AFFIDAVIT

I, the undersigned,

SIYABONGA INNOCENT GAMA

(IDENTITY NUMBER: 670519 5240 088)

do hereby make oath and state as set out below:-

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1.1 I am an adult male businessman, residing at 123 Eccleston Crescent, Bryanston, Johannesburg.

1.2 The facts herein contained are within my own personal knowledge and belief, save where expressly stated herein to the contrary.

2 The purpose with which I depose to this affidavit is to place additional information / material before the State Capture Commission (***"Commission"***), in response to the allegations levelled against me by the persons identified in the Regulation 10(*6*) notice (***the "notice"***) served on me in and during October 2020, and to respond to the interrogatories raised by the **Commission** as contained in paragraphs 1.5 of the said **notice**. A copy of the **notice** is ***annexed*** hereto, marked "***SG1***".

SG1

3 I presented an affidavit to the Commission on 31 January 2021, responding to the allegations of the following witnesses, in accordance with the Notice received in October 2020 (*the "Notice"*):-

3.1 Barbara Hogan (***"Hogan"***);

3.2 Roberto Gonsalves (***"Gonsalves"***);

3.3 Popo Simon Molefe (***"Popo Molefe"***); and

3.4 Makano Mosidi (***"Mosidi"***).

4 This supplementary affidavit is provided in response to the evidence of witnesses who have sought to implicate me, in circumstances where I have not previously addressed such evidence whether partly or as a whole, due to me not having been in possession of information/documentation which was necessary to facilitate a meaningful response. In this regard, I received most of the outstanding documentation/information requested from the **Commission** on 1 February 2021, 4 February 2021, and 2 March 2021, which assists me in providing responses to most of the witnesses testimony/statements. Consequently, I am now able to respond to the allegations of the following witnesses:-

4.1 Mohammed Mahomedy (***"Mahomedy"***); and

4.2 Francis **Callard** (*"Callard"*).

5 With reference to **Witness#2**, it remains my intention to submit an application to the Commission for leave to cause his cross-examination to be continued. However, I have requested further documentation from the Commission which prove essential for purposes of the preparation of **Witness#2's** cross-examination. Once in receipt of the aforementioned documentation, my application will follow.

6 I am advised that the witnesses identified in paragraph 4 above have all testified before the **Commission** and in certain respects , some of these witnesses' seek to implicate me in acts of wrongdoing including, *inter alia*, fraud, money laundering, corruption and tax evasion, which may prove relevant to the **Commission's** work.

7 In my affidavits deposed to on 29 January 2021, and 31 January 2021, I reserved my right to deal with the interrogatories listed in paragraphs 7.1.1 and 7.1.2 herein below, pending the documentation/information I requested, being made available to me. I am able to answer the remaining interrogatories as contained, in paragraph 1.5 of the **Notice**, and which relate to:-

7.1.1 the acquisition of the 100 21E Electric Locomotives; and

7.1.2 the acquisition of the 1064 Diesel and Electric Locomotives.

8 As will become apparent from what is contained herein below, I, in the strongest terms, deny all allegations of me having committed any acts of wrongdoing, as it relates to State Capture, in whatsoever form.

<u>MAHOMEDY STATEMENT</u>

9 **AD PARAGRAPH 5.1.1**

9.1 As General Manager, **Mahomedy** was not merely part of the team that managed the McKinsey Consortium (*"McKinsey"*), he was in fact the manager responsible for overseeing the **McKinsey** team. He was the Lead manager. **Mahomedy's** assertion that he was mostly part of the team is misleading.

9.2 **Mahomedy's** statement is misleading, and engineered to downplay his role in the management of **McKinsey**.

9.3 The 1064 Locomotive Business Case was developed at the Transnet Freight Rail (*"TFR"*) Division, whereafter it was handed over to Head Office.

9.4 In terms of the development of the Business Case for the 1064 Locomotives, there were probably between 6 (*six*) to 10 (*ten*)

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individuals that contributed to the development of the Business Case. The team was co-ordinated by **Callard,** whose main role was to ensure that the Business Case was coherent and that it integrated various elements of business, financial, commercial, technical as well as operational capabilities within **TFR**, with a view to optimizing the fleet.

9.5 The Business Case was finalised by **TFR** sometime in 2012, and then submitted to the Group Finance Division of Transnet soc Ltd (*"Transnet"*) which then appointed **McKinsey** as well as other transaction advisors that would assist **Transnet** in the acquisition of the 1064 locomotives.

9.6 Once the Business Case had been handed over from the **TFR** division to head office, the Business Case became the responsibility of head office.

9.7 Between May 2012 and April 2013, the Business Case was dealt with by the Group Chief Financial Officer (*"GCFO"*) at the time, Anoj Singh (*"Singh"*) and **Mahomedy** as the General manager responsible for Capital Assurance and Integration.

9.8 In the main, **Callard** and Pragasen Pillay (*"Pillay"*), together with others from the **TFR division** continued to support and assist the **McKinsey** and the Transnet Group (*"Group"*) in terms of providing professional inputs concerning technical information that was required of them.

9.9 **Mahomedy** who headed Group Capital and Integrated Assurance (*"GCIA"*) was responsible for considering the Business Case, interrogating it, optimising capital and providing assurance to the **Group** on the Business Case efficacy.

10 **AD PARAGRAPH 5.1.2**

10.1 The initial Business Case for the 1064 Locomotives was prepared by managers at **TFR**.

10.2 the Business Case was then submitted to Group Finance, and from the time that it was presented as a Business Case at the Transnet Capital Investment Committee (*"CAPIC"*), Group Finance advised that they were appointing **McKinsey** to evaluate and assess the Business Case.

11 **AD PARAGRAPH 5.1.3**

11.1 The appointment of transaction advisors took place at Group Office level. I cannot comment on the remainder of what is contained in this paragraph.

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12 **AD PARAGRAPH 5.1.4**

12.1 I was not a party to the appointment of either **McKinsey** nor Regiments Capital (*"Regiments"*).

13 **AD PARAGRAPH 5.1.5**

13.1 I agree that the final Business Case was a joint product of **TFR, McKinsey** and **GCIA**.

13.2 I confirm that **Singh** performed the key oversight role and I, in my capacity as Chief Executive Officer (*"CEO"*) of **TFR**, during the period May 2012 to April 2013, provided him with support in the form of human resources from within the **TFR** division.

14 **AD PARAGRAPH 5.1.6**

14.1 I was not a party to the financial modelling.

15 **AD PARAGRAPH 5.1.7**

15.1 I note the content of this paragraph, however, I am unable to comment on its contents.

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16 **AD PARAGRAPH 5.1.8**

16.1 I note the content of this paragraph, however, I am unable to comment on its contents.

17 **AD PARAGRAPH 5.1.9**

17.1 I admit the content of this paragraph.

18 **AD PARAGRAPH 5.1.10**

18.1 The reason why **McKinsey** was appointed was to evaluate the Business Case, which included technical, financial and commercial assumptions that had been arrived at by **TFR**.

18.2 As head of **GCIA**, **Mahomedy** would have been involved in the aforementioned exercise.

19 **AD PARAGRAPH 5.1.11**

19.1 The Business Case was completed when the board approved it in April 2013.

20 **AD PARAGRAPH 5.1.12**

20.1 I note the content of this paragraph, the first time that I had occasion to have regard to "*MSM6*", was when I received the Regulation 3.3 Notice concerning **Mahomedy's** proposed testimony.

21 **AD PARAGRAPH 5.1.13**

21.1 I note the content of this paragraph. In paragraph 1.1 of the agreement the parties envisaged that the transaction advisory services contemplated were in relation to the structuring and fund raising for the 1064 locomotive transaction.

22 **AD PARAGRAPH 5.1.14**

22.1 **Regiments** role as described in paragraph 1.1 of the agreement was to perform advisory services in relation to structuring and fund raising for the 1064 locomotives. **McKinsey's** role was to provide transaction advisory services.

23 **AD PARAGRAPH 5.3.1**

23.1 I note the content of this paragraph, I am however unable to comment as I was not a party to the correspondence referred to.

24 **AD PARAGRAPH 5.3.2**

24.1 I note the content of this paragraph. I am not aware of any special treatment afforded **CSR**.

25 **AD PARAGRAPH 5.3.3**

25.1 I note the content of this paragraph.

26 **AD PARAGRAPH 5.3.4**

26.1 ***MSM13*** was compiled by Thamsanqa Jiyane (*"**Jiyane**"*) in his capacity as the Chief Procurement Officer (*"**CPO**"*) of **TFR,** and as Chairman of the Cross Functional Evaluation Team (*"**CFET**"*).

26.2 Paragraphs 8.1 and 8.2 of the memorandum records that a supplier development cross functional team (*among a few other cross functional teams*), worked with Transnet's Internal Audit High Value Tender teams to review the issues, and assess the risks of supplier development in relation to **Transnet**. **Transnet's** supplier development cross functional team recommended the evaluation of B-BBEE at stage 3 instead of stage 1, which recommendation was initially submitted to the Group Chief Executive Officer (*"**GCEO**"*) and later, to the **Transnet** Board Acquisitions and Disposal's Committee (*"**BADC**"*), for approval.

26.3 **Transnet's** supplier development cross functional team adopted the approach that the criteria for international companies to obtain a B-BBEE certificate at stage 1 of the evaluation process was unrealistic, particularly when such entities such as China South Rail

(*"CSR"*) and Nelesco 85 did not have local offices. Therefore, instead of evaluating B-BBEE at stage 1, it would be evaluated at stage 3 to provide the foreign entities with enough time to liaise with the verification agencies and Department of Trade and Industry in order to comply with the aforementioned requirements. The Transnet Internal Audit high Value Tender Evaluation Team concurred with the recommendation.

26.4

26.4.1 The Supplier Development Team, I believe in collaboration with **Jiyane**, and with the final sign off by the **TFR** Chief Executive were transparent and sought the approval of the **GCEO** at the time, **Brian Molefe** after reviewing 2 (*two*) options to deal with the issue. The recommendation to the **GCEO** was a technical one that weighed in with different risks. It was then submitted to **Brian Molefe** who had the delegated authority to approve any of these changes.

26.4.2 The aforementioned authority had been given to **Brian Molefe** in his role as **GCEO** by the Transnet Board, to exercise authority in terms of the **Transnet** Procurement Procedures Manual, provided that he informed the board of all deviations that he had agreed to during the process. I was not the author of the memorandum concerned, however, I recommended same in accordance with protocol which prohibits communication between, in this instance, **Jiyane** as **CPO** and the **GCEO**.

26.5 The memorandum in question merely sought authority for and concurrence with the recommendation from the **GCEO**, concerning a decision from the **CFET**. The **CFET** did not seek to change the evaluation criteria but merely to move the evaluation stage from stage 1 to stage 3 to ensure equal opportunity for all bidders.

27 **AD PARAGRAPH 5.3.5**

27.1 I note the content of this paragraph, however, I do not know whether a 10% deposit payment was policy or merely a guideline within **Transnet**.

28 **AD PARAGRAPH 5.3.6 (*5.3.6.1 AND 5.3.6.2*)**

28.1 I note the contents however I, have never been involved in the said transactions.

29 **AD PARAGRAPH 5.3.7**

29.1 I was never involved in any advance payment negotiations.

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30 **AD PARAGRAPH 5.3.8 (*5.3.8.1 AND 5.3.8.2*)**

30.1 Noted. I was not involved in any such payments having been made.

31 **AD PARAGRAPH 5.3.9 (*5.3.9.1 AND 5.3.9.2*)**

31.1 I had no involvement in the payment of interest and penalties to **CSR**.

32 **AD PARAGRAPHS 5.3.10 AND 5.3.11**

32.1 **Transnet** had employed the services of PriceWaterhouseCoopers (*"PWC"*) to liaise with all original equipment manufacturers (*"OEM's"*) that had assembled locomotives on behalf of **Transnet,** and to ensure that a Maintenance Service Agreement (*"MSA"*) for the locomotives would be in place post assembly and post the initial warranty period.

32.2 The first of the **OEM's** to sign a **MSA** having supplied the 100 (*class 21E*), 95 (*class 20E*) and 359 (*class 22E*) locomotives, was **CSR**. In terms of the **MSA** which had been developed jointly between **PWC**, Transnet Engineering (*"TE"*) and **CSR**, an amount of R618 160 764 000.00 (*six hundred and eighteen million one hundred and sixty thousand seven hundred and sixty-four rand*) was to be paid upfront for the purposes of the supply of spares and tooling.

32.3 The aforementioned amount was paid, against an advance payment guarantee, which was agreed to by the parties and which was to secure the provision of maintenance services in respect of the locomotives that had been supplied by **CSR**.

33 **AD PARAGRAPH 5.3.13**

33.1 It is noted that **Transnet** terminated the letter of award authorised by **Mahomedy** in September 2018 (*and not October 2017 as indicated or as alleged by **Mahomedy***). In terms of the letter CRRC E-Loco (*Pty*) Ltd (*"**CRRC**"*) was to repay **Transnet** within two days of the cancellation, the amount of R618 160 746.00 (*six hundred and eighteen million one hundred and sixty thousand seven hundred and sixty-four rand*). The payment of the aforementioned amount was not followed up by **Mahomedy**, and thus payment was only received in December 2018.

