

ANNEXURE C



6 March 2009

The Chairman  
Transnet Limited  
49<sup>th</sup> Floor  
Carlton Centre  
150 Commissioner Street  
Johannesburg  
2000

Attention: Mr F Phaswana

Dear Mr Phaswana

RE: INVESTIGATIONS BY TRANSNET INTERNAL AUDIT INTO ALLEGATIONS  
RELATING TO TRANSNET FREIGHT RAIL ("TFR")

We have been requested to provide a summary on certain investigations which  
Transnet Internal Audit are currently undertaking relating to two matters,  
namely:-

- The acquisition of diesel locomotives; and
- The awarding of a security contract.

Please note that these investigations have not been finalised and that the  
attached summary report should be viewed in that light and be treated as  
confidential.

Should you require any further information please do not hesitate to contact  
us.

Yours Faithfully

Viv Oates  
Transnet Internal Audit

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Dr MD Hlatshway, PG Joubert, HNA Madhosi, M P Moyo, BT Ngwenya, HR Ntshongola, SC Raseke, EF Venter (Chief Financial Officer)  
Executive: Dr Eishi  
Group Company Secretary: Z Sijpeke

SUMMARY REPORT BY TRANSNET INTERNAL AUDIT INTO ALLEGATIONS  
RELATING TO TRANSNET FREIGHT RAIL ("TFR")

DIESEL LOCOMOTIVES

Background

A hotline report was received by the Public Service Commission on 9 November 2007. In this report, various allegations were made involving a Transnet tender for the supply of "Like New" locomotives.

The hotline report was forwarded to Mr F Phaswana, Chairman of Transnet Limited by Mr A Erwin, Minister of Public Enterprises on 31 January 2008.

From our review we have determined that **Electro-Motive Sibanye Joint Venture ("Joint Venture" or "Contractor")**, of which **Sibanye Trade Services** is a party, was awarded the 50 "Like New" locomotive contract, signed on 1 May 2007.

Findings


Our key findings to the above allegation are as follows:-

- Following a proposal by the Contractor to provide Transnet with 50 "Like New" locomotives the Transnet Board of Directors passed the following resolution on 13 February 2007:
  - "The Board RESOLVED that it grants approval for:
    - The implementation of the critical phase of the locomotive fleet modernisation plan which includes an investment of R874.57 million (nominal) in the acquisition of 50 EMD Class 34/37 upgraded diesel locomotives for Spoornet GFB;
    - The confinement of the tender to Electromotive Diesel (EMD);
    - The conclusion, signing and execution of the contract by the **Spoornet Chief Executive** for the manufacturing and supply of the 50 diesel locomotives to be delivered within 12 months of date of signature; and
    - The condition for the above approval is that **Sibanye Trade and Services** would not be involved in the contract and that **Transnet** would carry out all engineering on assembly and maintenance."

- This was later amended by the Transnet Board of Directors on 26 April 2007 to read as follows:
  - ▶ "The Board RESOLVED that it grants approval for:
    - ▶ The implementation of the critical phase of the locomotive fleet modernisation plan which includes an investment of R874.57 million (nominal) in the acquisition of 50 EMD Class 34/37 upgraded diesel locomotives for Spoornet General Freight Business;
    - ▶ The confinement of the tender to Electromotive Diesel (EMD);
    - ▶ The conclusion, signing and execution of the contract by the Spoornet Chief Executive for the manufacturing and supply of the 50 diesel locomotives to be delivered within 12 months of date of signature; and
    - ▶ The condition for the above approval is that Transwerk would carry out all engineering on assembly and maintenance."
- The contract for the supply of 50 "Like New" locomotives was signed on 1 May 2007 by the Chief Executive Officer of TFR, Mr S Gama;
- The contract did not take into account the resolution passed by the Board of Directors in ensuring that "Transwerk would carry out all engineering on assembly and maintenance";
- In terms of clause 7 (Key Contractors), the Contractor had to procure sub-contractors prior to the Effective date, and the agreements reached needed to be detailed and set out in the format described in Schedule 005 of the contract. The signed contract does not contain a schedule 005, and there was no contract in place between the Contractor and TRE; and
- As a result of not complying with the resolution passed by the Board of Directors, or alternatively not complying with clause 7 of the agreement, Transnet may incur significant additional direct or indirect costs.

