

S11

AFFIDAVIT & ANNEXURE

OF

CLINTON OELLERMANN



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

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214-0651
Email:

inquiries@sastatecapture.org.za

Website: www.sastatecapture.org.za

INDEX: EXHIBIT S11

Description	PAGES
Affidavit of Clinton Oellermann	001 to 013
Annexure "CO 1"	014 to 113
Annexure "CO 2"	114 to 211
Annexure "CO 3"	212 to 278

AFFIDAVIT CLINTON OELLERMAN

AFFIDAVIT CLINTON OELLERMANN

I, the undersigned

Clinton Oellermann

do hereby make oath and state:

1.

I am an adult male residing in the Pretoria East, Gauteng.

2.

I was a Project Manager employed by the Special Investigating Unit ("SIU") over the period 2005 to 2012. I was the lead investigator in the investigations conducted by the SIU into allegations of *inter alia*, serious malpractices or maladministration, fraud and corruption in connection with the administration of the Department of Correctional Services ("the Department"). The investigation was in terms of Proclamation 66, dated 8 August 2002, Proclamation R59 dated 19 November 2004 and extended by Proclamation R44, dated 28 November 2007. The investigations culminated in a report reflecting the findings by the SIU in respect of the following contracts / tenders awarded by the Department:

- 2.1 Kitchens tender: HK2/2004: awarded to Bosasa Operations (Pty) Ltd on 20 July 2004.
- 2.2 Access control tender: HK2/2005: awarded to Sondolo IT (Pty) Ltd on 11 April 2005.
- 2.3 Fencing tender: HK24/2005: awarded to Phezulu Fencing (Pty) Ltd on 29 November 2005.
- 2.4 Television tender: HK25/2005: awarded to Sondolo IT (Pty) Ltd on 03 March 2006.



AFFIDAVIT CLINTON OELLERMAN

3.

I have been provided a copy of a report by the SIU ("SIU report") into the aforementioned contracts, which was provided to the Commission of Inquiry into State Capture ("the Commission") by the SIU. The copy is attached hereto as **Annexure "CO 1"**. I confirm that this report was submitted to the Department in approximately mid to late 2009. This was in terms of sections 4(1)(d) and 5(7) of the Special Investigating and Special Tribunals Act 74 of 1996 ("SIU Act"). Attached to the report is an affidavit dated 24 February 2010, which I subsequently deposed to and wherein I stated that *"I can confirm that I am familiar with the nature and content of the evidence contained in the report and that it is a true reflection of the evidence procured."*

4.

I have accessed the documentation provided to the Commission and note the SIU report that was attached to the affidavit of Mr Angelo Agrizzi ("Mr Agrizzi") as **Annexure J, pages AA-278 to AA-344**. I confirm that this is the same report which I compiled and which was submitted to the Department. I do however note that the following pages are missing from the version attached to the affidavit of Mr Agrizzi:

- 4.1 The cover page of the report;
- 4.2 Page "x" of the report which contains a 'Distribution List'; and
- 4.3 Pages 49 to 75 of the report.

5.

Page "x" of the SIU report reflects that the report was distributed to five recipients as follows:

- 5.1 The Minister of Correctional Services, the Honourable Nosiviwe Mapisa-Nqakula;
- 5.2 Acting National Commissioner of Correctional Services, Ms J Schreiner;
- 5.3 Head of the Special Investigating Unit (SIU), Mr W Hofmeyr;

AFFIDAVIT CLINTON OELLERMAN

- 5.4 SIU Programme Manager, Adv S Jacobs;
- 5.5 SIU Archive.

6.

Page "x" also contains a 'CONFIDENTIALITY CLAUSE' at the bottom of the page, which states: "*The contents of this report are strictly confidential and may not be disclosed, in whole or in part, to any person or authority other than the addressees listed above, without the prior written consent of the Head of the SIU. Failure to adhere to this confidentiality clause will result in prosecution.*"

6.1

I am not aware as to how the report came to be in the possession of Mr Agrizzi or other members of the public. However, I can confirm that:

- 6.1.1 The report was not disseminated by the SIU to any other entity or individual other than the five listed above;
- 6.1.2 Regulation 4 of the Special Investigating Units and Special Tribunals, issued in terms of section 11 of the SIU Act and published in Government Gazette No. 25024, dated 14 March 2003 ("the SIU Regulations"), obliges SIU members to keep information confidential; and
- 6.1.3 Regulation 4 of the SIU Regulations and Regulation 6 of the SIU Regulations makes it an offence to breach the requirement for confidentiality, as prescribed by Regulation 4.

6.2

I can state that within a day or two of delivering the report to the Department, I received a telephone call from a journalist who informed me that a copy of the SIU report was in possession of Bosasa.

AFFIDAVIT CLINTON OELLERMAN

7

The SIU report set out the identified irregularities in respect of the aforementioned contracts as well as payments and other gratification for the benefit of Mr Linda Mti ("Mr Mti") and Mr Patrick Gillingham ("Mr Gillingham"). As a result, in late November 2009, the SIU submitted the report to the National Prosecuting Authority ("NPA") in accordance with section 4(1)(d) and 4(2) of the SIU Act, which states that:

"Functions of Special Investigating Unit:

(1) The functions of a Special Investigating Unit are ...

(d) to refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;...

(2) A Special Investigating Unit must, as soon as practicable & after it has obtained evidence referred to in subsection (1)(d), inform the relevant prosecuting authority thereof, whereupon such evidence must be dealt with in the manner which best serves the interests of the public."

8

Whilst conducting the investigation at the SIU, an application was made by certain implicated parties to restrain the SIU from performing certain functions. In response I submitted an affidavit, a copy of which is attached hereto as **Annexure "CO 2"**. The attached copy has writing on by unknown person(s); however it is the only copy available to me at the moment. My affidavit, which was signed on 10 March 2009, stipulates the details of the case as follows: CASE NO: 11068/09: In the matter between:

BOSASA OPERATIONS (PTY) LTD	First Applicant
AGRIZZI, ANGELO	Second Applicant
VAN TONDER, ANDRIES	Third Applicant
VORSTER, FRANS HENDRIK STEYN	Fourth Applicant
WATSON, GAVIN JOSEPH	Fifth Applicant
And	
THE SPECIAL INVESTIGATING UNIT	

AFFIDAVIT CLINTON OELLERMAN

8.1

My affidavit sets out the gist of the application as follows: *"The applicants seek an interdict restraining the SIU from performing its functions and / or proceeding with its investigation of the first applicant pursuant to the respondents powers as provided for in the SIU Act and the various proclamations, including, but not limited to proceeding with the envisaged Interrogation of the second to fifth applicants..."*

8.2

The implications of the civil proceedings are described under paragraph 4 of the SIU report under the headings "LIMITATIONS", which states: *"Bosasa has sought by way of application proceedings in the North Gauteng Division of the High Court of South Africa, to interdict the SIU from investigating the full scope of Bosasa's activities regarding the awarding of the four tenders to it by the DCS. As a result of the application, the SIU gave an undertaking not to interrogate material witnesses pending the finalisation of action proceedings for a final order. The SIU has accordingly not interrogated various Bosasa officials, its auditors and other witnesses, who could impart material information regarding issues relating to the investigation. The investigation has accordingly not been as intensive as the SIU would have wanted, and accordingly, any lacunae that exist in the investigation, will be addressed upon the resolution of the litigation between the SIU and Bosasa."*

9

I have been provided with a draft charge sheet which I am informed reflects the basis of the current charges against certain accused related to this matter, who were charged in February 2019. The draft charge sheet, a copy of which is attached per **Annexure "CO3"**, reflects the details of the accused as follows:

LINDA MORRIS MTI	ACCUSED 1
PATRICK O'CONNELL GILLINGHAM	ACCUSED 2
ANGELO AGRIZZI	ACCUSED 3
ANDRIES JOHANNES JACOBUS VAN TONDER	ACCUSED 4

AFFIDAVIT CLINTON OELLERMAN

AFRICAN GLOBAL OPERATIONS

(formerly known as BOSASA OPERATIONS (PTY) LTD)	ACCUSED 5
SONDOLO IT (PTY) LTD	ACCUSED 6
PHEZULU FENCING (PTY) LTD	ACCUSED 7.

10

In respect of the draft charge sheet, I can comment on the charges in so far as they relate to the SIU report, as follows:

- 10.1 Count 1 – 6: Contraventions of the Public Finance Management Act, 1 of 1999. This is only in respect of accused 1, Mr Mti. The charges relate to the irregularities in contracts HK2/2004, HK2/2005, HK24/2005 and HK25/2005 which were detailed in the 2009 SIU report.
- 10.2 Count 7 and 8: Prevention and Combatting of Corrupt Activities Act, 12 of 2004. The charges relate to payments and gratification to accused 1, Mr Mti, for flight-tickets, car rental services and accommodation as well as cash payments, over the period May 2004 to July 2015. These aspects were not dealt with in the 2009 SIU report.
- 10.3 Count 9 and 10: Prevention and Combatting of Corrupt Activities Act, 12 of 2004. The charges relate to payments and gratification to accused 2, Mr Gillingham, over the period April 2004 and April 2007. The majority of these payments were identified and referred to in the 2009 SIU report.
- 10.4 Count 11: Money Laundering: Prevention of Organised Crime Act, 121 of 1998. The charges are in respect of accused 3, 4, 5, 6 and 7. They relate to contracts HK2/2004, HK2/2005, HK24/2005 and HK25/2005 and the payment of R196 959.97 for a motor vehicle for the benefit of Accused 1, between the period April 2004 and September 2004. This information was detailed in paragraph 9.1 of the 2009 SIU report.
- 10.5 Count 12: Money Laundering: Prevention of Organised Crime Act, 121 of 1998. The charges are in respect of accused 3, 4, 5, 6 and 7. They relate to contracts HK2/2004, HK2/2005, HK24/2005 and HK25/2005 and the payment

AFFIDAVIT CLINTON OELLERMAN

of R155 000.00 for a motor vehicle for the benefit of Accused 1, between the period April 2004 and October 2004. This information was detailed in paragraph 9.1 of the 2009 SIU report.

10.6 Count 13: Money Laundering: Prevention of Organised Crime Act, 121 of 1998. The charges are in respect of accused 3, 4, 5, 6 and 7. They relate to contracts HK2/2004, HK2/2005, HK24/2005 and HK25/2005 and the payment of R62 796.00 for travel expenses relating to a European trip undertaken by Accused 2 and Theresa Gillingham. This information was not detailed in the 2009 SIU report.

10.7 Count 14: Money Laundering: Prevention of Organised Crime Act, 121 of 1998. The charges are in respect of accused 3, 4, 5, 6 and 7. They relate to contracts HK2/2004, HK2/2005, HK24/2005 and HK25/2005 and the payments for the benefit of Accused 2. Certain of this information was detailed in paragraph 9.1 of the 2009 SIU report.

10.8 Count 15: Money Laundering: Prevention of Organised Crime Act, 121 of 1998. The charges are in respect of accused 3, 4, 5, 6 and 7. They relate to contracts HK2/2004, HK2/2005, HK24/2005 and HK25/2005 and the payment of R180 000.00 for a vehicle for the benefit of Accused 2. This information was detailed in the 2009 SIU report. This information was detailed in paragraph 9.1 the 2009 SIU report.

I note that in the main the charges outlined above are based on the SIU report completed in 2009. If asked why charges were only brought ten years later I would comment that there were indeed procedural issues that needed to be overcome. However, apart from these, the delay is incomprehensible.

I have been provided with access to additional documents attached to the affidavit of Mr Agrizzi submitted to the Commission. These are documents from the NPA, mostly communications between the Commercial Crimes Unit ("CCU") and the National Director of Public Prosecutions ("NDPP"). I refer to these documents as they were

AFFIDAVIT CLINTON OELLERMAN

annexed to the affidavit of Mr Agrizzi. I will indicate how they relate to the SIU investigation as follows:

11.1 Memorandum dated 04 February 2010, from Advocate Glynnis Breytenbach to the NDPP, Advocate Simelane (**Annexure Q3; pages AA-388 to AA-392**), which states:

11.1.1 *"The so-called Bosasa matter was received in this office directly from the SIU during late November 2009 ...*

11.1.2 *It is essential to meet with the Acting Commissioner, since she would be the apposite person to depose to an affidavit to form the "founding" affidavit on which to base the investigation....*

11.1.3 *the case docket cannot be registered without the affidavit of the "complainant"....*

11.1.4 *The SIU has not supplied the source documents relating to their report ...*

11.1.5 *It is essential to understand whether the documents so obtained by the SIU are admissible and can be used in the criminal investigation..*

11.1.6 *An issue that needs to be addressed on an urgent basis is the position of Mr Linda Mti, who is one of the two main suspects, and who currently holds the position of Head of Security: 2010 World Cup and the impact that this investigation, once it gains momentum (and attracts the attention of the media), might have. Some guidance in this regard would be greatly appreciated ...*

11.2 The response from Advocate Simelane to Advocate Breytenbach dated 08 February 2009 (**Annexure Q4; pages AA-393 to AA-395**) stated that:

11.2.1 *You and your team ... must withdraw from the case until I am advised that a case is registered with the police ...*

11.2.2 *I would have hoped that by now the SIU itself would provide the required affidavit since they have the locus standi to investigate...*

11.2.3 *I note the point that you make regarding Mr Mti. It is mischievous in the least. Firstly there is no police docket or investigation underway.*

AFFIDAVIT CLINTON OELLERMAN

Secondly, on by your own admission, there is still an assessment to be made on the value of the information available. How therefore you can start speculating and making suggestions regarding any person, is beyond belief...."

11.3 With regards to the above I can state that:

11.3.1 The SIU is not obligated to provide an affidavit and register a criminal case as they refer matters to the NPA in accordance with Section 4(1)(d) and 4(2) of the SIU Act, which states that:

(d) to refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;

(2) A Special Investigating Unit must, as soon as practicable & after it has obtained evidence referred to in subsection (1)(d), inform the relevant prosecuting authority...

11.4 The minutes of a SPECIAL EXTENDED MINIISTERIAL MEETING dated 09 March 2010 (**Annexure Q5; pages AA-396 to AA-399**) reflect that the attendees were "*Minister JT Radebe, Minister NN Mapisa-Nqakula, Adv M Simelane*" and the secretariat as "*Mr T Tlali & Ms J Lepinka*". The minutes reflect that Advocate Simelane gave a presentation of the report whereafter the following was recorded:

11.4.1 *Challenges of the report was outlined; ie the unconstitutionality of the report in that the evidence as contained in the said report was contaminated...*

11.4.2 *The SIU report cannot hold any water in any court and that any presiding officer will not proceed with the report at hand...*

11.4.3 *The SIU investigation was not in line with the proper administration of justice, "without fear, favour and / prejudice" incorrect sections of their mandate was used to find evidence, statements were not done accordingly to the prescripts.*

11.4.4 *Political vendetta/agenda identified.*

AFFIDAVIT CLINTON OELLERMAN

11.4.5 *Manipulation of the public identified in that the report was discussed in Parliament prior to same being handed over to the relevant Exec Authority...*

11.4.6 *Media coverage over the report prior to having heard or confirmed any criminality by the mentioned senior officials of DCS...*

11.4.7 *A predetermined element was identified as well as the race of both the investigators (SAPS) (SIU) and prosecutors (NPA)...*

11.5 In this regard I can state that:

11.5.1 I am not aware of the unconstitutionality of the report, nor any political vendetta or any of the other issues raised which would prevent a successful prosecution.

11.6 Memorandum from Advocate M de Kock to the NDPP, Advocate Simelane, dated 17 November 2010 (**Annexure Q6; pages AA-400 to AA-404**), states:

11.6.1 *It would thus appear as if the SIU received information from various (and sometimes unreliable) sources and made use of the information either without verifying the facts or failing to point out anomalies to those reading the report...*

11.6.2 *The SIU report would appear to have been drafted in a careless and almost casual fashion. The lack of accuracy and precision with the drafting of the report will give ample opportunity to those seeking to fault...*

11.7 In this regard I can state that:

11.7.1 Although I do not agree with the aforementioned statements, I will not elaborate on this other than to state that this document in the hands of a suspect or accused would be extremely harmful to the prosecution. It must also be noted that the SIU report was not a final report prepared for the purposes of a criminal prosecution. This work would have to be done under the auspices of the NPA.

AFFIDAVIT CLINTON OELLERMAN

11.8 An undated document from Advocate de Kock (**Annexure Q8; pages AA-417 to AA-443**) which states that:

11.8.1 *The Eversheds letter dated 15 November 2009 and addressed to the State Attorney Cape Town allege that a copy of the SIU report was furnished to Bosasa Operations (Pty) Ltd by Mr. Gillingham's attorneys...*

11.8.2 *Neither Mr. Gillingham nor his attorneys could legally receive disclosure of the report unless they received the "prior written consent of the Head of the SIU."*

11.8.3 *It is my respectful submission that Bosasa Operations is in possession of an unauthorised copy of the SIU report. The mere fact that they (may have) received a copy of the report from an attorney does not in any way legalize their possession of the document...*

11.8.4 *The SIU report clearly prohibits that unauthorised distribution and/ or possession thereof. The confidentiality clause inserted in the report clearly states that disclosure of the contents amounts to a criminal offence..."*

11.9 Memorandum dated 26 November 2012 from Advocate M de Kock to the Acting Head SCCU (**Annexure Q12; pages AA-477 to AA-480**), which states:

11.9.1 *The SIU pointed out that they did not conduct a comprehensive financial investigation into the benefits allegedly received by Commissioner Mti because of various limitations experienced during their investigation.*

11.9.2 *The investigation of the matter is not yet completed and a charge sheet has not been drafted. Almost 200 statements have been obtained since the start of the investigation. We are still of the view that the investigation will take another six (6) months to complete."*

11.10 Memorandum dated 30 April 2013 from Advocate M de Kock to Advocate Mwrebi, Special Director of Public Prosecutions (**Annexure Q13; pages AA-481 to AA-484**), which states:

AFFIDAVIT CLINTON OELLERMAN

- 11.10.1 *I am busy working on a draft charge sheet in respect of Patrick O'Connell Gillingham ...*
- 11.10.2 *The investigation against Gillingham has not yet been finalised and we still await the forensic audit report...*
- 11.10.3 *Thus far I am of the opinion that it will be possible to enrol the matter during the second half of 2013 as indicated before....*
- 11.10.4 *It would theoretically be possible to enrol the case against BOSASA or the individuals mentioned in paragraph 1.3.1 above within six (6) months from this date. It is very difficult to give an accurate estimate on future events but I foresee the prosecution of both BOSASA and Mti within the next eighteen (18) months..."*

12

I am able to tell the Commission as much as I can recall of the work of the SIU in investigating the Bosasa matter and compiling the SIU report. I will do so in evidence.

13

I know and understand the contents of this statement.

I have no objection to taking the prescribed Oath.

I consider the prescribed Oath to be binding on my conscience.

SIGNED AT Parkview ON THIS 31st DAY OF MARCH 2019.



CLINTON OELLERMANN

I certify that this statement was noted down by me and that the deponent has acknowledged that he knows and understands the contents of this statement. This

AFFIDAVIT CLINTON OELLERMAN

S
2019-03-31

statement was sworn to before me and the deponents' signature placed thereon in my presence at Johannesburg on 31st MARCH April 2019 at 18:55

[Signature]
.....
COMMISSIONER OF OATHS

Shumani Mafunawuthe
.....

(Full names)

Shumani Mafunawuthe
.....

(Physical address)

71 Dumotile Road
.....

CONSTABLE VISPOL
.....

(Designation)

(Office)



ANNEXURE "CO 1"

AFFIDAVIT

I, the undersigned

CLINTON OELLERMANN

do hereby make an oath and state:

1.

I am an adult male currently employed as a Manager at the Special Investigating Unit (SIU) in Pretoria. My work address is located at Rentmeester Park, 74 Watermeyer Street, Meyerspark, Pretoria.

2.

I am duly authorised by the Head of the SIU and by virtue of my position as a Manager to depose to this affidavit, the contents of which are both true and correct and are within my personal knowledge and belief, save where otherwise stated or the contrary appears from the context hereof.

3.

The Special Investigating Unit was established in terms of the Special Investigating Units and Special Tribunals Act, Act 74 of 1996 (hereinafter referred to as the SIU Act), to investigate, *inter alia*, serious malpractices or maladministration, fraud and corruption in connection with the administration of State institutions and public money.

4.

The Special Investigating Unit is further mandated in terms of Proclamation R44, dated 28 November 2007 (hereinafter referred to as the **Proclamation**), to investigate, in respect of the Department of Correctional Services (hereinafter referred to as the **Department**) "...any –

- (a) *serious maladministration in connection with the affairs of the Department;*
- (b) *improper or unlawful conduct by officers and/or employees of the Department;*
- (c) *unlawful appropriation or expenditure of public money or property;*
- (d) *unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;*
- (e) *intentional or negligent loss of public money or damage to public property;*
- (f) *offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which offences were committed in connection with the affairs of the Department; or*
- (g) *unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,"*

That has taken place between 1 January 2000 and 28 November 2007. (A copy of the said proclamation is annexed hereto, marked "Annexure A".)

5.

The relevant provision in the Schedule to the Proclamation, for the purpose of this affidavit, is:

- "1. The procurement of goods and services by or on behalf of the Department without compliance with the Department's -
- (a) *policies, procedures, prescripts, directives, guidelines or standing instructions (hereinafter collectively referred to as the "prescripts"); and*
 - (b) *procurement and provisioning systems or supply chain management systems prescribed by applicable legislation,*

2016-02-24

in a manner that was not fair, competitive, transparent, equitable and/or cost-effective and payments made in respect thereof...".

6.

During 2007, the SIU, in pursuance of proclamation R.44, undertook to conduct an audit of a number of high value contracts awarded by the Department to the Bosasa Group of companies during the period 1 April 2004 to 21 March 2007.

7.

The said audit was later extended to include the investigation of allegations that senior DCS officials colluded with the certain individuals from the Bosasa group of companies and were involved in improprieties in the awarding of the tenders in question. I was the lead investigator in this investigation.

8.

During the course of the investigation the investigation team gathered evidence pursuant to the SIU fulfilling its mandate. This evidence, is recorded in a report which was submitted to the Department of Correctional Services in terms of sections 4(1)(d) and 5(7) of the Special Investigating and Special Tribunals Act 74 of 1996 – The investigation into allegations of irregularities in the procurement of services by the Department of Correctional Services in re: Tenders HK2/2004, HK2/2005, HK24/2005, HK25/2005.

9.

I can confirm that I am familiar with the nature and content of the evidence contained in the report and that it is a true reflection of the evidence procured.

10.

The above SIU report contains findings and recommendations, which I am advised by Council are both fair and reasonable.

**Report in terms of sections 4(1)(d) and 5(7) of
the Special Investigating Units and Special
Tribunals Act 74 of 1996 – The investigation
into allegations of irregularities in the
procurement of services by the Department of
Correctional Services in re: Tenders HK2/2004,
HK2/2005, HK24/2005, HK25/2005**



SIU

POISED TO STRIKE
against corruption

EXECUTIVE SUMMARY

The Special Investigating Unit (SIU) functions within the statutory framework set out in the Special Investigating Units and Special Tribunals Act 74 of 1996 (the Act). The SIU may only investigate matters referred to it for investigation by the President in terms of section 2(1) of the Act. The SIU's intervention in this investigation is authorised by presidential proclamation R44 of 2007 gazetted on 28 November 2007 (the Proclamation).

In 2006, various allegations surfaced in the media relating to the allegedly irregular awarding of contracts by the Department of Correctional Services (DCS) to Bosasa Operations (Pty) Ltd (Bosasa) and its affiliated companies.

Later in 2006, the Public Service Commission (PSC) and the Office of the Auditor General (OAG) referred specific allegations relating to contracts awarded to Bosasa to the SIU for investigation. Some of the more serious allegations are that:

- An irregular relationship existed between Bosasa or members of the Bosasa Group of Companies and two DCS officials, namely, the former Commissioner of Correctional Services, Mr L Mti (Commissioner Mti) and the DCS Chief Financial Officer (CFO) Mr P Gillingham (Gillingham)
- Commissioner Mti and Gillingham may have unduly received benefits as a result of the award of some of the contracts awarded by DCS to Bosasa and its affiliates
- Two tenders, namely, the kitchens tender and the access control tender, were irregularly extended
- Bosasa and its affiliates were responsible for drafting the bid specifications for these tenders.

Shortly after the publication of the proclamation, the SIU commenced with the investigation of the contracts awarded to Bosasa and its affiliates, namely, the kitchens, access control, fencing and television contracts.

The purpose of this report is to refer in terms of section 4(1)(d) of the Act, the evidence gathered by the SIU relative to the abovementioned contracts which, in its view, points to the commission of an offence by Bosasa and its affiliates and the persons mentioned in this report, to the Acting National Director of Public Prosecutions (NDPP) and further, to advise the DCS in terms of section 5(7) of the Act, that the evidence gathered by the SIU justifies the institution of legal proceedings by it against Bosasa and its affiliates and the persons mentioned in this report.

Findings in respect of the kitchens tender: HK2/2004

This contract was awarded to Bosasa on 20 July 2004.

The evidence gathered by the SIU, shows that there were clear deviations from the *National Treasury Supply Chain Management: A Guide for Accounting Officers/Authorities (SCM: Guide for Accounting Officers)*¹, more particularly, in that the end user departments were not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted.

The evidence clearly shows that Gillingham, outside the course of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in developing the tender specifications.

On the evidence of a whistleblower, a former employee of Bosasa (the witness), Bosasa irregularly participated in drafting the specifications for this tender. On the evidence of the witness, the specifications were drafted in such a manner that the security aspects of the tender provided Bosasa with a clear advantage over other bidders.

During the course of a search and seizure operation conducted at Gillingham's residence, a document containing the bid evaluation criteria and guidelines for evaluating the kitchens tender was found in the form of electronic data. Mr J Malan (Malan) the SIU cyber forensic expert, determined that this document originated from the computer of Mr A Agrizzi (Agrizzi), Bosasa's Chief Executive Officer/Managing Director. According to Malan, the document was last saved by Agrizzi on 28 June 2004. The evidence shows that this was on the same day that the DCS commenced with its screening of the bids received in respect of the kitchens tender. Whilst, Malan could not determine the date of first creation of the document on Agrizzi's computer, the evidence raises two concerns: first, whether Agrizzi (and as such Bosasa) was in possession of the document at the time that Bosasa's tender was submitted for the kitchens tender, and second, whether Bosasa was a party to the drafting of the evaluation criteria and guidelines for evaluating the tender. Obviously, if this were so, it would not only have subverted the entire procurement process because it would have placed Bosasa in an unduly advantageous position with reference to its competitors, but it would also have exposed the DCS to civil suits from unsuccessful bidders.

The evidence clearly indicates that Gillingham and Commissioner Mti received financial benefits from Bosasa after the award of this tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham and Commissioner Mti. The evidence

¹ Issued to all Accounting Officers on 26 February 2004; attached as Annexure 1

further shows that Mr WD Mansell (Mansell) and Mr J Smith (Smith)², both employees of the Bosasa Group, were instrumental in effecting these benefits to Gillingham and Commissioner Mti. The timing of the benefits appear to be sufficiently linked to the awarding of the kitchens tender. In the circumstances, it was unlawful for Gillingham and Commissioner Mti to have received these benefits.

The kitchens contract was extended by Commissioner Mti on 17 May 2005. In light of the irregular benefits received by him the extension of this contract was irregular and unlawful.

Recommendations In respect of the kitchens tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by the DCS on account of the award of the kitchens tender to Bosasa
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the kitchens tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Bosasa, the latter's office bearers and to the extent that Mansell, Agrizzi and Smith may not be office bearers of Bosasa, that they also be considered for prosecution in their personal capacities.

Findings in respect of access control tender: HK2/2005

This contract was awarded to Sondolo IT (Pty) Ltd (Sondolo), an affiliate company within the Bosasa Group, on 11 April 2005.

The evidence shows that there were clear deviations from the *SCM: Guide for Accounting Officers*, more particularly, in that the end user departments were not included in the bid process. According to the evidence, there was no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted. The budget for this tender was also significantly exceeded.

The evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in developing the tender specifications.

² Mr WD Mansell is a consultant to Bosasa; Mr J Smith is the Bosasa Financial Administrator

According to the evidence of both the witness and Malan, Bosasa was irregularly involved in drafting the bid specifications for this tender.

On the evidence of the witness, Agrizzi requested him to prepare specifications in line with the technology Bosasa was employing in the kitchens contract. According to him, the specifications prepared by him were drafted in such a manner that the security aspects afforded Sondolo a clear advantage over the other bidders. The witness subsequently identified a number of similarities between the specifications prepared by him and those in the advertisement for this tender.

On the evidence of Malan, a document titled "cctv bid.doc" was retrieved from the DCS and Bosasa systems. The document contained specifications for the access control tender. Version 2 of the document was found on the Bosasa system, whilst version 4 thereof was emailed by Gillingham from an email address belonging to Bosasa, to Mr S Mlombile (Acting Chief Deputy Commissioner: Corrections) (Mlombile) of DCS.

Given the fact that the evidence disclosed that there was a close association between Gillingham and Bosasa, the probabilities point to the fact that he must have been aware of Bosasa's irregular participation in drafting the specifications. In the circumstances, Gillingham and Bosasa's involvement in the drafting of the specifications seriously undermined the fairness of the procurement process.

Despite the fact that the Department of Public Works (DPW) had previously been engaged by the DCS to assist in drafting specifications for tenders involving technical detail, the evidence showed that DPW was excluded by Gillingham and Commissioner Mti from the procurement process for this tender, even though technical detail was involved.

The evidence further showed that the bid submission period was reduced from 30 to 21 days, without any apparent or justifiable cause. Given the technical nature of the tender and Bosasa's participation in the drafting of the specifications for the bid, the shortened period for submission of bids allowed Sondolo to enjoy an unfair advantage over the other bidders.

Given the fact that Bosasa operated the kitchens contract and therefore had knowledge of the correctional centre environment, the probabilities point to the fact that Sondolo enjoyed a significant advantage over its competitors because of its relationship with Bosasa.

Despite it being a bid requirement that bidders should have five years' experience, Sondolo was only registered 7 days before the closing of bids but was still awarded the tender. This was obviously irregular.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham. The evidence also shows that Gillingham failed to disclose the benefits received by him to either the BEC or the NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to have disclosed this fact before or during the deliberations related to this tender.

The SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits Commissioner Mti may have received from Bosasa, because of various limitations experienced during the SIU's investigation. However, the limited evidence gathered by the SIU, indicated that he received benefits from Bosasa, a few months before the access tender was granted to Sondolo.

The access control contract was extended by Commissioner Mti on 4 August 2005. In light of the irregular benefits received by him the extension of this contract was irregular and unlawful.

Recommendations in respect of the access control tender: HK2/2005

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the access control tender to Sondolo
- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the access control tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Agrizzi, Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity.

Findings in respect of the fencing tender: HK24/2005

The fencing tender was awarded on 29 November 2005 to Phezulu Fencing (Pty) Ltd (Phezulu), an affiliate company within the Bosasa Group.

The evidence shows that there were clear deviations from the DCS SCM User Manual: Directives³ (DCS procurement directives) in that the end user departments were not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted, which resulted in the initial budget being significantly exceeded and in addition being further increased by variation orders valued at R 100 million⁴.

As in the case of the previous two tenders, the evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process and was irregularly instrumental in the developing of the tender specifications.

In this tender, there was a heavy weighting in the evaluation criteria in favour of the integration of the fences with the computer software system, namely, the ON-IMIS system, which Sondolo introduced through the access control tender. This weighting accordingly favoured Phezulu on account of it being an affiliate of Bosasa.

An issue of concern to the SIU was the fact that substantial payments were made to Phezulu at the outset of the contract without adequate performance. The SIU examined payments made to Phezulu in respect of this tender. In terms of the contract provisions, 90% of the contract price was payable on delivery of the raw materials to the construction sites. The structure of this contract resulted in DCS making very large payments to Phezulu at a very early stage of the contract. Since this payment was shortly before the end of the financial year, the SIU concluded that this was a case of fiscal dumping, that is to say, when departments spend large amounts of money just prior to the financial year end to use up their budget, irrespective of whether the department gets value for money for such spending.

A further issue of concern is the fact that the bid conditions stipulated that fences be erected by 17 March 2006. At the compulsory briefing session for this tender, Gillingham confirmed that the erection of the fences was to be effected by 17 March 2006. Two bidders submitted project plans that complied with this deadline. However, Phezulu submitted two project plans

³ Came into effect in May 2005

⁴ The budget for the project was R 340 million, the contract awarded to Phezulu was R 486 million; in addition R 100 million in variation orders were authorised after the conclusion of the contract.

  vi

in terms of which they undertook to deliver raw materials to the sites by 17 March 2006, but would install the fences at a much later date.

In the BEC, Gillingham scored the two service providers referred to above, 0 out of 6 for time and Phezulu a full 6 points, despite the fact that its projected plan did not comply with the timelines. The SIU finds this approach by Gillingham incomprehensible, since on the face of it, Phezulu's project plans clearly did not comply with the tender requirements.

The evidence clearly indicates that Gillingham had received financial benefits after the award of this and the previous two tenders. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith, with close connections to Bosasa, were instrumental in effecting these benefits to Gillingham.

As previously observed, the SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits Commissioner Mti may have received from Bosasa, because of various limitations experienced during our investigation. However, the limited evidence gathered by the SIU, indicates that he received benefits from Bosasa, a few months before the fencing tender was granted to Phezulu.

The evidence also shows that Gillingham failed to disclose the benefits received by him to either the BEC or NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to disclose this fact before or during the deliberations related to this tender.

Recommendations in respect of the fencing tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that may have been sustained by DCS on account of the award of the tender to Phezulu
- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the fencing tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Phezulu, Bosasa, their office bearers and to the extent that Mansell and Smith may not be office bearers of either Phezulu or Bosasa, that they also be considered for prosecution in their personal capacity.

Findings in respect of television tender: HK25/2005

This contract was awarded on 3 March 2006 to Sondolo.

The evidence shows there were clear deviations from the DCS procurement directives, in that the end user departments were not included in the bid process. Furthermore, according to the evidence, there was no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted and the budget for the contract was significantly exceeded.

As in the case of the previous three tenders, Gillingham, outside the course of his normal duties played an integral role from the outset in the procurement process and was irregularly instrumental in the developing of the tender specifications.

Sondolo's first invoice for payment was submitted on 13 March 2006, three days after the contract had been signed. The invoice was for R106 million and it was paid on 23 March 2006. This, as in the fencing tender, was once again a case of fiscal dumping.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tenders. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham. The evidence also shows that Gillingham failed to disclose the benefits received by him, to either the BEC or the NBAC. Aside from it being unlawful for Gillingham to have received these benefits, it was further irregular for him not to have disclosed this fact before or during the deliberations related to this tender.

As previously observed, the SIU did not conduct a comprehensive financial investigation as in the case of Gillingham, into benefits received by Commissioner Mti from Bosasa, because of various limitations experienced during our investigation. However, the limited evidence gathered, indicates that he received benefits from Bosasa, some months before the television tender was granted to Sondolo.

Recommendations in respect of the television tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any loss that may have been sustained by DCS on account of the award of the television tender to Sondolo

- the DCS considers instituting disciplinary proceedings against Gillingham arising from his irregular conduct relating to the procurement process involving the television tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity.

DISTRIBUTION LIST

Copies	To
Copy 1 of 5	The Minister of Correctional Services, the Honourable Nosiviwe Mapisa-Nqakula
Copy 2 of 5	Acting National Commissioner of Correctional Services, Ms J Schreiner
Copy 3 of 5	Head of the Special Investigating Unit (SIU), Mr W Hofmeyr
Copy 4 of 5	SIU Programme Manager, Adv S Jacobs
Copy 5 of 5	SIU Archive

CONFIDENTIALITY CLAUSE

The contents of this report are strictly confidential and may not be disclosed, in whole or in part, to any person or authority other than the addressees listed above, without the prior written consent of the Head of the SIU. Failure to adhere to this confidentiality clause will result in prosecution. Any person breaching the required confidentiality shall be liable to indemnify the SIU and its members against any claim by any third party, arising from such breach.

TERMS OF REFERENCE

The SIU functions within the statutory framework set out in the Act. The SIU was established by the President in terms of section 2(1)(a)(i) of the Act and by Proclamation R118 of 31 July 2001. The SIU may only investigate matters referred to it for investigation by the President in terms of section 2(1) of the Act.

In June 2006, various allegations surfaced in the media relating to the allegedly irregular awarding of contracts by the DCS. The allegations specifically involved the Bosasa Group of Companies and two DCS officials, namely the former Commissioner Mti and the DCS CFO Gillingham.

Later in 2006, the PSC and the OAG referred to the SIU various allegations relating to the allegations made in the media. The PSC and OAG expressed particular concern around the regularity of the procurement processes relating to contracts awarded to Bosasa and two affiliated companies, Sondolo and Phezulu as well as to the nature of the relationship between the said companies and Commissioner Mti and Gillingham.

Some of the allegations the SIU was requested to investigate:

- involved whether Commissioner Mti and Gillingham may have unduly benefited from some of the contracts awarded by DCS to Bosasa
- concerned the problem that in relation to two tenders (access control and fencing) the DCS procured services involving technical detail without involving the Department of Public Works
- involved whether the kitchens tender was irregularly extended to include seven extra kitchens – the contract value grew to over R800 million, which included the adding of the additional kitchens resulting in additional expenditure of R82 million
- involved whether the access control tender may have been irregularly extended to include the staffing of the control rooms – the contract value grew from R237 million to almost R437 million, as Sondolo became responsible for monitoring the CCTV control rooms
- related to whether one of the bidders may have drafted the specifications for one or more of the relevant tenders – there were particular concerns around the specifications of the access control and television tenders
- concerned whether Commissioner Mti may have been involved with a company called Lianorah Investments, which had a relationship with Bosasa
- related to the supply of allegedly inferior quality goods in the access control tender.

The SIU requested a proclamation authorising its investigation of the allegations and was accordingly mandated by the President in terms of the Proclamation to investigate any irregularities perpetrated in connection with the procurement of services by the DCS.

In terms of the Proclamation, the SIU was mandated to investigate:

- 1 The procurement of goods and services by or on behalf of the Department without compliance with the Department's –
 - (a) policies, procedures, prescripts, directives, guidelines or standing instructions (hereinafter collectively referred to as the "prescripts"); and
 - (b) procurement and provisioning systems or supply chain management systems prescribed by applicable legislation,

in a manner that was not fair, competitive, transparent, equitable and/or cost-effective and payments made in respect thereof.
- 2 The failure by officials and employees of the Department to disclose that they had a direct or indirect interest in the suppliers and service providers used by the Department, which represented a conflict of interest.
- 3 The failure by the officials and employees of the Department to disclose to the Department that they were engaged in unauthorised business activities for remuneration outside the scope of their employment under the Public Service Act, 1994 (Proclamation 103 of 1994) or the Correctional Services Act, 1998 (Act 111 of 1998).
- 4 The conduct of –
 - (a) suppliers and service providers to the Department; and
 - (b) officials and employees of the Department,

which has resulted or may result in a loss of, damage to or a lack of control over public money, public property or other resources of the Department and any conduct directed at or promoting the aforementioned.
- 5 False or inflated claims by, or on behalf of officials and employees of the Department from certain medical aid schemes.
- 6 The theft or misuse of property and resources of the Department by officials and employees of the Department.

- 7 Illegal or irregular practices in terms of which officials and employees of the Department received or solicited benefits from other officials and employees of the Department or from members of the public in connection with the execution of their duties or the failure to execute their duties.
- 8 The conduct of officials and employees of the Department, which was aimed at influencing or hampering any investigation or the destruction of evidence.
- 9 The intimidation of officials or employees of the Department or members of the public by officials or employees of the Department with the aim to conceal corrupt or other unlawful practices within the Department.
- 10 Acts of undue influence and extortion committed by officials and employees of the Department with regard to members of the public and other officials or employees of the Department.
- 11 Fraud committed by officials and employees of the Department to the detriment of the Department.

The SIU's investigation focussed on the procurement processes related only to the kitchens, access control, fencing and television tenders.