34 **AD PARAGRAPH 5.3.14**

34.1 I repeat what is contained in paragraph 33 above. The **MSA** agreement was supposed to be replaced by a materials and reliability support contract (*"**MRS**"*), which would have secured **Transnet's** supply of spares and tools for the locomotives supplied by **CRRC**. The failure to ensure substitution of the **MSA** with the **MRS,** has resulted in many locomotives being parked in the

Transnet Railway System.

35 **AD PARAGRAPH 5.3.15**

35.1 I note the contents of this paragraph.

36 **AD PARAGRAPH 5.10.1 to 5.10.5**

36.1 I note the contents of these paragraphs.

37 **AD PARAGRAPH 5.10.6**

37.1 The memorandum referred to was compiled by Edward Thomas who was the erstwhile acting Group Chief Supply Chain Officer on 9 May 2016. It was recommended by Garry Pita (*"Pita"*) the Group Chief Financial Officer, and in turn, it was recommended by the **GCEO** for consideration by the Acquisition and Disposals Committee of the Board of **Transnet**. I repeat what I have stated in paragraph 26 above with reference to the compilation of memoranda and the signing off thereof.

37.1.1 It is unfortunate that **Mahomedy** only now mentions that he had not been consulted in relation to the capital optimisation services increase which fell within his portfolio, which was recommended by his direct superior, **Pita**.

37.1.2 **Mahomedy** ought to have known better and should have raised this aspect with his superior, **Pita**, failing which he should have raised it with me as **Pita's** superior, (*that there was a cost increase in his department which he either did not approve of or was not aware of or which was not required*).

37.1.3 **Mahomedy** did not take any steps to safeguard the interests of **Transnet**, if it is indeed his assertion that the cost did not need to be incurred. It is unfortunate that we only learnt about it in 2019 during his testimony before the **Commission**.

37.2 I was not aware that the **GCIA** or its General Manager, **Mahomedy** had not been consulted when the cost increase was requested. The relevant memoranda were accepted in circumstances where there was no reason to doubt the *bona fides* of officials who presented them to me.

38 AD PARAGRAPH 5.10.7 AND 5.10.8

38.1 I note the contents of these paragraphs.

39 **AD PARAGRAPH 5.11**

39.1 The **GCFO** of **Transnet,** supported by **Transnet's** Chief Legal Counsel initiated the process and I was a co-signatory of the memorandum which was submitted to the **Transnet** acquisition and disposals committee. The project was part of a cost savings and efficiency drive for the optimisation of supply chain management within **Transnet,** which it was hoped would save up to about R5 000 000 000.00 (*five Billion rand*) per annum.

39.2 The proposal had first been taken to Transnet's Audit Committee to permit Nkonki Inc. (*"**Nkonki**"*) to perform certain non-audit related services. **Transnet** had an evergreen contract with Kumba Iron Ore: Anglo American (*"**Kumba**"*), in terms of which **Kumba** paid it less than market related rates for portions of the iron ore haulage, the said rates were significantly below the market price that **Kumba's** competitors, such as Assmang would pay for the same service. It was estimated that an additional R1 Billion per annum could be paid by **Kumba** to **Transnet**. **Kumba** has failed to regularise the aforesaid position, ostensibly relying on a contract with **Transnet** which terminates in 2028. In 2005, **Transnet** entered into an anti-competitive and exclusionary 23 year agreement with **Kumba** to transport iron ore from Sishen to Saldanha, based on a fixed Rand per ton price. This was done to remove an embedded derivative on the original pricing mechanism which was linked to the US dollar iron ore price which almost bankrupted **Transnet**. My attempts to renegotiate with **Kumba** resulted in me being reported to Pravin Gordhan, the Minister of Public enterprises in May 2018.

39.3 It was envisaged that the funding for all of this work would be derived from cost savings or revenue enhancements and that there would be a formula which would be utilised to pay for it. This was a matter which was considered by two committees of the board, and not merely one sub-committee of the board. It was considered by the Audit Committee (*and supported by the Chairman of the Audit Committee*) and then recommended to the Acquisition and Disposal Committee of the Board.

39.4 It remains my understanding that the costs would have been funded from savings made and that no payments would have been made if there were in fact no savings, nor if they had failed to negotiate higher tariff prices in terms of coal and iron ore haulage.

39.5 Strict requirements and formulae were developed which had to be applied prior to sign-off by the different leaders in the business. **Nkonki** was to assess and evaluate the extent of savings generated and the compensation due as a result of such efforts.

39.6 **Mohomedy's** assertion that of the R500 million budget, only R26 100 000.00 (*twenty six million one hundred thousand rand*) was paid, is no doubt as a result of the stringent measures that were introduced, governing such expenditure. It later, in the latter part of 2017 or early in 2018 transpired that **Nkonki's** ownership had changed, and which had not been declared and that it had gone rogue. I terminated the relationship between **Nkonki** and **Transnet**. I believe this occurred well before the Auditor General gave such instruction.

CALLARD STATEMENT

40 **AD PARAGRAPH 17**

40.1 In and during 2007/2008, I commissioned a multi-disciplinary team to develop a locomotive fleet strategy and improvement plan for **TFR**. I do not recall who I appointed to lead this multi-disciplinary team.

40.2 The fleet plan that was developed was the product of many participants.

41 **AD PARAGRAPH 22**

41.1 After a strategy session by the Board of **Transnet** in October 2011, I shared the Market Demand Strategy and the locomotive fleet plan with the Department of Public Enterprises, as directed by the Board.

41.2 The fleet plan entailed that we could acquire 1064 locomotives for the general freight business in order for **Transnet** to gain freight market share. The new freight rail strategy, as developed by Ulrico Davids (*"**Davids**"*) (*Head of Strategy at TFR*) and his team, had been approved by both the **Transnet** Board as well as the Department of Public Enterprises. It was a railway strategy that proposed railway and business options which presented a realistic and practical improvement of South Africa's rail sector in the context of our own unique challenges.

41.3 Importantly, principles were developed which described an ideal role that a rail sector should fulfil from a macro economic as well as rail economic perspective.

41.4 The Market Demand Strategy addressed re-investment in rail as well as a turnaround strategy for the railways, which ushered in an era of efficiency and effectiveness, which could result in lower logistics costs.

41.5 **Callard** was not involved in the development of the Freight Rail Strategy.

ACQUISITION OF THE 100 LOCOMOTIVE'S

42 **AD PARAGRAPH 26**

42.1 It is correct that the Memorandum dated 15 October 2013, was in fact the memorandum that was submitted to the Transnet **BADC** for the acquisition of the 100 Class-19E electric locomotives. The acquisition was to serve the coal line.

42.2 It was my role (*not that of **Callard***) to peruse/review the motivation and the approval of the Business Case. However, my role was limited to submitting the Business Case to the **GCEO** of **Transnet**, whose function it was to submit the Business Case to the **BADC**. In turn, it was the **BADC's** function to submit the Business Case to the board, for final approval.

42.3 The Board was then required to submit the Business Case to the Minister, for Public Finance Management Act no. 1 of 1999 (*"**PFMA**"*) approval, in the event that **PFMA** approval was required. In this regard, for me to attend **BADC** meetings, I had to be invited by the **GCEO**, to support him when he presented the Business Case, if he found it necessary.

43 **AD PARAGRAPH 32**

43.1 It was indeed strange for **Callard** to simply invite himself to the **BADC** meeting, this in circumstances where he had not been requested to attend such meeting. In many instances, I would invite him to attend so as to support me, and me in turn supporting the **GCEO**. As I was not a member of the board, I would not know when these meetings were convened, unless there was an item that I had to present on. There were instances when I was informed as late as an hour before the meeting convened, that I was required to make a presentation. There have also been instances when I requested a colleague to attend in my stead, when I had prior commitments.

43.2 On this particular occasion, **Callard** had simply not been invited by anyone to attend, hence his recall.

44 **AD PARAGRAPH 33**

44.1 I admit the contents of this paragraph.

45 **AD PARAGRAPH 34**

45.1 The contents of this paragraph is noted.

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46 **AD PARAGRAPH 35**

46.1 I admit the contents of the paragraph.

47 **AD PARAGRAPHS 36 AND 37**

47.1 I do not dispute the contents of this paragraph, *albeit* that the SMS was sent to both **Callard** and **Pillay**.

48 **AD PARAGRAPH 38**

48.1 The memorandum that is referenced as annexure "***FC5***", is incorrectly dated 20 January 2015, the year should be 2014.

49 **AD PARAGRAPHS 44 AND 45**

49.1 The changes to the memorandum were effected by **Singh** who signed the memorandum on 21 January 2014. The memorandum was then signed by **Brian Molefe** on 22 January 2014. It should be noted that my signature was not appended to "***FC14***". I was not a party to what is alleged to have been the unilateral amendment. It was at all times known to **Callard** that I supported the confinement to Mitsui & Co Ltd (***"Mitsui"***).

50 **AD PARAGRAPH 47**

50.1 I cannot comment on the discussion between **Jiyane** and **Callard** as I was not a party thereto.

51 **AD PARAGRAPH 48**

51.1 I confirm having sent the email to **Singh**.

51.2 I recall having received a telephone call from **Callard** during the evening of 23 January 2014, when he informed me that the confinement to **Mitsui** had somehow been changed to a confinement to **CSR**. He made reference to a series of events that had led to this. I reminded **Callard** that I had warned him about dealing directly with people at group level without my approval or knowledge.

51.3 I indicated to him that I would liaise with **Singh** to establish what was going on. I sent the email referred to, during the evening of 23 January 2014, after my conversation with **Callard**. The email was premised on input provided by him. At that time, I had not yet seen the email which **Callard** had sent to me.

51.4 I agreed with **Callard** concerning the matters raised by him.

52 **AD PARAGRAPH 49**

52.1 I had been invited by the **GCEO** (*together with **Jiyane***) to the meeting to discuss the 1064 Business Case. I was not in attendance for the full duration of the meeting.

53 **AD PARAGRAPH 49.1**

53.1 I did not support the confinement to **CSR**, a fact well known to **Molefe** and **Singh**. The memorandum to the **BADC** was not signed by me.

54 **AD PARAGRAPH 51**

54.1 I have read the minutes, (*particularly at paragraph 5.22*) of the meeting of 24 January 2014, of the **BADC**.

54.2 It is clear to me that no one from **TFR** would have presented anything of the kind reflected in the minutes. As and by way of example, "*management informed the committee that it was decided that a 26 ton heavy haul line by GE would perform better than a class 19E locomotive by Mitsui*". The aforegoing caption is nonsensical in that not only is the heavy haul line not a locomotive, but also that General Electric (*"**GE**"*) only manufactures diesel locomotives, and therefore the specifications cannot be compared with those of

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electric locomotives manufactured for instance by **Mitsui**.

54.3 *"Management motivated for the confinement in favour of GE, this was motivated by a submission that was previously withdrawn due to reputational issues that had emanated from an old newspaper article. Management requested for a contract extension for class 43E diesel locomotives by CSR"*. From the aforegoing, it is clear that confusion reigned between the procurement of diesel locomotives by **GE** (*43D*) and the procurement of electric locomotives either from **CSR** and/or **Mitsui**. Consequently, no reliance ought to be placed on the aforesaid submissions as they are clearly wrong and not representative of what had been discussed. However, what is significant was the fact that whilst I supported the confinement to **Mitsui**, the **BADC** had rejected my said proposal on the basis, as I understand it, that such confinement would have been the third with **Mitsui**. As it so happened, **Brian Molefe** later informed me that my **Mitsui** submission would have been stillborn.

54.4 **Singh** and **Molefe** had removed my memorandum and prepared a new one which they signed and presented to the committee recommending **CSR** as the preferred supplier.

55 **AD PARAGRAPH 54**

55.1 At the time of me sending the SMS, I had already dealt with the matter as I had also spoken to **Callard** telephonically during the evening of 23 January 2014.

56 **AD PARAGRAPH 54.1**

56.1 The conclusion that **Callard** seeks to arrive at is incorrect.

56.2 My and **Callard's** discussion does not afford evidence of the fact that I had sight of the email, prior to our telephone call, if that is what is contended for by **Callard**.

56.3 My undertaking to explain what I believed was the **GCEO's** thoughts on the matter was a courtesy to him. It should be noted that I did not report to **Callard**, neither did he have a duty to report to me.

57 **AD PARAGRAPH 57**

I note the professional opinion expressed, I do not differ from it and have no cause not to support it.

58 **AD PARAGRAPH 69**

58.1 The memorandum was produced on 10 June 2014. **Callard** alleged that it was drafted by him and given to Ms. Rita Roper (*"**Roper**"*) (*the general manager for Capital Projects*), in order for her to discuss same with me. **Roper** never discussed it with me. Moreover, the memorandum was not signed and it was never executed.

58.2 In and during October 2014, the consideration was for 40 locomotives to be manufactured (*and assembled*) in China and 60 to be assembled in South Africa. The consideration to have all 100 locomotives manufactured in China would not have been aligned to our Supplier development and local content objectives.