Conclusion

- The signatories of the contract did not comply fully with the Board of Directors' resolution dated 26 April 2007, and clause 7 of the Contract, and consequently disciplinary action must be taken against the relevant signatories to the agreement. The presiding officer of the disciplinary hearing should take into consideration the implications to Transnet of the non-compliance and resultant additional costs to Transnet in determining an appropriate sanction; and
- The agreement must be rectified to fully reflect the resolution undertaken by the Transnet Board of Directors in the award of the Contract.

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## SECURITY CONTRACT

### Background

A number of allegations were raised relating to the TFR Security department. These were reported in two (2) anonymous call reports received from Tip-offs Anonymous ("TOA") on 21 October 2008 and 30 October 2008 respectively. Furthermore, an anonymous undated letter was received by the office of the Group Chief Executive, Ms Maria Ramos ("Ms Ramos"), on 18 September 2008, followed by an anonymous e-mail on 19 November 2008. The allegation which is specific to this summary report is as follows:

*"GNS - We were further made aware of the origin of this company which we need fully investigation. In a nut-shell: GNS is an abbreviation of, "General Nyanda Security". All in SA will confirm that we are right. This company was given special treatment because of its association with famous MK soldiers.... They did not go through proper tender process like the rest....."*

Due to the potential seriousness and sensitivity of the allegations raised, Transnet Internal Audit ("TIA") was requested to investigate the allegations raised in the call reports and e-mail correspondence.

### Findings

Our key findings to the above allegation are as follows:-

- The original RFP reference number 103098739 ("RFP 1") for the supply of security services was incorrectly cancelled and replaced with a new process;
- Subsequent to the cancellation of RFP 1, an additional three (3) security service providers were identified;
- The process of obtaining the three (3) further security service providers was not clearly documented nor communicated;
- Confinement, evaluation and award of the security contract was made to General Nyanda Security Risk Advisory Services (Pty) Ltd ("GNS") with effect from 1 December 2007. However, there was no clear documentary evidence of the confinement, evaluation and award to determine that the process was fair, equitable, transparent, competitive, and cost effective as required by the Constitution and PFMA.

- The evidence indicated that GNS was only registered with PSIRA on 9 June 2008;
- In terms of Section 20 (1) (a) of the PSIRA Act, no person except a security service contemplated in Section 199 of the Constitution (Act No 108 of 1996), may render security service for remuneration, reward, a fee or benefit, unless such person is registered as a security service provider in terms of this Act;
- It was confirmed that a company rendering services before being registered by PSIRA, would be in contravention of the PSIRA Act;
- The GNS confinement was approved on 5 December 2007 by Mr Gama;
- In accordance with section 5.4.2 of the Transnet Limited Delegation of Authority Framework dated 30 October 2007 ("Framework"), Mr Gama did not have the authority to approve the GNS confinement; and
- The contract for security services was only signed by TFR management on 4 June 2008, although services commenced on 1 December 2007.

#### Conclusion

- The delegated authority limit with regard to the approval of all confinement contracts should be adhered to in all instances and appropriately documented;
- Appropriate disciplinary action should be taken against Mr Gama, TFR CEO, as he did not have the authority to approve the confinement;
- Transnet should ensure that a single approved list of all security service providers for all security types, including specialist services, be used. Future RFPs should consider these service providers only and any deviations from the approved (accredited) list should be dealt with appropriately;
- TFR Management should take disciplinary action against officials who have not maintained appropriate and adequate documentation supporting decisions taken during the RFP and/or confinement process;

- Disciplinary action should also be considered against relevant TFR employees who have overlooked the registration requirements of security services providers in terms of the PSIRA Act; and
- Training and awareness of the DPP, should be considered for all CEO's, CFO's, and CIO's and any other parties that deal with the tender and procurement process in order to strengthen their understanding of the policies and procedures.