TABLE OF CONTENTS

		Page
1	INTRODUCTION	1
	1.1 Subject of report	1
	1.2 Background to report	1
	1.3 Objectives of report	1
2	METHODOLOGY	2
3	OUTLINE OF RELEVANT POLICIES AND SPECIAL LEGISLATION APPLICABLE TO INVESTIGATION	3
	3.1 The DCS procurement policy	3
	3.2 Treasury guidelines regarding budgeting for the tender process	7
	3.3 The Construction Industry Development Board legislation and regulations	11
4	LIMITATION ON THE INVESTIGATION	12
5	CYBER FORENSIC EXPERTISE ENGAGED BY THE SIU	13
6	THE BOSASA GROUP OF COMPANIES STRUCTURE	14
	6.1 Bosasa Operations (Pty) Ltd	14
	6.2 Sondolo IT (Pty) Ltd and Phezulu Fencing (Pty) Ltd	15
7	COMMISSIONER MTI'S FORMAL RELATIONSHIP WITH BOSASA	16
8	ANALYSIS OF CONTRACTS	17
	8.1 The kitchens tender: HK2/2004	17
	<i>8.1.1 Evidence gathered</i>	<i>17</i>
	<i>8.1.2 Findings</i>	<i>26</i>
	<i>8.1.3 Recommendations in respect of the kitchens tender</i>	<i>28</i>
	8.2 The access control tender: HK2/2005	29
	<i>8.2.1 Evidence gathered</i>	<i>29</i>
	<i>8.2.2 Findings</i>	<i>38</i>
	<i>8.2.3 Recommendations in respect of the access control tender</i>	<i>40</i>
	8.3 The fencing tender: HK24/2005	41
	<i>8.3.1 Evidence gathered</i>	<i>41</i>

8.3.2	<i>Findings</i>	49
8.3.3	<i>Recommendations in respect of the fencing tender</i>	51
8.4	The television (TV) tender: HK25/2005	52
8.4.1	<i>Evidence gathered</i>	52
8.4.2	<i>Findings</i>	59
8.4.3	<i>Recommendations in respect of the TV tender</i>	61
9	BENEFITS RECEIVED BY GILLINGHAM AND COMMISSIONER MTI.....	62
9.1	Benefits received by Gillingham	62
9.1.1	<i>Motor Vehicles</i>	62
9.1.2	<i>Cash and cheque deposits</i>	67
9.1.3	<i>Travel</i>	68
9.1.4	<i>Rugby Season Tickets</i>	68
9.1.5	<i>Properties</i>	69
9.1.6	<i>Private e-mail address</i>	71
9.1.7	<i>Documents seized during search, explaining some of benefits received by Gillingham</i>	71
9.2	Findings in respect of benefits received by Gillingham	72
9.3	Benefits received by Commissioner Mti	74
9.4	Findings in respect of Commissioner Mti	74
10	CONCLUSIONS	75

LIST OF ABBREVIATIONS

BEC	Bid Evaluation Committee
CCTV	Closed Circuit Television
CEO	Chief Executive Officer
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CSIR	Council for Scientific and Industrial Research
DCS / the Department	Department of Correctional Services
DPW	Department of Public Works
EFT	Electronic Funds Transfer
eNaTIS	National Traffic Information Systems
HCC	Head of Correctional Centre
IT	Information Technology
JHB	Johannesburg
NBAC	National Bid Adjudication Committee
NCC	Network Computing Consultants
OAG	Office of the Auditor General
ON-IMIS	Open Network Intelligent Management Information System
PFMA	Public Finance Management Act
PSC	Public Service Commission
RAMP	Repairs and Maintenance Project
SAPS	South African Police Service
SCMU	Supply Chain Management User
SETA	Sector Education and Training Authority
SIU / the Unit	Special Investigating Unit
VPN	Virtual Private Network

PROMINENT ROLE PLAYERS

Individual	Position
Mr Angelo Agrizzi	Chief Executive Officer/General Manager, Bosasa Operations
Mr Carlos Bonifacio	Auditor / Consultant: Consilium
Consilium (Pty) Ltd	Company linked to Bosasa
Ms Megan Gillingham	Mr Gillingham's daughter
Mr Patrick O'Connell Gillingham Jnr	Mr Gillingham's son
Mr Patrick O'Connell Gillingham	Chief Deputy Commissioner: Finance
Mr Ryan Albert Gillingham	Mr Gillingham's son
Mrs Theresa Gillingham	Mr Gillingham's spouse
Grande Four Property Trust	A trust linked to WD Mansell
Mr P Leshabane	Executive Director, Bosasa Group of Companies
Mr William Daniel Mansell	Consultant: Bosasa & Consilium
Mr Jarrod Mansell	Mr Mansell's son
Mrs Lisa Mansell	Mr Mansell's daughter-in-law
Mr Linda Mti	National Commissioner: DCS
Dr Jurgen Smith	Director: Consilium Financial Administrator: Bosasa
Andries van Tonder	CFO: Bosasa
Frans Vorster	Fleet Manager: Bosasa

LIST OF AFFIDAVITS OBTAINED

Name	Current Occupation	No. of Affidavits obtained
Mr C Aries	DCS Secretariat: Bid Adjudication Committee	Applicable to all Tenders
Mr JDE Basson	DCS Deputy Director: Contract Management	HK2/2004
Mr J Breytenbach	Chief Director: Norms and Standards, National Treasury	Applicable to all Tenders
Dr JJ Coetzee	DCS Deputy Commissioner: Operations and Management Support	HK2/2004, HK25/2005
Mr W Damons	DCS Deputy Commissioner: Facilities and Security	HK2/2005, HK24/2005,
Mr P Du Preez	DCS Deputy Director: Security Support	HK2/2005, HK24/2005
Mr F Engelbrecht	DCS Deputy Regional Commissioner: Gauteng	HK2/2004
Ms B George	Legal & Compliance Manager: Construction Industry Development Board	HK24/2005
Mr L Gqili	DCS Director: Formal Education	HK25/2005
Mr CJ Haak	Director: Correctional Services, National Treasury	Applicable to all Tenders
Mr P Leslie	DCS Deputy Director: Budget Control.	Applicable to all Tenders
Mr J Lethoba	DCS Director: Systems Development	HK25/2005
Mr J Maako	DCS Director: Contract Management	Applicable to all Tenders
Ms M Mabhena	DCS Director: Health Services	HK2/2004, HK25/2005
Mr T Mapasa	DCS Director: Procurement	Applicable to all Tenders
Mr F Mocheko	DCS Director: Building and Maintenance	HK2/2005
Mr M Ngubo	DCS Deputy Commissioner: Supply Chain Management	HK2/2005
Mr W Pretorius	DCS Deputy Director: Tender Management	HK2/2004, HK24/2005
Mr P Ramorotho	DCS Deputy Director: Nutrition and Hygiene Services	HK 2/2004
Ms J Sithuba	DCS Chief Deputy Commissioner Development and Care	HK2/2004, HK25/2005
Mr HB Steyn	DCS Director: Security Management Services	HK2/2005, HK24/2005
Mr H Truter	DCS Assistant Director: Professional Services Procurement	Applicable to all tenders
Ms S Truter	DCS Assistant Director: Procurement Policy Formulation	Applicable to all Tenders
Mr AJC Venter	DCS Area Co-ordinator: Corrections: Gauteng	HK2/2005 and HK24/2005
Mr F Venter	DCS Assistant Director: Risk Profile Management	Applicable to all Tenders
Mr JP Venter	Principal Engineer: Council for Scientific and Industrial Research	HK25/2005

Name	Current Occupation	No. of Affidavits obtained
Mr M Wolela	DCS Deputy Commissioner: Communications	HK25/2005
The witness	Former Bosasa Employee	HK2/2004 and HK2/2005

LIST OF TABLES

	Page
Table 1: Dates of deleted data on Bosasa servers	13
Table 2: Chronology of events regarding the tender process for kitchens tender	19
Table 3: BEC and NBAC members for kitchens tender	23
Table 4: Chronology of events regarding the bid process of tender HK2/2005	31
Table 5: BEC and NBAC members for the access control tender.....	36
Table 6: Chronology of the key events involved in the bid process for fencing tender	41
Table 7: BEC and NBAC members for fencing tender.....	47
Table 8: Chronology of key events in the TV tender.....	52
Table 9: BEC and NBAC members for the TV tender.....	56
Table 10: Combined scoring percentages obtained	57
Table 11: BEC and NBAC members for TV tender	58
Table 12: Suspicious cash and cheque deposits into ABSA account held by Mr Gillingham.....	67

1 INTRODUCTION

1.1 Subject of report

The SIU's findings in the investigation in terms of its terms of reference are set out in this report. The SIU investigated the kitchens, access control, fencing and television tenders. The report addresses the SIU's specific findings in relation to these four tenders.

1.2 Background to report

The SIU and the DCS entered their first investigation partnership on 1 October 2002. This partnership was extended for a further 3-year period on 9 June 2006 and terminated on 31 March 2009. As part of its service offering to the DCS, the SIU was requested to conduct procurement investigations.

Fairly early in the renewed partnership various allegations were raised in the media regarding possible irregularities in the procurement processes followed by DCS in procuring the services of Bosasa, Sondolo and Phezulu. Sondolo and Phezulu form part of the Bosasa Group of Companies. Further information pertaining to the formation and directorships of these companies is contained in section 6 (The Bosasa Group of Companies Structure) below.

This matter was then referred to the SIU in late 2006 by the PSC and the OAG. The SIU was requested to investigate various allegations in respect of these service providers (as set out in the terms of reference) and two specific officials within DCS, namely, Gillingham and Commissioner Mti.

The SIU obtained the Proclamation⁵, authorising this and other investigations in the DCS context, which meant the SIU was then in a position to fully investigate these tenders. The SIU then accordingly proceeded with its investigation.

1.3 Objectives of report

Section 4(1)(d) of the Act⁶ allows the SIU to refer evidence which points to the commission of an offence to the relevant Prosecuting Authority.

⁵ Proclamation R44 of 2007, attached as Annexure 2

⁶ The Special Investigating Units and Special Tribunals Act 74 of 1996, attached as Annexure 3



Section 5(7) of the Act provides that if during the course of an investigation, any matter comes to the attention of the Head of the SIU which, in his/her opinion, justifies the institution of legal proceedings by a state institution against any person, he/she may bring such matter to the attention of the State Attorney or the institution concerned, as the case may be.


Bearing the aforesaid provisions in mind, the objectives of the report are to:

- give an exposition of the evidence gathered during the investigation
- provide a summary of the findings based on the evidence
- make recommendations on the institution of legal proceedings.

2 METHODOLOGY

The SIU conducted the investigation as authorised by the Proclamation. The SIU employed a multi-disciplinary team consisting of forensic lawyers, forensic accountants, forensic investigators and cyber forensic experts to conduct this investigation. The SIU applied a uniform methodology across the investigation, involving the following:

- A review of all relevant documentation related to the tenders listed above
- Determining the level of compliance with DCS procurement policy, the relevant procurement legislation and standards set by Treasury
- Conducting interviews with and obtaining affidavits from officials within the DCS involved in the procurement process
- Conducting interviews with officials within Treasury and where necessary obtaining affidavits from them
- Conducting interviews with other witnesses that could shed light on the investigation
- Conducting a financial analysis into the affairs of Gillingham and a more limited analysis in respect of Commissioner Mti
- Conducting search and seizure operations to obtain evidence related to the investigation
- Obtaining and analysing of computer images obtained from Bosasa and various persons who featured in the procurement process
- An analysis of the documentary and electronic evidence obtained by the multi-disciplinary team.

 2

The SIU's conclusions rely on the facts established from the documentary and electronic information obtained during the course of the investigation.

3 OUTLINE OF RELEVANT POLICIES AND SPECIAL LEGISLATION APPLICABLE TO INVESTIGATION

3.1 The DCS procurement policy

A summary of the key steps in the procurement processes in the DCS are set out below.

Identification of a need

A need should be identified for the acquisition of a service or goods. A need is based on a strategic plan of a department within the DCS that serves as a basis for the identification of resources needed to achieve set objectives. The particular department's operational plan specifies the timelines for the acquisition of the resources and the achievement of its set goals. A budget estimate is prepared which expresses the need for funds necessary to acquire the resources.

Availability of Funds

All financial matters must first be finalised before bids are invited, i.e. bids should not be invited if funds are not available.

Drafting of specifications

Specifications should promote the broadest possible competition while simultaneously assuring that critical elements of performance are achieved. Specifications should be based on relevant characteristics and / or performance requirements. The end user is responsible for the drafting of the specifications of tenders, and may obtain assistance from the private sector when preparing the specifications. However, the involvement of the private sector should involve as many role players in the specific sector as possible to ensure that the specifications are as broadly drafted as possible and that they encourage competition.

Site Inspection and Explanatory meetings

Where it is necessary to invite prospective bidders to a site inspection or explanatory meeting, it should be indicated in the invitation to bidders whether this is compulsory

 3

or not. An attendance register should be completed by all attendees. Minutes of such meetings should be taken and distributed to all prospective bidders that attended.

Maintenance

Bidders are requested to indicate the maintenance structure and cost for the resource that is being tendered for. This information is used for evaluation purposes and budgeting.

Preferential Points System

The Preferential Points System (80/20 or 90/10) was designed to promote the socially desirable aim of Black Economic Empowerment (BEE). Depending on the value of the contract, either the 80/20 or the 90/10 points system is applicable. There is a set threshold for government contracts that determines which of the two points systems applies in any given tender. Assuming for argument's sake that the threshold is R5 million, then contracts below that value will be assessed according to the 80/20 system; if the contract is valued at above R5 million, the 90/10 system applies. Thus in dealing with a tender of R5 million or less, 20% of the bid evaluation points should be allocated to the assessment of the bidder's BEE profile, and conversely, when dealing with a tender above R5 million, the 90/10 principle applies and only 10% of the bid evaluation points are allocated to the evaluation of the bidder's BEE status. The particular points system applicable, whether 80/20 or 90/10, should be indicated in the bid documents.

Evaluation Criteria

In all four tenders referred to above and reviewed by the SIU, the price and functionality evaluation criteria were adopted by the DCS. National Treasury Regulations and Practice Notes set out the circumstances in which the price and functionality criteria should be applied.

Compiling bid documents

Bid documents are compiled and issued to prospective bidders by the Procurement Unit (PU) and consist of Specifications, Terms of Reference (TOR), General Conditions and other standard documents which address issues such as pricing, price adjustments, declarations of interest, etc.

Communication with bidders

Before bids close, communication between the officials of the department and prospective bidders may take place to clarify issues about the bid. During the evaluation of bids, delegated officials of the PU may communicate in writing with the bidders to obtain information where it is incomplete for clarification.

Approval to procure and appointment of Bid Evaluation Committee (BEC)

The BEC members are recommended by the end user and approved by the accounting officer of the relevant department seeking to acquire the resource. This committee evaluates bids according to given criteria, supplied at the commencement of the evaluation process. The process remains confidential. All members are required to declare any interests beforehand.

Appointment of the Bid Adjudication Committee (NBAC)

The members of the BAC are appointed by the accounting officer of the relevant department seeking to acquire the resource. There is a national BAC (NBAC) that considers recommendations in all cases with an estimated value of above R5 million. All members are required to declare any interests beforehand. No member of the BAC is appointed to the BEC or vice versa.

Invitation to bid

The PU is responsible for the compilation of the tender invitation based on detailed specifications and available funding. The bid is advertised in the government tender bulletin and in other media. The minimum period of 30 days between the publication date of the bid invitation and the closing time of bids may be extended for longer periods for tenders that are more complicated or shortened in appropriate circumstances. In terms of the advertisement, interested parties are invited to uplift the bid documents from the Department.

The bid documents contain comprehensive details of the procedure to be followed in submitting bids, qualifying criteria, forms to be completed, how the bids would be scored, special bid specifications etc. The bid documents form the sum total of all the information supplied to bidders to enable them to submit their bids. In the bid documents, the BEC may reserve the right to call for presentations from bidders, should this need arise.

Receiving bids and opening of bids

Bids must be opened in public as soon as possible after closing time by officials authorised in writing. Bids are given a registration mark of authenticity and all bids received must be listed. The names of the bidders and their individual total prices should be recorded when bids are opened. All bid documents must be scrutinised and initialled to prevent unnecessary criticism.

In all four tenders investigated by the SIU, the bid documents required bidders to submit their proposals in two separate parts – the one dealing with functionality and the other with price – each part to be contained in a different envelope. The first envelope had to contain the technical proposal (bid relating to functionality) and the second, the price proposal.

Evaluation criteria of bids by BEC

The threshold score for functionality in respect of each of the bids was set at 70%. Only those bidders whose functionality proposals met or bettered the threshold score, qualified to have their price proposals considered.

Once the scoring for the pricing proposals is complete, the scores for the functional and pricing proposals are applied to prescribed formulae to determine which of the bidders scored the highest points.

BAC assessment based on BEC recommendations

All relevant information must be placed before the NBAC to enable it to take an appropriate decision. To this end, all documentation relevant to the BEC's evaluation/scoring of the bidders, as well as the consolidated scoring of points by SCM/PU, is required to be placed before the NBAC.

Should the NBAC have any questions around any of the issues regarding the scoring and evaluation, they should obtain clarification from the bodies concerned that is to say, BEC, PU etc.

Awarding of contract

After the NBAC has approved the awarding of a contract, the successful bidder is advised of the acceptance of its bid by letter/facsimile. The successful bidder is allowed seven days within which to conclude a standard written contract, which must be signed before the validity period of the bid has expired. Bid results are then advertised in at least the government tender bulletin.

Further phases of contract

The further phases of the procurement process - placing an order, payments and contract management - are dealt with peripherally in this report, and therefore they are not set out here.

3.2 Treasury guidelines regarding budgeting for the tender process

Within the DCS, there was a substantial monetary saving in the compensation on employees' budget for the 2005/2006 financial year. Money from this saving was applied to fund some of the tenders under discussion.

The SIU obtained information relevant to the employment of the savings referred to above from Mr CJ Haak⁷ (Haak) from National Treasury. Haak holds the position of Director: Correctional Services.

According to Haak, there are specific rules in the Public Finance Management Act (1 of 1999) (PFMA) and regulations which permit funds already budgeted for to be moved across to different programmes. It is only when, within the virement rules – moving funds from one programme to another, provided that such movement does not exceed 8% of the total allocation of the transferring programme – the budget from which funds are sought to be transferred is increased, that approval from National Treasury would be required.

Accordingly, the DCS was entitled to re-prioritise funds for the 2005/2006 financial year, and was thus entitled to use the compensation of employees' funds for projects such as fencing, television and other tenders, provided the budget from which these funds were being transferred was not increased.

The DCS accordingly used section 43 of the PFMA to transfer R769 million from the Compensation of Employees programme to the Machinery and Equipment programme under Capital Assets.

The information imparted to the SIU by Haak was confirmed by Mr P Leslie⁸ (Leslie), the DCS Deputy Director: Budget Control.

According to Leslie, the fact that the funds for the fencing and television tenders were utilised towards the end of the financial year, resulted in the procurement process being rushed. For this reason, according to Leslie, the costs of the fencing and

⁷ See affidavit of Mr Haak, Annexure 4

⁸ See affidavit of Mr P Leslie, Annexure 5

television tenders, taken together with a further project relating to information technology and the purchasing of government vehicles, amounted to more than the initial saving of R641 million. Additional funds were subsequently sourced from "white paper" funds in the following year.

Lastly, according to Leslie, National Treasury had complained about spending such large amounts close to the end of the financial year and commented that it was equivalent to "fiscal dumping", i.e. where departments spend large amounts of money just prior to the financial year end to exhaust their budget, ignoring whether the department gets value or not for such spending.

The SIU interviewed Mr J Breytenbach⁹ (Breytenbach) of National Treasury with a view to obtaining clarity on a number of aspects applicable to the procurement process and to enable the SIU to appraise the procurement processes followed by the DCS and those prescribed by National Treasury.

According to Breytenbach, all goods and services procured by State Departments were required to be procured through the State Tender Board. The amended State Tender Board Regulations now make it possible for accounting officers of national state departments to procure goods and services either through the State Tender Board Act, or alternatively, in terms of the PFMA. On 5 December 2003, National Treasury issued a circular to all accounting officers confirming that they now had this option available to them and, in addition, issued a number of practice notes in terms of the 2003 regulations.

According to a Ms S Truter¹⁰ (S Truter), Assistant Director Procurement Policy Formulation, on 8 March 2004, Commissioner Mti, opted for the DCS procuring goods and services in terms of the PFMA. As an interim measure, the DCS used the prescripts of the *ST37: User Manual: Directives* from March 2004 to May 2005, after which its own *DCS SCM User Manual: Directives* came into effect.

According to Breytenbach, in the event of inconsistencies between the prescripts of the ST37 and the SCM prescripts, the prescripts of National Treasury prevail. Furthermore, section 3(3) of the PFMA provides that if there are inconsistencies between any other legislation and the PFMA, the PFMA prevails.

⁹ See affidavit of Mr Breytenbach, Annexure 6

¹⁰ See affidavit of Ms S Truter, Annexure 7

Further, according to Breytenbach, planning plays an integral part in SCM, and any irregular, unauthorised or fruitless and wasteful expenditure, is regarded as an act of financial misconduct in terms of section 38(1)(h)(iii) of the PFMA.

Paragraph 4.1.1 of ST37 provides that the department with a requirement for a product will usually initiate the drafting of the specifications or identify an existing specification that meets the requirement.

However, paragraph 4.1.1 only prevailed until 26 October 2004. Thereafter National Treasury's circular entitled 'Implementation of Supply Chain Management of 27 October 2004', provides for the appointment of a Bid Specification Committee (BSC), a BEC and a BAC. Paragraph 4.1(a) of the circular, provides that the BSC is responsible for compiling the bid specifications and that the specifications should be written in an unbiased manner to allow all potential bidders to offer their goods and/or services.

The position regarding the drafting of bid specifications changed with effect from 15 March 2005 when a new set of Treasury Regulations (the 2005 Treasury Regulations), issued in terms of the PFMA, came into effect. Regulation 16A6.2(b) of the 2005 Treasury Regulations, prescribes that a supply chain management system must, in the case of procurement through a bidding process, provide for the establishment, composition and functioning of bid specification, evaluation and adjudication committees. As from 15 March 2005, failure to establish a BSC constitutes irregular expenditure in terms of the PFMA.

Treasury Regulation 6.3(c) of the 2003 regulations provides that procurement through a bidding process, must provide for bids to be advertised for at least 30 days prior to closure, except in urgent cases when bids might be advertised for a shorter period as decided by the accounting officer. The shortening of the closing date for a complex tender may also be regarded as unfair to potential bidders in terms of section 217(1) of the Constitution.

According to Breytenbach, there are no specific prescripts regarding the drafting of evaluation criteria, but ideally the criteria should be drafted by the same person/s or committee that drafted the bid specifications.

In respect of the bid evaluation process, regulation 16A8.3(d) of the 2005 Treasury regulations, provides that a SCM official or other role player must ensure that they do not compromise the credibility or integrity of the SCM system through the acceptance of gifts, hospitality, or any other act. Sub-regulations 16A8.4(a) and (b) provide that if

 9

a SCM official or other role player, or any close family member, partner or associate of such official or other role player, has any private or business interest in any contract to be awarded, that official or other role player must disclose that interest and withdraw from participating in any manner whatsoever in the process relating to that contract. Failure to do so may be regarded as an act of abuse of the SCM system and the official may be charged in terms of Regulation 16A9 of the 2005 Treasury Regulations.

Further, practice note SCM 3 of 2003 introduced the concept of the evaluation of bids based on functionality and price. The evaluation of bids in terms of functionality and price, however, only applies to bids where the services of consultants, such as consulting firms, engineering firms, auditors and research agencies (professional services), are procured.

Paragraph 1.1 of practice note SCM 3 of 2003, specifically provides that the evaluation of bids on the basis of functionality and price, do not apply to general services such as construction works, manufacture of goods, operation and maintenance of facilities or plants, surveys, catering, cleaning and security in which the physical aspects of the activity predominates.

According to Breytenbach, the evaluation method involving the application of functionality and price, which was applied in the four tenders referred to above, was incorrectly applied and its application was contrary to Treasury Regulations. According to him, the evaluation method that should have been applied to these tenders was where price was the most important factor.

Breytenbach also explained that there is a duty on the BEC to inform the BAC if the tender price of the recommended bids exceeded the available budget. Section 38(1)(h)(iii) of the PFMA, provides that the accounting officer must take effective and appropriate disciplinary steps against any official in the service of the department, who makes or permits unauthorised, irregular, fruitless and wasteful expenditure. In addition, there is a duty on the BEC to ensure that a recommended bidder's price is reasonable prior to recommending to the BAC that the bid should be awarded to their preferred bidder.

With regard to contract administration, and in particular, upfront or advance payments to contractors, regulation 15.10.1.2(c) of the 2005 Treasury regulations, provides that prepayments for goods or services must be avoided, unless required by the contractual arrangements with the supplier.

Section 38(1)(a)(i) of the PFMA prescribes that an accounting officer must ensure that his/her department has and maintains an effective, efficient and transparent system of financial and risk management and internal control.

Paragraph 16.1.1 of practice note SCM 3 of 2003, provides that any changes to a contract that would in aggregate increase the original amount of the contract by more than 15%, is subject to the approval of the accounting officer or his/her delegate. Variation orders should also not infringe on the provisions of section 217(1) of the Constitution of the Republic of South Africa (Act 108 of 1996) (Constitution).

Paragraph 16.1.1 of practice note SCM 3 of 2003, deals with modifications to and extensions of contracts. Although the accounting officer has the authority to approve modifications to and extensions of contracts, such approval should not infringe the provisions of section 217(1) of the Constitution.

Paragraphs 21, 22 and 23 of the practice note SCM 1 of 2003, govern the contractual provisions regarding delays in the supplier's performance, penalties and the determination of default procedures to be followed, when a contractor fails to complete a contract by completion date.

The SIU also interviewed S Truter¹¹, Assistant Director: Procurement Policy Formulation in the DCS. S Truter explained the DCS policy pertaining to the submission of tax clearance certificates. According to her, practice note SCM 3 of 2006, provides that if the Department is in possession of an original tax clearance certificate, it is not necessary to obtain a new tax clearance certificate each time a price quotation is submitted from that specific supplier.

Lastly, it needs to be observed, that section 217(1) of the Constitution provides that when an organ of state contracts for goods and services, it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost effective.

3.3 The Construction Industry Development Board legislation and regulations

The SIU approached the Construction Industry Development Board (CIDB) to obtain information regarding the legislative framework that was applicable to construction tenders. This is specifically relevant to the fencing tender that was advertised in 2005. The purpose of the initial contact with the CIDB was to determine whether the

¹¹ Ibid



relevant CIDB prescripts had been complied with when the DCS advertised and awarded the tender.

The CIDB was established in April 2001 in terms of the Construction Industry Development Board Act (38 of 2000) (CIDB Act), to regulate and develop the construction industry for improved performance in infrastructure delivery. A further aim of the CIDB, is to promote uniform application of policy with regard to the construction industry throughout all spheres of government.

The SIU interviewed Ms B George¹² (George), the CIDB Legal and Compliance Manager. George advised the SIU on the provisions of the CIDB Act, its regulations and its application to the construction industry. Further details regarding the application of the CIDB Act and its regulations as regards the fencing tender are discussed later herein in sections 8.3.1 and 8.3.2.

4 LIMITATION ON THE INVESTIGATION

The report is based on the review and analysis of documentary and electronic evidence, interviews conducted and affidavits obtained by the SIU. The investigation, however, was constrained by litigation as explained hereunder.

Bosasa has sought by way of application proceedings in the North Gauteng Division of the High Court of South Africa, to interdict the SIU from investigating the full scope of Bosasa's activities regarding the awarding of the four tenders to it by the DCS. As a result of the application, the SIU gave an undertaking not to interrogate material witnesses pending the finalisation of action proceedings for a final order. The SIU has accordingly not interrogated various Bosasa officials, its auditors and other witnesses, who could impart material information regarding issues relating to the investigation. The investigation has accordingly not been as intensive as the SIU would have wanted, and accordingly, any *lacunae* that exist in the investigation, will be addressed upon the resolution of the litigation between the SIU and Bosasa.

¹² See affidavit of Ms B George, Annexure 8

5 CYBER FORENSIC EXPERTISE ENGAGED BY THE SIU

The SIU employed the services of a cyber forensic expert, Mr J Malan¹³ (Malan), to assist it with the retrieval and analysis of electronic data obtained from Bosasa and Gillingham.

The SIU served notices in terms of section 5(2)(b) and (c) of the Act, on Bosasa requesting *inter alia* that Bosasa provide the SIU with access to its servers so that the SIU could obtain electronic copies of relevant data relating to this investigation. Bosasa offered to assist the SIU with its investigation. The SIU and Bosasa reached an agreement in terms of which the SIU would be granted access to Bosasa's servers and laptops so that mirror images could be made of them.

The imaging was initially scheduled to take place in the first week of December 2008, but at the request of Bosasa, this process was postponed until the second week of December 2008. From 8 to 16 December 2008, the SIU made mirror images of the data on the Bosasa file server environment, domain controller system, email server, financial system server as well as of the personal laptops of Agrizzi, Mr A van Tonder (van Tonder) and Mr F Vorster (Vorster). During the imaging process, the SIU was denied access to one server. After the intervention of Adv J Wells, the SIU's Legal Advisor, access was eventually granted and the server was imaged.

Malan analysed the data obtained from Bosasa, using keyword searches. During his initial analysis of the data, he identified that a data deletion utility known as *Erase*¹⁴ had been used to delete a significant amount of data on the servers. Table 1 below, reflects the dates on which the data was erased.

Server name	Document and folder count	Timeline of modification and deletion	Comment
Domain server ADS01	32 769	24 July 2008	Documents appear to have been overwritten and then deleted
Domain server ADS01	60	2 December 2008	Mostly archived documents were overwritten and deleted
File server	116	3 December 2008	Folder names appear to have been overwritten with random data and then deleted

¹³ See affidavit of Mr J Malan, Annexure 9

¹⁴ The Eraser product is marketed as software that can frustrate cyber forensic investigations.

File server	468	4 December 2008	Folder names appear to have been overwritten with random data and then deleted
Domain server ADS01	7 130	6 December 2008	Documents appear to have been overwritten and then deleted

Because of the use of the *Eraser* utility, Malan had to employ advanced data recovery techniques, which assisted him in his endeavour to recover the maximum amount of data.

Malan also analysed the mirror images of Gillingham's computers and other electronic data storage facilities, obtained during a search conducted at Gillingham's residence in terms of section 6 of the Act. The *Eraser* utility was also found on Gillingham's system, but Malan found that the utility was not used extensively on his computer to destroy data.

Documents of particular relevance to the investigation of the kitchens and access control tenders, were retrieved and analysed by Malan and are dealt with under the discussion of these tenders.

6 THE BOSASA GROUP OF COMPANIES STRUCTURE

The SIU conducted an investigation into the establishment and structure of the Bosasa Group of Companies. The SIU's findings are based on information obtained from the Registrar of Companies, the previous auditors of the Bosasa Group, tender documentation submitted by Bosasa, Sondolo and Phezulu and from the official Bosasa website. The SIU's findings are set out below.

6.1 Bosasa Operations (Pty) Ltd

During December 1981, a company known as Emafini (Pty) Ltd was formed by Mr SJH Van Zijl (Van Zijl). In December 1984, Smith was appointed to Emafini as a Director. Emafini then changed its name to Meritum Hostels (Pty) Ltd in February 1985.

On 20 June 1996, Van Zijl and Smith entered into a pre-incorporation agreement with a trust, stipulating that a new holding company would be formed and a new operations company would be established to render the services for this holding company, administered by the trust. Mansell signed as a witness to the pre-incorporation agreement.

14



As a result of this agreement, Meritum Hostels became known as Dyambu Operations (Pty) Ltd (Dyambu Operations), and the trust, as the Dyambu Trust and the holding company, as Dyambu Holdings. In November 2000, Dyambu Operations changed its name to Bosasa Operations (Pty) Ltd.

Mansell was an active Director of Dyambu Operations from 1 June 1997. He resigned as a Director of Dyambu Operations in November 2000, when Dyambu Operations became Bosasa. Despite his resignation from Dyambu Operations, he remained on as a consultant with Bosasa and operated as such during the period that Bosasa was awarded contracts from DCS.

6.2 Sondolo IT (Pty) Ltd and Phezulu Fencing (Pty) Ltd

Sondolo, previously known as Mavava Trading (Pty) Ltd, was formed in 2005, while Phezulu, previously known as Nino Construction, changed its name to Phezulu Fencing in 1997.

Upon changing its name in 2005, Sondolo appointed Bester Viljoen Incorporated as its auditors. At this time, Johannes Gumede, Tony Perry, Papa Leshabane, Brian Gwebu, Jacqueline Leyds, Nomazulu Makoko (among others), were appointed as directors of Sondolo. These individuals were all affiliated to Bosasa.

In December 2005, a number of directors resigned from Phezulu, whilst directors such as Jacqueline Leyds and Victor Mhangwana, with previous Bosasa affiliations, were appointed in their stead as the new directors of Phezulu. At this stage, the auditors for Phezulu, were changed from PricewaterhouseCoopers to Bester Viljoen Incorporated, the auditors for Bosasa and Sondolo.

According to the documentation obtained from the Registrar of Companies, Bosasa, Sondolo and Phezulu have the following in common:

- Bester Viljoen Incorporated are their auditors
- Jacqueline Leyds is a director of all three companies
- Bosasa and Sondolo have Johannes Gumede, Munirah Oliveria and Ishmael Mncwaba as directors
- Bosasa and Sondolo share the same physical business address, namely, 1 Windsor Road, Mogale City, Krugersdorp, 1739.

In addition to the above, the documents obtained from the Registrar of Companies, indicate that company changes within Sondolo and Phezulu were addressed to

Bosasa. According to the Bosasa website, both Sondolo and Phezulu, fall within the Bosasa Group of Companies.

During the course of the investigation, a document compiled by Agrizzi, was handed to the SIU. This document, entitled *Summary Company Structure*¹⁵, indicated that Sondolo was owned by four companies, namely, Bancar Investment Holdings (Pty) Ltd (25%), Kgwerano Financial Services (Pty) Ltd (25%), Bosasa Youth Development Foundation (10%) and Bosasa (40%). On its website, Bosasa maintains that these companies are all affiliated to the Bosasa Group. The *Summary Company Structure* document in addition, indicated that Phezulu appointed Sondolo as its project manager and integrator of the fencing contract.

Lastly, the tender documentation submitted by Sondolo and Phezulu, confirm that they are part of the Bosasa Group of Companies and that they are dependent on each other for the delivery of services.

7 COMMISSIONER MTI'S FORMAL RELATIONSHIP WITH BOSASA

From the information obtained from the Registrar of Companies, Commissioner Mti is the director of a company called Lianorah Investment Consultancy (Pty) Ltd (Lianorah). Further information from the Registrar of Companies indicated that Lianorah is in one way or another, linked to Bosasa. These links include the following:

- Both Sondolo and Lianorah's registration documentation reflects Mr Stephan Kruger as the initial director, with BGB Smit as the auditors
- Both Sondolo and Lianorah appointed Bester Viljoen Incorporated as their new auditor in place of BGB Smit
- Bester Viljoen Incorporated are the auditors for Bosasa.

At the time Lianorah's incorporation, Commissioner Mti was the DCS National Commissioner. The timing of the registration of the above entity appears to coincide with the awarding to Sondolo of the access control tender, on or about 19 April 2005.

The analysis conducted by the SIU, has revealed that Lianorah was deregistered on 20 April 2007.

¹⁵ See Annexure 10

8 ANALYSIS OF CONTRACTS

Against the background of this information, the SIU analysed the procurement process related to the four contracts referred to above. The evaluation of each one, is dealt with below.

8.1 The kitchens tender: HK2/2004

The kitchens tender was awarded to Bosasa on 20 July 2004. The scope of the kitchens tender entailed the providing of full catering services, including full maintenance of kitchen equipment, cleaning and training of DCS staff and inmates, at correctional centres in seven management areas. These areas were Pretoria, Johannesburg, Durban Westville, Krugersdorp, Pollsmoor, Modderbee and St Albans.

The bid was advertised on 21 May 2004, and it required the rendering of services over a 3-year period (1 August 2004 to 31 July 2007), at a cost of approximately R239 427 694 per annum.

8.1.1 Evidence gathered

Engagement with the service provider prior to publication of the tender

The SIU ascertained that a DCS Executive Management Committee (EMC) meeting was held at Supersport Park in Centurion, Pretoria between November 2003 and early 2004. At this meeting, Agrizzi and Leshabane from Bosasa made a presentation to the attending DCS officials, including Commissioner Mti, Gillingham and Mr F Engelbrecht, the Regional Commissioner of DCS, Gauteng (Engelbrecht)¹⁶.

The Bosasa presentation was to advise the DCS of the services Bosasa was able to provide, including catering and measures to prevent the theft of food from prison kitchens.

This meeting took place not only prior to the advertising of the kitchens tender, but also before it was made known within the DCS that it would be outsourcing catering services, the full maintenance of kitchen equipment and the training of DCS staff and inmates at correctional centres.

Engelbrecht raised questions regarding the viability of outsourcing catering facilities after the Supersport Park presentation. His concern related to job security of DCS

¹⁶ See affidavit of Mr Engelbrecht, Annexure 11.

staff, the sustainability of such a venture, its budget and the effect of such outsourcing on offender labour. He stated that in response to his questions, Commissioner Mti had rudely instructed him to stop asking questions.

During a later EMC meeting held prior to May 2004, in Magaliesburg, Gillingham did a presentation regarding the outsourcing of catering services due to the amendments to the Correctional Services Act (111 of 1998) (Correctional Services Act). The relevant amendment to the Correctional Services Act provides:

"Food must be well prepared and served at intervals of not less than four and a half hours and not more than 14 hours between the evening meal and breakfast during each 24 hour period".

During the presentation, Gillingham highlighted the fact that the amendment set requirements which the DCS might not have the capacity to deal with effectively. In addition, he touched on aspects relating to the theft of food in prisons and general hygiene in prison kitchens. At the time of this presentation, Gillingham was the Regional Commissioner: North West, Mpumalanga and Limpopo.

Shortly after the presentation in Magaliesburg, the DCS CFO, Mr Tshivhase (Tshivhase), announced that the DCS would be outsourcing catering services. Gillingham was appointed as the project leader for this tender, which was then prioritised. Two DCS procurement officials, namely, Messrs W Pretorius¹⁷ (Pretorius) and Truter were requested to assist Gillingham with the project.

According to Engelbrecht, the Directorate: Health Care Services was responsible for nutritional services, and to his knowledge, none of the officials from that Directorate, were consulted by Gillingham regarding the drafting of the specifications for this tender.

The timeline of the tender

According to Mr H Truter (Truter)¹⁸, requests to invite bids had to be in writing, and a written instruction to proceed with invitations, needed prior approval. The kitchens tender was approved by Commissioner Mti on 24 May 2004. The bid was advertised on 21 May 2004, and the closing date was 25 June 2004. Compulsory briefing sessions were held from 4–15 June 2004 in all seven management areas where kitchen services were to be outsourced. The awarding of the bid by the NBAC was

¹⁷ See affidavit of Mr Pretorius, Annexure 12

¹⁸ See affidavit of Mr Truter, Annexure 13

scheduled for finalisation on 21 July 2004, but due to delays, the bid was only awarded on 27 July 2004, to Bosasa. Due to the abovementioned delays, Bosasa only commenced with performance on 16 August 2004, as opposed to the original performance date, namely, 1 August 2004.

For ease of reference, the chronological sequence of key events in the tender process for the kitchens tender is encapsulated in Table 2 below.

Date	Activity
21 May 2004 – 25 Jun 2004	Advertising of bid
11 Jun 2004	Scheduled bid collection
4 Jun 2004	Compulsory information meeting
4 Jun 2004 – 15 Jun 2004	Compulsory site meetings
25 Jun 2004	Closing date for bids
28 Jun 2004 – 30 Jun 2004	Screening of the bids
1 Jul 2004 – 8 Jul 2004	Evaluation process
12 Jul 2004 – 13 Jul 2004	Compiling by the BEC of their recommendations
14 Jul 2004 – 16 Jul 2007	Verification, preparation, recommendation and submission to the NBAC
20 Jul 2004	Awarding of the bid to Bosasa
21 Jul 2004	Scheduled date on which successful bidder was to be notified of award of bid
27 Jul 2004	Actual date on which Bosasa was informed that it was the successful bidder
29 Jul 2004	Signing of contract between DCS and Bosasa
1 Aug 2004	Scheduled date for commencement of services by Bosasa
16 Aug 2004	Actual date on which Bosasa started to render services

Drafting of the bid specifications

The SIU interviewed Mr T Mapasa (Mapasa), the DCS Director: Procurement¹⁹. According to him, the user department in terms of DCS procurement directives must assume responsibility for identifying the need, motivating the urgency and importance of the proposed tender, indicating the value or benefits to be derived from the tender and the providing of an estimate of the cost of the tender. Accordingly, a preliminary step in the procurement process is the identification by the relevant department of a need that is catered for in terms of its strategic plan.

¹⁹ See affidavit of Mr Mapasa, Annexure 14

The SIU could find no evidence that a needs analysis or feasibility study was conducted prior to the initiation of this tender process.

Although the kitchens contract should have originated in the DCS Directorate: Development & Care, the SIU established that the need for the kitchens contract did not originate in this directorate nor did this directorate initiate the process.

The SIU interviewed Ms J Sishuba (Sishuba), DCS Chief Deputy Commissioner: Development and Care and Ms M Mabena (Mabena)²⁰, DCS Director: Health Services. They advised that their directorates were excluded from the entire tender process, despite the fact that nutrition fell under their directorates as end users. According to them, Gillingham had assumed responsibility for the initiation and implementation of the procurement process.

The SIU interviewed the former Director: Security Management Services, Mr AJC Venter²¹ (Venter). Venter confirmed that he had neither taken part in the tender process for the kitchens tender nor was he or any other official from his directorate approached by either Gillingham or any other official for input in respect of the kitchens tender, specifically with regard to the security elements of the tender.

As regards the drafting of the specifications for the tender under discussion, Pretorius informed the SIU that during a meeting he had with Gillingham, the latter advised that he was developing specifications for the tender and handed Pretorius a two-page document that he was requested to peruse. The document handed to him, however, addressed only the aspects of training and equipment, but not the aspects relating to the preparation of food and ration scales, the heart of the kitchens tender. Pretorius advised that he suggested to Gillingham that the specifications used for the outsourcing of catering services at the Ekuseni Youth Centre be used as the basis for the development of the specifications for the kitchens tender. His subordinate, Truter, emailed these specifications to Gillingham.

Truter confirmed that Gillingham's specifications forwarded to him, were very basic and did not address the important aspects of the tender, such as provisioning of food, preparation, rationing scales, etc. In Truter's view, the tender was rushed, because on 10 May 2004, Gillingham had decided that the tender should be published on 21 May 2004.

²⁰ See affidavits of Ms Sishuba and Mabena. Annexure 15 and 16 respectively

²¹ See affidavit of Mr Venter, Annexure 17

According to Pretorius and Truter, they advised Gillingham on how to comply with the procurement process. However, they did not assist him with the technical aspects of the specifications, as they did not possess the required technical knowledge.

It is unclear to the SIU what qualified Gillingham to draft the specifications for this bid as he only possessed a matric qualification and was not a nutrition expert.

A review of the tender specifications revealed that a number of unusual specifications were included in the bid, namely:

- The installation of security cameras
- The requirement that bidders must have accredited security personnel with proven track records of installing and monitoring offsite (CCTV) and internet protocol surveillance and be International Standards Organisation 9001:2000 (ISO) compliant
- Bidders were required to have a fully functional integrated maintenance department experienced in facilities management with a minimum of 5 years experience
- Bidders were required to have a temporary mobile facility which complied with minimum health requirements to be utilised whilst the kitchens were being upgraded
- Bidders were required to procure the services of two qualified dieticians on their full time payroll, despite DCS having full-time dieticians on their payroll.

The SIU has further established from the witness²² that Agrizzi requested him to develop a solution for the installation of various types of security equipment in correctional centre kitchens. According to him, he was informed by Agrizzi that the solution would be added to the tender specifications to ensure that Bosasa enjoyed an advantage over the other bidders. The witness advises that this solution formed part of the eventual tender specifications.

In the bid, the following security equipment was specified:

- Surveillance cameras in the kitchens
- Digital video recorders in each kitchen office
- Control and review personal computers in each kitchen office
- Access control systems in store rooms and fridges

²² The affidavit of this witness will be withheld and provided to DCS upon request

- Wide area network connectivity to provide off-site surveillance.

During the security roll-out for the kitchens tender in August/September 2004, the witness was introduced to Mansell who had previously visited the Bosasa premises. The witness was informed that Mansell was a consultant and former partner of a Mr G Watson (Watson), the CEO of Bosasa. According to the witness, Mansell occupied an office in one of the Bosasa buildings and was often in the company of Agrizzi.

The bid evaluation and adjudication process

On 1 July 2004, the Code of Conduct and Declaration of Interest forms were signed by the members of the BEC in terms of which they were required to declare their interest, if any, in any of the bidders. Gillingham, as chairperson of the BEC, signed this form and indicated that he had no interest in any of the bidders for the kitchens contract.

Despite the fact that the kitchens contract was not a tender for consultant services, the DCS used the price and functionality tender evaluation method. Truter confirms that only Bosasa and Sechaba Catering Services (Sechaba) met the threshold for functionality and hence qualified for the second phase.

Members of the BEC²³ were informed by Gillingham, the Chairperson of the BEC, that the purpose of the kitchens tender, was to ensure that DCS complied with the amendments to the Correctional Services Act, with specific reference to section 8(5), referred to earlier.

The SIU interviewed Dr J Coetsee²⁴ (Coetsee), a member of the BEC that evaluated the kitchens tender. He informed the SIU that during the evaluation of the kitchens tender by the BEC, he observed that although the budget for the kitchens tender had been sourced from the Directorate: Health Care Services, this directorate had not requested the tender. Other BEC members further observed that the entire tender process had been managed by Gillingham.

From documentation made available to the SIU, it appears that after the awarding of the contract to Bosasa, a complaint was received from Sechaba, questioning the basis on which the tender was awarded to Bosasa. Sechaba complained that its pricing was reasonable in the light of its knowledge of prisons and high volume

²³ See affidavit of Mr Coetsee, attached as Annexure 18

²⁴ Ibid

feeding. In its response to the complaint, the DCS stated that the BEC was satisfied that Bosasa had best met the requirements for the tender.

The SIU in the course of its investigation obtained a file relating to allegations of maladministration and misconduct. It was alleged that Gillingham had an affair with his secretary, submitted fraudulent subsistence and travel claims (S&T claims) and had intimidated certain staff members.²⁵ Disciplinary action was recommended by DCS Deputy Commissioner: Legal and Special Operations, Adv T Mqobi (Mqobi), and DCS Chief Deputy Commissioner (CDC) Central Services, Ms J Schreiner. Contrary to the recommendations, Commissioner Mti sent a letter to Gillingham in which on the one hand he chides him for his misconduct, but on the other thanks him for repaying the irregularly obtained S&T monies. In the same letter, Commissioner Mti proceeded to appoint Gillingham as the DCS Acting CFO, which effectively gave him oversight of the procurement division. This appointment was shortly before the kitchens tender was awarded to Bosasa.