59 **AD PARAGRAPH 71**

59.1 This was a work in progress. I was not a party to it.

ACQUISITION OF THE 1064 LOCOMOTIVE'S

60 **AD PARAGRAPH 84**

60.1 An unsigned 50 page document dated 16 March 2012 (*on the cover page*), but dated 5 March 2012 (*within the document*), purports to be the document that was presented at the **CAPIC** meeting of 19 March 2012.

60.2 A Business Case was presented to **CAPIC**, the minutes of the meeting held on 19 March 2012 are unclear as to who in fact presented the Business Case. The minutes indicated that no decision was taken rather that the matter was referred to a Special

Investment Committee to deliberate on the Business Case. A copy of the minutes are annexed hereto marked "*SG2*".

SG2

61 **AD PARAGRAPH 93**

61.1 I note that the email referred to was however not addressed to me, but that I had been copied therein. In the context of me having received approximately 300 emails per day, work pressures and time constraints did not permit for me to have read all the emails received in my inbox. Furthermore, this particular email did not require my attention.

62 **AD PARAGRAPH 94**

62.1 I have now had sight of the Business Case referred to. Neither the email attachment nor the Business Case refer to any request for me to resolve the involvement of **TE** with **Singh**. I am lost as to what **Callard** seeks to convey.

63 **AD PARAGRAPH 102**

63.1 I was copied in on the chain of emails on 11 April 2013, which related to the finalisation of the Business Case which was to be put forward to the Board. The total estimated cost was based on a diesel locomotive price of R25 million per unit and an electric locomotive price of R34 million per unit. For each successive year, the aforementioned prices were escalated using projected US inflation rates which was converted into Rands based on future rates provided by Transnet Treasury. Hedging costs were assumed to be 8% of the locomotive cash flow. The USD / ZAR exchange rate was assumed to move from R9.70 in 2013 to R12.90 by 2020. The reality is that the Rand devalued against the Dollar at a significantly greater pace than the base assumptions provided for in the Business Case. The cause for the significant increase in contract value is simply the following:-

63.1.1 The cost components (*dealt with hereinbelow*) were included but were too conservatively estimated and thus understated.

63.1.2 The Rand devalued at a faster pace than what was assumed it would in April 2013, and therefore the base cost was underestimated.

63.1.3 The signature date of the contract was delayed by 1 (*one*) year, which resulted in a knock-on effect and a significant increase in the cost components across the board.

63.1.4 The escalation indices were understated, and therefore at March 2014, a higher risk premium was placed by the **OEM's** to hedge in Rand.

63.1.5 The **TE** scope was not incorporated in the initial estimate.

63.1.6 The impact and effect of batch pricing materialised when the contract was divided and awarded to 4 (*four*) **OEM's** instead of 2 (*two*).

63.2 As and by way of example and with reference to the forex factor, the exchange rates forecasted in the Business Case were far too conservative. The forecast assumed a movement over a 7 year period from R9.13 to the dollar to R12.55 by 2020. In reality, the USD /ZAR rate fluctuated between R9.70 to R16.50 during the period in question. A copy of Nedbank's, Annual Average exchange rates is annexed hereto marked ***"SG3"***. ***SG3***

64 **AD PARAGRAPH 118**

64.1 In an email from **Pillay** to **McKinsey** on 11 April 2013, **Pillay** conveyed to **McKinsey**, *inter alia*, that he had, had a discussion with me, the outcome of which was that **TFR** could not accept the increase in budget due to a shift in delivery time.

64.2 **Singh** addressed an email to the **McKinsey** team on 12 April 2013, copying me in, in which he records that he and I had agreed to the principle of containing costs by ensuring that there was no undue delay in delivery. He however, requested information from the team that would assist to confirm that final delivery by 2019, would be feasible. The discussions related to whether all the locomotives would be delivered by 2019. The assumption was that the first locomotives would roll off the production line in 2014. The discussion was not about the aggressive accelerated delivery of locomotives as is suggested by **Callard**. The team considered certain numbers which proved to indicate that the locomotives would become too costly if delivery was permitted to take place in 2020 and beyond. I was copied in emails (*to which were attached memoranda*) between **Singh** and **Pillay** which confirmed that 2019 was the final delivery date, and that the Business Case was premised on such a date. I annex hereto marked "*SG4*", copies of the emails in question. I was not party to the other emails concerning financial models, which required the attention of the finance teams, as well as persons required to assist in the technical detail. **Pillay** and **Callard**, together with others, dealt with financial matters and technical detail, to the extent required of them. *SG4*

64.3 I note that there was a request for him to be advised concerning the possibility of accelerated delivery. Again, it appears as though the team put together a document without any reference to me. The document attached as annexure *"FC56"*, was prepared for Singh as indicated in paragraph 1. Nowhere in the document is it suggested that it was prepared for my consideration. The first time that I had sight of this document was on 6 March 2014, when **Callard** sent it to me via email.

65 **AD PARAGRAPH 119**

65.1 The document was not sent to me on 12 February 2014, as suggested by **Callard.** I first had occasion to consider the matter on 6 March 2014.

66 **AD PARAGRAPH 122 and 123**

66.1 On 6 March 2014, **Callard** sent me and the rest of Exco an email that deals with the aggressive delivery of up to 480 locomotives, which he indicated was sent at the request of the **GCFO**. I replied to the email on 10 March 2014. In my replying email, I highlighted, amongst other things, that the biggest risks were associated with **TE** capabilities and the ability to find 50 dedicated train drivers who would focus only on test commissioning. I also requested that the document be updated with all of my concerns before it was to be submitted to the **GCFO**.

67 **AD PARAGRAPH 124**

67.1 A consideration of the 17-page report together with its annexures (*received from the Commission on 29 January 2021*), is that it is, at best a synopsis of an "*as is*" analysis which is not conclusive. No recommendations were made, save for an analysis of the then status *quo*, together with suggestions of what needed to be done to reach a delivery target of 480 locomotives per annum. The risks were highlighted, but no action plans were incorporated. It would seem correct to conclude that nothing concrete emanated from the suggestions, but that a workshop would be held in May 2014 (*although I was not present at the said workshop*), so as to assess the different scenarios that applied in the context of what the locomotive negotiating team had incorporated in the 17 March 2014 contracts.

68 **AD PARAGRAPH 127**

68.1 To the best of my recollection, the Head of Strategy and Business Planning shared the locomotive delivery accelerated strategy with me on 10 July 2014. I was not optimistic about what was presented and believed that their strategy was too aggressive.

68.2 I advised that the team should develop alternative delivery scenarios. It was clear to me that they had not fully considered the impact of the scenarios presented by them, especially the multiple dependencies in a network business.

68.3 Annexure "***FC61***" suggests that there was a contracted accelerated delivery schedule, which I had not agreed to. Rather, I instructed that further work had to be carried out on the document.

68.4 I did not believe that the accelerated delivery strategy permitted for and adopted the principles of an integrated rail business philosophy. I would never have agreed to accept delivery of more than 240 locomotives per annum. I always maintained the belief that from a resource perspective, no more than 20 locomotives per month could be accepted. Simply put, personnel numbers from engineering and operations (*movement personnel*) did not permit for more locomotives being to effectively put use.

68.5 In any event, the 1064 locomotives negotiating team that entered into contracts during March 2014, appear to have adopted some of the input provided by **Callard** and **Pillay** during contract negotiations. The team, led by **Callard**, had once again been overzealous in their approach to satisfy the **Transnet GCFO** demands. **Callard's** engagement with the group office again did not appreciate the multiple dependencies, such as by way of example, Transnet Engineering Risk, and train driver recruitment and training that such acceleration was dependent upon.

69 **AD PARAGRAPH 129**

69.1 I have earlier indicated that I was opposed to this, my advices fell on deaf ears and to add insult to injury, **Callard** and **Pillay** concealed the fact that they had contracted on the aggressive contract delivery, against my advices. It was clear that the aggressive contract delivery was not attainable, and it is clear that my SMS is taken out of context, in that it was sent with a sarcastic undertone when they realised that their objective was not attainable, and they wanted to revert to a slower contract delivery program. My SMS posed no prejudicial consequences for **Transnet**, and as it so happened, the program did revert to what was originally anticipated by me.

70 **AD PARAGRAPH 211**

70.1 I was indeed a member of the Locomotive Steering Committee. Whilst **Brian Molefe** designated me as Co-Chair of the Negotiating Committee, I did not participate in any negotiations as alleged, or at all. Whilst I did in fact offer to assist with any deadlock or dispute/s that arose during the negotiations process, I was at no stage requested to intervene or to assist.

8G

71 **AD PARAGRAPH 212**

71.1 I repeat what is contained in paragraph 102 hereinabove. A copy of the summary of the results of the negotiation process prepared by Transnet Treasury and Transnet Finance Department is annexed hereto marked "***SG5***". This document was relied upon by me, for purposes of finalising the memorandum to the board in which I dealt with the increase in contract value.

SG5

72 **AD PARAGRAPH 213, 214 & 215**

72.1 Copies of the reports prepared by **Callard** were sent to me. I never had sight of the email addressed to Ms. Nomfuyo Galeni (*"**Galeni**"*), the then **CFO** of **TFR**. In any event, **Galeni** may not have received the email as her email address in the email header is spelt incorrectly. An anomaly contained in **Callard's** email of 26 March 2018, is the allegation that **Transnet** overpaid in the region of R10 Billion (*1064 acquisition*), as this version is somewhat contradicted by the later allegation (*in the same email*) where he records that the R49 Billion price tag was arrived at because four **OEM's** had been contracted for the supply of the locomotives, instead of two. Thus, an overpayment is not established to have occurred, at least not on **Callard's** version.

72.2 On 13 March 2014, Callard sent an email to myself, **Galeni** and **Singh**, in which he confirmed that the final price of the diesel locomotives was R33 million and that of the electric locomotives was R42 million. In that email, **Callard** also model's the advance payment deposit of R3.9 Billion. The aforegoing stands in stark contrast to his later claim that he was oblivious to the increases in the estimated total cost of the 1064 acquisition as well as the quantum of the advance payments. A copy of the chain of emails is annexed hereto marked "***SG6***". ***SG6***

72.3 **Singh** and **Laher** informed me that the best fixed hedging rates had been procured. In fact, they indicated that negotiations had lasted into the early hours of the morning on 17 March 2014, so as to arrive at the final hedge and escalation figures which they informed me were very favorable, given that a Rand based contract, which would remain fixed with the said numbers, would be concluded for a period of 7 (*seven*) years.

72.4 An in-depth reconciliation was performed by **Laher** and Danny Smit which contained details of all the financial transactions leading up to the 1064 locomotive contract being entered into with the 4 (*four*) **OEM's**, with a combined contract value of some R49.8 Billion (*annexure "**SG5**"*).

Sb

73 **AD PARAGRAPH 216**

73.1 I have no recollection of any memoranda being presented at the said meeting. I recall a spreadsheet having been presented.

74 **AD PARAGRAPH 217**

74.1 I indeed shared all of **Callard's** correspondence with the chair of the audit committee, pursuant to which the chair of the audit committee introduced **Callard** to MNS Attorneys (*"MNS"*) for them to obtain **Callard's** input as part of the forensic process.

75 **AD PARAGRAPH 218**

75.1 I note the contents of this paragraph.

76 **AD PARAGRAPH 219**

76.1 I assume that all of the information made available to **Callard** was provided to **MNS**.

AD LIST OF INTERROGATORIES:

77 **The acquisition of the 100 21E locomotives:**

77.1 **TFR** had set out to procure 100 locomotives for the coal line from

Mitsui, in line with the 19E acquisition. The **BADC** determined that we had utilised confinement as a procurement strategy with **Mitsui** on two previous occasions and that this did not permit a third acquisition from **Mitsui**. The **GCEO** and **GCFO** subsequently requested a confinement to **CSR** and the **BADC** agreed to the request. The decision was taken whilst I was protesting the appropriateness of the request, having regard to the fact that **CSR** had no established history with the provision of similar locomotives in South Africa. Subsequent to the approval of the aforesaid request by the **BADC**, which motivated its decision to the Board, **Transnet's** Technical Design Team engaged with **CSR** to create prototypes, whereafter the locomotives were delivered and employed on the coal line. They were named the 21E series.

78 **Acquisition of the 1064 Diesel and Electric Locomotives:**

78.1 During the acquisition phase of the 1064 Diesel and Electric Locomotives, I was the Chief Executive of **TFR**, the Division of Transnet that motivated for the acquisition of the said locomotives.

78.2 A team of employees from within **TFR** developed and submitted an investment case (*"**Business Case**"*) for the locomotives to the **TFR** Investment Committee, which was chaired either by myself or the **CFO** of **TFR**, depending on which of us were available for a particular meeting. During the preliminary discussions concerning the Business Case, I chaired certain of the meetings prior to the Business Case being approved by TFRIC. Thereafter, and prior to it being elevated to the **CAPIC,** the **CFO** had chaired the other meetings.

78.3 Once the investment case was adopted by **CAPIC**, its future management was assumed by the **GCFO** of **Transnet**, who submitted the investment case to the Group Executive Committee. Once approved by the Executive Committee, it was considered by the **GCEO** who recommended it to the **BADC**, whose Chairperson in turn recommended the investment case to the Board.

