

**IN THE DISCIPLINARY MATTER BETWEEN:**

**THE DEPARTMENT OF PUBLIC WORKS,  
ROADS & TRANSPORT ("THE DEPARTMENT")**

Employer Party

and

**MR E THEBE**

Employee Party

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**EMPLOYER'S WRITTEN SUBMISSIONS**

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1. Mr Thebe ("the employee"), employed by the Department of Public Works, Roads and Transport ("the employer") is charged with 10 counts relating to various acts of misconduct. The charges are as follows:
2. CHARGE 1
  - 2.1 You have breached the provisions of section 217 of the Constitution of the Republic of South Africa Act 108 of 1996 ("the constitution") in that:
    - 2.1.1 You failed to follow a fair and transparent procurement system in the provision of services or awarding of tenders and/or employment of service providers in respect of various road construction within the North West Province;
    - 2.1.2 You contravened section 45(1)(b)(c) of the Public Finance Management Act ("PFMA") in that you failed and/or neglected to act responsibly in order to ensure the effective, efficient, economical and transparent use of financial and other resources of the government and/or State and/or the Department within your official area of responsibility;
    - 2.1.3 You have failed to take effective and appropriate steps to prevent, within your area of responsibility, any unauthorized expenditure, irregular expenditure and fruitless and wasteful expenditure which

was ultimately incurred by the government and/or State and/or Department;

2.1.4 In that, **on or about 20 October 2008** you caused the DPC **and/or the Department** to extent for a period of 4 months and to include Roucomm Systems, Moseme Construction and Kaulani Civils in the expired list of constructors that have been appointed to do emergency road patchwork, potholes and maintenance without following procurement procedures in place, resulting in the department contracting with the said companies to the tune of R424 240 000.00 when you have in fact misrepresented either intentionally or negligently that the amount of R30 000 000.00 was set aside for the CAPEX budget;

2.1.5 You are therefore guilty of gross misconduct.

### 3 CHARGE 2

3.1 **On or about 29 July 2008** you provided false information to the DPC **and/or the Department** to the effect that, the jetpatcher machine from Raliform will cost the department R1 800 000.00 whereas you made the department to pay Raliform the amount of R9 690 000.00 for the machine. The jetpatcher machine would have cost the department R1 200 000.00 per unit excluding VAT from Jetpatcher (Pty) Ltd who had demonstrated the machine's capability to the department's officials, including yourself.

3.2 As a result of your conduct, you have caused the department to incur fruitless and wasteful expenditure.

3.3 You are therefore guilty of gross misconduct.

### 4 ALTERNATIVE TO CHARGE 2

4.1 You have contravened the provisions of section 45(b)(c) of the PFMA in that you failed to act responsibly in order to ensure the effective, efficient, economical and transparent use of financial and other resources of the government or State or Department, when on or about 29 July 2008 you provided false information to the DPC to the effect that the jetpatcher machine from Raliform will cause the department R1 800 000.00 while it caused the department to pay Raliform R9 690 000.00 per unit for the machine at the time aforesaid, you knew or you ought to have known that the aforesaid machine would merely cost the department R1 200 000.00 per unit excluding VAT from Jetpatcher (Pty) Ltd which had made demonstration of the machines capability to the department's officials including yourself. As a result of your misrepresentation the department suffered actual prejudice by paying R9 690 000.00 when it could have

paid R1 200 000.00 per unit excluding VAT. You are therefore guilty of gross misconduct.

5 CHARGE 3

5.1 On or about 29 July 2008, you caused the department to pay Raliform R2 442 500.00 for a jetpatcher machine that the department could have otherwise purchased from Jetpatcher (Pty) Ltd for R1 200 000.00 excluding VAT. In doing so, you directly or indirectly accepted or agreed to be offered and to accept any gratification from Raliform for the benefit that was not due to you.

5.2 Your conduct aforesaid constitute corruption and in violation of the provisions of section 3 of the General Offence of corruption read with the provisions of section 4(1) of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004.

6 CHARGE 4

6.1 On or about 10 November 2008 you provided false information to the DPC to the effect that Raliform was the sole supplier of bitumen cationic emulsion 65 and it will cost the department R2 820.13 per unit whereas in truth and fact the department already had an existing contract with Tosas (Pty) Ltd to provide bitumen cationic emulsion 65 at R779.76 per unit.

6.2 Your conduct caused the department to incur fruitless and wasteful expenditure which it otherwise would not have incurred had it not been for your misrepresentation.

6.3 You are therefore guilty of gross misconduct.

7 CHARGE 5

7.1 On or about February 2009, you misrepresented to the department by which you caused the department to procure 100 drums of bitumen cationic emulsion 65 and paid Raliform Investment Holdings (Pty) Ltd R282 013.20 which it could have paid R77 976.00 for the same quantity had the department procured from Tosas (Pty) Ltd. As a result of your misrepresentation and/or conduct you caused the department to suffer actual prejudice and financial loss in the sum of R204 037.20.

7.2 You are therefore guilty of gross misconduct.

8 CHARGE 6

- 8.1 On or about 10 November 2008 you provided false information to the DPC to the effect that, Raliform was a sole supplier of bitumen cationic emulsion 65 which resulted in the department paying R2 890.64 per unit whereas in truth and fact the department already had an existing contract with Tosas (Pty) Ltd to provide bitumen cationic emulsion 65 at R779.76 per unit.
- 8.2 Your conduct constitute misrepresentation which caused the department to suffer actual loss in the sum of R844 352.40 in that, the department procured 400 drums of bitumen cationic emulsion 65 and paid Raliform Investment Holdings (Pty) Ltd R1 156 256.40 when it could have paid R311 904.00 to Tosas (Pty) Ltd for the same quantity.
- 8.3 You are therefore guilty of gross misconduct.

9 CHARGE 7

- 9.1 On or about 29 April 2009 you improperly and irregularly appointed **alternatively initiated and/or participated in the process leading to the appointment of** the following companies, Godirela Civils which was paid R2 969 567.05;
- 9.2 Kaulani Civils, which was paid R5 047 310.85 and Moseme Road Construction which was paid R944 286.66 in terms of Tender No. NW062/05 and 061/05 respectively to do emergency road patchwork and potholes without following procurement policy.
- 9.3 Your conduct, was in breach of section 45(1)(b)(c) of the PFMA. You are guilty of gross misconduct.

10 CHARGE 8

- 10.1 **During the period between 2007 and September 2009** you authorized the appointment of consultants to do scoping for projects and also initiated and committed funds for projects that were not listed in the infrastructure project management plan, thereby committing the department to embark on irregular and/or wasteful expenditure as the projects were not budgeted for. As a result of this conduct, you have made yourself guilty of gross misconduct.

11 CHARGE 9

- 11.1 On or about 29 April 2009, you improperly and irregularly, appointed **alternatively initiated a process or participated in the process for the appointment of** Kaulani Civils and Moseme Road Construction to do patchwork and repairs of various roads in Rustenburg at the cost of R5



552 061.03 and R1 653 273.63 without following procurement procedures in place.

- 11.2 As a result of your conduct, the department suffered prejudice. You are guilty of gross misconduct.

12 CHARGE 10

- 12.1 You are guilty of gross misconduct alternatively misconduct in that you prejudiced the administration, discipline and/or efficiency of the department in that during 2009 you **over committed the department with projects which were not budgeted for** as a result of which 97.8% of the department's construction budget was depleted long before the end of the financial year. Your conduct aforesaid is in contravention of section 45 read with section 57 of the Public Finance Management Act.

- 12.2 You are therefore guilty of gross misconduct.