For ease of reference, the names of the members of the BEC and NBAC are set out in Table 3 below. It will be noticed that Gillingham served on both committees, in the BEC as its chairman and in the NBAC, in an advisory capacity.

Table 3: BEC and NBAC members for the kitchens tender	
Bid Evaluation Committee	
Gillingham (Chairperson)	CDC Finance
Coetzee	Dir: Formal Education
Davids	Area Commissioner: Johannesburg Management Area
Mabena	Dir: Health Care Services
Mdletye	Area Co-ordinator: Development and Care: Durban Correctional Centre
Moodley	DC: Personnel Corrections
Maako	Dir: Contract Management
Lenkoe	Regional Head: Development and Care: Gauteng
FJ Venter	Secretary to BEC
National Bid Adjudication Committee	
Schreiner (Chairperson)	CDC: Central Services
Sishuba	CDC: Development & Care
Gillingham	CDC: Finance (Advisory Capacity)

²⁵ These details were obtained from the disciplinary file compiled by the DCS DIU

Ngubo	DC: Supply Chain Management
Mapasa	Dir. Procurement
Pretorius	Procurement: Secretariat
Aries	Procurement: Secretariat
Truter	Procurement

The cyber forensic expert's evidence

Malan recovered a document entitled *Checklist.doc*, obtained from the images seized at Gillingham's residence. The document contains bid evaluation criteria and guidelines for evaluating the kitchens tender. These criteria and guidelines obviously, should not have been in the possession of any bidder and especially not before the submission of tenders, since it would enable the bidder to know in advance the weighting of certain factors relevant to the tender.

Malan was able to establish that the document was created on 28 June 2004, and saved on the same date by Agrizzi. According to Malan, the document originated from Agrizzi's computer but the date of first creation could not be established, given the fact that Bosasa had used the *Eraser* utility to selectively erase certain information on its servers. Significantly, however, 28 June 2004, was the date on which DCS started to screen the bids in the kitchens tender.

Email logs between Agrizzi, Mansell and kobus@bfn.co.za

During the SIU's investigation of the access control tender an email address²⁶, Kobus@bfn.co.za, was linked to Gillingham.

According to Venter, Gillingham explained to him that kobus@bfn.co.za was his residential e-mail address.

The SIU determined that this email address belonged to an entity called *Network and Computing Consultants (NCC)*, situated in Bloemfontein.

Mr F De Villiers²⁷ of NCC informed the SIU that kobus@bfn.co.za was an email address belonging to Bosasa and paid for monthly by Bosasa between August 2004 and March 2005.

²⁶ Discussed in detail in section 8.2.1 titled "The Bid Specifications"

²⁷ See affidavit of Mr F De Villiers, attached as Annexure 19

The SIU obtained email logs from NCC and found two emails sent from Gillingham to Agrizzi on 26 April 2004 with the subject, "Tender Evaluation Criteria – Danny Mansell" and "Reviewed Documents". These documents were sent approximately one month before the kitchens tender was advertised.

During a search conducted by the SIU at Gillingham's residence in terms of section 6 of the Act, a business card in Gillingham's name was found that reflected that he was a consultant for *Consilium (Pty) Ltd* (established by the SIU as an affiliate company within the Bosasa Group). Furthermore, the contact information on the card included the email address, kobus@bfn.co.za.²⁸

The extension of the kitchens contract

As already observed, the kitchens tender covered seven management areas. The contract signed with Bosasa did not mention seven satellite correctional centres falling within these seven management areas. On 29 September 2004, Bosasa proposed to Gillingham that the seven satellite correctional centres be included by way of an extension of the kitchens tender.

The extension was recommended by Gillingham and authorised by Commissioner Mti on 17 May 2005.

The extension of the kitchens tender period

In October 2006, an extension of the contract was required because the contract would expire on 31 July 2007. The DCS was required to decide whether DCS personnel should render the services in future or a new tender should be advertised. The contract was extended by a year in order for the DCS to determine whether it should outsource the service again or provide the service itself. The contract was further extended for a period of six months.

A new kitchens contract HK14/2008, was awarded to Bosasa on 6 January 2009. The contract period for this contract was three years. In the course of a desktop analysis conducted by the SIU, it could not find any needs analysis or feasibility study for the new contract.

A disqualified bidder, Royal Sechaba (Pty) Ltd, previously Sechaba Catering Services, has since instituted legal proceedings against DCS and Bosasa to have this

²⁸ See copy of business card. Annexure 20

latter tender process reviewed and set aside. These proceedings are at present pending in the North Gauteng High Court.

Benefits received by Gillingham and Mti

The SIU has established that Gillingham received financial benefits from Bosasa over a period of time, for which he gave no valuable consideration. Whilst on the evidence, the payment of the benefits cannot be directly linked to a particular tender dealt with in this report, the timing of the benefits and the tenders lead the SIU to conclude that there is on the evidence a sufficient link between the benefits and the awarding of all of the tenders dealt with herein.

The benefits received by Gillingham and Commissioner Mti are dealt with in more detail later in section 9 of this report.

8.1.2 Findings

The evidence gathered by the SIU, shows that there were clear deviations from the SCM: Guide for Accounting Officers, more particularly, in that the end user department was not included in the bid process. There was also no proper financial planning for this tender in that there was no feasibility study nor needs analysis conducted.

The evidence shows that Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process in relation to the kitchens tender and was irregularly instrumental in the development of the tender specifications for the tender.

According to the witness, Bosasa irregularly participated in drafting the specifications for the tender under discussion and this fact was not disclosed by Gillingham during the bid evaluation process. On the evidence of the witness, the specifications were drafted in such a manner that the security aspects of the tender provided Bosasa with a clear advantage over other bidders. It is therefore not surprising that only two bidders were found to meet the functionality requirements by the BEC.

Furthermore, on the evidence of the cyber forensic expert, a document containing the bid evaluation criteria and guidelines for evaluating the tender was found in electronic data seized at Gillingham's residence, having originated from Agrizzi. The creation date of this document on Gillingham's computer was 28 June 2004 and was saved on Agrizzi's computer on the same day. Significantly, the DCS commenced with the screening of the tenders received in respect of the kitchens tender on 28 June 2004.

Whilst, Malan could not determine the date of first creation on Agrizzi's computer, the evidence raises two concerns: first, whether Agrizzi (and as such Bosasa) was in possession of the document at the time that Bosasa's tender was submitted for the kitchens tender, and second, whether Bosasa was party to the drafting of the evaluation criteria and guidelines for evaluating the tender. Obviously, if this were so, it would not only have subverted the entire procurement process because it would have placed Bosasa in an unduly advantageous position with reference to its competitors, but it would also have exposed the DCS to civil suits from unsuccessful bidders.

Given the fact that there was no BSC constituted to prepare the specifications for the kitchens tender, the fact that Gillingham played an integral role in the preparation of these specifications, the fact that these specifications were prepared in such a way as to favour Bosasa and the fact that a document containing the bid evaluation criteria and guidelines for evaluating the tender, was found on Gillingham's computer – having originated from Agrizzi – leads the SIU to believe that Bosasa along with Gillingham was not only involved in the drafting of these bid specifications for the kitchens tender but also in the drafting of the bid evaluation and guidelines thereof.

Paragraph 1.1 of practice note SCM 3 of 2003 provides that the price/functionality tender evaluation method applies only in tenders where consultant services are procured. It is therefore clear that to the extent that the kitchens tender did not involve consultant services, the price/functionality tender evaluation method applied to the kitchens tender, was in conflict with paragraph 1.1 of practice note SCM 3 of 2003.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of the kitchens tender. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham.

The SIU is of the view that the acceptance by Gillingham of financial and other benefits from Bosasa around the time that the kitchens tender was awarded was both irregular and unlawful.

The impact on the kitchens tender and the other tenders, of the receipt of benefits by Gillingham and Commissioner Mti, are more fully dealt with under the discussion of the benefits received by them in section 9.

Turning to the extension of the kitchens contract, the evidence shows that the kitchens tender was extended upon the recommendation by Gillingham and

authorised by Commissioner Mti on 17 May 2005. In light of the irregular benefits received by Commissioner Mti the extension of this contract was irregular and unlawful.

8.1.3 Recommendations in respect of the kitchens tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the kitchens tender to Bosasa
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the kitchens tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Bosasa, the latter's office bearers and to the extent that Mansell, Agrizzi and Smith may not be office bearers of Bosasa, that they also be considered for prosecution in their personal capacities
- the DCS cooperates with the NPA for the purposes of prosecuting the persons and entities mentioned above.

8.2 The access control tender: HK2/2005

The access control tender was awarded to Sondolo on 11 April 2005. The scope of the access control tender entailed the supply, delivery, installation, commissioning, support and maintenance of a comprehensive access control and body scanning system with CCTV coverage of DCS staff and inmates at 66 Maximum Security Facilities/Centres of Excellence. The advertisement for the access control tender was published on 4 February 2005. The contract was valued at R236 997 385.31.

This tender was extended to include the staffing of the control rooms at the 66 sites. This extension took place after the awarding of the initial contract.

8.2.1 Evidence gathered

The timeline of the tender process

The tender for access control was published on 4 February 2005, with the closing date on 25 February 2005. The usual time for bidders to respond to the tender advertisement is 30 days, but the time for this tender was reduced to 21 days. The authorisation for such a reduction in time was given by the then Acting National Commissioner, Mr V Petersen (Petersen) on 27 January 2005.

The SIU established from Venter, the circumstances leading up to the advertising and awarding of this tender. Venter informs that towards the end of 2004, he was informed by Mr W Damons (Damons), Deputy Commissioner: Facilities and Security Management, that R90 million that had been budgeted for expenditure on infrastructure within the DCS would not be spent by the DCS Building and Management Division, before the financial year end. Damons instructed him to spend the money to improve security at prisons with existing Repair and Maintenance Programme (RAMP) programmes, by means of variation orders. RAMP projects are an initiative started by the DPW to upgrade various government facilities. The DCS, at the time, had many RAMP projects running with the DPW at various correctional centres.

In pursuance of the instruction from Damons, Venter drafted a plan indicating at which correctional centres the money would be spent, what equipment was required, as well as the cost, amounting to R89 517 000. A memorandum requesting approval of the plan was approved by Messrs F Mocheko (Mocheko) DCS Director of Building

11.

A copy of the above-mentioned report submitted to the Department of Correctional Services is attached hereto as Annexure B.

DEPONENT: 

Do you know and understand the contents of this affidavit? YES

Do you have any objections to taking the prescribed oath? NO

Do you consider the prescribed oath to be binding on your conscience? YES

I certify that the above affidavit was taken by me and that the deponent has acknowledged that he/she knows and understands the contents of the affidavit. This affidavit was sworn to before me and the deponent's signature/mark/thumb print was placed thereon in my presence at PRETORIA on 24 FEBRUARY 2010 at 08:30.


JUSTICE OF PEACE
Ex Officio Commissioner of Oaths

~~DANIEL JOHANNES KRIEL~~
~~SENIOR SUPERINTENDENT (SAPS)~~
~~SERIOUS ECONOMIC OFFENCES UNIT~~
~~83 BEATRIX STREET~~
~~ARCADIA, PRETORIA~~



and Maintenance: Pretoria and Damons on 18 November 2004 after confirmation was received that the money was available.

According to Venter, the plan was approved by Mlombile on 3 December 2004, who commented that Commissioner Mti wanted the option of the DCS acquiring the equipment without the assistance of the DPW due to time constraints. Gillingham then requested him to obtain prices for security equipment as well as the specifications for the following security equipment from the DPW:

- Walk through metal detector
- X-ray scanner
- Security spike boom barrier system, and
- CCTV system (closed circuit television system).

In a memorandum dated 9 December 2004, Venter not only acknowledged the benefits of using the DPW, but also pointed out that his directorate had always been satisfied with the manner in which the DPW had procured equipment in the past. The memorandum was addressed to the following role players within the DCS, namely, Mocheko, Sokupa, Damons, Mlombile, Gillingham and Commissioner Mti.

In Venter's memorandum of 9 December 2004, he requested that the following points be considered:

- Employment of the necessary expertise to ensure that durable equipment was procured
- That the necessary expertise be obtained to ensure that correct equipment was installed, that the components complied with the specifications and were compatible with DCS systems
- The inclusion of a maintenance contract for a minimum period of 5 years
- That long delivery periods may result in some equipment only being installed during the following financial year
- That the DCS should continue to use the expertise of the DPW for the erection of security fences through the RAMP programmes.

According to Venter, he received the following responses to his memorandum:

- Mocheko supported the recommendation that the fences be erected through the DPW
- Sokupa recommended that all the equipment be procured by the DCS's Procurement Directorate

- Damons supported the recommendation that the fences be erected through the DPW, but in addition, recommended a tender process by the DCS in respect of the security equipment
- Gillingham supported the recommendation regarding the security fences, but suggested that the DCS follows its own procurement process in respect of the security equipment and that all the funds should be allocated before the end of March 2005

Commissioner Mti, whilst approving the recommendations made by Sokupa, Damons and Gillingham, commented that the relevant concerns raised by Venter would be taken into consideration, but that the DCS should follow its own tender process so as not to experience delays from the DPW.

For ease of reference, the sequence of key events involved in the bid process for the access control tender, is encapsulated in Table 4.

Table 4: Chronology of events regarding the bid process of tender HK2/2005	
Date	Activity
18 Nov 2004	Damons drafts memorandum indicating R90 million available for expenditure, proposing it be utilised at centres with existing RAMP programmes
9 Dec 2004	Commissioner Mti grants approval to proceed with tender
14 Jan 2005	Gillingham commences drafting of tender specifications
24 Jan 2005	Gillingham emails Mlombile bid specifications originating from kobus@bfn.co.za
19 – 26 Jan 2005	Meetings are held to finalise the drafting of tender specifications
27 Jan 2005	Mlombile forwards specifications to Venter
28 Jan 2005	Tender specifications are finalised
4 Feb 2005	Tender is published in the government gazette
14 Feb 2005	Compulsory information briefing is held
25 Feb 2005	Bid closed: 17 bids received as well as 3 late bids
2 Mar 2005	Initial screening of bids is finalised
9 Mar 2005	Motivation for the appointment of BEC members is drafted by Gillingham
16 Mar 2005	Gillingham signs the Declaration of Interest and Code of Conduct
	Instructions are given to the members of the BEC
11 April 2005	NBAC recommends tender be awarded to Sondolo
19 Apr 2005	Contract between DCS and Sondolo is signed

The bid specifications

According to Venter, Mlombile contacted him on 27 January 2006, in connection with an e-mail he had received from Gillingham. Attached to the e-mail, was a document containing specifications for security equipment. Mlombile was concerned by the fact that the individual who had forwarded the document to Gillingham, a certain Kobus with the email address of Kobus@bfn.co.za, was unknown to him. According to Venter, Mlombile suspected that the specifications contained in the document sent to Gillingham, were not drafted by DCS officials.

Venter informed that he investigated the origin of the email and found that the author of the document was an individual called "Danny" and that the e-mail address from which the document had been sent belonged to an entity called *Network and Computing Consultants (NCC)*, situated in Bloemfontein.

Venter then sent a memorandum to Damons, Mlombile and Gillingham in which he raised his concern not only about the origin of the document forwarded to Gillingham, but also the inadequacy of the bid conditions and specifications in the following respects:

- no provision was made for access control at entrances used by DCS officials and SAPS members, which were also being used for the admission and release of offenders
- no provision was made for access control at gates used by work teams at the Centres of Excellence
- no provision was made for equipment to scan items that were being delivered, or the person/s making the delivery
- the Directorate Security Management Services did not possess the expertise required for the purpose of drafting technical specifications, which the DPW had previously drafted
- the CCTV coverage focussed on people entering the secure areas but no mention was made of people exiting these areas.

Venter further informed that he did not receive any feedback regarding the concerns raised in his memorandum regarding the origin and inadequacy of the bid conditions and specifications that were forwarded to Gillingham. According to Venter, Gillingham explained to him that kobus@bfn.co.za was his residential e-mail address, from which he forwarded the document to his official DCS e-mail address.

Through the SIU's investigation, it was established that there was no Kobus employed as a consultant at the DCS and further, kobus@bfn.co.za, was an email address belonging to Bosasa and paid for monthly by Bosasa between August 2004 and March 2005, which includes the day on which the document was emailed to Gillingham.²⁹ The SIU was further able to establish that a number of emails were sent by Agrizzi to Kobus.³⁰

During a search conducted by the SIU at Gillingham's residence in terms of section 6 of the Act, a business card in Gillingham's name was found that reflected that he was a consultant for *Consilium (Pty) Ltd* (previously established by the SIU as an affiliate company within the Bosasa Group). Furthermore, the contact information on the card included the email address, kobus@bfn.co.za.³¹

The SIU was further able to establish that despite it not being within the course and scope of Gillingham's duties, he had assumed responsibility for the drafting of the bid specifications. This fact accords with Venter's evidence that he was not aware of any committee that was formed for the specific purpose of drafting the specifications for this tender.

The witness referred to previously, advised that in December 2004, he was given a document by Agrizzi that contained specifications for security measures at prisons. Agrizzi informed him that the document was for a tender, which the DCS was going to advertise in the near future. Agrizzi instructed him to ensure that the specifications were up to date with modern technology and to align them with the technology Bosasa was employing in the kitchens contract. The witness further advised that his previous involvement in the drafting of the kitchens tender specifications had made the task assigned to him by Agrizzi easier.

The witness further informed that Agrizzi had told him that he (Agrizzi) had informed the Bosasa team that the bid price had to be in the region of R80 million and the bid presentation should include aspects such as system design, costing and maintenance.

The SIU was further advised by the witness that it took him a few weeks to improve upon the specifications contained in the document given to him by Agrizzi. These improved specifications were later presented to Agrizzi.

²⁹ See Annexure 19

³⁰ It is important to note here the email sent between Agrizzi, Mansell and kobus during this tender and the kitchens tender

³¹ See Annexure 20

According to the witness, he later identified a number of similarities between his improved specifications and those contained in the tender advertisement.

According to documentation obtained from the Registrar of Companies, Sondolo (Pty) Ltd was only registered as such on 18 February 2005, that is, 7 days before the closing of the tender. Since the tender specifications required a proven track record of at least 5 years in the Information Technology (IT) industry, Sondolo clearly did not satisfy that requirement.

Further information sourced from the Sondolo bid documentation indicated the following shareholding in Sondolo:

- Bosasa (40%)
- Kgwerano Financial Services (Pty) Ltd (25%)
- Bancar Investment Holdings (Pty) Ltd (25%)
- Bosasa Youth Development Foundation (Pty) Ltd (10%) – Section 21 Company

As already observed, Kgwerano, Bancar and Bosasa Youth Development are all affiliate companies within the Bosasa Group.

The witness pointed out the following aspects that would have made it very difficult for other bidders to submit a sufficiently compliant bid:

- Given the close association between Bosasa and Sondolo and the former's knowledge of the prisons environment on account of its contractual relations in terms of the kitchens tender, its prior knowledge of the bid specifications and the exclusion of site visits allowed Sondolo to enjoy an undue advantage over other bidders
- Despite the technical nature of the bid, which would have required intensive research, the normal period of 30 days for the submission of bids was reduced to 21 days.

The cyber forensic expert's evidence

Malan obtained electronic copies from the DCS of the earliest versions of the tender specifications in respect of all the tenders forming the subject of the SIU's investigation into Bosasa and its affiliate companies. During the course of this investigation, Malan mirror imaged the servers of Bosasa and the laptops of Agrizzi, van Tonder and Vorster.

Malan used the electronic copies of the bid specifications that he had obtained from the DCS in an effort to establish whether there were any similar or identical bid specifications in the Bosasa data. Despite the deletion of information by Bosasa from its servers, Malan was able to identify a document named *cctv bid.doc* both in the electronic data received from the DCS and on one of Bosasa's servers.

The document on Bosasa's server indicated that it was last printed on 13 January 2005. The author of the document was "Danny" and the document was revision 2. The document contained specifications relating to the access control tender. This document was also found on the DCS server and was attached to an email Mlombile received from Gillingham on 24 January 2005. This document indicated that it was revision 4 of the document; the document found on Bosasa's server was revision 2.

The bid evaluation and adjudication process

On 16 March 2005, the Code of Conduct and Declaration of Interest forms were signed by the members of the BEC, in terms of which they were required to declare their interest, if any, in any of the bidders. Gillingham, as chairperson of the BEC, signed this form, indicating that he had no interest in any of the bidders for this contract.

In this bid, the price/functionality tender evaluation method was utilised. Only Sondolo satisfied the threshold for functionality, thus enabling it to be considered in the pricing phase.

Despite Pinnacle Technology Holding (Pty) Ltd (the second highest bidder) obtaining only 68.13% for functionality, it was included for consideration in the pricing phase.

The BEC recommended to the NBAC that Sondolo be awarded the contract. Following this recommendation, the NBAC after its deliberations awarded the contract to Sondolo on 11 April 2005.

For ease of reference, the name of the members of the BEC and NBAC are set out in Table 5 below. It will be noticed that Gillingham served on both committees, in the BEC as its chairman and in the NBAC in an advisory capacity.

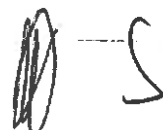


Table 5: BEC and NBAC members for the access control tender	
Bid Evaluation Committee	
Gillingham (Chairperson)	CDC: Finance
Tshele	Regional Co-ordinator Security: Gauteng
Lethoba	Director Systems Development
Kunene	Regional Commissioner Limpopo, Mpumalanga and North West
Malinga	Area Manager Modderbee
Lenkoe	Regional Head: Development & Care: Gauteng
Damons	DC: Facilities & Security
F Venter	Secretary of the Committee
Steyn	Deputy Director Security Management
National Bid Adjudication Committee	
Sishuba (Chairperson)	CDC: Development & Care
Gillingham	CDC: Finance (Advisory Capacity)
Petersen	CDC: Corporate Services
Ngubo	DC: Supply Chain Management
Sokupa	Dir: Facilities Planning & Development
Mapasa	Dir: Procurement
Pretorius	Acting DD: Tender Management
Ntuli	SPAO: Tenders
Aries	Procurement: Secretariat
Truter	Clerk: Tenders
Du Preez	Clerk: Tenders

The extension of the access control contract

Venter was made a member of the steering committee that managed the access control contract after it was awarded to Sondolo, and as such, attended steering committee meetings.

The witness referred to previously, who also attended various steering committee meetings, informed that when the DCS had to identify DCS officials for training by Sondolo to monitor the control rooms, it became apparent that the DCS was experiencing staff shortages of suitably computer literate personnel, an essential skill required for the access control contract. He further informed that Agrizzi suggested to

him that he propose to the steering committee that Sondolo would be able to provide the DCS with trained personnel to fulfil the function, which he accordingly did. He did not attend further steering committee meetings and was not sure if DCS acted upon his recommendation.

At one of the steering committee meetings, Gillingham raised the question of outsourcing the staffing function for the control rooms. Gillingham questioned the fact whether or not it would be a cheaper option for DCS to appoint a contractor to provide the staff for the control rooms.

Cost comparisons conducted internally in the DCS indicated that outsourcing the staff component would be cheaper than training DCS members to man control rooms. According to Venter, the initial plan was to outsource the staffing function of only the regional and national control rooms. However, in awarding the contract to Sondolo, the local control rooms were also included in the contract.

Ngubo a procurement official within the DCS, requested the extension of the contract via a memorandum. Commissioner Mti extended the contract on 4 August 2005 and the extension was valued at approximately R200 million.

Contract management

According to Mr Steyn³² (Steyn), the former Deputy Director: Security Management Services, all the work for the access control tender was completed. He confirmed that the maintenance agreement for the tender came into effect on 1 April 2007, and that R2 173 567.92 was paid to Sondolo per month, from the Goods and Services budget of the Directorate Security Management Services, for the maintenance.

Although Steyn indicated that there was no problem in the execution of this tender, the OAG highlighted that it has information that the service provider did not deliver the quality of security equipment specified in the bid specifications.

Benefits received by Gillingham and Mti

The SIU has established that Gillingham received financial benefits from Bosasa over a period of time, for which he gave no valuable consideration. Whilst on the evidence, the payment of the benefits cannot be directly linked to a particular tender dealt with in this report, the timing of the benefits and the tenders led the SIU to conclude that

³² See affidavit of Mr Steyn, Annexure 21

there is, on the evidence, a sufficient link between the benefits and the awarding of all of the tenders dealt with herein.

The benefits received by Gillingham and Commissioner Mti are dealt with in more detail later in section 9 of this report.

8.2.2 Findings

This contract was awarded on 11 April 2005 to Sondolo, a company in which Bosasa is a 40% shareholder.

The evidence shows that there were clear deviations from the *SCM: Guide for Accounting Officers*, more particularly, in that the end user departments were not included in the bid processes. According to the evidence, there was no proper financial planning for this tender in that there was no feasibility study or needs analysis conducted and the budget for this tender was significantly exceeded.

As in the kitchens tender, Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process in relation to the access control tender and was greatly instrumental in the development of the tender specifications for the said tender.

On the evidence of the witness and Malan, Bosasa participated in drafting the bid specifications for this tender. Agrizzi, according to the witness, requested him to prepare specifications in line with the technology Bosasa was employing in the kitchens contract. The witness subsequently identified a number of similarities between the specifications prepared by him and those in the advertisement for this tender. Furthermore, on the evidence of the witness, the specifications were drafted in such a manner that the security aspects afforded Bosasa a clear advantage over the other bidders.

On the evidence of Malan, a document titled "cctv bid.doc" was retrieved from the DCS and Bosasa systems. The document contained specifications for the access control tender. Version 2 of the document was found on the Bosasa system, whilst version 4 thereof was emailed by Gillingham from an email address belonging to Bosasa, to Mr S Mlombile (Acting Chief Deputy Commissioner: Corrections) (Mlombile) of DCS.

Given the fact that there was no BSC constituted to prepare the specifications for the access control tender, the fact that Gillingham played an integral role in the preparation of these specifications, the fact that these specifications were prepared in such a way as to favour Sondolo and the fact that a document containing the bid

specifications for the tender was found on Bosasa's servers (indicating that it was last printed on 13 January 2005, a day before Gillingham commenced drafting the tender specifications – some three weeks before the tender was published) led the SIU to believe that Sondolo/Bosasa, along with Gillingham, were involved in the drafting of the bid specifications for the access control tender.

The evidence further shows that the bid submission period was reduced to 21 days, without any apparent cause. Given the technical nature of the tender and Bosasa's participation in the drafting of the specifications for the bid, the shortened period for submission of bids and the fact that no site visits were allowed, provided Sondolo with an unfair advantage over the other bidders. The SIU was unable to find any evidence indicating that there was any urgency for the resource covered by the access control tender.

Paragraph 1.1 of practice note SCM 3 of 2003 provides that the price/functionality tender evaluation method only applies in tenders where consultant services are procured. It is therefore clear that to the extent that the access control tender did not involve consultant services, the price/functionality tender evaluation method applied to the access control tender was in conflict with paragraph 1.1 of practice note SCM 3 of 2003.

Since Sondolo enjoyed access to the correctional centre environment because of Bosasa's kitchens contract, the fact that no site visits were allowed, in effect, afforded Sondolo a significant advantage over its competitors.

Furthermore, despite it being a bid requirement that bidders should have five years' experience, Sondolo had only been registered 7 days before the closing of bids, yet Sondolo was awarded the tender. This was obviously irregular, since Sondolo should have been disqualified at the BEC stage.

The evidence clearly indicates that Gillingham and Commissioner Mti had received financial benefits from Bosasa. The SIU was unable to find any lawful cause for such benefits being made to Gillingham and Commissioner Mti. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham and Commissioner Mti.

The SIU is of the view that the acceptance by Gillingham and Commissioner Mti of financial and other benefits from Bosasa around the time that the access control tender was awarded, was both irregular and unlawful. Furthermore, Gillingham's failure – he served on the BEC and the NBAC – to disclose this during the

procurement process infringed paragraph 16A8.4 of the Treasury Regulations and as such, constituted an abuse of the supply chain management system.

The impact on the access control tender and the other tenders of the receipt of benefits by Gillingham and Commissioner Mti, will be dealt with more fully under the discussion of the benefits received by them in section 9 of this report.

Turning to the extension of the access control contract, the evidence shows that the access control tender was extended upon the recommendation of Ngubo and authorised by Commissioner Mti on 4 August 2005. In light of the irregular benefits received by Commissioner Mti the extension of this contract was irregular and unlawful.

8.2.3 Recommendations in respect of the access control tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that might have been sustained by DCS on account of the award of the access control tender to Sondolo
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the access control tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Agrizzi, Mansell and Smith may not be office bearers of either Sondolo or Bosasa, that they also be considered for prosecution in their personal capacity
- the DCS cooperates with the NPA for the purposes of prosecuting the persons and entities mentioned above.

8.3 The fencing tender: HK24/2005

The fencing tender was awarded to Phezulu on 29 November 2005. The scope of the fencing tender entailed the supply, delivery, installation and commissioning of security outer perimeter fences with taut wire for outer and inner fences and CCTV surveillance cameras at various correctional centres. The contract value was approximately R486 937 910.

The fencing tender was published on 14 October 2005, with closing date on 14 November 2005. The contract between Phezulu and the DCS was signed on 30 November 2005.

8.3.1 Evidence gathered

The timeline of the tender

For ease of reference, the chronology of the key events involved in the bid process for the fencing tender, is summarised in Table 6 below.

Table 6: Chronology of the key events involved in the bid process for the fencing tender	
Date	Activity
19 Sept 2005	Received the standard technical specifications for outer perimeter fences for prisons from DPW
20–30 Sept 2005	Compilation of bid specifications
4 Oct 2005	Compilation of Bid documents
6 Oct 2005	Request to government printers to publish the bid invitation
14 Oct 2005	Bid invitation is published
18 Oct 2005	Memorandum dated 13 October 2005 received from Dir: Facilities Planning and Development confirming availability of funds and providing "Request to Invite Bids"
25 Oct 2005	Compulsory information meeting
14 Nov 2005	Closing date for bids: 6 Bids were received
15 Nov 2005	Initial screening commenced, Tax clearance certificates were requested from 5 of the 6 bidders
15 Nov 2005	Memorandum to Dir: Security Management to convene BEC
17 Nov 2005	Briefing of the BEC
18 Nov 2005	Evaluation of the points for phase 1
18 Nov 2005	Opened financial proposal of short-listed bidder (phase 3)

Table 6: Chronology of the key events involved in the bid process for the fencing tender	
Date	Activity
18 Nov 2005	Calculation of points for phase 4
18 Nov 2005	Compilation of draft recommendation
23 Nov 2005	Finalising recommendation to the NBAC
29 Nov 2005	Recommendation approved by the NBAC
30 Nov 2005	Contract between DCS and Phezulu Fencing is signed
1 Dec 2005	Request government printers to publish the results

Planning of the tender

The SIU could find no evidence indicating that a needs analysis, feasibility studies or proper business plans were compiled for the fencing tender.

The fencing tender was initiated by Gillingham, who on 11 August 2005, requested Damons to obtain permission from Commissioner Mti to erect security fences at 26 Centres of Excellence and 22 High Risk Correctional Centres. Damons in turn instructed Venter to draft the required memorandum. Venter's memorandum was dated 24 August 2005. Venter's memorandum requesting approval for the project and:

- dealt with the utilisation of capital funds earmarked for the construction of 4 New Generation Prisons for the purpose of erecting security fences at 26 Centres of Excellence and 22 High Risk Correctional Centres
- identified the centres where security fences should be erected at an estimated cost of R86 487 000 for the Centres of Excellence and R71 379 500 for the High Risk Centres respectively, bringing the estimated cost of the entire project to R157 866 500
- requested that the procurement process be handled by Gillingham and Ngubo.

Attached to the memorandum were the standard technical specifications for outer perimeter security fences normally used by the DPW. Venter had obtained the specifications, on request of Gillingham, from Mr P du Preez (Du Preez), employed at the Mechanical Engineering, Fire and Security division of the DPW.

The need for fencing at correctional centres was previously identified during initial discussions for the access control tender during which Venter had indicated the

necessity of involving the DPW for assistance on account of its expertise³³ in this area. Venter's suggestion of the DPW's involvement in the fencing tender was supported by Mocheko, Damons and Gillingham. However, Gillingham later did an about turn, by recommending that the DCS should do its own procurement to the exclusion of the DPW.

Gillingham submitted his request for approval of the fencing tender on 31 August 2005. In his request, he recommended that the DCS should do its own procurement and not make use of the DPW. Commissioner Mti approved the request, including the recommendation that the DPW not be included in the procurement process. It is not possible to state on which date the approval was given, as the Commissioner did not indicate a date under his signature.

Venter informed that he completed the Request to Invite Bids (Tenders) form, on 11 October 2005, but deliberately refrained from completing the estimated expenditure section, as his directorate did not have the budget for such a project. The R180 million allocated for the project came from the savings on the compensation of employees' budget.

A letter from Sokupa, dated 13 October 2005, confirmed the availability of funds from the capital works budget for an amount of R160 million. This letter was, however, dated a month after the publication of the tender advertisement.

Venter further informed that on 9 November 2005, he was requested by Gillingham to conduct an updated costing exercise, with an instruction to include earth works, outer fences, taut wire detection, security lighting, CCTV coverage and integration costs. Because costing fell out of his normal scope of work, he approached the DPW for assistance. The DPW provided him with average prices but not a detailed costing. Based on this information from the DPW, he made a calculation and concluded that the cost of the project would amount to R347 383 550.

Venter was requested by the SIU to explain how the distances of the fences as reflected in a extract from the bid document, entitled "Appendix A – List of Centres", was determined. He explained that due to time constraints, he had requested the Heads of the centres that he had identified as requiring fencing, to appoint officials to measure the distances by foot.

³³ See Venter's statement, Annexure 17

The fencing tender was later amended by subsequent variation orders, amounting to approximately R100 million. The additional work that was required to be done, included, *inter alia*, the removal of trees and sub-stations, construction of guard houses, blasting and installation of generators due to inadequate electricity supply as well as erecting additional fences.

According to Steyn by 22 May 2009, R94 700 270.77 had been paid to Phezulu in respect of variation orders, with R4 335 087.12 still due to them.

The bid specifications

The evidence revealed that Gillingham was the project leader for the fencing tender. Although he held meetings with Damons and Venter from the Security Directorate (the end user), he did not discuss the technical fencing specifications with them. His discussions with them concerned issues relating to the bid document, such as what type of fences should be installed and at which centres.

According to Venter, the end user was excluded to a large extent in the tender process. Neither he, nor any other official from his directorate, was involved in the drafting, amending or approval of either the tender specifications or the evaluation criteria. His involvement was limited to obtaining standard specifications from the DPW and identifying the centres where fencing was required.

According to Venter, no tender specification committee was constituted for the fencing tender. According to Truter, Gillingham had, in accordance with paragraph 3.3.1.2 of chapter 3 of the SCM User Manual, certified that the specifications for the bid were obtained from the DPW as a standard set of needs that were adapted to DCS's specific circumstances. According to him, Gillingham, however, failed to indicate who assisted in or was responsible for making the adaptations to the specifications.

The bid evaluation and adjudication

There was great interest shown in the bid by virtue of the fact that the compulsory information meeting held on 25 October 2005 attracted 85 attendees from various enterprises, including Phezulu, Bosasa and Sondolo. However, despite the fact that there was wide interest shown in the bid, also manifested by the fact that documents were issued to 73 entities, only six bids were received.

Truter, a procurement official with the DCS, informed the SIU that he had received a request from his supervisor, Pretorius, after closure of the bids, to inform

Commissioner Mti who the bidders were. Despite being uncomfortable with the request, because information relating to the tender was confidential and people outside the procurement process should not have access to such information, Truter drafted such a memorandum to the Commissioner.

The Code of Conduct and Declaration of Interest forms were signed by the members of the BEC on 17 November 2005. Only Mr SG Oosthuizen declared an interest by virtue of the fact that his son was employed by one of the bidders' subcontractors, namely, Teqcon (Pty) Ltd. However, Gillingham signed the Declaration of Interest forms indicating that he did not have a personal interest in any of the bids forming the subject matter of the procurement process in the fencing tender.

The BEC used the functionality and price evaluation method for evaluating the fencing tender. However, according to Breytenbach, this approach was incorrect. The functionality and price evaluation method is only applicable when procuring the services of consultants, and not for general services such as construction work, catering, cleaning or security. The correct evaluation method that should have been used in this tender was the preference point system, as previously described.

It was a bid requirement – confirmed by Gillingham at the compulsory briefing session held on 25 October 2005 – that the erection of fences had to be completed by 17 March 2006.

However, Phezulu submitted two sets of project plans. The first dealt with the delivery of materials up to the completion date of 17 March 2006, while the second dealt with erection of the fences by the middle of 2007. The erection, addressed in the second project plan, ran far beyond the completion date.

However, other bidders, such as Provicom and Intervid, submitted a single plan for the tender with a completion date of 17 March 2006.

Despite the fact that both Provicom and Intervid's project plans were consistent with the completion date, Gillingham scored both these companies 0 out of 6 for time frames, while scoring Phezulu full marks for its time frames.

The DCS, according to George, did not comply with the CIDB prescripts, for the following reasons:

- The fencing tender was subject to the provisions of the CIDB Act and its regulations.
- In terms of regulation 24, the DCS should have stated in its invitation for tenders that only contractors that were duly registered with the CIDB would be

considered for the tender and, in addition, the DCS should have placed the invitation on the CIDB website.

- In terms of regulation 18, the DCS (as the employer) should have registered the fencing project with the CIDB within 21 days of it having been awarded.
- George, requested the CIDB Registry Department to confirm whether the DCS was registered as an employer at the time the tender was advertised and awarded; it was not
- Table 8 of regulation 17, prescribes the upper limits of the value range for the different grades and a contractor can only do construction work for the public sector up to the maximum values consistent with its grade
- In terms of regulation 25(9), the DCS should have established whether Phezulu was registered with the CIDB prior to awarding the contract to it. George, requested the CIDB Registry Department to confirm whether Phezulu had been registered at the time. The Registry Department indicated that Phezulu had registered for the first time on 10 May 2007, with a "7" grading which meant that Phezulu could only do construction work up to a maximum value of R30 million. The DCS should consequently have awarded the tender to a bidder with a grading of "9" due to the fact that the tender exceeded R30 million. There is no limit for a "9" grading.

The evidence shows that the non-compliance by Phezulu with the CIDB Act and its regulations were not brought to the attention of the NBAC by the BEC.

The minutes of the NBAC meeting reflect that Gillingham attended the meeting not only in his capacity as CDC: Finance, but also as a BEC representative. The minutes further reflect that Petersen, in his capacity as chairperson of the NBAC, confirmed with all officials present that none had any financial interest in any of the bids before the NBAC, since such person(s) would be required to excuse themselves when the relevant bid is presented. Two bids were evaluated during this particular NBAC meeting, namely, the fencing tender and tender DCS9/2005. The Declaration of Interest forms were distributed to all officials present at the meeting for their signatures and were returned to the chairperson. As in the case with the BEC, Gillingham signed the Declaration of Interest form on which he declared that he had no interest in either Phezulu or its sub-contractor, Sondolo.

For ease of reference, the names of the members of the BEC and NBAC who participated in the fencing tender, are set out in Table 7 below.

Table 7: BEC and NBAC members for the fencing tender	
Bid Evaluation Committee	
Gillingham (Chairperson)	CDC: Finance
Damons	DC: Facilities and Security
Venter	Dir: Security Management Services
Oosthuizen	DD: Project Management
Madisa	Regional Co-ordinator: Corrections: Gauteng
Morei	Area Co-ordinator: Corrections: Gauteng
Phaal	Secretary of the Committee
National Bid Adjudication Committee	
Petersen (Chairperson)	CDC: Corporate Services
Gillingham	CDC: Finance (CFO) (Advisory Capacity and BEC representative)
Mlombile	CDC: Corrections
Schreiner	CDC: Central Services
Ngubo	DC: Supply Chain Management
Mapasa	Acting Dir: Procurement
Kgwele	SCO: Secretariat
Aries	COII: Secretariat
Truter	Clerk: Tenders
Davids	Clerk: Tenders

Contract management

On 30 November 2005, Truter forwarded a memorandum to Pretorius, instructing that payments were to be made in strict accordance with the contractual conditions, which provided that:

"The contract manager must certify invoices to the effect that services were delivered correctly and in accordance with the contract before payment can take place".

After the commencement of the contract, the DCS received correspondence from Phezulu indicating that all materials to be used in fulfilling the tender would be purchased from local manufacturers and leading suppliers, including Sondolo and a company by the name of Teqcon (Pty) Ltd.

 47

On 14 December 2005, Phezulu forwarded to the Commissioner, a list of deposits required from DCS, as well as an invoice for a pre-payment of R56 410 172.69. The invoice was attached to a spending plan that reflected how payments should be made in terms of the contract. Venter, who had been appointed as project manager, advised that payment of the first invoice was made on 19 December 2005, by Mr F Venter (F Venter) from Gillingham's office, without any materials having been delivered or work done. Venter only became aware of the payment after it had been made.

On 18 January 2006, F Venter, forwarded Phezulu's second invoice, dated 13 January 2006, to Damons, requesting him to certify it as correct. The second invoice was for R79 138 225.30. Damons, in turn, forwarded this invoice to Venter.

On 20 January 2006, Venter advised Phezulu that it was not clear from the invoice whether materials amounting to the invoice total had been delivered to the sites, as there were no certified delivery notes attached. Venter's concern was that in terms of the contract with Phezulu, 90% of the contract price was only payable on delivery of the full bill of materials. Gillingham, however, instructed Venter that he should verify the spending plan and make payments in terms thereof. The sole purpose, however, of a spending plan, according to Venter, is to determine when materials would be delivered and their value and thus not to make payments that are contrary to the contract.

On the evidence, it would appear that because of the poor planning of this project, the budget was significantly exceeded and in addition gave rise to variation orders valued at R 100 million³⁴.

The evidence shows that Phezulu received 90% of the contract value, amounting to approximately R392 million, prior to the end of the financial year in March 2006 and before any fences had been erected.

The evidence further shows that the integration of the fence to the ON-IMIS access control system at the Johannesburg Correctional Centre is still outstanding, despite the completion date for the project being 17 March 2006.

³⁴ The budget for the project was R 340 million, the contract awarded to Phezulu was R 486 million.

Benefits received by Gillingham and Mti

The SIU has established that Gillingham received financial benefits from Bosasa over a period of time, for which he gave no valuable consideration. Whilst on the evidence, the payment of the benefits cannot be directly linked to this tender or any of the other tenders dealt with in this report, a sufficient link can be established between the benefits and the award of all of the tenders dealt with in this report, having regard to the timing of the benefits and the award of this and the other tenders.

The benefits received by Gillingham and Commissioner Mti are dealt with in more detail later in section 9 of this report.

8.3.2 Findings

This tender was awarded to Phezulu on 29 November 2005.

As in the case of the other two tenders discussed earlier in the report, the SIU could find no evidence of the establishment of a BSC in relation to the fencing tender.

Further, as in the previous two tenders discussed, Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process in relation to the fencing tender and was largely instrumental in the development of the tender specifications for this tender.

There were clear deviations in the fencing tender from the DCS procurement directives, in that the end user directorates were not included in the bid process. There was also no proper financial planning for this tender as there was no feasibility study or needs analysis conducted. This, on the evidence, led to the budget for this contract being significantly exceeded and variation orders valued at R 100 million being authorised.