78.4 The 1064 Locomotives acquisition was a significant investment case, both in complexity and in value, and the **GCFO** decided to insource additional technical skills in the form of **McKinsey** to assist him. Whilst **TFR** provided ongoing technical support and input, as and when it was required, we provided no further participation in terms of how the investment case was dealt with by the remaining approval structures.

78.5 The **Business Case** was created over a period of more than 18 months, prior to the contract having been concluded in March 2014. A **Business Case** estimates a budget whilst the procurement process delivers the actual outcome of the tender process. In this instance, the **Business Case** was circulated to members of **CAPIC** on 26 March 2012 for their consideration and comment, whereafter feedback was received to the effect that due to the magnitude of the proposed acquisition and the potential risks that such an investment poses to the **Group**, the Group finance team would be engaged to verify, validate and where necessary augment the **Business Case** to mitigate against potential risks. On 25 April 2013, one year after we handed over the process to **Group**, the Board approved the Business Case for the acquisition of the 1064 locomotives at an estimated cost of R38.6 Billion, which excluded the potential effects from forex hedging, forex escalation, and other price escalations. The aforegoing approval was premised on a memorandum dated 18 April 2013, a copy of which I annex hereto marked "*SG7*". However, the recommendation to the Transnet Board of Directors (*Special Meeting*) contained in paragraph 23 of the memorandum has become the source of much speculation as to its meaning. The caption which reads "*ETC for the acquisition is estimated at R38.6 Billion as per the corporate plan (excluding potential effects from forex hedging, forex escalation and other price escalations)*", is ambiguous. I have dealt with the ultimate increase in the contract value herein above, and have made my position very clear, which is that the cost components were in fact included, albeit at estimated and assumed values which proved inaccurate and were thus understated.

SG7

78.6 Once the Business Case was approved, a procurement process had to be initiated. In this instance, approval was obtained by the board for the **GCEO** to authorize and distribute a request for proposal (*"RFP"*) to the market, concurrently with the requisite **PFMA** approvals.

78.7 The procurement process was overseen by the **CPO** of **TFR**, **Jiyane**. Once the **RFP** was closed, I signed various letters to appoint cross functional team members to undertake the adjudication process. **Jiyane** proposed to me the names of various cross functional team members, whose names were shared with the **GCEO**, as the overall delegated authority, nominated by the Board to execute the procurement. Once the requests for proposals were closed, I signed all the letters of appointment of the members of the cross functional teams.

78.8 The procurement process is comprised of a number of other processes, such as adjudication and evaluation, negotiation, contracting and contract close out processes.

78.9 In all instances, we had subject matter experts such as Financial accountants in the finance team, engineers in the technical team, business analysts, logisticians and commodity experts in the commercial stream to deal with the critical evaluation elements such as commercial, operational, supplier development, technical, financial and broad-based empowerment. Every cross functional team had a chairperson who reported to and was accountable to the **CPO**. In this context, there were more than 40 (*forty*) individuals who formed part of the various cross functional teams, and who dealt with the different aspects of the 1064 locomotives acquisition. In addition, there was an independent review of the processes by a High Value Tender (*"HVT"*) audit team. I annex hereto marked *"SG8"* a copy of a report which serves as an example of the contract award report of the High Value Tender audit team demonstrating their satisfactory assessment of the process, and in particular never to provide an audit trail to support any changes from the initial Business Case. ***SG8***

78.10 To obtain a satisfactory assessment, the results of real-time assurance at each stage of the gateway review must indicate sufficient/ full compliance to the **HVT** methodology and / or the procurement procedures manual to mitigate and manage potential risks to which the process is exposed. There ought not to be any non-compliance weaknesses. There must be compliance with statutes and regulations and the team must have been fully engaged in order for the **HVT** team to express an opinion. As executives, I would rely on such reports which confirm that all due processes had been followed and that in particular, any changes from the initial **Business Case** was investigated and supported by means of an audit trail.

78.11 A question that has arisen is how the estimated cost contained in the investment case, which was estimated at R38.6 Billion, escalated to an increased figure of R49.54 Billion. A report by the finance negotiation team was presented to me and the **GCFO** in March 2014 (*annexure "SG5"*), which contained a breakdown of the final base costs at a figure of approximately R40.02 Billion, allowing for a previously unaccounted scope for **TE** involvement and batch pricing. The said report made provision for forex escalation to take into account an increase in steel prices and Rand depreciation at R6.73 Billion as well as a forex hedging cost of R2.73 Billion, amounting to a total cost of R49.54 Billion, which was the contract value concluded with the four respective **OEM's**. Added to the aforementioned figure is a 10% contingency reserve which increases the total cost to approximately R54 Billion.

DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at JOHANNESBURG on this the 18th day of MARCH 2021, the regulations contained in Government notice number 3619 of 21 July 1972 and number 1648 of 19 August 1977 having been complied with.

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
SANDTON
2021 -03- 18
KLIENTE DIENSSENTRUM
SANDTON
SUID-AFRIKAANSE POLISIEDIENS

COMMISSIONER OF OATHS

FULL NAME: Sothupanya Ephraim Mampa

DESIGNATION: W/O

AREA OF JURISDICTION: No 02 Summer [illegible] Road, Morningside

SG1

2nd Floor, Hillside House
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2193
Tel: (010) 214 0651
Email:
inquiries@sastatecapture.org.za
Website:
www.sastatecapture.org.za

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE REGULATIONS OF THE COMMISSION

TO	**:**	**MR SIYABONGA GAMA**
ADDRESS	**:**	**123b Eccleston Crescent** **Bryanston** **2191**
TEL	**:**	**011 577 5600 / 083 284 1484**
EMAIL	**:**	**siya.gama@icloud.com**
		c/o BRIAN KAHN INC **brian@briankahn.co.za** **nikki@briankahn.co.za** **mikayla@briankahn.co.za**

By virtue of the powers vested in me in my capacity as Chairperson of the abovementioned Commission by Regulation 10(6)[1] of the Regulations of the Judicial Commission of Inquiry

[1] Regulation 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, I hereby direct you, **Mr Siyabonga Gama**, to:

1. Deliver within **21 calendar days** of receipt hereof to the Secretary or Acting Secretary of the Commission at the address given above an affidavit or affirmed declaration in which:

   1.1 you state whether you admit or deny the allegations made about, or, against, you in the attached statement of **Ms Barbara Hogan dated 8 October 2018** ("Hogan's statement") which was submitted to the Commission for the purpose of its investigations. Your attention is drawn to paragraphs 36, 37, 39, 44, 48, 49, 50 and 51 of the statement and the annexures referenced in the aforementioned paragraphs;

   1.2 you state, if you deny or dispute any allegation or statement made about, or, against, you in Hogan's statement, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in this statement which refer, or, relate, to you;

   1.3 you state whether you admit or deny the allegations made about, or, against, you in the attached statement of **Mr Roberto Gonsalves dated 14 April 2019** ("Gonsalves's statement") which was submitted to the Commission for the purpose of its investigations. Your attention is drawn to paragraphs 34 and 41 of the statement and the annexures referenced in the aforementioned paragraphs;

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1.4 you state, if you deny or dispute any allegation or statement made about, or, against, you in Gonsalves's statement, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in this statement which refer, or, relate, to you;

1.5 you state whether you admit or deny the allegations made about, or, against, you in the attached affidavit of **Mr Mohammed Mahomedy dated 16 April 2019** ("Mahomedy's affidavit") which was submitted to the Commission for the purpose of its investigations. Your attention is drawn to paragraphs 5.1, 5.3, 5.10 and 5.11 of Mahomedy's affidavit and the annexures referenced in the aforementioned paragraphs;

1.6 you state, if you deny or dispute any allegation or statement made about, or, against, you in Mahomedy's affidavit, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in this affidavit which refer, or, relate, to you;

1.7 you state whether you admit or deny the allegations made about, or, against, you in the attached statement of **Mr Francis Callard dated 29 April 2019** ("Callard's statement") which was submitted to the Commission for the purpose of its investigations. Your attention is drawn to paragraphs 17, 22, 26, 32 to 38, 44, 45, 47, 48, 49, 51, 54, 57, 69, 71, 84, 93, 94, 102, 118, 119, 122 to 124, 127, 129, 211, and 213 to 219 of the statement and the annexures referenced in the aforementioned paragraphs;

1.8 you state, if you deny or dispute any allegation or statement made about, or, against, you in Callard's statement, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in this statement which refer, or, relate, to you;

1.9 you state whether you admit or deny the allegations made about, or, against, you in the attached affidavit of **Dr Popo Simon Molefe dated 29 April 2019** ("**Molefe's affidavit**") which was submitted to the Commission for the purpose of its investigations. Your attention is drawn to paragraphs 10.5 to 10.9, 10.12, 11.8.4, 11.10 and 11.14 of the affidavit;

1.10 you state, if you deny or dispute any allegation or statement made about, or, against, you in Molefe's affidavit, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in Molefe's statement which refer, or, relate, to you;

1.11 you state whether you admit or deny the allegations made about, or, against, you in the attached statement of **Ms Makano Muriel Anna Mosidi dated 10 May 2019** ("**Mosidi's statement**") which was submitted to the Commission for the purpose of its investigations. Your attention is drawn to paragraphs 17 to 19, 28, 30, 33, 34, 35, 38, 39, 40, 44, 48 and 49 of the statement and the annexures referenced in the aforementioned paragraphs;

1.12 you state, if you deny or dispute any allegation or statement made about, or, against, you in Mosidi's statement, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in this statement which refer, or, relate, to you;

1.13 you state whether you admit or deny the allegations made about, or, against, you in the attached affidavit (including annexures) of **Witness 2 dated 10 September 2020** which was submitted to the Commission for the purpose of its investigations;

1.14 you state, if you deny or dispute any allegation or statement made about, or, against, you in the affidavit, the grounds on which you base your denial and give your full version in regard to the allegation(s) or statement(s) or issue(s) or matters or incidents covered in this affidavit which refer, or, relate, to you;

1.15 you specifically address, in addition to the allegations in the aforementioned affidavits or statements (and annexures), your involvement in the following:

1.15.1 the award of a contract to GNS Risk Advisory Services (Pty) Ltd entered into on or about 4 June 2008, and any extension thereof;

1.15.2 the one billion rand equivalent club loan involving Trillian as lead arranger;

1.15.3 the property optimization structure in respect of which Trillian was paid in circumstances where no work had been done by Trillian;

1.15.4 the acquisition of the 100 21E Electric locomotives;

1.15.5 the acquisition of the 1064 Diesel and Electric locomotives; and

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China North Rail.

If you would like assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within five days (excluding weekends and public holidays) of receipt of this directive, contact, or, communicate with, the Secretary or Acting Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such a case you will not pay anything for such assistance. In this regard, please contact Mr Clarence Benjamin (clarenceb@commissionsc.org.za).

3. If, in order to prepare the affidavit or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary or Acting Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.

4. This directive is issued for the purpose of pursuing the investigation of the Commission.

5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(c), (d) and (e) of the Regulations of the Commission, as amended. Regulation 8(2) reads:

"8 (1) . . .

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(2) A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947)."

Regulation 11(3)(a) and (b) reads:

"11 (1) . . .

(2) . . .

(3) No person shall without the written permission of the Chairperson–

(a) disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or

(b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson."

Regulation 12(2)(c), (d) and (e) reads:

"12 (1) . . .

(2) Any person who

(a) . . .

(b) . . .

(c) . . . wilfully hinders, resists or obstructs the Chairperson or any officer in the exercise of any power contemplated in regulation 10(1) or (2);

(d) refuses or fails, without sufficient cause, to submit, within a period fixed by the Chairperson or at all, an affidavit or affirmed declaration pursuant to a directive issued by the Chairperson under regulation 10(6); or

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(e) contravenes a provision of regulation 11, is guilty of an offence and liable on conviction -

(i) in the case of an offence referred to in paragraph (a), (c), (d) or (e), to a fine, or to imprisonment for a period not exceeding 12 months; or

(ii) in the case of an offence referred to in paragraph (b), to a fine, or to imprisonment for a period not exceeding six months."

SIGNED IN JOHANNESBURG ON THIS 6th DAY OF OCTOBER 2020.

JUSTICE RMM ZONDO
DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

and

CHAIRPERSON: JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE

SG2

PRIVILEGED AND CONFIDENTIAL

MINUTES OF THE TRANSNET CAPITAL INVESTMENT COMMITTEE MEETING NO 12/3 HELD ON MONDAY, 19 MARCH 2012 AT 14:00 IN BOARDROOM, 4623, 46TH FLOOR, CARLTON CENTRE, 150 COMMISSIONER STREET, JOHANNESBURG

Resolution No/ For attention

1 WELCOME, CONSTITUTION OF MEETING, SIGNING OF ATTENDANCE REGISTER AND APOLOGIES

1.1 Welcome and Constitution of meeting

The Acting Chairman welcomed all the members and attendees and having noted that there was a quorum, declared the meeting duly constituted.

The attendance register was circulated for signature.

