflect advance payment, but the payment certificate cover letter by GIBB to Amatola reflected that this transaction was an advance payment.
- 7.5.5. At the time the advance payment was made by ORTDM to Amatola Water, the Advance Payment Guarantee from H&I HES JV was not attached.
- 7.5.6. We further noted that, Mr Bongani Matomela ("Mr Matomela") signed on the payment approval form on behalf of Mr Velem and Mr Hlazo.
- 7.5.7. No evidence was provided by Mr Matomela proving that there was a system of delegation in 2016 when he signed the delegation document from Mr Hlazo. The MFMA S79 states that the accounting officer must develop a system of delegation.
- 7.5.8. The delegation document by Mr Velem is dated 30 November 2018, yet Mr Matomela signed the payment approval form on behalf of Mr Velem about 29

November 2018 when one considers the date of the payment release by finance. It appears that Mr Matomela signed on behalf of Mr Velem without any delegated authority.

- 7.5.9. Mr Matomela failed to consider the principle of segregation of duties when he signed the payment approval form at the same time for Mr Hlazo and Mr Velem.
- 7.5.10. Mr Matomela and Mr Mtengwane signed on the payment approval form without providing evidence that they confirmed with the Project Manager whether work was done, or goods were delivered at the time.
- 7.5.11. It is important to note that the Project Manager Mr Mgqibi did not append his signature on the document and did not confirm that Mr Matomela and Mr Mtengwane called him in relation to the status of the project.
- 7.5.12. Mr Matomela confirmed that he signed the approval document without even checking whether work was done, or goods were delivered.
- 7.5.13. Mr Matomela and Mr Mtengwane signed the approval payment document without having sight of the Advance Payment Guarantee.
- 7.5.14. Mr Matomela and Mr Mtengwane failed to prove that when they signed the approval payment form they checked whether work was done or goods were delivered.
- 7.5.15. The tax invoice that was submitted by Amatola Water to ORTDM was not in line with the Agreement that was signed by the two institutions, in that it did not reflect advance payment as per S17.3.2.5 in the contract.
- 7.5.16. Mr Mtengwane and Mr Matomela signed the payment approval form yet the tax invoice from Amatola Water did not reflect advance payment as per requirement of the Agreement between Amatola Water and ORTDM.
- 7.5.17. Mr Matomela and Mr Mtengwane by approving the advance payment at the time, they were not in line with GCC 2015 as there was no documentary evidence of ownership and there was no indemnity approved in writing by the Employer.

7.5.18. The advance payment that was approved by Mr Matomela and Mr Mtengwane appear to be in contravention of the MFMA. The MFMA S164 (1)(c)(iii) states that, "no municipality or municipal entity may make loans to members of the public".

7.5.19. It appears that the advanced payment transactions by ORTDM to Amatola Water is a breach to the provisions of the MFMA and is not aligned with the GCC 2015.

**7.6. Advance Payments: Electrical connection for the Abstraction of raw water from the Mthatha Dam, new Highbury Water Treatment Works and upgrade of Thornhill Water Treatment Works**

7.6.1. An amount of R91 182 737.79 was paid on 28 June 2018 and another payment of R14 800 930.74 was made on 28 February 2019. It is evident that the advance payment allegation was founded.

7.6.2. Subsequent analysis on both payments made by ORTDM to Amatola Water, revealed that the total amount that was supposed to be paid was R105 983 668.53, but was divided into two payments.

7.6.3. It was further highlighted by Mr Mgqibi, Mr Mtengwane and Mr Velem they relied on Amatola when they approved payment as a result they did not perform any further checks in relation to the project.

7.6.4. The advance payment fee funds paid to KSD Local Municipality for the electrical connection appear to be overly inflated and require further interrogation.

7.6.5. The advance payment to KSD Local Municipality for the electrical connection appears to be risky considering KSD Local Municipality financial circumstances.

7.6.6. Mr Qweleka including Mr Mgqibi stated that the project is still in progress.

7.6.7. It was further stated by Mr Qweleka during the interview that for projects of this nature it is difficult to check value for money as the infrastructure belongs to KSD Local Municipality.

7.6.8. Mr Mqgibi, Mr Mtengwane and Mr Velem, stated that the project was managed by Amatola Water on behalf of ORTDM. They further stated that due to the nature of goods and services that were needed, an advance payment needed to be made to Amatola Water.

## **7.7. Other Findings**

7.7.1. Invoice payment management process of April 2019 is not aligned to daily processing of payment certificates.

7.7.2. We noted the following from our interviews with Mr Velem and Mr Mtengwane:

- Lack of documented processes for the Project Management function ;
- We observed that the Project Manager and the PMU Manager use their own personal discretion or work experience when managing the projects;
- Currently there are no prescribed processes at the Water Services department;
- There are no detailed templates for each deliverable or possible work product output;
- Lack project plans and schedules per ORTDM PMU project type;
- Currently there are no costing and budget spreadsheets with pre-defined line items, aligned to the above project types and which will be used for tracking detailed expenditure per project;
- Lack of standardising on project costs line items will also be used to drive uniform budgeting per project which should reduce the cost of projects for ORTDM. Although a project may still have unique cost items, most of it should be standardised to optimise cost efficiencies;
- Lack of project reporting and tracking processes, including financial data reporting per project, in line with the budget guideline accompanying the above templates;
- There is no evidence that there is project quality and performance management process, both from a quality control and a quality assurance point, including project health review procedures and templates;



7.7.3. During the interviews with the PMU Department, we noted that the onerous provisions of the MFMA are simply not understood and implemented accordingly, which has resulted to irregular expenditure;

## **7.8. Governance issues within ORTDM**

7.8.1. Lack of Standard Operating Procedures;

7.8.2. Lack of Performance management procedures and policies; and

7.8.3. No KPI's for employees below Director level.

## **8. RECOMMENDATIONS**

ORTDM in consultation with its legal department and in terms of the Municipal Finance Management Act and their applicable policies, should consider taking corrective and/or disciplinary action against the following:

### **1.1. Payment by OR Tambo District Municipality to Amatola Water: Construction of the 15ml Signal Hill Reservoir 4.**

8.1.1. Mr Mgqibi, Mr Mtengwane, Mr Velem and Mr Owen Hlazo approved the advance payment yet the tax invoice submitted by Amatola Water did not reflect advance payment as per the requirement in the contract agreement.