In this tender, there was a heavy weighting in the evaluation criteria in favour of the integration of the fences with the computer software system, namely, the ON-IMIS system, which Sondolo/Bosasa had introduced into DCS through the kitchens and access control tenders. This weighting unfairly favoured Phezulu on account of it being an affiliate of Bosasa/Sondolo.

Phezulu was also unfairly favoured in another respect. According to the evidence, the bid conditions specify, and Gillingham confirmed in the compulsory briefing session for this tender, that the erection of the fences was to be effected by 17 March 2006. Two bidders each submitted a single project plan that complied with this deadline. However, Phezulu submitted two project plans in terms of which it undertook to

deliver raw materials to the sites by 17 March, with erection to follow only at a much later date. On the face of it, Phezulu's project plans clearly did not comply with the bid's requirement and Gillingham's confirmation thereof, and as such, ought to have been disqualified on the basis of non-compliance.

Despite the fact that Phezulu should have been disqualified by virtue of its non-compliance with the bid requirements and the CIDB Act and its regulations, the NBAC was not informed thereof and proceeded to award the contract to Phezulu on 29 November 2005. This was clearly irregular.

As earlier observed, paragraph 1.1 of practice note SCM 3 of 2003, provides that the price/functionality tender evaluation method applies only in tenders where consultant services are procured. It is therefore clear that to the extent that the fencing tender did not involve consultant services, the price/functionality tender evaluation method applied to the fencing tender was in contravention of paragraph 1.1 of practice note SCM 3 of 2003.

The SIU is of the view that the structure of the fencing contract as regards payment was designed to favour Phezulu. The SIU examined payments made to Phezulu in respect of this tender. In terms of the contract provisions, 90% of the contract price was payable on delivery of the raw materials to the construction site; it was part of the contract conditions that these deliverables had to take place before 17 March 2006. The structure of this contract accordingly, resulted in the DCS making large payments to Phezulu at a very early stage of the contract. Since this payment was shortly before the end of the financial year, this amounts to fiscal dumping.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tenders. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham.

The SIU is of the view that the acceptance by Gillingham of financial and other benefits from Bosasa, was both irregular and unlawful. Furthermore, Gillingham's failure – he served on both the BEC and the NBAC – to disclose this during the procurement process, infringed paragraph 16A8.4 of the Treasury regulations and as such, constituted an abuse of the supply chain management system.

The impact on the fencing tender and the other tenders of the receipt of benefits by Gillingham and Commissioner Mti, will be dealt with more fully later herein under the discussion of the benefits received by them in section 9 of this report.

8.3.3 Recommendations in respect of the fencing tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any losses that may have been sustained by the DCS on account of the award of the fencing tender to Phezulu
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of DCS) arising from his irregular conduct relating to the procurement process involving the fencing tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa, their office bearers and to the extent that Mansell and Smith may not be office bearers of either Phezulu or Bosasa, that they also be considered for prosecution in their personal capacity
- the DCS cooperates with the NPA for the purposes of prosecuting the persons and entities mentioned above.

8.4 The television (TV) tender: HK25/2005

The TV tender was awarded to Sondolo on 3 March 2006. The scope of the TV tender entailed the supply, delivery, installation, commissioning and maintenance of television systems and monitors, to all correctional centres within the DCS. It was a requirement that the system had to integrate into the local, regional and national control rooms, and had to provide effective video conferencing facilities.

8.4.1 Evidence gathered

The timeline of the tender

As in the fencing tender, the bid invitation for this tender was also published on 14 October 2005, with the same closing date, namely, 14 November 2005. For ease of reference, the chronology of key events in the bid process for the television tender is summarised in Table 8 below.

Table 8: Chronology of key events in the TV tender	
Date	Activity
3 Oct 2005	Approval obtained for the reallocation of surplus funds from the 2005/2006 budget for numerous projects, including Development (televisions for correctional centres)
7 Oct 2005	DCS requests the government printers to publish the bid on 14 October 2005
13 Oct 2005	Bid documents are finalised
14 Oct 2005	Publication of the bid invitations
18 Oct 2005	Gillingham submits a request to invite bids to the Director, Procurement
25 Oct 2005	Compulsory information meeting
14 Nov 2005	Closing date for bid invitations – 5 bids received
18 Nov 2005	Initial screening completed
21 Nov 2005	Request 2 of the 5 bidders to submit original tax clearance certificates
13 Dec 2005	Briefing of the BEC
14 Dec 2005	Request clarification regarding pricing from Sondolo, and was received
15 Dec 2005	Sondolo receives BEC's recommendation
5 Jan 2006	Recommendation to NBAC is finalised
24 Jan 2006	NBAC meeting – Referred bid back for technical evaluation
25 Jan 2006	Letters of appointment of co-opted members to the BEC for technical evaluation
27 Jan 2006	Technical evaluation by E Phenya and MJ Lethoba

Date	Activity
30 Jan 2006	Gillingham requests final recommendations on the technical evaluation
7 Feb 2006	Facsimile to all bidders requesting to extend bid validity date, all bidders agreed
17 Feb 2006	Resubmission of recommendation to the NBAC
3 Mar 2006	NBAC approves the recommendation without remarks
10 Mar 2006	Contract between DCS and Sondolo signed
10 Mar 2006	Request government printers to publish the bid results

The planning of the tender

The project was initiated on 3 October 2005, when Mr JJ Venter (JJ Venter), Director: Budget Administration, drafted a memorandum seeking approval for the re-prioritisation and re-allocation of surplus funds from the 2005/2006 budget for a number of projects.

Following JJ Venter's memorandum, Gillingham made a recommendation for the approval of funds for the TV tender. This was granted by the Commissioner Mti on 3 October 2005. R60 million was allocated to the TV project. The funds were re-allocated from the R641 million saving on the Compensation of Employees' budget.

Once it had been established that funds were available, Gillingham became actively involved in the tender process as project leader.

The Communications Directorate, which was the end user in this project, was largely excluded from the tender process. Mr M Wolela, the Deputy Commissioner: Communications (Wolela)³⁵, only became aware of the project 2 or 3 days prior to the tender being advertised. It therefore follows that the Communications Directorate did not initiate the project.

The evidence also shows that no needs analysis or feasibility study was conducted.

As already observed, the advertisement for the TV tender was published on 14 October 2005, yet the evidence shows that on 18 October 2005, Gillingham purported to submit a request to invite bids for the tender to the Director: Procurement. The request indicated that the contract period was for 5 years at an estimated cost of R60 million. In addition, Gillingham stated that the Information

³⁵ See affidavit of Mr M Wolela, attached as Annexure 22

Technology Committee had approved the request and that installation and commissioning had to be completed by 17 March 2006. This request was approved on the same day.

The evidence also shows that the lack of planning and consultation with the end user, resulted in the initial budget of R60 million escalating to R224 364 480, the amount for which the tender was eventually awarded.

The communications directorate believed that the system to be installed would allow the DCS management to communicate with other regions and/or correctional centres from a central point. This was, however, not the case, since the integration according to the tender specifications required the TV system to be integrated with existing DCS technologies (ON-IMIS). Had the end user been involved with drafting of the specifications, it would have indicated that its primary concern was the ability of the system to enable communication from a central point.

The bid specifications

The evidence revealed that no tender specification committee was constituted for the television tender.

Truter informed that he was requested by Gillingham to assist him with the review of the specifications for the TV tender. According to Truter, he, however, only assisted Gillingham in addressing procurement related issues and not the technical aspects of the specifications.

According to a Mr JP Venter (JP Venter)³⁶, a principal engineer at the CSIR, he was approached toward the end of 2005 to comment on the specifications for the TV tender. On account of the type of information given to him, he was unable to comment on the technical aspects of the specifications and was able only to comment on superficial and cosmetic issues related to them.

The compulsory information meeting chaired by Gillingham was held on 25 October 2005. During this meeting, Gillingham briefed the attendees on the DCS's objectives in relation to the bid, explained the bid document and highlighted important aspects.

³⁶ See affidavit of Mr JP Venter, attached as Annexure 23

The bid evaluation and adjudication

On 13 December 2005, the Code of Conduct and Declaration of Interest forms were signed by the members of the BEC, in terms of which they were required to declare their interest, if any, in any of the bidders. Gillingham, as chairperson of the BEC, signed this form indicating that he had no interest in any of the bidders for this contract.

As was the case with the previous three tenders, the evaluation method of functionality and price, was used. As in the other three tenders, the threshold for functionality was 70%. Only Sondolo attained the 70% threshold, and as such, qualified to proceed to the next phase.

During phase 2, the BEC unanimously agreed that presentations and site visits were unnecessary, as Sondolo's technical proposal was clear in all respects. The BEC accordingly, recommended Sondolo as the preferred bidder.

The evidence shows that the BEC neither informed the NBAC that the initial budget of R60 million had increased to R224 million, nor did it inform the NBAC of the reasonableness of Sondolo's price.

The NBAC met on 24 January 2006, to consider the recommendations made by the BEC. The NBAC chairperson, Schreiner, required clarification on aspects such as how the need for the bid had been identified and by whom the specifications had been drafted and how the process had been managed. In the course of answering the questions, Gillingham confirmed that no proper business case had been formulated for the project but stated that members from Communications, IT and the CSIR had assisted with the drafting of the specifications for this tender.

Schreiner further inquired why no technical expert from the IT department had been involved in the evaluation process, as the technical requirements were a critical element in the tender. Gillingham replied that there was no one available at the time the evaluation was conducted and that the specifications had been made available to the CSIR and that it had made certain recommendations. However, as already observed, the comments from JP Venter from the CSIR were superficial and cosmetic in nature and did not address the technical aspects of the tender.

For ease of reference, the names of the members of the BEC and NBAC who participated in the procurement process are set out in Table 9 below:

Table 9: BEC and NBAC members for the TV tender	
Bid Evaluation Committee	
Gillingham (Chairperson)	CDC: Finance
Manzini	Dir: Communication Services
Moruane	Dir: Social Work Services
Coetzee	Dir: Formal Education
Gqili	Dir: Sport, Recreation, Arts and Culture
Kunene	Dept Reg Comm.: Limpopo, Mpumalanga and North West
F Venter	Secretary of the Committee
National Bid Adjudication Committee	
Schreiner (Chairperson)	CDC: Development & Care
Sishuba	CDC: Communication
Gillingham	Chairperson of BEC
From documentary evidence at hand, it is not clear who the remaining members were.	

The NBAC referred the bid back to the BEC for technical evaluation. On 25 January 2006, Schreiner co-opted Messrs JP Venter, E Phenya, Director: Customer Relations and M Lethoba, the Director: Systems Development, onto the BEC. The BEC was then mandated to evaluate the bid from a technical point of view and report its recommendations to the NBAC.

The technical evaluation was conducted on 27 January 2006 by the BEC and only two of the three co-opted members. According to JP Venter, despite his having addressed correspondence to the DCS advising that he would be available on both 26 and 27 January 2006, and then from 6 February onward, for a BEC meeting to assist with the evaluation, he was not contacted again and accordingly did not participate in the BEC evaluation.

JP Venter informed the SIU that, in his view, Sondolo had been unfairly favoured by the bid requirement that the TV system and monitors had to be integrated with the existing DCS technologies (ON-IMIS designed by Bosasa), since Sondolo would have had the assistance of Bosasa in integrating the systems. Venter was also believed that it would have been fairer if the integration element had been removed from the specifications and a separate tender for the integration element called for.

The technical committee subsequently met and found that none of the bidders had submitted convincing bids that warranted their being awarded the contract. Both the individual and combined overall technical committee evaluation indicated that none of the bidders had reached the 70% technical threshold, and as such, none could have moved on to the second phase of evaluation. The highest mark Sondolo received from either co-opted member was 67.5%. The technical committee's findings were submitted to Gillingham.

The technical committee's evaluation scores were incorporated by Gillingham into the collective scores of the six other BEC members who had previously evaluated the tender prior to it being sent back by the NBAC for technical review. Thus the scores were effectively based on the scoring of eight individuals. The combination of the scoring of the initial BEC members and the technical committee resulted in the final scores depicted in Table 10.

Table 10: Combined scoring percentages obtained	
Bidders Reviewed	Combined Scoring Percentages
Dimension Data	59.88%
Muster Digicom	22.38%
Connecting Africa	64%
Tat i-Chan Technologies	57.75%
Sondolo IT	80.38%

The BEC's unanimous recommendation that Sondolo be awarded the bid was resubmitted to the NBAC on 17 February 2006. During this meeting, Gillingham informed the NBAC that JP Venter from the CSIR had not been available to assist with the technical review. This statement by Gillingham was, however, incorrect, as Venter had confirmed that he was available on 27 January – the day on which the technical review was conducted – but had not been advised of the meeting. The recommendation was approved on 3 March 2006 by the NBAC, without any further remarks.

The minutes of the NBAC meeting held after the technical review had been finalised, reflected that Gillingham attended not only in his capacity as CDC: Finance, but also as chairperson of the BEC. The minutes further reflected that Declaration of Interest forms were distributed to all members in attendance and that none of the attendees declared any interest in the bid or any of the bidders.

Gillingham signed the Declaration of Interest forms, indicating that he had no personal interest in any of the bids.

 57

The contract was signed between the DCS and Sondolo on 10 March 2006. Despite the delays caused by the technical review, the date for the performance of the tender remained 17 March 2006. This effectively meant that Sondolo had one week in which to complete the entire project countrywide, which it did not do.

Table 11 represents the names of the officials who constituted the NBAC after the technical review had been conducted.

Table 11: BEC and NBAC members for the TV tender	
Bid Evaluation Committee	
Gillingham (Chairperson)	CDC: Finance
Manzini	Dir: Communication Services
Morwane	Dir: Social Work Services
Coetsee	Dir: Formal Education
Gqili	Dir: Sport, Recreation, Arts and Culture
Kunene	Dept Reg Comm.: Limpopo, Mpumalanga and North West
Phenya (Co-opted)	Dir: Customer Relations
Lethoba (Co-opted)	Dir: Systems Development
F Venter	Secretary of the Committee
National Bid Adjudication Members	
Sishuba (Chairperson)	CDC: Development & Care
Petersen	CDC: Corporate Services
Gillingham (Evaluation Committee Chairperson)	CDC: Finance
National Bid Adjudication Members	
Motseki	CDC: Corrections
Ngubo	DC: Supply Chain Management
Tshabalala	DD: Logistic Administration Support
Kgwele	SCO: Secretariat
Aries	COII: Secretariat
Truter	Clerk: Tenders

Contract management

As in the case of the fencing contract, the contract for the TV tender provided that payment of 90% of the bid price would be paid on successful completion of delivery of the full bill of materials on site and 10% after installation.

According to Maako, a number of problems were experienced with the management of the television tender, which apparently stemmed from the lack of planning, and the failure to do a needs analysis and a feasibility study during the initial phase of this tender.

According to Maako, the number of communal cells specified in the specifications did not correspond to the actual numbers at the correctional centres. This resulted in variation orders having to be issued.

Despite the completion date of 17 March 2006, installation of the TV system in the Umtata Management Area only occurred in late 2007 and the beginning of 2008.

The SIU examined the payments made to Sondolo in terms of this contract and discovered an invoice for payment submitted on 13 March 2006, three days after the contract had been signed. The invoice was for R106 million and it was paid on 23 March 2006.

Benefits received by Gillingham and Mti

The SIU has established that Gillingham received financial benefits from Bosasa over a period of time, for which he apparently gave no valuable consideration. Whilst on the evidence, the payment of the benefits cannot be directly linked to this tender or any of the other tenders dealt with in this report, a sufficient link can be established between the benefits and the award of all of the tenders dealt with in this report, having regard to the timing of the benefits and the award of this and the other tenders.

The benefits received by Gillingham and Commissioner Mti are dealt with in more detail later in the report.

8.4.2 Findings

This contract was awarded on 3 March 2006 to Sondolo.

As in the case of the other three tenders discussed earlier, the SIU could find no evidence of the establishment of a BSC in relation to the TV tender.

As in the previous three tenders discussed, Gillingham, outside of his normal duties, played an integral role from the outset in the procurement process in relation to the TV tender and was largely instrumental in the development of the tender specifications for this tender.

Similarly to the previous three tenders discussed, there were clear deviations in the TV tender procurement process from the DCS procurement directives in that the end user directorate was not included in the bid process. There was also no proper financial planning for this tender as there was no feasibility study or needs analysis conducted.

As observed earlier, paragraph 1.1 of practice note SCM 3 of 2003 provides that the price/functionality tender evaluation method applies only in tenders where consultant services are procured. It is therefore clear that to the extent that the TV tender did not involve consultant services, the price/functionality tender evaluation method applied to the TV tender was in conflict with paragraph 1.1 of practice note SCM 3 of 2003.

The SIU is of the view that the structure of the TV contract as regards payment was designed to favour Sondolo. In terms of the contract provisions, 90% of the contract price was payable on delivery of the raw materials to the construction site; it was part of the contract conditions that these deliverables had to take place before 17 March 2006, with installation to follow later. The structure of this contract accordingly permitted the DCS to make large payments to Sondolo at a very early stage of the contract. The payment of R 106 million was paid to Sondolo on 23 March 2006, thirteen days after the contract was signed. Since this payment was shortly before the end of the financial year, this amounts to fiscal dumping.

The evidence clearly indicates that Gillingham received financial benefits from Bosasa after the award of this and the previous tenders. The SIU was unable to find any lawful cause for such benefits being made to Gillingham. The evidence further shows that Mansell and Smith were instrumental in effecting these benefits to Gillingham.

The SIU is of the view that the acceptance by Gillingham of financial and other benefits from Bosasa, was both irregular and unlawful. Furthermore, Gillingham's failure – he served on the BEC and the NBAC – to disclose this during the procurement process, infringed paragraph 16A8.4 of the Treasury regulations and as such, constituted an abuse of the supply chain management system.

The impact on the TV tender and the other tenders of the receipt of benefits by Gillingham and Commissioner Mti, will be dealt with more fully under the discussion of the benefits received by them.

8.4.3 Recommendations in respect of the TV tender

The SIU recommends that:

- the DCS considers instituting civil proceedings in the appropriate forum for the recovery of any loss that may have been sustained by the DCS on account of the award of the TV tender to Sondolo
- the DCS considers instituting disciplinary proceedings against Gillingham (Commissioner Mti no longer being in the employ of the DCS) arising from his alleged irregular conduct relating to the procurement process involving the TV tender
- the NDPP considers instituting criminal proceedings against Gillingham, Commissioner Mti, Sondolo, Bosasa and their office bearers.
- the DCS cooperates with the NPA for the purposes of prosecuting the persons and entities mentioned above.

9 BENEFITS RECEIVED BY GILLINGHAM AND COMMISSIONER MTI³⁷

9.1 Benefits received by Gillingham

A financial analysis conducted in respect of benefits received by Gillingham and his immediate family are dealt with under the following headings:

- Motor vehicles
- Cash and cheque deposits
- Travel
- Rugby season tickets
- Properties
- Private email address

9.1.1 Motor Vehicles

To date, the following vehicles, either purchased in full or partially funded by individuals/entities linked to Bosasa, were received by Gillingham and/or his immediate family members.

VW Golf 5 2005 Model

This vehicle was purchased at the Glen Volkswagen (VW) dealership in Glenvista, south of Johannesburg. Mr Robbie Seegers³⁸ (Seegers), the principal dealer at VW, gave the SIU a file, which revealed that the vehicle was purchased by Gillingham on 1 September 2004. The purchase of the vehicle cost R196 959.97.

The client file contained a Bosasa order form for mud flaps and a 6-disc shuttle to the value of R4 050 and an invoice was made out to Bosasa, for R200 260.02.

An analysis of Gillingham's ABSA bank cheque account, revealed a deposit of R196 959.97 made on 30 August 2004, that is to say, two days prior to the purchase date of the vehicle. Information provided by ABSA bank revealed that a cheque had been deposited into Gillingham's account by Smith, with the reference *Mansell*.

³⁷ A timeline illustrating the benefits received by Commissioner MtI and Gillingham and key dates in the four procurement processes are set out in Annexure 24
³⁸ See affidavit of Mr R Seegers, see Annexure 25

Mercedes E Class E270 CDI 2004 Model

This vehicle was purchased by Gillingham from Grand Central Motors (GCM) in Midrand. The SIU obtained the client file from the principal dealer of GCM, Mr J Heyneke³⁹ regarding this purchase. The client file indicated that the initial offer to purchase appeared to have been signed by Frans Vorster on 11 June 2004 for R492 378. A second offer to purchase was signed by Gillingham on 13 October 2004 for R504 659, as extra specifications had been added to the vehicle.

The client file also indicated that on 13 October 2004, Gillingham made a deposit on this vehicle of R120 281 by way of a cheque.

An analysis of Gillingham's ABSA bank cheque account, revealed a deposit of R155 000 made at the Key West Branch in Krugersdorp on 12 October 2004. Information obtained from ABSA bank revealed that the R155 000 cheque deposit was made by Smith with the reference *Mansell*.

The SIU established that the balance of the purchase price of the vehicle was financed by Stannic and was paid monthly by a debit order deducted from Gillingham's salary. The vehicle was settled on 20 February 2007.

Silver VW Polo 2006 Model

This vehicle was purchased from Lindsay Saker Krugersdorp (LSK). The SIU spoke to Mr K van der Merwe⁴⁰, the Sales Manager at LSK, regarding the purchase of this vehicle. Van der Merwe handed over a number of documents to the SIU for examination. These were examined and the following established:

- The original offer to purchase document indicated the purchaser's details as Bosasa (Pty) Ltd. The offer to purchase showed the method of payment as cash and was dated 12 April 2004
- The vehicle was invoiced to Bosasa Operations to which the vehicle was delivered, the total purchase price being reflected as R123 269.28
- An extract of the dealer's bank account statement reflects the payment reference of *R Gillingh*, with the payment amount corresponding with the invoice above

³⁹ See affidavit of Mr Heyneke, attached as Annexure 26

⁴⁰ See affidavit of Mr van der Merwe, attached as Annexure 27

- A new delivery check sheet indicated the customer's name as Bosasa Operations (Pty) Ltd; the document was dated 18 April 2006 and the customer acknowledgement signature appeared to be that of Frans Vorster (Vorster)

The SIU also interviewed Ms M van der Schyff⁴¹, the salesperson responsible for the sale of the vehicle. She confirmed that she had been the salesperson responsible for the Bosasa account and that during April 2006 she was contacted by Vorster, Fleet Manager for Bosasa Operations, who placed the order for the Volkswagen Polo on behalf of Bosasa Operations.

According to Ms van der Schyff, Bosasa Operations usually financed their vehicles through Wesbank. However, for this particular transaction, the vehicle was paid for in cash via an electronic funds transfer (EFT), directly into the dealer's FNB bank account.

FNB was requested in terms of section 5(2)(b) of the Act to identify the source of the EFT payment into the LSK's dealership account. FNB was able to identify that the payment had been made from a Standard Bank account bearing account number 80530192.

Standard Bank was requested in terms of s 5(2)(b) of the Act to identify the account holder of account 80530192 and to provide the bank statements for this account. Standard Bank revealed that the account was held by Mr WD Mansell.

Van der Schyff further explained that the identity document of Ryan Albert Gillingham was supplied to her directly by Vorster for vehicle registration purposes. However, the vehicle was collected by Vorster and not R Gillingham.

According to eNaTIS⁴² records, this particular vehicle with licence number TMR507GP was registered in the name of Ryan Albert Gillingham (R Gillingham), ID 841024 5006 088. The SIU has established that R Gillingham is the natural son of Gillingham.

White VW Polo 2006 Model

Regarding the purchase of this vehicle, the SIU spoke to Mr M Thomas (Thomas)⁴³, General Manager of The Glen Volkswagen (TGV). Documentation contained in the client file for this particular transaction indicated that the purchase price was

⁴¹ See affidavit of Ms van der Schyff, Annexure 28

⁴² Electronic National Traffic Information System (eNaTIS)

⁴³ See affidavit of Mr M Thomas, attached as Annexure 29

R131 367.99. The payment was made directly into TGV's Standard Bank account, via EFT, on 21 December 2006.

A "Motivate Data Capture" document, contained in the client file, indicated that Megan Gillingham (M Gillingham) was the client. However, the email address of the client was reflected as andries@bosasa.com. This document also indicated that the method of finance was "Cash".

First National Bank (FNB) was requested in terms of section 5(2)(b) of the Act to identify the account holder responsible for the payment of R131 367.99 to TGV. FNB identified the account holder as Andries van Tonder (van Tonder)⁴⁴. Van Tonder's bank statements reflected a cheque deposit of R140 000 on 21 December 2006 – the same day on which the vehicle payment was made – from JG Smith's Nedbank account. As indicated above, the "Motor Data Capture" indicated the email address of the client as andries@bosasa.com.

According to eNatis records, this particular vehicle with licence number VLZ368 GP was registered in the name of M Gillingham, ID 870614 0016 084. M Gillingham is the natural daughter of Gillingham.

The investigation findings suggest that the vehicles purchased for Gillingham's children were acquired through financial assistance from Bosasa or individuals linked to Bosasa or its affiliate companies. The documentation and information gathered from interviews with the salespersons connected to the transactions relating to the sale of the vehicles suggested a direct relationship between the purchase of the vehicles, Bosasa and the subsequent registration of the vehicles in Gillingham's children's names.

Additional profiling of Ryan and Megan Gillingham indicated that at the time the vehicles were purchased, neither of them was employed and as such did not earn any form of substantial income. Their financial position would not have enabled them to afford these vehicles or obtain financing, let alone pay for the vehicles in cash.

Mercedes E Class E320 2007 Model

The eNatis report drawn for this vehicle indicated that it was purchased by Gillingham on 11 April 2007 from Constantia Kloof Motors (CKM) in Roodepoort.

⁴⁴ Van Tonder is an employee of Bosasa


65

According to information contained in the client file obtained from CKM, this particular vehicle was ordered for Vorster but then transferred to Gillingham. According to the sales executive, Mr C Barnard (Barnard) at CKM, Vorster could no longer afford to purchase the vehicle and requested that it be transferred to his business partner, Gillingham. Barnard further informed that the vehicle could only be transferred if it could be proved that there was a business partnership between the two parties concerned.


The client file indicated that proof of such a relationship was provided in the form of documentation in respect of Oak Ridge Trading 114 CC. The client file further indicated that the vehicle was ordered on 9 February 2007 but the close corporation was established on 16 March 2007. The business principals are registered as Vorster and Gillingham. The vehicle was transferred to Gillingham but it is clear that the close corporation was established merely as a means of facilitating this transfer.

Barnard further advised that no trade-in was used but that a payment of R180 000 was received with the reference *Gillingham*, into Sandown Motor Holdings' Nedbank account on 11 April 2007. This particular payment could not be traced to Gillingham, and as such Nedbank was requested in terms of section 5(2)(b) of the Act to provide the SIU with information pertaining to this transaction.

Nedbank was able to confirm that they had received a customer instruction to have the funds transferred. The instruction came from Mr C da CM Bonifacio (Bonifacio). Bonifacio's Nedbank statements indicate both the payment from and a deposit into his account for R180 000 on 11 April 2007. The source of this deposit was identified as a cheque for R180 000 paid from Bonifacio's FNB account. As such, FNB was requested in terms of section 5(2)(b) of the Act to provide the SIU with Bonifacio's bank statements and information pertaining to the origin of the R180 000 paid by Bonifacio.

FNB identified the source of the R180 000 deposit into Bonifacio's account as an EFT from Agrizzi's FNB account. FNB also provided the SIU with Agrizzi's account statements which revealed a R180 000 EFT transaction with the reference "Bosasa" made on 11 April 2007.

The investigation findings suggest that the vehicle purchased for Gillingham was acquired through financial assistance by Bosasa or individuals linked to Bosasa or its affiliate companies. The documentation and information gathered from interviews with the salespersons connected to this transaction related to the sale of the vehicle

 66

suggest a direct relationship between the purchase of the vehicle, Bosasa, and the subsequent registration of the vehicle in Gillingham's name.

9.1.2 Cash and cheque deposits

Table 12 illustrates cash and cheque deposits received by Gillingham. The transactions relate to his ABSA cheque and credit card accounts. Each of the deposits is discussed individually.

Date	Description	Reference	Cheque Acc	Credit Card
30 Aug 04	Deposit	Flora Centre	196 959.97	
12 Oct 04	Deposit	Key West	155 000.00	
5 Aug 05	Deposit	Chq. Bosman Str	22 685.60	
16 Aug 05	Deposit	Chq. Bosman Str	20 000.00	
18 Aug 05	Deposit	Cash Bosman Str	20 000.00	
19 Aug 05	Deposit	Cash Bosman Str	20 000.00	
20 Aug 05	Deposit	Cash Bosman Str	20 000.00	
25 Nov 05	Deposit	WDM	10 000.00	
07 Jul 06	Deposit	Cash ABSA Branches		10 000.00
20 Jul 06	Deposit	Cash ABSA Branches		18 000.00
24 Aug 06	Deposit	Cash ABSA Branches		20 000.00

- **30 August 2004:** Cheque for R196 959.97 deposited by JG Smith, used for purchase of Golf 5 on 1 September 2004.
- **12 October 2004:** Cheque for R155 000 deposited by JG Smith, used to pay deposit of R120 281 on Mercedes E270 on 13 October 2004.
- **5 August 2005:** Two cheques amounting to R22 685, one for R2 685 from MX Health and the other for R20 000 signed by WD Mansell and paid from the account of Grande Four Property Trust.
- **16 August 2005:** Cheque for R20 000, paid from the account of WD Mansell.
- **18–20 August 2005:** Three cash deposits of R20 000 each, amounting to R60 000, deposited by Gillingham. On 23 August 2005 a cheque for R66 000 was paid by Gillingham to a company called Sterlings Living. The back of the cheque contained the reference *Kitchen Deposit*. The relevance of the kitchen deposit will be dealt with in the discussion of the properties.

- **25 November 2005:** Cheque for R10 000 with reference *WDM*, the initials for William Daniel Mansell. This payment was traced in Mansell's bank statements, which contained the reference "Payment to POC Gillingham"
- **7 July–24 August:** Three cash deposits of R10 000, R18 000 and R20 000 were made on 7 July, 20 July and 24 August 2006, respectively, into Gillingham's credit card. In addition, overseas payments were reflected in Gillingham's credit card statements for the month of July 2006, suggesting he was abroad during that time.

9.1.3 Travel

The SIU established that M Gillingham, Gillingham's daughter, travelled to Europe on a school endorsed tour during 2005.

The Unit established that Mansell made a cheque payment of R16 410 in favour of Travel Showcase on 2 February 2005. The cheque for this amount bore the reference M Gillingham on the reverse side.

The SIU contacted Mr J Hohls, the owner of Travel Showcase SA who confirmed that a cheque payment of R16 410 was received as part of the tour fees organised by Travel Showcase for Megan Gillingham. He also confirmed that the drawer of this cheque was WD Mansell.

9.1.4 Rugby Season Tickets

The SIU searched Gillingham's residence in terms of section 6 of the Act. During this search, six Blue Bulls season tickets were found. These tickets all displayed the number 0503195.

The Blue Bulls Company who controls the sale of the tickets furnished the SIU with a season renewal document that reflected the number 0503195, as well as corresponding details of Mansell from Campo Distributors, with email address, DANNYMAN@IAFRICA.COM. This information had been replaced with Mansell from L&J Grainary, as a seasonal account holder, with the email address lisamansell@telkomsa.net. In addition, the updated information contained an identity number, 751027 5102 086, which belonged to Mansell's son, Jarrod. The email address was that of Jarrod Mansell's (J Mansell) wife, Lisa. J Mansell gave the instruction to have the names on the ticket changed from Campo Distributors to L&J Grainary.

A system printout from the Blue Bulls Company reflected hand written information indicating that the existing seats, printed as HBBM16–21 be kept, with a request for an additional nine seats to be added.

The tickets found in Gillingham's possession bore the reference HBBM 16–21. It appeared that these were the six tickets purchased in 2005.

From documentation obtained from the Blue Bulls Company, it was established that 15 tickets were purchased for R16 400, in respect of which R1 000 had been paid. The balance of R15 400 was paid by way of a cheque drawn on the Grande Four Property Trust account. There was also a sum of R2 000 that had been paid for parking. The parking was paid for by J Mansell by way of an EFT.

9.1.5 Properties

Erf 106 Midstream Estate

Gillingham purchased undeveloped land, namely, Erf 106 in Midstream Estate, Midrand. A mortgage bond in favour of ABSA for R 695 000 was registered over the property. The transfer fee of R52 027 was paid by means of a cash deposit into the transferring attorney's trust account. A copy of the deposit slip provided by ABSA reflected a signature purporting to be that of Gillingham's eldest son, Patrick Gillingham (P Gillingham).

Architectural Plans for Erf 106 Midstream Estate

A dwelling house was constructed on the property. The codes depicted on the plans for the dwelling and the bank statements and cashbooks of the architects who prepared the plans in respect of this property are listed and explained below:

- B91 = Code used for Bosasa as a client
- G43 = Code used for Mr Gillingham as a client
- G49 = Code used for Mr Gillingham (Jnr) as a client

From information gathered from HMZ Architects (HMZ) the Unit established that the standard cost for a draft plan was R9 131.40. This amount was paid into the HMZ account on 9 June 2005 with reference *Cheque deposit Bosasa Key West Ser 438*. The code B91 was written on the architects' bank statement by their accountants. On 10 June 2006, R41 075 was paid to the architects, with reference *Cheque deposit Bosasa Operations*.



Building on Erf 106 Midstream Estate

Mr R Hoeksma (Hoeksma), owner of Riekele Construction was employed for the construction of Gillingham's dwelling on Erf 106, Midstream Estate, Midrand. Prior to being contracted to build Gillingham's home, Hoeksma had been a contracted builder for Bosasa.

Between 2004 and 2007, it was evident that approximately R30 million was paid to Riekele Construction by Bosasa; during this period, Gillingham's dwelling was constructed. There was no indication in Gillingham's bank account of any payments to Riekele Construction.

Imported Kitchen

Gillingham visited the showroom of Sterlings Living (SL) in Pretoria to have a kitchen, designed according to his requirements, fitted in his newly constructed Midstream Estate home.


As a means of preventing any breach of contract on the part of Gillingham, SL required a 50% deposit after the agreement was signed. In accordance with this provision, Gillingham paid R66 000 to SL by way of cheque on 20 August 2005.

This payment seemed to have been funded by the cash deposits for R60 000 made into Gillingham's account between 18 and 20 August 2005. The balance of the payments to SL were made as follows:

- **5 August 2005:** Cheque payment by Danny Mansell from the Grande Four account for R50 396.92.
- **16 November 2005:** Cheque payment from Danny Mansell from the Grande Four account for R53 500.
- **2 December 2005:** Cash payment of R1 600 at Sterlings Living.
- **10 January 2006:** Cash deposit into Sterlings Living account for R14 313.49, on completion of the job. This deposit was made at the Clearwater Mall in Roodepoort; the person who made the deposit was unknown.

Protea Aftree-Oord

R80 000 was paid to Booysen, Dreyer & Nolte Attorneys on 21 August 2006 to fund the purchase of a retirement home at Protea Aftree-Oord in Heuwelsig, for Gillingham. The payment of R80 000 was effected by way of an EFT, bearing the

 70

reference *P Gillingham*. The document further reflected the name of *Danny Mansell*, a trustee of Grande Four Property Trust, as the person who made the payment.

Gillingham's bank account reflected payments for this property. The identity of the tenant occupying this property has yet to be established.

Erf 971 Midstream Estate

P Gillingham purchased vacant property, namely, Erf 971 Midstream Estate, for R645 000 in March 2006 and a bond of R300 000 was obtained through ABSA Bank. On 24 February 2006, Gillingham paid R350 000 into the account of Grande Four Property Trust, presumably as a contribution towards the purchase price. On 27 February 2006, Grande Four Property Trust paid R392 000 to LC Viljoen Attorney's Inc., presumably partly funded by the R350 000 paid in by Gillingham.

P Gillingham had plans drafted by HMZ in order to develop the vacant land. Between 30 August and 31 October 2006, Riekele Construction paid various amounts totalling R50 589.12 for the drafting of the plans for this development after having received R61 164.42 on 29 August 2006 from L&J Civils, (a company owned by Jarrod and Lisa Mansell).

Before building could commence, P Gillingham sold the land for R720 000 and settled his bond with ABSA Bank. The profit from this sale was paid into an Investec bank account.

9.1.6 Private e-mail address

Gillingham, as discussed earlier, claimed that the email address, kobus@bfn.co.za, was his personal email address.

As also already discussed, the SIU established that this email address was one of many owned and paid for by Bosasa.

9.1.7 Documents seized during search, explaining some of benefits received by Gillingham

During a section 6 search conducted at Gillingham's residence, the SIU seized two documents.

The first document contained notations to the following effect:

"RH: Cost of Land R600,00.00; Building R1,200,000.00".

The RH presumably stands for Riaan Hoeksma.



"R500,000.00 pd GR4; R1,300,000,000.00 TO BE REPAID TO GR4".

GR4 presumably stands for Grande Four Property Trust with links to Mansell.

"MEGAN R135000-00 LOAN AVT".

AVT presumably stands for Andries van Tonder who was responsible for payment of the purchase price of R131 367.99 for the 2006 white Polo purchased for M Gillingham.

"RYAN R127,000-00 LOAN DM"

DM presumably stands for Danny Mansell, who was responsible for payment of the purchase price of R123 269.28 for the 2006 silver Polo purchased for R Gillingham.

"FRANS R180,000.00 LOAN FRANS"

Presumably Frans stands for Frans Vorster, Fleet Manager at Bosasa who initially placed the order for the Mercedes E320 2007 model subsequently taken over by Gillingham and in respect of which R180 000 was paid by EFT by Agrizzi.

The second document reflects the bank details for the Grande Four Property Trust and the amount of R350 000 suspected to be the details for the payment made by Gillingham to Grande Four. This amount was used to fund the amount paid to LC Viljoen attorneys for P Gillingham's land in Midstream Estate.

9.2 Findings in respect of benefits received by Gillingham

The evidence convincingly established that the purchase of the VW Goff 5; the silver VW Polo and the white VW Polo, together with the part payment of R120 281 on the Mercedes E 270 and the part payment of R180 000 on the Mercedes E320 for Gillingham and his family, were financed by Bosasa acting through the agency of various individuals and/or entities.

The evidence also firmly established that the overseas trip of M Gillingham, Gillingham's daughter, was financed by Bosasa acting through the agency of Mansell.

The evidence further firmly established that the six rugby season tickets found in the possession of Gillingham, were financed by Bosasa acting through the agency of Mansell.

The evidence also clearly established that Bosasa financed the development of a dwelling house for Gillingham on Erf 106 Midstream Estate, Midrand. In this regard, the evidence showed that the architects were paid R41 075 on 10 June 2006 by

Bosasa. The evidence further shows that between 2004 and 2007, R30 million was paid by Bosasa to Riekele Construction, the same construction company employed to construct the dwelling house on Erf 106. The building costs were approximately R1 200 000, due regard being had to the document found during the search and seizure operation at Gillingham's residence which had the annotation: "RH: Cost of land R600 000; Building R1 200 000". The fact that there was a cheque deposit on 16 August 2005 for R20 000 paid by Mansell and three cash payments of R20 000 each, between 18 and 20 August 2005, coupled with the fact that Gillingham paid R66 000 as a deposit on 20 August 2005 to SL for the imported kitchen, affirmed the involvement of Bosasa in the construction of Gillingham's dwelling on Erf 106.

Whilst the SIU could not establish the depositors of the cash payments into Gillingham's credit card account between 7 July and 24 August 2006, the SIU is satisfied that these payments were probably effected by Bosasa. On the available evidence, there is nothing to indicate the contrary.

The evidence also firmly established that R80 000 was paid by Mansell on 21 August 2006 to the transferring attorney's in respect of a retirement home for Gillingham. The SIU has little doubt that this payment was effected by Mansell acting through the Grande Four Property Trust on behalf of Bosasa.

The evidence revealed that Gillingham paid R350 000 to Grande Four Property Trust, as part payment for vacant property purchased by his son P Gillingham. The trust, after receiving this amount from Gillingham, paid R392 000 to the attorneys attending to the transfer of the property into P Gillingham's name. The evidence further shows that R61 164.42 was paid to HMZ for attending to the plans for the property, by L&J Civils, a company owned by Mansell's son, Jarod and his wife, Lisa. The close connection between Mansell and Bosasa leads to the conclusion that the contribution made towards the proposed development of P Gillingham's property, was in effect made by Bosasa.

The evidence also clearly establishes that Gillingham was using an email address, namely, Kobus@bfn.co.za paid for by Bosasa.

Given that the Bosasa Group of Companies were awarded large contracts, estimated in excess of R1.5 billion, and that Gillingham played an integral role in all of these contracts, the benefits acquired by Gillingham and his family, within the period these contracts were awarded, signifies the existence of an improper and corrupt relationship between Gillingham and the Bosasa Group of Companies.

9.3 Benefits received by Commissioner Mti

According to Ms M Zietsman (Zietsman), an architect, she met and was requested to compile plans for Commissioner Mti for a house to be built on Erf 61, situated in Savannah Hills Estate, Midrand. According to her, this house was to be built for Commissioner Mti. However, the SIU has established that the title deeds reflect the owner of this house as Autumn Storm Investments 119 (Pty) Ltd. The Unit was able to determine that this company belongs to Hoeksma. As earlier observed, between 2004 and 2007, Bosasa paid R30 million to Hoeksma's building construction company, Riekele Construction, for construction work.

Zietsman confirmed that the following payments were made for Commissioner Mti's plans:

- **22 October 2004:** a cheque deposit of R5 500 with the reference *Bosasa Operations*
- **10 December 2004:** a credit transfer payment of R58 361 with the reference *Bosasa*.

To date, the SIU has established that Commissioner Mti occupied the house built for him, built on Erf 61 Savannah Hills, Sagewood Ext 1.

The SIU has further established that Vorster, from Bosasa, placed an order for the purchase of a Volkswagen Toureg motor vehicle for Commissioner Mti, in September 2005. The SIU has further established that Commissioner Mti has since taken possession of this vehicle. The SIU has sought to obtain from the dealer, LSK who dealt with this transaction, further details as to the payment and or financing thereof, but the latter was unable to locate the client file. The SIU recently received a letter from attorneys BDK acting on behalf of Commissioner Mti, in which they offered to make available all the details regarding the purchase of this vehicle. As at the time of preparing this report, the SIU has not obtained such details.

9.4 Findings in respect of Commissioner Mti

The SIU is of the view that the house built by Riekele Construction was built for Commissioner Mti. This can be gathered from the fact that the plans were prepared for Commissioner Mti and that he has taken up occupation of the dwelling. The evidence clearly established that Bosasa effected payment of R5 500 and R58 361 to HMZ for the payment of plans in connection with the construction of the house for Commissioner Mti. The fact that Riekele Construction was previously engaged by Bosasa between 2004 and 2007 and was paid approximately R30 million during this

period for construction work, leads the SIU to conclude that the construction of this house was probably funded by Bosasa.

Whilst the SIU cannot, on the evidence to hand, say with certainty that the Tourag was funded by Bosasa, the fact that Vorster, who has a close connection with Bosasa, was involved in placing the order for this vehicle, in the absence of any evidence pointing to the contrary, raises the concern that Bosasa may have been involved in funding this vehicle, either wholly or in part.

The SIU has not been able to establish that Commissioner Mti gave any valuable consideration to Bosasa for any of the financial benefits received by him.

10 CONCLUSIONS

The SIU is satisfied that the normal procurement process was not followed by the DCS in the four tenders discussed in this report for the reasons advanced.

Given the fact that Gillingham and Commissioner Mti improperly received benefits from Bosasa, the fact that there was a close working relationship between Gillingham and Commissioner Mti leads the SIU to conclude that there was an improper and corrupt relationship between Gillingham, Commissioner Mti and the Bosasa Group of Companies.