(*The numbering reflects the sequence of the meeting.*)

1.2 Present

Mr A Singh	Acting Group Chief Financial Officer
Ms P Difeto	General Manager: Office of the Group Chief Executive
Mr S Gama	Chief Executive Officer: Transnet Freight Rail
Ms M Moses	Group Executive: Transnet Capital Projects
Mr K Phihlela	Group Executive: Commercial
Mr K Socikwa	Chief Executive Officer: Transnet Port Terminals (*Video-conference*)
Mr F Potgieter	Chief Operational Manager: Transnet Rail Engineering (*on behalf of Mr Vallihu*)
Mr CA Moller	Chief Executive Officer: Transnet Pipelines
Mr M Gregg-Macdonald	Group Executive: Planning and Monitoring

1.3 In Attendance

Mr M Abdool	Chief Financial Officer: Transnet National Port Authority
Ms C Janse van Rensburg	Department Head: Finance, Transnet Capital Projects (*on behalf of Mr G Bierman*)
Ms N Galeni	Chief Financial Officer: Transnet Freight Rail
Mr L Gillman	Senior Manager: Investment Portfolio Management, Group Financial Planning
Ms D Moephuli	Group Treasurer
Ms T Naidoo	Chief Financial Officer: Transnet Pipelines
Ms S Pillay	Chief Financial Officer: Transnet Port Terminals
Mr D Struwig	Chief Financial Officer: Transnet Rail Engineering
Ms A Govender	Company Secretariat

1.4 Apologies

Mr B Molefe	Group Chief Executive (*Chairman*)
Mr T Morwe	Chief Executive Officer: Transnet National Ports

Resolution No/ For attention

	Authority
Mr R Vallihu	Chief Executive Officer: Transnet Rail Engineering
Mr G Bierman	Chief Financial Officer: Transnet Capital Projects

1.5 **Adoption of Agenda**

The agenda was adopted as tabled.

2 **SAFETY BRIEFING AND EVACUATION PROCEDURE**

The safety briefing and evacuation procedures for the 46th floor were conducted by means of a safety card.

3 **DECLARATION OF INTERESTS**

The Declaration of Interests Register was circulated to all members and attendees for signature.

4 **APPROVAL OF THE MINUTES OF THE MEETING HELD ON 20 FEBRUARY 2012**

4.1 The minutes of the meeting held on 20 February 2012, were corrected and approved.

5 **MATTERS ARISING**

5.1 **Project Status Reporting to be rolled out through-out Transnet**

5.1.1 Mr Gillman referred the Committee to the report as contained in the pack. He stated that the Project Status Reporting has not been implemented by the Operating Divisions.

5.1.2 Ms Pillay stated that:
(i)Transnet Port Terminals (TPT) has conducted an analysis of the requirements and identified a 2 month gap analysis;
(ii)TPT's reporting is derived from SAP and what is required in terms of the Project Status Reporting is primarily Primavera usage; and
(iii)TPT would need to change its reporting processes and needs to understand why the current processes do not suffice.

5.1.3 The Acting Chairman requested that Mr Gillman follow up with the Operating Divisions to understand why they have not complied with this requirement; what their concerns are; what the implementation plan for each Operating Division is and if those timelines are acceptable or not. — Mr Gillman

5.2 **Obtain Competition Commission approval for the DIA site**

5.2.1 Mr Gregg-Macdonald stated that it is unlikely that Transnet will receive Competition Commission approval for the DIA site by 31 March 2012. — Mr Gregg-Macdonald

5.2.2 The Acting Chairman stated that the post balance sheet events must be

Resolution No/ For attention

considered. Mr Singh

5.3 **Comprehensive fleet plans to be included in the business case submissions All fleet plans to be reviewed on an annual basis and should there be a change it must be tabled at this Committee for approval and if there is no change the Committee should be advised**

5.3.1 The Acting Chairman clarified that when the Fleet Plans are tabled in 2013, the Operating Divisions will not be required to table the full Fleet Plan only the amendments thereto, as a result of any changes in strategy or any significant findings, which the Operating Divisions may have as a result of operations.

5.3.2 Mr A Madlala: Project Manager, Transnet Port Terminals and Mr P Govender: Project Manager, Transnet Port Terminals, took the Committee through the presentation titled "TPT's National Fleet Plan."

5.3.3 The Committee noted the presentation and agreed, in view of time constraints, that the Fleet Plan be presented at the Investment Forum. The Investment Forum will then provide feedback to this Committee and the Fleet Plan will subsequently be tabled at this Committee, for approval. Mr Socikwa Mr Gillman

5.3.4 Ms Moses stated that it would be useful to see the assumptions on the maintenance strategy, as TPT's maintenance of the equipment, will have an influence on the length of the replacement cycles.

5.3.5 Mr Socikwa undertook to insert a slide in the presentation, on the assumptions on the maintenance strategy. Mr Socikwa

5.4 **Provide update on purchase of Richards Bay Land**

5.4.1 The matter was dealt with under item 8.8 of the agenda.

5.5 **(i) TPT to prepare a commercial strategy indicating how the capital invested will be recovered. The strategy should take into account the Port of Richards Bay in its entirety i.e. the sustaining capital; paving and the 7 year view**
(ii) The commercial strategy to address the negative NPV on business case 8.1 and 8.2.
(iii) TPT/Transnet Freight Rail (TFR) to prepare an integrated plan indicating how it will ensure that TFR is linked to the capital plan

5.5.1 Mr D Maclean: General Manager Commercial, Transnet Port Terminals, took the Committee through the presentation titled "Richards Bay Terminal Commercial Plan Incorporating TFR Initiatives."

5.5.2 Ms Galeni enquired whether the issue of aging equipment has been aligned in terms of TPT's capital requirements in the 7 year plan. Mr Maclean confirmed that all the equipment will be upgraded.

5.5.3 Mr Gillman suggested that TPT produce a financial analysis (NPV) based on

Resolution No/ For attention

various scenarios, one scenario being the achievement of volumes as per the Corporate Plan, other scenario's would include adjusting for prices and volumes.

5.5.4 Mr Maclean stated that the supply chain solution is in place and recovering capital investment is a product of volumes and price, if TPT can increase the volumes it can get the price to an acceptable level, which the market can tolerate. Further, he stated that all the contracts will be on a take-or-pay-basis and the storage model has been reviewed based on the 10% rule.

5.5.5 Mr Socikwa stated that the presentation is in support of the volume targets that TPT has committed to as per the Corporate Plan and the volume projections in the 7 year plan, TFR and TPT will ensure alignment and capacity availability to meet those volumes.

5.5.6 Mr Gama stated that:
(i) A TPT/TFR team has commenced a review of the Port of Richards Bay;
(ii) TFR is currently deriving 49% efficiencies from the tipplers; and
(iii) Tipplers are an issue in both the Ports of Richard Bay and Port Elizabeth. He enquired whether the tipplers are in the 7 year Replacement Programme as this will ensure greater efficiencies.

5.5.7 Mr Socikwa stated that:
(i) TPT is engaging with TFR with regard to the tipplers in the Port of Richards Bay;
(ii) The age profile of the tipplers have been taken into consideration in the 7 year plan; in the Replacement and Maintenance Plan and the operating methodology; and
(iii) The team is reviewing how TPT can operate the equipment in a manner that will extend their useful life and optimise throughput both from a rail and ports perspective.

5.5.8 Ms Moses stated that:
(i) A project team has been established to review the needs for the Port going forward, however in her view the forum is not well attended; it appears that the correct level of people have not been appointed to the forum and it is uncertain whether the forum has been mandated by the Chief Executives of the Operating Divisions;
(ii) The disconnect between TNPA and TPT is evident at the forum; and
(iii) E&Y have been attending the forum to assist from a governance perspective and ensure that the correct people attend the forum.

5.5.9 Mr Gregg-Macdonald undertook to review the matter and revert. Mr Gregg-Macdonald

5.5.10 Ms Pillay stated that
(i) Although the NPV is negative for the 7 year view it is better than doing nothing, which will result in the current volumes being lost; and
(ii) The Eastern Catchment Integrated Corridor Study (ECICS) long term view is positive from a Transnet combined perspective, however if the FEL 1 and 2 ECICS projects are delayed, it will impact a major portion of TPT's cash flows

Resolution No/ For attention

for the current year.

5.5.11 Mr Gregg-Macdonald stated that the tipplers for manganese are in the Manganese Expansion Project, which is in the 7 year plan and in the ECICS, however the equipment will only be procured towards the end of the 7 years.

5.5.12 Mr Gama stated that in the interim a manpower plan is required to hire the correct plant engineers for the artisan work.

5.5.13 Mr Socikwa stated that the plans with regard to maintenance and operating methodology etc. are in operation between the TFR and TPT teams, however TFR and TPT need to reach alignment on what the synchronised maintenance plan and operating methodology will be, on an ongoing basis to ensure optimum performance of the supply chain through the tipplers for Richards Bay.

5.5.14 The Committee noted the presentation and requested that it be presented to the Investment Forum for evaluation from a singular and cumulative Transnet perspective, taking into account the ECICS. The Investment Forum will provide feedback to this Committee. — Mr Socikwa / Mr Gillman

5.6 **TFR: Capitalised Locomotive, Wagon and Infrastructure maintenance intervention costs: Table a procurement strategy at the next meeting**

5.6.1 The matter has been finalised.

5.7 **TFR: Capital projects to upgrade 180 class 6E/1 locomotives to class 18E locomotives (Total ETC R1,620.57 million): Table a procurement strategy at the next meeting**

5.7.1 The matter has been finalised.

5.8 **TFR: Capital projects to upgrade 180 class 6E/1 locomotives to class 18E locomotives (Total ETC R1,620.57 million): Amend the Corporate Plan to reflect the correct numbers**

5.8.1 The matter has been finalised.

5.9 **TFR: Fitment of ultrasonic broken rail detection (UBRD) systems on the Ore Line (ETC R78 million – unplanned): TFR to include the correct amount in the Corporate Plan for 2012/13**

5.9.1 The matter has been finalised.

5.10 **Approval to change scope items on the existing 5.5mtpa Manganese Execution Project: The scope to be revised to 26 ton axel load to ensure consistency throughout the network**

5.10.1 The matter has been finalised.

		Resolution No/ For attention
6.1	**Capex Overview**	
6.1.1	Mr Gillman took the Committee through the Capex Overview, as contained in the pack. He highlighted the Latest Estimates and Savings, and the Market Demand Strategy Approval Planning Tool (ETC over R100 million).	
6.1.2	The Acting Chairman stated that:	
	(i) The only change in numbers compared to the previous month, is TFR which has revised its budget downwards by approximately R100 million due to the VAE consignment;	
	(ii) The root causes of the underspend needs to ascertained and managed on a monthly basis. If the root causes cannot be addressed during the year the Committee should be advised to enable alternate planning to be considered; and	CEs/Ms Moses
	(iii) Mr Gillman has sent a spread sheet to the Operating Divisions requesting them to identify savings and other issues beyond their control e.g. contingencies. At the April 2012 Committee meeting feedback in this regard will be provided.	Mr Gillman
6.1.3	Mr Gillman stated that Group Financial Planning is in the process of developing a tracking tool for feasibility studies.	
6.1.4	The Acting Chairman requested:	
	(i) A summary page to be inserted on the Market Demand Strategy Approval Planning Tool (ETC over R100 million);	Mr Gillman
	(ii) A plan outlining how the late submission issues will be resolved; and	
	(iii) A Capital Investment Committee Work plan for the feasibility studies and the investment plans.	Mr Gillman/ Company Secretary
6.2	**Capital Projects**	
6.2.1	Ms Moses took the Committee through the submission, as contained in the pack.	
6.2.2	She highlighted the following: *Safety*: A Disabling Injury Frequency Rate (DIFR) of zero was achieved for the month.	
6.2.3	*Environmental*: Transnet Capital Projects (TCP) has received the Water Use Licence for the construction of an additional rail line (12km) between the Nsezi Railyard and the Skoonkraal Railyard in Richards Bay.	
6.2.4	*NMPP:* (i) The Annual Cost Flow Forecast is -20.8%; (ii) TCP has given notice to AWP. AWP has 3 items remaining in its scope of work for completion: 1. Completion of the intermediate phase i.e. the pipelines; pump stations and metering stations;	

2.Completion of the engineering works on Terminal 2; and
3.Final account and close out;

(iii) TCP anticipates that the majority of AWP's work will be completed by May 2012, with the smaller items of work being completed in June/July 2012; and
(iv) TCP will approach the market shortly for a new engineering supplier to complete the remaining engineering works on TM1.

6.2.5 *Approval of submissions to Group*:
TCP has made progress and there are regular meetings between Group Legal; Group Procurement and Group Finance, however some items remain outstanding.

7 **SUBMISSIONS FOR NOTING**

7.1 **Investment Forum Report**

7.1.1 The Investment Forum Report was taken as read and noted.

8 **MATTERS FOR DISCUSSION/APPROVAL**

8.7 **Transnet National Port Authority (TNPA): Dredging Services, Replacement of Grab Hopper Dredger 2012/13 (ETC R215 million)**

8.7.1 Mr Abdool took the Committee through the submission, as contained in the pack.

8.7.2 The purpose of this submission is to obtain approval for the replacement of the Grab Hopper Dredger, as contained in business case version 4 dated 14 November 2011 in its entirety and without exception, for the Estimated Total Cost of R215 million, to commence on 1 April 2012 and be completed by 31 December 2013.

