

National Assembly

Question Number: 2749

Mr M S F de Freitas (DA) to ask the Minister of Transport:

- (1) When were the respective certificates of compliance for the (i) Gauteng Open Road Tolling, (ii) Transaction Clearing House and (iii) Violations Processing Centre systems issued to the contractor(s) of each of the systems;
- (2) in each case, (a) who signed the specified certificates and (b) under what conditions were they issued;
- (3) (a) how many faults were outstanding by the launch date of 3 December 2013, (b) what were the faults with regard to each certificate and (c)(i) how many and (ii) which of the specified faults were categorised as critical or serious faults;
- (4) (a) why was each of the operations allowed to continue, (b) how was the contractor penalised in accordance with the rules of the International Federation of Consulting Engineers and (c) what were the actual (i) amounts and (ii) dates of payment releases to the contractor in respect of services provided for the period 1 July to 15 December 2013? NW3181E

Responses to questions by Mr M S F de Freitas

- (1) The commissioning certificates were issued in sections and in accordance with the provisions of the FIDIC Conditions of Contract for design, build and operate projects (FIDIC), being the contract which applies to the project. The commissioning certificate for the sections comprising the Gauteng Open Road Tolling system and the Transaction Clearing House was issued on 18 December 2013 and effective from 2 December 2013. The section certificate for the relevant part of the Violations Processing Centre (VPC) was issued on 30 April 2015 and effective from 15 December 2014. Although the section of the system comprising the VPC was only commissioned with effect from 15 December 2014, it was considered ready for operation from toll commencement based on the contractor's confirmation (and extensive testing, trial operations and pilot testing) that the system and operations were ready from toll commencement. This all in accordance with FIDIC.
- (2) The Employer's Representative, in terms of Sub clause 11.6 of FIDIC, issued the section commissioning certificates. Certificates were issued in terms of Sub clause 11.6 of FIDIC and that in terms of Sub clause 11.5 of FIDIC which provides that:

"i. Issue the Commissioning Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose..."
- (3) There were no "faults" outstanding on the launch date of 3 December 2013. FIDIC contemplates and as will be appreciated from the section of FIDIC recorded above, that the commissioning certificates are issued subject to certain outstanding work and defects. This is addressed in

Clause 12 of FIDIC and this is the basis upon which the section completion certificates were issued.

- (4) The operations continued based on the requirements of FIDIC and the issuing of the requisite commissioning certificates. Delays were dealt with in accordance with the delay damages provisions of the contract and were applied accordingly where delay occurred. For the period 1 July 2013 to 15 December 2013 the following amounts were paid to the contractor in respect of the services provided.

| Month | Operations |
|--------------|-------------------|
| Jul-13 | R 29 827 326.93 |
| Aug-13 | R 15 126 538.85 |
| Sep-13 | R 30 559 820.76 |
| Oct-13 | R 33 290 653.38 |
| Nov-13 | R 47 446 297.39 |
| Dec-13 | R 80 869 591.90 |

The followings are to be noted in this regard:

- (i) The payments to the contractor, in addition to payments for the services provided by the contractor, payment for the maintenance of all buildings and gantry's maintained by the contractor, payments for systems maintenance, payments in respect of utilities (water and electricity), rentals of customer kiosks and operations undertaken by the contractor including those for the benefit of the road user;
- (ii) The contractor was required, at all times, to be operationally ready not knowing the toll commencement date and having regard to the various court cases;
- (iii) The increases in payments in October, November and December 2013 should be viewed in light of the ramp-up of operations required for purposes of toll commencement;
- (iv) All payments are determined based on a measurement based contract (add-measured contract) and accordingly the contractor is only paid for services actually rendered; and
- (v) The December payment is for the full months services not just to 15 December 2013 as a result of the end of the year industry shut down.