In as much as there was an improper and corrupt relationship between Gillingham and Bosasa, the SIU is satisfied that the entire procurement process in each of the tenders was undermined to the extent that Bosasa and its affiliates were unduly and unfairly advantaged as against their competitors for an in respect of the various tenders.

On the evidence before it, the SIU is accordingly satisfied that the improper and corrupt relationship between Gillingham, Commissioner Mti and the Bosasa Group of Companies has seriously undermined the procurement process and exposed the DCS to civil suits by competitors who were unfairly treated.

ANNEXURE “CO 2”

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, HIGH COURT)

CASE NO: 11068/09

In the matter between:

BOSASA OPERATIONS (PTY) LTD

First Applicant

AGRIZZI, ANGELO

Second Applicant

VAN TONDER, ANDRIES JOHANNES

Third Applicant

VORSTER, FRANS HENDRIK STEYN

Fourth Applicant

WATSON, GAVIN JOSEPH

Fifth Applicant

And

SPECIAL INVESTIGATING UNIT

Respondent

ANSWERING AFFIDAVIT

I, the undersigned,




CLINTON OELLERMANN

do hereby make oath and state:

WHY IS NO REFERENCE MADE TO THE PARTS OF THE AFFIDAVIT OF THE PRESIDENT

[Handwritten marks and signatures]

1. I am an adult male project manager, employed by the Special Investigating Unit ("SIU") to manage and direct the investigations of the SIU.
2. The contents of this affidavit are within my personal knowledge where that is apparent from the context, and are true and correct. Where I make legal submissions, I do so on the advice of my legal representatives. I believe such advice to be correct.
3. I am authorised to depose to this affidavit on behalf of the respondent, who opposes the application for an interdict on the grounds set out below. I have read the affidavits filed by the applicants in support of their urgent application, and answer them herein.
4. As is apparent from what I set out hereunder, I am required by the nature of this application and the matters to which it refers, to rely to some extent on hearsay evidence or documents from other parties. I verily believe in the correctness of what is contained in such documents or what has been conveyed to me by others.
5. I have been employed by the SIU since 11 April 2005. I am the lead investigator in an investigation currently being conducted by the SIU concerning procurement irregularities in the Department of Correctional Services ("the Department"). The evidence obtained as a result of the SIU investigation necessitated further investigation into

S

the relationship between the first applicant, Bosasa Operations (Pty), Ltd ("*Bosasa*") and or its employees and certain officials in the employ of the Department. The scope of the investigation is set out in the notices attached as annexures FA16.1 to FA 16.3 to the founding affidavit of Papa Festus Leshabane ("*Leshabane*").

* 6. At this stage of the investigation, I am not at liberty to disclose our findings, as we have not yet reported to the President or Parliament. However, if ordered by a court to do so, I will disclose documentary evidence to a Judge in chambers.

PREVIOUS INVESTIGATION AND IRREGULARITIES FOUND

The investigation has produced evidence that suggests strong indications of irregularity pertaining to the procurement processes under consideration. I anticipate that we will have finalised the investigation shortly and will report to the President within the next three months.

8. In what follows I address:

the *in limine* point that the applicants ought to have joined the President of the Republic of South Africa ("the President") as a respondent;

the extensive general and specific steps taken by the SIU to protect the integrity of the information pertaining to its investigation of the first applicant. I summarise the affidavits deposed to by the SIU's employees and private

Ⓢ

Ⓢ

Ⓢ

("Proclamation R66") in Government Gazette No: 23730 of 8 August 2002. A copy of Proclamation R66 is annexed to the applicants papers marked "FA6". The SIU's mandate was increased in scope by the President through Proclamation R59 of 2004 ("Proclamation R59") published in Government Gazette No: 26990 of 19 November 2004 with the terms of reference being, in addition, fraud in the department for the period 1996 until the date of Proclamation R59. A copy of Proclamation R59 is annexed to the applicants papers marked "FA7".

11. The latest mandate of the SIU was executed by the President in Proclamation R44 of 2007 ("Proclamation R44") published in Government Gazette No: 30527 of 28 November 2007. A copy of Proclamation R44 is annexed to the applicants papers marked "FA8", and the schedule forming part of the annexure is repeated at in Leshabane's affidavit at pages 12 to 14 of the application. I address the basis and terms of reference for Proclamation R 44 below.
12. Section 2(1)(a)(ii), 2(2) and 2(3) of the SIU Act provides in relevant part that:-
- "2 (1) The President may, whenever he or she deems it necessary on account of any of the grounds mentioned in subsection (2), by proclamation in the Gazette –*
- (b) (ii) refer the matter to an existing Special Investigations Unit for investigation;*

Handwritten initials and signatures, including a large 'S' and a signature that appears to be 'B/S'.

forensic consultants. The averments made in answer to the application demonstrate unequivocally that:

NHY SINCE OUR APPLICATION WAS THERE BEEN NO PRESS REPORTS.

The SIU did not leak any information pertaining to its investigation of the first applicant to the media; and

Contrary to the contentions of the applicant, the SIU has not been supine and has certainly taken adequate steps to ensure that the integrity of its information is protected.

I then address *seriatim* certain of the allegations in the affidavits filed by the applicants.

POINT IN LIMINE: MISJOINDER

9. The SIU was established by the President in terms of section 2(1)(a) (i) of the Special Investigating Units and Special Tribunals Act, 74 of 1996 ("SIU Act") by Proclamation R118 of 31 July 2001 ("Proclamation R118").
10. The President initially authorised the mandate of the SIU to investigate the findings of corruption within the Department of Correctional Services ("the department") in Proclamation R66 of 2002

✓
✓
S
A

2(2) *The President may exercise the powers under subsection (1) on the grounds of any alleged –*

- (a) *serious maladministration in connection with the affairs of any State institution;*
- (b) *improper or unlawful conduct by employees of any State institution;*
- (c) *unlawful appropriation or expenditure of public money or property;*
- (d) *unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;*
- (e) *intentional or negligent loss of public money or damage to public property;*
- (f) *offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which*

✍

✍

✓

✍

offences was committed in connection with the affairs of any State institution; or

(g) unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof. ✓

2(3) The proclamation referred to in subsection (1) must set out the terms of reference of the Special Investigating Unit, and such particulars regarding the establishment of the Special Investigating Unit or the Special Tribunal as the President may deem necessary." ✓

13. The functions of Special Investigating Unit are, within the framework of its terms of reference as set out in Proclamations R66, R59 and R44, set out in s 4 (1) and (2) of the SIU Act: ✓

"(a) to investigate all allegations regarding the matter concerned;

(b) to collect evidence regarding acts or omissions which are relevant to its investigation and, if applicable, to institute proceedings in a Special Tribunal against the parties concerned; ✓

↑

RD

S

RD

- (c) to present evidence in proceedings brought before a Special Tribunal;
- (d) to refer evidence regarding or which points to the commission of an offence to the relevant prosecuting authority;
- (e) to perform such functions which are not in conflict with the provisions of this Act, as the President may from time to time request;
- (f) from time to time as directed by the President to report on the progress made in the investigation and matter brought before the Special Tribunal concerned;
- (g) upon the conclusion of the investigation, to submit a final report to the President; and
- (h) to at least twice a year submit a report to Parliament on the investigations by and the activities, composition and expenditure of such Unit."

THIS WAS DONE IN 2006 - NO REQUIREMENTS MADE FOLLOWING BY SIU.

(2) A Special Investigating Unit must, as soon as practicable after it has obtained evidence referred to in subsection (1)(d), inform the relevant prosecuting authority thereof, whereupon such

J *D* *S* *AD*

evidence must be dealt with in the manner which best serves the interests of the public."

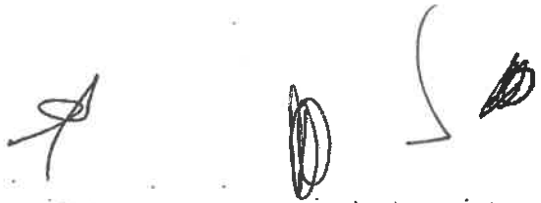
14. The mandate of the SIU in this investigation derives from Proclamation R 44 issued by the President.
15. The SIU may only investigate matters referred to them for investigation by the President in terms of section 2(1) of the Act
16. In terms of section 2 of the SIU Act, the President may, only when he or she deems it necessary on account any of the grounds mentioned in sub-section 2(2) thereof refer a matter to the SIU for investigation.
17. The subject matter of the SIU investigation is set out in the Schedule to Proclamation R 44.
18. When a matter is referred to the SIU, section 4(1)(a) provides in effect that it must do the investigation *"within the framework of its terms of reference as set out in the Proclamation referred to in section 2(1)"*. The terms of reference mentioned in section 4(1)(a) are the President's definition of the matter referred for investigation, that is, matters described in the schedule of Proclamation 44. It becomes the SIU's terms of reference which determines the scope of the investigation.

\$

①

S

①

19. The applicants seek an interdict restraining the SIU from performing its functions and / or proceeding with its investigation of the first applicant pursuant to the respondent's powers as provided for in the SIU Act and the various proclamations, including, but not limited to proceeding with the envisaged interrogation of the second to fifth applicants over the period 24 to 26 March 2009, pending the final determination of an action for a permanent interdict to be instituted by the applicants within 30 days.
20. Although the applicants 'couch' the relief sought in terms of an interim interdict, the effect of the relief sought is in fact a final interdict. Because of the inevitably protracted nature of any action proceedings, the application to be instituted by the applicants will have the effect of permanently placing the investigation on hold. The investigation is at an advanced stage and such an interdict would thereby negate the mandate issued in the proclamation by the President.
21. As the SIU acts in terms of the mandate of the President and reports to the President, the applicants ought to have joined the President in this application. I am advised that should this Honourable Court be of the view that the relief sought is final in effect, the applicants' failure to join the President renders their application defective, and it ought to be dismissed alternatively postponed for them to bring the necessary joinder application. This issue will be addressed in legal argument.
- 

THE STEPS TAKEN BY THE SIU TO PROTECT THE INTEGRITY OF THE INFORMATION OBTAINED IN THE INVESTIGATION OF THE FIRST APPLICANT

22. The SIU has evaluated its processes undertaken for data retrieval and restoration in the investigation into the first applicant. The assessment unequivocally reveals that the information leaked to the media was not by any member of the SIU or its private forensic consultants engaged in the data retrieval and restoration exercise.

23. There are only four sources of electronic data obtained by the SIU, which are relevant to the information published in the press, and complained of in this application;

The Bosasa server information;

The electronic information forensically imaged from Patrick Gillingham's ("Gillingham") computers;

(1)

The electronic information forensically imaged from Angelo Agrizzi's ("Agrizzi") laptop;

(2)

Information obtained from an informer whose identity the SIU is not at liberty to disclose in this affidavit, but will be made available at the request of the judge hearing the application.

(3)

Handwritten notes: "AFC 10" and "20/2/2009" with a bracket.

Handwritten initials and scribbles at the bottom right of the page.

24. I address below these four sources of electronic information and the individuals who have had access to them. Prior to doing so, I briefly set out the general practices and policies of the SIU in place to address confidentiality.

Practices and policies of the SIU in place to address confidentiality

25. The SIU's employment contracts have terms pertaining to confidentiality, requiring that members may not communicate outside of the Unit. ✓
26. All SIU members are required to take and subscribe to an oath of secrecy before a commissioner of oaths, as provided for in regulation 3(2) of the Regulations: Special Investigating Units and Special Tribunals issued in terms of section 11 of the SIU Act and published in Government Gazette No. 25024, dated 14 March 2003 (Government Notice No. R.360 of 2003) ("the SIU regulations"). ✓
27. Regulation 4 of the SIU Regulations obliges SIU members to keep information confidential. ✓
28. Regulation 6 of the SIU Regulations makes it an offence to breach the requirement for confidentiality, as prescribed by Regulation 4. ✓
- AD S

Verifying compliance and enforcement:

29. The SIU enforces a strict principle of confidentiality in general, but even more so pertaining to our investigations.

30. The confidentiality principle is further supported and enforced by the SIU's Internal Integrity Unit ("IIU"), which subjects SIU members to stringent pre-employment screening and internal integrity vetting measures, and also at times involves subjecting them to voice stress analysis and under cover exercises. The IIU has the authority to investigate all allegations of misconduct.

31. In the investigation into procurement irregularities relating to tenders awarded by the Department, the SIU has been extremely careful in managing the investigation, to protect and manage the confidentiality and integrity of the evidence obtained, mindful of potential disclosures.

32. The members of the investigating team are housed separately from the rest of the SIU members and had received specific instructions not to communicate any information, not even with other members of the SIU.

33. I also point out the SIU does not elicit evidence through the press. We have the machinery created by the Act, in particular in section 5 and 6

*MEYER
NO
MAKE OF THE
NO*

[Handwritten marks]

[Handwritten mark]

thereof at our disposal to access information and evidence that is relevant to our investigations.

34. I now turn to address the electronic data information obtained by the SIU.

The affidavit of Jacques Riel Malan

35. I refer firstly to the supporting affidavit of Jacques Riel Malan ("*Malan*"). In summary, in respect of protecting the integrity of the information obtained through the investigation, he states as follows:

He agreed to the terms of the confidentiality agreement entered into with the SIU(annexure FA17.3.), and is bound by such agreement. (at paragraph 4 to 5)

The data retrieval and restoration exercise at Bosasa

At the request of the SIU he conducted a data retrieval and restoration process at the offices of Bosasa in terms of an agreed protocol between the SIU and Bosasa (See paragraph 37 to 39 of the founding affidavit of Leshabane, as read with annexures "FA17.1" to "FA17.3") (at paragraphs 6 to 10.)Two forensic copies were made of each drive of the Bosasa server:

At present, one of the copies is still sealed and is in his possession in safe storage. Nobody has had access to that copy (including himself);

He is presently utilising the other copy to recover data for purposes of the SIU investigation, which copy is also securely stored at his office. Nobody apart from himself has had access to that copy.(at paragraph 11)

Although the process of recovery of the data is underway, because it is time consuming, complex and incomplete he has not yet transferred any of the data retrieved from the Bosasa servers or user laptops to the SIU. He also has not forwarded such data to anyone else. (at paragraphs 12 to 14)

He has discovered a data deletion utility on the Bosasa servers and found that files were destroyed consistent with that application. It is apparent that utility was installed and the files were deleted shortly prior to the imaging process. (at paragraphs 13)

In the data from Bosasa that he has recovered and analysed, he has not come across the e-mail correspondence annexed to the Mail & Guardian article published on 30 January 2009, (Annexure "FA19" to applicant's founding affidavit).(at paragraph 16)

Malan read the alleged e-mail correspondence between Gillingham and Agrizzi for the first time when it was published in the Mail & Guardian.(at paragraph 17)



Agrizzi's laptop

①

Agrizzi's laptop was forensically imaged during the data retrieval and restoration process. Malan has commenced the process of data recovery but has not yet found any documents that are relevant to the investigation, nor has he found any e-mail correspondence, including the correspondence published by the Mail & Guardian, that is of any relevance to the investigation.(at paragraph 18)

The data retrieved from Agrizzi's laptop is in Malan's possession. Nobody else has had access to it. He has not forwarded such data to the SIU or anyone else.(at paragraph 19)

Gillingham's computers

②

Malan has not had any access to the data obtained from Gillingham's computers.(at paragraph 20)

Electronic data obtained from the SIU's source

③

Jason Jordaan ("Jordaan"), who is employed by the SIU as a cyber forensic lead furnished Malan with a DVD on 15 January 2009, advising that it contained information obtained from a SIU source/whistle blower.(at paragraph 21)

REFER TO IT ALL THE TIME
OK HOW THAT THEY HAVE TO IT

[Handwritten mark]

[Handwritten mark]

[Handwritten mark]

[Handwritten mark]

The DVD has been in safe storage at Malan's office and in his care since obtaining it from Jordaan. Nobody else has had access to it, and he has never discussed the DVD with anyone else from the SIU.(at paragraph 22)

Malan has not analysed or retrieved any of the data on the disk.(at paragraph 23)

36. Accordingly, since December 2008 when the data restoration process was underway, Malan has been the only person who has had access to the data. His analysis is incomplete and he has not released any of the information to the SIU or to any other person.

The affidavit of Jason Jordaan

37. Secondly, I refer to the affidavit of Jordaan. In summary, in respect of protecting the integrity of the information obtained through the investigation, he states as follows:

At the time of his employment by the SIU in 1998, Jordaan swore an oath of confidentiality as required by the Special Investigating Units and Special Tribunals Act, 74 of 1996 ("SIU Act"), which he adheres to at all times in his employment with the SIU.(at paragraph 3)

VERONIE MET JORDAAN. HAD HANDS MEETING.

On 5 September 2008 he attended a meeting with a whistle blower who had some computer information that he wished to make available to the SIU. (at paragraph 4 to 5)

Jordaan wanted to image the whistle blower's entire laptop as this would have ensured evidential integrity. However, the whistle blower did not agree to this. Instead, the whistle blower himself transferred only the files in question from his laptop, which he had with him at the meeting, directly to an external hard drive (a storage device) of Jordaan.(at paragraph 6)

Accordingly, the information transferred had no evidential value from a forensic perspective.(at paragraph 7)

SOMEONE HAD ACCESS TO SERVER.

✓ The data provided was in a compressed format as it had been copied as a data back up. Jordaan was requested by the SIU to decompress and extract the information into a readable format. (at paragraph 9)

Jordaan conducted no analysis on the data at that stage as he had not received any directions from the SIU. (at paragraph 10)

Jordaan confirms that on 29 September 2008 he gave me a CD of the raw data and that I advised him thereafter that I was unable to open any of the data to read it.(at paragraph 11)

Handwritten mark

Handwritten mark

Handwritten mark

On 15 January 2009, at the request of the SIU and at their offices in Pretoria, Jordaan handed Malan a copy of the information received from the source on a CD. (at paragraph 12)

Jordaan confirms that he also attempted to place a copy of the information on my SIU laptop. However, I again advised him that I was not able to open any of the files or documents copied to my laptop and had therefore deleted the information.(at paragraph 13)

Apart from the disks that were furnished to myself and to Malan, the data obtained from the source has been in Jordaan's safe custody since September 2008. (at paragraph 12)

The only time that Jordaan physically looked at the data was at the request of Suad Jacobs ("Jacobs"), approximately a week after the Mail & Guardian article had been published on 30 January 2009. Jacobs requested Jordaan to do a search in the data for the e-mails that the Mail & Guardian had published. After conducting a search, Jordaan discovered that the e-mail correspondence did form part of the data that had been copied by the whistle blower.(at paragraph 14)

Apart from reporting his findings to Jacobs, Jordaan had not released any information or data on the disk to anyone other than Malan or myself. (at paragraph 15)

2 SOURCES
TO: M.C.
WHISTLEBLOWER
JORDAAN



Gillingham's computers

One of Jordaan's colleagues, Henry Baden Wiggill ("Wiggill") was responsible for the process of seizing the electronic information from Gillingham's premises. The imaging and acquiring of the electronic information was performed by Wiggill at the SIU office in Pretoria. After the imaging, the hard drives containing the information were securely stored in a strong room at the SIU office and no-one had access to them. Wiggill did not conduct an analysis of the data. (at paragraph 16)

On 4 November 2008 Jordaan collected all the hard drives containing the Gillingham data and removed them to East London, where they were securely stored, and only he had access to them.(at paragraph 16)

Jordaan was requested by Jacobs to conduct a search on the data utilising both key words and the terms of reference of the search warrant, to determine whether any evidence was available on the hard drives, which he commenced on 7 November 2008.(at paragraph 19 to 20)

On 20 November 2008 Jordaan released two CD's containing the information from the search to Jacobs and to myself. He did not discover any of the e-mail correspondence referred to by the Mail & Guardian amongst the data. However, the letter of concern addressed to Dennis Bloem, and annexed to the Mail & Guardian article was the only document found on Gillingham's computer.

THIS WAS IN THE OFFICE COMPUTER

38. Wiggill and Jacobs have deposed to confirmatory affidavits to Jordaan's affidavit, and also confirmed that they did not disclose the data to anyone else.

39. I confirm that I was unable to access the information furnished by Jordaan to me, either on my hard drive or on the disk and that I did not disclose the information to any other person. ✓

40. Following interviews held with the source, a draft affidavit was prepared, however he is unwilling to depose to an affidavit at this stage. ✓

41. It is apparent from what I have stated above that:

there were a very limited number of people who have had access to the electronic information utilised in this investigation,

the email correspondence was not located in the whistle blower/source's data until after the Mail and Guardian article was published, and

none of the information has been furnished to the press.

THE AFFIDAVIT OF PAPA FESTUS LESHABANE:

✓

[Handwritten signature]

[Handwritten signature]

[Handwritten signature]

5

Ad paragraph 10 thereof:

42. I deny that the applicants merely seek interim relief. The effect of the order sought by the applicants is an indefinite halt to the investigation of the first applicant by the SIU.

43. I am advised that the relief claimed, although cast as interim relief, is final in nature. It is simply not possible for action to be brought and determined on an expedited basis, and the protracted delay which will no doubt arise from the proposed action, will result in an indefinite halt to the investigation.

44. I am further advised that even if the court reaches the conclusion that the relief sought is not of a final nature, the applicants have not made out a prima facie case and accordingly, an interim interdict ought not to be granted.

45. This issue will be addressed in legal argument.

Ad paragraph 11.1 thereof:

46. I deny the contentions advanced in this subparagraph. I have already addressed the SIU structures and policies in place to protect the integrity of the information obtained in the investigation. I also summarised the supporting affidavits deposed to by the employees

Handwritten note:
I think it will answer the question.

Handwritten marks:
A scribble, a large 'S' shape, and a small scribble.

and private forensic consultants of the SIU who had access to electronic information in respect of the BOSASA investigation. They unequivocally deny under oath that they leaked the information to the press. Furthermore, it is apparent that the email correspondence published by the Mail & Guardian was not accessed by the SIU prior to its publication, and has been in the possession of at least one other source since September 2008.

Ad paragraph 11.2 thereof:

47. The first applicant has complained to the SIU that it fears that the SIU's investigative powers are being utilised, abused and/or manipulated by one or more of the first applicant's competitors or persons controlled by them, with the intention of bringing about the termination of tenders awarded to the first applicant. I deny that this is the case. The SIU's investigation is conducted under the mandate issued by the President, within the boundaries set by the SIU Act and the founding proclamation. The SIU is not in any way influenced or controlled by other parties and fiercely guards its independence in giving effect to its mandate to investigate the problem of maladministration and corruption in the Department. As I have explained above, its mandate is to investigate the allegations as set out in Proclamation R44, and no more than that.

Refer to the MASC DOCUMENTATION

✓

ef

D

S

10

48. I deny that the proclamations came into existence primarily to pursue complaints against the first applicant. ✓
49. There are currently three proclamations in force that mandate the DCS to conduct investigations in respect of the Department: ✓
- Proclamation R 44;
 - Proclamation R 59
 - Proclamation R 66.
50. Proclamation 44(annexure FA8 to Leshabane's affidavit) forms the basis of the SIU's current investigation into procurement irregularities within the Department, which includes the procurement contracts concluded between the Department and Bosasa.
51. In the period prior to the issuing of Proclamation 44, Proclamation 66(annexure FA6 to Leshabane's affidavit) mandated the SIU to investigate more broadly a range of alleged maladministration and corruption in the Department, one aspect of which was the procurement of goods and services for the Department and the procedures related thereto.
52. Proclamation R59 extended the scope of the investigation under proclamation R66 to include "*Fraud committed by employees of the Department to the detriment of the Department*".
- S
- ✍️

53. The history of the extensions of the time periods of the earlier Proclamation R 66 is set out in the Motivation for an Extension to the Investigation Mandate / Period of the Investigating Unit as authorised by Proclamation R66 of 8 August 2002 (*"the motivation"*) by the Minister of Correctional Services, Mr BMN Balfour, annexed as "CO1".

54. In the motivation Minister Balfour explains that:

the relevant terms of reference of Proclamation R66 had initially targeted the period between January 1996 and the date of publication of the proclamation, which was 8 August 2002.

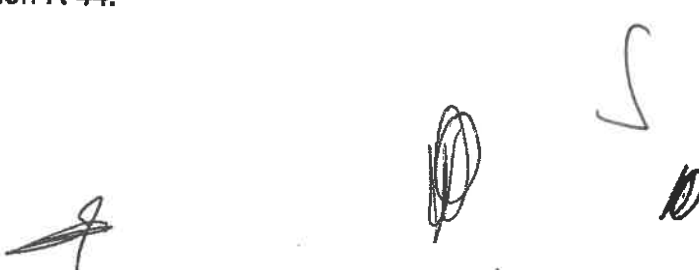
Subsequent to the publication of Proclamation 66, during the course of its investigation into the matters listed in the schedule, the SIU discovered certain fraudulent conduct which had occurred and was still occurring after 8 August 2002. In the result the period of investigation was extended by:

Proclamation R56 till 18 July 2003; and

Proclamation R58 till 19 November 2004.

55. During that investigation, the SIU discovered improper conduct which had occurred and was still occurring and as a result the department

requested to have the period of the SIU investigation again extended, and to authorise its further investigation.

56. Minister Balfour records his full and unconditional support for such an investigation, in the national interest, and states that his department has already expressed its willingness to do everything within its power to bolster up the SIU's capacity to undertake such an investigation. It is apparent from the motivation that Minister Balfour has at all times supported the ongoing investigations in terms of Proclamations R 66 and R 59.
57. In March 2006, after conducting general investigations in terms of Proclamation R 66 and R 59, which partially referred to procurement, the DCS requested the SIU to commence a new investigation into the affairs of the DCS, with its primary focus as areas of procurement (national and provincial across all sectors of the DCS), asset management at correctional centre facilities, the management of correctional centre pharmacy's and to continue its investigations into the Medcor medical aid scheme, while still proceeding with investigations already commenced under Proclamation R66 of 2002 (as amended or extended)).
58. The new investigations that were referred to the SIU by the DCS culminated in Proclamation R 44.
- 

59. The service level agreement ("SLA") or partnership agreement between the SIU and the department was also extended. The SLA is a legal framework which arranges the rights, duties and obligations between the two government entities, in terms of which the SIU at the request of the department, creates and maintains a dedicated forensic capacity to inquire into / investigate / litigate or facilitate appropriate civil or criminal legal action with regard to issues and specific matters emanating from the terms of the proclamation, and in terms of which the department makes funding available and access to information.

*Referred to MIT's
EVENTS*

60. The SLA indicates the departmental support for the proclamation.

61. The SIU had the following sources of information at its disposal at the time of the mandate being issued in Proclamation R 44:

* DCS referred various potentially regular procurement matters to the SIU, along with the relevant documentation,

* DCS handed the SIU its procurement database for the period 2000 to 2006 and a few hundred of the most valuable procurement contracts were analysed;

The SIU pursuant to its investigations in the first partnership with the DCS obtained many documents and sources during the course of its investigations,

[Handwritten mark]

[Handwritten mark]

[Handwritten mark]

highlighting problems in the area of procurement, assets management, correctional centre pharmacy's and the DCS medical aid fund (Medcor);

The DCS provided the SIU with a forensic investigation report compiled by Price Waterhouse Coopers relating to allegations of corruption in the DCS procurement division.

The SIU had access to the final report of the Jali Commission.

The SIU received numerous reports and allegations from members of the public of improper conduct falling within the ambit of matters mentioned in the schedule to Proclamation R66.

Information was also furnished to the SIU by the Public Service Commission and the Auditor General's office.

The SIU also relied on its own pre-proclamation database analysis that had been conducted under the previous proclamations.

62. The result of this process was:

- ✶ The identification of procurement process irregularities;
 - ✶ The identification of particular red flag contracts which were used as indicators based on allegations, suspicion or interim findings.
- f B S ①

63. All of this information at the disposal of the SIU was indicative of maladministration, misconduct and corruption in terms of section 2(2) of the SIU Act.

64. In proclamation 44 the SIU investigation is limited to certain subject matter, and in particular procurement, namely:

"1. *The procurement of goods and services by or on behalf of the Department without compliance with the Department's-*

(a) policies, procedures, prescripts, directives, guidelines or standing instructions (hereinafter collectively referred to as the 'prescripts'); and

(b) procurement and provisioning systems or supply chain management systems prescribed by applicable legislation,

in a manner that was not fair, competitive, transparent, equitable and/or cost-effective and payments made in respect thereof.

2. *The failure by officials and employees of the Department to disclose that they had a direct or indirect interest in the suppliers*

and service providers used by the Department, which represented a conflict of interest.

3. *The failure by the officials and employees of the Department to disclose the Department that they were engaged in unauthorised business activities for remuneration outside the scope of their employment under the Public Service Act, 1994) Proclamation No. 103 of 1994 or the Correctional Services Act, 1998 (Act No. 111 of 1998).*

4. *The conduct of –*

- (a) *suppliers and service providers of the Department;*
and
(b) *officials and employees of the Department,*

which has resulted or may result in a loss of, damage to or a lack of control over public money, public property or other resources the Department and any conduct directed at or promoting the aforementioned.

5. *False or inflated claims by, or on behalf of officials and employees of the Department from certain medical aid schemes.*

[Handwritten marks: a signature, a vertical line, and a scribble]

6. *The theft or misuse of the property and resource of the Department by officials and employees of the Department.*
7. *Illegal or irregular practices in terms of which officials and employees of the Department received or solicited benefits from other officials and employees of the Department or from members of the public in connection with the execution of their duties or the failure to execute their duties.*
8. *The conduct of the officials and employees of the Department which was aimed at influencing or hampering any investigation or the destruction of evidence.*
9. *The intimidation of officials and employees of the Department or members of the public by officials or employees of the Department with the aim to conceal corrupt or other unlawful practices within the Department.*
10. *Acts of undue influence and extortion committed by officials and employees of the Department with regard to members of the public and other officials or employees of the Department.*
11. *Fraud committed by officials and employees of the Department to the detriment of the Department."*

65. The investigation was limited to prescribed timeframes namely 1 January 2000 to 28 November 2007.
66. The investigation was based on the allegations contemplated in terms of section 2(2) of the SIU Act, that were made in respect of the Department.
67. It is apparent that Proclamation R44 allows the SIU to investigate the particular area of procurement irregularities.
68. The process of obtaining a proclamation involves robust consultation and assessment of the grounds for the investigation. This includes a consultation process with the relevant Department. A practice has developed in consultation with the Ministry of Justice to ensure compliance with the threshold required by the SIU Act, before a request for a proclamation is submitted to the President. In most if not all instances an in depth assessment of the grounds for the proclamation is conducted by the SIU prior to approaching the President, through the DOJ, to issue a proclamation.
69. In this investigation, this consultation is evidenced through the motivation from the Minister of Correctional Services to the Minister of Justice indicating his support for the investigation. Departmental support is also evidenced through the SLA.

Ad paragraph 11.3

70. I deny that the investigation is not *bona fide*:

a) The Proclamation R 44 is in place to investigate the procurement irregularities in the department; ✓

b) The grounds for the proclamation have been set out above; ✓

c) The proclamation gives the SIU a broad mandate to investigate procurement irregularities in the DCS; ✓

d) The proclamation is supported by the DCS and the Ministry of Correctional Services. ✓

e) The investigation has identified procurement process irregularities.

71. Although there were concerns raised about some of the red flag contracts that were entered into with Bosasa, there were no specific complaints against Bosasa from which the proclamation emanated. It is as a consequence of the evidence obtained thus far in giving effect to the mandate in the Proclamation R 44 that specific evidence relating to Bosasa has been gathered.

Investigation R 44 pass.

NO PROSECUTION INVESTIGATION TO BE CARRIED OUT.

Handwritten initials and marks at the bottom of the page.

Access to Information

72. In its correspondence dated 18 February 2008 (annexure "FA28" to applicants' founding affidavit) the SIU denied the request by the second to fifth applicants for copies of the statements and/or affidavits underlying the complaints, and denied that these were necessary for the attendance at the s 5(2)(b) and (c) hearings. The second to fifth applicant were invited by the SIU to submit a request for access to information in terms of the Promotion of Access to Information Act 2 of 2000 (the "PAIA"), should it require access to information for any other purpose.

73. I have already explained that there were no specific complaints about the First Applicant underlying the investigation. The scope of the investigation was general in nature and pertained to procurement. Tenders awarded to Bosasa were investigated as a result of executing the mandate of the investigation.

74. Accordingly, the SIU takes issue with the contention of the second to fifth applicants that information "concerning the underlying complaints" is necessary for purposes of the questioning.

Referred to
MEMORANDUM
HEARINGS

75. An independent chair will preside at the questioning, to whom they can make specific requests in relation to information and which will be impartially considered.

76. Nevertheless, the SIU hereby tenders as follows:

If the applicants submit a request for access to information in terms of PAIA, the SIU will postpone the s 5(2)(b) or (c) hearings, pending the outcome of such a request under the provisions of PAIA.

to PAIA

Ad paragraph 11.3 thereof:

77. I deny that the investigation is "not bona fide". I have explained above the basis for the investigation. The SIU's investigation is conducted under the mandate issued by the President in Proclamation R44 and is done within the framework of the Act and the terms of reference.

78. Insofar as the allegation that the first applicant was previously cleared by the Department of any wrong doing in relation to the tenders in question, is concerned, that is simply not the case.

*BY COUNSEL
S.A. 2005
S. NW UNIT*

[Handwritten initials and marks]

79. The Department only investigated tender HK 30/2005, and has subsequently requested the SIU to investigate that tender, and provided its full support for the investigation. ✓✓
80. The SIU has never cleared the first applicant of any wrongdoing in relation to the tenders under investigation by the SIU.

Ad paragraph 11.4 thereof:

81. I deny the contentions advanced in this subparagraph. I address these issues in my response to the more detailed averments made in the later paragraphs of Leshabane's affidavit.
82. As is tendered above, although the SIU takes issue with the applicants alleged inability to prepare for the formal questioning, the SIU has agreed not to proceed with such questioning under oath on 24 and 26 March, in the event that the applicants submit an access to information request in terms of PAIA.

Ad paragraph 12 thereof:

83. The extent of the investigation is set out in the notices issued in terms of s 5(2) (b) and (c) of the SIU Act.

Ad paragraph 13 thereof:

S
P
P

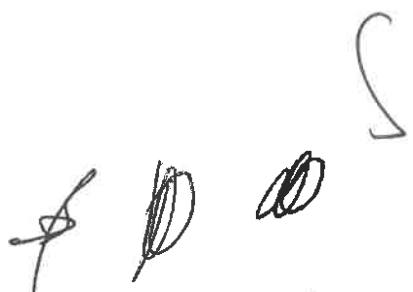
84. I deny that the applicants have to date co-operated fully with SIU in the investigation. The applicant's have sought to delay certain aspects of the investigation. I mention by way of example:

The applicant did not attend a meeting proposed by the first applicant between itself and the SIU *"to set the record straight"*;

The questioning under oath scheduled for 14 November 2008 was postponed at applicant's instance. Correspondence from applicant's attorney (annexed as "CO2") reflects that one of the grounds for such further delay was that *"the relationship between the Gillingham family and certain of the clients whom we represent goes back in time a lot further than we initially understood the position to be, and it is accordingly necessary for us to fully investigate this aspect of the matter to enable us to prepare our clients for your intended questioning."*

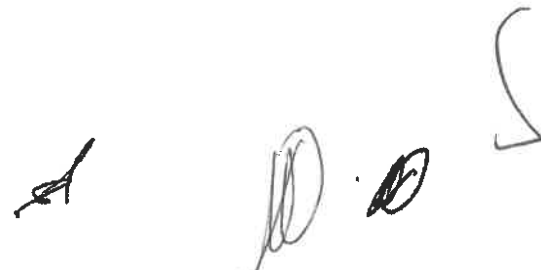
The data retrieval and imaging process at Bosasa was delayed by a week.(Malan at paragraph 9)

During the data retrieval process, Malan was denied access to agreed servers. It was only after a 16 hour delay and with the intervention of Jerome Wells that access was arranged through Brian Beybuck.(Malan at paragraph 10)



85. Malan also explains that he discovered that a data deletion utility was placed on the Bosasa servers – and found destroyed files consistent with that application. He says it was apparent that the utility was installed and the files were deleted shortly prior to the imaging process.
86. It is also apparent from the correspondence annexed as FA 17.1 to 17.3 to Leshabane's affidavit that the First Applicant did not merely seek to co-operate with the investigation but sought to control it by being present at the phase 2 analysis of the data.
87. I have already explained that the SIU has agreed not to proceed with the formal questioning under oath on 24 and 26 March 2009, in the event that the applicants submit a request for access to information in terms of PAIA.

Ad paragraph 14 thereof:

88. For the reasons I have already advanced above, I deny that the relief sought in these proceedings is interim, or that the SIU's investigation into the first applicant ought to be placed on hold. I also deny any abuse of the powers in the SIU Act by the respondent, and in particular insofar as such powers relate to the investigation of the first applicant.
- 

89. For the reasons advanced hereunder in response to the applicant's specific averments concerning urgency, I also deny that there is any basis for this application to be determined on an urgent basis.

Ad paragraphs 15 to 19 thereof:

90. I note the contents of these paragraphs. I am also aware of other tenders awarded to the Bosasa group of companies during the period, for example the fencing contract awarded to Phezulu Fencing.

Ad paragraph 20 to 24 thereof:

91. I have set out above the history to the present investigation and the various proclamations in which the President authorised the mandate of the SIU. To the extent that these paragraphs are not consistent with what I have set out above, their contents are denied.

Ad paragraph 25

92. On 25 April 2007, the Beeld newspaper reported in an article marked "CO3" that the PSC was investigating a possible conflict of interest and the SIU was looking at the process followed during the allocation of the Bosasa tenders.

93. In that article Falek Davids, deputy chief of the SIU is quoted as follows: *"The SIU did however look at certain DCS tenders to determine if the process and awarding(of tenders) were regular. We are still busy with this process. .. But at this stage there are no allegations of specific criminal or unethical behaviour that we investigate against any specific person, official or company."*

94. Prior to that in November 2006, in an article annexed as part of CO3 the Beeld had reported that an investigation by Beeld revealed that:

"Employees of the Bosasa group knew of the tender long before it was advertised on February 4 20005;

Large parts of the tender's technical specifications were written on Bosasa computers in December 2004"

Ad paragraph 30 thereof:

95. I annex the letter addressed to the SIU marked "CO4".

Ad paragraph 35 thereof:

96. I deny that the notices limited the extent of the investigation insofar as it relates to the second to fifth applicants in any manner. The notices merely limited the time period in respect of such questioning to the period 1 August 2004 to 28 November 2007.



Ad paragraph 36 thereof:

97. I deny that the documents requested in the notices were provided to the SIU on 14 November 2008. Although some requested documents were made available, others were not, for example the requested bank statements were not furnished to the SIU.

None of the documents requested

Ad paragraphs 37 to 39 thereof:

98. I refer to the affidavit of Malan, who states that the retrieval process was planned for the first week of December 2008 and delayed by the first applicant till the second week of December. He also states that he was initially denied access to certain servers. I consequently deny that the first applicant's co-operation as tendered was consistently given effect to.

V. Malan's affidavit is false

99. To the contrary it seems that the Applicant desires and seeks to control the direction and result of the investigation. This holds true in that they directed and limited Malan's access to only certain servers and is further manifested in Annexure FA 17.2 to Leshabane's affidavit requested that their cyber forensic expert be present when analysing the information.

Right to protect company

S

§

o

o

100. Malan also states that he has discovered that a data deletion utility was placed on the Bosasa servers – and he found destroyed files consistent with that application. He states that it is apparent that the utility was installed and the files were deleted shortly prior to the imaging process.

101. I have no knowledge of the alleged computer server failure that occurred on 8 November 2007, or the subsequent events, or whether that meant that the applicants were unable to furnish the electronic information referred to in the SIU notices.

102. Malan states that there are a number of forensic experts in South Africa who could conduct the information retrieval exercise.(at paragraph 30)

Ad paragraph 40 thereof:

103. I have already addressed the question of the cooperation of the applicants with the SIU, which has been limited in certain instances.

104. For the reasons advanced in paragraphs 21 to 37 above, I deny that the SIU leaked information to the media about its investigation of the first applicant, or permitted such leaking of information or that it was within the power of the SIU to put an immediate stop to such leaking of information.

*THE APPLICANTS
MAY HAVE
CONTACTED
THE SIU*

[Handwritten signature]

[Handwritten mark]

[Handwritten mark]

[Handwritten mark]





Ad paragraph 41 thereof:

105. I have no knowledge of whether first applicant has been subjected to unbalanced media reporting.
106. I deny that the articles published in the Mail & Guardian on 23 and 30 January 2009, written by Adrian Basson lead *"to the inescapable conclusion that one or more members of the SIU were leaking information to the media."*

Ad paragraph 42 thereof:

107. I admit that the article dated 23 January 2009, annexed as "FA18" contains the following statements:

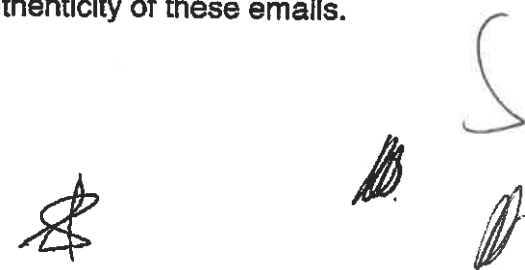
"The M&G was reliably told that the SIU executed search and seizure operations at Bosasa Krugersdorp premises in early December and also raided the Centurion home of the suspended regional commissioner for North West, Mpumalanga and Limpopo, Patrick Gillingham, towards the end of year."

108. I have no knowledge as to whether or not this information was in the public domain.
- 
- 
- 
- 

Ad paragraph 45 thereof:

109. I have no knowledge as to whether the article relies *"entirely out of context, on certain e-mail correspondence between the department's employee, Mr Patrick Gillingham and the second applicant, copies of which e-mails are attached to the articles, annexure "FA19" hereto"*.
110. I note that Gillingham does not confirm the accuracy of paragraph 45 in his confirmatory affidavit.

Ad paragraph 46 thereof:

111. I note that the applicants contest the authenticity of these e-mails. It is respectfully submitted that the applicants cannot, on the one hand contend that the emails being available in the public domain has tainted the investigation by the SIU, and on the other hand contend that the e-mails are not authentic.
112. As I explain above, the SIU has also not been able to determine the authenticity of these e-mails.
113. I note that Gillingham does not confirm the averment in paragraph 46 of Leshabane's affidavit contesting the authenticity of these emails.
- 

Ad paragraph 47 thereof:

114. For the reasons advanced in paragraph 21 to 36, I deny that *"an irresistible inference is to be drawn that Basson's source is one or more members of the SIU, who discloses information unlawfully"*.