8.7.3 The Committee **RESOLVED** that it approves the replacement of the Grab Hopper Dredger, as contained in business case version 4 dated 14 November 2011 in its entirety and without exception, for the Estimated Total Cost of R215 million, to commence on 1 April 2012 and be completed by 31 December 2013. 12/3/1

8.8 **Port of Richards Bay**
(A) 2011/12 Acquisition of City of uMhlatuze land (ETC R0.028 million)
(B) Acquisition of private land (Bayside and Agricultural land) ETC R98.476 million) (Excl borrowing cost of R11.226 million)

8.8.1 Mr Abdool took the Committee through the submission, as contained in the pack.

8.8.2 The purpose of this submission is to obtain approval of funds for the acquisition of private land (474 hectares agricultural land and 44.5 hectares Billiton land) for the future port development during the 2012/2013 financial year at an Estimated Total Cost of R98.476 million (excluding borrowing costs of R11.226 million).
The 938 hectare at R29.65 per hectare, amounting to R27 811.70 for the City

Resolution No/ For attention

owned land has been approved by TNPA's Chief Executive for acquisition by Transnet Property.

8.8.3 Ms Moephuli stated that:
(i) The structuring of the purchase of the land should be done more efficiently to prevent the immediate payment of funds, as the funds are not in the seven year plan;
(ii) There are no plans for the development of the land in the next 3 years; and
(iii) TNPA should consider a structure which would enable the land owners to utilise the land, whilst the plans for the land are being finalised.

8.8.4 Mr Abdool responded that the acquisition of the land is included in the 2016/17, seven year plan. He raised a concern regarding the cost of acquiring the property at present, compared to what the property will cost in 3 years time and confirmed that TNPA does not require the land for the next 3 years. Further, he stated that the land is not in the Port however, it will form part of the Port Development Framework.

8.8.5 The Acting Chairman stated that:
(i) TNPA should attempt to negotiate a first right of refusal of an option to purchase the land;
(ii) Concurrently, TNPA should fix an escalation formula and advise the Committee what the purchase price will be in 4 years time;
(iii) TNPA should review the base price, addressing the concern that R88 000 per hectare for farmland appears to be expensive; and
(iv) If TNPA decides to proceed with the purchase of the land and accelerate the cash flows, it must advise the Committee of the projects which will be deferred, in order to ensure that its 7 year plan cash flows are not exceeded overall. Mr Abdool

8.8.6 Mr Gillman stated that TNPA should investigate how the Ports Regulator would treat the acquisition of the land i.e. will a return be earned from the date of purchase. Mr Abdool

8.8.7 The Committee **RESOLVED** that it does not approve the funds for the acquisition of private land (474 hectare agricultural land and 44.5 hectare Billiton land) for the future port development in the Port of Richards Bay during the 2012/2013 financial year at an Estimated Total Cost of R98.476 million (excluding borrowing costs of R11.226 million). 12/3/2

8.2 **Asset Tracking and OBC for additional locomotives (ETC R472 million)**

8.2.1 Ms Galeni took the Committee through the submission, as contained in the pack.

8.2.2 The purpose of this submission is to request approval for fitment of On-Board Computers (OBC's); Locomotive Tracking (GPS) and Communication (Triton) Units; Train Definition Units (TDU's) and Radio Frequency Identification (RFID) tags onto additional locomotives at an Estimated Total Cost of R472 million.

Resolution No/ For attention

This item has been included in the 7 year Capex projections.

8.2.3 The Committee **RESOLVED** that it recommends that the Group Executive Committee approves the fitment of On-Board Computers (OBC's); Locomotive Tracking (GPS) and Communication (Triton) Units; Train Definition Units (TDU's) and Radio Frequency Identification (RFID) tags onto additional locomotives at an Estimated Total Cost of R472 million. 12/3/3

8.3 **OBC on Diesel locomotives on RTO & remaining lines and on shunting locomotives in 25 major yards (ETC R179.877 million)**

8.3.1 Ms Galeni took the Committee through the submission, as contained in the pack.

8.3.2 The purpose of this submission is to request approval for the procurement, fitment, testing and commissioning of On-Board Computers (OBC's) for 370 Diesel Locomotives in the remaining 12 Dark Territory Lines (RTO, etc) and on 300 Shunting Locomotives in 25 Major Shunting Yards at an Estimated Total Cost of R179.877 million.

Provision has been made for this expenditure in the 7 year Capex projections.

8.3.3 The Committee **RESOLVED** that it approves the procurement, fitment, testing and commissioning of On-Board Computers (OBC's) for 370 Diesel Locomotives in the remaining 12 Dark Territory Lines (RTO, etc) and on 300 Shunting Locomotives in 25 Major Shunting Yards at an Estimated Total Cost of R179.877 million. 12/3/4

8.4 **Upgrade of 20 Class 34GM Diesel Electric Locomotives (ETC R125 million)**

8.4.1 Ms Galeni took the Committee through the submission, as contained in the pack.

8.4.2 The purpose of this submission is to obtain approval for the upgrading of 20 Class 34GM locomotives at an ETC of R125 million, as part of the last phase of the current class 34GM upgrade programme.

8.4.3 Mr Gillman requested clarification of the difference between the utilisation of the old locomotives and the upgraded locomotives i.e. 6.25 day turnaround time versus 4 day turnaround time and the impact on the financial analysis. Ms Galeni

8.4.4 The Committee **RESOLVED** that it approves the request for the upgrading of 20 Class 34GM locomotives at an Estimated Total Cost of R125 million, as part of the last phase of the current class 34GM upgrade programme. 12/3/5

8.5 **Building the additional 52 Jumbo wagons for export Coal ramp-up plan to 81mt and beyond for 2011/12 (ETC increase on warrant ROU3 from R634.488 million to R689.478 million)**

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Resolution No/ For attention

8.5.1 Ms Galeni took the Committee through the submission, as contained in the pack.

8.5.2 The purpose of this submission is to request approval for:
(i) An increase in ETC for Warrant ROU3 from R410 million to R676.49 million; and
(ii) The build of an additional 52 new Jumbo wagons for the coal export business at a cost of R54.990 million in 2011/12.

8.5.3 Ms Pillay enquired whether this business case was a condonement as TRE has already built the wagons.

8.5.4 The Committee **RESOLVED** that it approves:
(i) An increase in Estimated Total Cost for Warrant ROU3 from R410 million to R676.49 million; and
(ii) The build of an additional 52 new Jumbo wagons for the coal export business at a cost of R54.990 million in 2011/12. 12/3/6

8.6 **Capitalisation of Wagons maintenance for 2011/12 (Capitalise projected 1152 wagons at ETC R84 million and request approval for additional R23 million)**

8.6.1 Ms Galeni took the Committee through the submission, as contained in the pack.

8.6.2 The purpose of this submission is to request approval:
(i) To capitalise projected 1152 wagons at an estimated cost of R84 million with useful life exceeding 24 months; and
(ii) For additional R23 million to cover the additional 240 GFB unplanned wagons lifting's (Wagons move from B fleet to A fleet) to support 219 target.

8.6.3 The Committee **RESOLVED** that it approves the request:
(i) To capitalise projected 1152 wagons at an estimated cost of R84 million with useful life exceeding 24 months; and
(ii) For additional R23 million to cover the additional 240 GFB unplanned wagons lifting's (Wagons move from B fleet to A fleet) to support 219 target. 12/3/7

8.1 **Procurement of 1064 New Locomotives (ETC R38 146 million)**

8.1.1 The purpose of this submission is to obtain approval:
(i) To procure 1064 locomotives for General Freight as set out in Business Case version 0, dated 7 March 2012 in its entirety and without exemption;
(ii) For the estimated cost of R38 146.3 million; and
(iii) Which is to commence on 1 July 2012 and be completed by 31 March 2019.

8.1.2 The Committee deliberated on whether the business case should be approved at this meeting, on the basis of the presentation, notwithstanding the fact that the submission was not included in the pack.

		Resolution No/ For attention
8.1.3	The Acting Chairman stated that the submission should be submitted to the Committee members for their review and comments should be forwarded to Mr Gillman. He stated that Mr Gama and himself will decide on an external party to review the business case and provide a risk assessment.	Mr Gillman Messrs Singh/ Gama
8.1.4	The Committee **RESOLVED** that it does not recommend this business case for approval to the Group Executive Committee. A Special Capital Investment Committee meeting should be held to deliberate on the business case.	12/3/8
8.9	**TRE change of projects within approved budget**	
8.9.1	Mr Potgieter took the Committee through the submission, as contained in the pack.	
8.9.2	The purpose of this submission is to obtain approval for a change of projects within the approved budget.	
8.9.3	Mr Gillman stated that from a process perspective the budget should have been calculated correctly at the outset, as there is now a budget which aligns to the corporate plan and a TRE reprioritised list. In the new financial year this should not recur, as the process should be conducted in November and not in March.	
8.9.4	Mr Potgieter stated that this is difficult in a maintenance environment, from a process perspective it would be ideal to conduct the process in November, however in practice this is not feasible.	
8.9.5	Mr Gillman stated that TRE should then conduct variance reporting instead of completing a new budget.	
8.9.6	Mr Struwig requested that Group Financial Planning indicate their requirements going forward and if TRE is required to table its changes at this Committee for noting, it will do so.	
8.9.7	The Committee **RESOLVED** that it approves the request to change the projects within the approved budget with an Estimated Total Cost of R890 million.	12/3/9
9	**GENERAL**	
9.1	**Capital Investment Committee Mandate**	
9.1.1	The Committee noted the Capital Investment Committee Mandate.	
10	**CLOSE**	
10.1	There being no further business to conduct, the meeting was closed.	

ACTING CHAIRMAN
DATE: ____________

COMPANY SECRETARY
DATE: ____________

SG3

Please note that the exchange rates are purely indication rates which are recorded at 9 am from Reuters, these are not official Nedbank rates.
Nedbank takes no responsibility for any action based thereon.

Annual Exchange Rates

	USD-ZAR	EUR-ZAR	GBP-ZAR	ZAR-CHF	ZAR-JPY	ZAR-AUD	ZAR-BWP
1995	3,632		5,740	0,325	25,854	0,371	
1996	4,294		6,718	0,289	25,472	0,301	0,765
1997	4,609		7,562	0,315	26,251	0,292	0,782
1998	5,549		9,196	0,264	23,812	0,289	0,758
1999	6,122	6,532	9,908	0,246	18,629	0,254	0,751
2000	6,955	6,401	10,505	0,244	15,590	0,249	0,730
2001	8,617	7,721	12,414	0,199	14,296	0,228	0,681
2002	10,539	9,930	15,803	0,149	11,980	0,176	0,605
2003	7,584	8,556	12,379	0,179	15,441	0,205	0,659
2004	6,4616	8,0284	11,8313	0,1939	16,89	0,2125	0,7325
2005	6,3806	7,9327	11,6007	0,1963	17,3675	0,2071	0,8097
2006	6,7796	8,5311	12,5213	0,1870	17,3160	0,1981	0,8689
2007	7,0625	9,6711	14,1322	0,1705	16,7349	0,1698	0,8772
2008	8,2640	12,0711	15,1430	0,1328	12,7900	0,1451	0,8359
2009	8,4440	11,7119	13,1344	0,1301	11,2445	0,1522	0,8550
2010	7,3324	9,7240	11,3295	0,1428	12,0192	0,1492	0,9321
2011	7,2702	10,1070	11,6462	0,1229	11,0860	0,1344	0,9466
2012	8,2206	10,5655	13,0311	0,1146	9,7548	0,1181	0,9314
2013	9,6588	12,8391	15,1286	0,0966	10,1456	0,1076	0,8744
2014	10,8605	14,4262	17,8920	0,0845	9,7672	0,1024	0,8296
2015	12,7721	14,1721	19,5283	0,0758	9,5403	0,1047	0,7975
2016	14,7129	16,2907	20,0027	0,0673	7,4107	0,0917	0,7441
2017	13,3209	15,0501	17,1656	0,0741	8,4359	0,0982	0,7795
2018	13,2471	15,6160	17,6476	0,0743	8,3930	0,1016	0,7759
2019	14,4566	16,1855	18,4504	0,0689	7,5568	0,0997	0,7482
2020	16,4651	18,7827	21,1038	0,0574	6,5287	0,0887	0,7005

SG4

fcallard@telkomsa.net

From:	Pragasen Pillay Transnet Freight Rail JHB
Sent:	12 April 2013 14:00
To:	Anoj Singh Corporate JHB; 'naseem_saloojee@mckinsey.com'
Cc:	Siyabonga Gama Transnet Freight Rail JHB; 'nischal_baijnath@mckinsey.com'; 'alinafe_thupa@mckinsey.com'; Johan Bouwer Transnet Freight Rail JHB; Francis Callard Transnet Freight Rail JHB; Natasia McMahon Transnet Freight Rail JHB
Subject:	RE: Price/forex estimates

Hi Annoj we have already submitted all the information below Alinafe on Wednesday.

Naseem please advise if there is anything that is missing.