8.1.2. Mr Mgqibi, Mr Mtengwane and Mr Velem approved the advance payment without even having sight of the payment guarantee.

8.1.3. It is evident that Mr Mgqibi, Mr Mtengwane, Mr Velem and Mr Hlazo by approving the advance payment at the time were not in line with GCC 2015 as there was no documentary evidence of ownership and there was no indemnity approved in writing by the Employer.

8.1.4. The advance payment that was approved by Mr Mgqibi, Mr Mtengwane, Mr Velem and Mr Hlazo appear to be in contravention of the MFMA. The MFMA S164 (1)(c)(iii) states that, "no municipality or municipal entity may make loans to members of the public".

### **1.2. Prepayment of Khwalo**

1.2.1. ORTDM in consultation with its legal department and in terms of the Municipal Finance Management Act and their applicable policies, take corrective and/or disciplinary action against the following:

- Mr Vellem, Mr Mtsengwane and Ms Tshicilela for enabling advance payment for Khwalo contrary to section 164 (1) (c) of MFMA and section 6.10.1 and 6.10.1.5 of GCC 2015;
- Ziinzame for presenting the first invoice of Khwalo with fraudulent supporting documents; and
- Mr Hlazo for approving the payment of the first invoice of Khwalo without ensuring that all required supporting documents were attached to the payment voucher

### **1.3. Prepayment of Gcinasonke**

1.3.1. ORTDM in consultation with its legal department and in terms of the Municipal Finance Management Act and their applicable policies, take corrective and/or disciplinary action against the following:

- Mr Vellem, Mr Mtsengwane and Ms Tshicilela for enabling advance payment for Gcina Sonke contrary to section 164 (1) (c) of MFMA and section 6.10.1 and 6.10.1.5 of GCC 2015;
- Ziinzame for presenting the first invoice of Gcina Sonke with fraudulent supporting documents; and
- Mr Hlazo for approving the payment of the first invoice of Khwalo without ensuring that all required supporting documents were attached to the payment voucher

### **1.4. Prepayment of Valotone and Phoenix**

1.4.1. ORTDM in consultation with its legal department and in terms of the Municipal Finance Management Act and their applicable policies, take corrective and disciplinary action against the following:

- Mr Mgqibi for the following:
  - ✓ For signing Payment Approval Form without ensuring that proper supporting documents are attached on the payment pack.

- ✓ For not ensuring, as a Project Manager, that Valotone and Phoenix had proper payment guarantees for their advance payments in terms of section 6.10.1.5 of GCC 2015;
- Mr Mr Vellem and Mr Mtsengwane for signing Payment Approval Form without ensuring that proper supporting documents are attached on the payment pack;
- Ziinzame for not ensuring, as consultant, that Valotone and Phoenix had proper payment guarantees for their advance payments in terms of section 6.10.1.5 of GCC 2015.`

### **1.5. Investigation into 3 unexplained Advance Payments made to Amatola Water by ORTDM**

1.5.1. ORTDM in consultation with its legal department and in terms of the Municipal Finance Management Act and their applicable policies, take corrective and disciplinary action against the following:

#### ***1<sup>st</sup> Advance Payment: Construction of Thornhill Clear Water Pump Station***

- 1.5.2. We noted that the delegation document by Mr Velem is dated 30 November 2018, yet Mr Matomela signed the payment approval form on behalf of Mr Velem about 29 November 2018 when one considers the date of the payment release by finance. It appears that Mr Matomela signed on behalf of Mr Velem without any delegated authority.
- 1.5.3. When signing the payment approval document for two people at the same time, Mr Matomela failed to adhere to the principle of segregation of duties.
- 1.5.4. Mr Matomela and Mr Mtengwane signed on the payment approval form without providing evidence that they confirmed with the Project Manager whether work was done or goods were delivered at the time.
- 1.5.5. Mr Matomela signed the payment approval document without even checking whether work was done or goods were delivered.
- 1.5.6. Mr Matomela and Mr Mtengwane signed the approval payment document without having sight of the Advance Payment Guarantee.

- 1.5.7. Mr Mtengwane and Mr Matomela signed the payment approval form yet the tax invoice from Amatola Water did not reflect advance payment as per requirement of the Agreement between Amatola Water and ORTDM.
- 1.5.8. The advance payment that was approved by Mr Matomela and Mr Mtengwane appear to be in contravention of the MFMA. The MFMA S164 (1)(c)(iii) states that, “no municipality or municipal entity may make loans to members of the public”.
- 1.5.9. Mr Velem failed to ensure that there are written Standard Operating Procedures and policies within the Project Management Unit
- 1.5.10. Mr Hlazo failed to ensure the following at ORTDM:
  - Proper Finance Payment process;
  - Proper Operational Risk Management;
  - Standard Operating Procedures;
  - Performance management
  - Key Performance Indicators for employees below Director level.

## Extension

**We would like the Council to take note of the fact that this report covers only infrastructure payments. This the first phase.**

**We therefore, request 3 weeks extension to complete investigation of COVID 19 related transactions.**