Ad paragraph 47.1 thereof:

115. Only 13 of the SIU investigators and employees were aware of the raid on Gillingham's premises prior to its occurrence, namely:

Faiek Davids

Suad Jacobs

Jerome Wells

Clinton Oellermann

Pranesh Maharaj

Prudence Mahlokoane

Corrie du Tolt

Smile Ndlovu

Jacqui Lynn McIntyre

Janine Louw

Deidre Viljoen

Thuli Skosana

Baden Wiggill

Hannes Senekal

116. They are all subject to the confidentiality requirements of the SIU.
117. Nevertheless they have all stated on affidavit under oath that they did not disclose the fact of this search and seizure to Basson or to anyone else.
118. It is an indication of how well the SIU maintained confidentiality about the search and seizure exercise in their determination to preserve the integrity of the information to be obtained in the search, that there was no prior knowledge of the raid by the press. Basson does not suggest that he had prior knowledge of the raid - he only published information concerning the raid some time after it occurred - by which stage it was not only known to members of the SIU.
119. By then officials at the Magistrate's Court where the application for the warrant was sought would also have been aware thereof, as were the security officers at the golf estate where the Gillingham's resides. And of course Gillingham himself was aware of it.
120. Gillingham has deposed to a confirmatory affidavit in support of the application, in which he confirms under oath that he did not disclose the fact of the raid to Basson or anyone else.
121. This seems improbable in light of his longstanding relationship with certain of the applicants, as is confirmed by their attorneys of record,

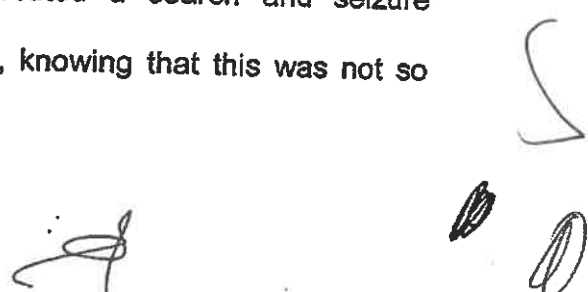
which would suggest that he may well have passed on to employees or directors of the first applicant the fact that his home was raided.

122. In any event I respectfully submit that the SIU did not disclose the raid on Gillingham's premises to the media.

Ad paragraph 47.2 thereof:

123. I deny that the suggested source of this information is far fetched. Several SIU employees have gone under oath to describe the meetings with the whistle blower who was the source of certain electronic information. If necessary, the SIU has tendered to release the identity of the source to a Judge in Chambers, in order that his identity may be otherwise protected.

Ad paragraph 47.3 thereof:

124. I deny that it is likely to have been one or more members of the SIU who are the source of the information in relation to the so-called 'search and seizure operation' as it is termed by Basson in his article, annexure "FA18".
125. It is equally improbable that members of the SIU would have told the Mail & Guardian that they had executed a search and seizure operation at first applicant's premises, knowing that this was not so
- 

and that the SIU acquired certain electronic information from first applicant's premises pursuant to an agreement with first applicant.

126. I deny that the confidentiality agreement concluded with the SIU in relation to this exercise was breached. I refer above to Malan's affidavit in which he confirms that the confidentiality agreement was in no way breached. He sets out the trail of the electronic evidence and significantly, states that the evidence has neither been released to the SIU, nor to other persons.

Ad paragraph 47.4 thereof:

127. I respectfully submit that the SIU's answer to this contention does shift the balance of the above probability.

Ad paragraph 47.5 thereof:

128. I deny that the allegations in the article of 30 January 2009 relate to the precise investigation being conducted and questioning to be undertaken by the SIU as appears from paragraphs 2 and 3 of the notices (Annexure "FA16.1 to 16.3" to Leshabane's affidavit).

129. The article details information obtained from the annexed e-mail correspondence but does not set out the nature of the investigation being conducted by the SIU other than in the broadest terms.

A

OG


130. The notices forming annexure "FA16.1 to FA 16.3" were only ever forwarded by the SIU to the attorneys of record for the applicants.

Ad paragraph 47.7 thereof:

131. I again note that the applicants dispute the authenticity of the e-mails in question and refer to my response in paragraphs 86 to 88 above.

132. I deny that the e-mail correspondence accompanied as annexures to the Mail & Guardian article were sourced from any data obtained by the SIU from Mr Gillingham's or Mr Agrizzi's computers. I refer to the affidavits of Malan and Jordaan who confirm this. The only document that was sourced from Gillingham's computer was the letter of concern addressed to Dennis Bloem. As Jordaan explains, the e-mail correspondence annexed to the Mail & Guardian article was only located as a result of a search conducted by him under instruction from Jacobs in the week after the article was published, in the electronic information obtained from the source.

Ad paragraphs 49 to 49.4.3 thereof:

133. The content of the letter addressed to the SIU is noted. The applicants deny the contentions advanced in the various subparagraphs. I have already addressed those issues.
- 

Ad paragraph 49.5.1 thereof:

134. I deny that section 4 of the Act was contravened by the SIU, as the SIU did not furnish any information obtained during the course of its investigation into the applicant to the press.


Ad paragraph 49.5.2 thereof:

135. I deny that sections 5(3) or 6 of the Act were infringed, or that the privacy rights of the first applicant were infringed by the SIU.

Ad paragraph 49.5.3 thereof:

136. I deny that sections 6(3)(f) of the SIU was ignored by the SIU. Receipts were furnished to the applicant by Malan. Insofar as the First Applicant requires a further receipt, a further receipt will be has been forwarded to the First Applicant by the SIU prior to the hearing of the matter.
137. I have already addressed the data analysis process that is underway, and that Malan has not yet completed his search or furnished the information to the SIU.



138. Malan confirms that he is not recovering all the data lost by Bosasa, as a result of the alleged server crash in 2007 and that he is only conducting a data search relating to specific documents that are relevant to the terms of the section 5(2)(b) and (c) notices issued during the SIU investigation. (at paragraph 24)
139. He also confirms that as a result of mirror imaging the Bosasa servers, the search is conducted in respect of all the data on the servers, and he is not yet in a position to determine what data is irrelevant to the investigation and does not fall within the section 5(2) notices. He states that it is not possible to separate parts or documents from a forensic image and preserve the integrity of the relevant data. (at paragraph 26).
140. He further confirms that all of the data that he has access to on the two forensic copies is also physically present on Bosasa's system, and if need be they could undertake the same forensic exercise in analysing their own data. Accordingly, it is not correct for them to complain that they do not have access to the data.(at paragraph 27)
141. However, in order that Bosasa may conduct a forensic process on the data, without having to retrieve and re-image the data from the Bosasa servers, Malan has undertaken to furnish Bosasa with a copy of the forensic discs in his possession, alternatively, to copy the forensic disc onto a hard drive in their presence. (at paragraph 28)
- 

142. The SIU hereby tenders to furnish a copy of the forensic disc on the basis described above.

Ad paragraph 50 thereof:

143. The conclusion of the letter is noted.

Ad paragraph 52.1 thereof:

144. The SIU's response contained in "FA28", is to assure the applicants that no information concerning their client's business activities with the Department was leaked to the press. They also advise that they have consistently declined to supply any information to the press despite numerous requests.

145. I consequently deny that the SIU resorts to a strangely equivocal response, rather it simply offers an assurance that no information has been leaked to the media.

146. I refer to paragraphs 21 to 37 which address the facts relating to the relevant electronic information in the possession of the SIU.

Ad paragraph 52.2 thereof:

[Handwritten marks: a stylized 'S', a circled 'B', and a circled 'D']

147. In terms of an agreement with the first applicant, the SIU obtained electronic information by mirror imaging the data contained on hard drives and servers on the first applicant's premises.

148. The SIU did not remove any books, documents or objects found on the first applicant's premises but downloaded the information as aforesaid. A receipt was issued by Malan to applicants' representative, Leon van Tonder, in respect of the aforesaid. The SIU has issued a further receipt annexed hereto. *NOT AFFIRMED.*

149. I have already addressed this issue at paragraphs 109 to 115 above.

Ad paragraph 52.3 thereof:

150. I have already addressed the question of an access to information request in terms of PAIA.

Ad paragraph 52.4 thereof:

151. I deny that Faiek Davids, the acting projects director of the SIU, is not involved in the investigation underway.

Ad paragraph 53 thereof:

[Handwritten marks: a large 'S' and several scribbles]

152. I deny that the SIU's response establishes or confirms the first applicant's contention that the SIU is abusing the powers bestowed upon it in terms of the SIU Act, or that the investigation currently underway is not *bona fide*. I have already addressed the basis for the investigation. It is simply not the case that the investigation has been undertaken "*at the behest of one or more parties playing out an agenda intended to discredit the first applicant in the eyes of the media and the public generally, utilising the powers bestowed upon the SIU as their instrument to do so.*" ✓

Ad paragraph 54.1 thereof:

153. I have already addressed in paragraphs 21 to 37 the denial by the SIU that one or more of its members is the source of the leak of the information to the media.

Ad paragraph 54.2 thereof:

154. I have already denied that the article of 30 January 2009 deals with precisely the same issues as those referred to the in the notices served on the second to fifth applicants; annexure "FA16" hereto.

Ad paragraph 54.3 thereof:

Handwritten marks at the bottom of the page, including a large 'S' and several scribbles.

*Obligation to
see to
rights of
the
applicant*

155. As I have explained above, the source furnished certain electronic information to the SIU. The SIU has no powers or obligations in terms of the SIU Act to address or investigate whether the source offering the information to the SIU is the source of the leaks to the media. Furthermore, the integrity of the information furnished to the SIU by the source is questionable. As I have explained above, the respondent is not in a position to disclose the identity of the source of the leak to the first applicant, but has undertaken to do so to a Judge in Chambers.

Ad paragraph 54.4 thereof:

*How do they
deny what
the law
requires the
respondent to
do?*

156. I again deny the first applicant's contention that the inference is to be drawn that the SIU has itself leaked the information to the media, or alternatively has been supine in permitting such conduct bearing in mind its rights, powers and obligations in terms of the SIU Act.

157. I deny too that the SIU has acquiesced to the leaking of information to the media, or acquiesced with the media itself in permitting the continued publication of the information.

158. As I mentioned above, with the exception of the letter addressed to Dennis Bloem, the e-mail correspondence published by the Mail & Guardian had not been retrieved or accessed by the SIU prior to its publication. Although the e-mail correspondence, if authentic, may be

[Handwritten marks and signatures]

relevant to the investigation, it is not the primary evidence upon which the investigation is based.

PRIMARY EVIDENCE IS THE M. O.

Ad paragraph 54.5 thereof:

159. I deny that the SIU has permitted any leaks of information to the media in relation to its investigation. The e-mail correspondence was published by the Mail & Guardian prior the SIU retrieving such correspondence.

160. I also deny the further contentions advanced in this paragraph.

Ad paragraph 54.6 thereof:

161. I have no knowledge of the alleged coincidence in respect of the timing of the publication of Basson's allegations to coincide with the award of the department's tender HK14/2008 published in the Government Gazette on 16 January 2008. I note that the applicants contend that the information published by Basson was "speculative half truths published out of context in the media". It is not apparent how such information that is alleged to be "speculative half truths" can in any way impact on the integrity of the SIU investigation.

Ad paragraph 54.7 thereof:

Handwritten marks and signatures at the bottom of the page.

162. I again deny that the source of the leaked information is the SIU, particularly as such information obtained from first applicant's computer's servers in early December 2008 has not yet been given to the SIU by Malan, and only Malan has had access to such information.

Ad paragraphs 54.8 to 54.10 thereof:

163. I have already addressed the SIU's compliance with section 6(3)(f) of the SIU Act. That will, however, be addressed in legal argument, to the extent necessary.

Ad paragraph 54.11 thereof:

164. I have already addressed the application of the PAIA. I deny that requiring the first applicant to comply with PAIA evidences the SIU's lack of *bona fide's* in relation to the investigation in question.

Ad paragraph 54.12 thereof:

165. I have already addressed the issue of return of data. I deny that the SIU's statement evidences any lack of *bona fide's* in dealing with the first applicant and its investigation into the first applicant. I have also

A

S

①

②

already addressed the knowledge of the author of the letter of the investigation above.

Ad paragraph 54.13 thereof:

166. Malan has not completed his analysis, he anticipates that it will be completed within a month.
167. I have already addressed and refuted the possible consequences of the lack of availability of the electronic data by the SIU's tendering of a copy of the forensic disk.
168. I deny that this *"results in an abuse of the SIU's powers in terms of the Act"*.

Ad paragraph 54.14 thereof:

169. I deny that the SIU is conducting a fishing expedition.
170. I refer to Malan's supporting affidavit in which he confirms that he is only conducting a data search relating to specific documents that are relevant to the terms of the section 5(2)(b) and (c) notices issued during the SIU investigation.

Ad paragraph 56 thereof:



171. I again deny that the SIU has publicly disseminated any information obtained during its investigation into the first applicant's dealing with the department to the media or to anyone else. I also deny that the SIU has in any way permitted the ongoing leaking of such information.

Ad paragraph 57 thereof:

172. The contents of the paragraph are noted.

Ad paragraph 58 thereof:

173. The contents of this paragraph are noted. The SIU unequivocally denies that it has tipped off the media about details of its investigation.

Ad paragraph 59 (including 59.1 and 59.2) thereof:


174. I again deny the allegation that the leaks of the information outlined in Leshabane's affidavit came from within the SIU or that the SIU has in any manner rendered itself culpable by acquiescing with such conduct by a known source. I deny the contentions advanced in the various subparagraphs which are made in support of the averment that the

SIU has abused its powers to investigate the applicants, which too is denied.

Ad paragraph 59.3 thereof:

175. I deny that the SIU has abused its powers or that it has denied the applicants the right to apply for the hearings of the potential special tribunal to be held behind closed doors in accordance with section 10(2) of the SIU Act, should the tribunal be satisfied that it will be in the interest of justice to do so, and find that there is a likelihood that harm may ensue to any person as a result of the proceedings being open.
176. I deny that the majority of the information and allegations that would form part of such a special tribunal, were it to be held, are in the public domain. I have already stated that the SIU has not yet established the authenticity of the e-mails published by the Mail & Guardian and only acquired access to those e-mails after publication. The significant evidence and allegations to be relied upon by the SIU are not in the public domain.

Ad paragraph 60 thereof:

177. For the reasons advanced above, I deny the contentions advanced in this paragraph.
- 

Ad paragraph 61 thereof:

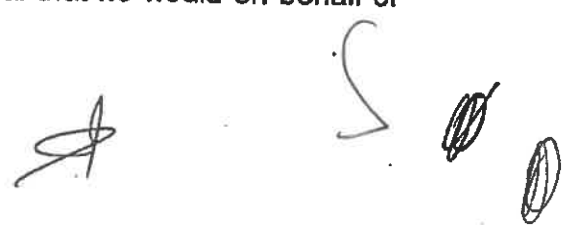
178. I deny that the information leaked was obtained as a result of the SIU's investigation of the applicants. I further deny that the SIU has acquiesced in such conduct, or in any way abused the powers afforded to the SIU by the SIU Act.

Ad paragraph 62 thereof:

179. I again deny that the SIU's conduct in its investigation constitutes an abuse of power, in that it failed to comply with section 3(f) of the SIU Act.

Ad paragraphs 64 to 66 thereof:

180. The terms of reference of the data retrieval process were agreed to by the first applicant and the respondent. The respondents were aware that Malan, employed by Facts Consulting (Pty) Ltd would be conducting the data imaging process. The first applicant consented to such a process as is apparent from FA 17.1 to FA 17.3 annexed to Leshabane's affidavit. The first applicant was also aware that Malan would be responsible for the data retrieval. As only Malan would have the data within his possession, it is logical that he would on behalf of



the SIU issue a receipt for the two forensic copies of each drive that was made.

181. The further receipt is annexed as CO3.

Ad paragraphs 67 to 69 thereof:


182. I reiterate that there is as yet no outcome to the data retrieval process conducted at first applicant's premises.

Ad paragraph 70 thereof:

183. I have already answered these paragraphs.

Ad paragraphs 71 to 77 thereof:


184. I have already addressed the basis for the SIU's investigation, and the tender in respect of the applicants requesting access to information in terms of PAIA. I deny that the SIU's failure to furnish the complaint in any way leads to the conclusion that the SIU's investigation is not *bona fide*.




Ad paragraph 78 thereof:

185. I deny that the applicants have established, even on a *prima facie* basis, any infringement of their constitutional right to privacy or a fair hearing, as well as the related rights contained in sections 5(3), 6(2)(c) and 10(2) of the SIU Act. The SIU was not responsible for the leak to the Mail & Guardian and each of the contentions concerning the rights contained in the Act have already been addressed.
186. I again deny that the SIU has abused their powers.
187. I refer to the tender made by the SIU in paragraph 55 hereof.
188. I deny that the relief sought is competent.

Ad paragraph 79 thereof:

189. The first applicant has not sought to interdict the SIU from the alleged leaking, but has rather sought to interdict the investigation as a whole.
190. The SIU has not conducted itself in the manner complained of by the applicant's. The alleged harm already experienced by the first applicant is not as a result of any conduct on the part of the SIU.
- 

191. The SIU has denied any leaks and hereby undertakes to continue enforcing its confidentiality requirements in respect of such information.
192. In any event, the applicants make out no case in respect of future harm.
193. In the event that the investigation into the first applicant results in further irreparable harm to its reputation, that will be its own doing and based on the evidence obtained during the investigation.
194. The SIU is not responsible for any harm caused to the first applicant due to the alleged violation of its constitutional rights by *"being unfairly and unjustly placed on trial by the media as a result of false or misleading reports about the investigation being published"*.
195. The applicant has a range of remedies available to it to address the alleged trial by the media, such as an action for damages.
196. The reports published have not been about the investigation itself, but rather about e-mail correspondence that may be relevant to the investigation. Prior to their publication, the emails were not being utilised as evidence by the SIU, as they were not yet aware of their existence.
- 


Ad paragraph 80 thereof:

197. I deny that the balance of convenience favours granting the interim interdict.
198. The SIU has not leaked information to the media, nor has it acquiesced with such conduct. The applicants have made out no case in respect of future harm.
199. The prejudice to the public if the SIU is required to indefinitely postpone the continuation of its investigation is immense:

The investigation concerns serious procurement irregularities. It has produced evidence that suggests strong indications of irregularity pertaining to the procurement processes under consideration;

The investigation concerns corruption and maladministration, which are inconsistent with the rule of law and the fundamental values of the Constitution. The public interest requires that these issues are properly and speedily addressed in order that the primary object of the Act is met, namely to enable the State to recover money it had lost as a result of unlawful or corrupt action by its employees or other persons.

It is anticipated that the SIU will have finalise the investigation shortly and will report to the President within the next three months.



200. The SIU has tendered to postpone the formal questioning of the second to fifth applicants pending the determination of an application for access to information to be submitted under PAIA.

Ad paragraphs 81 to 84 thereof:

201. I deny that this application ought to be dealt with on an urgent basis.

The urgency is entirely self created:

The notices to attend the formal questioning were served on the applicants on or about 29 October 2008; and

the questioning sessions were initially set down for hearing on 14 November 2008; and

the questioning sessions were postponed a day or so before 14 November 2008, at the behest of the applicants, to great wasted expense of the Unit, who had to pay the neutral counsel that would have acted as presiding officer in the questioning process;

a new date was agreed with the applicants (i.e. 24 and 26 March 2009)

Handwritten signatures and initials at the bottom of the page. There are three distinct marks: a stylized signature on the left, a large 'S' in the middle, and a circled mark on the right.

The applicants had ample time to bring this application, which would not have necessitated any urgent application proceedings. The fact that the applicants elected to wait until March 2009 to bring the application was a voluntary decision on their part.

Furthermore, if one has regard to paragraph 25 in which the applicant's say that they suspected the SIU of leaking info with the first newspaper report of 22 February 2008, they have waited some 12 months to bring the application.

THE AFFIDAVIT OF PATRICK CONNELL GILLINGHAM

Ad paragraph 3

202. I have already taken issue with the contents of paragraph 47.1 in Leshabane's affidavit.

203. I note that Gillingham does not confirm the correctness of the averment that the email correspondence published by the Mail and Guardian is not authentic.

Conclusion

204. A number of confirmatory affidavits are required to confirm certain averments in this affidavit and the affidavits of Malan and Jordaan.

Handwritten signatures and initials at the bottom of the page, including a large signature on the left, a stylized 'S' in the middle, and several smaller initials on the right.

Because of the time constraints in filing these affidavits and the fact that many of the deponents are in various parts of the country, some of the affidavits filed are unsigned or faxed copies, and other confirmatory affidavits will be filed in due course. The original signed copies will be made available prior to the hearing of the matter.

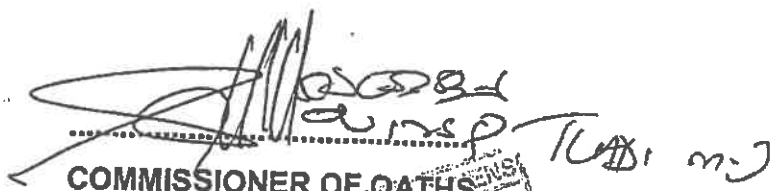
205. I accordingly pray that the application is dismissed with costs, including the costs of two counsel.



CLINTON OELLERMANN

I certify that:

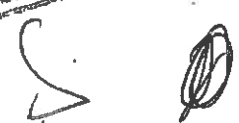
- 1. the deponent acknowledged to me that:
 - 1.1 he/she knows and understands the contents of this declaration;
 - 1.2 he/she has no objection to taking the prescribed oath;
 - 1.3 he/she considers the prescribed oath to be binding on his/her conscience;
- 2. the deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God";
- 3. the deponent signed this declaration in my presence at the address set out hereunder on this day of MARCH 2009 .



COMMISSIONER OF OATHS

Designation and Area **POLOKWANE**
Full Names **MAFEDI TLADI**
Street Address **38 SCHOEMAY STR**

2009-03-10
STATION COMMISSIONER
POLOKWANE
SOUTH AFRICAN POLICE SERVICE



"07"



DEPARTMENT: CORRECTIONAL SERVICES

REPUBLIC OF SOUTH AFRICA

Private bag X136, Pretoria, 0001, Tel. 012 - 307 - 2883, Facsimile 012 - 323 8784
124 Church Street, Poyntons Building (West), . PretoriaENQ: Ms. J Schreiner
TEL: 012 307 2602
DATE: 30 May 2006The Honourable Minister of Justice and Constitutional Development
Ms B.S. MBANDLA

Dear Colleague

**MOTIVATION FOR AN EXTENSION TO THE INVESTIGATION MANDATE/PERIOD OF
THE SPECIAL INVESTIGATING UNIT, AS AUTHORISED BY PROCLAMATION R.66 OF
08 AUGUST 2002**

I refer to the abovementioned matter.

At the request and instance of my department, the Special Investigating Unit ("SIU") is in the process of applying for a further extension to its terms of reference, as stipulated in Proclamation R.66 of 08 August 2002 (as amended).

Handwritten marks: a large 'S' shape, and three illegible signatures or initials.

**MOTIVATION FOR AN EXTENSION TO THE INVESTIGATION MANDATE/PERIOD OF
THE SPECIAL INVESTIGATING UNIT, AS AUTHORISED BY PROCLAMATION R.66 OF
08 AUGUST 2002**

The relevant terms of reference targeted the period between January 1996 and the date of publication of the Proclamation, which was 8 August 2002. Subsequent to the said publication and during the course of the SIU's investigation, it discovered improper conduct falling within the ambit of the matters mentioned in the Schedule to Proclamation R.66 of 2002, which had occurred and was still occurring after 8 August 2002. In the result, the period of investigation was extended by:

1. Proclamation R.56 of 18 July 2003; and
2. Proclamation R.58 of 19 November 2004,

thus mandating the SIU to investigate the matters mentioned in the Schedule to Proclamation R.66 of 2002 between January 1996 and 19 November 2004.

Further hereto, the Schedule of Proclamation R.66 of 2003 was extended by Proclamation R.59 of 19 November 2004, to include Fraud committed by employees of the Department to the detriment of the Department.

Subsequent to the said publications and during the course of the SIU's investigation, it discovered improper conduct falling within the ambit of the matters mentioned in the Schedules to Proclamation R.66 of 2002 and Proclamation R.59 of 2004, which had occurred and was still occurring after 19 November 2004. In the result, my department requested the SIU to do the necessary to have the period of its investigation again extended to authorise its further investigations.



MOTIVATION FOR AN EXTENSION TO THE INVESTIGATION MANDATE/PERIOD OF
THE SPECIAL INVESTIGATING UNIT, AS AUTHORISED BY PROCLAMATION R.66 OF
08 AUGUST 2002

I confirm that the SIU has prepared a draft motivation requesting an amendment to Proclamation R.66 of 2002, which was submitted to my department for scrutiny and we concur with its content.

In view of the foregoing, I appeal to you as a matter of urgency to facilitate the issuing of a proclamation by the President, authorising the SIU to investigate the further matters, to expose the impropriety and the individuals involved in it, and to take the necessary steps to recover the losses.

I record my full and unconditional support for such an investigation in the national interest and my department has already expressed its willingness to do everything within its power to bolster up the SIU's capacity to undertake such an investigation.

The discussions that I have had with Willie Hofmeyer have included a scheme for a real and effective skills transfer from the SIU to officials in my department to take place, thereby capacitating the department to address future impropriety of this nature at a very early stage.

I shall be pleased to discuss any concerns you may have regarding this matter.

Handwritten signatures and initials at the bottom right of the page. There are three distinct marks: a large, stylized signature on the left, a smaller signature in the middle, and a circular stamp or signature on the right.

MOTIVATION FOR AN EXTENTION TO THE INVESTIGATION
MANDATE/PERIOD OF THE SPECIAL INVESTIGATING UNIT, AS
AUTHORSED BY PROCLAMATION R.66 OF 08 AUGUST 2002

I take this opportunity to thank you in advance for your urgent co-operation.

Yours faithfully



MR B.M.N. BALFOUR
MINISTER OF CORRECTIONAL SERVICES

011

abcdef

ABCDEFGH

15:05:12 07-11-2008

1/5

CO2

ROUTLEDGE MODISE

In association with



EVERSHEDS

SPECIAL INVESTIGATING UNIT

Fax No. (012) 843-8813

Attention: **MR. J WELLS**
MR. C. OELLERMANN

Date 07 November 2008

Your ref

Our ref Brian Blebuyck/gm/T18901

Direct dial (27 11) 523-6180

Direct fax 086-673-6955

sandrafreese@eversheds.co.za

Docex 7 Sandton Square

By Fax

CONFIDENTIALITY CAUTION

This document is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged and confidential. If the reader of this document is not the intended recipient, or the employee or agent responsible for delivering the document to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited. If you have received this document in error, please notify us immediately by telephone and return the original document to us at the above address at our cost.

Dear Sirs

RE: NOTICES TO APPEAR BEFORE THE SPECIAL INVESTIGATING UNIT

We refer to the above Notices served on the writer in respect of Mr Gavin Watson, Mr Angelo Agrizzi, Mr Andries van Tonder and Mr Frans Vostar, for whom we act and on whose behalf we accept such notices.

Please note that we do not act for Mr William Daniel Mansell, nor do we accept service of the Notice on his behalf. In this regard, Mr Mansell is not an employee of either Bosasa Operations (Pty) Ltd ("Bosasa") or Sondolo IT (Pty) Ltd ("Sondolo"), and as such, it will be necessary for you to make arrangements to serve your notice on him personally.

On Thursday the 6th instant we consulted with our clients in order to obtain instructions in anticipation of their interrogation on Friday 14 November 2008. In consulting with our clients, it became apparent to us that the matters in issue in respect of which you intend questioning our clients are more extensive than appears at first blush from the questions and documentation referred to in your Notices. It was also apparent to us that for us to properly fulfil our mandate to our clients, it will be necessary for us to have regard to more documentation than that referred to by you in your Notices, and that it is going to take us some time in order to properly prepare ourselves in order to place ourselves in a position to properly and adequately advise our clients in regard thereto.

22 Fredman Drive
Sandton, Johannesburg
P O Box 78333
Sandton City 2146
Tel +27 11 286 6900
Fax +27 11 286 6901

Routledges Incorporated trading as Routledge Modise and Eversheds LLP are both members of Eversheds International Limited

Eversheds LLP is a limited liability partnership, registered in England and Wales, registration number OC304045
Incorporated in the registration number 1992/004450/27
VAT registration number 4430174611
The incorporation does not involve a partnership or any similar sharing of obligations
WWW.EVERSHEDS.CO.ZA

ROUTLEDGE INCORPORATED: DIRECTORS: Terry Hoban (Chairman), Peter van Heekert (Deputy Chairman), Irleen Abdulla, Dave Adams, Carl Anderson, Anne Alton, Brian Blebuyck, Keith Bryson, Tony Coney, Penny Crocker, Paul Cusack, Nylesa Cochrane, Sibaya Colton, Robyn de Kock, Brenda de Witte, Deborah Ol Shana, Warren Durr, Grant Edmondson, Doug Francis, Desmond Gribble, Adam Gurr, John Jacobs, Jon Jacobs, David Jank, Charles Kettle, Zarna Malcom, Peter Kemp, Hennie le Roux, Larry Levin, Geraldine Macdonald, Imami Mahomed, Charles Nassif, Nic Martin, Maryam Mithatan, Sarvam Nio, Lavery Norris, Simone Murray, Graham Park, Eddie Rumbold, Nabil Prasad, Claudia Poley, Gary Pritchard, Cive Rantony, Richard Scapp, City Group, Arnold Shapiro, Ian Sheehan, Jeff Smith, Colin Smith, Emili Souda, Glenn Stiles, Jenny Thiel, Gabrielle Joubert, Johan van der Vyver, Vanessa Venter, Tanya Walsman, Grant Williams, CONDUCT PARTNER John Kell, James Lintford, Derek Noble, Victor Osherson, Wendy Ralston, Kevin Ross, Eric Srinivas, Andrew Staines, Jung van Dyk, Felicia van Riel, ASSOCIATE? Ben Chang, Hester Chappell, Mark Coole, Saundra Gendron, Rickie Hovine, Odwa Kapuya, Ayanda Jandava, Walekasi Olanu, Heinrich Venter, Siba Williams, Anne Wilson

[Handwritten mark]

[Handwritten mark]

[Handwritten signature]

[Handwritten mark]

[Handwritten mark]

It appears further that the relationship between the Gillingham family and certain of the clients whom we represent goes back in time a lot further than we initially understood the position to be, and it is accordingly necessary for us to fully investigate this aspect of the matter to enable us to prepare our clients for your intended questioning.

Moreover, the obtaining of the documentation referred to by you in your Notices is proving more challenging than initially anticipated. In this regard we annex hereto the Bosasa IT Disaster Log dated 8 November 2007 from which it is apparent that Bosasa's server crashed on that date with a catastrophic loss of information. This is confirmed by the note from Datacentrix (Pty) Ltd dated 9 November 2007 which is also attached. In the light of the foregoing, we have advised our clients that in order to comply with your Notices, it is necessary for them to employ the services of an appropriate expert in an endeavour to retrieve the information which has been lost from our clients' server. You will appreciate that this exercise will take some time to complete.

Furthermore, with regard to your request for copies of bank account statements in respect of Bosasa and Sondolo for the period 1 August 2004 to 28 November 2007, our clients' bankers have informed them that the cost of obtaining such statements is likely to exceed an amount of R10 000.00. Please confirm that you are amenable to pay this cost.

Having regard to the foregoing, it is clear to us that our clients' intended questioning on 14 November 2008 cannot proceed on that date as further time is required both to prepare our clients for such examination and to obtain further relevant documentation which is not currently available.

We accordingly request that our clients' interrogation be postponed to a mutually convenient date in January or February 2009 (but not 26 to 29 January 2009 as the writer already has an existing commitment on those days) and we would appreciate your response to this request as a matter of urgency.

With regard to the documentation which is currently available, we note that your notices by and large refer to a request for documents over the period 1 August 2004 and 28 November 2007. Our clients are amenable to furnish to you, on or before 14 November 2008, with copies of those documents referred to in the Notices which are currently in their possession, and which accord with the period referred to above. This will put you in a position to commence considering such documentation prior to the interrogation of our clients in January or February 2009. Having said this, and subject to our clients being granted the requested postponement of the interrogation, our clients will also make available to you further relevant documentation outside of the period 1 August 2004 to 28 November 2007 prior to their interrogation in January/February 2009.

Kindly acknowledge receipt hereof and confirm that given the circumstances you are amenable to postponing our clients' interrogation as suggested, and in this regard, you are requested to telephone the writer on his cell phone 082 567 9074, as he will be in Cape Town on the 10 and 11 November 2008.

We look forward to your response as a matter of urgency.

Yours faithfully

pp


BRIAN BIERBUYCK

For ROUTLEDGE MODISE

 EVERSHEDS





Articles on Bosasa

Did Balfour lie about Mti?

Date: 25/04/2007

Adriaan Basson and Carien du Plessis, Beeld

Johannesburg - Did Ngconde Balfour and his deputy mislead the country about investigations into Linda Mti, the former national prisons commissioner?

This question was being asked after the Public Service Commission (PSC) and the special investigating unit (SIU) indicated that they had not yet decided about Mti's guilt.

In contrast, Balfour, minister of correctional services, issued a statement on March 2, saying Mti was "cleared" by both these bodies.

Loretta Jacobus, Balfour's deputy, in February told Parliament during an information session: "Nothing in the PSC report implicated the commissioner."

Tenders worth billions

The investigations followed after Beeld and Die Burger revealed the relationship between Mti and the Bosasa group of companies.

Companies in the Bosasa group received tenders worth R1.87bn from the department of correctional services over two years.

Mti resigned in November last year - eight months before his contract with the DCS would have expired.

He was then appointed as security chief for the local organising committee for the 2010 World Cup soccer tournament.

The PSC was investigating a possible conflict of interest and the SIU was looking at the process followed during the allocation of the Bosasa tenders.

The March 2 statement read: "He (Balfour) further also announced that the investigation by the Public Service Commission and the Special Investigation Unit on the alleged tender irregularities related to the Sondolo IT tender for the installation of the bio-metric security system in correctional centres, has respectively cleared the former commissioner, Linda Mti of any conflict of interest, unethical or criminal conduct."

Sondolo IT, a company in the Bosasa group, was allocated the R237m contract to install access control systems at 66 prisons countrywide.

According to Humphrey Ramafoko, a spokesperson for the PSC, they had given Balfour only a preliminary report, as further investigation was required by the SIU.

A

→

MB

The PSC was waiting for a final answer from the SIU before a final report would be compiled for Balfour's attention.

"The PSC has not made any findings relating to Mr Mti at this stage," Ramafoko said.

According to Faiek Davids, deputy chief of the SIU, they had "at no stage launched any formal or informal investigation" into Mti.] NB

"The SIU did however look at certain DCS tenders to determine if the process and awarding (of tenders) were regular. We are still busy with this process. p> "But at this stage there are no allegations of specific criminal or unethical behaviour that we investigate against any specific person, official of company."] NB

At the end of last year, Beeld and Die Burger revealed that Bosasa had written large parts of the tender document for the access control system, even before the tender was officially advertised.

Luphumzo Kebeni, Balfour's spokesperson, failed to react to Beeld's enquiries after initially saying these were "easy questions".

- Beeld

Scandal rocks prison services

16/11/2006 07:37 - (SA)

Adriaan Basson and Carien du Plessis, Beeld

Johannesburg - A company with links to Commissioner Linda Mti, the outgoing prisons chief, wrote a large part of a multi-million rand security tender that was subsequently awarded to them by the Department of Correctional Services (DCS).

Sondolo IT, an "unknown player" in the IT sector which is part of the Bosasa group of companies, was last year awarded one of the biggest contracts in the history of this sector (R237 million) for the installation and maintenance of modern access control systems at 66 prisons countrywide.

An investigation by Beeld revealed:

- Employees of the Bosasa group knew of the tender long before it was advertised on February 4 2005;

- Large parts of the tender's technical specifications were written on Bosasa computers in December 2004;

A

S B
ab

- Mti and Gavin Watson, CEO of Bosasa, have a long-standing relationship since the 1980s when Mti was the commander of Mkhonto weSizwe (MK), the ANC's armed wing, and later became chairperson of the ANC in the Eastern Cape, and

- Patrick Gillingham, financial chief of the DCS, is regularly seen at Bosasa's office in Krugersdorp.

Denial

The DCS last night denied that any "external organisation" participated in the compilation of the tender document.

DCS spokesperson Manelisi Wolela said a technical committee drew up the tender specifications by "improving old specifications" with the "latest technology".

Bosasa group spokesperson Papa Leshabane, denied that his group "consults" with clients on official tender documents or that Bosasa received special treatment by the DCS.

About Gillingham's visits to Bosasa, Leshabane said a number of senior DCS and government officials have visited Bosasa "from time to time". The DCS officials did allegedly visit Bosasa to inspect the premises and receive "training and development sessions".

According to Wolela, Gillingham last visited Bosasa in October 2004 as part of a "delegation" who received training for the implementation of a catering system.

According to Beeld's sources Bosasa already knew at the end of 2004 that a tender for access control systems was going to be advertised by the DCS in the new year.

But the most damning proof of wangling on a high level between the DCS and Bosasa, prior to the tender being advertised, is a 28-page document in Beeld's possession containing technical specifications for the tender.

A forensic investigation was done into this document, which showed that the document was created on December 17 2004 on a Bosasa computer - almost two months before the tender was officially advertised.

Mti resigned last week

Professor Basie von Solms, head of the University of Johannesburg's academy for information technology, compared the Bosasa document with the official tender specifications and found that almost 33% of the technical specifications for the tender were "either taken directly (word for word) or agreed very closely" with the Bosasa document. The awarding of this and other multi-million rand tenders by the DCS to Bosasa companies has been in the news since Beeld revealed Mti's link to Bosasa six months ago.

Apart from his relationship of many years' standing with Watson, the prisons chief is also a director of a private company - Lianorah Investment Consultancy - which was registered for him by Tony Perry, Bosasa's group secretary.

According to the registrar of companies' records Lianorah is in the process of being deregistered.

The special investigative unit (the Cobras) recently launched an investigation into the awarding of the Bosasa-tenders and others contracts by the DCS.

Mti's resignation was last week accepted by cabinet.

Mti has always denied any impropriety.

- Beeld

S
P
P

4606

ROUTLEDGE MODISE

In association with



EVERSHEDS

DEPUTY HEAD SPECIAL INVESTIGATING UNIT

Urgent attention: Mr Falek Davids

Date 03 September 2008
 Your ref Falek Davids
 Our ref Brian Blabuyck/gm/115991
 Direct dial (27 11) 523-6027
 Direct fax 086-674-2751
 brianblabuyck@eversheds.co.za
 Docec 7 Sandton Square

By fax 012 843 0113

CONFIDENTIALITY CAUTION

This document is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged and confidential. If the reader of this document is not the intended recipient, or the employee or agent responsible for delivering the document to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited. If you have received this document in error, please notify us immediately by telephone and return the original document to us at the above address at our cost.

Dear Sir

ARTICLE PUBLISHED IN THE MAIL & GUARDIAN NEWSPAPER ON FRIDAY 29 AUGUST 2008.

We address you at the instance of our client Bosasa Operations (Pty) Ltd ("Bosasa") in respect of whom we have previously written to you in relation to articles published in the Mail & Guardian Newspaper under the authorship of Mr Adriaan Basson.

Despite your advices as contained in your letter of 12 March 2008 that the SIU was not targeting any specific company in its audit as to ascertain if the Department of Correctional Services procurement division was adhering to its procurement policy, in a clear reference to our client, the Mail & Guardian has again on the 29 August 2008 published a statement with the effect that the SIU are currently involved in a fraud investigation pertaining, inter alia, into our client.

In this regard we attach hereto a copy of the article which appeared in the Mail & Guardian on 29 August 2008 and refer you to the sixth paragraph thereof wherein it is stated that

"In 2001 President Thabo Mbeki appointed Mtl head of prisons, a position he vacated early and under a cloud in 2006 after being linked to companies whose multimillion-

22 Fredman Drive
 Sandton, Johannesburg
 P O Box 78333
 Sandton City 2146
 Tel +27 11 286 6900
 Fax +27 11 286 6901

Routledges Incorporated trading as Routledge Modise and Eversheds LLP
 are both members of Eversheds International Limited

Eversheds LLP is a limited liability partnership, registered in England and Wales, registration number OC204885
 Routledges Inc registration number 1992/001120/11
 VAT registration number 4420134611
 The incorporation does not constitute a partnership or any mutual sharing of obligations
 www.eversheds.co.za

ROUTLEDGES INCORPORATED DIRECTORS Terry Nelson (Chairman), Peter van Niekerk (Deputy Chairman), Inizan Abdulla, Dave Adams, Carl Abertoni, Neels Adams, Edas Bekayic, Keth Bratton, Tony Caine, Paddy Chesney, Paul Colson, Myra Coetzee, Susan Cunniff, Robert Cunniff, Aashy of Rock, Brian de Villiers, Deborah Di Nino, Warren Dreyer, Mike Dvorak, Graig Edmondson, Dean Fennie, Desmond Grobbelaar, Adam Gora, Innes Harbidge, Julian Isaacs, Jan Jacobson, David Joubert, Charles Kinnaird, Zuzana Kucharska, Peter Kenna, Helene de Roux, Larry Levin, Debbie Mouton, Ibrahim Mohamed, Charles Parry, Ric Parry, Herbert Pridmore, Sandra Pitt, Leary Meehan, Simon Pinter, Alanis Pinter, Glenn Pitt, Brian Puggill, Candice Pyle, Gary Pritchard, Chris Ransome, Bradley Ross, Clive Scarth, Arnold Shapiro, Tim Shapiro, Jeff Smith, Eric Smith, Ewald Smith, Colin Smith, Glenn Smith, Jerry Stone, Stephen (John) Thornhill, John van der West, Yolanda Vorster, Tony Waldman, Grant Williams
 SENIOR ASSOCIATES Richard Arty, Cecile Faurie, Tynan Fawcett, Hilda Hayward, Dennis Hendry, Steve Louwrens, Paul Louwrens, Paul Lombard, Robert Ross, Victor Williams
 ASSOCIATES Helen Adams, Peter Adams, Zuzana Kucharska, Rickie Krause, Owen Kuper, Kumbungu Kujumula, Hebra Lefkowitz, Ella Ches, Marco Clavel, Nick Cash, Hilla Dikoni, Zuzana Kucharska, Agathe Madhona, Wolfram Opre, Umas Opre, Cassie Pinter, Rochelle Pinter, Lee Reynolds, Emma Steiner, Thando Ndlovu, Shela Ngomondzi, Caroline Ntshong, Ayanda Mofokeng, Wolfram Opre, Umas Opre, Cassie Pinter, Rochelle Pinter, Lee Reynolds, Emma Steiner, Neelich Valentyn, Hans van Marck, David Vyal, Fran Winkler, Arne Wilson
 OFFICE MANAGER May-Elaine Thussen

n:\brian blabuyck\bosasa\115991-mail & guardian\correspondence\faxes\deputy head special investigating unit 03 09 08.doc

rand contracts with the department of correctional services form part of a fraud investigation by the Special Investigation Unit.

These ongoing and substantiated allegations on the part of the Mail & Guardian continue to cause harm to our client in its day to day commercial activities. As such, our client has requested us to seek an urgent meeting with you to discuss these ongoing allegations, and to discuss with you our client's stated offer of cooperation in relation to whatever investigations you may be busy with.

To this end, you please be good enough to advise the writer as to when and where it would be convenient to meet to discuss these matters with ourselves and our client.

We await your response at your earliest convenience.

Yours faithfully

Brian Blebuyck

FOR ROUTLEDGE MODISE

BVERSHEDS

18/09 1008 THU 14:23

FAX

001

*** FAX TX REPORT ***

TRANSMISSION OK

JOB NO.	4883
DESTINATION ADDRESS	30001#90214247554
PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	18/09 14:21
USAGE T	01' 15
PGS.	4
RESULT	OK

0115236751

routledge MODISE

Routledge Inc

13:00:46

09-09-2008

1/3

ROUTLEDGE MODISE

In association with



EVERSHEDS

DEPUTY HEAD SPECIAL INVESTIGATING UNIT

Urgent attention: Mr Faiek Davids

Date 03 September 2008
 Your ref Faiek Davids
 Our ref Brian Blabuyck/gm/115991
 Direct dial (27 11) 523-6027
 Direct fax 086-674-2751
 brianblabuyck@eversheds.co.za
 Doxex 7 Sandton Square

By fax 012 843 0113

CONFIDENTIALITY CAUTION
 This document is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged and confidential. If the reader of this document is not the intended recipient, or the employee or agent responsible for delivering the document to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited. If you have received this document in error, please notify us immediately by telephone and return the original document to us at the above address at our cost.