TRANSNET
freight rail

Pragasen Pillay
General Manager ,Logistic Integration
Transnet Freight Rail

011 544 9352   083 400 3917

086 236 1543   Pragasen.Pillay@transnet.net

www.transnet.net

From: Anoj Singh Corporate JHB
Sent: 12 April 2013 01:47 PM
To: Pragasen Pillay Transnet Freight Rail JHB; 'naseem_saloojee@mckinsey.com'
Cc: Siyabonga Gama Transnet Freight Rail JHB; 'nischal_baijnath@mckinsey.com'; 'alinafe_thupa@mckinsey.com'; Johan Bouwer Transnet Freight Rail JHB; Francis Callard Transnet Freight Rail JHB; Natasia McMahon Transnet Freight Rail JHB
Subject: Re: Price/forex estimates

Hi JD

.s per my telephone conversation with Siya today, we have agreed to revise the business plan to reflect a 1064 locomotive requirement by 2019 instead of the current 2020 timeline.

In order to turn the business case around for the Steerco and Board I will need you to help the working team by providing by close of business Sunday a number of analysis revisions that I understand sit with you.

the team will require the following:

- TFR fleet plan to reflect a need for 1064 locomotives by 2019 (this must exclude locomotives already on order and operational efficiencies; will also require the justification of an accelerated run out plan and cost benefit analysis)
- Supporting documents for the interdependancies
- Wagon build
- Deployment plan

- HR plan
- Fleet run out plan

Please liaise directly with Thembi and the McKinsey team to ensure this information is delivered.

We will schedule a meeting on Monday to discuss the same.

Regards,
Anoj

From: Pragasen Pillay Transnet Freight Rail JHB
Sent: Thursday, April 11, 2013 04:03 PM
To: naseem_saloojee@mckinsey.com <naseem_saloojee@mckinsey.com>
Cc: Siyabonga Gama Transnet Freight Rail JHB; Anoj Singh Corporate JHB; nischal_baijnath@mckinsey.com <nischal_baijnath@mckinsey.com>; alinafe_thupa@mckinsey.com <alinafe_thupa@mckinsey.com>; alinafe_thupa@mckinsey.com <alinafe_thupa@mckinsey.com>; Johan Bouwer Transnet Freight Rail JHB; Francis Callard Transnet Freight Rail JHB; Natasia McMahon Transnet Freight Rail JHB
Subject: RE: Price/forex estimates

Naseem please note that we have had a discussion with Mr. Gama the CE of TFR the following was the outcome:

1. TFR cannot accept that the budgeted amount for the 1064 be escalated due to the delivery time shifting 2 years beyond the MDS timeline. Noting the effect on time value of money by the extended proposed delivery.
2. The 1064 is purchased to support and deliver on the agreed approved MDS volumes. The question is what is the value of receiving 152 locomotives beyond 2018/2019 to the MDS?
3. This assessment by Mckenzie was to assist in speeding up the process of approval so that the delivery supports the volume ramp up. In this case it seems not to do this.

In summary TFR cannot accept the current proposed delivery and requires that this be brought back to the required timelines.

TRANSNET freight rail
Pragasen Pillay
General Manager ,Logistic Integration
Transnet Freight Rail

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From: Francis Callard Transnet Freight Rail JHB
Sent: 10 April 2013 01:14 PM
To: naseem_saloojee@mckinsey.com; Pragasen Pillay Transnet Freight Rail JHB; Johan Bouwer Transnet Freight Rail JHB; Natasia McMahon Transnet Freight Rail JHB
Cc: nischal_baijnath@mckinsey.com; alinafe_thupa@mckinsey.com; alinafe_thupa@mckinsey.com
Subject: RE: Price/forex estimates

Hi Naseem

I get a slightly lower price for diesels based on your figures . Please see attached.
Have not done electrics yet.
Is there a misaligned assumption
Regards
Francis

From: naseem_saloojee@mckinsey.com [mailto:naseem_saloojee@mckinsey.com]
Sent: 10 April 2013 12:23 PM
To: Pragasen Pillay Transnet Freight Rail JHB; Francis Callard Transnet Freight Rail JHB
Cc: nischal_bajjnath@mckinsey.com; alinafe_thupa@mckinsey.com
Subject: Fw: Price/forex estimates

JD, Francis,

See the current price estimates and projected transaction cost below. We currently project the overall cost of the transaction to be ZAR 39bn.

Our USD costs of $2.6 million per diesel and $3.5 million per electric were derived working with David Potter. We have escalated these prices based on projected US inflation and converted back to ZAR based on the forward rate from the TransnetTreasury. Let us know if you have any feedback here.

Naseem Saloojee
McKinsey & Company
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----- Forwarded by Naseem Saloojee/TOR/NorthAmerica/MCKINSEY on 10/04/2013 12:19 PM -----

From: Nischal Bajjnath/JOH/Africa/MCKINSEY
To: Naseem Saloojee/TOR/NorthAmerica/MCKINSEY@MCKINSEY
Cc: Alinafe Thupa/JOH/Africa/MCKINSEY@MCKINSEY
Date: 10/04/2013 08:26 AM
Subject: Re: Price/forex estimates

Hi Naseem,

Here is the price/forex estimates used. 13/14 prices sourced from Expert interviews

Fin Year	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21
Diesels									
ZAR locomotive price		25.2	27.0	29.1	31.2	33.4	35.8	38.4	41.1
USD locomotive price		2.6	2.7	2.7	2.8	2.8	2.9	3.0	3.0
Electrics									
ZAR locomotive price		33.9	36.4	39.1	42.0	45.0	48.3	51.7	55.3
USD locomotive price		3.5	3.6	3.7	3.7	3.8	3.9	4.0	4.1
FX Futures (ZAR/USD)		9.7	10.2	10.7	11.2	11.7	12.3	12.9	13.5
US inflation			2.2%	2.3%	2.3%	2.3%	2.3%	2.3%	2.3%

Our base procurement schedule is as follows (Number of locos operational):

	13/2014	14/2015	15/2016	16
Into Service Procurement schedule	0	73	181	
Diesels	0	73	125	
Dual voltage	0	0	56	

Cash flow schedule is as follows:

Loco capital costs

	13/2014	14/2015	15/2016	16
Diesel Cashflows (ZAR millions)	250	2 582	3 432	
Electric Cashflows (ZAR millions)	300	0	2 742	

Loco capital cash flow schedule assumes a contract signing fee of ZAR250million and ZAR300million for Diesels and Electrics respectively, offset against the first payment batch. The payment terms are assumed to be split 90:10, with 90% payment on delivery and 10% payment on operation.

Hedging costs

	13/2014	14/2015	15/2016	16
Diesel hedging costs (ZAR millions)	20	207	275	
Electric hedging costs (ZAR millions)	24	0	219	

Hedging costs are assumed to be 8% of the loco cashflows above.

Thanks,

Nischal Bajjnath
McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa
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nischal_bajinath@mckinsey.com

Naseem Saloojee---2013/04/09 09:51:16 PM---Hey Nischal, In the AM, can you please put the price/forex assumptions from the model into an email?

om: Naseem Saloojee/TOR/NorthAmerica/MCKINSEY
To: nischal_bajinath@mckinsey.com,
Date: 2013/04/09 09:51 PM
Subject: Price/forex estimates

Hey Nischal,

In the AM, can you please put the price/forex assumptions from the model into an email? Basically need the price for diesel and electric, the US inflation rate estimate we're using, the fwd exchange rate (from TFR treasury), the delivery schedule (base case), and our ultimate final price number.

I'd like to send these to JD and to the Transnet Treasury office to weigh in on.

Naseem Saloojee
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SG5

Locomotive tender for the supply of 1064 new locomotives for the Transnet Freight Rail General Freight Business

Report of the Finance Negotiation Team
to
Siyabonga Gama (TFR CE)
Anoj Singh (Transnet GCFO)

Key outcomes from the negotiations for the acquisition of 1064 new Locomotives concluded in March 2014

[illegible]

[illegible]

[illegible]

[illegible]

26 March 2014

Chairperson of the 1064 Steering Committee
Mr. Brian Molefe
Johannesburg
2001

Dear Sir

We are engaged in the High Value Tender review process for the **Contract Award Stage** of the **Supply of 1064 New Locomotives for the General Freight Business (GFB) (TFRAC-HO-8608/9) Tender** in line with the PPM and Tender Management Control Framework. The details of the review and findings thereto are presented in this report.

We value the opportunity to work with you and sincerely appreciate the co-operation and assistance provided to us during the course of the review. We would be pleased to further discuss any aspect of our procedures or this report with you or other members of management at your convenience. If you have any questions, please contact Andre Botha (Director) on 083 308 5763 email: abotha@sekelaxabiso.co.za

This report is intended solely for the information and use of the Transnet Board Audit Committee, 1064 Steering Committee, Transnet Management, TFR Supply Chain Services and any other Governance structures.

Yours faithfully,

Ms Mmathabo Sukati
Chief Audit Executive
Transnet Internal Audit
Cc: As per distribution list in Section 4

TRANSNET

Contents

Section 1: Executive summary

Context

Transnet's mandate is to contribute to lowering the cost of doing business in South Africa and to support South Africa's economic growth and the National Growth Plan (NGP) by delivering reliable cost effective freight services that satisfy customer demand. Transnet's new Market Demand Strategy (MDS) aims to drive their own growth strategy which aims to significantly contribute to the growth of the South African economy. Transnet intends spending over R300bn in capital investment over the next 7 years.

To support effective tendering processes to achieve this level of spend Transnet introduced a High Value Tender gateway review process for all tenders in excess of R50m. The focus of the HVT Gateway Review Process is to ensure that the processes undertaken for these tenders are fair, transparent, equitable, competitive and cost-effective. As from 1 October 2012, TIA introduced an upgraded Gateway Reporting system applicable to all HVTs which included an assurance ranking for each Gateway in which TIA is involved.

A key objective of the High Value Tender (HVT) Gateway Review Process is to provide guidance and support during the HVT Gateway Review Process and assurance against the PPM at each gateway on tenders above R50 million, and for a few specific strategic and high risk tenders below this threshold. This provides a platform for:

- Providing assurance to Transnet on the effectiveness of the processes followed for high value tenders.
- Strengthening the overall control environment in relation to procurement/tenders
- Rolling out and sharing of best practice across all ODs relating to procurement processes.
- Long term up-skilling of procurement staff.
- Providing input into updating of procurement procedures and supporting controls after witnessing application of such procedures.
- Fewer queries/challenges raised by DACs and/or bidders during high value tenders
- Reduction in timelines due to reduction in number of re-tenders.
- In addition we have been requested to review the accuracy of the computations and recommended outcome.

Background to the Tender

TFR is moving from a strategy of "responding to confirmed demand" to creating "capacity to unlock demand". The MDS is informed by future planned investments that support the move from road to rail by targeting rail-friendly traffic currently on the road. As part of Transnet's Market Demand Strategy, TFR has committed to grow its volumes by 143 million tonnes, from 207 million tonnes to 350 million tonnes; over 60 percent of this growth is expected to be delivered by the General Freight Business (GFB), which will grow from the current 82.6 million tonnes to 170 million tonnes by 2019.

This investment in growing GFB volumes makes business sense, as it lowers the cost of doing business and accelerates a modal shift from road to rail. The majority (85 percent) of the growth in GFB demand is generated by rail-friendly bulk commodities that need to be transported long distances such as manganese, magnetite, and domestic iron ore; bulk commodities with certain demand, like coal needed for Eskom's power stations; and container-based commodities for which existing demand moves on road and will shift to rail.

The average age of the TFR GFB fleet is currently 32 years and comprises 1 888 locomotives, which are broadly divided into workhorses and shunters, with the workhorses being the prime income generators. There was a major procurement of over 1 000 locally manufactured electric locomotives in the 1970s and 1980s, which became the workhorses of the current fleet. No new locomotives were purchased for GFB from 1992 through to 2008 when the GFB fleet was augmented by a series of purchases that included 50 "like new" diesels, 100 diesels, and 43 diesels. Currently, 95 new electric locomotives are on order from China. These purchases were not sufficient to meet market demand and achieve a road-to-rail migration.

An RFP was issued for the acquisition of **1064 New Locomotives for the General Freight Business (GFB) (TFRAC-HO-8608/9)** to be delivered and fully operational according to the specifications provided. Respondents are to provide their best solution to meet the aggressive delivery schedule required by Transnet as set out in the RFP.

Section 1: Executive summary (cont'd)

Audit Scope and approach

The overall scope of HVT is to provide guidance, review and observe all procurement processes followed through the following stages of the tender process:

- Demand stage: Demand review & development of specification/TDR , Business case development / SPP,
- Acquisition stage,
- Evaluation stage,
- **Negotiations and Contract Award Stage,**
- Contract management stage (limited),
  - Provide assurance at key/specific Gateways.