Dear Sir

ARTICLE PUBLISHED IN THE MAIL & GUARDIAN NEWSPAPER ON FRIDAY 29 AUGUST 2008.

We address you at the instance of our client Bosasa Operations (Pty) Ltd ("Bosasa") in respect of whom we have previously written to you in relation to articles published in the Mail & Guardian Newspaper under the authorship of Mr Adriaan Basson.

Despite your advices as contained in your letter of 12 March 2008 that the SIU was not targeting any specific company in its audit as to ascertain if the Department of Correctional Services procurement division was adhering to its procurement policy, in a clear reference to our client, the Mail & Guardian has again on the 29 August 2008 published a statement with the effect that the SIU are currently involved in a fraud investigation pertaining, inter alia, into our client.

In this regard we attach hereto a copy of the article which appeared in the Mail & Guardian on 29 August 2008 and refer you to the sixth paragraph thereof wherein it is stated that

"In 2001 President Thabo Mbeki appointed Mtl head of prisons, a position he vacated early and under a cloud in 2006 after being linked to companies whose multimillion-

22 Fredman Drive
 Sandton, Johannesburg
 P O Box 74333
 Sandton City 2146
 Tel +27 11 286 6900
 Fax +27 11 286 6901

Routledges Incorporated trading as Routledge Modise and Eversheds LLP
 are both members of Eversheds International Limited

Eversheds LLP is a limited liability partnership, registered in England and Wales, registration number OC04465
 Eversheds Inc registration number 199706150721
 VAT registration number 443124411
 The incorporation does not involve a partnership or any other relationship of obligation
 WWW.EVERSHEDS.CO.ZA

S O

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, HIGH COURT)**

CASE NO: 11068/09

In the matter between:

BOSASA OPERATIONS (PTY) LTD	First Applicant
AGRIZZI, ANGELO	Second Applicant
VAN TONDER, ANDRIES JOHANNES	Third Applicant
VORSTER, FRANS HENDRIK STEYN	Fourth Applicant
WATSON, GAVIN JOSEPH	Fifth Applicant

And

SPECIAL INVESTIGATING UNIT	Respondent
-----------------------------------	-------------------

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JEROME WELLS

do hereby make oath and state:

Handwritten signature of Jerome Wells, consisting of a stylized 'J' and 'W' followed by a flourish.

1. I am employed as a Senior Manager Legal at the Special Investigations Unit ("SIU").
2. The contents of this affidavit are within my personal knowledge and are true and correct.
3. I have read the affidavit of Jacques Malan and confirm the correctness of the contents of paragraph 10 thereof.
4. I have read paragraph 116 and 117 of the affidavit of Clinton Oellermann and confirm that I am subject to the confidentiality requirements of the SIU. I did not disclose the fact of the Gillingham search and seizure to Basson or to anyone else.



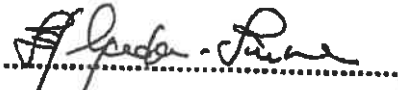
JEROME WELLS

I certify that:

1. the deponent acknowledged to me that:
 - 1.1 he/she knows and understands the contents of this declaration;
 - 1.2 he/she has no objection to taking the prescribed oath;
 - 1.3 he/she considers the prescribed oath to be binding on his/her conscience;

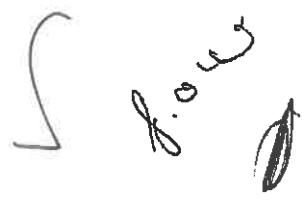


2. the deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God";
3. the deponent signed this declaration in my presence at the address set out hereunder on this 10th day of MARCH 2009 .


.....
COMMISSIONER OF OATHS

**FIONA JANE GORDON - TURNER
PRACTISING ADVOCATE
5E KEEROM STREET
CAPE TOWN**

**Designation and Area
Full Names
Street Address**



**The State Attorney
Die Staatsprokureur
iGqweta likaRhulumente**

4th FLOOR / 4^{de} VERDIEPING
22 Long Street
Langstraat 22
CAPE TOWN/KAAPSTAD
8001

Docex: 156

Postal
address/Posadres
Private Bag
Privaatsak X 9001
CAPE TOWN
KAAPSTAD
8000

TEL (021) 441-9200
FAX (021) 421-9364

My Ref/My Verw/Isalathiso sam:
0729/09/P10

Your Ref/U Verw/Isalathiso sakho
Bobby Walser

10 March 2009

FAX: (012) 843 0113

Corporate Lawyer
Special Investigating Unit
74 Watermeyer Street
MEYERS PARK
0184

BOSASA OPERATIONS (PTY) LTD & OTHERS / SPECIAL INVESTIGATING UNIT

Please find attached a copy of a self-explanatory correspondence from the Applicants' attorneys for your urgent attention and further instructions.


Mr Oellermann has just advised the writer that he is on his way to the Commissioner of Oaths and will forward the papers to our correspondents in Pretoria.


for STATE ATTORNEY
/ea

CC: Mr Botes
State Attorney Pretoria
Fax: 086 629 1077

CC: Adv A Albertus (SC)
Fax: (021) 424 7554

CC: Adv M O'Sullivan
Fax: (021) 426 1612



ROUTLEDGE MODISE

In association with



EVERSHEDS

*Let please
have a look at
this*

THE STATE ATTORNEY

FAX NUMBER: 021 421 9364

Attention: M R BIKO

Date 10 March 2009
Your ref 0729/09/P10
Our ref Brian Biebuyck/gm/118901
Direct dial (27 11) 523-6027
Direct fax 086-674-2751
brianbiebuyck@eversheds.co.za
Docex 7 Sandton Square

By fax

CONFIDENTIALITY CAUTION

This document is intended only for the use of the individual or entity to which it is addressed and contains information that is privileged and confidential. If the reader of this document is not the intended recipient, or the employee or agent responsible for delivering the document to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited. If you have received this document in error, please notify us immediately by telephone and return the original document to us at the above address at our cost.

Dear Sir

RE: BOSASA OPERATIONS (PTY) LTD & OTHERS / SPECIAL INVESTIGATING UNIT

Your fax of even date refers. Please note that the writer's fax number is 086 674 2751 and not 086 674 1351. Please address future correspondence to the correct fax number.

We decline your request for a further extension to the deadline, already extended to 15h00 today, 10 March 2009, granted to you yesterday.

The notice of motion and founding affidavit in the above matter was served on your client on 27 February 2009. You have now had 11 days within which to file an answer. It is unreasonable to expect our client to grant you a further extension, albeit that the deponent to your affidavit is allegedly unavailable today. All concerned have known of the relevant time periods for the last eleven days.

In this regard we place on record that your client's failure to file its answering affidavit timeously severely prejudices our client as we are obliged in terms of TPD practice to file all papers, index etc by no later than 12h00 Thursday 12 March 2009 for a hearing in the week commencing 17 March 2009. Our clients are now faced with severe time constraints within which to prepare replying papers. Should we be unable to meet the deadline due to your client's tardiness, the matter will not be capable of set down until 24 March 2009.

22 Fredman Drive
Sandton, Johannesburg
P O Box 78333
Sandton City 2146
Tel +27 11 286 6900
Fax +27 11 286 6901

Routledges Incorporated trading as Routledge Modise and Eversheds LLP are both members of Eversheds International Limited

Eversheds LLP is a limited liability partnership, registered in England and Wales, registration number OC304765
Routledges Inc registration number 092/008130/11
VAT registration number 44361346
The association does not involve a partnership or any mutual sharing of obligations
www.eversheds.co.za

Keith Arbuckle, Tony Conroy, Patsy Chanary, Paul Orlend, Hyton Cochran, Selwyn Chen, Robin de Kock, Braam de Villiers, Deborah Di Sola, Warren Drex, Grant Edmunds, Owen Franch, Desmond Grobbelaar, Adam Guim, Johan Jacobs, Ian Jacobson, Ivo Jorke, Charles Kurten, Zarina Kellerman, Peter Kemp, Marlene le Roux, Larry Levin, Danielle Magubane, Imvathi Mahomed, Charles Marais, Suz Marais, Maryem Middleton, Sandra Mito, Lavery Madhe, Simone Morny, Erwin Nel, Debbie Ntombela, Alida Paggas, Candice Pity, Gary Pritchard, Chris Rynow, Bradley Scow, Cely Searle, Amalia Joseph, Tom Slaughter, Jeff Smith, Kate Smith, Emile Soups, Gosh Stein, Johny Solly, Setitshapi Jethi Thoma, Johan van der Vyver, Veronica Vurgaralis, Tanya Walsman, Grand Wilmore, John Hall, Janus Leterek, Derek Rubin, Victor Williams, Richard Aulry, Connie Fourie, Tyrin Poulis, Metelle Heywood, Dimitri Kavelakia, Sven Lauritsik, Paul Levine, Basil Meehan, Lebogang Mosele, Wendy Rachman, Kevin Ross, Elna Simoya, Andrew Staude, Jurg van Dyk, Felicia van Rood, Gern Chong, Monica Ciponi, Mark Coss, Senusha Govindar, Roke Krause, Owa Kupala, Ayanda Mordwans, Welekal Dkora, Heinrich Valentini, Sila Williams, Anne Wilson, Teresa Dux, May-Elsine Thomson

S

0115238161

rouledge MODISE

Routledge Inc

15:50:49

10-03-2009

2 / 2

All our client's in this regard are hereby reserved.

2

Yours faithfully

BRIAN BIEBUYCK
DIRECTOR
For ROUTLEDGE MODISE

 **EVERSHEDS**

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, HIGH COURT)**

CASE NO: 11068/09

In the matter between:

BOSASA OPERATIONS (PTY) LTD **First Applicant**

AGRIZZI, ANGELO **Second Applicant**

VAN TONDER, ANDRIES JOHANNES **Third Applicant**

VORSTER, FRANS HENDRIK STEYN **Fourth Applicant**

WATSON, GAVIN JOSEPH **Fifth Applicant**

And

SPECIAL INVESTIGATING UNIT **Respondent**

SUPPORTING AFFIDAVIT

I, the undersigned,

JACQUES RIEL MALAN

do hereby make oath and state:

Handwritten signature and initials in the bottom right corner of the page.

2

1. I am adult male director of Facts Consulting, and a forensic technology expert.
2. The contents of this affidavit are within my personal knowledge where that is apparent from the context, and are true and correct.
3. Facts Consulting is a technology service provider who are consultants to the Special Investigations Unit ("SIU") in the technology component of their investigations.
4. Prior to acting as consultant for the SIU, in December 2008 I was required to sign a confidentiality agreement, a copy of which is annexed as "FA17.3" to the founding affidavit of Mr Papa Festus Leshabane ("Mr Leshabane"). The agreement reads as follows:

"I, Jacques Riel Melan declare under oath/affirm that, except in so far as is necessary in the performance of my duties in connection with the functions of the Special Investigating Unit or with the written leave of the Head of the Unit or by order of the Special Tribunal or High Court, I shall not communicate to any person any matter or information which may come to my knowledge in connection with any investigation by the Special Investigating Unit, or allow or permit any person to have access to any records of the Special Investigating Unit, including any note, record or



transcription of the proceedings of the said Unit, in my possession or custody or in the possession or custody of the said Unit or any member thereof.

Having regard to the role and purpose of the Special Investigating Unit, declare that I have disclosed anything that may materially influence the decision to appoint me as a member of the Special Investigating Unit"

5. I am bound by the agreement and adhere to it at all times in my consultancy work performed for the SIU.

The data retrieval and restoration process at Bosasa

6. I was requested by the SIU to conduct a data retrieval and restoration process at the offices of the first applicant, Bosasa Operations (Pty), Ltd ("Bosasa").
7. The protocol agreed between the SIU and Bosasa was that I would create forensic images and subsequently filter and extract specific and relevant information from the images obtained. The systems that were accessed by the process included:

The file server environment where users store files and back up information;

Handwritten signature and initials, possibly 'Sg' followed by a circled 'D'.

Mar 10 09 03:17p

Yolande Byrd

012 348 1232

p.4

4

Domain controller system containing user privilege profiles and audit logs of IP ownership;

Mail server containing e-mail;

Financial system and related supporting databases;

Personal computers used by the individuals summonsed in terms of section 5(2)(b) and (c).

8. It was agreed between Bosasa and the SIU that the servers described above would be shut down after hours and two forensic copies of each drive would be made. However, it transpired that it was not necessary to shut the system down, and the process of 'live' forensic imaging was ultimately the process agreed to by Bosasa's expert, Mr Johnny Wilkinson ("Wilkinson"), and implemented by myself.
9. Although the data retrieval and imaging process was scheduled to commence in the first week of December, it was delayed by BOSASA and ultimately conducted between 8 and 16 December 2008. Mr Wilkinson was present on 8 December 2008 to oversee the agreed process but was not present hereafter.

10. During the process I was granted access to certain servers for 16 hours. It was only through the intervention of Jerome Wells, who arranged access through Brian Bieybuyck, that such access was granted.

The safekeeping of the two forensic copies and recovery of the data

11. During the data retrieval process two forensic copies were made of each drive:

At present, one of the copies is still sealed and is in my possession, securely stored at my office. Nobody has had access to that copy (including myself).

I am presently utilising the other copy to recover data for purposes of the SIU investigation. Nobody apart from myself has had access to that copy, which is also securely stored at my office.

12. The process of recovery of the data is underway but incomplete. It is a time consuming and complex process. I anticipate that it will be completed within a month.
13. I have discovered that a data deletion utility was placed on the Bosasa servers – and found destroyed files consistent with that application. It

S J
D

6

is apparent that the utility was installed and the files were deleted shortly prior to the imaging process.

14. As I have not completed the data recovery process, I have not yet transferred any of the data retrieved from the Bosasa servers or user laptops to the SIU.
15. The data retrieved from Bosasa is within my possession and safekeeping. I have not disclosed the data to the SIU or anyone else.
16. In the data from Bosasa that I have recovered and analysed, I have not come across the e-mail correspondence annexed to the Mail & Guardian article published on 30 January 2009, (Annexure "FA19" to applicant's founding affidavit).
17. I read the alleged e-mail correspondence between Gillingham and Agrizzi for the first time when it was published in the Mail & Guardian.

Agrizzi's laptop

18. Agrizzi's laptop was forensically imaged during the data retrieval and restoration process. I have commenced the process of data recovery but I have not yet found any documents that are relevant to the investigation, nor have I found any e-mail correspondence, (including



7

the correspondence published by the Mail & Guardian) that is of any relevance to the investigation.

19. The data retrieved from Agrizzi's laptop is within my possession. Nobody else has had access to it. I have not forwarded such data to the SIU or anyone else.

Gillingham's computers

20. I have not had any access to the data obtained from Patrick Gillingham's ("Gillingham") computers.

The SIU's source

21. Jason Jordaan ("Jordaan"), who is employed by the SIU as a cyber forensic lead furnished me with a DVD on 15 January 2009, advising that it contained information obtained from a SIU source.
22. The DVD has been in safe storage at my office and in my care since obtaining it from Jordaan. Nobody else has had access to it. I have never discussed the DVD with anyone else from the SIU or outside of the SIU.
23. I have not analysed or retrieved any of the data on the disk.

Handwritten signature and initials in the bottom right corner of the page.

Ad paragraphs 54 and 62 to 70 of Leshabane's affidavit

24. I have read the averments made at paragraphs 54 and 62 to 70 of Leshabane's affidavit.
25. In response thereto, I confirm that I am not recovering all the data lost by Bosasa, as a result of the alleged server crash in 2007. It is simply not feasible to recover all the data that was lost and I am only conducting a data search relating to specific documents that are relevant to the terms of the section 5(2)(b) and (c) notices issued during the SIU investigation.
26. However, as a result of mirror imaging the search is conducted in respect of all the data on the Bosasa servers. I am not yet in a position to determine what data is irrelevant to the investigation and does not fall within the section 5(2) notices. It is not possible to separate parts or documents from a forensic image and preserve the integrity of the relevant data.
27. All of the data that I have access to on the two forensic copies is also physically present on Bosasa's system, and if need be they could undertake the same forensic exercise in analysing their own data. Accordingly, it is not correct for them to complain that they do not have access to the data.

Handwritten signature and initials in the bottom right corner of the page.

9

28. However, in order that they can conduct a forensic process on the data if they so wish, without having to image the servers again, I can furnish them with a copy of the forensic disc in my possession. An expert can readily confirm the integrity of the copy because of the hash value of the data. Alternatively, I could copy the forensic images onto a hard drive in their presence.
29. Although the process of data recovery is complex, there are a number of experts in this forensic field in South Africa who would be able to conduct the process of restoring the data with which I am presently underway.
30. I have already explained that I have not disclosed any of the information obtained from the Bosasa data retrieval and restoration process to the SIU yet.



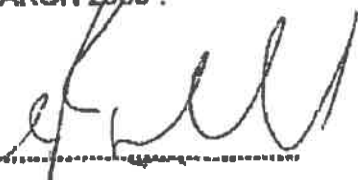
JACQUES MALAN

I certify that:

1. the deponent acknowledged to me that
 - 1.1 he/she knows and understands the contents of this declaration;
 - 1.2 he/she has no objection to taking the prescribed oath;
 - 1.3 he/she considers the prescribed oath to be binding on his/her conscience;



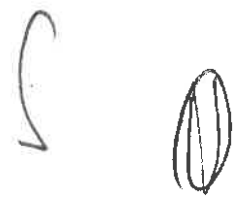
- 2. the deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God";
- 3. the deponent signed this declaration in my presence at the address set out hereunder on this 10th day of MARCH 2009.



COMMISSIONER OF OATHS

Designation and Area
Full Names
Street Address

BERNARD ENGELBRECHT
COMMISSIONER OF OATHS
CHARTERED ACCOUNTANTS OF SOUTH AFRICA
221 WATERKLOOF ROAD
WATERKLOOF
PRETORIA



ANNEXURE "CO 3"

S

IN THE COURT FOR THE REGIONAL DIVISION OF NORTH GAUTENG
HELD IN PRETORIA

CASE NUMBER:

THE STATE

versus

LINDA MORRIS MTI

ACCUSED 1

PATRICK O'CONNELL GILLINGHAM

ACCUSED 2

ANGELO AGRIZZI

ACCUSED 3

ANDRIES JOHANNES JACOBUS VAN TONDER

ACCUSED 4

AFRICAN GLOBAL OPERATIONS

(formerly known as BOSASA OPERATIONS (PTY) LTD)

ACCUSED 5

SONDOLO IT (PTY) LTD

ACCUSED 6

PHEZULU FENCING (PTY) LTD

ACCUSED 7

S 1

COUNT 1 – 6 (IN RESPECT OF ACCUSED 1 ONLY)

A CONTRAVENTION OF SECTION 86(1) READ WITH SECTIONS 1, 38(1)(a)(iii), 38(1)(b), 38(1)(c)(ii), 38(1)(n), 44(2) AND 76(2)(c) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999, FURTHER READ WITH SECTION 217 OF THE CONSTITUTION.

COUNT 7 (IN RESPECT OF ACCUSED 1 ONLY)

MAIN COUNT: CORRUPTION – CONTRAVENTION OF SECTION 4(1)(a)(i)-(iv) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 OF 1977.

ALTERNATIVE COUNT TO COUNT 7: CORRUPTION – CONTRAVENTION OF SECTION 10(a) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 OF 1977.

COUNT 8 (IN RESPECT OF ACCUSED 3, 4, 5, 6 AND 7 ONLY)

**MAIN COUNT: CORRUPTION – CONTRAVENTION OF SECTION 4(1)(b)(i)-(iv)
READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND
COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ
WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 OF 1977.**

**ALTERNATIVE COUNT TO COUNT 8: CORRUPTION – CONTRAVENTION OF
SECTION 10(b) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE
PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004,
FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT,
51 OF 1977.**

COUNT 9 (IN RESPECT OF ACCUSED 2 ONLY)

**MAIN COUNT: CORRUPTION – CONTRAVENTION OF SECTION 4(1)(a)(i)-(iv)
READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND
COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ
WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 OF 1977.**

**ALTERNATIVE COUNT TO COUNT 9 – CONTRAVENTION OF SECTION 10(a)
READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND
COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ
WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT, 51 OF 1977.**

COUNT 10 (IN RESPECT OF ACCUSED 3, 4, 5, 6 AND 7 ONLY)

**MAIN COUNT: CORRUPTION – CONTRAVENTION OF SECTION 4(1)(b)(i)-(iv).
READ WITH SECTIONS 1, 2, 24, 25, 26(1)(A) OF THE PREVENTION AND
COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ
WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 OF 1977.**

**ALTERNATIVE COUNT TO COUNT 10: CORRUPTION – CONTRAVENTION OF
SECTION 10(b) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE
PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004,
FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT,
51 OF 1977.**

COUNT 11 (IN RESPECT OF ACCUSED 2, 3, 5, 6 AND 7 ONLY)

**MAIN COUNT: MONEY LAUNDERING – CONTRAVENTION OF SECTION 4
READ WITH SECTION 1, 7A AND 8 OF THE PREVENTION OF ORGANISED
CRIME ACT 121 OF 1998, FURTHER READ SECTION 51(2) OF ACT 105 OF
1997.**

COUNT 12 (IN RESPECT OF ACCUSED 2, 3, 5, 6 AND 7 ONLY)

**MAIN COUNT: MONEY LAUNDERING – CONTRAVENTION OF SECTION 4
READ WITH SECTION 1, 7A AND 8 OF THE PREVENTION OF ORGANISED
CRIME ACT 121 OF 1998, FURTHER READ SECTION 51(2) OF ACT 105 OF
1997.**

COUNT 13 (IN RESPECT OF ACCUSED 2, 3, 4, 6 AND 7 ONLY)

**MAIN COUNT: MONEY LAUNDERING – CONTRAVENTION OF SECTION 4
READ WITH SECTION 1, 7A AND 8 OF THE PREVENTION OF ORGANISED
CRIME ACT 121 OF 1998, FURTHER READ SECTION 51(2) OF ACT 105 OF
1997.**

S



COUNT 14 (IN RESPECT OF ACCUSED 2, 3, 5, 6 AND 7 ONLY)

**MAIN COUNT: MONEY LAUNDERING – CONTRAVENTION OF SECTION 4
READ WITH SECTION 1, 7A AND 8 OF THE PREVENTION OF ORGANISED
CRIME ACT 121 OF 1998, FURTHER READ SECTION 51(2) OF ACT 105 OF
1997.**

COUNT 15 (IN RESPECT OF ACCUSED 2, 3, 5, 6 AND 7 ONLY)

**MAIN COUNT: MONEY LAUNDERING – CONTRAVENTION OF SECTION 4
READ WITH SECTION 1, 7A AND 8 OF THE PREVENTION OF ORGANISED
CRIME ACT 121 OF 1998, FURTHER READ SECTION 51(2) OF ACT 105 OF
1997.**

COUNT 1 (IN RESPECT OF ACCUSED 1 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 86(1) READ WITH SECTIONS 1, 36, 38(1)(a)(iii), 38(1)(b), 38(1)(c)(ii), 38(1)(n), 44(2)(d) AND 76(4) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999, AND FURTHER READ WITH SECTION 217 OF THE CONSTITUTION, 1996.

1. IN that during the period between May 2004 and July 2004 and at or near Pretoria in the regional division of Gauteng, the Accused, being the Accounting Officer of the Department of Correctional Services, did unlawfully, wilfully or in a grossly negligent manner, fail to comply with the following provisions of the Public Finance Management Act;
 - 1.1 The duty to ensure that the Department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective (Section 38(1)(a)(iii)); or
 - 1.2 The duty to take responsibility for the effective, economical and transparent use of the resources of the Department (Section 38(1)(b)); or
 - 1.3 The duty to take effective and appropriate steps to prevent irregular expenditure (Section 38(1)(c)(ii)); or
 - 1.4 The duty to comply and ensure compliance by the Department, with the provisions of the Public Finance Management Act (Section 38(1)(n)),

2. In that Accused 1 failed to ensure compliance with the prescribed procurement processes of the Department of Correctional Services during the conclusion of TENDER NUMBER HK2/2004: RENDERING OF CATERING AND TRAINING SERVICES AT THE VARIOUS MANAGEMENT AREAS, in the amount of R 718 283 084, 07 (seven hundred and eighteen million two hundred and eighty three thousand and eighty four rand, seven cents).
3. Accused 1 appointed Accused 2 to serve as the chairperson of the Bid Evaluation Committee in TENDER HK2/2004, and also appointed him to take part in the National Bid Adjudication Committee on an "advisory capacity", resulting in Accused 2 taking part in both the Bid Evaluation Committee and the National Bid Adjudication Committee.
4. There was no proper financial planning for this tender in that there was no feasibility study or needs assessment conducted.
5. The end-user Department was not involved in the drafting of the specifications to ensure that value for money is achieved.
6. Accused 1 did not ensure that the specifications were written in an unbiased manner to allow all potential bidders to offer their services.
7. The Bid Evaluation Committee did not compose of Supply Chain Practitioners or officials from the end-user Department requiring the rendering of catering and training services to ensure competitiveness and cost effectiveness.

8. No formal Bid Specifications Committee existed. The specifications for TENDER HK2/2004 were drafted by the employees of Accused 5 who included Accused 3 and Mr William Daniel Mansell, to the disadvantage of other bidders.

COUNT 2 (IN RESPECT OF ACCUSED 1 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 86(1) READ WITH SECTIONS 1, 36, 38(1)(a)(iii), 38(1)(b), 38(1)(c)(ii), 38(1)(n), 44(2)(d) AND 76(4) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999, AND FURTHER READ WITH SECTION 217 OF THE CONSTITUTION, 1996.

9. In that upon or about 17 May 2005 and at or near Pretoria in the regional division of Gauteng, the Accused, being the Accounting Officer of the Department of Correctional Services, did unlawfully, wilfully or in a grossly negligent manner, fail to comply with the following provisions of the Public Finance Management Act;

- 9.1 The duty to ensure that the Department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective (Section 38(1)(a)(iii)); or

- 9.2 The duty to take responsibility for the effective, economical and transparent use of the resources of the Department (Section 38(1)(b)); or
- 9.3 The duty to take effective and appropriate steps to prevent irregular expenditure (Section 38(1)(c)(ii)); or
- 9.4 The duty to comply and ensure compliance by the Department, with the provisions of the Public Finance Management Act (Section 38(1)(n)),
10. In that Accused 1 failed to ensure compliance with the prescribed procurement processes of the Department of Correctional Services by extending TENDER NUMBER HK2/2004: RENDERING OF CATERING AND TRAINING SERVICES AT THE VARIOUS MANAGEMENT AREAS without referring the said service out to tender.
11. The said irregular extension included the adding of additional kitchens to the contract and that caused the contract value to increase by an extra R 82 000 000, 00 (eighty two million rand).

COUNT 3 (IN RESPECT OF ACCUSED 1 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 86(1) READ WITH SECTIONS 1, 36, 38(1)(a)(iii), 38(1)(b), 38(1)(c)(ii), 38(1)(n), 44(2)(d) AND 76(4) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999, AND FURTHER READ WITH SECTION 217 OF THE CONSTITUTION, 1996.

12. IN THAT during the period between November 2004 and April 2005 and at or near Pretoria in the regional division of Gauteng, the Accused, being the Accounting Officer of the Department of Correctional Services, did unlawfully, wilfully or in a grossly negligent manner, fail to comply with the following provisions of the Public Finance Management Act;

- 12.1 The duty to ensure that the Department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective (Section 38(1)(a)(iii)); or
- 12.2 The duty to take responsibility for the effective, economical and transparent use of the resources of the Department (Section 38(1)(b)); or
- 12.3 The duty to take effective and appropriate steps to prevent irregular expenditure (Section 38(1)(c)(ii)); or

12.4 The duty to comply and ensure compliance by the Department, with the provisions of the Public Finance Management Act (Section 38(1)(n)).

13. In that Accused 1 failed to ensure compliance with the prescribed procurement processes of the Department of Correctional Services during the conclusion of TENDER HK2/2005: SUPPLY AND DELIVERY, INSTALLATION, COMMISSIONING, SUPPORT AND MAINTENANCE OF A COMPREHENSIVE ACCESS CONTROL AND BODY SCANNING SYSTEM WITH CCTV COVERAGE OF CORRECTIONAL SERVICES STAFF AND INMATES AT SIXTY SIX (66) MAXIMUM SECURITY FACILITIES/CENTRES OF EXCELLENCE, in the amount of R 236 997 351, 31 (two hundred and thirty six million nine hundred and ninety seven thousand three hundred and fifty one rand, thirty one cents).

14. Despite it being a bid requirement that bidders should have five years' experience, Sondolo IT (Pty) Ltd (Accused 6) was only registered seven (7) days before the closing of bids but was not disqualified.

15. Accused 1 appointed Accused 2 to serve as the chairperson of the Bid Evaluation Committee in TENDER HK2/2005, and also appointed him to take part in the National Bid Adjudication Committee on an "advisory capacity", resulting in Accused 2 taking part in both the Bid Evaluation Committee and the National Bid Adjudication Committee.

16. There was no proper financial planning for this tender in that there was no feasibility study or needs assessment conducted which resulted in the initial budget being significantly exceeded.
17. The end-user Department was not involved in the drafting of the specifications to ensure that value for money is achieved.
18. Accused 1 did not ensure that the specifications were written in an unbiased manner to allow all potential bidders to offer their services.
19. No formal Bid Specifications Committee existed. The specifications for TENDER HK2/2005 were drafted by the employees of Accused 5 who included Accused 3 and Mr William Daniel Mansell, to the disadvantage of other bidders.

COUNT 4 (IN RESPECT OF ACCUSED 1 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 86(1) READ WITH SECTIONS 1, 36, 38(1)(a)(iii), 38(1)(b), 38(1)(c)(ii), 38(1)(n), 44(2)(d) AND 76(4) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999, AND FURTHER READ WITH SECTION 217 OF THE CONSTITUTION, 1996.

20. IN THAT during the period between 10 August 2005 and December 2005 and at or near Pretoria in the regional division of Gauteng, the Accused, being the Accounting Officer of the Department of Correctional Services, did unlawfully, wilfully or in a grossly negligent manner, fail to comply with the following provisions of the Public Finance Management Act;

- 20.1 The duty to ensure that the Department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective (Section 38(1)(a)(iii)); or
- 20.2 The duty to take responsibility for the effective, economical and transparent use of the resources of the Department (Section 38(1)(b)); or
- 20.3 The duty to take effective and appropriate steps to prevent irregular expenditure (38(1)(c)(ii)); or
- 20.4 The duty to comply and ensure compliance by the Department, with the provisions of the Public Finance Management Act (38(1)(n)).

21. In that Accused 1 approved the conclusion of a Service Level Agreement with Accused 6 in the amount of R 208 739 700, 00 (two hundred and eight million seven hundred and thirty nine thousand seven hundred rand) for Accused 6 to provide staff (human resources) to operate the approved access control system which formed part of TENDER HK2/2005 without referring the said service for provision of human resources to public tender since it constituted a new contract.

22. Accused 1's conduct as aforesaid, resulted in irregular expenditure in the amount of R 208 739 700, 00 being incurred by the Department since the said expense was not budgeted for. The advertised bid, TENDER HK2/2005, did not make provision for the staffing of the control rooms and the ex post facto conclusion of the Service Level Agreement between the Department and Accused 6 as aforesaid, resulted in the Department incurring extra costs which were not budgeted for.

}



COUNT 5 (IN RESPECT OF ACCUSED 1 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 86(1) READ WITH SECTIONS 1, 36, 38(1)(a)(iii), 38(1)(b), 38(1)(c)(ii), 38(1)(n), 44(2)(d) AND 76(4) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999, AND FURTHER READ WITH SECTION 217 OF THE CONSTITUTION, 1996.

23. IN THAT during the period between August 2005 and November 2005 and at or near Pretoria in the regional division of Gauteng, the Accused, being the Accounting Officer of the Department of Correctional Services, did unlawfully, wilfully or in a grossly negligent manner, fail to comply with the following provisions of the Public Finance Management Act;

23.1 The duty to ensure that the Department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective (Section 38(1)(a)(iii)); or

23.2 The duty to take responsibility for the effective, economical and transparent use of the resources of the Department (Section 38(1)(b)); or

23.3 The duty to take effective and appropriate steps to prevent irregular expenditure (Section 38(1)(c)(ii)); or

- 23.4 The duty to comply and ensure compliance by the Department, with the provisions of the Public Finance Management Act (Section 38(1)(n)).
24. In that Accused 1 failed to ensure compliance with the prescribed procurement processes of the Department of Correctional Services during the conclusion of TENDER HK24/2005: SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF SECURITY OUTER PERIMETER FENCES WITH OR WITHOUT TAUT WIRE DETECTION INNER FENCES AND CCTV SURVEILLANCE CAMERAS AT VARIOUS CENTRES OF THE DEPARTMENT OF CORRECTIONAL SERVICES, in the amount of R 486 937 910, 35 (four hundred and eighty six million nine hundred and thirty seven thousand nine hundred and ten rand and thirty five cents).
25. Accused 1 appointed Accused 2 to serve as the chairperson of the Bid Evaluation Committee in TENDER HK24/2005, and also appointed him to take part in the National Bid Adjudication Committee on an "advisory capacity", resulting in Accused 2 taking part in both the Bid Evaluation Committee and the National Bid Adjudication Committee.
26. There was no proper financial planning for this tender in that there was no feasibility study or needs assessment conducted which resulted in the initial budget of R 340 000 000, 00 (three hundred and forty million rand) being significantly exceeded and in addition being further increased by variation orders valued at about R 100 000 000, 00, (one hundred million rand).

27. The end-user Department was not involved in the drafting of the specifications to ensure that value for money is achieved.
28. Accused 1 did not ensure that the specifications were written in an unbiased manner to allow all potential bidders to offer their services.
29. No formal Bid Specifications Committee existed. The specifications for TENDER HK24/2005 were drafted by the employees of Accused 5 who included Accused 3 and Mr William Mansell, to the disadvantage of other bidders.

COUNT 6 (IN RESPECT OF ACCUSED 1 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 86(1) READ WITH SECTIONS 1, 36, 38(1)(a)(iii), 38(1)(b), 38(1)(c)(ii), 38(1)(n), 44(2)(d) AND 76(4) OF THE PUBLIC FINANCE MANAGEMENT ACT 1 OF 1999, AND FURTHER READ WITH SECTION 217 OF THE CONSTITUTION, 1996.

30. IN THAT during the period between September 2005 and March 2006 and at or near Pretoria in the regional division of Gauteng, the Accused, being the Accounting Officer of the Department of Correctional Services, did unlawfully, wilfully or in a grossly negligent manner, fail to comply with the following provisions of the Public Finance Management Act;

- 30.1 The duty to ensure that the Department has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective (Section 38(1)(a)(iii)); or
- 30.2 The duty to take responsibility for the effective, economical and transparent use of the resources of the Department (Section 38(1)(b)); or
- 30.3 The duty to take effective and appropriate steps to prevent irregular expenditure (Section 38(1)(c)(ii)); or
- 30.4 The duty to comply and ensure compliance by the Department, with the provisions of the Public Finance Management Act (Section 38(1)(n)).
31. In that Accused 1 failed to ensure compliance with the prescribed procurement processes of the Department of Correctional Services during the conclusion of TENDER HK25/2005: SUPPLY, DELIVERY, INSTALLATION, COMMISSIONING AND MAINTENANCE OF TELEVISION SYSTEMS AND MONITORS TO ALL CORRECTIONAL CENTRES WITHIN THE DEPARTMENT OF CORRECTIONAL SERVICES, in the amount of R 224 364 480, 00 (two hundred and twenty four million three hundred and sixty four thousand four hundred and eighty rand).

32. Accused 1 appointed Accused 2 to serve as the chairperson of the Bid Evaluation Committee in TENDER HK25/2005, and also appointed him to take part in the National Bid Adjudication Committee on an "advisory capacity", resulting in Accused 2 taking part in both the Bid Evaluation Committee and the National Bid Adjudication Committee.
33. There was no proper financial planning for this tender in that there was no feasibility study or needs assessment conducted which resulted in the initial budget being significantly exceeded.
34. The end-user Department was not involved in the drafting of the specifications to ensure that value for money is achieved.
35. Accused 1 did not ensure that the specifications were written in an unbiased manner to allow all potential bidders to offer their services.
36. No formal Bid Specifications Committee existed. The specifications for TENDER HK25/2005 were drafted by the employees of Accused 5 who included Accused 3 and Mr William Daniel Mansell, to the disadvantage of other bidders.

COUNT 7 (IN RESPECT OF ACCUSED 1 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 4(1)(a)(i) - (iv) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 of 1977.

37. In that during the period between May 2004 to July 2015, particularly on the dates as indicated on Column B of Schedule 1, and at or near Pretoria and or Johannesburg in the regional division of Gauteng, Accused 1, who was a public officer in the employ of the Department of Correctional Services, did directly or indirectly accept or agree or offer to accept from Accused 3, 4, 5, 6, and 7 unauthorised gratifications indicated in Column C of Schedule 1 in the amounts indicated in Column D, to wit, flight tickets, car rental services and accommodation were paid for him and his family members and or for other persons known to him, and Accused 1 further, on the dates as indicated on Column B of Schedule 2 received cash payments as indicated in Column D of Schedule 2,

38. for the benefit of himself (Accused 1) and or for the benefit of his family members and or other persons known to him, in order for Accused 1 to personally act in a manner-

(i) That amounts to the –

- (aa) illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; or
- (ii) That amounts to –
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or set of rules; or
- (iii) Designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

100. to wit, failing to ensure compliance with the procurement processes of the Department of Correctional Services and Treasury Regulations in relation to Tenders HK2/2004, HK2/2005, HK24/2005 and HK25/2005 resulting in the BOSASA Group of companies (Accused 5, 6 and 7) being awarded the said tenders.



ALTERNATIVE COUNT TO COUNT 7 (IN RESPECT OF ACCUSED 1 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 10(a) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 of 1977.

101. In that during the period between May 2004 to April 2015, particularly on the dates as indicated on Column B of Schedule 1, and at or near Pretoria or Johannesburg or Midrand or Krugersdorp or Roodepoort or Alberton in the regional division of Gauteng, Accused 1, who was party to an employment relationship with the Department of Correctional Services, did directly or indirectly accept or agree or offer to accept from Accused 3, 4, 5, 6 and 7, unauthorised gratifications indicated in Column C of Schedule 1 in the amounts indicated in Column D, to wit, flight tickets, car rental services and accommodation were paid for him and his family members and or for other persons known to him, and Accused 1 further, on the dates as indicated on Column B of Schedule 2 received cash payments as indicated in Column D of Schedule 2,
102. for the benefit of himself (Accused 1) and or for the benefit of his family members and or other persons known to him, in respect of Accused 1 doing any act in relation to the exercise, carrying out or performance of his powers, duties or functions within the scope of his employment relationship

COUNT 8 (IN RESPECT OF ACCUSED 3, 4, 5, 6 AND 7 ONLY)

THAT THE ACCUSED ARE GUILTY OF CONTRAVENING SECTION 4(1)(b)(i)-(iv) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 OF 1977.

103. In that during the period between May 2004 to April 2015, particularly on the dates as indicated on Column B of Schedule 1, at or near Pretoria or Johannesburg or Midrand or Krugersdorp or Roodepoort or Alberton in the regional division of Gauteng, the Accused, did directly or indirectly give or agree or offer to give to Accused 1, who was party to an employment relationship with the Department of Correctional Services, unauthorised gratifications indicated in Column C of Schedule 1 in the amounts indicated in Column D, to wit, flight tickets, car rental services and accommodation were paid for him and his family members and or for other persons known to him, and the Accused further, on the dates as indicated on Column B of Schedule 2 paid cash payments as indicated in Column D of Schedule 2 to Accused 1,

39. for the benefit of himself (Accused 1) and or for the benefit of his family members and or other persons known to him, in order for Accused 1 to personally act in a manner-

- (i) That amounts to the –
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; or

- (ii) That amounts to –
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or set of rules; or

- (iii) Designed to achieve an unjustified result; or

- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

100. to wit, failing to ensure compliance with the procurement processes of the Department of Correctional Services and Treasury Regulations in relation to Tenders HK2/2004, HK2/2005, HK24/2005 and HK25/2005 resulting in the BOSASA Group of companies (Accused 5, 6 and 7) being awarded the said tenders.

ALTERNATIVE COUNT TO COUNT 8 (IN RESPECT OF ACCUSED 3, 4, 5, 6 AND 7 ONLY)

THAT THE ACCUSED ARE GUILTY OF CONTRAVENING SECTION 10(b) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 of 1977.

108. In that during the period between May 2004 to April 2015, particularly on the dates as indicated on Column B of Schedule 1, at or near Pretoria or Johannesburg or Midrand or Krugersdorp or Roodepoort or Alberton in the regional division of Gauteng, the Accused, did directly or indirectly give or agree or offer to give to Accused 1, who was party to an employment relationship with the Department of Correctional Services, the following unauthorised gratifications indicated in Column C of Schedule 1 in the amounts indicated in Column D, to wit, flight tickets, car rental services and accommodation were paid for him and his family members and or for other persons known to him, and the Accused further, on the dates as indicated on Column B of Schedule 2 paid cash payments as indicated in Column D of Schedule 2 to Accused 1,

109. for his own benefit and or for the benefit of his family members in respect of Accused 1 doing any act in relation to the exercise, carrying out or

performance of his powers, duties or functions within the scope of his employment relationship.

COUNT 9 (IN RESPECT OF ACCUSED 2 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 4(1)(a)(i) - (iv) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 of 1977.

109. In that during the period between April 2004 and April 2007, particularly on the dates indicated in Schedule 3, at or near Pretoria or Johannesburg or Midrand or Krugersdorp or Roodepoort or Alberton in the regional division of Gauteng, Accused 2, who was a public officer in the employ of the Department of Correctional Services, did directly or indirectly accept or agree or offer to accept from Accused 3, 4, 5, 6 and 7 the gratifications indicated in Schedule 3, for his own benefit and or for the benefit of his family members,

110. in order for Accused 2 to personally act in a manner-

(i) That amounts to the –

(aa) illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a

constitutional, statutory, contractual or any other legal obligation; or

(ii) That amounts to –

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or set of rules; or

(iii) Designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

111. to wit, Accused 2, colluded with Accused 3 and a certain Mr William Daniel Mansell, who were employees of and or associated with Accused 5, to draft or compile the bid specifications which were used as part of the invitation to bid for tenders, HK2/2004, HK2/2005, HK24/2005 and HK25/2005, resulting in the BOSASA Group of companies (Accused 5, 6 and 7) being advantaged over other bidders and being awarded the said tenders since they had knowledge of the bid specifications before the said tenders were advertised.

112. In the Bid Evaluation Committee dealing with the evaluation of tender HK24/2005, Accused 2 favoured Phezulu Fencing (Pty) Ltd (Accused 7) by allocating a score of 6 (six) points to Accused 7 despite the fact that its projected plan did not comply with the stipulated timelines as per the bid conditions. On the other hand, he gave a score of 0 out of 6 for the other two service providers whose projected plans complied with the deadline.

113. In the Bid Evaluation Committee dealing with the evaluation of tender HK2/2005, Accused 2, as the Chairperson of the Bid Evaluation Committee, did not disqualify Sondolo IT (Pty) Ltd (Accused 6) which was registered only seven (7) days before the closing of bids despite it being a bid requirement that bidders should have five years' experience.

ALTERNATIVE COUNT TO COUNT 9 (IN RESPECT OF ACCUSED 2 ONLY)

THAT THE ACCUSED IS GUILTY OF CONTRAVENING SECTION 10(a) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 of 1977.

114. In that during the period between April 2004 and April 2007, particularly on the dates as indicated in Schedule 3, at or near Pretoria or Johannesburg or Midrand or Krugersdorp or Roodepoort or Alberton in the

regional division of Gauteng, Accused 2, who was party to an employment relationship with the Department of Correctional Services, did directly or indirectly accept or agree or offer to accept from Accused 3, 4, 5, 6 and 7 the unauthorised gratifications indicated in Schedule 3, for his own benefit and or for the benefit of his family members in respect of Accused 2 doing any act in relation to the exercise, carrying out or performance of his powers, duties or functions within the scope of his employment relationship.

COUNT 10 (IN RESPECT OF ACCUSED 3, 4, 5, 6 AND 7)

THAT THE ACCUSED ARE GUILTY OF CONTRAVENING SECTION 4(1)(b)(i) - (iv) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 of 1977.

115. In that during the period between April 2004 and April 2007, particularly on the dates indicated in Schedule 3, at or near Pretoria or Johannesburg or Midrand or Krugersdorp or Roodepoort or Alberton in the regional division of Gauteng, the Accused, did directly or indirectly give or agree or offer to give the gratifications indicated in Schedule 3, to Accused 2 who was a public officer in the employ of the Department of Correctional Services, for his own benefit and or for the benefit of his family members,

116. in order for Accused 2 to personally act in a manner-

(i) That amounts to the –

(aa) illegal, dishonest, unauthorised, incomplete, or biased exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; or

(ii) That amounts to –

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or set of rules; or

(iii) Designed to achieve an unjustified result; or

(iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

117. to wit, Accused 2, colluded with Accused 3 and a certain Mr William Daniel Mansell, who were employees of and or associated with Accused 5, to draft or compile the bid specifications which were used as part of the invitation to bid for tenders, HK2/2004, HK2/2005, HK24/2005 and HK25/2005, resulting in the BOSASA Group of companies (Accused 5, 6 and

7) being advantaged over other bidders and being awarded the said tenders since they had knowledge of the bid specifications before the said tenders were advertised.

118. In the Bid Evaluation Committee dealing with the evaluation of tender HK24/2005, Accused 2 favoured Phezulu Fencing (Pty) Ltd (Accused 7) by allocating a score of 6 (six) points to Accused 7 despite the fact that its projected plan did not comply with the stipulated timelines as per the bid conditions. On the other hand, he gave a score of 0 out of 6 for the other two service providers whose projected plans complied with the deadline.

119. In the Bid Evaluation Committee dealing with the evaluation of tender HK2/2005, Accused 2, as the Chairperson of the Bid Evaluation Committee, did not disqualify Sondolo IT (Pty) Ltd (Accused 6) which was registered only seven (7) days before the closing of bids despite it being a bid requirement that bidders should have five years' experience.

**ALTERNATIVE COUNT TO COUNT 10 (IN RESPECT OF ACCUSED 3, 4, 5, 6
AND 7 ONLY)**

THAT THE ACCUSED ARE GUILTY OF CONTRAVENING SECTION 10(b) READ WITH SECTIONS 1, 2, 24, 25, 26(1)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT 12 OF 2004, FURTHER READ WITH SECTION 269A OF THE CRIMINAL PROCEDURE ACT 51 of 1977.

120. In that during the period between April 2004 and April 2007, particularly on the dates as indicated in Schedule 3, at or near Pretoria and Johannesburg in the regional division of Gauteng, the Accused, did directly or indirectly give or agree or offer to give to Accused 2, who was party to an employment relationship with the Department of Correctional Services, the unauthorised gratifications indicated in Schedule 3, for Accused 2's own benefit and or for the benefit of his family members, in respect of Accused 2 doing any act in relation to the exercise, carrying out or performance of his powers, duties or functions within the scope of his employment relationship.

COUNT 11 (IN RELATION TO ACCUSED 2, 3, 4 AND 5 ONLY)

**THAT THE ACCUSED ARE GUILTY OF MONEY LAUNDERING -
CONTRAVENTION OF SECTION 4 READ WITH SECTIONS 1, 8(1) OF ACT 121
OF 1998, AND FURTHER READ WITH SECTION 51(2) OF ACT 105 OF 1997.**

121. IN THAT during the period between April 2004 and September 2004 and at or near Pretoria and or Johannesburg in the regional division of Gauteng, the Accused, unlawfully, whilst they knew or ought reasonably to have known that certain properties to wit, monies derived by Accused 5 from the National Department of Correctional Services as payment for services rendered in connection with tenders HK2/2004, HK2/2005, HK24/2005 and HK25/2005, were proceeds of unlawful activities or that it formed part of the proceeds of unlawful activities to wit Corruption, agreed and arranged that cash in the amount of R 196 959, 97 (one hundred and ninety six thousand nine hundred and fifty nine rand and ninety seven cents) be paid from Accused 5's FNB bank account number, 62053736743, to a certain Dr J Smith's Nedbank account number, 1928031803, who in turn paid it into Accused 2's ABSA bank account number, 9062273466, for the benefit of Accused 2 towards the sale of a Volkswagen Golf 1.6 valued at R 196 959, 97.

122. And the aforesaid agreement had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount of R 196 959, 97 or the ownership thereof and/or removing or diminishing such cash which was acquired as a result of the commission of an offence of Corruption.

COUNT 12 (IN RELATION TO ACCUSED 2, 3, 4 AND 5 ONLY)

THAT THE ACCUSED ARE GUILTY OF MONEY LAUNDERING - CONTRAVENTION OF SECTION 4 READ WITH SECTIONS 1, 8(1) OF ACT 121 OF 1998, AND FURTHER READ WITH SECTION 51(2) OF ACT 105 OF 1997.

123. IN THAT during the period between April 2004 and 13 October 2004 and at or near Pretoria and or Johannesburg in the regional division of Gauteng, the Accused, and a certain Mr Frans Hendrik Steyn Vorster, unlawfully, whilst they knew or ought reasonably to have known that certain properties to wit, monies derived by Accused 5 from the National Department of Correctional Services as payment for services rendered in connection with tenders HK2/2004, HK2/2005, HK24/2005 and HK25/2005, were proceeds of unlawful activities or that it formed part of the proceeds of unlawful activities to wit Corruption, agreed and arranged that cash in the amount of R 155 000, 00 (one hundred and fifty thousand rand) be paid from Accused 5's FNB bank account number, 62053736743, to Dr J Smith's Nedbank account

number, 1928031803, and that Dr J Smith should issue a cheque in the amount of R 155 000, 00 which was deposited into Accused 2's ABSA bank account number, 9062273466, to purchase a motor vehicle, to wit a Mercedes Benz E270 CDI.

124. And the said agreement had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount of R 155 000, 00 or the ownership thereof and/or removing or diminishing such cash which was acquired as a result of the commission of an offence of Corruption.

COUNT 13 (IN RELATION TO ACCUSED 2, 3, 4 AND 5 ONLY)

**THAT THE ACCUSED ARE GUILTY OF MONEY LAUNDERING -
CONTRAVENTION OF SECTION 4 READ WITH SECTIONS 1, 8(1) OF ACT 121
OF 1998, AND FURTHER READ WITH SECTION 51(2) OF ACT 105 OF 1997.**

125. IN that during the period July 2006 and at or near Pretoria and or Johannesburg in the regional division of Gauteng, the Accused, unlawfully, whilst they knew or ought reasonably to have known that certain properties to wit, monies derived by Accused 5 from the National Department of Correctional Services as payment for services rendered in connection with tenders HK2/2004, HK2/2005, HK24/2005 and HK25/2005, were proceeds of unlawful activities or that it formed part of the proceeds of unlawful activities

to wit Corruption, agreed and arranged that cash in the amount of R 62 796, 00 (sixty two thousand seven hundred and ninety six rand) be paid from Accused 5's FNB bank account number, 62053735290, to the Standard bank cheque account number, 080010571, belonging to Mr William Daniel Mansell's family trust, Grande Four Property Trust. In turn, Grande Four Property Trust paid the said amount for the three invoices issued by Blakes Travel Agency (Pty) Ltd against the Customer Detailed Ledger Account, "G00009: Mr P Gillingham", to the total of value R 62 796, 00, for travel expenses relating to a European trip undertaken by Accused 2 and Theresa Gillingham.

126. And the said agreement had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount of R 62 796, 00 or the ownership thereof and/or removing or diminishing such cash which was acquired as a result of the commission of an offence of Corruption.

COUNT 14 (IN RELATION TO ACCUSED 2, 3, 4 AND 5 ONLY)

**THAT THE ACCUSED ARE GUILTY OF MONEY LAUNDERING -
CONTRAVENTION OF SECTION 4 READ WITH SECTIONS 1, 8(1) OF ACT 121
OF 1998, AND FURTHER READ WITH SECTION 51(2) OF ACT 105 OF 1997.**

127. IN THAT during the period between April 2004 and December 2006 and at or near Pretoria and or Johannesburg in the regional division of Gauteng, the Accused, unlawfully, whilst they knew or ought reasonably to have known that certain properties to wit, monies derived by Accused 5 from the National Department of Correctional Services as payment for services rendered in connection with tenders HK2/2004, HK2/2005, HK24/2005 and HK25/2005, were proceeds of unlawful activities or that it formed part of the proceeds of unlawful activities to wit Corruption, agreed and arranged that amounts of monies be paid from Accused 5's FNB bank account number, 62053736743, into the two Nedbank account numbers, 1928031803 and 1928035426, of Dr J Smith.

128. On 21 December 2006 Dr J Smith transferred an amount of R 130 000, 00 (one hundred and thirty thousand) from his Nedbank account number, 1928035426, to his Nedbank account number, 1928031803. On the very same day, he issued and deposited a "Not Transferrable" cheque in the amount of R 140 000, 00 (one hundred and forty thousand) into Accused 4's FNB bank account number, 62105004634, and referenced it as a "loan".

129. On 21 December 2006 Accused 4 paid the amount of R 131 367, 99 into the Standard Bank account number, 021004188, of the Glen Volkswagen, Glenvista, towards the purchase of a motor vehicle, to wit, a VW POLO, Accused 2's daughter, Megan Gillingham.

130. And the aforesaid agreement had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount of R 196 959, 97 or the ownership thereof and/or removing or diminishing such cash which was acquired as a result of the commission of an offence of Corruption.

COUNT 15 (IN RELATION TO ACCUSED 2, 3, 4 AND 5 ONLY)

**THAT THE ACCUSED ARE GUILTY OF MONEY LAUNDERING -
CONTRAVENTION OF SECTION 4 READ WITH SECTIONS 1, 8(1) OF ACT 121
OF 1998, AND FURTHER READ WITH SECTION 51(2) OF ACT 105 OF 1997.**

131. IN that during the period between April 2004 and 11 April 2007 and at or near Pretoria and or Johannesburg in the regional division of Gauteng, the Accused, and a certain Mr JDCM Bonifacio, unlawfully, whilst they knew or ought reasonably to have known that certain properties to wit, monies derived by Accused 5 from the National Department of Correctional Services as payment for services rendered in connection with tenders HK2/2004, HK2/2005, HK24/2005 and HK25/2005, were proceeds of unlawful activities

or that it formed part of the proceeds of unlawful activities to wit Corruption, agreed and arranged that cash in the amount of R 180 000, 00 (one hundred and eighty thousand rand) be paid from Accused 5's FNB bank account number, 62053736743, to Accused 3's FNB bank account number, 62091005217.

132. In turn, Accused 3 transferred the same amount of R 180 000, 00 to Mr JDCM Bonifacio's FNB bank account number, 62012712411. On the same day, 11 April 2007, Mr JDCM Bonifacio issued a cheque from the said FNB account payable to C J Bonifacio in the amount of R 180 000, 00 (one hundred and eighty thousand rand) and deposited the said cheque into his Nedbank Current account number, 1988251273. Mr JDCM Bonifacio then instructed Nedbank to transfer the said amount of R 180 000, 00 to the Nedbank account number, 145404833, belonging to Sandown Motor Holdings, with reference, "GILLINGHAM", as part payment towards the purchase of a Mercedes Benz E320 CDI for the benefit of Accused 2.

133. And the said agreement had the effect of concealing or disguising the nature, source, location, disposition or movement of the said amount of R 180 000, 00 or the ownership thereof and/or removing or diminishing such cash which was acquired as a result of the commission of an offence of Corruption.

SCHEDULE 1**CAR RENTAL, AIR FLIGHT TICKETS AND ACCOMMODATION PAID FOR
ACCUSED 1**

COLUMN A	COLUMN B	COLUMN C	COLUMN D
TRANSACTION NUMBER	DATE	SERVICE/BENEFIT	VALUE
1.	06 May 2005	Car rental from Imperial	R 4 022.49
2.	09 May 2005	Accommodation in Paxton Hotel	R 1 300.90
3.	08 June 2005	Air flight tickets	R 2 651.00
4.	08 June 2005	Air flight tickets	R 2 651.00
5.	15 June 2005	Accommodation in Hemingways Hotel	R 6 446.00
6.	28 June 2005	Car rental from Avis	R 3 701.10
7.	19 July 2005	Air flight tickets	R 3 030.00
8.	23 July 2005	Air flight tickets	R 1 560.00
9.	27 July 2005	Air flight tickets	R 6 624.00
10.	15 September 2005	Air flight tickets	R 2 868.00
11.	21 September 2005	Accommodation in Paxton Hotel	R 1 599.50
12.	23 September 2005	Air flight tickets	R 6 176.00
13.	27 September 2005	Car rental from Avis	R 2 413.80

14.	11 October 2005	Air flight tickets	R 3 088.00
15.	20 October 2005	Accommodation in Paxton Hotel	R 2 959.15
16.	20 October 2005	Car rental from Avis	R 4 432.25
17.	24 October 2005	Accommodation in Paxton Hotel	R 1 062.50
18.	25 October 2005	Car rental from Avis	R 4 445.21
19.	17 January 2005	Car rental from Avis	R 861.81
20.	26 October 2005	Air flight tickets	R 3 026.00
21.	16 November 2005	Accommodation in Paxton Hotel	R 484.00
22.	16 November 2005	Accommodation in Paxton Hotel	R 425.00
23.	17 November 2005	Air flight tickets	R 3 138.00
24.	04 January 2006	Air flight tickets	R 2 788.00
25.	09 January 2006	Accommodation in The Beach Hotel	R 1 717.00
26.	09 January 2006	Accommodation in The Beach Hotel	R 1 972.00
27.	09 January 2006	Accommodation in The Beach Hotel	R 2 403.00
28.	09 January 2006	Accommodation in The Beach Hotel	R 858.50
29.	10 January 2006	Accommodation in The Beach Hotel	R 1 302.90
30.	17 January 2006	Car rental from Avis	R 796.12
31.	18 January 2006	Accommodation in Garden Court Hotel	R 1 161.50

32.	23 January 2006	Accommodation The Beach Hotel	R 930.50
33.	23 January 2006	Accommodation in The Beach Hotel	R 1 607.40
34.	06 February 2006	Air flight tickets	R 3 122.00
35.	10 February 2006	Car rental from Avis	R 1 027.71
36.	16 February 2006	Air flight tickets	R 1 674.00
37.	16 February 2006	Accommodation in The Beach Hotel	R 1 002.50
38.	02 March 2006	Air flight tickets	R 5 568.00
39.	13 March 2006	Car rental from Avis	R 6 533.54
40.	16 March 2006	Air flight tickets	R 4 925.00
41.	28 March 2006	Accommodation in Hemingways Hotel	R 6 208.00
42.	31 March 2006	Car rental from Avis	R 1 431.15
43.	30 June 2006	Air flight tickets	R 2 641.00
44.	28 July 2006	Air flight tickets	R 6 216.00
45.	31 July 2006	Car rental from Budget	R 3 219.70
46.	31 July 2006	Car rental from Avis	R 2 744.15
47.	20 August 2006	Accommodation in The Beach Hotel	R 3 733.80
48.	22 September 2006	Air flight tickets	R 3 133.00
49.	18 October 2006	Air flight tickets	R 3 228.00
50.	20 October 2006	Car rental from Avis	R 2 341.66
51.	31 October 2006	Accommodation in Hemingways Hotel	R 2 135.60

52.	02 November 2006	Air flight tickets	R 4 301.00
53.	27 November 2006	Air flight tickets	R 2 763.00
54.	29 November 2006	Air flight tickets	R 6 974.00
55.	04 December 2006	Air flights tickets	R 3 601.00
56.	12 December 2006	Car rental from Avis	R 1 903.18
57.	14 December 2006	Air flight tickets	R 3 943.00
58.	29 December 2006	Air flight tickets	R 1 503.00
59.	29 December 2006	Accommodation Hemingways Hotel	R 2 312.60
60.	29 December 2006	Car rental from National Car	R 3 534.50
61.	29 December 2006	Accommodation in Paxton Hotel	R 1 021.00
62.	06 January 2007	Air flight tickets	R 6 546.00
63.	20 January 2007	Air flight tickets	R 3 235.00
64.	31 January 2007	Car rental from Avis	R 660.28
65.	26 January 2007	Car rental from Avis	R 1 806.77
66.	26 January 2007	Accommodation The Beach Hotel	R 1 310.20
67.	26 January 2007	Car rental from Avis	R 6 272.09
68.	29 January 2007	Air flight tickets	R 1 849.00
69.	31 January 2007	Accommodation in Hemingways Hotel	R 5 929.40
70.	31 January 2007	Accommodation in The Beach Hotel	R 1 350.10

71.	07 February 2007	Accommodation in Paxton Hotel	R 537.00
72.	07 February 2007	Air flight tickets	R 3 169.00
73.	16 February 2007	Air flight tickets	R 5 245.00
74.	07 February 2007	Air flight tickets	R 5 245.00
75.	16 February 2007	Air flight tickets	R 370.00
76.	February 2007	Accommodation in The Court Yard	R 150.00
77.	February 2007	Accommodation in The Court Yard	R 2 617.95
78.	23 February 2007	Air flights tickets	R 3 220.00
79.	27 February 2007	Car rental from Avis	R 709.38
80.	28 February 2007	Car rental from Dollar Thrifty Car	R 250.01
81.	28 February 2007	Car rental from Dollar Thrifty Car	R 1 884.61
82.	27 April 2007	Car rental from Avis	R 2 863.56
83.	04 May 2007	Car rental from Avis	R 1 465.07
84.	23 May 2007	Car rental from Avis	R 793.62
85.	20 June 2007	Car rental from Avis	R 3 292.72
86.	30 June 2007	Accommodation in Arabella Sheraton	R 3 231.87
87.	01 July 2007	Air flight tickets	R 2 802.00
88.	01 July 2007	Air flight tickets	R 2 802.00
89.	01 July 2007	Air flight tickets	R 3 146.00
90.	04 July 2007	Accommodation in Paxton Hotel	R 1 072.00
91.	06 July 2007	Accommodation Garden Court Marine Parade	R 4 942.76

92.	10 July 2007	Car rental from Avis	R 4 351.54
93.	10 July 2007	Car rental from Avis	R 1 355.07
94.	16 July 2007	Air flight tickets	R 7 570.00
95.	25 July 2007	Car rental from Avis	R 738.94
96.	25 July 2007	Car rental from Avis	R 1 228.88
97.	27 July 2007	Accommodation in Garden Court Els	R 1 015.12
98.	06 August 2007	Accommodation in Paxton Hotel	R 2 044.00
99.	06 August 2007	Accommodation in Paxton Hotel	R 1 338.00
100.	24 August 2007	Car rental from Avis	R 1 779.87
101.	31 August 2007	Accommodation in Paxton Hotel	R 1 073.95
102.	29 September 2007	Car rental from Avis	R 1 328.58
103.	10 October 2007	Accommodation in Garden Court Hotel	R 4 211.10
104.	24 October 2007	Car rental from Avis	R 1 237.19
105.	17 October 2007	Air flight tickets	R 3 121.80
106.	19 October 2007	Air flight tickets	R 3 473.20
107.	24 October 2007	Car rental from Avis	R 1 814.31
108.	24 October 2007	Car rental from Avis	R 755.64
109.	25 March 2008	Air flight tickets	R 3 473.20
110.	31 October 2007	Accommodation in Paxton Hotel	R 658.00
111.	31 October 2007	Accommodation in Paxton Hotel	R 1 890.00
112.	03 November 2007	Car rental from Avis	R 1 085.88

113.	07 November 2007	Accommodation in Paxton Hotel	R 588.19
114.	20 December 2007	Car rental from Avis	R 801.67
115.	04 January 2008	Accommodation in Garden Court Kings Beach	R 1 571.35
116.	18 January 2008	Air flight tickets	R 2 328.40
117.	23 January 2008	Car rental from Avis	R 830.10
118.	11 February 2008	Car rental from Avis	R 1 868.77
119.	25 February 2008	Accommodation in The Beach Hotel	R 3 263.88
120.	25 March 2008	Air flight tickets	R 12 415.20
121.	25 March 2008	Air flight tickets	R 2 389.60
122.	07 April 2008	Car rental from Avis	R 3 964.04
123.	07 April 2008	Accommodation in Paxton Hotel	R 1 830.70
124.	07 April 2008	Accommodation in Paxton Hotel	R 1 443.00
125.	07 April 2008	Accommodation in Paxton Hotel	R 528.00
126.	25 March 2008	Air flight tickets	R 2 389.60
127.	03 October 2008	Air flight tickets	R 10 037.52
128.	07 October 2008	Car rental from Avis	R 3 428.53
129.	20 October 2008	Accommodation in Paxton Hotel	R 1 802.75
130.	14 July 2009	Car rental from Avis	R 1 320.93
131.	28 July 2009	Air flight tickets	R 5 382.64
132.	27 July 2009	Accommodation in Southern Sun - The Cullinan	R 1 892.71

133.	03 August 2011	Car rental from Budget	R 5 112.80
134.	12 September 2011	Accommodation in Paxton Hotel	R 6 067.50
135.	29 September 2011	Air flight tickets	R 4 452.20
136.	07 October 2011	Car rental from Avis	R 3 011.40
137.	13 October 2011	Accommodation in Paxton Hotel	R 3 778.80
138.	10 November 2011	Car rental from Avis	R 3 903.26
139.	04 February 2012	Air flight tickets	R 7 261.60
140.	08 February 2012	Air flight tickets	R 7 951.00
141.	06 March 2012	Accommodation Paxton Hotel	R 3 805.59
142.	23 March 2012	Car rental from Avis	R 1 818.29
143.	10 April 2012	Car rental from Budget	R 3 613.65
144.	12 April 2012	Accommodation in Hemingways Hotel	R 5 406.81
145.	30 April 2012	Air flight tickets	R 13 881.20
146.	04 May 2012	Air flight tickets	R 4 409.40
147.	14 May 2012	Car rental from Avis	R 3 069.28
148.	30 June 2012	Air flight tickets	R 6 516.30
149.	06 July 2012	Car rental from Budget	R 4 087.85
150.	11 July 2012	Accommodation in Paxton Hotel	R 1 778.40
151.	11 July 2012	Accommodation in Paxton Hotel	R 2 592.40
152.	11 July 2012	Accommodation in Paxton Hotel	R 890.20

153.	31 July 2012	Air flight tickets	R 5 675.20
154.	07 August 2012	Accommodation in Paxton Hotel	R 4 734.50
155.	19 September 2012	Car rental from Avis	R 2 444.41
156.	05 October 2012	Car rental from Budget	R 9 522.67
157.	07 November 2012	Car rental from Budget	R 277.00
158.	29 October 2012	Air flight tickets	R 4 111.50
159.	10 October 2012	Car rental from Avis	R 4 983.87
160.	29 October 2012	Accommodation in Southern Sun – Emnotweni	R 1 181.90
161.	18 October 2012	Accommodation in Southern Sun Hotel	R 2 021.57
162.	18 October 2012	Accommodation in Southern Sun – Emnotweni	R 3 351.79
163.	30 October 2012	Car rental from Hertz	R 5 857.47
164.	30 October 2012	Air flight tickets	R 9 100.40
165.	27 November 2012	Accommodation in Paxton Hotel	R 1 980.40
166.	27 November 2012	Accommodation in Paxton Hotel	R 2 018.40
167.	27 November 2012	Air flight tickets	R 4 768.30
168.	27 November 2012	Air flight tickets	R 4 039.80
169.	27 November 2012	Air flight tickets	R 5 910.80
170.	14 December 2012	Accommodation in Paxton Hotel	R 1 220.40

171.	31 December 2012	Accommodation in Royal Palm Hotel	R 1 762.50
172.	31 December 2012	Accommodation in City Lodge Bloemfontein	R 4 184.10
173.	31 December 2012	Air flight tickets	R 4 572.20
174.	31 December 2012	Air flight tickets	R 3 926.00
175.	31 December 2012	Air flight tickets	R 4 019.80
176.	31 December 2012	Car rental from Budget	R 2 769.00
177.	31 December 2012	Accommodation in Ushaka Manor Guest House	R 10 471.60
178.	23 January 2013	Car rental from Budget	R 9 753.25
179.	23 January 2013	Accommodation in Garden Court East London	R 3 142.98
180.	31 January 2013	Air flight tickets	R 6 367.60
181.	31 January 2013	Air flight tickets	R 6 037.00
182.	27 February 2013	Air flight tickets	R 4 057.80
183.	28 February 2013	Car rental from Budget	R 2 381.50
184.	28 February 2013	Car rental from Budget	R 3 058.51
185.	28 February 2013	Accommodation in Radisson Blu Hotel PE	R 6 512.40
186.	29 March 2013	Air flight tickets	R 11 637.60
187.	18 April 2013	Accommodation in Paxton Hotel	R 5 882.81



188.	18 April 2013	Car rental from Budget	R 5 143.45
189.	18 April 2013	Air flight tickets	R 7 356.60
190.	22 April 2013	Accommodation in Hemingways Hotel	R 9 068.00
191.	22 April 2013	Car rental from Avis	R 6 911.84
192.	29 April 2013	Accommodation in Paxton Hotel	R 5 686.81
193.	30 April 2013	Air flight tickets	R 4 748.70
194.	30 April 2013	Car rental from Dollar Thrifty	R 1 620.32
195.	07 June 2013	Car rental from Avis	R 4 873.76
196.	19 June 2013	Accommodation in Boardwalk Hotel PE	R 14 757.00
197.	03 June 2013	Accommodation in Broadwalk Hotel PE - Extra's	R 618.50
198.	20 June 2013	Accommodation in Royal Palm Hotel	R 1 975.20
199.	27 June 2013	Car rental from Budget	R 3 960.86
200.	28 June 2013	Air flight tickets	R 5 669.60
201.	28 June 2013	Accommodation in Paxton Hotel	R 10 751.40
202.	10 July 2013	Car rental from Avis	R 1 425.43
203.	16 July 2013	Accommodation in Radisson Blu Hotel PE	R 3 144.20
204.	29 July 2013	Air flight tickets	R 4 502.40
205.	13 August 2013	Car rental from Budget	R 4 962.58
206.	24 August 2013	Air flight tickets	R 6 030.40



207.	14 August 2013	Air flight tickets	R 5 483.20
208.	14 August 2013	Air flight tickets	R 5 483.20
209.	24 August 2013	Accommodation in Paxton Hotel	R 5 759.80
210.	24 August 2013	Car rental from Avis	R 6 296.29
211.	24 August 2013	Air flight tickets	R 5 780.30
212.	25 September 2013	Air flight tickets	R 4 698.80
213.	25 September 2013	Accommodation in Southern Sun Hotel	R 4 558.70
214.	25 September 2013	Car rental from Budget	R 2 565.24
215.	22 October 2013	Car rental from Avis	R 5 302.55
216.	22 October 2013	Car rental from Budget	R 627.20
217.	25 October 2013	Car rental from Avis	R 4 891.89
218.	25 October 2013	Car rental from Hertz	R 2 297.47
219.	25 November 2013	Air flight tickets	R 6 270.00
220.	25 November 2013	Accommodation in Southern Sun Hemingways	R 1 870.85
221.	25 November 2013	Air flight tickets	R 10 625.80
222.	28 November 2013	Air flight tickets	R 5 060.80
223.	28 November 2013	Accommodation in Queens Casino & Hotel	R 1 346.00
224.	05 December 2013	Car rental from Budget	R 1 882.54
225.	11 December 2013	Car rental from Avis	R 2 544.71

226.	19 December 2013	Air flight tickets	R 7 436.40
227.	19 December 2013	Air flight tickets	R 8 750.60
228.	20 December 2013	Car rental from Budget	R 1 021.20
229.	20 December 2013	Car rental from Budget	R 1 021.20
230.	20 December 2013	Car rental from Budget	R 627.20
231.	31 December 2013	Car rental from Budget	R 4 406.63
232.	27 January 2014	Accommodation in City Lodge Waterfront	R 13 162.79
233.	28 January 2014	Car rental from Avis	R 12 204.82
234.	28 January 2014	Air flight tickets	R 705.00
235.	19 February 2014	Air flight tickets	R 730.00
236.	28 January 2014	Air flight tickets	R 7 968.70
237.	19 February 2014	Air flight tickets	R 755.00
238.	28 February 2014	Air flight tickets	R 4 674.70
239.	26 March 2014	Car rental from Avis	R 5 264.04
240.	27 March 2014	Accommodation in Southern Sun Hemingways	R 1 875.45
241.	27 March 2014	Air flight tickets	R 7 695.80
242.	27 March 2014	Air flight tickets	R 7 695.80
243.	17 April 2014	Car rental from Avis	R 7 598.22
244.	25 April 2014	Accommodation in Paxton Hotel	R 14 762.51

245.	22 May 2014	Car rental from Avis	R 8 527.94
246.	23 May 2014	Air flight tickets	R 10 931.20
247.	27 May 2014	Accommodation in Hemingways Hotel	R 5 212.41
248.	23 June 2014	Air flight tickets	R 6 724.10
249.	23 June 2014	Car rental from Avis	R 8 009.41
250.	23 June 2014	Air flight tickets	R 5 323.50
251.	24 July 2014	Car rental from Budget	R 7 739.21
252.	29 July 2014	Car rental from Budget	R 5 088.32
253.	20 August 2014	Car rental from Avis	R 1 379.26
254.	07 July 2015	Traffic Fine paid for Mti (Accused 1) in PE	R 322.00

TOTAL VALUE: R 975 637.22

SCHEDULE 2**CASH DEPOSITS PAYMENTS GIVEN TO ACCUSED 1**

COLUMN A	COLUMN B	COLUMN C	COLUMN D
TRANSACTION NUMBER	DATE	SERVICE/BENEFIT & BANK STATEMENT DESCRIPTION	VALUE IN RAND
255.	04 March 2004	Cash Deposit Key West Mti	R 2 500.00
256.	19 April 2004	Cash Deposit Key West Mti	R 2 500.00
255.	04 May 2004	Cheque Deposit Key West Bosasa	R 2 500.00
256.	08 June 2004	Cash Deposit Key West 1111	R 2 500.00
257.	05 July 2004	Cash Deposit Key West Mti	R 4 234.60
258.	05 August 2004	Cash Deposit Key West Mti	R 4 234.60
259.	02 September 2004	Cash Deposit Key West Mti	R 4 234.60
260.	04 October 2004	Cash Deposit Key West Mti	R 4 234.60

261.	03 November 2004	Cash Deposit Key West Sal	R 4 234.60
262.	03 December 2004	Cash Deposit Key West Mii.	R 4 234.60
263.	03 January 2005	Cheque Deposit Key West Mti	R 4 234.60
264.	08 February 2005	Cheque Deposit Key West Mti	R 4 234.60
265.	02 March 2005	Cash Deposit Key West Mti	R 4 234.60
266.	06 April 2005	Cash Deposit Westgate 665-2256	R 4 234.60
267.	26 April 2005	Cash Deposit Key West Mti	R 4 234.60
268.	02 June 2005	Cash Deposit Westgate M T I	R 4 234.60
269.	04 July 2005	Cash Deposit Key West Dep	R 4 234.60
270.	29 July 2005	Cash Deposit Key West 6652256	R 4 234.60
271.	23 August 2005	Cash Deposit Key West 665.2256	R 4 234.60
272.	28 September 2005	Cash Deposit Westgate Dep	R 7 250.00

273.	03 December 2005	Cash Deposit- Thank You Vods020Kd Q90	R 5 000.00
274.	09 December 2005	Cash Deposit Eastgate 0829081549	R 5 000.00
275.	06 January 2006	Cash Deposit Pretoria 0829081549	R 5 000.00
276.	12 March 2007	Cash Deposit Calswald 0824554908	R 4 500.00
277.	06 July 2007	Cash Deposit Mbeki-Pe 0832010106	R 9 000.00
278.	03 December 2007	Cash Deposit- Thank You VodscLtd9 RHB	R 4 500.00
279.	06 December 2007	Cash Deposit- Thank You VodsJfnfz SHB	R 6 000.00

SCHEDULE 3**GRATIFICATIONS GIVEN TO ACCUSED 2 (GILLINGHAM)**

1. On 28 April 2004 an invoice to the amount of R 1 653, 00 (one thousand six hundred and fifty three rand) for the costs of Accused 2's air travel from Johannesburg to Port Elizabeth and back to Johannesburg was issued by Blakes Travel Agency (Pty) Ltd to Bosasa's (Accused 5) Customer Detailed Ledger Account number, B00087, in the ledger account of Blakes Travel.
2. On 17 July 2006 Blakes Travel Agency (Pty) Ltd issued three invoices against the Customer Detailed Ledger Account, "G00009: Mr P Gillingham", to the total of value R 62 796, 00, for a European trip undertaken by Accused 2 and Theresa Gillingham. On 27 July 2006 Blakes Travel Agency (Pty) Ltd received payment in the amount of R 62 810, 00 from Mr William Daniel Mansell and or his trust, Grande Four Property Trust's Standard Bank account number, 080010571. The funds from Grande Four Property Trust emanated from Accused 5's FNB account number, 62053735290.
3. During the period 15 February 2007 to 18 March 2007, Accused 2 hired a motor vehicle at Avis. In March 2007, Blakes Travel Agency (Pty) Ltd issued an invoice against the customer account, "A00031: Agrizzi Mr A" to the total value of R 15 202, 63.

4. During the period 18 March 2007 to 12 April 2007, Accused 2 hired a motor vehicle at Avis. In April 2007, Blakes Travel Agency (Pty) Ltd issued an invoice against the customer account, "A00031: Agrizzi Mr A" to the total value of R 24 971, 98.
5. During the period 22 June 2007 to 24 June 2007, Accused 2 hired a motor vehicle at Avis. In June 2007, Blakes Travel Agency (Pty) Ltd issued an invoice against the customer account, "A00031: Agrizzi Mr A" to the total value of R 2 042, 90.
6. On 30 August 2004 the amount of R 196 959, 97 (one hundred and ninety six thousand, nine hundred and fifty nine rand ninety seven cents) was paid into Accused 2's ABSA bank account number, 1012851592, from Dr J Smith's Nedbank account number, 192803180. The said amount of R 196 959, 97 originated from Accused 5's FNB account number, 62053735290. Accused 2 used the said funds to purchase a Volkswagen Golf 1.6, registration number, RMD 413 GP, from the Glen Volkswagen, Johannesburg.
7. On 21 September 2004 mud flaps and a CD shuttle in the amount of R 4 050, 04 (four thousand and fifty rand four cents) were ordered as additional extras from the same dealership and paid for the benefit of Accused 2 with funds from Accused 5's FNB account number, 62053735290.
8. On 12 October 2004 the amount of R 155 000, 00 (one hundred and fifty five thousand rand) was paid into Accused 2's ABSA bank account number, 1012851592, from Dr J Smith's Nedbank account number, 192803180, and

Accused 2 utilised a portion of the said funds as deposit towards the sale of a Mercedes Benz E Class E270 CDI, from the Grand Central Motors, Midrand.

9. On 30 January 2005 the amount of R 16 410, 00 (sixteen thousand four hundred and ten rand) was paid from the Standard Bank account of Mr William Daniel Mansell to Travel Showcase to enable Accused 2's daughter, Megan, to participate in a school tour to Europe during 2005. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.
10. On 15 February 2005, a cheque in the amount of R 52 027, 00 (fifty two thousand and twenty seven rand) was cashed from the bank account of Accused 5 and the same amount was deposited into the ABSA bank account number, 01013481845, belonging to Van Der Merwe Du Toit Incorporated, to settle the transfer costs to the amount of R 52 027, 00 (fifty two thousand and twenty seven rand) for a personal residence of Accused 2, Erf 106 Midstream Estate.
11. On 10 June 2005 the amount of R 41 075, 00 (forty one thousand and seventy five rand) was paid from the FNB account number, 62053735290, of Accused 5, into the bank account of HMZ Architects and Developers for the benefit of Accused 2 for architectural services rendered by HMZ Architects and Developers at Accused 2's residence, Erf 106 Midstream Estate.
12. Between 30 June 2006 and 05 October 2006, the total amount of R 81. 141, 12 (eighty one thousand one hundred and forty one rand twelve cents) was paid by R Hoeksma of Riekele Konstruksie into the bank account of HMZ

Architects and Developers for the benefit of Accused 2's son (P Gillingham Jnr) for architectural services rendered by HMZ Architects and Developers at the residence of P Gillingham Jnr, Erf 971 Midstream Estate. The funds from Riekele Konstruksie emanated from Accused 5's FNB account number, 62053735290.

13. Between 12 August 2005 and 14 January 2007, Accused 2's costs to the value of R 185 810, 41 (one hundred and eighty five thousand eight hundred and ten rand and forty one cents) towards Sterlings Living (Pty) Ltd for the design and fitting of a new kitchen and other appliances at his private residence, 6 Marlboro Place, Midstream Estate, were paid for with funds coming from the bank accounts of Mr William Daniel Mansell and Accused 5.

14. On 15 September 2005 the amount of R 50 000, 00 (fifty thousand rand) was paid by Mr William Daniel Mansell from the bank account of Grande Four Property Trust, to Amazing Sounds CC for the credit of Accused 2. The funds from Grande Four Property Trust emanated from Accused 5's FNB account number, 62053735290.

15. On 22 September 2005 the amount of R 29 545, 00 (twenty nine thousand five hundred and forty five rand) was paid by Mr William Daniel Mansell from his Standard Bank Account to Weylandts Homestore's Nedbank Account, 1232107492, for the credit of Accused 2. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.



16. On 26 September 2005 the amount of R 30 095, 00 (thirty thousand and ninety five rand) was paid by Mr William Daniel Mansell from his Standard Bank Account to Studio Blue (Pty) Ltd's Standard Bank Account, 021217661, for the credit of Accused 2. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.
17. On 26 September 2005 a total amount of R 18 723, 79 (eighteen thousand seven hundred and twenty three rand seventy nine cents) was paid by Mr William Daniel Mansell from his Standard Bank Account to Wetherly Stores' for the credit of Accused 2. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.
18. On 03 October 2005 the amount of R 19 152, 00 (nineteen thousand one hundred and fifty two rand) was paid by Mr William Daniel Mansell from his Standard Bank Account to RSA Stone's ABSA Bank Account, 4047809611, for the credit of Accused 2. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.
19. During October 2005 the total amount of R 62 100, 00 (sixty two thousand one hundred rand) was paid by Mr William Daniel Mansell from his Standard Bank Account to DP Botha's ABSA Bank Account, 9147515527 , for the building services rendered for Accused 2 at his residence in Marlborough Drive, Midstream Estate. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.

20. On 10 October 2005 the amount of R 8000, 00 (eight thousand rand) was paid by Mr William Daniel Mansell from the bank account of Grande Four Property Trust to Baksons (Pty) Ltd, for the sale of a television set for the benefit of Accused 2. The funds from Grande Four Property Trust emanated from Accused 5's FNB account number, 62053735290.
21. On 07 November 2005 the amount of R 43 000, 00 (forty three thousand rand) was paid by Mr William Daniel Mansell to American Shutters CC's Standard Bank Account, 277060346, towards the sale of shutters (blinds) for the benefit of Accused 2. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.
22. Accused 2 bought property situated at 971 Midstream Estate, Ext 8, Midrand for R 645 000, 00. The purchase price was then reduced by way of a bond for R 300 000, 00. On 24 February 2006 Accused 2 transferred the amount of R 350 000, 00 into the bank account of Grande Four Property Trust. On 27 February 2006 the amount of R 392 000, 00 was paid into the trust account of L C Viljoen Attorneys by Grande Four Property Trust to cover the balance of R 345 000, 00 plus transfer duties of R 46 163, 00. Thus, Mr William Daniel Mansell through Grande Four Property Trust, paid a gratification of R 42 000, 00 for the benefit of Accused 2.
23. On 07 November 2005 the amount of R 25 600, 00 (twenty five thousand six hundred rand) was paid by Mr William Daniel Mansell to Bundu Blind's Standard Bank Account number, 226053776, for installation of blinds at Accused 2's residence situated at Marlborough Place, Midstream Estate,

Midrand, for the benefit of Accused 2. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.

24. On 08 December 2005 the amount of R 7 884, 24 (seven thousand eight hundred and eighty four rand twenty four cents) was paid by Mr William Daniel Mansell to Spire Technology CC's Standard Bank Account number, 023110317, for supplying and installing glass at Accused 2's residence situated at 6 Marlboro Road, Midstream Estate, Midrand, for the benefit of Accused 2. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.
25. During April 2006, a motor vehicle, Polo Volkswagen 1.6, in the amount of R 123 269, 28 was purchased from Lindsay Saker dealership, Krugersdorp, by Mr William Daniel Mansell and or Accused 5 and or its employee (F Vorster), for the benefit of Accused 2 and or his son , Ryan Gillingham.
26. On 26 April 2006 the amount of R 10 000, 00 (ten thousand rand) was paid by Mr William Daniel Mansell to Gert van der Merwe Couturier's ABSA Bank Account number, 4050979932, for the matric dance dress of Accused 2's daughter, Megan. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.
27. On 21 August 2006 and 10 October 2006 respectively, the amounts of R 80 000, 00 (eighty thousand rand) and R 8 046, 00 (eight thousand and forty six rand) were paid by Mr William Daniel Mansell to Booysen, Dreyer & Nolte Attorneys and Conveyancers' ABSA Bank Account number, 4052904991, as initial down payment and additional bond costs of a property

situated at Section 105 Protea Aftree – Oord, Heuwelsig, purchased by Accused 2. The funds from Mr William Daniel Mansell emanated from Accused 5's FNB account number, 62053735290.

28. On 16 September 2006 the amount of R 27 600 (twenty seven thousand six hundred rand) was paid by Mr William Daniel Mansell and or Accused 5 to Inscape Design Colleges' Standard Bank Account number, 001664417, as tuition fees for the daughter of Accused 2, Megan Gillingham.

29. On 21 December 2006, a motor vehicle, a white Polo Volkswagen 1.6, in the amount of R 131 367, 99 was purchased from The Glen Volkswagen dealership, Alberton, by Accused 4 and or Dr J Smith and or Accused 5, for the benefit of Accused 2 and or his daughter, Megan Gillingham.

30. During April 2007 Accused 2 purchased a motor vehicle, Mercedes Benz E320 CDI, in the amount of R 555 150, 02 (five hundred and fifty five thousand one hundred and fifty rand and two cents), from Mercedes Benz Constantia Kloof dealership in Roodepoort, and he applied for a motor vehicle finance of R 375 150, 02 from Stannic. The balance of R 180 000, 00 was settled by an electronic transfer into the bank account of Sandown Motor Holdings (Pty) Ltd by an employee of Accused 5, CJ Bonifacio. The said amount of R 180 000, 00 had been paid by Accused 5 into the bank account of Accused 3 who in turn transferred it to CJ Bonifacio.

31. Between February 2005 and December 2005, Accused 2 received a gratification in the form of a house situated at 106 Midstream Estate, to the estimated value of R 1 885 500, 00, constructed by Riekele Konstruksie. The costs of the house were paid by Accused 5.

D A F

S