Contract Award Stage identifies the preferred bidder/s through agreed evaluation criteria set prior to the issue of the tender. This review of the **Contract Award Stage for the Supply of 1064 New Locomotives for the General Freight Business Tender (TFRAC-HO-8608/9),** will focus specifically on the following processes:

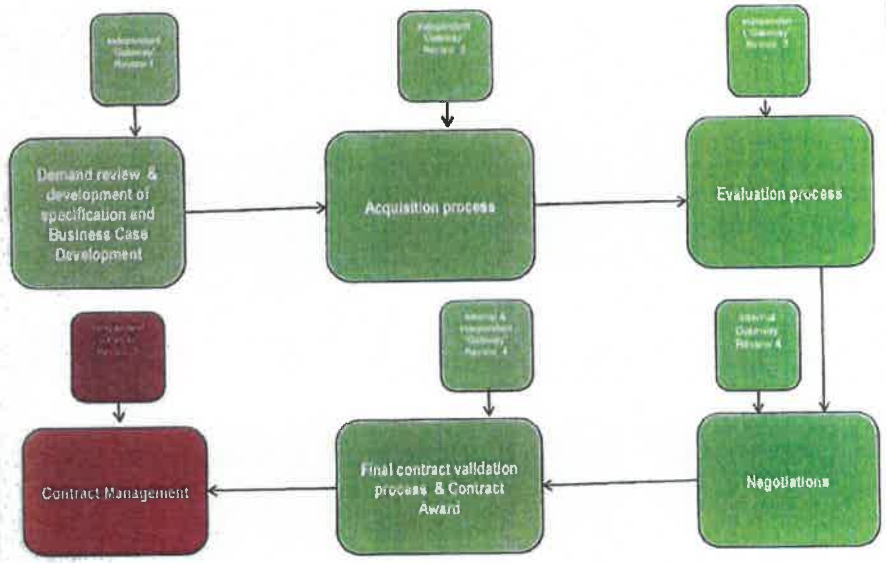
This review of the **Contract Award Stage Supply of 1064 New Locomotives for the General Freight Business (GFB) (TFRAC-HO-8608/9) Tender**, will focus specifically on the following objectives:

1. That the final approval process is designed to ensure that the scope of work awarded to the preferred bidder is within the scope and approval of the stakeholders which entails the following key activities:
   - Update business case to reflect any amendments and changes that have resulted in terms of the tendering process and negotiation, in particular with regard to changes in specifications and cost.
   - Confirm that recommended bidders offer value for money and that the solution is affordable and presented to BADC
   - Provide an audit trail to support any changes from the initial business case

2. That the contracts are concluded within the confines of the business case and RFP and approval of the stakeholders which include the following key activities:
   - Contact successful bidder
   - Advise unsuccessful bidders
   - Agree timeline for initialisation of services/products procured
   - Parties sign acknowledgment that the final contract complies with all the requirements stipulated within the RFP and with governance procedures and the contract is then concluded by the relevant authorised signatory
   - Award contract
   - Advise successful bidder that they have 120 days to submit their complete SD plan – commence SD negotiations and finalise SD annexure to main contract

Section 1: Executive summary (cont'd)

HVT process and 1064 status



Gateway 1 &2 completed on April 30th 2013 - EY TIA HVT
Gateway 3 -Evaluations completed on the 6th December 2013.
Gateway 4- completed on the 26th February 2014
Gateway 5- concluded on the 17th March 2014

Stages not yet reached

The approach embodies the following elements:

1. Tightened HVT Methodology

- Provide required support in the development of the negotiations strategy
- Support a dry run with the CFST for the negotiations strategy, scenarios and possible outcomes.
- Provide guidance and advice to CFST as required as negotiations unfold.
- Provide TIA HVT resources to support the Transnet team in terms of ensuring due process is followed if a preferred bidder site audit is conducted.
- Review pre and post award processes and documentation prior to final contract sign-off to check final contract to RFP and negotiations outcome (no "leakage").
- Ensure that all elements of the Corruption Risk Management plan have been executed.
- TIA to review negotiations results report prior to submission to BADC.

Section 1: Executive summary (cont'd)

FRM Approach to the 1064 Locos HVT

Forensic Pre-Negotiation Security Checks / Activities

- Mimecast Analysis
- Site visit briefing – Vendor engagement guidelines

Section 1: Executive summary (cont'd)

Forensic Pre-Negotiation Security Checks / Activities

1064 - Transnet Locomotive Acqusition Process Fraud/Corruption Risk Manangement Plan					
	Activities	Objectives	Observation	Recommendation	Status
1	Conduct Mimecast Analysis on all internal stakeholders involved in the 1064 Locomotive Acquisition process.	Identify possible fraud / corruption being committed by internal stakeholders in the 1064 Locomotive Acquisition process, or individuals that may appear to have unethical relationships with a bidder.	The final phase of the Mimecast activity has been completed. The analysis of the email communication did not did not reveal any non-business communication between internal stakeholders and bidders.	none	Finalised
2	Develop OEM site visit guidelines.	To ensure that dealings with OEMs are kept at arm's length during site visits by Transnet employees or agents involved in the 1064 Acquisition process.	TIA drafted OEM guidelines which were included in the Fraud Awareness Training material. These guidelines were communicated to all CFET members during the Fraud Awareness Training sessions. The guidelines were intended to assist CFET members on how to conduct themselves when interacting with 1064 bidders during the period of evaluation.	none	Finalised

Section 1: Executive summary (cont'd)

Basis of overall Gateway report classification

The Contract Award Stage as outlined in the audit scope has three key control objectives, namely:

1. That the final approval process is designed to ensure that the scope of work awarded to the preferred bidder is within the scope and approval of the stakeholders;
2. That the contracts are concluded within the confines of the business case and RFP and approval of the stakeholders; and
3. That the manner in which the contract award process is conducted is fair, equitable, transparent, cost effective and competitive.

The results of the gateway review indicate that the Contract Award stage of the tender was successfully concluded, and no residual risks existed which would have an impact on the next stages of the tender process.

TIA provides reasonable assurance that the process followed for the Contract Award Stage of the tender was compliant with the High Value Tender Methodology. This assurance rating is based on the fact that matters raised by TIA that could have had a potential impact on the efficiency of the process under review were resolved by Transnet Freight Rail.

On the basis of the above, the process has been classified as "satisfactory".

Summary of key observations

The table below summarises the results of the gateway key activities:

🟢 **HVT Compliant** 🟡 **Partially HVT Compliant** 🔴 **Not HVT Compliant**

Areas probed	HVT compliance	Finding / Comment
Approval of BOD/ BADC to conclude contract	🟢	The award of the contract was approved by the BADC on 26th February 2014
Contracts (TFR & TE) correctly authorised	🟢	The contract was signed by GCE.
Confirmation of award	🟢	Letters issued by Transnet dated 26 March 2014 titled" Effective date Notice" have been signed by all four bidders in acknowledgement of the award.
Complete SD Plan correctly formulated	🟢	SD Plan to be negotiated and finalized after 120 days of contract award.
Press Release	🟢	Press release was held on the 17th March 2014
Advise unsuccessful bidders	🟡	Letters by Transnet have been drafted as at 28 March 2014 , awaiting GCEO signature
Correct team in place with relevant skills to manage the contract award and aware of their roles and responsibilities	🟢	The GCE appointed the CFNT on the 28th January 2014

Section 2: Gateway 5 Contract Award

The mandated negotiating team presented the Best and Final Offer (BAFO) results to the Transnet BADC on the 26th February 2014 who authorised the following:

1. Approval of the BAFO results
2. Finalisation of the negotiation process

➢ The Contract Award embodied the following key elements:

i. Signing of the Locomotive Supply Agreement on the 17th March 2014
ii. The signing of Transnet Engineering (TE) Sub-contract agreement by all four bidders on the 17th March 2014
iii. Public announcement of the 1064 award by the GCE
iv. Submission of Security documents by the 25th March 2014 to Transnet SOC by the successful bidders.
v. 31st March 2014 Advance payment by Transnet to the successful bidders.

The table below summarises the outcome of the Contract Award performed by the Transnet Cross Functional Negotiation Team (CFNT).

1064 Locomotives	Contractual compliance SLA-TFR	Contractual compliance sub-contract-TE	Split of Award	Signing of contracts 17 March 2014	Audit Rating	Management comment	Audit observation
CSR (Electric)	√	√	60%	√	[redacted]	None	Satisfactory
BT (Electric)	√	√	40%	√	[redacted]	None	Satisfactory
GE (Diesel)	√	√	50%	√	[redacted]	None	Satisfactory
CNR (Diesel)	√	√	50%	√	[redacted]	None	Satisfactory

Section 3: Distribution list

Distribution	Business category	Name	Job title
	Transnet Executive Management	B Molefe	Group Chief Executive Office
		A Singh	Group Chief Financial Officer
		S Gama	TFR Chief Executive Officer
		T Jiyane	Chief Procurement Officer
	Transnet Internal Audit (TIA)	A Botha	TIA Director
		M Sukati	Chief Audit Executive

Section 4: Definitions

The tables below give the definitions for the Overall Report Classifications and Observation Classifications. The classifications are based on TIA's view of the gateway process under review and by definition involves the application of judgement which takes into account both **subjective** and **objective** issues.

Overall report classifications

Satisfactory	Requires improvement	Unsatisfactory
▪ The results of real-time assurance at each stage of the High Value Tender (HVT) Gateway review process indicate **full/ sufficient compliance** to the High Value Tender Methodology and/or PPM to mitigate and/or manage those risks to which the process under review is exposed. Indicative matters likely to give rise to an **satisfactory rating** are: ▪ No significant compliance weaknesses in the key gateway activities ▪ Satisfactory compliance to laws and regulations (e.g. PFMA) and/or guidelines set out in the PPM (as amended). ▪ Where the need for minor improvements; to the HVT gateway process were noted, TIA recommendations have been taken into account by the OD. ▪ TIA was fully engaged in the HVT Gateway process review. Only **level 3** observations identified or **level 2** observations which are not pervasive in nature.	▪ The results of real-time assurance at each stage of the High Value Tender (HVT) Gateway review process indicate **incomplete/ limited non-compliance** to the High Value Tender Methodology and/or PPM to mitigate and/or manage those risks to which the process under review is exposed. Indicative matters likely to give rise to an **requires improvement** rating are: ▪ Limited compliance weaknesses in key gateway activity ▪ Limited non-compliance to laws and regulations (e.g. PFMA) and/or guidelines set out in the PPM (as amended). ▪ TIA was **partially engaged** in the HVT Gateway process review (e.g. only a review of the SPP and/or request for proposal instead of being involved in the cross functional sourcing team key meetings). ▪ All critical recommendations made by TIA **have not been fully** taken into account and implemented by the OD. ▪ **Level 1** observations identified, but resolved through the required engagement and escalations protocols at the conclusion of the gateway stage. ▪ **Level 2 and 3** observations identified.	▪ The results of real-time assurance at each stage of the High Value Tender (HVT) Gateway review process indicate **non-compliance** to the High Value Tender Methodology and/or PPM to mitigate and/or manage all/key risks to which the process under review is exposed. Indicative matters likely to give rise to an **unsatisfactory rating** are: ▪ Several significant compliance weaknesses (breakdown) **in the** overall key gateway activities Actions likely to bring the Transnet Group name into disrepute. ▪ Significant noncompliance to laws and regulations (e.g. PFMA) and/or guidelines set out in the PPM (as amended). ▪ Level 1 observations which have not been resolved through the required engagement and escalations protocols at the conclusion of the gateway stage. ▪ TIA was not involved at all in the HVT Gateway process review. ▪ All critical TIA recommendations have not been taken into account and implemented by the OD.

Section 4: Definitions (cont'd)

Observation classifications

Level 3	Level 2	Level 1
▪ Failure to achieve gateway activities which are not material to the Group/Operating Division which for example entail "Housekeeping" matters that require management action in the normal course of business.	▪ Failure to complete less significant gateway activities with the potential to cause financial loss, or result in operational, regulatory or reputational impact, for the tender under review across the Group/Operating Division indicating a material deviation from the HVT Methodology/PPM.	▪ Failure to complete significant **gateway** activities with the potential to cause material **financial loss**, or result in **material operational, regulatory** or **reputational** impact, for the **tender** under review across the Group/Operating Division indicating a material deviation from the HVT Methodology/PPM.

Section 5: Appendix of HVT Checklist

HVT checklists and key supporting documentation

Minimum requirements	Collected / On HVT shared drive	Comment
Evidence that contract is loaded on SAP	O/S	The contract review and finalisation have been completed by the bidders as at 28 March 2014 but have not been uploaded onto SAP as at date of issue of this report.
Acceptance of Contract Letter	TIA has been shown the copies	Letters issued by Transnet headed" Effective Date Notice" were signed by both parties in acknowledgement of the award.
Key correspondence (e.mails...)	N/A	N/A
Contracts	O/S	Have been reviewed by the legal team and finalised. The GCEO signed the last page.

TRANSNET

Section 6: Glossary of terms

Glossary	AC	Acquisition Council
	ASDW	Acceleration Solutions Development Workshop
	BCC	Business Critical Controls
	CAPIC	Capital Investment Committee
	CFRC	Critical Financial Reporting Controls
	CPTD	Cumulative Project To Date
	CSA	Control Self-Assessment
	DoA	Delegation of Authority
	EPCM	Engineering, Procurement and Construction Management
	ETC	Estimated Total Cost
	FEL	Front End Loading
	FFC	Forecast Final Cost
	HVT	High Value Tender
	ITM	Issue Tracking Management tool
	MDS	Market Demand Strategy
	OD	Operating Division
	PEP	Project Execution Plan
	PLP	Project Lifecycle Process
	PPM	Procurement Policy and Procedure
	SHEQ	Safety, Health, Environmental and Quality
	TIA	Transnet Internal Audit
	SD	Supplier Development
	WBS	Work Breakdown Structure